



FACILITIES MANAGEMENT

CONDITIONS OF CONTRACT (DPW)

SEPT. 2005 VERSION 1



PA-10 (FM): CONDITIONS OF CONTRACT

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1. DEFINITIONS

- 1.1. The following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:
- 1.1.1. "Additional Services" are increases in the quantity of the routine Services detailed in the Scope of Works.
- 1.1.2. "Bill of Quantities" means the document so designated in the Pricing Data that describes the Services and indicates the quantities and rates associated with each item which the Employer agrees to pay the Service Provider for the Services completed;
- 1.1.3. "Certificate of Completion" means the certificate issued by the Service Manager signifying that the Contract has expired;
- 1.1.4. "Commencement Date" means the date on when the Service Provider is notified of the Employer's acceptance of its offer;
- 1.1.5. "Contract" means the Contract signed by the Parties and of which these Conditions of Contract form part of, and such amendments and additions to the Contract as may be agreed in writing between the Parties;
- 1.1.6. "Contract Data" means the specific data, which together with these Conditions of Contract, Scope of Works and Pricing Data collectively describe the risks, liabilities and obligations of the contracting Parties and the procedures for the administration of the Contract;
- 1.1.7. "Contract Period" is from Commencement Date for the period stated in the Contract Data;
- 1.1.8. "Contract Price" means the price to be paid for the Services in accordance with the Pricing Data, subject to such additions thereto or deductions there from as may be made from time to time under the provisions of the Contract;
- 1.1.9. "Contract Sum" refers to the amount stated by the Service Provider in the Form of Offer and Acceptance;
- 1.1.10. "CPAP" means contract price adjustment provisions used for the adjustment of fluctuations in the cost of labour, plant and materials and goods as stated in the Contract Data;
- 1.1.11. "Day" means a calendar day;
- 1.1.12. "Drawings" means all drawings, calculations and technical information which are made available to the Service Provider for inspection at a venue and time to be announced by the Service Manager and any modifications thereof or additions thereto from time to time approved in writing by the Employer or delivered to the Service Provider by the Employer;
- 1.1.13. "Employer" means the contracting Party named in the Contract Data who appoints the Service Provider;
- 1.1.14. "Equipment" includes all appliances, tools implements, machinery, articles and things of whatsoever nature required in or for the rendering, completion or defects correction of the Services but does not include materials;
- 1.1.15. "Facilities" means the land and buildings, detailed in the Scope of Works, and any additions, or omission thereto, made available by the Employer for the purposes of the Contract, on, under, over, in or through which the Services are to be rendered or carried out;
- 1.1.16. "Form of Offer and Acceptance" means the written communication by the Employer to the Service Provider recording the acceptance of the Service Provider's offer;
- 1.1.17. "Identified Projects" means any projects, other than routine Services, identified and agreed to by the Parties during the Contract period or any extensions thereto, to be completed in terms of the Contract.



- 1.1.18. "Materials" includes all materials, commodities, articles and things required to be furnished under the Contract for the execution of the Services;
- 1.1.19. "Month" refers to the period commencing on a certain day of a month to the day preceding the corresponding day of the next month;
- 1.1.20. "Parties" means the Employer and the Service Provider;
- 1.1.21. "Pricing Data" means the document that contains the Bill of Quantities and provides the criteria and assumptions, which it will be assumed in the Contract were taken into account by the Service Provider when developing his prices;
- 1.1.22. "Services" means all the work to be performed by the Service Provider during the Contract Period in accordance with the Contract, as more fully set out in the Scope of Works, as amended from time to time by written agreement between the Parties;
- 1.1.23. "Service Provider" means the Tenderer, as named in the Contract Data, whose offer has been accepted by or on behalf of the Employer and, where applicable, includes the Service Provider's heirs, executors, administrators, trustees, judicial managers or liquidators, as the case may be, but not, except with the written consent of the Employer, any assignee of the Service Provider;
- 1.1.24. "Service Manager" means the representative of the Employer named as the Service Manager in the Contract Data. The Employer reserves the right to replace the said Service Manager, by written notice to the Service Provider, without the need to furnish reasons therefor;
- 1.1.25. "Scope of Work" refers to the document which defines the Employer's objectives and requirements and specifications and any other requirements and constraints relating to the manner in which the Services must, or may, be provided or performed;
- 1.1.26. "Service Period" refers to the period indicated in the Contract Data during which the Service Provider shall render the Services required in terms of the Contract;
- 1.1.27. "Transitional Stage" refers to the period indicated in the Contract Data, which commences immediately on the expiry of the Service Period, and during which the Services to be provided by the Service Provider shall include, inter alia, the provision and transfer to the incoming service provider of managerial support and information, as detailed in the Scope of Works.

2. INTERPRETATION

- 2.1. In this Contract, except where the context otherwise requires:
- 2.1.1 The masculine includes the feminine and the neuter, vice versa;
- 2.1.2 The singular includes the plural; and vice versa
- 2.1.3 Any reference to a natural person includes a body corporate, firm, association or consortium/joint venture/partnership, vice versa.
- 2.2. The headings to the clauses of this Contract are included for reference purposes only and shall not affect the interpretation of the provisions to which they relate.
- 2.3. Words and phrases defined in any clause shall bear the meanings assigned thereto.
- 2.4. The various parts of the Contract are severable and may be interpreted as such.
- 2.5. The expressions listed in clause 1 bear the meanings as assigned thereto and cognate expressions bear corresponding meanings.
- 2.6. If any provision in a definition clause is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of the Contract, notwithstanding that it is only contained in the interpretation clause.



3. DURATION

- 3.1. The rights and obligations of the Parties to this Contract shall commence on the Commencement Date.
- 3.2. Subject to the terms of clauses 33 and 34 relating to breach and termination respectively, the Contract will commence on the Commencement Date and terminate on the expiry of the Contract Period, unless it is extended in terms of clause 3.3.
- 3.3. The terms or duration of the Contract may be extended as a result of bona fide negotiations between the Parties. No extension of term or duration of the Contract shall however be valid unless the terms and conditions of such extension has been reduced to writing and signed by the authorised representatives of both Parties.

4. RIGHTS AND OBLIGATIONS OF THE EMPLOYER

- 4.1. The Employer shall give access to or supply the Service Provider with:
 - 4.1.1 All relevant, available data and information required and requested by the Service Provider for the proper execution of the Services; and
 - 4.1.2 Such assistance as shall reasonably be required by the Service Provider for the execution of its duties under the Contract.

5. RIGHTS AND OBLIGATIONS OF THE SERVICE PROVIDER

- 5.1. The Service Provider shall, in executing his obligations, comply with the Service Manager's written instructions on any matter relating to the Services.
- 5.2. The Service Provider shall take instructions only from the Service Manager or other persons authorised by the Service Manager in terms of Clause 6.
- 5.3. The Service Provider shall not have the power of attorney or authority to enter into any contract or to otherwise bind or incur liability on behalf of the Employer, save where prior written authorisation has been obtained.
- 5.4. The Service Provider shall ensure that it, its employees, agents and representatives have the relevant experience and capacity necessary for rendering of the Services with the reasonable degree of skill, care and diligence that may be expected of professionals providing services similar to the Services.
- 5.5. Should any member of the Service Provider's team, in the opinion of the Service Manager or occupants of the Facilities, misconduct himself or is incompetent or negligent in the delivery of the Services, or whose presence on the Facilities is otherwise considered by the Service Manager, or occupants of the Facilities, on reasonable grounds, to be undesirable, the Employer may, in writing and together with reasons therefor, request that such person be removed. Such person shall not again be employed on the Services without the prior written consent of the Employer.
- 5.6. The Service Provider undertakes to effect such removal, as referred to in 5.5 above, within a day of receipt of the Employer's written request.
- 5.7. The Service Provider shall ensure that reasonable levels of care and responsibility are exercised when using items belonging to the Employer in the delivery of the Services.
- 5.8. During the ongoing provision of the Services the Service Provider shall at all times keep the Facilities clean and in a safe condition.
- 5.9. Notwithstanding anything herein contained to the contrary, it is specifically agreed that the appointment of the Service Provider shall not create an employment contract or relationship between the Parties and the Service Provider or his employees shall therefore not be entitled to any benefits to which the employees of the Employer may be entitled.



6. SERVICE MANAGER

- 6.1. The Service Manager shall administer the Contract on behalf of the Employer in accordance with the provisions of the Contract.
- 6.2. The Service Manager may delegate any of his powers and authority and may cancel such delegation, on the prior written notification thereof to the Service Provider.
- 6.3. Such delegation shall continue in force until the Service Manager notifies the Service Provider in writing that the delegation is terminated.
- 6.4. The Service Provider may at any time, prior to giving effect thereto, refer any written order or instruction of the Service Manager's delegatee to the Service Manager who shall confirm, reverse or vary such order or instruction.

7. SECURITY

- 7.1. The Service Provider shall provide to the Employer security in the amount and in the form set out in the Contract Data and any expenditure incurred in doing so shall be borne by the Service Provider.
- 7.2. Should the Service Provider fail to select the security to be provided or should the Service Provider fail to provide the Employer with the selected security within 21 days from Commencement Date, it shall be deemed that the Service Provider has selected a security in the form of a retention of 2.5 % of the Contract Sum (excl. VAT).

8. SECURITY CLEARANCE

- 8.1. In the event of security clearance becoming necessary, the Service Provider, any subcontractors and all human resources utilized by the Service Provider undertake to undergo security clearance, for which purpose the necessary forms will be made available to the Service Provider at the relevant time by the Employer. The Service Provider accepts that if he or any of his human resources refuses to undergo the required security clearance, they will not be allowed on the Facilities to render the Services.
- 8.2. It is required that all persons engaged in the rendering of the Services shall be easily identifiable and where required, security cleared.

9. CONFIDENTIALITY

- 9.1. The Service Provider undertakes to keep any and all information, of whatever nature, relating to the Contract or which he becomes privy to due to his presence at the Facilities, strictly confidential and such shall not be sold, traded, published or otherwise disclosed to anyone in any manner whatsoever, including by means of photocopy or other reproduction, without the Employer's prior written consent. As disclosure or improper use of the confidential information, without the Employer's prior written consent, will cause the Employer harm:
 - 9.1.1 the Service Provider shall be liable for any loss or damages suffered by the Employer and shall indemnify the Employer against any claims by third parties as a result of such unauthorised disclosure or use thereof, either in whole or in part; and/or
 - 9.2.1 the Employer shall be entitled to cancel the Contract
- 9.2. The Service Provider shall be entitled to disclose such confidential information to the following persons, who have a clear need to know interest, in order to assist with the rendering of the Services on the Contract:
 - 9.2.1 employees, officers and directors of the Service Provider; and
 - 9.2.2 any professional consultant or agent retained by the Service Provider for the purpose of rendering the Services, provided that the identity of such consultant or agent is made known to the Employer in writing and the Employer acknowledges in writing that the confidential information may be disclosed to such person.

- 9.3. The Service Provider shall be responsible for ensuring that all persons to whom the confidential information is disclosed under this Contract shall keep such information confidential and shall not disclose or divulge the same to any unauthorised person.
- 9.4. The confidential information shall remain the property of the Employer and the Employer may demand the return or destruction thereof, at the cost of the Service Provider, at any time upon giving written notice to the Service Provider. Within ten (10) days of receipt of such notice, the Service Provider shall return all of the original confidential information and shall destroy all copies and reproductions (both written and electronic) in its possession or in the possession of persons to whom it was disclosed and furnish a certificate to the Employer stating as much.

10. AMBIGUITY IN DOCUMENTS

- 10.1. The several documents forming the Contract are to be taken as mutually explanatory of one another and any ambiguity in or discrepancy between them shall be explained and, if necessary, rectified by the Service Manager who shall thereupon issue to the Service Provider a written explanation giving details of the adjustments, if any, and a written instruction directing what Service, if any, is to be delivered.

11. INSURANCES

- 11.1. It is the responsibility of the Service Provider to assess his risks on this project and to ensure that he obtains and maintains the adequate insurances to cover such risks.

12. ACCESS TO THE FACILITIES AND COMMENCEMENT OF THE SERVICES

- 12.1. The Service Provider shall provide the Employer, within 21 days of the Commencement Date, with an acceptable health and safety plan and such other information required in terms of the Occupational Health and Safety Act (85 of 1993).
- 12.2. The Service Period shall commence 30 days from Commencement date, or on such other date as maybe specified in the Contract Data
- 12.3. Notwithstanding the provision of 12.2, the Service Provider shall be given access to the Facilities or portions thereof, only after the provision by the Service Provider of an acceptable health and safety plan and of security clearance being obtained in terms of Clauses 12.1 and 8.1 respectively.
- 12.4. The Service Provider shall be given access to the Facilities or portions thereof and shall render the Services in accordance with its programme, referred to in clause 13 or after the receipt by him of a written instruction to this effect.
- 12.5. If the Employer fails to give the Service Provider access to the facility or any portion thereof for any reason other than default by the Service Provider and the Service Provider suffers additional costs as a result thereof, the Service Provider shall be entitled to make a claim therefor provided that the Service Provider is able to prove his claim and that he has taken all reasonable steps to mitigate the additional costs.

13. PROGRAMME

- 13.1. The Service Provider shall deliver to the Service Manager within 14 days from Commencement Date, a realistic programme and a cash flow for the delivery of the Services. The programme shall describe and detail the order in which the Services are to be rendered and shall be subject to the approval of the Service Manager, which written approval shall not be unreasonably withheld.
- 13.2. The Service Provider shall, on receipt of a written request from the Service Manager, furnish the Employer with any documents or information, of whatever nature, in support of the programme and/or in relation to the manner in which the Services are to be rendered and/or the resources to be supplied and used in the rendering of the Services and/or progress of the various parts of the Contract; and/or a detailed cash flow forecast.
- 13.3. A programme and the cash flow forecast will be submitted in terms of 13.1 and reviewed quarterly or as circumstances may require.



