

BID NUMBER: 15/2021/CTN/INFRA

REQUEST FOR PROPOSAL (RFP) FOR The Maintenance of Permanent Track by Means of On-Track Machinery: Ballast Tamping Machine with Wagons)

CLOSING DATE	31 OCTOBER 2022
CLOSING TIME	12:00
BID DOCUMENTS DELIVERY ADDRESS	PASSENGER RAIL AGENCY OF SOUTH AFRICA NO 1 ADDERELY STREET 6TH FLOOR, ROOM 622B PROPNET BUILDING CAPE TOWN 8001
BIDDER NAME	
BID RETURN ADDRESS	PASSENGER RAIL AGENCY OF SOUTH AFRICA NO 1 ADDERELY STREET 6TH FLOOR, ROOM 622B PROPNET BUILDING CAPE TOWN 8001

CIDB GRADING: 7CE OR HIGHER

Disclaimer

This document is provided solely for the purpose set out in this RFP and is not intended to form any part or basis of any investment decision by Bidders. The recipient should not consider the document as an investment recommendation by PRASA or any of its advisers.

Each person to whom this document (and other later documents) is made available must make his own independent assessment of the Project after making such investigation and taking such professional advice as he/she or it deems necessary. Neither the receipt of this document or any related document by any person, nor any information contained in the documents or distributed with them or previously or subsequently communicated to any Bidder or its advisers, is to be taken as constituting the giving of an investment advice by PRASA or its advisers.

Whilst reasonable care has been taken in preparing this RFP and other documents, they do not purport to be comprehensive or true and correct. Neither PRASA nor any of its advisers accept any liability or responsibility for the adequacy, accuracy or completeness of any of the information or opinions stated in any document.

They acquaint themselves with this RFP and take note that no representation or warranty, express or implied, is or will be given by PRASA, or any of its officers, employees, servants, agents or advisers with respect to the information or opinions contained in any document or on which any document is based. Any liability in respect of such representations or warranties, howsoever arising is hereby expressly disclaimed.

If any recipient, or its employees, advisers or agents make or offers to make any gift to any of the employees of PRASA or consultant to PRASA on the RFP either directly or through an intermediary then such recipient, Bidder will be disqualified forthwith from participating in the RFP.

Each recipient of this RFP agrees to keep confidential any information of a confidential nature which may be contained in the information provided (the "Confidential Information Provided"). The Confidential Information provided may be made available to Bidder's subcontractors, employees and professional advisers who are directly involved in the appraisal of such information (who must be made aware of the obligation of confidentiality) but shall not, either in the whole or in part, be copied, reproduced, distributed or otherwise made available to any other party in any circumstances without the prior written consent of PRASA, nor may it be used for any other purpose than that for which it is intended.

These requirements do not apply to any information, which is or becomes publicly available or is shown to have been made available (otherwise than through a breach of a confidentiality obligation).

Bidders, Key Contractors and their constituent members, agents and advisers, may be required to sign confidentiality Contracts/undertakings (in such form as PRASA may require from time to time).

All Confidential Information Provided (including all copies thereof) remains the property of PRASA and must be delivered to PRASA on demand. Further, by receiving this RFP each Bidder and each of its members agrees to maintain its submission in Bid to this RFP confidential from third parties other than PRASA and its officials, officers and advisers who are required to review the same for the purpose of procurement of the RFP.

Any recipient residing outside the Republic of South Africa is urged to familiarise themselves with and to observe any regulatory requirements relevant to the proposed transaction (whether these derive from a regulatory authority within or outside the Republic of South Africa).

Any requirement set out in this RFP regarding the content of a response to the RFP is stipulated for the sole benefit of PRASA, and serves as expressly stated to the contrary, may be waived at its discretion at any stage in the procurement process.

PRASA is not committed to any course of action as a result of its issuance of this RFP and/or its receipt of a Proposal in response to it. Please note that PRASA reserves the right to:

- Modify the RFP's goods / service(s) / works and request Respondents to re-bid on any changes;
- Withdraw, amend the RFP at any time without prior notice and liability to compensate or reimburse any respondent;
- Reject any Proposal which does not conform to instructions and specifications which are detailed herein
- Disqualify Proposals submitted after the stated submission deadline;
- Call a respondent to provide additional documents which PRASA may require which have not been submitted to PRASA.
- Not necessarily accept the lowest priced Proposal or alternative bid;
- Not accept any response to the RFP or appoint a final bidder;
- Reject all proposals if it so decides;
- Withdraw the RFP on good cause shown;
- Award a contract in connection with this Proposal at any time after the RFP's closing date;
- Award a contract for only a portion of the proposed goods/ service/s/ works which are reflected in the scope of this RFP;

- Split the award of the contract between more than one Service Provider, should it at PRASA's discretion be more advantageous in terms of, amongst others, cost or development considerations;
- Make no award at all;
- Validate any information submitted by Respondents in response to this bid. This would include, but is not limited to, requesting the Respondents to provide supporting evidence. By submitting a bid, Respondents hereby irrevocably grant the necessary consent to PRASA to do so;
- Request annual financial statements prepared and signed off by a professional accountant or other documentation for the purposes of a due diligence exercise; and/or
- Not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provided for it.

To adopt any proposal made by any bidder at any time and to include such proposal in any procurement document which may or may not be made available to other bidders.

All costs and expenses incurred by Bidders in submitting responses to this RFP shall be borne by the Bidders and PRASA shall not be liable for any costs or expenses whatsoever or any claim for reimbursement of such costs or expenses.

Should a contract be awarded on the strength of information furnished by the Respondent, which after conclusion of the contract, is proved to have been incorrect, PRASA reserves the right to cancel the contract and/or place the Respondent on PRASA's list of Restricted Suppliers.

PRASA reserves the right to negotiate market-related price with the bidder scoring the highest points or cancel the bid; if the bidder does not agree to a market related price, negotiate a market related price with the bidder scoring the second highest points or cancel the bid; if the bidder scoring the second highest points does not agree to a market related price, negotiate a market related price with the bidder scoring the third highest points or cancel the bid. If the market related price is not agreed as envisaged in this paragraph, PRASA will cancel the bid.

PRASA reserves the right to negotiations Best and Final Offer (BAFO) with selected Respondents where none of the Proposals meet RFP requirement, are affordable and demonstrate value for money and there is no clear preferred response to the RFP

Should the preferred bidder fail to sign or commence with the contract within a reasonable period after being requested to do so, PRASA reserves the right to award the business to the next ranked bidder, provided that he/she is still prepared to provide the required goods at the quoted price. Under such circumstances, the validity of the bids of the next ranked bidder(s) will be deemed to remain valid, irrespective of whether the next ranked bidder(s) were issued with a Letter of Regret. Bidders may therefore be requested to advise whether they would still be prepared to provide the required goods at their quoted price, even after they have been issued with a Letter of Regret.

PRASA will not reimburse any Respondent for any preparatory costs or other work performed in connection with its Proposal, whether or not the Respondent is awarded a contract.

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TERMS AND CONDITIONS FOR BIDDING PART B	Form B
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ACKNOWLEDGEMENT	Form G
SBD 4 DECLARATION OF INTERESTS	
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1 LIST OF ANNEXURES

Draft Contract	Annexure 1
RFP CLARIFICATION FORM	Annexure 2
Local Content Annexures (Annexures C, D and E as well as guidance on the calculation of the Local Content SATS 1286; 2011 addition 1)	Annexure 3

2 ACRONYMS

BBBEE	Broad Based-Black Economic Empowerment
CIDB	Construction Industries Development Board
DTiC	The Department of Trade and Industry and Competition
PPPFA	Preferential Procurement Policy Framework Act 5 of 2000 (as amended from time to time)
PFMA	Public Finance Management Act No.1 of 1999 (as amended from time to time)
PRASA	Passenger Rail Agency of South Africa
RFP	Request for Proposal
SANAS	South African National Accreditation System

3 INTERPRETATION

In this RFP, unless inconsistent with or otherwise indicated by the context –

- 4.1 headings have been inserted for convenience only and should not be taken into account in interpreting the RFP;
- 4.2 any reference to one gender shall include the other gender;
- 4.3 words in the singular shall include the plural and vice versa;
- 4.4 any reference to natural persons shall include legal persons and vice versa;
- 4.5 words defined in a specific clause have the same meaning in all other clauses of the RFP, unless the contrary is specifically indicated;
- 4.6 any reference to the RFP, schedule or appendix, shall be construed as including a reference to any RFP, schedule or appendix amending or substituting that RFP, schedule or appendix;
- 4.7 the schedules, appendices and Briefing Notes issued pursuant to this RFP, form an indivisible part of the RFP and together with further clarifying and amending information provided by PRASA, constitute the body of RFP documentation which must be complied with by Bidders;
- 4.8 in the event of any inconsistency between this RFP or other earlier information published with regard to the Project, the information in this RFP shall prevail; and
- 4.9 this RFP shall be governed by and applied in accordance with South African law.

4 DEFINITIONS

In this RFP and in any other project documents (as defined below) which so provides, the following words and expressions shall have the meaning assigned to them below and cognate expressions shall have a corresponding meaning, unless inconsistent with the context:

- 5.1 “Accounting Authority” means the Board of PRASA;
- 5.2 “Contract” means the Contract to be entered between PRASA and the successful Bidder for the provision of the *services* procured in this RFP.
- 5.3 “Bid” means the Bid to the RFP submitted by Bidders;
- 5.4 “Bidders Briefing Session” means the compulsory briefing session to be held at the offices of PRASA, in order to brief the Bidders about this tender;
- 5.5 “Black Enterprise” means an enterprise that is at least 51% beneficially owned by Black People and in which Black People have substantial Management Control. Such beneficial ownership may be held directly or through other Black Enterprises;
- 5.6 “Black Equity” means the voting equity held by Black People from time to time;
- 5.7 “Black People” means African, Coloured and Indian South African citizens, and “Black Person” means any such citizen ;
- 5.8 “Black Woman” means African, Coloured and Indian South Africa Female citizen;
- 5.9 “Briefing Note” means any correspondence to Bidders issued by the PRASA;
- 5.10 “Business Day” means any day except a Saturday, Sunday or public holiday in South Africa;
- 5.11 “Bidders” means individuals, organisations or consortia that have been submitted responses to the RFP in respect of the tender;
- 5.12 “Consortium” means any group of persons or firms jointly submitting a Bid as Bid to this RFP and “Consortia” means more than one Consortium;
- 5.13 “Contractor” the successful Bidders who has signed a Contract with PRASA in terms of this RFP.
- 5.14 “Closing Date” means the closing date for submission of bids/ Proposals by Bidders which is **31OCTOBER 2022**
- 5.15 “Project” means this project for the **THE MAINTENANCE OF PERMANENT TRACK BY MEANS OF ON-TRACK MACHINERY: BALLAST TAMPING MACHINE WITH WAGONS**
- 5.16 “RFP” means the Request for Proposals issued by PRASA for this tender; and
- 5.17 “Scope of Work” means the scope of work for this project as detailed out in the RFP technical specifications.

SECTION 1

NOTICE TO BIDDERS

1 INVITATION TO BID

You are hereby invited to submit a bid to meet the requirements of the Passenger Rail Agency of South Africa. Responses to this RFP [hereinafter referred to as a **Bid** or a **Proposal**] are requested from persons, companies, close corporations, or enterprises [hereinafter referred to as an **entity, Bidder**].

BID DESCRIPTION	MAINTENANCE OF PERMANENT TRACK BY MEANS OF ON-TRACK MACHINERY: BALLAST TAMPING MACHINE WITH WAGONS
BID ADVERT	This RFP may be downloaded directly from National Treasury's e-Tender Publication Portal at www.etenders.gov.za free of charge. With effect from 07 OCTOBER 2022
	07 OCTOBER 2022
COLLECTION DATE DEADLINE (if applicable)	N/A
COMPULSORY / NON-COMPULSORY BRIEFING SESSION	17 OCTOBER 2022
CLOSING DATE	31 OCTOBER 2022 Bidders must ensure that bids are delivered timeously to the correct address. As a general rule, if a bid is late or delivered to the incorrect address, it will not be accepted for consideration.
VALIDITY PERIOD	90 Business Days from Closing Date Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period.
CLOSING DATE FOR QUESTIONS	28 OCTOBER 2022
CLOSING DATE FOR RESPONSES	28 OCTOBER 2022
CONTACT PERSON	YOLISWA MGENCE 021 – 449 2925

Any additional information or clarification will be emailed to all Respondents, if necessary.

2 FORMAL BRIEFING 1

A compulsory pre-proposal RFP briefing will be conducted at Room 163, Infrastructure Building, Off Malta Road, Salt River on the **17 OCTOBER 2022**, at **10:00**. [Respondents to provide own transportation and accommodation]. The briefing session will start punctually, and information will not be repeated for the benefit of Respondents arriving late.

2.1 *A Certificate of Attendance in the form set out in Form D hereto must be completed and submitted with your Proposal as proof of attendance is required for a compulsory site meeting and/or RFP briefing.*

2.2 Respondents failing to attend the compulsory RFP briefing will be disqualified.

3 BRIEFING SESSION MINUTES AND NOTES

3.1 PRASA will issue briefing session minutes or notes together with the response to the clarification questions within 05 days from the date of the briefing session.

3.2 Clarifications will be issued to all Respondents to this RFP utilizing the contact details provided at receipt of the responses to the RFP documentation, after submission to the authorised representative.

3.3 Bidders / Respondents are requested to promptly confirm receipt of any clarifications sent to them.

3.4 Bidders / Respondents must ensure responses to the clarifications are received on or before the deadline date stated.

4 PROPOSAL SUBMISSION OF RFP RESPONSE

Proposal Responses must be submitted to PRASA in a sealed envelope addressed as follows:

The Secretariat / Tender Office

RFP No: **15/2021/CTN/INFRA**

Description of Bid: **MAINTENANCE OF PERMANENT TRACK BY MEANS OF ON-TRACK MACHINERY: BALLAST TAMPING MACHINE WITH WAGONS**

Closing date and time: **31 OCTOBER 2022**

Closing address *[Refer to options in paragraph 6 below]*

5 DELIVERY INSTRUCTION FOR RFP

Delivery of Bid

The Bid envelopes must be deposited in the PRASA tender box which is located at the main entrance of the PRASA and must be addressed as follows:

THE SECRETARIAT / TENDER OFFICE
PRASA ADJUDICATION COMMITTEE TENDER BOX
NO 1 ADDERLEY STREET
6TH FLOOR, ROOM 622B
PROPNET BUILDING
CAPE TOWN
8000

6 BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND SOCIO-ECONOMIC OBLIGATIONS

As explained in more detail in the attached SBD 6.1 (BBBEE Preference Points Claim Form) in and as prescribed in terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note that PRASA will award “preference points” to companies who provide valid proof of their B-BBEE status using either the latest version of the generic Codes of Good Practice or Sector Specific codes (if applicable).

Note: Failure to submit valid and original (or a certified copy of) proof of the Respondent’s compliance with the B-BBEE requirements stipulated in this RFP (the B-BBEE Preference Points Claim Form) at the Closing Date of this RFP, will result in a score of zero being allocated for B-BBEE.

6.1 B-BBEE Joint Ventures or Consortiums

Respondents who would wish to respond to this RFP as a Joint Venture [JV] or consortium with B-BBEE entities, must state their intention to do so in their RFP submission. Such Respondents must also submit a signed JV or consortium agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. If such a JV or consortium agreement is unavailable, the partners must submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded business by PRASA through this RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to PRASA.

Respondents are to note the requirements for B-BBEE compliance of JVs or consortiums as required by **SBD 6.1** [the B-BBEE Preference Point Claim Form] and submit it together with proof of their B-BBEE Status as stipulated in the Claim Form in order to obtain preference points for their B-BBEE status.

Note: Failure to submit a valid and original B-BBEE certificate for the JV or a certified copy thereof at the Closing Date of this RFP will result in a score of zero being allocated for B-BBEE.

6.2 Subcontracting

As an organ of state, PRASA fully endorses Government's transformation and empowerment objectives and when contemplating subcontracting Respondents are requested to give preference to companies which are Black Owned, Black Women Owned, Black Youth Owned, owned by Black People with Disabilities, EMEs and QSEs including any companies designated as B-BBEE Facilitators¹.

- an EME or QSE;
- an EME or QSE which is at least 51% owned by Black People;
- an EME or QSE which is at least 51% owned by black people who are youth;
- an EME or QSE which is at least 51% owned by black people who are women;
- an EME or QSE which is at least 51% owned by black people with disabilities;
- an EME or QSE which is at least 51% owned by black people living in rural or underdeveloped areas or townships;
- an EME or QSE which is at least 51% owned by black people who are military veterans; or
- a cooperative which is at least 51% owned by black people.

A bid that fails to meet this pre-qualifying criteria will be regarded as an unacceptable bid. Respondents are required to select suppliers to subcontract to from a list that PRASA will make available listing all suppliers registered on the approved database of National Treasury for the required goods/services in respect of the applicable designated groups. The list is attached as **Annexure**

¹ The Minister of the Department of Trade and Industry has the power to designate certain Organs of State or Public Entities as B-BBEE Facilitators. For example, the South African National Military Veterans' Association (SANMVA) has been designated as a B-BBEE Facilitator. As such they will be treated as having rights of ownership held 100% by Black People, 40% by Black Women and 20% by Black designated groups.

Respondents are required to submit proof of the subcontracting arrangement between themselves and the subcontractor. Proof of the subcontracting arrangement must include a subcontracting agreement.

Respondents are to note that it is their responsibility to select competent subcontractors that meet all requirements of the bid so that their bid is not jeopardised by the subcontractor when evaluated. Respondents are responsible for all due diligence on their subcontractors.

Respondent/s are discouraged from subcontracting with their subsidiary companies as this may be interpreted as subcontracting with themselves and / or using their subsidiaries for fronting. Where a Respondent intends to subcontract with their subsidiary this must be declared in their bid response.

The successful Respondent awarded the contract may only enter into a subcontracting arrangement with PRASA's prior approval. The contract will be concluded between the successful Respondent and PRASA, therefore, the successful Respondent and not the sub-contractor will be held liable for performance in terms of its contractual obligations.

In terms of **SBD 6.1** of this RFP [the B-BBEE Preference Point Claim Form] Respondents are required to indicate the percentage of the contract that will be sub-contracted as well as the B-BBEE status of the sub-contractor/s.

7 COMMUNICATION

- 7.1 For specific queries relating to this RFP during the RFP process, bidders are required to adhere strictly to the communication structure requirements. An RFP Clarification Form should be submitted to Yoliswa.Mgenge@prasa.com before **31 OCTOBER 2022** on **Friday**, substantially in the form set out in **Section 6** hereto.
- 7.2 In the interest of fairness and transparency PRASA's response to such a query will be made available to the other Respondents who have attended a compulsory and a non-compulsory briefing session. For this purpose PRASA will communicate with Respondents using the contact details provided at the compulsory and a non-compulsory briefing session.
- 7.3 After the closing date of the RFP, a Respondent may only communicate in writing with the Bid Secretariat, at telephone number 021 – 449 2925 email Yoliswa.Mgenge@prasa.com on any matter relating to its RFP Proposal.

7.4 Respondents are to note that changes to its submission will not be considered after the closing date.

7.5 Respondents are warned that a response will be liable for disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer(s) or employee of PRASA in respect of this RFP between the closing date and the date of the award of the business. Furthermore, Respondents found to be in collusion with one another will automatically be disqualified and restricted from doing business with PRASA in future.

8 CONFIDENTIALITY

8.1 PRASA shall ensure all information related to this RFP is to be treated with strict confidence. In this regard Respondents / Bidders are required to certify that they have acquainted themselves with the Non-Disclosure Agreement. All information related to a subsequent contract, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information gleaned from provision of the Services, which is either directly or indirectly related to PRASA's business, written approval to divulge such information must be obtained from PRASA.