- 13.4. Agreement to the programme by the Service Manager or any adjustment thereto will not alter the responsibilities of the Service Provider in terms of this Contract.

14. SUBCONTRACTING

- 14.1. The Service Provider may subcontract any part of the Services at its discretion. The subcontracts shall incorporate the applicable terms, conditions and requirements of this Contract.
- 14.2. Subcontracting by the Service Provider shall not be construed as relieving the Service Provider from any obligations under the Contract or imposing any liability on the Employer.

15. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 15.1. The Service Provider undertakes to obtain the necessary consent from the proprietors or their licensees should the Service Provider make use of the intellectual property of any other person.
- 15.2. The Service Provider further indemnifies the Employer against any claim or action (including costs on an attorney and client scale) caused by or arising from the failure to obtain such consent.

16. COMPLIANCE WITH LEGISLATION

- 16.1. This clause applies to legislation emanating from national and provincial government as well as that of any local authorities in whose area of jurisdiction the Facilities fall and which have a bearing on the delivery of the Services and Facilities under this Contract.
- 16.2. All the applicable legislation, which does not specifically allow discretion in respect of compliance by the Employer, shall be followed exactly as intended by such legislation regardless of any instructions, verbal or in writing, to the contrary.
- 16.3. Should any applicable legislation allow discretion in respect of compliance by the Employer it shall be followed exactly as intended by the relevant legislation as if no discretion is allowed until such time as specific instructions in writing are issued to the Service Provider by the Service Manager.
- 16.4. The Service Provider shall in the provision 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 any legislation or imposed by any other body or person. The Service Provider hereby indemnifies the Employer against any liability for any breach of the provision of this clause.
- 16.5. It is the responsibility of the Service Provider to obtain the consents, permissions and/or permits, referred to in Clause 16.4, in the provision of the Services.
- 16.6. The Service Provider shall not have a claim against the Employer, and the Employer shall not be liable to refund the Service Provider for any of the fees, taxes, levies and other charges referred to Clause 16.4.

17. REPORTING OF INCIDENTS

- 17.1. In addition to the above, the Service Provider shall, as soon as possible, notify the Employer in writing of any incidents at the Facilities, which resulted or could have resulted in damage to property or injury or death to persons.
- 17.2. The Service Provider shall verbally notify the Service Manager of any of the incidents referred to in 17.1 immediately after the occurrence thereof.
- 17.3. The Service Provider shall follow up the verbal notification referred to in 17.2 with a detailed written report on such incidents to the Service Manager within the time frame indicated by the Service Manager, but in any event within 48 hours of the incident.
- 17.4. The written report referred to in 17.3 shall provide for all incidents, which resulted in injury, death or damage to property.



- 17.5. The Service Provider shall notify the Employer immediately, on becoming aware of the Contract requiring him to undertake anything that is illegal or impossible

18. NUISANCE

- 18.1. The Service Provider shall deliver the Services in a manner that shall not cause unnecessary noise, nuisance, or hinder the normal activities in the Facilities.
- 18.2. The Service Provider hereby indemnifies the Employer against any liability arising out of the Service Provider's non-compliance with his obligations in terms of Clause 18.1.

19. MATERIALS, WORKMANSHIP AND EQUIPMENT

- 19.1. All Services delivered, and materials and workmanship shall comply with the requirements of this Contract, the manufacturer's specification; good industry practice and the Service Manager's written instructions and shall be suitable for the purpose intended.
- 19.2. The Service Provider shall, in accordance with the Scope of Works or if instructed by the Service Manager, carry out tests demonstrating the acceptability of the relevant Services provided, or the suitability of materials or equipment to be used.
- 19.3. The Service Provider shall provide all necessary assistance, labour, materials, testing equipment and instruments for the purpose of such tests to be performed by himself or, if so instructed by the Service Manager, for the purposes of tests to be performed by any other person.
- 19.4. All costs for tests carried out shall be deemed to be included in the Service Provider's prices
- 19.5. Copies of the reports on the tests referred to in Clause 19.2 shall be forwarded by the Service Provider to the Employer within 10 days of the tests being completed.

20. URGENT WORK

- 20.1. The Employer may, by itself or through another service provider, effect any remedial or other repair work which becomes necessary due to an act or omission on the part of the Service Provider.
- 20.2. If the remedial or repair work became necessary due to an act or omission on the part of the Service Provider, its employees, agents or representatives, the Service Provider shall effect such remedial or repair work at its own cost.
- 20.3. If the remedial or repair work is urgently necessary due to an act or omission on the part of the Service Provider, its employees, agents or representatives and the Service Provider refuses to or is not available or able to effect such remedial or repair work, the Employer may effect such remedial or repair work either by itself or through another service provider.
- 20.4. If the Employer effects the remedial or repair work in terms of 20.3, then the Employer may recover such costs, losses or damages from the Service Provider or by deducting the same from any amount still due under this Contract or under any other contract presently or hereafter existing between the Employer and the Service Provider and for this purpose all these contracts shall be considered one indivisible whole.

21. INDEMNIFICATIONS

- 21.1. The Service Provider shall be liable for and hereby indemnifies the Employer against any liability, claim, demand, loss, cost, damage, action, suits or legal proceedings whether arising in common law or by statute consequent upon:
- 21.1.1 personal injuries to or the death of any person arising out of, related to, occasioned by, attributed to, or in the cause of or caused by the rendering of the Services;
- 21.1.2 loss of or damage to any movable or immovable or personal property or property contiguous to the Facilities whether belonging to or under the control of the Employer or any other body or person arising out of, related to, occasioned by, attributed to, or in the cause of or caused by reason of the rendering of the Services;



21.1.3 any liens, attachments, charges or other encumbrances or claims upon or in respect of any materials parts, work-in-process or finished work furnished to, or in respect of which any payment has been made by the Employer.

21.2. The Employer accepts liability for all acts or omissions of its employees, agents or representatives.

22. VARIATIONS

22.1. The Employer may at any time during the Contract Period, vary the Services by way of additions, omissions, or substitutions.

22.2. No variation by the Employer of whatever nature shall vitiate the Contract.

22.3. Any Services required by the Employer outside of the Services as referred to in the Scope of Works will be regarded as being Identified Projects and shall be dealt with under clause 23 and shall be executed as a variation order.

22.4. The Service Provider shall inform the Employer of any instructions that are deemed to be Additional Services prior to such instructions being executed.

22.5. Additional Services will only be executed by the Service Provider after receipt by him of a written instruction from the Service Manager.

22.6. If no prior written authorisation, as required in 22.5 above, has been obtained, the Employer shall not reimburse the Service Provider for the Additional Services so executed, and the Service Provider agrees that it shall not have a claim for payment for such Additional Services.

22.7. The Additional Services will be valued at the rates in the Pricing Data.

23. IDENTIFIED PROJECTS

23.1. The Service Provider shall inform the Employer of any instructions that are deemed to be Identified Projects prior to such instructions being executed.

23.2. The Employer is not obliged to engage the services of the Service Provider on Identified Projects. The Employer may, by itself, through another service provider or through the Service Provider effect the services/works under Identified Projects.

23.3. Identified Projects will only be executed by the Service Provider after receipt by him of a written instruction from the Service Manager.

23.4. If no prior written authorisation, as required in 23.3 above, has been obtained, the Employer shall not reimburse the Service Provider for the Identified Projects so executed, and the Service Provider agrees that it shall not have a claim for payment for such Identified Projects.

23.5 In respect of the Identified Projects, the written instruction referred to in 23.3 shall:

- (a) describe the services/works required to be executed by the Service Provider under the Identified Project;
- (b) state the due commencement and completion dates of the relevant Identified Project;
- (c) state the total cost of the relevant Identified Project as agreed to between the Parties; and
- (d) any additional requirements, conditions of contract and/or restrictions, other than those already stated in the Contract, that will be applicable.

23.6 Within 14 days of receipt of the written instruction referred to in 23.5, the Service Provider shall furnish the Employer with a realistic programme and a cash flow for the relevant Identified Project as required in 13.



- 23.7 Where an Identified Project comprises services/works that are of the same or similar character executed under the same or similar conditions as those to which the rates in the Pricing Data apply, it shall be valued at such rates.
- 23.8 Where an Identified Project comprises services/works that are not of the same or similar character executed under the same or similar conditions as those to which the rates in the Pricing Data apply, it shall be valued at market related rates to be agreed to in writing between the Employer and the Service Provider and in advance of executing the Identified Project. Failing agreement, the rates applicable shall be as determined by the Employer.
- 23.9 If the Service Provider fails to complete the Identified Project by the completion date specified in the written instruction referred to in 23.3, then the Service Provider will be liable for a penalty, at the rate stated in the Contract Data, for every day that lapses from the due completion date of the relevant Identified Project to the date of the actual completion of such Identified Project.
- 23.10 If the Identified Projects are delayed by variations, omissions, additions, substitutions or organised work stoppages by any workman not due to any action on the part of the Service Provider, exceptionally inclement weather, any substantial increase in provisional quantities or any other cause beyond the Service Provider's control, including delays caused by the Employer, then the Service Provider shall be entitled to apply in writing within 21 days of the cause of delay arising to the Service Manager for extension of the due completion date of the relevant Identified Project stating the cause of delay and period of extension applied for.
- 23.11 If during the period for completion of the Identified Project or any extension thereof abnormal rainfall or wet conditions occur, the formula below shall be used to calculate separately the delay for each calendar month or part thereof. It shall be calculated each month during the period referred to herein above, or until the issue date of the certificate of completion for the relevant Identified Project, whichever is the shorter period. The delay calculated for a given month shall be used to determine the interim extension of time granted for the month. At the end of the applicable period referred to above, the aggregate of the monthly delays will be taken into account for the final determination of the total extension of time for the Contract:

$$V = \frac{(Nw - Nn) + (Rw - Rn)}{X}$$

- V = Delays due to rain in calendar days in respect of the calendar month under consideration.
- Nw = Actual number of days during the calendar month on which a rainfall of Y mm or more per day has been recorded
- Rw = Actual rainfall in mm for the calendar month under consideration.
- Nn = Average number of days in the relevant calendar month (as derived from existing rainfall records provided in the project specifications) on which a rainfall of Y mm or more per day has been recorded.
- Rn = Average rainfall in mm for the calendar month, as derived from the rainfall records supplied in the project specifications.
- X = 20, unless otherwise provided in the project specifications.
- Y = 10, unless otherwise provided in the project specifications.

The total delay that will be taken into account for the determination of the total extension of time for the Contract shall be the algebraic sum of the monthly totals for the period under consideration. But if the grand total is negative, the time for completion shall not be reduced on account of abnormal rainfall. The total extension of time for any calendar month shall not exceed (Nc - Nn) calendar days, where Nc = number of days calendar days in the month under consideration

The factor (Nw - Nn) shall be considered to represent a fair allowance for variations from the average number of days during which rainfall equals or exceeds Y mm per day.



The factor $(Rw - Rn) \div X$ shall be considered to represent a fair allowance for variations from the average for the number of days during which rainfall does not equal or exceed Y mm per day, but when wet conditions prevent or disrupt work.

This formula does not take into account any flood damage, which could cause further or concurrent delays and which should be treated separately in so far as extension of time is concerned.

Accurate rain gaugings shall be taken at a suitable point on the site daily at 08:00 unless otherwise agreed to by the Service Manager, and the Contractor shall, at his own expense, take all necessary precautions to ensure that the rain gauges cannot be interfered with by unauthorized persons.

Information regarding existing rainfall records, if available from a suitable rainfall station near the site, will be supplied in the project specifications, together with calculations of rain delays for previous years in accordance with the above formula. The average of these delays will be regarded as normal rain delays which the Contractor shall accommodate in his programme, and for which no extension of time will be considered.

- 23.12 Upon receipt of such written application, referred to in 23.10, the Employer may in writing extend the due completion date of the relevant Identified Project by a period to be determined by the Employer or may refuse to extend the due completion date of the relevant Identified Project. The due completion date of an Identified Project may not be extended beyond the end of the Contract Period stated in the Contract Data.
- 23.13 Any decision given by the Employer, in terms of 23.12, shall be final and binding on the Parties.
- 23.14 Should the Service Provider fail to apply in writing for an extension of the due completion date of the relevant Identified Projects within the 21 days referred to in 23.10, or should the Employer not grant an extension of the due completion date then the due completion date stipulated in the relevant written instruction referred to in 23.5 shall not be extended nor the Service Provider exonerated from liability to pay the penalty stipulated in 23.9 or from specific performance of the service/works within the period in the relevant written instruction.

24. SUSPENSION OF THE SERVICES

- 24.1 The Service Provider shall, on the written order of the Service Manager, suspend the provision of the Services or any part thereof for such time or times and in such manner as the Service Manager shall order and shall, during such suspension, properly protect the Services so far as is necessary.
- 24.2 If the Service Provider is instructed in writing by the Service Manager to suspend any or all of the Services, the Service Provider shall re-schedule the relevant Services. For the duration of such suspension all penalties applicable to that Service will be waived. Should the Service Provider suffer any additional costs resulting from such suspension, the Service Provider shall be entitled to make a claim therefor provided that the Service Provider shall prove his claim and that he has taken all reasonable steps to mitigate the additional costs.
- 24.3 If the Service Provider is unable to render any of the Services for any reason other than an instruction by the Employer to suspend the Services in terms of clause 24.1, the Employer shall not be liable for any claim of whatever nature, including a claim for costs, by the Service Provider.