8.2 Respondents must clearly indicate whether any information submitted or requested from PRASA is confidential or should be treated confidentially by PRASA. In the absence of any such clear indication in writing, PRASA shall deem the response to the RFP to have waived any right to confidentiality and treat such information as public in nature.

9 INSTRUCTIONS FOR COMPLETING THE RFP

9.1 All responses to the RFP must be submitted in two sealed envelopes/boxes; the first envelop/box shall have the technical, compliance and BBBEE response and the second envelop/box shall only have the financial response. Bidders must ensure that they do not indicate any financial information in the first envelop/box. PRASA may disqualify Bidders who fail to adhere to this requirement.

9.2 Bidders are required to package their response/Bid as follows to avoid disqualification:

Volume 1 (Envelope 1/Package 1)

- **Part A:** Compliance Response and B-BBEE Response
- **Part B:** Technical or Functional Response (response to scope of work)

Volume 2 (Envelope 2/ Package 2)

- **Part C: Financial Proposal**

Volume 2 Has to be submitted in a separate sealed envelope. Bidders must make their pricing offer in envelope 2/package 2, no pricing and pricing related information should be included in the Volume 1 envelope 1.

- 9.3 Bidders must submit 1 original response, 1 copy and an electronic version which must be contained in CDs or Memory Cards clearly marked in the Bidders name.
- 9.4 Bidders must ensure that their response to the RFP is in accordance with the structure of this document.
- 9.5 Where Bidders are required to sign forms they are required to do so using a black ink pen.
- 9.6 Any documents forming part of the original responses to RFP but which are not original in nature, must be certified as a true copy by a Commissioner of Oaths.
- 9.7 Each response to RFP must be in English and submitted in A4 format, except other graphic illustrations, which may not exceed A3 format, unless the contrary is specifically allowed for in this RFP. Responses to RFP must be neatly and functionally bound, preferably according to their different sections.
- 9.8 The original responses to RFP must be signed by a person duly authorized by each consortium member and Subcontractor to sign on their behalf, which authorization must form part of the responses to RFP as proof of authorization. By signing the responses to RFP the signatory warrants that all information supplied by it in its responses to RFP is true and correct and that the responses to RFP and each party whom the responses to RFP signatory represents, considers themselves subject to and bound by the terms and conditions of this RFP.
- 9.9 The responses to RFP formulation must be clear and concise and follow a clear methodology which responses to RFP must explain upfront in a concise Executive Summary and follow throughout the responses to RFP.
- 9.10 Responses to RFP must provide sufficient information and detail in order to enable PRASA to evaluate the responses to RFP, but should not provide unnecessary detail which does not add value and detracts from the ability of PRASA to effectively evaluate and understand the responses to RFP. The use of numbered headings, bullet points, sections, appendices and schedules are encouraged.

- 9.11 Information submitted as part of a responses to RFP must as far as possible, be ordered according to the order of the required information requested by PRASA. All pages must be consecutively numbered.
- 9.12 Responses to RFP must ensure that each requirement contained in the RFP is succinctly addressed. Responses to RFP should as far as possible use the terms and definitions applied in this RFP and should clearly indicate its interpretation of any differing terminology applied.
- 9.13 Response to RFP documents are to be submitted to the address specified in **paragraph 5** above, and Bidders must ensure that the original and copies (where applicable) are identical in all respects as PRASA will not accept any liability for having disqualified a bidder for failing to provide a mandatory returnable document.
- 9.14 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated.
- 9.15 Any additional conditions must be embodied in an accompanying letter. Subject only to clause 16 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.
- 9.16 Bidders are required to review the Contract. Bidders may further amend and or delete any part of the Draft Contract where they deem fit to do so. Where Bidders have amended and or deleted any part of the Contract, it must be clearly visible by using track changes and must ensure that the disc copy of their bid submission for the Draft Contract is in word version and not password protected. **It must be noted that the marked up Contract will form part of the evaluation.**

10 RFP TIMETABLE

PRASA may at its sole discretion amend any of the milestone dates indicated in the table below.

Bidders will be informed of any amendments to the timeline through the issue of the Addendum.

RFP PROCESS	MILESTONE DATES
Bid issue date	10 OCTOBER 2022
Briefing Session for Bidders at the]	17 OCTOBER 2022
Closing date for Questions	28 OCTOBER 2022
Closing date for Responses	28 OCTOBER 2022

Closing Date for Submission of final Bid	31 OCTOBER 2022
Evaluation of Proposals (Bidders note that PRASA may call for Presentation of bidders offers at any stage of the evaluation process)	TBA
Appointment of the successful Bidder	TBA
Contract Negotiations	TBA
Signing of Contract	TBA
Contract Commencement	TBA

11 LEGAL COMPLIANCE

Bidders must ensure that they comply with all the requirements of the RFP and if Bidders fail to submit any of the required documents, such Bids shall, at the sole discretion of PRASA, be disqualified the Bidder. PRASA reserves the right to call a Bidder to provide additional documents which PRASA may require from a Bidder which have not been submitted to PRASA.

Respondents must ensure that they comply with all the requirements of the RFP and if Bidders fail to submit any of the required documents, such Bids shall, at the sole discretion of PRASA, be disqualified.

The successful Bidder [hereinafter referred to as the **Service Provider**] shall be in full and complete compliance with any and all applicable laws and regulations.

12 NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE

Respondents are required to self-register on National Treasury's Central Supplier Database (CSD) which has been established to centrally administer supplier information for all organs of state and facilitate the verification of certain key supplier information. Only foreign suppliers with no local registered entity need not register on the CSD. The CSD can be accessed at <https://secure.csd.gov.za>. Respondents are required to provide the following to PRASA in order to enable it to verify information on the CSD:

Supplier Number: _____ **Unique registration reference number:** _____.

13 TAX COMPLIANCE

Respondents must be compliant when submitting a proposal to PRASA and remain compliant for the entire contract term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).

It is a condition of this RFP that the tax matters of the successful bidder be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

The Tax Compliance status requirements are also applicable to foreign Respondents/ individuals who wish to submit bids.

Respondents are required to be registered on the Central Supplier Database (CSD) as indicated in paragraph 16 and the National Treasury shall verify the Respondent's tax compliance status through the Central Supplier Database (CSD).

Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database (CSD) and their tax compliance status will be verified through the Central Supplier Database (CSD).

For this purpose, the attached SBD 1 marked Annexure..... must be completed and submitted as an essential returnable document by the closing date and time of the bid.

New Tax Compliance Status (TCS) System

SARS has implemented a new Tax Compliance Status (TCS) system in terms of which a taxpayer is now able to authorise any 3rd party to verify its compliance status in one of two ways: either through the use of an electronic access PIN, or through the use of a Tax Clearance Certificate obtained from the new TCS system.

Respondents are required to provide the following to PRASA in order to enable it to verify their tax compliance status:

Tax Compliance Status (TCS) Pin:_____.

14 PROTECTION OF PERSONAL DATA

In responding to this bid, PRASA acknowledges that it may obtain and have access to personal data of the Respondents. PRASA agrees that it shall only process the information disclosed by Respondents in their response to this bid for the purpose of evaluating and subsequent award of

business and in accordance with any applicable law. Furthermore, PRASA will not otherwise modify, amend or alter any personal data submitted by Respondents or disclose or permit the disclosure of any personal data to any Third Party without the prior written consent from the Respondents. Similarly, PRASA requires Respondents to process any personal information disclosed by PRASA in the bidding process in the same manner.

SECTION 2

BACKGROUND OVERVIEW AND SCOPE REQUIREMENTS

1 INTRODUCTION AND BACKGROUND

Passenger Rail Agency of South Africa (“PRASA”) has identified the need to appoint a service provider for **The Maintenance of Permanent Track by Means of On-Track Machinery: Ballast Tamping Machine with Wagons**

The Employer’s objectives are to maintain Permanent-Way track in the Western Cape Province, provide construction work opportunities.

The description of the project contained in the Scope of Work is merely an outline of the Contract Works and shall not limit the work to be carried out by the Contractor under this Contract. Details of some of the major items are given in this section and approximate detailed quantities for each type of work to be carried out in accordance with the Contract Documents are included in the Bill of Quantities.

2 OVERVIEW

This contract THE MAINTENANCE OF PERMANENT TRACK BY MEANS OF ON-TRACK MACHINERY: BALLAST TAMPING MACHINE WITH WAGONS, hereinafter also referred to as the “Works,” and any other work arising out of or incidental to the above, or required from the contractor for the proper completion of the Works in accordance with the true meaning and intent of the contract.

PRASA seeks to benefit from this partnership in the following ways:

- 2.1** Elimination of speed restrictions associated with track geometry, thereby minimising train delays
- 2.2** Reducing the risk of derailments
- 2.3** Comfortable ride for passengers and to reduce the mechanical strain applied to the rails by passing trains.

3 KEY OBJECTIVES OF THE RFP

This RFP has been prepared for the following purposes:

- 3.1** TO SET OUT THE RULES OF PARTICIPATION IN THE BID PROCESS REFERRED TO IN THIS RFP.
- 3.2** TO DISSEMINATE INFORMATION ON THE PROJECT CONTEMPLATED IN THIS RFP.
- 3.3** TO GIVE GUIDANCE TO BIDDERS ON THE PREPARATION OF THEIR RFP BIDS.
- 3.4** TO GATHER INFORMATION FROM BIDDERS THAT IS VERIFIABLE AND CAN BE EVALUATED FOR THE PURPOSES OF APPOINTING A SUCCESSFUL BIDDER.
- 3.5** TO ENABLE PRASA TO SELECT A SUCCESSFUL BIDDER THAT IS:
 - a) technically qualified and meet the empowerment criteria described in this RFP;
 - b) Carry all the obligations of the Contract.

4 SCOPE OF WORK

PART C1: CONTRACT DATA

C1.1: Form of Offer and Acceptance – Agreement.....

C1.2 Contract Data:.....

C1.3 Form of Guarantee:

C1.1 Form of Offer and Acceptance – Agreement

C1.1.1 Offer

The employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of:

THE MAINTENANCE OF PERMANENT TRACK BY MEANS OF ON-TRACK MACHINERY: BALLAST TAMPING MACHINE WITH WAGONS

The tenderer, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the returnable schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the tenderer, deemed to be fully authorized, signing of this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the contractor under the contract including compliance with all of its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the contract data.

THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE ADDED TAX IS:

.....

..... Rand (in words)

R..... (In figures)

This offer may be accepted by the employer by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender data, whereupon the tenderer becomes the party named as the contractor in the conditions of contract identified in the contract data.

Signature

Date

Name

Capacity

For the Tenderer:

(Name and

Address of Organization)

.....

.....

Witness:

Name:

Signature:

C1.1.2 Acceptance

By signing this part of this form of offer and acceptance, the employer identified below accepts the tenderers offer. In consideration thereof, the employer shall pay the contractor the amount due in accordance with the conditions of contract identified in the contract data. Acceptance of the tenderer's offer shall form an agreement between the employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is subject to this agreement.

The terms and conditions of the contract are contained in:

Part C1: Agreement and contract data, (which includes this agreement)

Part C2: Pricing data

Part C3: Scope of work

Part C4: Site information

and drawings and documents or parts thereof, which may be incorporated by reference into Parts C1 to C4 above.

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the tender schedules as well as any changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance are contained in the schedule of deviations to and forming part of this agreement. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the employer's agent (whose details are given in the contract data) to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data. Failure to fulfill any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now contractor) within five working days of the date of such receipt notifies the employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.

**Request for Proposal For The Maintenance of Permanent Track by
Means of On-Track Machinery: Ballast Tamping Machine with Wagons**

Tender Number: 15/2021/CTN/INFRA



Signature

Date

Name

Capacity

for the Employer Passenger Rail Agency of South Africa, trading as Metrorail

Metrorail Western Cape

1 Adderley Street

Propnet Building

6th Floor Room 622A

Cape Town

Witness:

Name:

Date

Signature:

C1.1.3 Schedule of Deviations

1 Subject

Details

.....

.....

2 Subject

Details

.....

.....

By the duly authorized representatives signing this agreement, the employer and the tenderer agree to and accept the foregoing schedule of deviations from and amendments to the documents listed in the tender data and addenda thereto as listed in the tender schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the tenderer and the employer during this process of offer agreed by the tenderer and the employer during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.

For the Employer: Passenger Rail Agency of South Africa,

trading as Metrorail

Room 622A

1 Adderley Street

Cape Town

Signature

Date

Name

Capacity

Witness:

Name:

Date

Signature:

For the Tenderer

Signature Date

Name

Capacity

Witness:

Name: Date

Signature:

C1.1.4 Confirmation of Receipt

The Tenderer, (now Contractor), identified in the Offer part of this Agreement hereby confirms receipt from the Employer, identified in the Acceptance part of this Agreement, of one fully completed and signed Contract Document inclusive of this Agreement today:

the(day) of (month) 20..... (year)

at (place)

For the Contractor:

Signature Date

Name

Capacity

Witness:

Name: Date

Signature:

C1.2 CONTRACT DATA

C1.2.1 General Conditions of Contract

The following standardized General Conditions of Contract:

GENERAL CONDITION OF CONTRACT (E5)

Shall apply to and form the General Conditions of Contract for this contract.

C1.2.2 Contract Specific Data

	Clause Definition	Completion, addition or Substitution of Clause
a	The Defects Liability Period....	0 Month
b	The Due completion Date....	36 Months
c	The name of the Employer....	METRORAIL DIVISION OF THE PASSENGER AGENCY OF SOUTH AFRICA
d	The address of the Employer....	Physical: The Regional Manager Metrorail Western Cape Room 622A Propnet Building 1 Adderley Street Cape Town (T): 021 449 2925 (F): 021 449 6300 Postal: P.O. Box 5446 Cape Town
e	Project Manager	The Regional Engineer, Perway
f	Technical Officer	Mr. W Abrahams (NDip Civil Eng)

	Clause Definition	Completion, addition or Substitution of Clause
g	The address of the Engineer....	Physical: The Regional Engineer Infrastructure (Perway) Metrorail Western Cape Tel +27(0)21 507 2650 Fax+27(0)21 507 1600
h	The Pricing Strategy....	Re-measurement Contract
i	The documentation required before commencement with Works execution....	1) Final Health and Safety Program 2) Initial Programme of Works 3) Risk Management Report
j	The time to submit documentation required before commencement with Works execution	21 days
k	The non-working days.... The special non-working days are:	Sundays 1) All gazetted public holidays falling outside the year end break 2) The year end break commencing on mid-December and ending on early January as published by SAFCEC
l	Penalty for delay	The penalty for failing to complete the Works within the specified time limit, plus approved extensions of time or part thereof is R4000.00 per calendar day.
m	Security	The time to deliver the Security / Guarantee / Surety is within 14 days of the date of signing the Confirmation of Receipt. The security to be provided by the Contractor shall be a performance guarantee of 15% of the Contract Sum.
n	Insurances	The value of Plant and materials supplied by the Employer to be included in the insurance sum is R 0.00 (Nil). The amount to cover professional fees for repairing damage and loss to be included in the insurance sum is R 0.00 (Nil).

	Clause Definition	Completion, addition or Substitution of Clause
o	Details to be Confidential	The Contractor shall treat the details of the Works comprised in this Contract as private and confidential (save in so far as may be necessary for the purposes hereof) and shall not publish or disclose the same or any particulars thereof in any trade or technical paper elsewhere without the prior written consent of the Engineer
p	Penalty for delays to trains	If any trains are delayed by the Contractor and the Engineer/Engineer's Representative is satisfied that the delay was avoidable, a penalty to the amount of R 10 000, 00 (Ten Thousand Rand) per hour or part thereof for the period of delay will be imposed will be imposed/raised on the Contractor.
CL 29.3	Security And Retention Money	Retention money shall be 5 percent when the security referred to in clause 29.1 hereof is 10 percent and 10 percent when the said security is 5

Part 2 (To be completed by the Contractor)

C1.2.2 CONTRACT SPECIFIC DATA

The following contract specific data are applicable to this Contract.

Clause Number	Clause Definition	Completion, addition or Substitution of Clause
1.1.9	The name of the Contractor....	
1.2.1.2	The address of the Contractor....	Physical Address: Postal Address:
	Key Personnel Responsibilities Qualifications Experience (2) Name Job Responsibilities	

Qualifications

Experience

(3) Name

Job

Responsibilities

Qualifications

Experience

Unless otherwise specified in the contract, the contractor can chose any of the following type **Securities**

Type of Security	Indicate Choice
<i>Option 1</i> Performance Guarantee in the amount equal to 10 % of the contract sum and 5% (retention) of the value certified in the	Yes ☐ No ☐
<i>Option 2</i> Performance Guarantee i equal to 5 % and retention 5% of the contract. payment certificate.	Yes ☐ No ☐
<i>Option 3</i> Retention of 10% of contract sum	Yes ☐ No ☐
<i>No security(only if specified by the Employer)</i>	

NB. Where guarantees are equal or more that 10% of contract sum, the total retention monies to be held shall not exceed 5% of contract price.

Securities must be valid until the Completion of the Works

1.3 Performance Guarantee

THE PASSENGER RAIL AGENCY OF SOUTH AFRICA VAT registration number 4900110612

A legal entity established in terms of the Legal Succession of the South African Transport Services Amendment Act. 2008 (Act No. 38 of 2008) Trading as Metrorail

DEED OF SURETYSHIP

CONTRACT NO. 15/2021/CTN/INFRA THE MAINTENANCE OF PERMANENT TRACK BY MEANS OF ON-TRACK MACHINERY: BALLAST TAMPING MACHINE WITH WAGONS

I/We the undersigned _____

being duly authorised thereto in my/our capacity as _____

do hereby bind _____

(Name of Bank or Insurance/Guarantee Company hereinafter referred as "the Guarantors")

7 AS SURETY/SURETIES IN SOLIDUM FOR AND CO-PRINCIPAL DEBTOR(S) IN AN AMOUNT NOT EXCEEDING FOR THE DUE AND FAITHFUL PERFORMANCE BY. (HEREINAFTER REFERRED TO AS "THE CONTRACTOR") OF ALL THE DUTIES AND OBLIGATIONS RESTING UPON AND ASSUMED BY THE CONTRACT/TERMS OF A CERTAIN CONTRACT **NO15/2021/CTN/INFRA** ENTERED INTO BETWEEN THE CONTRACTOR AND METRORAIL FOR MAINTENANCE OF PERMANENT TRACK BY MEANS OF ON –TRACK HEAVY MACHINERY: BALLAST TAMPING MACHINE WITH WAGONS IN THE METRORAIL REGION.

I/We, in my/our capacity aforementioned, do further undertake that in the event of any failure on the part of the Contractor faithfully to carry out and discharge all his duties and obligations under the said contract, the said sum not exceeding or such portion thereof as may be demanded by METRORAIL shall immediately become due and payable to METRORAIL on demand, provided always that such failure is not due to circumstances beyond the control of the Contractor.

And I/We, in my/our capacity aforementioned, do further declare it to be a condition of this Suretyship that the Guarantors shall be discharged and freed of all liability hereunder unless METRORAIL has

lodged a claim against them, or notified them of its intention to lodge a claim, on account of damage or loss arising from such failure on the part of the Contractor as aforementioned –

- (a) not later than three calendar months after the end of the calendar month in which the work under the said contract is completed or, in the event of the contract being terminated for any reason prior to completion of deliveries, within three calendar months after the end of the calendar month in which it is so terminated;

PART C2: PRICING DATA

C2.1 Pricing Instructions

C2.2 Bill of Quantities

C2.1 Pricing Instructions

- i) The quantities in the Bill of Quantities are estimated and may be more or less than stated. The contractor shall submit with his tender a complete and detailed priced bill (prepared in black ink) for the Works. All work covered by the bill including work resulting from modifications or alterations to drawings shall be measured and paid for according to the completed bill.
- ii) The absence of stated quantities in the Bill is no guarantee that none will be required. Reasonable and sufficient rates and/or prices shall therefore be inserted to every item, as such prices will be considered when awarding the contract.
- iii) In the event that a tenderer leaves any item/s blank which are materially important for the award of the contract/business or fails to tender in an amount expressed or calculable in Rand and cents (e.g. total amount, unit price, hourly rate), Metrorail reserves the right to disqualify such a tender.
- iv) Provision, as set out below, is made in the Bill of Quantities for the pricing of work done relating to the different activities.
- v) For all sections of work the contractor shall supply and deliver all labour, tools, machinery and materials required for the completion of Works. All quantities for the works shall be agreed and confirmed in writing by the Contractor and Engineer/Technical Officer in the Site Diary prior to the commencement of any works
- vi) **Covid-19 Measurements**
The contractor shall implement measures required in terms of covid-19 regulations. No separate payment will be made for such measures, as the contractor shall allow for this in his rates tendered for the Works.

All items in the Bill of Quantities are Provisional and the actual amount of work necessary and executed shall be measured by the Technical Officer in the presence of the Contractor or his Agent. Only the quantity of such work executed shall be paid for at the rates quoted in the Bill of Quantities.

Item	Description	Unit	QTY	Rate	Amount
2	Execution of Work				
2.1.1	Machine: First 180 To days	days	180		
2.1.2	Wagon: First 180 To days	days	180		
2.2.1	Machine: Additional To days	days	10		
2.2.2	Wagon: Additional To days	days	10		
3	<u>Working hours</u>				
3,1	Machine Tw tamp	hours	800		
3,2	Machine Tw loco (rate only)	hours	-		
3,3	Wagon Tw (wagon)	hours	1000		
4	<u>Overtime</u>				
4,1	Hours outside of Tom of 8h	hours	50		
4,2	O/T for Saturdays (6th or 11th day)	hours	150		
4,3	O/T for Sundays and PPH (6th or 11th day)	hours	200		
5	<u>Shift Allowance</u>				
5,1	Hours worked on Saturdays 10/14 or 5/10	hours	20		
5,2	Hours worked on Sundays 10/14 or 5/10	hours	20		
5,3	Night shift for hours between 18h00 to 06h00	hours	20		
6	<u>Technical Developments-Labour Rates</u>				
	<i>Normal hours</i>				
6,1	Artisan	hours	-		
6,2	Skilled labour	hours	-		
6,3	Un-skilled labour	hours	-		
	<i>Enhancing for overtime (Incl. above)</i>				
6,4	Week days, including Saturdays	50%	-		
6,5	Sundays and PPH	100%	-		
7	<u>Standby</u>				
7,1	Standby - Operator	days	10		
7,2	Operator call out	hours	100		

Item	Description	Unit	QTY	Rate	Amount
8	Labour (Teams) - 180 days PA gaurenteed				
8,1	Track master X 2	Day	180		
8,2	Track helper X 6	Day	180		
8,3	Track worker X 24	Day	180		
	<i>Enhancing for overtime (Incl. above)</i>				
i)	Week days, including Saturdays	50%	-		
ii)	Sundays and PPH	100%	-		
8,4	Vehicle and equipment	Day	180		
Total excluding VAT					
VAT@ 15%					
TOTAL PER YEAR INCLUDING VAT					
TOTAL FOR 3 YEARS					

Escalation base date:

Lo=

Po=

Mo=

Do=

PART C3: SCOPE OF WORK

- C3.1 Description of the Works.....**
- C3.2 Engineering.....**
- C3.3 Procurement.....**
- C3.4 Construction: Works Specifications.....**
-

C3.1 Description of the Works

1. EMPLOYER'S OBJECTIVES

The Employer's objectives are to maintain Permanent-Way track in the Western Cape Province, provide construction work opportunities.

The description of the project contained in the Scope of Work is merely an outline of the Contract Works and shall not limit the work to be carried out by the Contractor under this Contract. Details of some of the major items are given in this section and approximate detailed quantities for each type of work to be carried out in accordance with the Contract Documents are included in the Bill of Quantities.

2. OVERVIEW OF THE WORKS

2.1. Description of the Work

This contract **THE MAINTENANCE OF PERMANENT TRACK BY MEANS OF ON-TRACK MACHINERY: BALLAST TAMPING MACHINE WITH WAGONS**, hereinafter also referred to as the "Works," and any other work arising out of or incidental to the above, or required from the contractor for the proper completion of the Works in accordance with the true meaning and intent of the contract.

2.2. Boundaries of the site

The location of the sites is indicated in the scope of work and will also be pointed out at the time of the site inspection.

Access to the site of the Works is by public roads joining up with the service/mechanisation roads of PRASA along the railway line. The Contractor shall not make use of private roads to gain access to the service/mechanisation roads unless he can produce documentary proof of consent from the owner of such road and indemnifies PRASA against any claims that may arise from the use of such private roads. The Contractor shall acquaint himself with the available access to the site and the condition of the roads during the site inspection.

Vehicle access to certain sections is restricted. The Contractor shall make his own arrangements with regard to access to the sites and shall allow for this in his rates tendered for the Works.

2.3. Occupation of the site

Site access will only be granted by the Technical Officer subject to approval of the following documentation as drafted by the contractor:

1. Construction Methodology – consisting of detailed methodology describing how the works will be carried out, i.e. labour, tools, plant etc.)
2. Risk Assessment – this is to be compiled in conjunction with relevant Health and Safety Acts as well as the relevant documentation as provided by PRASA
3. Health and Safety Program and appointments (Act 85).
4. Programme of works – consisting of detailed activities and how they will be completed within the stipulated timeframe (MS Projects format).

Refer Annexure 4 of the E4E specification. A Site Access Certificate will not be issued unless the contractor's Health and Safety Programme has been approved by the Technical Officer.

Access to the site of the works will be given to the Contractor after the approval of the above mentioned documents.

3. EXTENT OF THE WORKS

The work that is to be carried out under the contract is as provided for in the Schedule of Quantities. However, if during the course of construction conditions are found to differ from those anticipated, the Engineer reserves the right to modify the scope of the work to suit the prevailing conditions and circumstances. Variations introduced in this manner will be measured and paid for at the rates tendered for appropriate items listed elsewhere in the schedule of quantities or in the absence of such rates, as extra work.

4. CONSTRUCTION PROGRAMME

The time for Practical Completion, as stated in the Contract Data in terms of the Conditions of Contract, **36 months** inclusive of non-working days, but exclusive of special non-working days (public holidays and year end break (builders holidays) – referred to in of the General Conditions of Contract). The Contractor shall plan and programme his construction sequence for completion within the time period specified.

5. PLANT, MATERIAL AND SERVICES AVAILABLE

5.1. Plant, material and equipment

Except where otherwise specified, the Contractor shall provide all necessary labour, material, transport, plant, equipment, consumables, tools and services of every description required to complete the works included in this Contract and any other work arising from it. All material supplied by the Contractor shall be subject to the approval of the Technical Officer, and shall be used in accordance with the manufacturer's specifications.

No plant or equipment will be supplied by Metrorail.

5.2. Existing services

The Contractor shall take all reasonable precautions to protect existing services during his activities on the site, and any known service damaged as a result of the Contractor's operations, shall be repaired and reinstated by the Contractor or the Authority concerned, all at the expense of the Contractor and to the satisfaction of the Technical Officer.

6. SITE ESTABLISHMENT

6.1. Services and facilities provided by Metrorail

Metrorail will make sites available for the Contractor's camp upon request from the contractor. No other services or facilities will be provided by Metrorail.

6.2. Services and facilities provided by the Contractor:

Site storage / camp site

The Contractor shall clear and prepare the site for his camp and the cost thereof shall be included in the rates tendered for the Works.

The Contractor shall provide safe and secure storage facilities for all materials or machines/equipment brought onto and in use on the site. Such facilities shall be capable of ensuring that unauthorised persons or animals cannot gain access to such chemicals.

The Contractor shall provide at his/her own cost any security measures he/she may deem necessary for safe and effective execution of the work within the contract area.

6.3. Housing of employees

No housing of employees of the Contractor will be allowed on the property of the Passenger Rail Agency of South Africa and the Contractor shall make his own arrangements for the housing of his employees.

6.4. Water supply, light, power etc.

The contractor shall make his own arrangements for the supply of water (for all purposes), light, power, approved portable sanitation facilities, and telephones as required for his camp site and on the site of the Works.

6.5. Contractor's agent and communication

The Contractor or his duly authorised agent shall at all times be in possession of a cellular phone, in working condition, so as to enable the Technical Officer to communicate with the Contractor at all times during the duration of the contract. The Contractor shall allow for this in his rates tendered for the Works.

6.6. Tidiness of site

The contractor shall continuously clear and dispose of rubbish, debris, waste and surplus materials to maintain the site in a tidy state.

6.7. Removal of facilities established on site

On completion of the contract the Contractor shall remove all established facilities from the site and restore the site as directed by the Technical Officer.

6.8. Security

The Contractor shall provide his own security for the protection of his workmen and assets.

7. OCCUPATIONS AND WORK PERMITS

No occupations and work permits will be granted and the contractor shall plan and execute the Works in such a manner that the safe passage of trains will not be affected. Clearances as set out in the E7/1 specification shall at all times be adhered to.

8. SAFETY CLOTHING

The Contractor shall supply all relevant safety clothing to all supervision and labour. The Contractor shall also supply reflective vests to all supervision and labour so that they are more visible to train drivers. No separate payment will be made for safety clothing, as the contractor shall allow for this in his rates tendered for the Works.

9. HOURS OF WORK

Normal working hours shall mean the period from 07:00 to 16:30 on normal weekdays. No work will be permitted outside normal working hours, on Saturdays, Sundays and public holidays, unless the permission of the Manager has been obtained in writing. Written

application to work outside of normal working hours must be submitted to the Technical Officer two days in advance of the dates that the contractor plans to work.

10. SPECIAL AUTHORITY / CHANGE OF NAME

Transnet Limited has granted special authority to PRASA for the use of any of its standard or standardized specifications and documents in tenders/contracts entered into between PRASA and the Contractor.

Wherever “Transnet” or “Spoornet” is referred to in the Tender/Contract documents it shall be read as “PRASA”, provided that the context intends this translation.

11. PAYMENT

Payment will be made within thirty (30) days from receiving of the contractor's invoice.

C3.2 Engineering

Drawings

The work shall be carried out in accordance with the following drawings which are included in this document form part of the contract documents:

Void

C3.4 Construction

Works Specifications

PART A: STANDARD SPECIFICATIONS

The following relevant standardised specifications, as listed below, shall form the Standard Specifications and apply to this contract:

PART A: PROJECT SPECIFICATION FOR MAINTENANCE OF RAILWAY TRACK WITH ON-TRACK MACHINERY

PART B: PARTICULAR (PROJECT) CONDITIONS AND SPECIFICATIONS FOR THE MAINTENANCE OF PERMANENT TRACK WITH ONE ON-TRACK MECHANISED MAINTENANCE MACHINE CONTENTS.

All these Standard Specifications shall be read in conjunction with the amendments and additions thereto set out in the Project Specifications.

In addition to Part A and Part B Standard Specifications the following supplementary standard specifications shall also apply to this contract:

HEALTH AND SAFETY SPECIFICATIONS

Wherever “Transnet” or “Spoornet” is referred to in the documents it shall be read as “METRORAIL”, provided that the context intends this translation. Most of the activities pertaining to the Works will be executed on, over, under or adjacent to Railway lines and near High Voltage equipment.

Trains will be operated on the railway lines while work is in progress. The contractor shall at all times perform the work in such a manner that the tracks are safe for the passage of trains.

The contractor shall at all times be responsible for the safety of his personnel on the site of the works while paying special attention to the danger of them being over-run by passing trains.

The following generic (Standard) PRASA specifications are applicable to this contract:

- E7/1: Specification for works on, over, under or adjacent to Railway lines and near High Voltage equipment. (Also referred to as the SPK7/1 specification)
- E.4E Transnet (Jan 2004 - As adapted for PRASA): Safety arrangements and procedural

compliance with the Occupational Health and Safety Act (Act 85 of 1993) and applicable Regulations. (Also referred to as the E4E specification)

- S410 Transnet (As adapted for PRASA) : Specifications for Railway Earthworks

Non-compliance to contractual safety conditions

Metrorail reserves the right to stop the Works and report the Contractor to the Department of Labour should the Contractor fail to adhere to any of the contractual safety conditions. No extension of time claim or relief of penalties requests arising from the Works being stopped due to the Contractor's failure to comply with contractual safety conditions will be entertained.

PART A: PROJECT SPECIFICATION FOR MAINTENANCE OF RAILWAY TRACK WITH ON-TRACK MACHINERY

1. DEFINITIONS AND INTERPRETATION

In this Contract, unless inconsistent with the context: -

ACTUAL PREPARATION TIME (T_p) means the period between the actual commencement of the track occupation and the actual commencement of the work by the machinery, plus the period of time between the actual end of the work by the machinery and the actual time when the machinery is secured at its staging point, clear of the occupied track. Preparation time excludes all periods of delay by PRASA.

ANNUAL HOLIDAYS means the annual holiday with duration of 15 consecutive working days plus statutory public holidays, Saturdays and Sundays that may fall within in this period, when no Work will be performed by the Contractor.

AVAILABLE means when required to do work, a machine is able to produce work to the standards specified.

BREAKDOWN TIME (T_b) means all periods during which the machinery is non-available.

CANT means the difference in elevation between the running surfaces of the two rails.

CURVE LOCATION POINTS means the four points, which locate the transitions of the curve, or the two points, which locate the circular curve, where no transitions are provided.

DAY shall mean a calendar day. Where a specific number of days is allowed in the Contract for the performance of any act or is stipulated for the extinction of any right or the duration of any event or circumstance the days between the commencement and last day of the Annual Holidays (both days included) and the day from which the period is stated or agreed to commence, shall be excluded from the calculation of the number of days concerned.

DOUBLE SHIFT WORKING means the working of two consecutive shifts of 8 hours, which may each be non-continuous and scheduled at any times during a 24 hour day.

IDLE TIME (T_i) means all periods of 15 consecutive days or longer during which PRASA does not require work to be performed by the machinery. This excludes the stoppage of work during the annual holiday.

JOINT ASSEMBLIES means all types of joints, including flash-butt and thermit welded, fishplate and block-joints.

LINE means the maximum rate of deviation of the running edge of one rail from a straight line between two points on the same rail of tangent track. Measurements will be taken 15mm below the top of the rail, against the gauge side of the rail used by the machine as a datum for aligning.

MACHINERY means the on-track machinery provided complete with all fittings, accessories and ancillary equipment including trailers, caravans and spare parts, as may be required to comply with the requirements of the specifications.

MAXIMUM OCCUPATION TIME (Tom) means the total occupation time, non-continuous, on a normal working day, not exceeding a total net period stated in the Special Conditions and Specifications.

MONTH means the continuous period from the first day to the last day of any calendar month, both days included.

MONTHLY WORKING TIME (Twm) means the targeted average monthly working time.

MOVING TIME (Tm) means the period required to move the machinery from work site to work site as a train, as part of or on a train. Moving time will commence at the announced time of departure and will end when the staging point at the new work site is reached. Periods of overnight stops when the machinery is travelling as a train, as part of or on a train will be excluded from moving time. Moving time will be included in occupation time for payment purposes.

NIGHT SHIFT ALLOWANCE means an allowance paid for any time worked between 19h00 and 05h00 (Night shift allowance is additional to either overtime or normal shift time, if applicable)

NON-AVAILABLE means when required to do work, the machinery or the operation thereof is unsafe, or the machinery is not able to produce work to the standards specified, due to any reason other than a stoppage of work caused by PRASA.

NORMAL WORKING DAY means a total shift of 8 hours, which may be non-continuous, out of every 24 hours for 5 consecutive days out of every 7 days, or for 10 consecutive days out of every 14 days. The Technical Officer will determine the daily starting time, which may vary to suit seasonal changes or train timetables.

The Technical officer shall decide when 10/14-day work shifts will be worked. When a machine works further than 600 km away from the machine's base depot, the contractor may request working a 10/14-day shift if occupation conditions allow. PRASA will consider such working shifts and the additional Saturday and Sunday shift payments will then apply.

OCCUPATION means a closure of the line on which work is to be performed for a specified period.

OCCUPATION DAY (To-day) means any day that the machinery will be required by the Technical Officer to be available.

OCCUPATION TIME (To) means the period(s) between the announced commencement time of an occupation and the time when the machinery is secured at its staging point for the last time.

OVERTIME means any time worked in excess of the hours of a normal working day and any time worked on Saturdays, Sundays and statutory public holidays in excess of 5 consecutive days out of 7 days or in excess of 10 consecutive days out of 14 days, all on the written instruction of, or as approved by the Technical Officer.

PLAIN TRACK means all track excluding sets and restricted track.

QUOTED PREPARATION TIME (Tq) means the combined period, as quoted by the Contractor in the Schedule of Machinery (for one complete cycle), to move the machinery from its staging point, travel to the point of work, to prepare it for work, and on completion of the work to return and secure it at the staging point, clear of the occupied track.

RESTRICTED TRACK means that portion of plain track where locking bars, guard rails and check rails are not removed prior to working or where sleepers are skewed by more than 75mm (measured at the rail's centre line) or where Dowty retarders and boosters are fitted which prevent the machine from producing work at the scheduled rates as defined in the Special Conditions and Specifications.

SETS mean all types of turnouts, including crossings, single and double slips.

SHIFT ALLOWANCE (normal) means an allowance paid for time worked on a Saturday, Sunday or statutory paid public holiday when working 5 consecutive days out of 7 days or 10 consecutive days out of 14 days (Payment for shift allowance ceases when overtime is paid)

SPLICE JOINT means a prefabricated rail expansion device. The thermit welds at either end demarcate the extremities of the splice joint.

SPLIT OCCUPATION means an occupation on any one-day, divided into 2 periods, the sum of which does not exceed 9 hours, with a 2 hour break in between and the total period not exceeding 11 hours.

STANDING TIME (Ts) means a stoppage of work caused by PRASA.

TIME WORKED IN (Twi) means any day a machine is agreed to be available and works outside of and in lieu of a normal working day. Such Twi as well as production statistics and all relevant times must be reflected against the day for which the time was worked in.

TOP means a change of gradient of one or both rails.

TRACK means and includes plain track, restricted track, sets, splice joints and all joint assemblies.

TRAVELLING TIME (Tt) means the time for the machinery to travel between work site and staging point.

TWIST means the algebraic difference between adjacent cant measurements.

VERSINE means the offset measurement at midpoint of a 10m chord taken at any location on curved track. Measurements will be taken 15 mm below the top of the rail, against the gauge side of the rail used by the machine as a datum for aligning.

WORK means the work to be carried out in terms of the Contract.

WORKING TIME (Tw) means the periods during which the machinery is actually engaged on the operation or function for which it was provided.

2. THE CONTRACTOR'S GENERAL OBLIGATIONS

2.1. The Contractor's general obligations under the Contract comprise:-

2.1.1. Maintenance of railway track and the provision of on-track maintenance machinery and all accessory tools and equipment of the types and nature stipulated in the Project Specification and

2.1.2. The provision of all labour, supervisory personnel and specialised tradesman required to undertake the duties and functions required in terms of the Contract and everything, whether of a temporary or permanent nature, required for performance of the Work and services to be provided in terms of the Contract.

- 2.2. PRASA shall, in the case of a breach of contract by the Contractor in terms of contract, have a lien over the Contractor's machines and accessory tools and equipment and all temporary buildings of the Contractor used for carrying out the Work.

3. WORKMEN

In addition to the general condition of contract, add the following:

- 3.1. The Contractor shall ensure that all staff transported on on-track machines and PRASA wagons or coaches, shall at all times be transported in a safe and responsible way. Only authorised staff shall be transported.