25. PENALTY FOR NON-PERFORMANCE

- 25.1 The Service Provider shall be liable for a performance deduction, if the Service Provider in rendering any of the Services required under the Scope of Works, as amended from time to time,
- 25.1.1 delays in performing any of the Services;
- 25.1.2 fails to perform any of the Services;
- 25.1.3 fails to perform any of the Services to the standard required in the Scope of Works, as amended from time to time.
- 25.2 The performance deduction shall be calculated in accordance with the formula detailed in the Scope of Works.



- 25.3 The Service Provider shall not be liable for a performance deduction, if the Service Provider is unable to perform due to no fault of his own, his employees, agents or representatives.
- 26. PAYMENTS**
- 26.1 The Service Manager will evaluate the Service Provider's performance on a monthly basis.
- 26.2 The Service Provider shall submit a monthly certificate taking into account the following:
- 26.2.1 the assessment of the Services rendered during the assessment month, including routine services, management fees, and services using call down rates;
 - 26.2.2 adjustments in terms of the pricing data;
 - 26.2.3 additional work rendered by the Service Provider;
 - 26.2.4 CPAP adjustment where stated in the Contract Data; and
 - 26.2.5 VAT. Vat will be indicated separately in all documents.
- 26.3 If the Service Provider elects a security of 2,5% retention, or a 1,25% cash and 1,25% retention, then 5% of all moneys (excl. VAT) in the monthly certificate assessed by the Service Manager as being due to the Service Provider will be retained until such time as the amount retained equals 2.5% or 1,25%, whichever is applicable, of the Contract Sum (excl. VAT)
- 26.4 The monthly certificate shall be supported by a detailed report substantiating the Services rendered at each Facility during the month under assessment.
- 26.5 The monthly certificate shall be assessed by the Service Manager. If the Service Manager agrees with the certificate, he will issue a statement within 14 days of the receipt of the certificate, taking into account inter alia the following:
- (1) deductions for penalties;
 - (2) deductions for overpayments;
 - (3) deductions for retention
 - (4) deductions for damages.
- 26.6 The Service Provider shall, on receipt of the statement referred to in 26.5, issue to the Employer a tax invoice in the amount reflected in the statement. The Employer shall effect payment to the Service Provider within 16 days of receipt of the tax invoice.
- 26.7 If the Service Manager does not agree with the certificate issued by the Service Provider in terms of Clause 26.2, the Service Manager shall within 14 days of receipt of the certificate, issue a statement in the amount to which the Service Manager agrees and shall give reasons for rejecting the balance of the claim indicated in the statement.
- 26.8 The Service Provider shall furnish the Employer with a tax invoice in the amount indicated in the statement referred to in Clause 26.7.
- 26.9 With regards to the claim in dispute, the Service Provider may, within 14 days of the Service Manager issuing the statement referred to in 26.7, submit a revised certificate or a justification for his claim or declare a dispute in terms of 34.
- 26.10 If it is later resolved that the amount in dispute or any part thereof is owing to the Service Provider, the Employer shall be liable for interest thereon from 30 days after the issue of the relevant monthly certificate referred to in 26.2 until the date of payment at the interest rate determined from time to time, by the Minister of Finance in terms of section 80 (1)(b) of the Public Finance Management Act, 1999 (Act 1 of 1999), as amended.
- 26.11 All the work shall be evaluated in accordance with the provisions of the Pricing Data.



- 26.12 In assessing the quality of the work presented by the Service Provider, the Employer may enlist the assistance of third persons. In assessing the work the third person shall act reasonably. The selection of such third persons shall be in the absolute discretion of the Employer and the Service Provider shall abide by such selection.
- 26.13 Any and all extra costs incurred by the Service Provider, resulting from the Service Provider having to address and/or rectify queries arising from a claim submitted in respect of work done, shall be for the account of the Service Provider.

27. RELEASE OF SECURITY

- 27.1 If the Service Provider has furnished a security by way of a variable guarantee of 2.5% of the Contract Sum (excl. VAT), the security will be reduced and be released in accordance with the provisions of such variable guarantee.
- 27.2 If the Service Provider elects to furnish a security by way of a cash deposit of 2.5% of the Contract Sum (excl. VAT), then the security will be released as follows:
- 27.2.1 annually in equal portions, subject to 27.2.2 and 27.2.3;
- 27.2.2 95% of the last annual portion of retention shall be released within 30 days of the expiry of the Service Period;
- 27.2.3 the remaining retention shall be released within 30 days of the issue of the Certificate of Completion.
- 27.3 If the form of security selected is:
- (a) a retention of 2.5% of the Contract Sum (excl. VAT); or
- (b) a 1,25% cash deposit and a 1,25% retention of the Contract Sum (excl. VAT),
- then security will only be released after the 2,5% or 1,25% retention respectively has been accumulated, as follows:
- 27.3.1 annually in equal portions, subject to 27.3.2 and 27.3.3;
- 27.3.2 95% of the last annual portion of retention shall be released within 30 days of the expiry of the Service Period;
- 27.3.3 the remaining retention shall be released within 30 days of the issue of the Certificate of Completion.

28. OVERPAYMENTS

- 28.1 If any overpayment of whatever nature is made to the Service Provider, the Service Provider shall be obliged to repay such amount to the Employer and the Employer shall be entitled to deduct such over payment from any amount due to the Service Provider, in respect of this Contract or any other contract, which the Employer may have with the Service Provider. The Employer shall be entitled to claim interest on any and all overpayments made to the Service Provider at the rate prescribed, from time to time, by the Minister of Finance in terms of section 80 (1)(b) of the Public Finance Management Act, 1999 (Act 1 of 1999), as amended.

29. COMPLETION

- 28.1 At the expiry of the Service Period the Service Manager shall furnish the Service Provider with a written list of Employer's Assets and Data handed over at commencement of the Contract and accumulated during the Contract Period.
- 29.2 At the expiry of the Contract Period, the Service Manager shall issue to the Service Provider a Certificate of Completion.
- 29.3 Upon the issue of a Certificate of Completion, unless otherwise provided in the Contract:



29.3.1 The Guarantee shall be returned, if applicable.

29.3.2 The final cash deposit or retention, whichever is applicable, shall be reduced to zero.

30. ASSIGNMENT

30.1 The rights and obligations of the Parties in terms of this Contract shall not be ceded, assigned, delegated, or otherwise transferred, by either Party to any person outside of the Service Provider and the Employer, save with the prior written consent of the other Party.

30.2 Each Party warrants that he is acting as a principal and not as an agent of an undisclosed principal.

31. INDULGENCES

31.2 No extension of time, latitude or other indulgences which may be given or allowed by either Party to the other shall constitute a waiver or alteration of this Contract, or affect such Party's rights, or prevent such Party from strictly enforcing due compliance with each and every provision of this Contract.

32. OWNERSHIP AND PUBLICATION OF DOCUMENTS

32.1 The Employer will become the owner of the information, documents, advice, recommendations and reports collected, furnished and/or compiled by the Service Provider during the course of, and for the purposes of executing this Contract, all of which will be handed over to the Employer, unless otherwise stipulated in the Contract, within ten (10) days of request therefor, but in any event on the termination and/or cancellation of this Contract for whatever reason. The Service Provider relinquishes its retention or any other rights to which it may be entitled.

32.2 The copyright of all documents, recommendations and reports compiled by the Service Provider during the course of and for the purposes of finalising Services, and the Contract as a whole, will vest in the Employer, and may not be reproduced or distributed or made available to any person outside the Employer's service, or to any institution in any way, without the prior written consent of the Employer. The Employer shall have the right to use such material for any other purpose without the approval of, notification to or payment to the Service Provider.

32.3 The copyright of all electronic aids, software programmes etc. prepared or developed in terms of this Contract shall be vested in the Employer, who shall have the right to use such material for any other purpose without the approval of, information or payment to the Service Provider.

32.4 In case of the Service Provider providing documents or material to the Employer, the development of which has not been at the expense of the Employer, copyright shall not be vested in the Employer. The Service Provider shall be required to indicate to which documents and/or materials this provision applies.

32.5 The Service Provider hereby indemnifies the Employer against any action or claim that may be instituted against the Employer and for any damages suffered or legal costs (including costs on an attorney and client scale) incurred on the grounds of an alleged infringement of any copyright or any other intellectual property right in connection with the work outlined in this Contract.

32.6 All information, documents, recommendations, programmes and reports collected or compiled must be regarded as confidential and may not be communicated or made available to any person outside the Employer's service and may not be published either during the currency of this Contract or after termination thereof without the prior written consent of the Employer.

33. BREACH OF CONTRACT

33.1 In the event of a breach by the Service Provider of any of the terms and conditions of this Contract, the Employer shall issue a notice of non-compliance requiring compliance within 10 (ten) days. In the event that the Service Provider fails to remedy such breach on expiry of the notice period, then the Employer shall without prejudice to any other rights that it may have, be entitled to exercise any or all of the following rights:

33.1.1 Enforce strict compliance with the terms and conditions of the Contract;



- 33.1.2 To terminate this Contract without prejudice to any other rights it may have;
- 33.1.3 To suspend further payments to the Service Provider;
- 33.1.4 To appoint other service providers to complete the execution of the Services, in which event the Service Provider shall be held liable for costs incurred in connection with and arising from the appointment of such a service provider as well as damages suffered.
- 33.2 The Service Provider agrees to, within ten (10) days of written request from the Employer, give access to and to make available all information, documents, programmes, advice, recommendations and reports collected, furnished and/or compiled by them to enable the Employer to assume responsibility for and the benefit of the project as a whole.
- 33.3 In the event of breach by the Employer of the terms and conditions of this Contract, and in the event of the Employer remaining in breach after ten (10) days' written notice calling for rectification of the breach, the Service Provider shall be entitled to:
 - 33.3.1 enforce strict compliance with the terms and conditions of the Contract; or
 - 33.3.2 terminate the Contract by delivering written notice to the Employer to that effect to the extent that such breach is of a material term of this Contract.
- 34. **STOPPAGE AND/OR TERMINATION OF CONTRACT**
 - 34.1 The Employer reserves the right to terminate this Contract or temporarily stop the Services, or any part thereof, at any stage of completion.
 - 34.2 The Employer shall have the right to terminate this Contract without prejudice to any of its rights upon the occurrence of any of the following acts:
 - 34.2.1 on breach of this Contract by the Service Provider as stipulated in Clause 33;
 - 34.2.2 on commencement of any action for the dissolution and/or liquidation of the Service Provider, except for purposes of an amalgamation or restructuring approved in advance by the Employer in writing;
 - 34.2.3 if the Service Provider receives a court order to be placed under judicial management or to commence liquidation proceedings that is not withdrawn or struck out within five (5) days;
 - 34.2.4 if the Service Provider informs the Employer that it intends to cease performing its obligations in terms of this Contract;
 - 34.2.5 if the Service Provider informs the Employer that it is incapable of completing the Services as described; or
 - 34.2.6 if in the opinion of the Employer the Service Provider acted dishonestly;
 - 34.3 The Employer reserves the right to, even in the absence of breach or the events referred to in 34, terminate this Contract at any time, by giving one (1) calendar month written notice to the Service Provider.
 - 34.4 Further, the Contract shall be considered as having been terminated:
 - 34.4.1 where the Employer stops the Contract and/or the Project and instructions to resume or reinstate the Services are not issued within twelve (12) months of the instruction; or
 - 34.4.2 if instructions, necessary for the Service Provider to continue with the Services after a stoppage instruction, are not received from the Employer within three (3) months after such instructions were requested by the Service Provider.
 - 34.5 Should the Contract between the Employer and the Service Provider, or any part thereof, be terminated by either of the Parties due to reasons not attributed to the Service Provider:



- 34.5.1 The Service Provider will be remunerated for the appropriate portion of the Services satisfactorily completed, calculated in accordance with the agreed rates.
- 34.5.2 Invoices for work done shall be submitted to the Employer within three (3) months after the termination of the Contract, failing which the Employer will not be obliged to pay same.
- 34.5.3 The Service Provider shall not be entitled to advance a right of retention or any similar right if this Contract is terminated and specifically agrees to, within ten (10) days of written request from the Employer, give access to and to make available all information, documents, programmes, advice, recommendations and reports collected, furnished and/or compiled by them to enable the Employer to assume responsibility for and the benefit of the Contract as a whole.

35. DISPUTE RESOLUTION

- 35.1 In the event of a dispute, the Parties shall endeavour to resolve such dispute through negotiation, in good faith.
- 35.2 If the Parties fail to resolve a dispute through negotiation as mentioned in 35.1, within 14 days of a dispute being declared, the Parties may by written agreement refer the matter to mediation.
- 35.3 The mediator shall be a person agreed to by the Parties, failing agreement, the President: South African Facilities Management Institute shall nominate the mediator.
- 35.4 Whether or not mediation resolves the dispute and irrespective of the outcome of thereof, the Parties shall bear their own costs arising from the mediation and shall equally share the costs of the mediator and related costs. The mediator and the Parties shall, before the commencement of the mediation, agree on a scale of fees on which the mediator's fees will be based.
- 35.5 The Parties shall appoint the mediator within 21 days of agreeing to mediate.
- 35.6 On appointment of the mediator, the Parties shall jointly with the mediator decide on the procedure to be followed, representation, dates and venue for the mediation.
- 35.7 If the dispute or any part thereof is settled, the agreement shall be recorded by the mediator and signed by both Parties. The agreement shall be binding on the Parties to the extent that it correctly records the issues agreed upon between the Parties.
- 35.8 If the dispute or any part thereof remains unresolved, it may be resolved by litigation proceedings.
- 35.9 If the mediator or any Party, at any time during the mediation process, is of the opinion that the mediation will not resolve the dispute, then he may in writing stop the mediation process. The dispute may then be dealt with in terms of 35.8.
- 35.10 Notwithstanding anything else herein contained to the contrary, it is agreed that irrespective of the fact that the dispute is referred to negotiation, mediation or litigation in court, the decision of the Employer on the dispute involved will immediately be given effect to by the Service Provider and the Service Provider shall proceed with the Services with all diligence unless the Parties agree otherwise in writing.