The attention of the Contractor is directed to the requirements of safety legislation and regulations with regard to storage and transport of dangerous substances, accommodation and transport of people.

Staff shall only be allowed to travel on a train or machine in approved accommodation or cabin facilities

4. HOURS OF WORK

Replace " *hours of work* " in the general condition of contract with the following:

- 4.1. The Contractor shall conform to the hours of duty laid down by the Technical Officer.
- 4.2. When required, the Contractor shall work either overtime or shifts, on paid public holidays, Saturdays or Sundays. The machinery will not be required to work more than 6 shifts in any 7-day period or 11 shifts in any 14-day period.
- 4.3. Work shall not be suspended for rain or inclement weather unless otherwise agreed by the Technical Officer.
- 4.4. Before the end of each day's work the Contractor will be advised in writing of the commencement time and duration of the following day's occupation(s). The duration of the occupation will be subject to train operating conditions.
- 4.5. The Contractor may be required to work SPLIT occupations as defined in clause 1, when a 2 hours period will be allowed between occupation periods for servicing of the machines.

- 4.6. The Contractor will be allowed sufficient time on-track to calibrate and adjust the machine as part of the preventive maintenance of the machine. This time will be outside the scheduled occupation periods and will not be included in any of the contract measurements.

5. COMPLIANCE WITH STATUTES AND SAFETY RULES

Add the following sub-clause to the general conditions of contract.

- 5.1. The term "safety rules" in clauses 10.1 and 10.4 is used in a generic sense and refers to all PRASA arrangements, procedures and requirements, pertaining to safety, specified or incorporated by reference in the contract documents, such as the **Specification for Work On, Over, Under or Adjacent to Railway Lines and near High Voltage Equipment, E7/1, the Electrical Safety Instructions - High Voltage Equipment**. (Copies of these documents are available for inspection at the offices of PRASA.)

6. PLACE OF WORK

- 6.1. The Technical Officer shall determine where the Work shall be performed.

The Technical Officer shall make the necessary arrangements to move the machinery by rail from one work site to another, and shall give the Contractor written notice of the date and time of departure. Major movements will be planned and the time allowed should be a minimum of 14 days or such shorter period as agreed.

- 6.2. Any delay to an announced move caused by the Contractor will render the machinery non-available for the period of such delay, excluding overnight stops.

7. RECORDS AND INSTRUCTION BOOKS

The Contractor shall submit such returns as may be required by the Technical Officer. He shall also provide and keep on each machine a duplicate carbon copy book, A4 size, the Workbook, in which instructions and events concerning the contract work shall be recorded, signed and dated by the Technical Officer or his deputy, and the Contractor.

8. MACHINERY AND EQUIPMENT REQUIRED

- 8.1. Mechanical and motive aspects

- 8.1.1. All machinery provided by the Contractor shall be in good mechanical condition and he shall maintain the machinery in good mechanical condition for the duration of the Contract.
- 8.1.2. Axle loads shall not exceed 20 tons.
- 8.1.3. The machine shall be self-propelled.
- 8.1.4. The machine shall have service brakes and independent emergency brakes capable of providing minimum retardation of 12,5% and 6% of gravitational acceleration respectively, on dry rail.
- 8.1.5. At the start of each occupation the Contractor shall, in the presence of the Technical Officer's deputy, perform the daily tests laid down by the Technical Officer. The brakes shall be briefly applied at low speed when travelling on level track or upgrade. If in the opinion of the Technical Officer's deputy the brakes do not function satisfactorily, the machinery shall be removed immediately to a staging point. Machinery staged due to defective brakes will be regarded as non-available.
- At approximately one-month intervals the Technical Officer's deputy will test the brakes with a brake efficiency test meter and record the results in the workbook.
- 8.1.6. The machine shall actuate all signalling equipment used by PRASA for traffic control.
- 8.1.7. Regular checks shall be made for pressure loss on brake cylinders and circuits, wear and set of brake shoes, proper functioning of sirens and mechanical locks on hydraulic components.
- 8.1.8. The machine shall have an adequate lighting system for operation at night. Lights shall be provided for travelling in both forward and reverse directions. The trailing end headlights and leading end red lights shall not be switched on during motion.
- 8.1.9. The machine shall be capable of being hauled as the last vehicle of a train if required to clear the section after breakdown. The Contractor shall provide towing equipment.
- 8.1.10. Where specified, machinery shall have off-tracking equipment suitable for use on either of the off-track stand types shown in Annexure D. Should these stands not be suitable, PRASA will construct stands to the Contractor's requirements and at his cost, subject to the particulars of such requirements being submitted with his tender.

8.2. Wheel flanges, tyres and axles

8.2.1. The condition of the flanges and treads of wheels of all machines shall be carefully examined. Should any appear to be excessively worn, they shall be tested by means of the wheel flange thickness and skid limit gauge and the tyre-wear limit gauge.

8.2.2. Wheels shall comply with the following requirements:

- The thickness of a flange shall not be less than the minimum indicated by the wheel flange thickness gauge.
- Hollow wear on the tread shall not exceed 6mm.
- The flange height shall not exceed 35mm.
- The angle of the flange shall not be less than 15° and the radius at the tip of the flange not less than 6mm.

8.2.3. Axles shall comply with the following requirements:

- Ultrasonic testing: to specifications laid down by PRASA, done for new axles and every time an axle is replaced after fitting new wheels.
- Distance between wheel flanges: 988mm ± 2mm.

8.3. Fueling and maintenance

8.3.1. The Contractor shall not re-fuel, service or repair the machinery, during occupations, save as provided in 13.2.2.

8.3.2. The Contractor may repair and adjust the machinery during stoppages caused by PRASA. The machinery will be regarded as available during such repairs or adjustments, provided that the required working of the machine is not delayed thereby.

8.4. Recording instruments

8.4.1. Each machine shall be fitted with an approved tachograph, a mechanically operated event recorder and a speedometer.

- 8.4.2. The Contractor shall be responsible for inserting recording cards in the tachograph and event recorders, and for synchronising these instruments.
- 8.4.3. The Technical Officer's deputy will be responsible for setting the event recorder.
- 8.4.4. The Technical Officer's deputy will test the tachograph and event recorders at least once a week in the presence of the Contractor. The Contractor shall either repair or replace any device, which is inaccurate by more than 1 %. Failure to repair or replace an inaccurate device within 72 hours of the test will render the machinery non-available.
- 8.4.5. Should the tachograph or the event recorder break down, the Technical Officer's deputy will keep a complete written record of the starting and ending times of all events occurring during a track occupation. The Contractor shall sign this record if he agrees, and if he disagrees he shall indicate on the record the reasons for the disagreement and then sign the document. Such disagreement shall be settled by negotiation between the Technical Officer and the Contractor.

8.5. Radio equipment

- 8.5.1. During track occupations the Contractor shall provide a cellular telephone for communication between the Workplace and the controlling office on either side of the Workplace or the area CTC office.

The cell phone for the official use of PRASA shall be provided with a talk time contract of not less than 500 talk minutes per month. **There will be no separate item for cell phone, the Contractor shall, at their own discretion, include the costs of cell phone in other items of the BOQ.**

This Cell phone shall also be available for the use of the PRASA signal's or electrical technician involved if required for work directly related to the tamping work. Use of this phone by any other PRASA official than the Track inspector with the machine, may only be with his permission. The Track inspector with the machine shall be responsible for controlling the number of calls on this phone.

- 8.5.2. The Contractor shall provide and maintain walkie-talkie radio transceivers with a minimum range of 5 km in open country.

The Technical Officer, in consultation with the Contractor, will allocate suitable frequencies within the 450 MHz to 470 MHz band for configuration of the radio equipment.

The Contractor will be given seven day's written notice when additional radios are required.

- 8.5.3. All of the above-mentioned radio equipment shall operate on 12,5 kHz channel spacing, and shall comply with specification SABS-1069.
- 8.5.4. The Contractor may operate the radio equipment only for trackside protection. The use of the allocated frequencies must be terminated when the contract expires.
- 8.5.5. When walkie-talkie communication fails due to faulty equipment, the machinery will be deemed as non-available.
- 8.5.6. When radio and or cellular telephone communication between the place of Work and the controlling stations or the protection flagmen fails, the Contractor shall remove the machinery from the track as soon as possible.
- 8.5.7. PRASA will provide, install and maintain a radio in the cab of the machine for train control purposes. The Contractor shall indicate the position in which the radio shall be installed, and provide a suitable power supply point for the radio equipment when requested. The machine will not be allowed to operate without this radio.

8.6. Warning devices

- 8.6.1. The machine shall be fitted with a hooter for use during travelling.
- 8.6.2. The machine shall be fitted with a separate warning system used solely for and on the approach of a train. The pitch and intensity shall make it discernable from other sounding devices and easily heard above the working of the machine anywhere within 100m from the machine. The warning system shall be activated by an appointed employee of the Contractor.

The Contractor's appointed employee shall be in continuous radio communication with PRASA's protection flagmen who will warn the Contractor's employee of approaching trains on adjacent lines

8.6.3. A rotating amber flashing light shall be fitted to the top of the machine's cab, for use during travel.

8.7. Machinery Specifications

Machinery shall be suitable for use under the following conditions and dimensional limitations: -

8.7.1. Vehicle gauge: 1 065mm gauge track shown in Annexure 2 (Sht 1 of 2). Should the machinery exceed the vehicle gauge in any respect, this shall be clearly indicated by the Contractor by means of suitable drawings.

8.7.2. Track gauge: nominal 1 065mm, with a range of - 10mm to + 45mm.

8.7.3. Minimum structure gauges: as shown in Annexure 1 (Sheet 1,2 and 5 of 5).

8.7.4. Single lines or multiple lines with a minimum distance of 4m between track centres.

8.7.5. Maximum track gradient: 1 in 30.

8.7.6. Minimum curve radius: 125m.

8.7.7. Work place altitude range: 0 to 2 000m above sea level.

8.7.8. Ambient temperature range: - 5°C to + 50°C.

8.7.9. Mass of rail: 60 kg/m, 57 kg/m, 48 kg/m, 40 kg/m, 30 kg/m or 22 kg/m.

8.7.10. Maximum mass per sleeper: Sets - 750 kg; other - 300 kg.

8.7.11. Types of sleepers in track: timber, steel, monolithic or tie-bar concrete.

8.7.12. Sleeper spacing: 500mm to 900mm.

8.8. Unknown / Alternative / Substitute Machines

PRASA will, in the case where alternative or substitute machines or machines with characteristics which are unknown to PRASA are offered by Tenderers or the Contractor, require that such machines, before they are accepted, be subjected to trials under the prevailing working conditions of the contract area(s) to demonstrate their compliance with

the contract specifications. Machines that do not comply with the specifications will not be accepted.

9. AVAILABILITY

- 9.1. The machinery shall be available, warmed up and at the place of Work on the date and at the time indicated by the Technical Officer's deputy.
- 9.2. Machinery will be regarded as available when moving from one Work place to another.
- 9.3. Moving to effect initial delivery, and final removal after completion of the Work, as well as moving requested by the Contractor (i.e. for maintenance or temporary storage of the machine at locations other than the Work place) will not be included when determining availability.
- 9.4. The Technical Officer shall give the Contractor a minimum of 14 days written notice to stop work temporarily for a period exceeding 14 consecutive days and a minimum of 14 days written notice to resume work after such temporary stoppage. Such idle time shall not be included in measurements for availability.

10. NON-AVAILABILITY

- 10.1. The Contractor shall advise the Technical Officer as soon as possible when any machinery is not available for work at its appointed place of Work and shall indicate the estimated time when it will be available for work.
- 10.2. Should any of the specified components or functions of the machine be non-available, the machine will be regarded as non-available.
- 10.3. Machinery will be regarded as available after breakdown when it is declared available and placed on the track for the purpose of testing, resetting or working, unless after the period of testing and resetting the machinery is still non-available. In the latter case, breakdown time will commence from the time that the machinery previously became non-available.
- 10.4. The provisions regarding productivity and standards of workmanship and accuracy shall apply during periods of testing or resetting.
- 10.5. When the machine is not available at all for Work on a day because of a breakdown on the previous day, occupation time and non-availability will both be equal to Tom hours.

- 10.6. Should a single stoppage of Work due to a breakdown of a machine exceed or be likely to exceed 60 minutes, the Technical Officer's deputy may require the machine to be removed to a staging point as soon as possible. Such travelling, whether from or returning to the point of breakdown, will not be included in Tt, but will be included in Tb.
- 10.7. If the Contractor is instructed to work either overtime or more than Twm, non-availability due to breakdown occurring in such time will not be penalised. Occupation time will also not be measured during such breakdown.

11. PROVIDED BY PRASA

PRASA will provide the following free of charge: -

- 11.1. Water to operate the machinery, where available. The quality of water cannot be guaranteed.
- 11.2. Where available, at campsites as in clause 8.2, water for drinking and domestic purposes and hot water for ablutions.
- 11.3. Free traffic consignment notes for the conveyance by rail from one area of operation to another or from the Contractor's workshop or depot to the area of operation and vice versa will be issued for the machine (whether under own power, coupled to a train or loaded onto a railway truck), spares, caravans used with the machine and either of one spares trailer or one light delivery vehicle.
- 11.4. PRASA will be responsible for the safety of the machinery in so far as train working is concerned and will provide a qualified employee for each machine or group of machines, who will be in charge and who will –
- Travel in the cab of the machinery whenever it moves as a train outside occupation areas.
 - Arrange protection for and supervise the operation of the machinery within the zone of protection, whether it is working, moving or standing idle.
 - Supervise all on-tracking and off-tracking operations and ensure that the machinery is made secure when parked at the staging point.
- 11.5. Before work is commenced, the Technical Officer's deputy will enter in the work book the approximate positions of underground or hidden electrical conductors that may affect, or be

affected by, the Work to be done under the Contract, or alternatively, endorse in the work book that no such conductors exist.

- 11.6. Nothing contained here in shall detract from the Contractor's obligation to exercise care in all respects in carrying out his duties under the Contract.
- 11.7. PRASA will provide two or more DZ type rail wagons for use under all ballast screening and ballast tamping operations. The number of wagons required can be agreed upon between the Technical Officer and the Contractor and it depends on availability of the wagons and the reasons for requesting it. These wagons will also be moved free on rail.

12. TO BE PROVIDED BY THE CONTRACTOR

- 12.1. Except where otherwise specified the Contractor shall at his own cost provide all machinery, labour, transport, consumable stores, equipment, tools, services, materials, spare parts and ingredients of every description required for the performance and completion of his contractual obligations.
- 12.2. The Contractor shall provide and deliver to the place of Work all fuels and water required for the machine operations.
- 12.3. The Contractor shall maintain and operate the machinery, direct his own personnel and perform all work required.
- 12.4. During track occupations, the Contractor shall ensure that sufficient mechanics, operators and labour are present to ensure efficient operation of the machinery.
- 12.5. At least one qualified and experienced mechanic shall be in attendance at all times during track occupations and when the machinery travels as a train.
- 12.6. The Contractor shall appoint one suitably qualified person as his representative at each occupation.
- 12.7. The Contractor and the Technical Officer shall notify each other in writing of the names of their representatives who will be present during track occupations. These, as well as any changes in the personnel, shall be recorded in the workbook.
- 12.8. Failure to comply with the provisions of 17.2 to 17.7 shall render the machinery non-available.

13. MACHINE MOVEMENTS

- 13.1. The Contractor shall deliver the machinery in full operational condition, with all operatives, to the initial place of Work, as directed by the Technical Officer.
- 13.2. The Contractor shall not place the machinery onto the track or remove it there from, or use it in any way, except when authorised to do so by the Technical Officer or his deputy.
- 13.3. The Contractor is responsible for movement of his machines in the occupation area.
- 13.4. Machinery shall not be operated as a train unless a representative of PRASA, appointed by the Technical Officer, who is authorised to give instructions regarding the movement of the machinery, travels on the machinery to its destination. The Contractor shall, subject to the provisions of clause 10, assist PRASA in all matters concerning the safety of trains, persons and the machinery.
- 13.5. The Contractor shall ensure that the off-tracking rails are correctly placed and fastened before lowering or moving the machinery onto them.
- 13.6. The Contractor shall point out to the Technical Officer any part of the track or off-track stand where conditions may constitute a danger to the machinery and its ancillary equipment, and record this in the work book. The Contractor shall however repair off-track platforms where work can reasonable be expected to be done by the labour provided with the machine as per the schedule of labour.
- 13.7. The Contractor shall load and unload all machinery to be transported by rail truck (see clause 16.3) and shall be responsible to properly secure all machinery to be so transported.

14. CARE OF MATERIAL SUPPLIED BY PRASA

Any material supplied by PRASA shall be used in the most economical way, and the Contractor shall take all reasonable care to prevent loss or damage thereof. Any material lost or damaged through negligence on the part of the Contractor or his employees shall either be made good by the Contractor or PRASA will replace it. The value of the material replaced by PRASA, including the cost of transport at normal tariffs applicable to the public, will be deducted from any money due to the Contractor or recovered in any other way.

15. COMPLIANCE WITH STANDARDS OF WORKMANSHIP AND ACCURACY

- 15.1. The Contractor shall work to the track dimensions required by the Technical Officer. These dimensions will be given in writing to the Contractor or indicated by means of chalk marks on the sleepers.
- 15.2. The Contractor shall continuously monitor and evaluate measurements of the track and shall ensure compliance with the specified standards of workmanship and accuracy.
- 15.3. Where, in the opinion of the Contractor, the condition of the track or any site condition is such that the specified performance standards cannot be achieved, he should record all relevant information before and after working in conjunction with the Technical Officer's deputy. The Technical Officer may, if he concurs with the Contractor's contentions, adapt the specified standards of workmanship and conformance to suit the track and/or site conditions.

16. UNSATISFACTORY PERFORMANCE OF THE MACHINERY

- 16.1. The Technical Officer may terminate the Work and/or order the machinery to be moved to another place of Work and/or order the removal of mechanic(s) and/or operator(s), and/or order the temporary or permanent removal and replacement of a machine under the following conditions:
- When the output of the machinery is less than 70% of the required minimum productivity for a period of two consecutive months, or
 - When the percentage **availability** of the machinery (as described in the Special Conditions of Contract and Specifications) is less than 75% for a period of two consecutive months.
- 16.2. The Contractor may substitute, either temporarily or for the duration of the Contract, other machinery in place of that listed in the Schedule of Machinery offered. The substitute machinery shall be subject to all the terms and conditions of the Contract and shall in no way be inferior to the original machinery. (See clause 13.8). The Technical Officer shall be advised of any proposed substitution, which shall be subject to his approval.
- 16.3. Should the Technical Officer, at any time, be of the opinion that the machinery provided by the Contractor is performing defectively or is incapable of achieving the specified output and availability the Technical Officer may notify the Contractor in writing, but the Contractor shall not be relieved of any of his contractual obligations if such notification is not given. The

Contractor shall there-upon take steps to improve the output and availability of the machinery to specified performance levels or to replace the machinery with machinery capable of achieving the specified performance, failing which the Executive Officer may act in terms of Clause 29.

17. MEASUREMENT AND PAYMENT

17.1. The quantities in the Schedule of Quantities and/or Prices are estimated and may be more or less than stated. The Technical Officer will measure all the work done and certify payment therefore in accordance with the Schedule of Quantities and/or Prices. The absence of stated quantities is no guarantee that none will be required.

17.2. Payment for establishment of a machine at the commencement of the Contract will only be made after the machine has attained the required minimum availability over a period of one month.

Should the Contract not be completed for any reason whatsoever, due to the Contractor, he shall refund to PRASA a percentage of the establishment cost. The refund shall be proportional to the uncompleted period of the Contract.

In the case of unknown, alternative or substitute machines, establishment payments will only be made after successful completion of the trials (see clause 13.8) and only for the initial machine establishment.