36. GENERAL

- 36.1 This is the entire Contract between the Parties and may only be amended if reduced to writing and signed by the duly authorised representatives of both Parties, whereafter such amendments will take effect.
- 36.2 The Contract shall be governed by, construed and interpreted according to the law of the Republic of South Africa.

37. DOMICILIUM CITANDI ET EXECUTANDI

Any reference to words "Bid" or "Bidder" herein and/or in any other documentation shall be construed to have the same meaning as the words "Tender" or "Tenderer".

For Internal & External Use

Effective date 1 September 2005

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Version:1.0

PART ---

HEALTH AND SAFETY

SPECIFICATION

FOR

YEAR TENDER

AND

MAINTENANCE/SERVICE

CONTRACTS

AUGUST 2005

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6 Annexure D

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7 Annexure E

Acknowledgement of receipt

1 INTRODUCTION AND BACKGROUND

1.1 Background to the Health and Safety Specification:

The Construction Regulations in the Occupational Health and Safety Act and regulations 85 of 1993 place the onus on the Client to prepare a health and safety specification for all construction work.

1.2 Purpose of the Health and Safety Specification:

To assist in achieving compliance with the Occupational Health and Safety Act 85/1993 and Construction Regulations in order to reduce incidents and injuries. This specification shall act as the basis for the drafting of the construction phase health and safety plan.

1.3 Implementation of the Health and Safety Specification:

~~This specification forms an integral part of the contract~~ and the Contractor is required to use it at pre-tender phase when drawing up its Year Tender/maintenance/service contract health and safety plan. Where applicable the Principal Contractor shall forward a copy of this specification to all Contractors at their bidding stage so that they can in turn prepare health and safety plans relating to their operations.

2 OCCUPATIONAL HEALTH AND SAFETY SPECIFICATION

2.1 SCOPE:

The specification covers the requirements for eliminating incidents and injuries as far as reasonably possible for Cape Town: Year Tenders/maintenance/service contracts. The scope also addresses legal compliance, hazard identification and risk assessment, risk control, and promoting a health and safety culture amongst those working on the project. The specification also makes provision for the protection of those persons other than employees.

2.2 INTERPRETATIONS:

2.2.1 Application

This specification is a compliance document drawn up in terms of South African legislation and is therefore binding. It must be read in conjunction with relevant legislation as set out previously.

2.2.2 Definitions

The definitions as listed in the Occupational Health and Safety Act 85 / 1993 and Construction Regulation shall apply.

2.3 GENERAL ADMINISTRATIVE REQUIREMENTS:

2.3.1 Compensation of Occupational Injuries and Diseases Act 130 of 1993 (COIDA) (Registration with Workmen's Compensation)

The Principal Contractor shall submit a letter of good standing with its Compensation Insurer to the client as proof of registration. This certified proof of registration to be submitted with the tender document. Contractors shall submit proof of registration to the Principal Contractor. **No contractor will commence work on any site unless proof of the above is received.**

2.3.2 Health and Safety File

The Principal Contractor and all Contractors shall have a health and safety file available at his premises, containing all health related information. The Health and Safety file must be handed to DPW at completion of the project.

2.3.3 Initial Hazard Identification and Risk Assessment

An initial hazard identification and basic risk assessment is attached for perusal by the principal Contractor (Annexure D). These hazards and the consequential risks must be addressed in the Construction-phase health and safety plan to be submitted by the Principal Contractor and by other Contractors. The Principal Contractor must include a comprehensive risk assessment document compiled by a competent person, detailing all potential site-specific risks. Contractors shall do the same for their scope of work.

2.3.4 Health and Safety Training

The Principal Contractor shall ensure that all site personnel undergo a risk-specific health and safety induction training session before starting work. In this case, the induction must include the transportation risks. A record of induction training attendance shall be kept in the health and safety file.

2.3.5 General Record Keeping

The Contractor shall keep and maintain Health and Safety records to demonstrate compliance with the Specification document, the OHS Act 85 /1993, and Construction Regulations. The Contractor shall ensure that all records of incidents / injuries, training, inspections, audits, etc. are kept in a health and safety file available on request.

2.3.6 Emergency Procedures

The Principal Contractor shall acquaint himself with the client's emergency/evacuation procedure and adhere to all such procedures. All workmen shall be in possession of emergency telephone numbers and be capable / trained to handle injuries, incidents, fire, and major incidents.

2.3.7 First Aid Box and First Aid Equipment

A fully stocked first aid box must be available on each of the maintenance vehicles whenever work is being carried out. The stock shall be risk-specific and have at least the

minimum contents as per the legal requirements (General Safety Regulations, OHS Act 85 of 1993).

2.3.8 Accident / Incident Reporting and Investigation

Injuries are to be categorised into first aid, medical, disabling, fatal. The Principal contractor must stipulate how it will handle each of these categories. When reporting injuries to DPW, these categories shall be used.

All injuries must be investigated by the Principal Contractor, with a report being forwarded to the DPW forthwith.

2.3.9 Personal Protective Equipment (PPE) and Clothing

The Principal Contractor shall ensure that all workers wear PPE. Task-specific PPE shall be identified during the risk assessment. See attached "initial hazard identification and risk assessment" (Annexure D) for minimum requirements.

2.3.10 Non-conformance and failure to follow health and safety measures

Any non-conformance by an employee shall be dealt with by means of an internal disciplinary procedure. All such non-conformances must be documented and reported to the DPW.

2.3.11 Contractors (sub-contractors)

The Principal Contractor shall ensure the all Contractors under its control comply with this Specification document, the OHS Act 85 /1993, Construction Regulations and all other relevant legislation that may relate to the activities directly or indirectly. The Contractor, when appointing other Contractors as "sub-contractors", shall mutatis mutandis ensure compliance. Contractors are Employers in their own right and must comply with all requirements including but not limited to preparing a site-specific health and safety plan, opening and maintaining a health and safety file, training their workers, appointing competent supervisors, etc.

2.4 REQUIREMENTS:

2.4.1 Hazardous Chemical Substances (HCS)

Any hazardous chemical substances not able to be substituted must be safely transported. All workers must be inducted into the hazards, the consequences and control measures required to protect themselves against exposure. A list of these substances must be included in the health and safety file and updated as the site progresses. Material safety data sheets (MSDS) must be included by the supplier, however, it remains the Principal Contractor's responsibility to ensure that these MSDS's are available and in the file. All containers shall be clearly labelled, including dangers, control measures and emergency procedures.

No Hazardous chemicals substances, empty containers, may be left or disposed of on the Departments sites.

2.4.2 Fire Extinguishers and Fire Fighting Equipment

The Principal Contractor shall carry at least one 9kg Co² and one 9kg DCP extinguisher on his service vehicle.

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- c) the names, ID numbers and period of employment of each learner and candidate.

4.1.3 The contractor shall keep records of the hours worked and registration particulars towards compliance with this standard. The contractor shall allow the employer's representative to inspect or audit such training records at any time.

4.1.4 The employer's representative shall undertake suitable random audits on records to confirm compliance with requirements.

4.1.5 The learners shall be directly employed by the contractor or SDA. The contractor shall enter into a contract agreement with the cidb SDAs, training provider or skills development facilitator of their choice participating in the implementation of this standard to:

- a) prepare training plans for registered learners, including details of the scope of experiential work to be covered and expected outcomes;
- b) register learners with the appropriate Sector Education and Training Authority established in terms of the Skills Development Act of 2008 (Act 37 of 2008);
- c) manage learner registration with appropriate trade testing authorities as well as preparation for the trade test;
- d) liaise with the supervisor to monitor onsite training progress of learners;
- e) liaise with the supervisor to arrange for summative assessments at appropriate stages of the training; and
- f) liaise with the supervisor to prepare reports for the employer or employer's representative.

4.2 STRUCTURED WORKPLACE LEARNING OPPORTUNITIES FOR LEARNERS

4.2.1 Structured workplace learning opportunities shall be aligned to the curriculum requirements set for the particular part or full occupational qualification or professional designation for which the learner is registered.

4.2.2 A responsible supervisor will be appointed to allocate learning tasks, under the guidance of a competent person, to learners in line with their training plans.

4.2.3 Mentoring associated with structured workplace learning for artisan learners shall be undertaken by an artisan in the applicable trade with a minimum of 3 years of trade specific experience. The number of artisan learners mentored by a single mentor shall,

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unless otherwise permitted by the National Artisan Moderation Body, not exceed 4 at any one time.

- 4.2.4** Supervision associated with structured workplace learning for learners leading to a part or full occupational qualification other than artisan learners shall be undertaken by a person qualified in the applicable discipline with a minimum of 3 years of post-qualification experience.
- 4.2.5** The contractor shall submit to the employer's representative, in respect of each learner:
- a) within one month of commencing work directly related to the contract or order, a workplace training plan together with name of the learner's mentor and supervisor;
 - b) within one month of commencing work directly related to the contract or order:
 - 1) proof of registration as a learner with the relevant SETA where applicable; and
 - 2) a copy of the mentorship agreement entered into with the learner or the company mentorship agreement entered into with the relevant qualified agency;
 - c) within two weeks of updating a workplace training plan, the revised workplace training plan;
 - d) a quarterly progress report and a final report at the end of the structured mentorship period including a log of exposure and interactions with the mentor in sufficient detail to demonstrate compliance with requirements, signed off by the mentor, the supervisor and the learner.
- 4.2.6** Learners shall be required by the mentor to complete training reports required by the relevant qualifying authority whenever a substantial activity or training period has been completed.
- 4.2.7** The mentor and supervisor shall sign off all reports and logbooks to allow the learner to move to other projects or employment and continue the path towards a qualification.

4.3 STRUCTURED WORKPLACE LEARNING FOR CANDIDATES

- 4.3.1** Mentoring associated with structured workplace learning for candidates shall be in accordance with the prescripts of the relevant professional body or statutory council.
- 4.3.2** The contractor shall:
- a) appoint a supervisor who is actively engaged in work directly associated with the contract to issue tasks, oversee their implementation and provide input to the candidate on an on-going basis;

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- b) identify a suitable mentor for the candidate. If the contractor does not have an inhouse mentor, the contractor shall enter into a mentoring agreement with the candidate and an external company as required by the professional body or statutory council; and
- c) issue each candidate with a portfolio of evidence file which is to be kept up to date with all the documentation issued or prepared including the workplace training plan and all revisions thereof as well as copies of the logbook entries and training experience reports.

4.3.3 The mentor shall from time to time provide an updated workplace training plan for a candidate outlining the activities in which the candidate will be involved, including activities required by the relevant professional body or statutory council. The mentor shall require candidates to maintain a logbook issued by the relevant professional body or statutory council. The mentor shall sign off such logbook at quarterly presentations and progress review meetings.

NOTE: The mentor should ensure where the duration of the contract or order exceeds the minimum time to register in a professional category of registration that candidates are exposed to the full range of activities and work towards assuming the full level of responsibility recommended by the relevant professional body or statutory council. This may require rotations and secondments.

4.3.4 The contractor shall submit to the employer's representative, in respect of each candidate:

- a) within one month of commencing work directly related to the contract or order:
 - 1) a workplace training plan together with name of the candidates' mentor and supervisor;
 - 2) proof of registration as a candidate with the relevant professional body or statutory council; and
 - 3) register all beneficiaries of the Standard be with the cidb SDA
- b) within one month of commencing work directly related to the contract or order a copy of the mentorship agreement entered into with the candidate or the company mentorship agreement entered into with a professional body or statutory council;
- c) within two weeks of updating a workplace training plan, the revised workplace training plan;
- d) quarterly progress reports and a final report at the end of the structured mentorship period including a log of exposure and interactions with the mentor in sufficient detail to demonstrate compliance with requirements, signed off by the mentor, the supervisor and the candidate.

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- 4.3.5** Candidates shall be required by the mentor to complete training reports required by the relevant professional body or statutory council whenever a substantial activity or training period has been completed.
- 4.3.6** The mentor and supervisor shall sign off all reports and logbooks to allow the candidate to move to other projects or employment and continue on the path towards registration where the work related to the contract ends for whatever reason prior to the candidate gaining sufficient experience for registration.

5 RECORDS

- 5.1** The contractor shall submit all the documentation required in terms of clause 4 in a timely manner and according to a prescribed format where applicable.
- 5.2** The employer's representative shall certify the value of the credits counted towards the contract skills development goal, if any, whenever a claim for payment is issued to the employer and shall notify the contractor of this amount.
- 5.3** The contractor shall, upon termination of the opportunities provided in order to satisfy the contract skills development goal, certify the quantum and nature of the opportunity and submit the certificate, counter-certified by the relevant individual, to the employer's representative for record-keeping purposes.

6 SANCTIONS

- 6.1** In the event that the contractor fails to substantiate that any failure to achieve the contract skills development goal was due to reasons beyond the contractor's control which may be acceptable to the employer, the sanctions provided for in the contract or order shall apply.