17.3. Measurement and payment for the hire and operation of the machinery will be made as specified in the Project Specification. The following general payment provisions shall apply;

17.3.1. A machine-hire rate per day for each production machine that is available and operational. The rate shall include for all accessory labour, tools, equipment, etc., and everything whatsoever pertaining to the operation and maintenance of the machine.

17.3.2. A production-rate for each unit of time worked or work produced by the machine during actual working time. The rate shall include for all labour, fuels, consumables, materials, etc. and everything whatsoever, pertaining to the production output of the machine. The rate shall apply to all work performed on a "normal working day" as defined and to all Double-Shift working.

17.3.3. An extra-over payment will be made for overtime worked or production units produced during overtime working, i.e. time worked in excess of the maximum daily occupation

time (Tom) on a normal working day and on Saturdays, Sundays and statutory public holidays. The overtime payment will not apply to Double Shift working.

17.3.4. Contractor shall submit, with their tenders, full particulars of the labour task crews, allowed for in the rates tendered in respect of clause 22.3.1 and 22.3.2, to undertake the tasks and functions specified in the Special Conditions and Specifications. Such particulars shall include the details of crew strengths i.e. numbers of labourers and supervisors, etc.

17.4. Additional payment will be made when the machine is required to work outside the contract area described in the Special Conditions and Specifications.

17.5. No payment whatsoever will be made for periods of non-availability.

17.6. No payment will be made if a machine is unable to work as a result of an accident to the machine, regardless of the cause of such accident.

17.7. When two or more machines work in tandem and as an interdependent production system, the entire group of machines will be deemed to be non-available if the non-availability of one or more machines renders the entire production system substantially unproductive.

17.8. The Contractor shall be paid at the hourly rates in the Labour Payment Schedule when the Technical Officer approves a temporary increase in labour to perform the tasks and functions specified in the Special Conditions and Specification, at particular workplaces.

18. INCREASE OR DECREASE IN COSTS

All price adjustments (in writing) are subject to negotiations between Supply Chain Services and Supplier.

18.1. A contract price adjustment factor to be determined in accordance with the formula described in 18.2 will be applied to allow for all increases or decreases in costs, from any cause whatsoever, which may occur after the closing date of the submission of tenders and before the date of completion. **The factor shall be rounded off to six decimal places.**

$$(1 - x) \left(0.35 \frac{Lt}{Lo} + 0.40 \frac{Pt}{Po} + 0.13 \frac{Mt}{Mo} + 0.12 \frac{Dt}{Do} - 1 \right)$$

18.2. The contract price adjustment factor shall be -

Where $x = 0,15$; and

Lo , Po , Mo and Do are respectively labour, machinery, material and diesel fuel indices ruling for the calendar month two (2) months prior to closing date of the tender;

Lt , Pt , Mt and Dt are respectively labour, machinery, material and diesel fuel indices ruling for the calendar month two (2) months prior to the date of measurement.

18.3. The indices to be used shall be those for the Consumer Price Index and Production Price Index as obtained from the monthly Statistical News Release published by STATS South Africa.

- Lo and Lt shall be the labour indices for Metropolitan Areas.
- Po and Pt shall be the average of the price indices of Non-Electrical Machinery multiplied by an equalizing factor of 1.00866 and Transport Equipment in the ratio of 1:1
- Mo and Mt shall be the price indices of materials used in Mechanical Engineering
- Do and Dt shall be the price indices of "Diesel Oil "

18.4. When the value of an index at the time of calculation is not known the latest available index shall be used and any correction necessary shall be made by addition or subtraction in subsequent monthly payment certificates.

18.5. The amounts to be added to or subtracted from the monthly payment certificates shall be calculated by multiplying the amount certified for payment for that month (but excluding amounts not subject to price adjustment) by the contract price adjustment factor for that month.

Adjustment to measurements of previous months' quantities will be included in calculation of the amount certified for payment and will therefore be subject to the price adjustment factor of the current measurement month.

18.6. Any additions to or deductions from the amount payable, brought about by the application of the contract price adjustment factor, shall be deemed to have made full allowance for all increases or decreases in cost from any cause whatsoever, including all overhead costs as well as any increases and decreases therein, and profit.

- 18.7. Value added tax shall be excluded from individual payment item rates and price adjustment indices as it will be added to the total of the month's measurement, after price adjustment have been made in terms hereof.

19. FOREIGN EXCHANGE RATE FLUCTUATIONS

- 19.1. The contract price payable to the Contractor will be adjusted for increases and decreases in costs of imported materials, machines and spare parts, due to fluctuations in foreign currency exchange rates after the conclusion of the Contract and for the duration thereof. Tenderers shall, by furnishing the particulars in the appendix to the Schedule of Quantities and/or Prices, indicate whether or not their tenders or part(s) thereof are subject to variation on account of exchange rate fluctuations.

Where no particulars are furnished, such tenders will be deemed to be not subject to variation on account of exchange rate fluctuations.

- 19.2. The contract price adjustments will be made in the monthly payment certificates in respect of the progress payments for that month and are to be based on the Standard Bank of South Africa's "TT sell" rate at the close of business on the last banker's day of the month for which measurement is being made.
- 19.3. The percentages quoted in the appendix shall indicate the proportion of the scheduled rate or price that are subject to exchange rate fluctuations and the adjustments on account of exchange rate fluctuations shall only be made in respect of those proportions of the tendered rates and/or prices. The percentages quoted shall not be subject to variation on account of the actual quantities measured being more or less than the estimated quantities stated in the tender schedule of quantities and/or prices.
- 19.4. The rate of exchange to be used by Tenderers in the computation of their tender rates and/or prices and which is to be quoted in the appendix are the rate of exchange on the day 7 days prior to the date on which tenders close.
- 19.5. The adjustments of the tendered rates and prices will be made in respect of percentages quoted to be affected by fluctuations in the rate of exchange of the stated currency, between the rate stated in the appendix and the ruling rate determined in accordance with clause 24.2 hereof.

19.5.1. The contract price adjustments stipulated in clause 23 hereof shall not apply to the portions of the contract payments that are subject to adjustments for exchange rate fluctuations in terms hereof and the following formula shall apply instead.

The foreign exchange rate adjustment formula shall read:

Where $x = \frac{(1-x)[\frac{C_t}{C_o} - 1]}{\frac{C_t}{C_o} - 1}$ percentage not applicable to foreign exchange

19.5.2. C_o shall be the rate as prescribed in clause 24.4 hereof.

C_t shall be the rate as prescribed in clause 24.2 hereof.

The indices to be used will be those that the Contractor proposed in his tender. These indices shall be from an official series, published by the generally accepted institution of the country to which the foreign currency is to be remitted. The tender shall furthermore show the trend of the indices over a period of at least two years.

19.6. The Contractor shall, when requested by the Technical Officer, furnish documentary proof of remittance to another country of the contract payments made in terms of this clause.

20. PAYMENT CERTIFICATES

20.1. On or about the last day of each month, the Technical Officer's deputy will make a progress measurement of the work done in conjunction with the Contractor.

20.2. Thereafter the Project Manager will issue a certificate authorising payment of such sum of money as he may consider represents the value of the work referred to in 25.1.

20.3. The Contractor shall be entitled to receive payment of the amount authorised in the said certificate within 30 days from the date of measurement or receipt of the Contractor's VAT-invoice, whichever is the later. Such payment will be regarded as an open payment, and both the certificate and payment will be subject to revision and adjustment by the Project Manager if at any time he is of the opinion that the certificate does not represent accurately the value of work completed or to correct previous over or under payments.

20.4. In the event of failure by PRASA to make payment within the time stipulated in clause 25.3, he shall pay to the Contractor interest at prime overdraft rate as certified by the Contractor's bankers upon all overdue payments of such certified amounts, from the date on which such payments should have been made. Interest payments shall not be applicable to corrections made in respect of previous over- or underpayments.

- 20.5. The Project Manager shall, within 28 days after completion of the Contract, authorise the release of surety, and submit for approval by the Executive Officer a Final Certificate which, after approval by the latter, shall be issued to the Contractor, thereby certifying both the final completion of the Contract Work and the amount due to the Contractor. The Project Manager may deduct from the Final Payment Certificate any money then due by the Contractor to PRASA under the Contract, and for such provisions for the resolution of any disputes which may at the time exist between the Contractor and PRASA, as is deemed necessary by him.
- 20.6. The Project Manager shall, within 14 days after approval by the Executive Officer, and subject to clause 25.5, send the Final Certificate to the Contractor who, by countersigning thereof, shall certify his acceptance of the amount shown due to him as being full and final payment, subject only to the resolution of outstanding disputes.
- 20.7. Within 30 days after the receipt of the Contractor's certification, PRASA will remit to the Contractor the balance of all money so due under the Contract in terms of the Final Certificate.
- 20.8. Where the Contractor fails to certify the Final Certificate or has not disputed the correctness thereof within three months after its receipt by him, PRASA will deem the Contractor to be in agreement with the Final Certificate and will effect payment in terms thereof.

PRASA will not consider or admit any claim arising from the Final Certificate or in connection with the Contract, which has not been lodged with the Project Manager within a period of three months after receipt by the Contractor of the Final Certificate, and the Contractor accepts and acknowledges that by his failure to lodge a claim within the above-stipulated period of three months, he waives such claim and relieves PRASA of responsibility for such claim.

- 20.9. Neither the issue of the Final Certificate nor any payment made there under shall release the Contractor from any liability to indemnify PRASA against, and to reimburse it in respect of, any claim made or to be made against it by a third party for damage or loss sustained by such third party in consequence of any wrongful act or omission of the Contractor, or his employees or agents.

21. GUARANTEE

PRASA requires a Bank Guarantee or Deed of Surety ship of 5% of the total value of the Contract as security for the due and faithful performance by the Contractor of all the duties and obligations resting upon and assumed by him in terms of the Contract.

The bank guarantee or Deed of Suretyship is to be returned to the Contractor upon completion of the contract after certification from the Project Manager that all contract requirements have been met.

22. ANNEXURES

The following annexures are applicable to this contract:

Annexure 1 (Sheet 1 of 5); Horizontal clearances: 1065mm track gauge

Annexure 1(Sheet 2 of 5); Vertical clearances: 1065mm track gauge

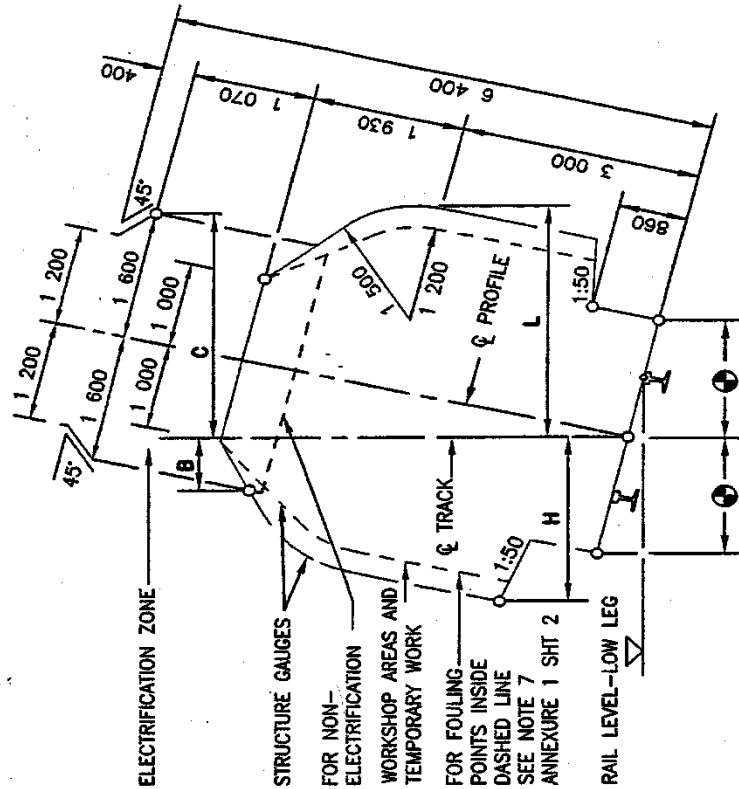
Annexure 2 (Sheet 1 of 2); Vehicle gauge: 1065mm track gauge

Annexure 4 (Sheet 1 of 1); Formation and Ballast minimum requirements

Annexure 16 (Sheet 3 to 5 of 5); De-stressing and working temperature ranges

ANNEXURE 1
SHEET 1 of 5
AMENDMENT

HORIZONTAL CLEARANCES :
1 065mm TRACK GAUGE



RADIUS (m)	WITH CANT		NO CANT	
	H (mm)	L (mm)	H & L	C (mm)
90	2 730	3 090	2 780	2 100
100	2 700	3 030	2 750	2 050
120	2 650	2 970	2 700	2 010
140	2 620	2 920	2 660	1 990
170	2 590	2 870	2 630	1 970
200	2 570	2 820	2 600	1 950
250	2 550	2 790	2 580	1 920
300	2 540	2 760	2 560	1 900
350	2 530	2 730	2 540	1 890
400	2 520	2 710	2 530	1 875
500	2 510	2 680	2 520	1 850
600	2 500	2 660	2 510	1 830
800	2 490	2 620	2 500	1 790
1 000	2 480	2 600	2 490	1 760
1 200	2 480	2 580	2 490	1 730
1 500	2 480	2 550	2 480	1 700
2 000	2 480	2 500	2 480	1 660
3 000	2 470	2 470	2 470	1 600
>5 000	2 460	2 460	2 460	1 600

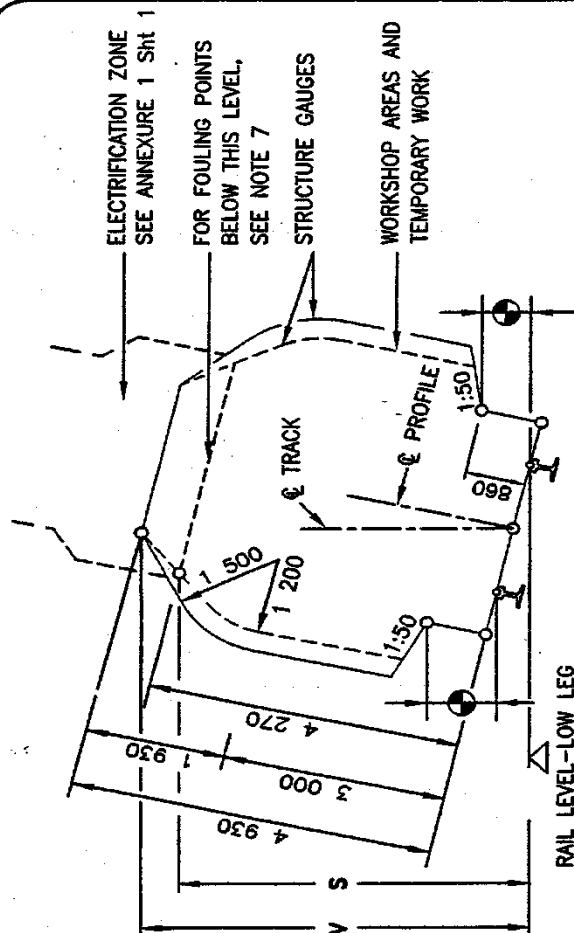
REMARKS:

1. H AND B IS THE REQUIRED HORIZONTAL CLEARANCE ON THE OUTSIDE OF THE CURVE BASED ON MINIMUM CANT.
2. L AND C IS THE REQUIRED HORIZONTAL CLEARANCE ON THE INSIDE OF THE CURVE BASED ON MAXIMUM CANT.
3. INTERMEDIATE VALUES MAY BE INTERPOLATED BY THE ENGINEER IN CHARGE.
4. FOR WORKSHOP AREAS AND TEMPORARY WORK, CLEARANCES H AND L MAY BE REDUCED BY 300mm.
5. SEE ANNEXURE 1 SHEET 3 FOR PLATFORM CLEARANCES.
6. ALSO REFER TO REMARKS 4 TO 8 OF ANNEXURE 1 SHEET 2.

BE 97-01 Sht 1 of 5

DATE : JUNE 2000

VERTICAL CLEARANCES :
1 065mm TRACK GAUGE

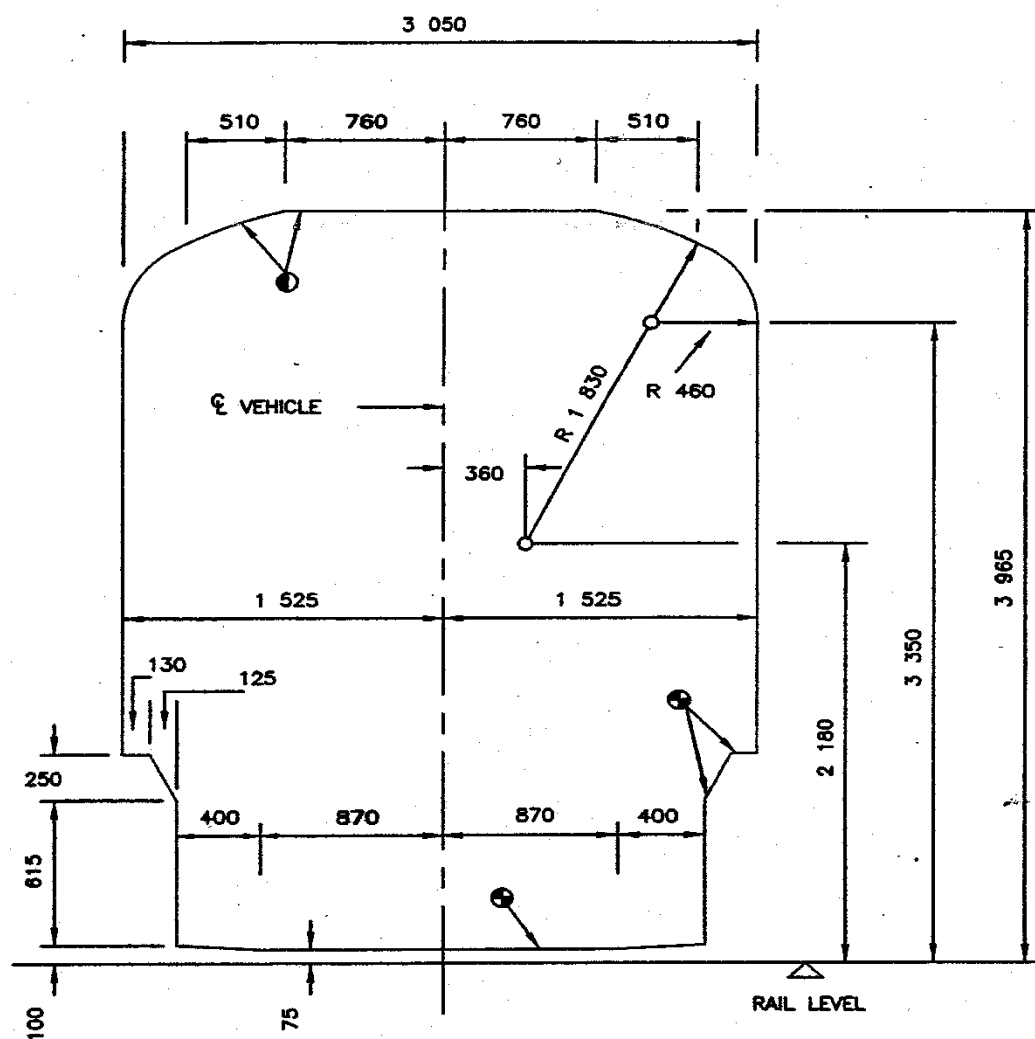


LOCATION	NOT ELECTRIFIED	ELECTRIFIED (PRESENT OR FUTURE)		
		RADIUS (mm)	3kV & 25kV 50kV	
			V (mm)	V (mm)
ALL AREAS OTHER THAN THOSE INDICATED BY * BELOW	100	4 470	5 050	5 400
	300	4 410	5 020	5 370
	600	4 370	5 000	5 350
	1 000	4 350	4 990	5 340
	1 500	4 310	4 960	5 310
	2 000	4 290	4 940	5 290
	>3 000	4 270	4 930	5 280
* OVER OR NEAR POINTS AND CROSSING IF REQUIRED BY ELECTRICAL IRRESPECTIVE OF RADIUS			5 650	6 000

REMARKS:

1. **V** IS THE REQUIRED VERTICAL CLEARANCE EXCEPT WHERE REDUCED CLEARANCE **S** APPLIES.
2. **S** IS THE MINIMUM VERTICAL CLEARANCE FOR STRUCTURES AND TEMPORARY WORK OVER NON-ELECTRIFIED LINES.
3. INTERMEDIATE VALUES MAY BE INTERPOLATED BY THE ENGINEER IN CHARGE.
4. FOR APPLICATION AT CURVES
 - 4.1 APPLY INCREASED CLEARANCES FOR CURVES TO POINTS 3m BEYOND THE ENDS OF THE CIRCULAR CURVE.
 - 4.2 REDUCE CLEARANCES AT A UNIFORM RATE OVER THE REMAINDER OF THE TRANSITION CURVE.
 - 4.3 FOR NON-TRANSITIONED CURVES REDUCE AT A UNIFORM RATE OVER A LENGTH OF 15m ALONG STRAIGHTS.
5. NEW STRUCTURES: SEE BRIDGE CODE.
6. TUNNELS: SEE DRAWING BE 82-35.
7. FOULING POINTS: SEE CLAUSE 8.1.
8. CLEARANCES ARE BASED ON 15m BOGIE CENTRES AND 24.2m VEHICLE BODY LENGTH.
9.  SEE ANNEXURE 1 SHEET 3 FOR PLATFORM CLEARANCES.