NOTE: The contract establishes the sanctions that apply. These are set out in a tender evaluation schedule, the scope of work or contract data. Sanctions where tender evaluation points are granted with respect to a tendered CSDG or where a minimum CSDG is specified are usually applied in the form of:

- a) financial penalties (low performance damages), typically formulated on the difference between the contracted CSDG and the CSDG achieved in the performance of the contract; and
- b) the issuing of completion certificates only after the certificates described in clause 5 are received.

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ANNEX A: INCORPORATING THIS STANDARD IN A PROCUREMENT DOCUMENT

(Informative)

A1 GENERAL

- A1.1** The following clause should be added to the scope of work of a contract or order to establish requirements:

Skills development requirements

The contractor shall achieve in the performance of the contract the contract skills development goal established in this *Standard for developing skills through infrastructure contracts (March 2020)*

NOTE: The term contractor may need to be changed to "consultant" or "professional service provider" or "supplier" depending upon the term that is used in the form of contract that is adopted. The term "performance of the contract" may need to be replaced with "execution of an order" where the scope of work forms part of an order.

- A1.2** Where an employer requires that employees of the state be seconded to the contractor in order to be provided with structured workplace learning opportunities in accordance with the provisions of this standard, the following clause should be included in the scope of work:
- A1.3** The specified number of employees of the state is The employer must provide a list of persons for selection by the contractor as prescribed in the implementation guidelines. Persons selected by the contractor shall be seconded to the contractor under the terms and conditions prescribed in the implementation guidelines.
- A1.4** Where the contract is part of a Strategic Infrastructure Project (SIPs) the contractor will be required to report to the Presidential Infrastructure Coordinating Council through the respective SIP Skills Coordinators linked to the office of the SIP Coordinator, using the approved PICC reporting template.

A2 SANCTIONS

- A2.1** Sanctions should be provided for in the contract in the event that the contractor fails to substantiate that any failure to achieve the contract participation goal was due to quantitative under runs, the elimination of items, or any other reason beyond the contractor's control which may be acceptable to the employer.
- A2.2** Reference should be made to the cidb Practice Note to be published on methodologies and mechanisms to be adopted for sanctions on contractors who fail to comply with the provisions of the Standard.

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ANNEX B: ROLE AND FUNCTION OF SKILLS DEVELOPMENT AGENCY

(Informative)

The Skills Development Agency (SDA) will provide career management and compliance reporting functions for all learners for CSDG compliance in terms of this Standard. Where the contractors provide direct employment to unemployed learners, or enrolls own employees for CSDG compliance, the contractor shall register them with the cidb SDA. The SDA can also act as an employment intermediary for unemployed learners.

The roles and functions of the Skills Development Agency (SDA) are summarised below.

B1 CAREER MANAGEMENT AND COMPLIANCE REPORTING

B1.1 The contractor shall enter into a contract agreement with the cidb SDA, training provider or skills development facilitator to manage their learners according to the provisions given below:

- a) preparing training plans for registered learners, including details of the scope of experiential work to be covered and expected outcomes;
- b) registering learners with the appropriate Sector Educational and Training Authority established in terms of the Skills Development Act of 2008 (Act 37 of 2008);
- c) conducting entry and exit level medicals for learners at the conclusion of each placement opportunity;
- d) providing personal protective equipment;
- e) liaising with the supervisor to monitor onsite training progress of learners;
- f) liaising with the supervisor to arrange for summative assessments at appropriate stages of the training; and
- g) liaising with the supervisor to prepare reports for the employer's representative and cidb at practical completion of the contract.

B1.2 The relevant training provider or skills development facilitator shall invoice the contractors for the provision of these services as per cost schedule in Table 3.

B1.3 The cidb SDA shall open a trust fund to ring-fence monies essential for all learner requirements where necessary provided for in this standard such as personal protective equipment, medical assessments, insurance, course fees, monitoring as well as top up training and assessment.

B2 EMPLOYMENT INTERMEDIARY

B2.1 The cidb SDA can act as an employment intermediary for unemployed learners and provide contractors with learners qualifying for participation in the CSDG, as well as managing their employment functions such as payment of stipends, workman's compensation, provision of personal protective equipment, trade specific tools, etc.

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- B2.2** In such cases, the contractor shall contract directly with an SDA, training provider or skills development facilitator of their choice for the recruitment, placement and management of learners. The contractor shall pay the SDA, training provider or skills development facilitator in accordance with the notional costs provided for in this standard, or as amended by a Gazette.



EXPANDED PUBLIC WORKS SPECIFICATION

The following Specification is divided into the following compliance categories that must be fulfilled:-

1. EPWP NYS Specification
2. EPWP Reporting requirements
3. Project Steering Committee
4. Community Liaison Officer
5. Sub-contracting
6. DPW Projects Branding

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SL 01. SCOPE

This project is part of the Expanded Public Works Programme (EPWP) and aims to train young people and provide them with practical work experience under the National Youth Service (NYS) training. Youth aged between 18 and 35 will be recruited through EPWP processes and be trained in skills relevant to the work that will be done on this project.

The training of the youth employed will have to be conducted by an accredited Training Service Provider contracted by a contractor in conjunction with EPWP processes (where EPWP NYS Coordinator will give guidance). The contracted Training Service Provider will have at all times provide the Contractor with an update on youth training each have received.

The Contractor will be required in both training and on site exposure to employ all of the youth for a minimum period of 9 months. Furthermore the Contractor will be required to avail services of an adequately qualified foreman/ supervisor specifically for EPWP NYS youth Participants to act as their construction mentor for the duration of on site training. The contractor may not be required to employ all youth in the programme at the same time, but may phase the youth throughout the project, as long all youth will receive their minimum duration stated earlier.

This specification contains the standard terms and conditions for Participants employed in elementary occupations and training on a Special Public Works Programme (SPWP) for the National Youth Services Programme. These terms and conditions do NOT apply to person's permanent employed in the supervision and management of a SPWP.

SL 02. TERMINOLOGY AND DEFINITIONS

SL 02.01 TERMINOLOGY

- 02.01.01** **"SPWP"** – The Code of Good Practice for Special Public Works Programmes, which has been gazetted by the Department of Labour, and which provides for special conditions of employment for these EPWP projects. In terms of the Code of Good Practice, the Participants on these projects are entitled to formal training, which will be provided by an accredited training provider/s appointed (and funded) by the Department of Public Works through contracted Contractor. For projects of up to six months in duration, this training will cover life-skills and information about other education, training and employment opportunities.
- 02.01.02** **"EPWP"** – Expanded Public Works Programme, a National Programme of South Africa Government, approved by Cabinet.
- 02.01.03** **"NYS"** – National Youth Service means a structured skills development programme aimed to capacitate youth.

SL 02.02 DEFINITIONS

- 02.02.1** **"Employer"** – means any Department employing Participants to work in elementary occupations on a SPWP;
- 02.02.2** **"Client"** – means the Department of Public Works.
- 02.02.3** **"Participants"** – a recipient/s of National Youth Service programme who benefits through participation in an elementary occupation on a SPWP.
- 02.02.4** **"department"** – means any department of the State, implementing agent or contractor;
- 02.02.5** **"elementary occupation"** – means any occupation involving unskilled or semi-skilled work;
- 02.02.6** **"management"** – means any person employed by a department or implementing agency to administer or execute a SPWP;
- 02.02.7** **"task"** – means a fixed quantity of work;
- 02.02.8** **"task-based work"** – means work in which a Participant is paid a fixed rate for performing a task;
- 02.02.9** **"task-rated Participant"** – means a Participant paid on the basis of the number of tasks completed;
- 02.02.10** **"time-rated Participant"** – means a Participant paid on the basis of the length of time worked
- 02.02.11** **"Service Provider"** – means the consultant appointed by Department to coordinate and arrange the employment and training of labour on EPWP infrastructure projects.

SL 03. APPLICABLE LABOUR LAWS

In line with the Expanded Public Works Programme (EPWP) policies, the Ministerial Determination, Special Public Works Programmes, issued in terms of the Basic Conditions of Employment Act of 1997 by the Minister of labour in government Notice No. R63 of 25 January 2002, of which extracts have been reproduced below, shall apply to works described in the scope of work and which are undertaken by unskilled or semi-skilled Participants.

The Code of Good Practise for Employment and Conditions of Work for Special Public Works Programmes, issued in terms of the Basic Conditions of Employment Act of 1997 by the Minister of Labour in Government Notice No. R64 of 25 January 2002 shall apply to works described in the scope of work and which unskilled or semi-skilled Participants undertake

SL 04. EXTRACTS FROM MINISTERIAL DETERMINATION REGARDING SPWP

SL 04.01 TERMS OF WORK

- 04.01.01** Participants on a SPWP are employed on a temporary basis.
- 04.01.02** A Participant may NOT be employed for longer than 24 months in any five-year cycle on a SPWP.
- 04.01.03** Employment on a SPWP does not qualify as employment and a Participant so employed does not have to register as a contributor for the purposes of the Unemployment Insurance Act 30 of 1966.

SL 04.02 NORMAL HOURS OF WORK

- 04.02.01** An employer may not set tasks or hours of work that require a Participant to work–
- (i) more than forty hours in any week
 - (ii) on more than five days in any week; and
 - (iii) for more than eight hours on any day.
- 04.02.02** An employer and a Participant may agree that the Participant will work four days per week. The Participant may then work up to ten hours per day.
- 04.02.03** A task-rated Participant may not work more than a total of 55 hours in any week to complete the tasks (based on a 40-hour week) allocated to him.
- 04.02.04** Every work is entitled to a daily rest period of at least eight consecutive hours. The daily rest period is measured from the time the Participant ends work on one day until the time the Participant starts work on the next day.

SL 04.03 MEAL BREAKS

- 04.03.01** A Participant may not work for more than five hours without taking a meal break of at least thirty minutes duration.
- 04.03.02** An employer and Participant may agree on longer meal breaks.
- 04.03.03** A Participant may not work during a meal break. However, an employer may require a Participant to perform duties during a meal break if those duties cannot be left unattended and cannot be performed by another

Participant. An employer must take reasonable steps to ensure that a Participant is relieved of his or her duties during the meal break.

- 04.03.04 A Participant is not entitled to payment for the period of a meal break. However, a Participant who is paid on the basis of time worked must be paid if the Participant is required to work or to be available for work during the meal break.

SL 04.04 DAILY REST PERIOD

Every Participant is entitled to a daily rest period of at least eight consecutive hours. The daily rest period is measured from the time the Participant ends work on one day until the time the Participant starts work on the next day.

SL 04.05 WEEKLY REST PERIOD

Every Participant must have two days off every week. A Participant may only work on their day off to perform work which must be done without delay and cannot be performed by Participants during their ordinary hours of work ("emergency work").

SL 04.06 WORK ON SUNDAYS AND PUBLIC HOLIDAYS

- 04.06.01 A Participant may only work on a Sunday or public holiday to perform emergency or security work.
- 04.06.02 Work on Sundays is paid in terms of Basic Conditions of Employment Act rate of pay.
- 04.06.03 A task-rated Participant who works on a public holiday must be paid –
- (i) the Participants daily task rate, if the Participant works for less than four hours;
 - (ii) double the Participants daily task rate, if the Participant works for more than four hours.
- 04.06.04 A time-rated Participant who works on a public holiday must be paid –
- (i) the Participants daily rate of pay, if the Participant works for less than four hours on the public holiday;
 - (ii) double the Participants daily rate of pay, if the Participant works for more than four hours on the public holiday.

SL 04.07 SICK LEAVE

- 04.07.01 Only Participants who work four or more days per week have the right to claim sick-pay in terms of this clause.
- 04.07.02 A Participant who is unable to work on account of illness or injury is entitled to claim one day's paid sick leave for every full month that the Participant has worked in terms of a contract.
- 04.07.03 A Participant may accumulate a maximum of twelve days' sick leave in a year.
- 04.07.04 Accumulated sick-leave may not be transferred from one contract to another contract.
- 04.07.05 An employer must pay a task-rated Participant the Participants daily task rate for a day's sick leave.
- 04.07.06 An employer must pay a time-rated Participant the Participants daily rate of pay for a day's sick leave.
- 04.07.07 An employer must pay a Participant sick pay on the Participants usual payday.
- 04.07.08 Before paying sick-pay, an employer may require a Participant to produce a certificate stating that the Participant was unable to work on account of sickness or injury if the Participant is –
- (i) absent from work for more than two consecutive days; or
 - (ii) absent from work on more than two occasions in any eight-week period.
- 04.07.09 A medical certificate must be issued and signed by a medical practitioner, a qualified nurse or a clinic staff member authorised to issue medical certificates indicating the duration and reason for incapacity.
- 04.07.10 A Participant is not entitled to paid sick-leave for a work-related injury or occupational disease for which the Participant can claim compensation under the Compensation for Occupational Injuries and Diseases Act.

SL 04.08 MATERNITY LEAVE

- 04.08.01 A Participant may take up to four consecutive months' unpaid maternity leave.
- 04.08.02 A Participant is not entitled to any payment or employment-related benefits during maternity leave.
- 04.08.03 A Participant must give her employer reasonable notice of when she will start maternity leave and when she will return to work.
- 04.08.04 A Participant is not required to take the full period of maternity leave. However, a Participant may not work for four weeks before the expected date of birth of her child or for six weeks after the birth of her child, unless a medical practitioner, midwife or qualified nurse certifies that she is fit to do so.
- (i) A Participant may begin maternity leave:–
 - 1. four weeks before the expected date of birth; or on an earlier date;
 - 2. if a medical practitioner, midwife or certified nurse certifies that it is necessary for the health of the Participant or that of her unborn child; or
 - 3. if agreed to between employer and Participant; or
 - 4. on a later date, if a medical practitioner, midwife or certified nurse has certified that the Participant is able to continue to work without endangering her health.
- 04.08.05 A Participant who has a miscarriage during the third trimester of pregnancy or bears a stillborn child may take maternity leave for up to six weeks after the miscarriage or stillbirth.
- 04.08.06 A Participant who returns to work after maternity leave, has the right to start a new cycle of twenty-four months employment, unless the SPWP on which she was employed has ended.

SL 04.09 FAMILY RESPONSIBILITY LEAVE

- 04.09.01 Participants, who work for at least four days per week, are entitled to three days paid family responsibility leave each year in the following circumstances:-
- i. when the employee's child is born;
 - ii. when the employee's child is sick;
 - iii. in the event of the death of:-
 1. the employee's spouse or life partner
 2. the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling

SL 04.10 STATEMENT OF CONDITIONS

- 04.10.01 An employer must give a Participant a statement containing the following details at the start of employment:-
- i. the employer's name and address and the name of the SPWP;
 - ii. the tasks or job that the Participant is to perform;
 - iii. the period for which the Participant is hired or, if this is not certain, the expected duration of the contract;
 - iv. the Participants rate of pay and how this is to be calculated;
 - v. the training that the Participant may be entitled to receive during the SPWP.
- 04.10.02 An employer must ensure that these terms are explained in a suitable language to any employee who is unable to read the statement.
- 04.10.03 An employer must supply each Participant with a copy of the relevant conditions of employment contained in this specification.
- 04.10.04 An employer must enter into a formal contract of employment with each employee. A copy of a pro-forma is attached at the end of this specification.

SL 04.11 KEEPING RECORDS

- 04.11.01 Every employer must keep a written record of at least the following –
- i. The Participant/s employment contract;
 - ii. Payments (proof of payments) made to each Participant.
 - iii. Certified copy of an Identity Document
 - iv. Signed monthly attendance registers
 - v. in the case of a task-rated Participant, the number of tasks completed by the Participant;
 - vi. in the case of a time-rated Participant, the time worked by the Participant;
- 04.11.02 The employer must keep this record for a period of at least three years after the completion of the SPWP.

SL 04.12 PAYMENT

- 04.12.01 The Participants shall be remunerated monthly in terms of the amount agreed upon by Ministerial Determination 4 and paid monthly on the day agreed upon with the contractor.
- 04.12.02 Payment must be made through electronic fund transfer (EFT) into Participant bank account.
- 04.12.03 An employer must give a Participant the following information in writing –
- i. the period for which payment is made;
 - ii. the number of tasks completed or hours worked;
 - iii. the Participants earnings;
 - iv. any money deducted from the payment;
 - v. the actual amount paid to the Participant.
- 04.12.04 After the Participant is paid s/he must acknowledge receipt of payment by signing payment register.
- 04.12.05 If a Participants employment is terminated, the employer must pay all monies owing to that Participant within one month of the termination of employment.

SL 04.13 DEDUCTIONS

- 04.13.01 An employer may not deduct money from a Participants payment unless the deduction is required in terms of a law.
- 04.13.02 An employer who deducts money from a Participants pay for payment to another person must pay the money to that person within the time period and other requirements specified in the agreement law, court order or arbitration award concerned.
- 04.13.03 An employer may not require or allow a Participant to:-
- i. repay any payment except an overpayment previously made by the employer by mistake;
 - ii. state that the Participant received a greater amount of money than the employer actually paid to the Participant;

SL 04.14 HEALTH AND SAFETY

- 04.14.01 Employers must take all reasonable steps to ensure that the working environment is healthy and safe and that all legal requirements regarding health and safety are strictly adhered to in accordance to Occupational Safety and Health Act no 85 of 1993
- 04.14.02 A Participant must:
- i. work in a way that does not endanger his/her health and safety or that of any other person;
 - ii. obey any health and safety instruction; in accordance to Occupational Safety and health Act no 85 of 1993
 - iii. use any personal protective equipment or clothing issued by the employer;
 - iv. report any accident, near-miss incident or dangerous behaviour by another person to their employer or manager.
- 04.14.03 Employers must conduct occupational medical examination fitness test.

SL 04.15 COMPENSATION FOR INJURIES AND DISEASES

- 04.15.01 It is the responsibility of employers to arrange for all persons employed on a SPWP to be covered in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993.
- 04.15.02 A Participant must report any work-related injury or occupational disease to their employer or manager.
- 04.15.03 The employer must report the accident or disease to the Compensation of Injuries and Diseases Act Commissioner within 07 days.
- 04.15.04 An employer must pay a Participant who is unable to work because of an injury caused by an accident at work 75% of their earnings for up to three months.
- 04.15.05 The employer will be refunded this amount by the Compensation Commissioner. This does NOT apply to injuries caused by accidents outside the workplace such as road accidents or accidents at home.

SL 04.16 TERMINATION

- 04.16.01 The employer may terminate the employment of a Participant provided he has a valid reason and after following existing termination procedures.
- 04.16.02 A Participant will not receive severance pay on termination.
- 04.16.03 A Participant is not required to give notice to terminate employment. However, a Participant who wishes to resign should advise the employer in advance to allow the employer to find a replacement.
- 04.16.04 A Participant who is absent for more than three consecutive days without informing the employer of an intention to return to work will have terminated the contract. However, the Participant may be re-engaged if a position becomes available for the balance of the 24-month period.
- 04.16.05 A Participant who does not attend required training events, without good reason, will have terminated the contract. However, the Participant may be re-engaged if a position becomes available for the balance of the 24-month period.

SL 04.17 CERTIFICATE OF SERVICE

- 04.17.01 On termination of employment, a Participant is entitled to a certificate stating:-
- i. the Participants full name;
 - ii. the name and address of the employer;
 - iii. the SPWP on which the Participant worked;
 - iv. the work performed by the Participant;
 - v. any training received by the Participant as part of the SPWP;
 - vi. the period for which the Participant worked on the SPWP;
 - vii. any other information agreed on by the employer and Participant.

SL 05. EMPLOYER'S RESPONSIBILITIES

The employer shall adhere to the conditions of employment as stipulated in the *Code of Good Practice for Employment and Conditions of Work for Special Public Works Programmes*. Over and above the conditions stipulated above, he shall be responsible to:

- 05.01 formulate and design a contract between himself/ herself and each of the recruited youth Participants, ensuring that the contract does not contravene any of the Acts stipulated in South African Law, e.g. Basic Conditions of Employment Act, etc. (A copy of a pro-forma contract is attached at the end of this specification);
- 05.02 screen and select suitable candidates for employment from the priority list of youth Participants provided by the Umsobomvu Youth Fund (UYF);
- 05.03 ensure that the recruited youth Participants are made available to receive basic life skills training which will be conducted and paid for by the Umsobomvu Youth Fund;
- 05.04 ensure that all youth Participants receive instruction on safety on site prior to them commencing with work on site;
- 05.05 ensure that all youth Participants are covered under workmen's compensation for as long as they are contracted to the contractor. Payment to the Compensation Commissioner shall be the responsibility of the contractor;
- 05.06 assist in the identification and assessment of potential youth Participants to undergo advanced technical training in respective trades;
- 05.07 test and implement strict quality control and to ensure that the health and safety regulations are adhered to;
- 05.08 provide all youth Participants with the necessary protective clothing as required by law for the specific trades that they are involved in.

- 05.09 provide overall supervision and day-to-day management of youth Participants and/or sub-contractors; and
- 05.10 ensure that all youth Participants are paid their wages on time through a pre-agreed payment method as stipulated in the contract with the youth Participant.

SL 06. TRAINING OF YOUTH PARTICIPANTS

SL 06.01 PREAMBLE

The Code of Good Practise for Employment and Conditions of Work for Special Public Works Programmes encourages:-

- 06.01.01 optimal use of locally-based labour in a Special Public Works Programme (SPWP);
- 06.01.02 a focus on targeted groups which consist of namely youth, consisting of women, female-headed households, disabled and households coping with HIV/AIDS; and
- 06.01.03 the empowerment of individuals and communities engaged in a SPWP through the provision of training.

SL 07. YOUTH PARTICIPANTS SELECTION CRITERIA

The youth Participants of the programmes should preferably be non-working individuals from the most vulnerable sections of disadvantaged communities who do not receive any social security pension income. The local community must, through all structures available, be informed of and consulted about the establishment of any EPWP-NYS.

In order to spread the benefit as broadly as possible in the community, a maximum of one person per household should be employed, taking local circumstances into account.

Skilled artisans from other areas may be employed if they have skills that are required for a project and there are not enough persons in the local communities who have those skills or who could undergo appropriate skills training. However, this should not result in more than 80% of persons working on a programme not being from local communities.

Programmes should set participation targets for employment with respect to youth, single male- and female-headed households, women, people with disabilities, households coping with HIV/AIDS, people who have never worked, and those in long-term unemployment.

- 07.01 The proposed targets as set out in sub clauses should accommodate:-
 - (i) 100% youth from 18 to 35 years of age;
 - (ii) 60% women;
 - (iii) 2% disabled.

SL 08. PROVINSIONAL RATES OF PAY

The payment conditions is that a proof be provided in the claim processing of the services rendered and of that cost incurred. The cost incurred means and referred to a periodical or once off proof of payment on any direct or indirect procured services in the EPWP-NYS training bill of quantity where their expenses are charged against line item provisional sums. The line items are set to have a mark-up/ profit value as a separate profit and attendance item to accommodate administration cost and transaction cost where necessary including any other cost incurred activities to render the service complete.

It is stipulated that youth Participants on the EPWP-NYS receive a minimum Stipend per day whilst on off-site and on-site training in ALL provinces. The Stipend means and referred to a claim of a progressive work based experiential training and exposure of any Participant in EPWP-NYS programme. The progressive work referred to a productive days work relevant or similar in nature to the required training standards received by Participant/s and of any relevant cost to be claimed. The failure in compliance in that particular day work will be at a contractors cost remunerated within the required Building Industrial Councils rate of pay.

SL 09. PAYMENT FOR TRAINING ON YOUTH PARTICIPANTS

SL 09.01 (TARGET:- NUMBER OF YOUTH PARTICIPANTS)

09.01.01 Orientation and Life Skills

Orientation and Life Skills development training for youth Participants for an average of set days per youth Participant is necessary at inception of the project once all recruitment processes are exhausted. All youth Participants are entitled to undergo life skills training.

Training on this life skills module will be flexible enough to meet the needs of the employer. Training should take place immediately after site hand-over and during the period of site establishment and pre-planning before actual construction starts, alternatively this will be spread over the duration of the contract period. The contractor will be required to work closely with the Training Service Provider so that the timeframe of the training is aligned with the construction works schedule and the demand for Participants.

09.01.02 TECHNICAL SKILLS TRAINING

Technical skills training for youth Participants for an average of set days per youth Participant is necessary immediately once they conclude their life Skills training. The Employer shall assist in identifying youth Participants for further training. The youth Participant/s will undergo further technical training to prepare them for opportunities elsewhere and or as semi-skilled labourers. Such training will comprise of an off-site theoretical and simulation theory regarded herein as component 1 that will be undertaken by accredited private and or public training institution. The training undertaken through public training institution will provide youth only with fees for once-off per subject level payment and stipends payments.

The contractor will be responsible to supervise and appoint appropriate supervision that will act as mentor on Participants for on-site practical work based experiential exposure on those learner ear-marked to return to site. The programme will consist of this on-site practical work regarded herein as component 2 under the supervision of the employer for the ear-marked youth. The Youth Participants will be entitled to full training programme completion once all training modules are completed.

SL 010. PAYMENT REDUCTION

Payment reduction due to not meeting the training target, then as per the contractual penalties obligations of the contract will be applicable up until such time the requirements are met. The contractual penalties obligations is referred to as is detailed in the contractual arrangements between the contractor and DPW. The payment reduction means no other or alternative clause that will substitute the contractual penalties obligations.

SL 011. PROFIT AND ATTENDANCE

The profit and attendance referred to means a line item mark-up percentage of any services rendered within the re-measured progressive claims to DPW by a contractor. The payment conditions is that a proof be provided in the claim processing of the services rendered and of that cost incurred. The cost incurred means and referred to a periodical or once off proof of payment on any direct or indirect procured services in the EPWP-NYS training bill of quantity where their expenses are charged against line item provisional sums. The line items are set to have a mark-up/ profit value as a separate profit and attendance item to accommodate administration cost and transaction cost where necessary including any other cost incurred activities to render the service complete.

SL 012. PAYMENT FOR TRAVELLING OFF AND ON-SITE TRAINING

The unit of measurement for travelling shall be the cost for the youth Participant off or on-site that must be arranged by the contractor. Amounts quoted shall be corrected according to re-measurement based on actual invoices. The unit of measurement for travelling shall be the amounts in Rand from a particular transport service taxi. The tendered percentages will be paid to the contractor on the value of each payment pertaining to the travelling to cover contractor's expenses in this regard.

SL 013. EMPLOYMENT OF YOUTH PARTICIPANTS THAT ARE PAID STIPEND

Employment of youth Participants shall provide youth Participants with on and or off-the-job training to enable them to fulfil their employment requirements. The employer shall also be expected to closely monitor the job performance of youth Participants and shall identify potential youth Participants for skills development programmes. The unit of measurement shall be the number of youth Participants at an EPWP-NYS Stipend rate per day as the amount agreed by Ministerial Determination multiplied by the period employed in that particular month.