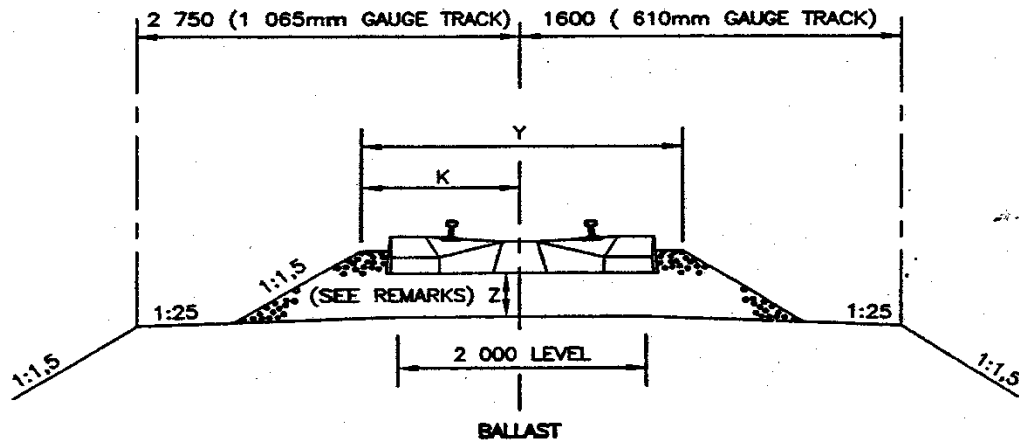
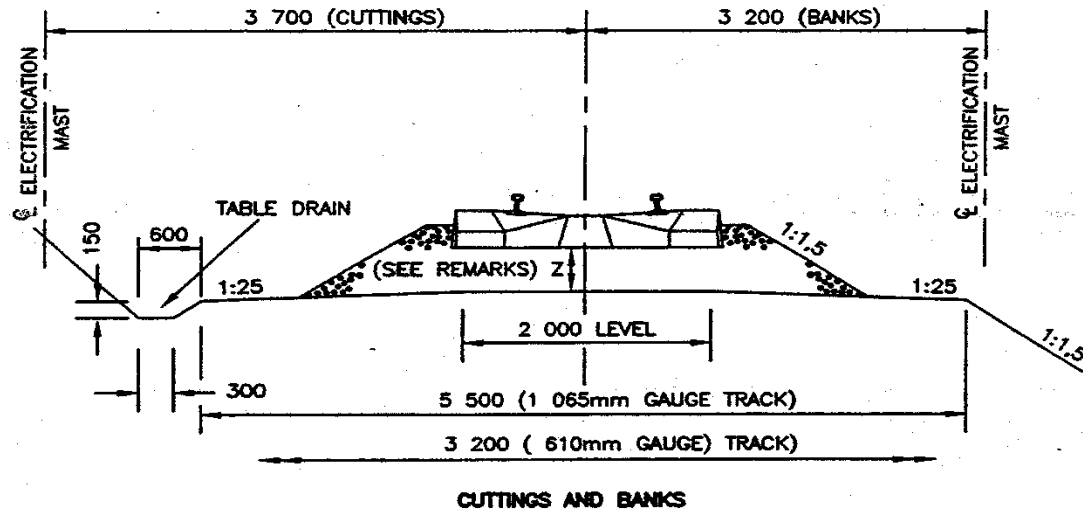
VEHICLE GAUGE :
1 065mm TRACK GAUGE



1. WITHOUT LOAD AND WITH NEW TYRES, VEHICLE MUST NOT BE HIGHER THAN THIS OUTLINE.
2. WITH FULL LOAD AND WORN TYRES, VEHICLE MUST NOT BE LOWER THAN THIS OUTLINE.

ANNEXURE 4
SHEET 1 of 1
AMENDMENT

FORMATION AND BALLAST :
MINIMUM REQUIREMENTS



CLASS OF LINE	Z (mm)	Y (mm)	K (mm)	QUANTITY (m ³ /km)		
				PY/FY	P2/F4	WOOD
S	300	2 800	1 400	1 600	—	—
N1	280	2 700	1 350	1 500	1 400	—
N2	200	2 700	1 350	—	1 200	1 100

REMARKS:

1. Z TO BE MEASURED UNDER THE LOW LEG RAIL ON CURVES.
2. DEPTH OF BALLAST (Z) ARE TO BE MEASURED IN THE CONSOLIDATED STATE, THAT IS AFTER 100 000 GROSS TON TRAIN TRAFFIC.

ANNEXURE 16
SHEET 3 of 5
AMENDMENTDESTRESSING AND WORKING
TEMPERATURE RANGES

SECTION	DESTRESSING RANGES		WORKING RANGES FOR RAIL LAYING	
	THROUGH LINES	YARD TRACKS	B	C
CAPE TOWN – BELLVILLE	20 – 50	25 – 45	15 – 55	15 – 60
* BELLVILLE – WORCESTER	25 – 45	30 – 40	20 – 50	20 – 60
* WORCESTER – DE AAR	25 – 40	25 – 35	20 – 50	20 – 55
HUTCHINSON – CALVINIA	25 – 35	25 – 30	20 – 40	20 – 50
KOOTJIESKOLK – SAKRIVER	25 – 35	25 – 30	20 – 40	20 – 50
KRAAIFONTEIN – BITTERFONTEIN	25 – 45	30 – 40	20 – 50	20 – 60
KALBASKRAAL – SALDANHA	25 – 45	30 – 40	20 – 50	20 – 60
HERMON – PORTERVILLE	25 – 45	30 – 40	20 – 50	20 – 60
WOLSELEY – PRINCE ALFRED HAMLET	25 – 45	30 – 40	20 – 50	20 – 60
PAARL – FRANCHHOEK	25 – 45	30 – 40	20 – 50	20 – 60
EERSTERVIER – BREDASDORP	25 – 45	30 – 40	20 – 50	20 – 60
VAN DER STEL – STRAND	25 – 45	30 – 40	20 – 50	20 – 60
KLIPDALE – PROTEN	25 – 45	30 – 40	20 – 50	20 – 60
EERSTERVIER – MULDERSVLEI	25 – 45	30 – 40	20 – 50	20 – 60
* WORCESTER – RIVERSDALE	25 – 40	30 – 35	20 – 45	20 – 55
KENTEMADE – ATLANTIS	25 – 45	30 – 40	20 – 50	20 – 60
TABLE BAY HARBOUR – SIMONSTOWN	20 – 50	25 – 45	15 – 55	15 – 60
CAPE TOWN CENTRAL METRO AREA	20 – 50	25 – 45	15 – 55	15 – 60
* DE AAR – * KIMBERLEY	25 – 35	25 – 30	20 – 40	20 – 50
* KIMBERLEY – MAKWASSIE	25 – 40	30 – 40	20 – 50	20 – 55
* MAKWASSIE – * KLERKSDORP	20 – 40	25 – 35	15 – 50	15 – 55
* KIMBERLEY – * POSTMASBURG	25 – 35	25 – 30	20 – 40	20 – 50
POSTMASBURG – HOTAZEL	25 – 40	30 – 35	20 – 45	20 – 55
DE AAR – NAKOP	25 – 40	30 – 35	25 – 45	25 – 55
GROVEPUT – COPPERTON	25 – 40	30 – 35	25 – 45	20 – 55
UPINGTON – KAKEMAS	25 – 40	30 – 35	25 – 45	20 – 55
BELMONT – DOUGLAS	25 – 40	30 – 35	20 – 45	20 – 55
VEERTIENSTROME – MAFKENG	25 – 40	30 – 35	20 – 45	20 – 55
PUDIMOE – COLIGNE	25 – 40	30 – 35	20 – 45	20 – 55
* MAKWASSIE – VERMAAS	20 – 40	25 – 35	15 – 45	15 – 55
OTTOSDAL – * KLERKSDORP	20 – 40	25 – 35	15 – 45	15 – 55
LICHTENBURG – WELVERDIEND	20 – 40	25 – 35	15 – 45	15 – 55
PORT ELIZABETH – ALICEDALE	25 – 45	30 – 40	20 – 50	20 – 60
* ALICEDALE – NOUPOORT	25 – 40	30 – 35	20 – 45	20 – 55
NOUPOORT – DE AAR	25 – 40	30 – 35	20 – 45	20 – 55
SWARTKOPS – KLIPPLAAT	25 – 45	30 – 40	20 – 50	20 – 60
KLIPPLAAT – ROSMEAD	25 – 45	30 – 40	20 – 50	20 – 60
ADDO – KIRKWOOD	25 – 45	30 – 40	20 – 50	20 – 60
RIVERSDALE – * MOSSELBAAI	25 – 45	30 – 40	20 – 50	20 – 60
MOSSELBAAI – GEORGE	20 – 45	25 – 40	15 – 50	15 – 60
* GEORGE – OUDTSHOORN	25 – 45	30 – 40	20 – 50	20 – 60
* OUDTSHOORN – * KLIPPLAAT	25 – 40	30 – 35	20 – 45	20 – 55
OUDTSHOORN – CALITZDORP	25 – 45	30 – 40	20 – 50	20 – 60
* GEORGE – KNYSNA	25 – 45	30 – 40	20 – 50	20 – 60
* PORT ELIZABETH – AVONTUUR	25 – 40	30 – 35	20 – 45	20 – 55
GAMTOOS – PATENSIE	25 – 45	30 – 40	20 – 50	20 – 60
COOKHOUSE – SOMERSET EAST	25 – 40	30 – 35	20 – 45	20 – 55
* ALICEDALE – PORT ALFRED	30 – 40	30 – 35	25 – 45	25 – 55
BARKLEY BRIDGE – ALEXANDRIA	25 – 45	30 – 40	20 – 50	20 – 60
EAST LONDON – DOHNE	20 – 45	25 – 40	15 – 50	15 – 60
* DOHNE – QUEENSTOWN	25 – 40	30 – 35	20 – 50	20 – 55
* QUEENSTOWN – BURGERSDORP	20 – 35	25 – 30	15 – 45	15 – 50
* BURGERSDORP – SPRINGFONTEIN	20 – 40	25 – 40	15 – 50	15 – 55
COOKHOUSE – BLANEY	25 – 40	30 – 35	20 – 45	20 – 55
AMABELE – UMTATA	25 – 40	30 – 35	20 – 45	20 – 55
IMVANI – QAMATA	25 – 40	30 – 35	20 – 45	20 – 55
* ROSMEAD – STORMBERG	20 – 30	20 – 25	15 – 35	15 – 45
SCHOOMBEE – HOFMEYR	20 – 30	20 – 25	15 – 35	15 – 45
STERKSTROOM – MACLAER	20 – 30	20 – 25	15 – 35	15 – 45
MOLTENO – JAMESTOWN	20 – 30	20 – 25	15 – 35	15 – 45
BURGERSDORP – BARKLEY EAST	20 – 35	25 – 30	15 – 40	15 – 50

REMARKS:

1. FOR REMARKS SEE ANNEXURE 16 SHEET 5.

ANNEXURE 16
 SHEET 4 of 5
 AMENDMENT

 DESTRESSING AND WORKING
 TEMPERATURE RANGES

SECTION	DESTRESSING RANGES		WORKING RANGES FOR RAIL LAYING	
	THROUGH LINES	YARD TRACKS	B	C
	A	D		
NOUPOORT – SPRINGFONTEIN	20 – 40	25 – 35	15 – 45	15 – 55
* SPRINGFONTEIN – BLOEMFONTEIN	20 – 35	25 – 30	15 – 40	15 – 50
BLOEMFONTEIN – THEUNISSEN	20 – 35	25 – 30	15 – 40	15 – 50
* THEUNISSEN – KROONSTAD	20 – 40	25 – 35	15 – 45	15 – 55
KROONSTAD – VEREENIGING	20 – 40	25 – 35	15 – 45	15 – 55
BETHLEHEM – ARLINGTON	15 – 35	20 – 30	10 – 40	10 – 50
* ARLINGTON – * KROONSTAD	15 – 40	20 – 35	10 – 45	10 – 55
KIMBERLEY – EMMAUS	25 – 40	25 – 35	20 – 45	20 – 55
* EMMAUS – BLOEMFONTEIN	20 – 35	25 – 30	15 – 40	15 – 50
SPRINGFONTEIN – KOFFIEFONTEIN	25 – 40	30 – 35	20 – 45	20 – 55
ALJAL NORTH – SANNASPOS	20 – 40	25 – 35	15 – 45	15 – 55
GROOTVLEI – * BETHLEHEM	20 – 35	25 – 30	15 – 40	15 – 50
* BETHLEHEM – BLOEMFONTEIN	20 – 35	25 – 30	15 – 40	15 – 50
HARRISMITH – BETHLEHEM	15 – 35	20 – 30	10 – 40	10 – 50
VREDEFORT – DOVER	20 – 40	25 – 35	15 – 45	15 – 55
WOLWEHOEK – ARLINGTON	20 – 40	25 – 35	15 – 45	15 – 55
* ARLINGTON – MARQUARD	20 – 40	25 – 35	15 – 45	15 – 55
ORKNEY – WESLEIGH	20 – 40	25 – 35	15 – 45	15 – 55
VIERFONTEIN – BULTFONTEIN	20 – 40	25 – 35	15 – 45	15 – 55
ANCONA – WHITES	20 – 40	25 – 35	15 – 45	15 – 55
THEUNISSEN – WINBURG	20 – 40	25 – 35	15 – 45	15 – 55
WARDEN – * HARRISMITH	20 – 40	25 – 35	15 – 45	15 – 55
MASERU – MARSAILLES	20 – 40	25 – 35	15 – 45	15 – 55
LADYBRAND – MODDERPOORT	20 – 40	25 – 35	15 – 45	15 – 55
VIRGINIA – GLEN HARMONY	20 – 40	25 – 35	15 – 45	15 – 55
WONDERFONTEIN – BROODSNYERSPLAAS	15 – 40	20 – 35	10 – 45	10 – 55
ERMELO – MACHADODORP	20 – 40	25 – 35	15 – 45	15 – 55
BUHRMANNSKOP – LOTHAR	15 – 35	20 – 30	10 – 40	10 – 50
ROSSBURG – * DASSENHOEK	20 – 45	25 – 40	15 – 50	15 – 60
DASSENHOEK – CATO RIDGE	25 – 40	30 – 35	20 – 45	20 – 55
CATO RIDGE – PIETERMARITZBURG	25 – 40	30 – 35	20 – 45	20 – 55
* PIETERMARITZBURG – * VOLKSRUST	20 – 40	25 – 35	15 – 45	15 – 55
ROSSBURG – HILLCREST	20 – 45	25 – 40	15 – 50	15 – 60
* HILLCREST – CATO RIDGE	25 – 40	30 – 35	20 – 45	20 – 55
DURBAN – PORT SHEPSTONE	20 – 50	25 – 45	15 – 60	15 – 65
KELSO – UMZINTO	20 – 50	25 – 45	15 – 60	15 – 65
DURBAN – HLUHLUWE	20 – 50	25 – 45	15 – 60	15 – 65
* HLUHLUWE – GOLELA	25 – 45	30 – 40	20 – 55	20 – 60
EMPANGENI – NKWALINI	25 – 50	30 – 45	20 – 55	20 – 60
DUFFSROAD – KWAMASHU	25 – 50	30 – 45	20 – 55	20 – 60
THORNHILL – RICHMOND	25 – 40	30 – 35	20 – 45	20 – 55
THORNHILL – PENTRICH	25 – 40	30 – 35	20 – 45	20 – 55
* PIETERMARITZBURG – KOKSTAD	25 – 35	25 – 30	20 – 40	20 – 50
DONNYBROOK – UNDERBERG	20 – 35	25 – 30	15 – 40	15 – 50
FRANKLIN – MATATIELE	20 – 35	25 – 30	15 – 40	15 – 50
PIETERMARITZBURG – DALTON	25 – 40	30 – 35	20 – 45	20 – 55
* DALTON – KRANSKOP	20 – 40	25 – 35	15 – 45	15 – 55
SCHROEDERS – BRUYNHILL	25 – 40	30 – 35	20 – 45	20 – 55
* DALTON – GLENSIDE	20 – 40	25 – 35	15 – 45	15 – 55
GREYTOWN – MOUNT ALIDA	20 – 40	25 – 35	15 – 45	15 – 55
ENNERSDALE – BERGVILLE	25 – 40	30 – 35	20 – 45	20 – 55
GLENCOE – VRYHEID	20 – 40	20 – 35	15 – 50	15 – 55
NEWCASTLE – UTRECHT	20 – 40	25 – 35	15 – 45	15 – 55
LADYSMITH – HARRISMITH	20 – 40	25 – 35	15 – 45	15 – 55

REMARKS:

1. FOR REMARKS SEE ANNEXURE 16 SHEET 5.

ANNEXURE 16
SHEET 5 of 5
AMENDMENTDESTRESSING AND WORKING
TEMPERATURE RANGES

SECTION	DESTRESSING RANGES		WORKING RANGES FOR RAIL LAYING	
	THROUGH LINES	YARD TRACKS	B	C
KLERKSDORP - * POTCHEFSTROOM	20 - 35	25 - 30	20 - 40	15 - 50
POTCHEFSTROOM - * KRUGERSDORP	20 - 40	25 - 35	15 - 45	15 - 55
KRUGERSDORP - JOHANNESBURG	15 - 40	20 - 35	10 - 45	10 - 55
JOHANNESBURG - OLIFANTSFONTEIN	15 - 40	20 - 35	10 - 45	10 - 55
POTCHEFSTROOM - VEREENIGING	20 - 40	25 - 35	15 - 45	15 - 55
VEREENIGING - GERMISTON	20 - 40	25 - 35	15 - 45	15 - 55
VOLKSRUST - * STANDERTON	15 - 35	20 - 30	10 - 40	10 - 50
STANDERTON - * HEIDELBERG	20 - 35	25 - 30	15 - 40	15 - 50
HEIDELBERG - GERMISTON	20 - 40	25 - 35	15 - 45	15 - 55
BALFOUR NORTH - * GROOTVLEI	20 - 35	25 - 30	15 - 40	15 - 50
GROOTVLEI - REDAN	20 - 40	25 - 35	15 - 45	15 - 55
FIRHAM - VREDE	20 - 35	25 - 30	15 - 40	15 - 50
VOLKSRUST - BREYTEN	15 - 40	20 - 35	10 - 45	10 - 55
BETHAL - SPRINGS	20 - 40	25 - 35	15 - 45	15 - 55
SPRINGS - KAYDALE	20 - 40	25 - 35	15 - 45	15 - 55
MIDWAY - HOUTHELUWEL	20 - 35	25 - 30	15 - 40	15 - 50
BANK - LANGLAAGTE	20 - 35	25 - 30	15 - 40	15 - 50
MAFIKENG - * KRUGERSDORP	25 - 40	30 - 35	20 - 45	20 - 55
APEX - WITBANK	20 - 35	25 - 30	15 - 40	15 - 50
DELMAS - HAWEKUP	20 - 35	25 - 30	15 - 40	15 - 50
SENTRARAND AREA	15 - 35	20 - 30	10 - 40	10 - 50
JOHANNESBURG CENTRAL METRO AREA	15 - 40	20 - 35	10 - 45	10 - 55
OLIFANTSFONTEIN - * IRENE	15 - 40	20 - 35	10 - 45	10 - 55
IRENE - PRETORIA	20 - 40	25 - 35	15 - 45	15 - 55
PRETORIA - * WARMBATHS	20 - 40	25 - 35	15 - 45	15 - 55
WARMBATHS - * POTGIETERSRUS	20 - 45	25 - 40	15 - 55	15 - 60
POTGIETERSRUS - BETTERIDGE	20 - 45	25 - 40	15 - 50	15 - 50
* PRETORIA - * WATERVAL BOVEN	20 - 40	25 - 35	15 - 50	15 - 55
WATERVAL BOVEN - * NELSPRUIT	20 - 45	25 - 40	15 - 55	15 - 60
NELSPRUIT - KOMATIPOORT	25 - 45	30 - 40	20 - 55	20 - 60
HERCULES - MAGALIESBURG	20 - 40	25 - 35	15 - 45	15 - 55
PRETORIA - BRITS	20 - 40	20 - 35	15 - 45	15 - 55
BRITS - RUSTENBURG	20 - 40	25 - 35	15 - 45	15 - 55
RUSTENBURG - * THABAZIMBI	20 - 40	25 - 35	15 - 45	15 - 55
THABAZIMBI - ELLISRAS	25 - 40	30 - 35	20 - 45	20 - 55
BRITS - ATLANTA	20 - 40	25 - 35	15 - 45	15 - 55
NYLSTROOM - VAALWATER	20 - 40	25 - 35	15 - 45	15 - 55
NABOOMSPRUIT - ZEBEDIELA	20 - 40	25 - 35	15 - 45	15 - 55
PIENAARSRIVER - MARBLE HALL	25 - 40	30 - 35	20 - 45	20 - 55
RAYTON - CULLINAN	20 - 40	25 - 35	15 - 45	15 - 55
GROENBULT - KAAPMUIDEN	25 - 45	30 - 40	20 - 50	20 - 60
HOEDSPRUIT - PHALABORWA	25 - 45	30 - 40	20 - 50	20 - 60
* KAAPMUIDEN - BARBERTON	20 - 45	25 - 40	15 - 50	15 - 60
* NELSPRUIT - GRASKOP	20 - 35	25 - 30	15 - 40	15 - 50
CITRUS - PLASTON	20 - 45	25 - 40	15 - 50	15 - 60
BELFAST - STEELPOORT	20 - 40	25 - 35	15 - 45	15 - 55
DERWENT - ROOSSENEKAL	20 - 40	25 - 35	15 - 45	15 - 55
PRETORIA CENTRAL METRO AREA	20 - 40	25 - 35	15 - 45	15 - 55
SALDANHA - BAMBOESBAAI	20 - 50	25 - 45	15 - 55	15 - 60
* BAMBOESBAAI - SISHEN	25 - 40	30 - 35	20 - 45	20 - 55
RICHARDSBAY - ULUNDI	20 - 45	-	20 - 55	-
* ULUNDI - PIET RETIEF	20 - 40	25 - 35	20 - 50	15 - 55
PIET RETIEF - * SHEEPMORE	20 - 40	25 - 35	20 - 50	15 - 55
SHEEPMORE - ERMELO	15 - 35	20 - 30	15 - 45	10 - 50
* ERMELO - BROODSNYERSPLAAS	15 - 40	20 - 35	15 - 50	10 - 55
BROODSNYERSPLAAS - OGIES	15 - 40	20 - 35	15 - 50	10 - 55

REMARKS:

1. RAIL TEMPERATURES IN DEGREE CELSIUS.
2. USE A RAIL TENSOR WHEN THE DIFFERENCE IN THE 'A' RANGE IS 10° CELSIUS OR SMALLER.
3. * DENOTES "EXCLUDED".

**PART B: PARTICULAR (PROJECT) CONDITIONS AND SPECIFICATIONS FOR THE
MAINTANACE OF PERMANENT TRACK WITH ONE ON-TRACK MECHANISED
MAINTANANCE MACHINE CONTENTS**

CLAUSE

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1.3 Duration of contract

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APPENDIX A - Measurements forms: Turnouts and Open Track.

APPENDIX B - Position of measuring stations: 1:20, 1:12 and 1:9

APPENDIX C - Track standards.

P.1. SCOPE

P.1.1 Nature of work

This specification covers the maintenance of track by the Contractor with an **on-track** Mobile mechanised maintenance machine.

P.1.2. Contract area

The contract area will be the track owned or maintained by METRORAIL within the limits of METRORAIL WESTERN CAPE. The machine may also be utilised on other Metrorail regions.

P.1.3. Duration of contract

P.1.3.1 The contract will commence continue for a period of **36 months** under the same terms and conditions described in the contract. The Contractor will be notified three months before the end of the initial contract period whether Metrorail wishes to exercise this option.

P.2. DEFINITIONS

P.2.1 “Ballast” Broken stone of the required grading used to support sleepers

P.2.2 “Box in and trim” To place ballast between the sleepers and on the ballast shoulders to form the required profile.

P.2.3 “Tamp” means to place and compact sufficient ballast under the sleepers to form a firm interlocking mass supporting the sleepers at the correct level.

SINGLE TAMP - A tamper passes over the track and tamps every sleeper once.

DOUBLE TAMP - A tamper passes over the track and tamps every sleeper twice in succession. For every tamp the tines are lifted clear of the ballast.

SINGLE TAMP - A tamper passes over the track once and tamps every sleeper (single or double tamp)

DOUBLE PASS - A tamper passes over the track, tamps every sleeper (single or double tamp), returns with tines in the raised position and again passes over the track, tamping every sleeper (single or double tamp)

RESTRICTED TRACK - Restricted track is all plain track that cannot be tamped at the normal tamping rate due to lock bars, dowlies, guard rails, splice joints, block joints, bonds out of position, lubricators, axle counters, signalling Equipment, services, or where sleepers are skewed by more than 75mm.

TAMPING POSITION -Both sides of every sleeper-to-rail fastening.

P.3. TYPE OF MACHINE REQUIRED

P.3.1 Motive Aspects

P.3.1.1 The tamping unit shall be self-propelled and capable of maintaining the following travelling speeds in either direction:

- Level gradient, empty without wagons-60km/h.
- 1:60 gradient, with wagon and fully loaded-30km/h.

Should this not be achieved the difference between actual and theoretical travelling time will be regarded as breakdown time.

P.3.1.2 Each machine shall actuate colour-light signals when travelling at any speed by means of electric currents passing from one rail to the other through the machine.

P.3.1.3 Each machine shall have power service brakes with independent operation to each axle capable of providing a minimum retardation on dry rail of 12,5% at travelling speed.

P.3.1.4 **Emergency brakes independent of the service brakes shall operate on at least one wheel set and be capable of providing a minimum retardation on dry rail of 6% at travelling speed.**

P.3.1.5 The total mass of the machine in operating order shall be not less than 25 tons. Axle loads shall not exceed 18.5 tons.

P.3.1.6 Two electric headlamps of at least 400W each and 2 red warning lights shall be fitted at each end of the machine.

- P.3.1.7** Maximum wheel-tread and rim wear, distance between wheel flanges and ultrasonic testing for flaws in running axles shall all be measured and shall comply to METRORAIL standards.
- P.3.1.8** The machine shall be capable of being hauled as last vehicle of a train, if required to clear the section after breakdown. All equipment required to haul the machine as the last vehicle shall be supplied by the contractor.
- P.3.1.9** Fuel tank capacity shall be sufficient for 20 hours of working or travelling between refuelling.

P.3.2 Safety Aspects

- P.3.2.1** Each machine shall be fitted with a hooter for use during travelling and a separate warning system used solely for the warning of approaching trains. The pitch and intensity shall make it discernible from other sounding devices and easily hear above the working of the machine anywhere within 100 metres from the machine. An appointed employee of the Contractor shall activate the warning system.
- P.3.2.2** Each machine shall be fitted with adequate lights to light a work area for 10m around the machine when it operates in the night hours (minimum of four 500-Watt lamps)
- P.3.2.3** Each machine and all its tools and equipment shall comply with the Occupational Health and Safety Act (Act no. 85 of 1993).

P.3.3 Transport, Storage, and Load Area

The machine shall be able to carry and store the following equipment:

- P.3.3.1 Mechanised Maintenance Machine:** Metrorail requires that provision be made that four of its employees to travel from the staging point to work place in the cab of the Mechanised Maintenance machine. Both cabins must be suitably protected against inclement weather.
- P.3.3.2** Self-propelled wagon: **The following tools, to be provided by the Contractor,** shall be stored safely in a lockable toolbox, underneath the wagon:-

- 6 Pandrol levers,
- 6 Fist levers,
- 8 Beaters
- 8 Ballast forks
- 8 Slewing Bars
- 4 Pionjars, or similar motorised handheld tampers,
- 4 “A”- type rail jacks.
- 4 sets of portable floodlights of 500 watts intensity for night working,
- 2 rail disc-cutters,
- 2 wrenches with sockets, capable of loosening and fastening coach screws, “T”-bolts and fish bolts,
- One sleeper drill
- Welding machines, MP12 and MC2 grinders shall be carried on the wagon deck.

P.3.3.3 The wagon shall have detachable sides of approximately 400mm high.

P.3.3.4 The wagon area shall have a length of at least 12 metres, and shall be able to carry a maximum load of 10 tonnes comprising of the following or similar materials (these items shall be adequately supported by non-flexible support firmly secured):-

1 x 1:12 frog, or stock and switch (complete), or

1 x 1:7 double slip obtuse and acute frog, or

5 x F4 (or similar) type sleepers all with fastenings, and

4 x 12m 48/57kg/m rails or block joint.

P.3.3.5 All additional equipment supplied as requested see clause 3.8.

P.3.3.6 Both the Mechanised Maintenance Machine and the Wagon shall have buffers at both ends.

P.3.3.7 The wagon shall be self-propelled, consisting of two axles, and shall be able to move at 1:60 gradients at a speed of +-30 km/h, when fully loaded.

P.3.3.8 The control box shall be fitted at one end of the wagon only.

P.3.4 Void

P.3.5 Tamping equipment

- P.3.5.1** The machine shall be able to tamp plain track, restricted track, all types of sets listed in the schedule of machines, splice joints and all joint assemblies.

Signalling and electrical equipment such as axle counters and connecting rods will not be removed.

Bonds and cables will not be removed unless connections are bolted to the rail. The contractor shall replace bolted connections after the tamping operation.

- P.3.5.2** **The machine shall be capable of tamping at least ten sleepers per minute in plain track.**

- P.3.5.3** The machine shall tamp at least 95% of the tamping positions of every set, and all other tamping positions. The Contractor shall arrange to tamp the remaining tamping positions of sets by means of Pionjars or similar equipment.

The turnout portion of a set, up to the “end of turnout”, shall be tamped during the same pass as the straight.

The Contractor shall indicate, on the set diagrams with his submission, which tamping positions his machine cannot tamp, and the extent to which the curved (turnout) portion can be tamped with the machine on the straight (through) line.

- P.3.5.4** The machine shall have auto, as well as design lining equipment and be capable of tamping between 230mm and 440 mm below rail level with the top of the tines adjusted to 15mm below the underside of the sleeper.

- P.3.5.5** The machine must be able to lift the track by lifting it from the bottom flange at rail joints and turnouts.

- P.3.5.6** The method of tamping shall provide an equal positive horizontal force to opposite tines. The tines vibration frequency shall be between 30 and 40 Hz with amplitude of about 10mm.

The closing force shall be applied hydraulically to the tines and the system shall be fitted with an adjustable pressure control. The squeezing time shall be not less than one second.

P.3.5.7 The tamping cycle shall be automatic. Once initiated by the operator, the insertion closing and extraction of the tines shall follow automatically. Manual operation shall be possible through the use of by-pass switches.

P.3.5.8 The contractor shall ensure that tines are replaced before reaching the minimum required surface area of 8000mm². The replacement of tines shall be completed within ten minutes.

P.3.5.9 Standards of workmanship and accuracy

P.3.5.9.1 The contractor shall work to the track dimensions required by the technical Officer. These dimensions will be given in writing to the contractor or indicated by means of chalk marks on the sleepers.

P.3.5.9.2 The technical Officer may take spot measurements of the track immediately after operation of the machinery to evaluate the accuracy of the geometry measurement equipment of the machine.

P.3.5.9.3 The contractor shall continuously monitor and evaluate vertical and horizontal alignment and cant behind the machine.

P.3.5.9.4 Standards in the Vertical Plane.

- 1) The rate of run-out at the end of a lift or from a defect which occurs in one or both rails shall not exceed 1 in 1000.
- 2) The deviation of the running top of either rail from a straight line between two points not more than 10m apart shall not exceed 1 in 250.
- 3) The actual cant at any point shall not differ by more than 3mm from the specified cant.
- 4) Cant readings taken 3m apart shall not differ by more than 3mm on straight track and circular curves, and not more than 6mm on transition curve. Where the two readings indicate cants in

opposite directions the difference shall be the algebraic difference.

P.3.5.9.5 Standards in the Horizontal Plane

- 1) On straight track, the rate of deviation of the running edge of one rail of the track from a straight line between two points not more than 10m apart shall not exceed 1 in 2000.
- 2) On curves, the offsets at any point measured from a 10m chord shall not differ from the required offsets by more than 2,5mm plus 5% of the average offset.

P.3.5.9.6 The tamping of ballast under sleepers shall be such that the track standards described in P.5.5.10.4 and P.5.5.10.5 will be maintained during the passage of a train.

P.3.6 Hoisting Equipment

P.3.6.1 The wagon is to be fitted with a hydraulic crane for loading material at material camps or at points next to the track, transporting this material to discharge points and offloading them as and where directed by the Technical Officer.

P.3.6.2 A 16 ton-meter crane is required, and must be able to reach a distance varying between 4m from the centre-line of a track, and a maximum of 11m above rail level.

P.3.6.3 Movement of the crane shall be physically restricted that no part of the crane shall ever reach higher than 3,9m above the rail when handling material under live overhead conditions. This limit will be relaxed when working with overhead structures and under “dead” overhead conditions.

P.3.6.4 Lifting cables and slings capable of lifting any type of permanent way material currently used by METRORAIL shall be supplied by the Contractor. That shall include a spreader bar with suitable connections for 6m rails and a spreader bar with suitable connections to lift five P2 (or similar) sleepers simultaneously.

P.3.6.5 The wagon shall be secured not to lift when handling material.

P.3.6.6 The crane shall be mounted to the one end of the wagon, and centrally to the track.

P.3.6.7 The crane shall properly be earthed to the rail-track.

P.3.7 Communication

P.3.7.1 The Contractor shall provide one cell-phone at the Mechanised Maintenance Machine, for communication to the technical officer or his deputy, and to the Contractors Depot.

P.3.7.2 The Contractor shall also provide one cell-phone at the Mechanised Maintenance Machine, for communication BETWEEN Operating and the Metrorail Track Inspector/Master.

P.3.8 Additional Equipment Supplied as Requested

The following additional equipment shall be available when required by the Technical Officer:

2 Hydraulic jacks to assist with jacking sets when being tamped.

P.4. ACCOMODATION

The Contractor shall make his own arrangements for accommodation of staff employed and all costs shall be included in the rates tendered. No accommodation for staff will be permitted on Metrorail property.

P.5. HOURS OF WORK

P.5.1 Commencement time and duration of occupations

P.5.1.1 Before the end of each day's work the Contractor will be advised in writing of the commencement time and duration of the following day's occupation(s).

P.5.1.2 The duration of the occupation will be subject to train operating conditions. Work may be required during 18:00 to 06:00 on regular basis.

P.5.1.3 More than one occupation may be called on any day, provided the Contractor is allowed sufficient time between occupations for servicing of the machine.

P.5.1.4 The Contractor will be allowed sufficient on-track time to calibrate and adjust the machine. This time could be outside the announced occupations and will not be included in any of the contract measurements.

P.5.2 Standby

- P.5.2.1** When required by METRORAIL the operator of the machine shall be required to be on standby during off-periods, weekends and public holidays. Seven day's prior notice will be given to the contractor.
- P.5.2.2** The operator of the machine shall be on standby during 19:00 to 05:00 between Monday to Friday on which work is performed.
- P.5.2.3** When on standby, the machine Operator shall be available at a pre-arranged telephone number at all hours. (This may be a radio-call system).
- P.5.2.4** When called out the machine Operator shall be at the pre-arranged place within one hour of being called out.
- P.5.2.5** When required by METRORAIL, the team shall be required to be on standby during off-periods, weekends, and public holidays. Seven days prior notice will be given to the contractor.

P.5.3 LABOUR

- P.5.3.1** The contractor shall provide two Perway teams (one with the tamper & one with the wagon) consisting of the following personnel:
- 2 qualified Track Master,
- 6 qualified Track-helpers,
- 24 Track-workers.
- P.5.3.2** The above-mentioned personnel shall be equipped with necessary safety clothing for the maintenance of the Railway-track, e.g. handling of track material, tools and equipment.
- P.5.3.3** The Contractor shall also provide an appropriate vehicle for the transporting of tools and equipment of the team, from the Perway depot, to any worksite on the Metrorail region.

P.5.3.4 One Perway team may be utilised as an independent unit away from the machine or wagon e.g. as a separate maintenance team replacing for example major sub-components.

P.6 PROVIDED BY METRORAIL

P.6.1 Operation of machine or equipment

All equipment required operating with Machine and wagon will be provided by the Contractor see clause P3.3.2

P.7 BREAKDOWN

P.7.1 Should the machine or trailer or any of its equipment be non-available and influence the working of the other, each machine's availability will be regarded as non-available.

P.7.2 Should the machine or trailer or any of its equipment be non-available and does not influence the working of the other, each machine's availability will be regarded separately.

P.7.3 Should any equipment on the machine not achieve the production rate indicated in the Schedule of the Machines the machinery may be regarded as non-available or the difference between the actual production time and the schedule production time may be regarded as breakdown time.

P.7.4 Should the quality of work produced by the machinery not be to the standard required the machinery may be regarded as not available.

P.7.5 The machine and the wagon will be considered on breakdown if the team does not report for duty on that specific day.

P.8 TAMPING RATE

P.8.1 The nominal production rate in sleepers/minute (10) must be maintained over a calendar month.

P.8.2 The following definitions shall apply in this regard:

SA: The total number of sleepers actually tamped each month. (Excluding all sleepers tamped in turnouts and restricted track).

Tw: Actual working time for tamping (minutes) per month excluding tamping time on turnouts and restricted track.

R: Nominal Tamping rate shall be 10 sleepers/minute for open track.

P.8.3 Sleepers tamped during turnout and restricted track maintenance will not count towards total for SA.

P.8.4 Tw will be multiplied with the ratio: $P = (\text{Actual tamping rate}) / R = \text{Productivity Factor}$.