The rate tendered shall include full compensation for all costs associated with the employment of youth Participants and for complying with the conditions of contract. The cost for the training shall be excluded from this item. This item is based on 9 months minimum appointment for youth Participants. The submission of attendance registers by contractor to DPW is very critical as they are the source leading to training monitoring, transactions and auditing. The attendance registers will be used as a source to quantify eligibility of productive due days for payment.

SL 014. PROVISION OF EPWP DESIGNED OVERALLS AND HARD HATS TO YOUTH PARTICIPANTS

The youth Participant/s will each be supplied with 2 sets of EPWP branded overalls, 1 set of EPWP branded hard hat and 1 set of Safety Boots. Youth Participant/s colour of their overall/s should be orange (top and bottom) as per DPWP corporate identity on branding specification with the exception on Correctional Services contracts where the overalls should be blue (top and bottom). An amount has been provided in the Schedule of Quantities under this sub-item for the supply of EPWP designed protective clothing by the contractor.

It is the responsibility of the contractor to purchase or to delegate to its Training Service Provider for the purchase of Participant/s protective clothing. The sets of protective clothing as stated will be provided once and if a need arise to replace for whatever reasons such cost will be recovered from those in need for second set outside the provisional sums arrangement in the contracted bill of quantities.

SL 015. PROVISION OF SMALL TOOLS FOR YOUTH PARTICIPANTS

The contractor will provide or delegate to its training Service Provider all youth Participants with prescribed tools for their respective service areas/ trades. The specification for the mentioned tools to be provided by the Training Service Provider. The tools will become the property of the youth Participant after the completion of the programme.

The contractor together with Training Provider need to provide youth Participants with relevant training tools during their stay within respective training venues/ areas. The tools provide particular on site must be under the control and supervision of the contractor's responsibility.

SL 016. APPOINTMENT OF YOUTH PROJECT TRAINING COORDINATOR/S

The appointment of Youth Project Training Coordinator/s (PTC) for the duration of the programme will be determine in the inception of the project. The Youth PTC will be appointed by EPWP-NYS Office and will act as Participant Liaison Officer to facilitate and coordinate the training programme between the youth Participants, Training Provider, the contractor and EPWP-NYS Office (Maximum ratio is 1:30 – Youth PTC to Youth Participants). The coordination of the training programme as the core function of EPWP NYS will require PTC to reside within DPWI Offices in order to monitor and report on compliance issues of work based access, experiential exposure and mentoring on site of Youth by Contractors.

The item rate shall include full compensation for the cost of liaising with all relevant stakeholders on all issues regarding the training. The Youth PTC will assist in administration and promotion of fair, transparent, reliable and competitive private procurement processes and keep/ update documentation. The Youth PTC is required to processes and keep Stipend transaction records among other roles and give inputs on progress work claims, verifications for payments and final accounts.

SL 017. LIAISON WITH SERVICE PROVIDER

The tendered rate shall include full compensation for the cost of liaising with the Service Provider and Social Facilitators on all issues regarding the youth Participants training. The cost to be claimed under tendered rate should be supported by meeting agenda/s and resolutions and or meeting minutes.

SL 018. LOGISTICS FOR EXIT WORKSHOP

The tendered rate shall include full compensation for the cost of liaising with the relevant Service Providers for the arrangements of all learner profiling and exit workshop events. The items range from catering, clothing, venue, hiring requirements and decoration and entertainment items, etc.

SL 019. EPWP REPORTING SYSTEM REQUIREMENTS

The Project must be registered on the NDPW EPWP reporting system by the public Body and report on:-

- SL 019.01** Certified copy of participants' id (not later than 3 months at the time of system enrolment),
- SL 019.02** Beneficiary contract need to be uploaded on the system when registering a project for EPWP compliance.
- SL 019.03** The contractor is required to submit monthly beneficiary reports (Annexure B), which are to be attached to payment certificates and invoices as per attached Reporting Templates.
- SL 019.04** The contractor needs to ensure that participants are registered under workman's compensation and that UIF is deducted for EPWP participants.
- SL 019.05** Payment shall only be processed once compliance with EPWP and other Reporting requirements has been proven.
- SL 019.06** The reported information must be accompanied by:-
 - 1. Copies of ID (once off) when participants contracted,
 - 2. Beneficiary Contract of Employment (once off),
 - 3. Attendance registers (monthly) and
 - 4. Proof of Payment (monthly)
- SL 019.07** All copies of these documents should be kept safe on site for the duration of the contract for Audit purpose.

SL 020. PROJECT STEERING COMMITTEE (PSC)

Each project shall have a Project Steering Committee (PSC) that shall consist of the following stakeholders:

- Department of National Public Works representative.
- Municipal representative.
- Community representatives.
- Client department representative.
- Main Contractor.

SL 020.01 Operating Procedures

The PSC shall oversee the following

- (a) The PSC will adhere to government legislation and policy guidelines which are relevant to enable it to execute its work. The Intermediary guidelines will also be adhered to e.g. procurement policies.
- (b) The meetings will be scheduled, and will be held on agreed dates and times.
- (c) That targets set in terms of work opportunities are met.
- (d) That local labour is recruited according to agreed procedures and processes
- (e) Manage EPWP participant grievances.
- (f) Responsible for communication with local EPWP participants.

SL 020.02 Secretariat

The contractor shall appoint a Community Liaison Officer (CLO) who shall provide secretariat support to the PSC.

SL 20.03 PSC Meetings

The PSC shall meet once a month prior to the site meetings and report the resolutions at the Site Meeting.

SL 20.04 Funding of PSC

The activities of the PSC will be voluntary and members would receive no remuneration for their time. The contractor may provide refreshments on the day of a meeting. It is thus important that community members of the PSC be drawn from the local area in order to avoid travelling costs.

SL 021. COMMUNITY LIAISON OFFICER (CLO)

SL 021.01 The Contractor shall allow for and pay any and all costs necessary for the engagement of the services of a Community Liaison Officer (CLO) for the full duration of a project.

SL 21.02 A CLO will be identified by the local structures (Project Steering Committee) of the ward areas and appointed following a fair and transparent interviewing process, to be conducted in the presence of local structures and the contractor representative, in order to assist the Contractor in the procurement of any local labour, etc. required for this project.

SL 21.03 The Contractor is to liaise with the CLO and afford him any assistance needed in ensuring sound working relations with the local community.

SL 21.04 Key Responsibilities of the CLO are envisaged to include and not necessary be limited to:

- a) Assisting local leadership in conducting skills and resources audit which facilitates sourcing labour from within the ward or targeted areas for employment, as required by contractor,
- b) Assisting in the procurement of materials from local resources, as required by the contractor,
- c) Assisting the contractor by identifying areas of potential conflict and or threats to the project or to stakeholders in the project and recommend appropriate action to the contractor.
- d) Assisting contractor and stakeholders in the project in the resolution of any conflict which may arise.
- e) Establishing and ensuring that sufficient and open communication channels between the contractor and the work force are maintained.
- f) Establish and ensuring that efficient and open communication channels between the contractor and the community are maintained.
- g) Identifying and reporting to the Contractor regarding issues where communication between stakeholders is necessary, recommend courses of action and facilitate such communications.
- h) Assisting the Contractor and the work force in the establishment of grievance procedures and necessary recommendation to the Contractor regarding the grievances and solution thereto.
- i) Attending to site meetings and project implementation meetings as required by the Contractor and prepare periodic reports as may be required by the Contractor from time to time.
- j) Attending to such other duties which are consistent with the functions of a CLO, as may be required by the Contractor from time to time.

SL 022. CONTRACTUAL OBLIGATIONS IN RELATION TO LABOUR

The participants to be employed in the programme (EPWP) shall be directly contracted to the employer. Over and above the construction and project management responsibilities, the employer will be expected to perform the tasks and responsibilities as set out in clause SL 05 above.

SL 023. CONTRACTUAL OBLIGATIONS IN PRELIMINARIES & GENERAL CLAUSES: NATIONAL YOUTH SERVICE

EMPLOYMENT AND TRAINING OF YOUTH WORKERS ON THE EXPANDED PUBLIC WORKS PROGRAMME (EPWP) INFRASTRUCTURE PROJECTS; NATIONAL YOUTH SERVICE (NYS).

The contractor shall comply with all the requirements as set out in the "Additional Specification SL: Employment and Training of Youth Workers on the Expanded Public Works Programme (EPWP) Infrastructure Projects: National Youth Service (NYS)" as attached to these bills of quantities.

The contractor shall identify a minimum number of youth workers from a priority list, and shall employ them at the statutory labour rates for a minimum period and train them elsewhere through accredited private or public institutions, all as per the aforementioned specification and as measured in these bills of quantities.

The contractor shall liaise and co-ordinate with the employer and the EPWP Training Service Provider with regard to the priority list, the selection of youth workers, and the employment and training of the identified youth workers.

The contractor shall avail the services of an adequately qualified foreman specifically for the EPWP-NYS youth workers, to act as their construction supervisor. The foreman will be responsible for continually monitoring the progress of the youth workers and for addressing questions and issues that may arise from the youth workers.

Separate items which will be subject to re-measurement have been included elsewhere in these bills of quantities to cover the direct costs associated with the employment and training of the youth workers. Any additional requirements in respect of the aforementioned specification are deemed to be priced hereunder and no additional claims in this regard shall be entertained.

SL 024. CONTRACTUAL OBLIGATIONS IN PRELIMINARIES & GENERAL CLAUSES: WORK OPPORTUNITIES
IMPLEMENTATION OF LABOUR-INTENSIVE INFRASTRUCTURE PROJECTS UNDER THE EXPANDED PUBLIC WORKS PROGRAMME (EPWP): WORK OPPORTUNITIES

The Contractor shall comply with all the "Code of Good Practice for Employment and Conditions of Work for Special Public Works Programme" issued in terms of the "Basic Conditions of Employment Act, 1997 (Act No 75 of 1997)" and the related "Ministerial Determination", for the employment of locally employed and or temporary workers on a labour-intensive infrastructure project under the Expanded Public Works Programme (EPWP).

The contractor shall maintain daily records with regards to workers employed and shall, on a monthly basis, submit a report to the principal agent in the prescribed format. Compulsory indicators such as project budget, actual project expenditure, number of job opportunities created, demographic characteristics of workers employed, minimum daily wage rate, number of person-days of employment created and number of training person-days, shall be included in said report, all as defined in the guidelines for the implementation of Labour-intensive Infrastructure Projects under the Expanded Public Works Programme (EPWP)

Provision for pricing of compliance with the aforementioned is made under this clause and it is explicitly pointed out that all requirements in respect of the aforementioned are deemed to be priced hereunder and no additional claims in this regard shall be entertained.

EPWP - EMPLOYMENT AGREEMENT
[Example]

CONTRACTOR

Name:

Address:

ID:

AND

WORKER

Name:

Address:

ID:

1. I am pleased to confirm that you have been appointed to work on a task-based employment contract within an EPWP project. During this contract you will undertake various tasks.
2. This contract must be in conjunction with the standard terms and conditions of employment applicable to a EPWP, a copy of which is attached.
3. The project where you will be employed is located at
4. The contract will start on
and end on.....
5. You must be aware that this contract is a limited term contract and not a permanent job. Your minimum period will be 6 months and the contract may be terminated for one of the following reasons:
 - (a) Funding for the programme in your areas comes to an end.
 - (b) You repeatedly do not perform in terms of the tasks set out in your work programme.
 - (c) If you breach any of the terms and conditions of this contract.
6. Disciplinary:
You will be employed as a general labourer within the EPWP team.
7. While you are working you will report to

8. Payment

You will be paid a fixed amount of R for abasis.

9. The contractor shall not be required to provide to local participants:

- holiday, leave, sick or severance pay;
- a pension or similar scheme;
- a medical aid or similar scheme.

10. Signatures

Signed on this day of 20.....

Contractor:

Date:

Worker:

Date:

Witness:

Date:

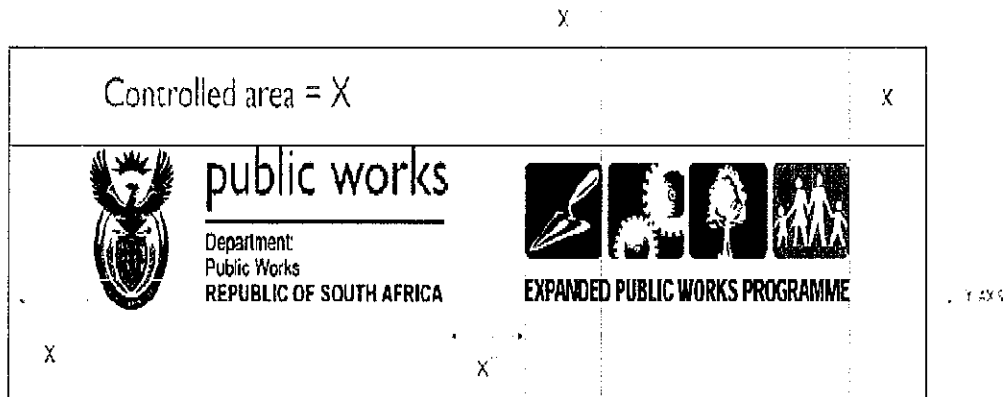
SL 025. ANNEXURE A.1 – EPWP BRANDING REQUIREMENTS

(Please note that the new Public Works and Infrastructure logo should be used instead of the Public Works Logo)

The EPWP identity construction

The logo spacing guide is used to check relationship of the Public Works Logo and Expanded Public Works Programme logo.

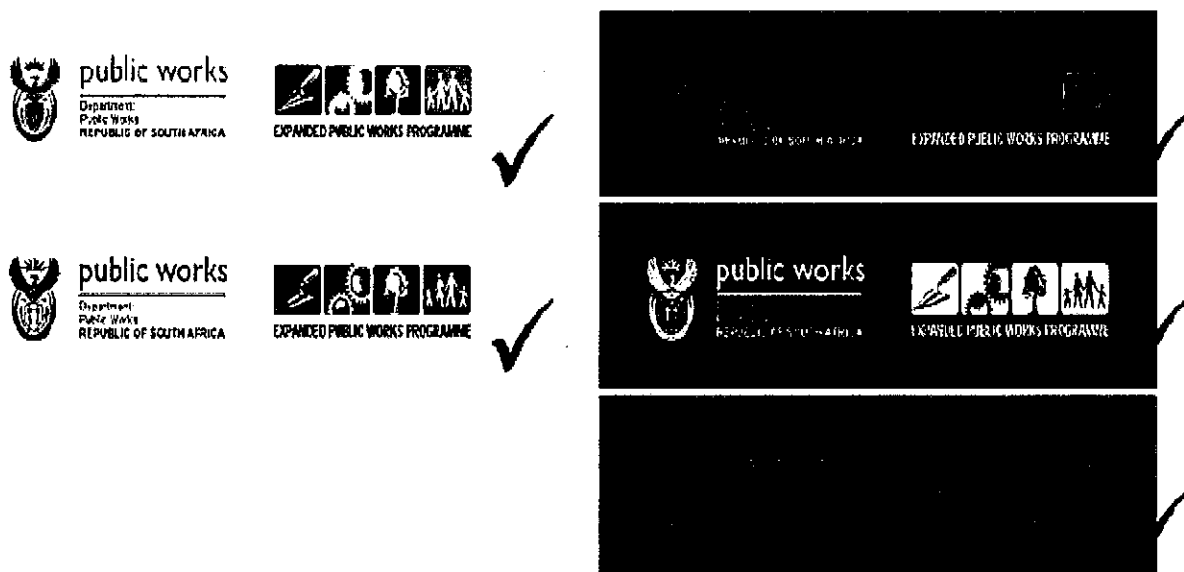
HORIZONTAL RELATIONSHIP



In the horizontal relationship the DPW logo always appears on the left and EPWP logo on right.

* NOTE The space between the public works logo and EPWP logo may increase but never decrease less than X width. The logos must always bottom align with Y axis.

The EPWP identity - Acceptable colour application



The EPWP identity - Typography

The fonts chosen for the EPWP identity is Gill Sans and Arial. The following versions of the Gill Sans and Arial family can be used.

Primary descriptor: Gill Sans Regular

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
1234567890 *&!/?@

Secondary typography: Arial Bold

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
1234567890 *&!/?@

Primary descriptor: Gill Sans Bold

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
1234567890 *&!/?@

Secondary descriptor (EPWP): Arial Narrow

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
1234567890 *&!/?@

Secondary typography: Arial Regular

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
1234567890 *&!/?@

The EPWP identity - Colour palette

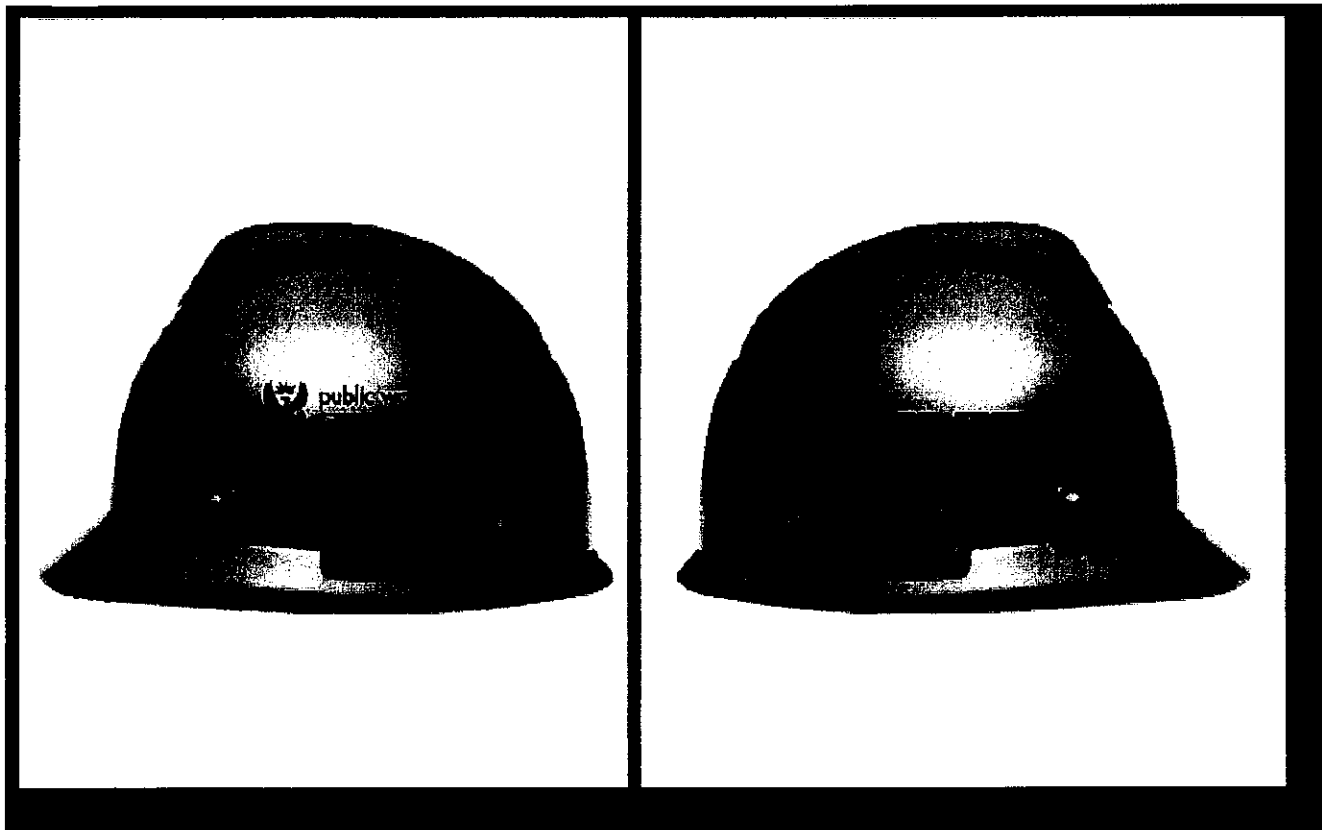
The Primary colour palette for the EPWP identity is Black and Yellow.
The Secondary colour palette appear in the logo and is an integral part of the EPWP identity.

PRIMARY COLOUR PALETTE



SECONDARY COLOUR PALETTE





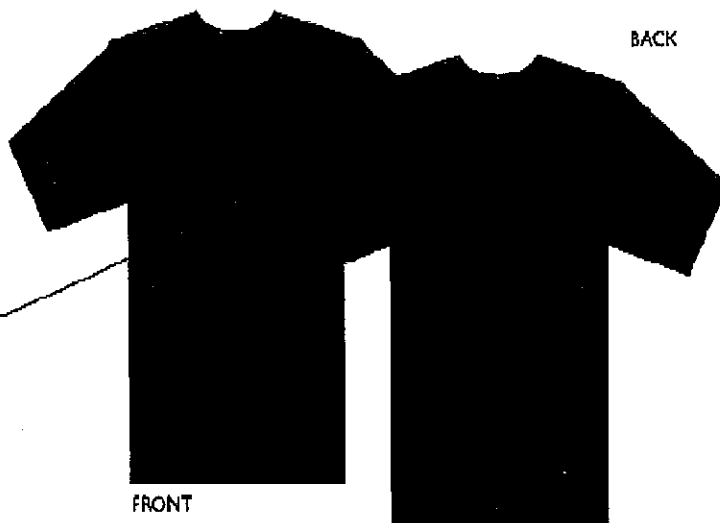
The EPWP co-branding in promotional material

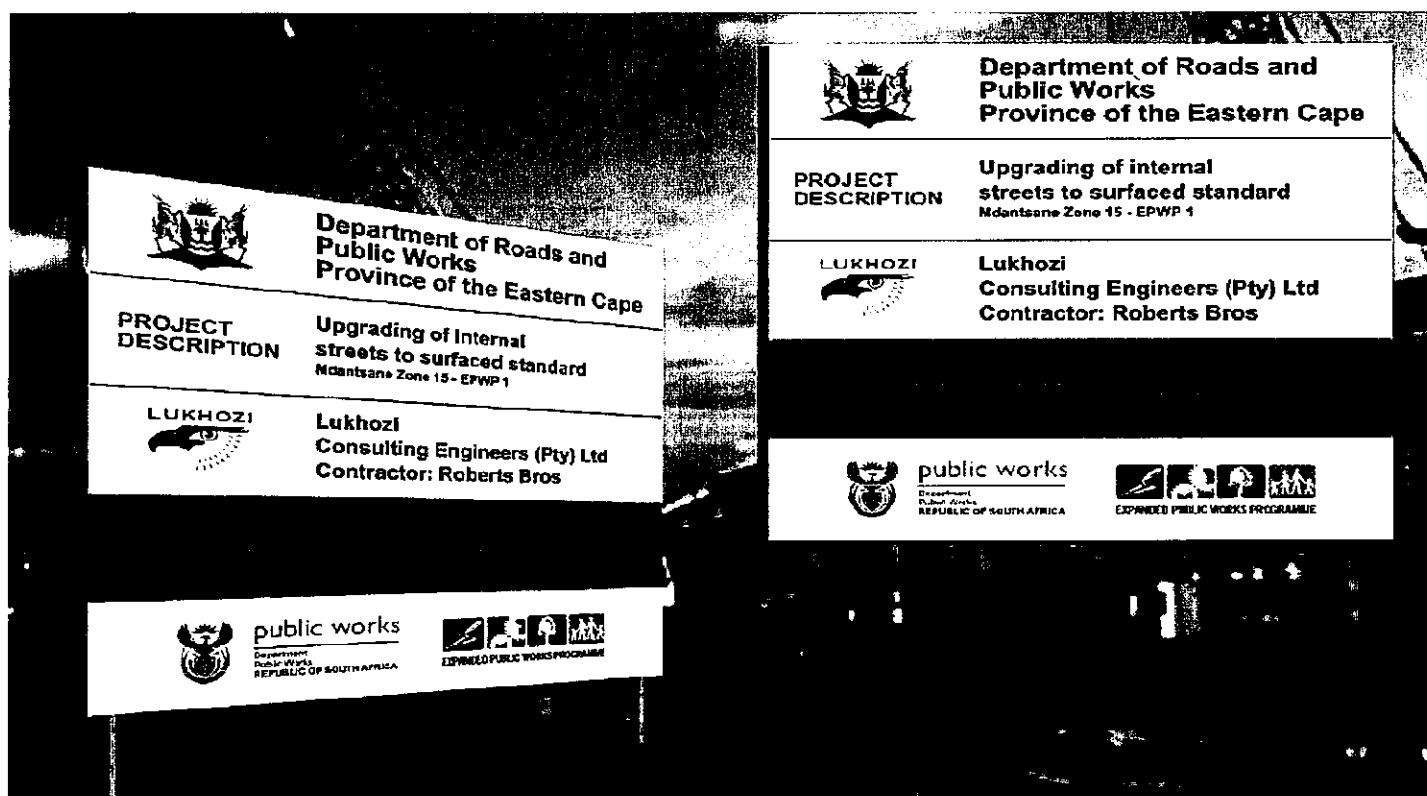
The Expanded Public Works Programme corporate identity is likely to be applied in conjunction with many other role players. When using the horizontal version of the EPWP identity the following scenarios applies.

National branding scenario

The EPWP master brand logo is applied to the front, with the sector indicated on the back. The project identity is always applied to the left sleeve.

Master Brand logo version





ANNEXURE B.1 – EPWP BENEFICIARY REPORTING TEMPLATE
ANNEXURE B.2 – EPWP PROGRESS DATA REPORT TEMPLATE

BENEFICIARY INFORMATION
PLEASE PROVIDE BENEFICIARY INFORMATION ON THIS SHEET

										JULY			
First name	Initials	Last name	I.D. Number	DOB	Gender	Has disability	Education level	Start date		Number of labour days for July	Daily task rate for July	Total wages paid July	Total number of training days July
				dd/mm/yyyy y	M or F	Y or N	See codes at bottom of list	dd/mm/yyyy				DO NOT ENTER DATA IN THIS COLUMN	
TOTALS (DO NOT ENTER DATA IN THIS LINE)										0			0

- Education Levels – use the codes (1,2,3) on the excel spreadsheet
 - (1) Unknown
 - (2) No Schooling
 - (3) Grade 1-3 (Sub A – Std 1)
 - (4) Grad 4 (Std 2) ABET 1
 - (5) Grade 5-6 (Std 3-4) ABET 2
 - (6) Grade 7-8 (Std 5-6) ABET 3

PROGRESS REPORT DATA

	2011					
	TOTAL up to JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
Financial Report						
Expenditure (Total monthly for Project)						
EPWP Certified Contractors						
Number of contractors						
Amount Spent (by Contractor)						
SMME Contractors						
Number of contractors						
Amount Spent						
Milestones	If milestone has been achieved provide the achievement date, otherwise indicate "NO" for each milestone not achieved.					
Project approved						
Consultant appointed						
Detailed Design specifications approved						
Tender report approved						
Construction started						
Implementation complete						
Actual Outputs						
Type of output						
Quantity achieved						
Date achieved						