P.8.5 Productivity factor for open track will be restricted to 1,15. (11,5 sleepers per minute).

P.8.6 Production factor for turnouts and restricted track will be 1.

9. PAYMENT

9.1 The symbols used here are the same as defined in Part A of the contract, briefly:

- To = Occupation time
- Tb = Breakdown time (non-available)
- Tw = Working time
- Tom = Maximum occupation time

9.2 No payment will be made for periods of non-availability or if the machine is unable to work as a result of an accident to the machine.

9.3 ESTABLISHMENT

There will be no separate item for establishment, the Contractor shall, at their own discretion, include the costs of establishment in other items of the BOQ.

9.4 ITEM 2: EXECUTION OF WORK

Supply, maintain and operate the mobile maintenance machinery including the supply of consumables will be paid for according to the availability of the machine.

The availability is calculated as follows;

$$\text{Availability (A)} = \frac{\text{To} - \text{Tb}}{\text{To}}$$

The monthly payment = Availability multiplied by the rate in item 2. (To and Tb are the totals for the month)

To-days for the Machine and the wagon shall be priced and paid separately. Availability of the machines can be considered separately.

9.5 ITEM 3: WORKING

9.5.1 ITEM 3.1 TAMPING TIME ($T_{w_{tamp}}$)

Payment will be made for each hour of working time as an independent machine (e.g. as a tamping machine). Only work that was required and accepted will be included in the production measurement and payment under item 3.1.

$$\text{Monthly payment} = [\text{Production factor (P)}] \times [\text{rate for item 3.1}] \times [T_{w_{tamp}}]$$

Production rates will be calculated as per clause 8.

9.5.2 ITEM 3.2: LOCO TIME ($T_{w_{loco}}$)

Payment will be made for each hour of working time as a dependant machine (with the trailer) and the machine is not occupied with tamping, e.g.: travelling, with or without the trailer: standing while waiting for loading or any non-tamping activity.

Monthly payment = $Tw_{loco} \times [\text{rate for item 3.2}]$.

9.5.3 ITEM 3.3 WAGON WORKING TIME $Tw_{(wagon)}$

Payment will be made for each hour by the wagon

9.6 ITEM 4: OVERTIME

ITEM 4.1 Overtime payment for the team and machine will be made for occupation time during week-days (Monday to Friday) in excess of the hours of maximum occupation time (TOM) of 8 (eight) hours per day.

ITEM 4.2 Overtime payment for the team and machine will be made for work performed on a Saturday when in excess of 5 consecutive days out of every seven days or in excess of 10 consecutive days out of every 14 days.

ITEM 4.3 Overtime payment for the team and machine will be made for work performed on a Sunday or Paid Public Holiday when in excess of 10 consecutive days out of every 14 days.

9.7 ITEM 5: SHIFT ALLOWANCE

ITEM 5.1 A shift allowance payment for the team and machine will be made for work performed on a Saturday when working five days out of every seven days or ten days out of every fourteen days.

ITEM 5.2 A shift allowance for the team and machine will be made for work performed on a Sunday or Paid Public Holiday when working five days out of every seven days or ten days out of every fourteen days.

ITEM 5.3 A night shift allowance for the team and machine will be made when an 8-hour occupation or part thereof falls between 19h00 and 05h00, and will be made in addition to any other shift or overtime payments.

9.8 ITEM 6: TECHNICAL DEVELOPMENTS

When technological development required by Metrorail necessitates modifications to the machine, an assessment of the time and cost of such modifications shall be submitted to the Technical Officer as soon as possible. Modifications in the field shall only be done on instruction of the Technical Officer, for which the following shall apply:

- For labour, the rates in ITEM 6 of the scheduled of prices.
- A mark-up of 25% will be allowed on landed prices of imported parts or the delivered prices of locally manufactured parts and will excluded from price adjustment.

ITEM 7: STANDBY

Metrorail will advise the Contractor at least 3 weeks in advance to make the machine and its crew available for standby during its annual leave period payment will be made for the number of days the machine is required to be on standby. Additional payment per hour shall be made for the actual hours the machine is requested to work during this period.

A separate payment will be made for the team when requested by Metrorail to be on standby and/or when called-out.

ITEM 8: DAY LABOUR

ITEM 8.1 Payment on a daily rate will be made under this item for 1 Trackmaster to supervise the Contractor's team.

ITEM 8.2 Payment on a daily rate will be made under this item for 3 Track Helpers (train protection).

ITEM 8.3 Payment on a daily rate will be made for 12 Track workers.

ITEM 8.4 Payment on a daily rate will be made for transport of team to worksite and back.

SCHEDULES OF MACHINE/S

TAMPING PLAIN TRACK

TYPE OF MACHINE OFFERED:

1. **MAKE** : _____
2. **MODEL(YEAR)** : _____
3. **NOMINAL PRODUCTION RATE** : _____
(sleepers/min) (Minimum =10 sleepers/min)
4. **LIFTING AND SLEWING**
 - 4.1. **MAXIMUM LIFT (mm)** : _____
 - 4.2. **MAXIMUM SLEW PER PASS (mm)** : _____
5. **NOMINAL TRAVELLING SPEED (km/h)**
 - 5.1. **LEVEL GRADIENT (minimum 80 km/h)** : _____
 - 5.2. **GRADIENT OF 1:60 (minimum 45 km/h)** : _____
 - 5.3. **WHEN TRAVELLING AS PART OF AND COUPLED TO A TRAIN:** _____
(minimum 60 km/h)
6. **TAMPING FREQUENCY (Hz)** : _____

Note: Nominal in the schedule of machines indicates the maximum continuous production rate that the machine is capable of.

TYPE OF TAMPING	UNIT SCHEDULED	RATE/TIME
-----------------	----------------	-----------

to be completed by Tenderer

Plain track	sl/min	Rp =
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Restricted track	sl/min	Rr =
------------------	--------	------

Maximum rate	sl/min	R max. =
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Sets:

1:20 wood	Minute	R20w =
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1:20 concrete	Minute	R20c =
---------------	--------	--------

1:12 wood	Minute	R12w =
-----------	--------	--------

1:12 concrete	Minute	R12c =
---------------	--------	--------

1:9 wood	Minute	R9w =
----------	--------	-------

1:9 concrete	Minute	R9c =
--------------	--------	-------

1:8 wood	Minute	R8 =
----------	--------	------

1:6 wood	Minute	R6 =
----------	--------	------

1:7 or 1:4 diamond	Minute	Rd =
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Scissors	Minute	Rci = NA
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Single slip	Minute	Rss = NA
-------------	--------	----------

Double slip	Minute	Rds = NA
-------------	--------	----------

Splice joint	Minute	Rsj =
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Note: All scheduled rates must include the machine preparation time for turnout tamping.

Schedule of Labour for full time support of machine operations (TAMPING PLAIN TRACK)

	A) Machine support Labour	B) Full time support Subcontract labour as part of machine activity.	C) Any other full time labour – (Functions to be specified.)
Contract supervisor			
2. Machine operators			
3. Machine maintenance support			
Technicians			
4. Machine Technician Trade			
hands supporting machines:			
5. Other Machine support Grades: Specify:			
6. Subcontractor supervisor / Track master for tamping support			
7. Subcontractors Trade hands for track support. Trackman etc.			
8. Bonders.			
9. Flagmen			
10. Workers (Track workers Un – skilled labour)			
11. Vehicle allowed for transport of workers & tools. (Type & Capacity)			
12. Any other support allowed for execution of this function (Clarify)			

Schedule of Rail wagons

Wagons used for contract and intended to be continued to be used as part of offer.

Number of wagons	Type of wagons used /required	For what purpose is wagon used	Transnet Wagon Number of present wagon in use	Type of Wheel bearings of wagon & general condition (White Metal or roller bearing)	Motivation for wagon required and implication if wagon is not made available for contract
Example 1	DZ with built roof	Mass Fuel tank (10000l)		White Metal bearings Wagon good condition	

SCHEDULE OF CELL-PHONE CONTRACT

Name of Service Provider (i.e. Vodacom / MTN) & Type of Contract (i.e. Talk 500 / Pinical 600)

Cellular Telephone _____

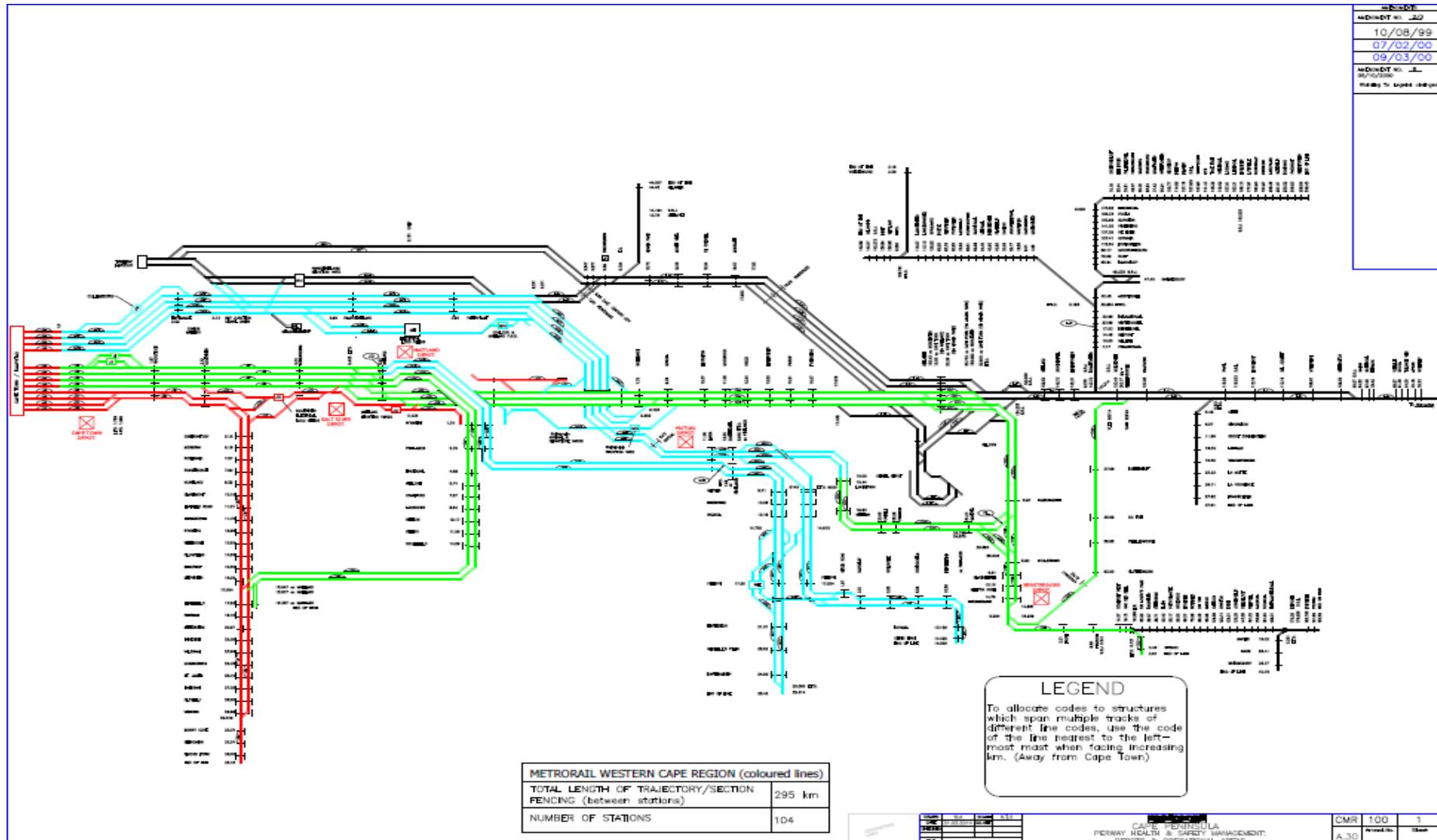
PART C4: SITE INFORMATION

C4.1 General

The work sites are located within the boundaries of the railway reserve of PRASA Cape Town Region rail network. The layout below indicates the network in which PRASA operates and it includes sections which are owned and under the jurisdictions of Transnet Freight Rail (TRF). The Contractor shall only perform work on the sections that are owned and maintained by PRASA. Sections not owned and maintained by PRASA i.e. owned by TFR are shown in blue on the layout.

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5 EVALUATION METHODOLOGY

The evaluation of Bids will be based on the information contained in Bids received in RFP and, which may be further supplemented by presentations and clarification information provided, if required. All Bids shall be equally evaluated by various committees involved in the evaluation process in accordance with stated Evaluation Criteria. Procurement integrity and fairness, transparency, competitiveness and full accountability will at all times be paramount.

5.1 EVALUATION AND SCORING METHODOLOGY

The evaluation of the Bids by the evaluation committees will be conducted at various levels. The following levels will be applied in the evaluation:

LEVEL	DESCRIPTION
Verify completeness	The Bid is checked for completeness and whether all required documentation, certificates; verify completeness warranties and other Bid requirements and formalities have been complied with. Incomplete Bids will be disqualified.
Verify compliance	The Bids are checked to verify that the essential RFP requirements have been met. Non-compliant Bids will be disqualified.
Detailed Evaluation of Technical	Detailed analysis of Bids to determine whether the Bidder is capable of delivering the Project in terms of business and technical requirements. The minimum threshold for technical evaluation is [65%], any bidder who fails to meet the minimum requirement will be disqualified and not proceed with the evaluation of Price and B-BBEE.
B-BBEE	Evaluate B-BBEE
Price Evaluation	Bidders will be evaluated on price offered.
Scoring	Scoring of Bids using the Evaluation Criteria.
Recommendation	Report formulation and recommendation of Preferred and Reserved Bidders
Best and Final Offer	PRASA may go into the Best and Final Offer process in the instance where no bid meets the requirements of the RFP and/or the Bids are to close in terms of points awarded.
Approval	Approval and notification of the final Bidder.

5.2 EVALUATION CRITERIA

Interested bidders for this project shall be evaluated in terms of their business credentials, financial standing, empowerment, technical capacity and experience. The evaluation committee shall use the following Evaluation Criteria depicted in Table 1 for the selection of the preferred bidder that shall execute construction work for the project.

EVALUATION CRITERIA	WEIGHTING
Stage 1	Compliance
Mandatory Compliance	Basic Compliance
Stage 2	Technical/Functionality
Technical/Functional Requirements	Threshold of 65%
Stage 3	Price and BBBEE
Price	80 OR 90
BBBEE	20 OR 10
TOTAL	100

Details of the stages outlined in table 1 above are presented in the following sections.

6 STAGE 1: COMPLIANCE REQUIREMENTS

Bidders must comply with the following requirements and failure to comply will lead to immediate disqualification.

Mandatory Requirements

Stage 1A- Mandatory Requirements

If you do not submit the following documents your tender will be automatically disqualified:

If you do not submit the following documents your Proposal will be disqualified automatically:

No.	Description of requirement	
a)	Completion of ALL RFP documentation (includes ALL declarations and Commissioner of Oath signatures required)	X
b)	Briefing session Form D	X
c)	Signed Joint Venture , Consortium Agreement or Partnering Agreement (whichever is applicable)	X
d)	Proof of CIDB grading of or higher	7CE or higher
e)	Declaration document for local content and production SBD 6.2	N/A
f)	Annexure C – Local Content Declaration – Summary Schedule	N/A
g)	Proof of minimum B-BBEE threshold of level 4 and below and/or Proof Indicate whether Bidder is EMEs and/or QSEs	
	In compliance with the Preferential Procurement Regulation requirement of subcontracting 30% of the Works, PRASA requires a Memorandum/da Of Understanding from the Bidders to reflect the names of companies that it intends subcontracting to, the nature of the works to be subcontracted and contract % that will be subcontracted to the respective companies and the terms and conditions of the relationship between the Bidder and subcontracting companies	X

h)	Professional Registration of Key Personnel	N/A
	1. Project Manager with SACPMP or PMP	N/A
	2. Electrical Design Engineering with ECSA	N/A
	3. Civil and Structural Design Engineer with ECSA	N/A
	4. Telecommunications/ICT design Engineer with ECSA	N/A
	5. Electronic Design Engineer with ECSA	N/A
	6. Quantity Surveyor with SACQSP	N/A
	7. Environmental Manager	N/A
	NB: Provide copies of Original Qualifications and Certificates of professional bodies. The copies must be certified by the commissioner of oath. The date on the stamp shall be three months or less old before the closing date of the tender. If the qualification has been awarded in other language either than English please provide translation in English)	N/A

If you do not submit the following basic compliance documents and should an award be made, these basic compliance documents must be made available within seven (7) days, failing of which the award will be recalled.

No.	Description of requirement	
a)	Letter of Good Standing: COID	x
b)	Supply of valid SARS Pin	x
c)	Company registration documents	x
d)	Copies of Directors' ID documents	x
e)	CSD supplier registration number	x
f)	Copies of the Rates and Taxes to determine the footprint	x
g)	Annexure D – Imported Content Declaration – Supporting Schedule to Annex C	
h)	Annexure E – Local Content Declaration – Supporting Schedule to Annex C	

NB: Bidders must submit Proof of its BBBEE status level contributor, a bidder failing to submit proof of BBBEE status level of contributor or is a non-compliant to BBBEE may not be disqualified and will score 0 points of 20 BBBEE

STAGE 2: TECHNICAL / FUNCTIONALITY REQUIREMENTS

Qualifying bidders shall then be evaluated on technicality/ functionality after meeting all compliance requirements outlined above. The minimum threshold for technical/functionality requirements is 65%. Bidders who score below this minimum requirement shall not be considered for further evaluation in stage 3.

Details of the technical / functional requirements are presented in Table 3 below

FUNCTIONAL EVALUATION CRITERIA

ID	FUNCTIONALITY QUALITY CRITERIA	SUB-CRITERIA SCORING		POINTS
1	<u>Capacity – Plant and Equipment</u> Provide proof of ownership (e.g. letter from the bank) or lease agreement with company owning the following: Ballast Tamping Machine with Wagons	Excellent	5	50
		Poor	1	
2.	<u>Previous Experience:</u> Organisational Experience and Reference Letters: Supply evidence of previous experience in the form of completed projects/services/contracts. Examples of Similar Works include but is not limited to: • Ballast Screening by means Heavy on Track Machinery • Ballast Tamping by means of Heavy on Track Machinery • Rail Grinding by means Heavy on Track Machinery. Attached is a reference letter template that can be used. The reference letter must be sent to the company/business where services were previously rendered for. Should the bidder be in possession of existing letter, the letter shall cover all aspects shown below:	Excellent	5	50
		Very Good	4	
		Good	3	
		Average	2	
		Poor	1	

	A. Previous client and completed works/services information i. Name of Organisation ii Description of works/goods/services that were provided. iii. Year iv. Duration B. Evaluation of service providers performance: i. Name of the organisation ii. Description of works/goods/services that were provided			
TOTAL				100

Details of the scoring methodology presented above are outlined in Table 4 below

ID	QUALITY CRITERIA	INDICATORS				
		1 - Poor	2 - Average	3 - Good	4 - Very Good	5 - Excellent
1	<u>Capacity – Plant</u> Provide proof of ownership (e.g. letter from the bank) or lease agreement with company owning the following: Ballast Tamping Machine with Wagons as specified in Clause P3 of Part B: Particular Project Specifications.	No proof of ownership provided for machines <i>The Tenderer owns no relevant machines</i>				Proof of ownership or proof of agreement to lease the machine to cover the contract period provided of all plant/machines provided . <i>The Tenderer has all relevant machines</i>

ID	QUALITY CRITERIA	INDICATORS				
		1 - Poor	2 - Average	3 - Good	4 - Very Good	5 - Excellent
2	<u>Previous experience:</u> <u>Organizational Experience and reference letters:</u> Organisational Experience and Reference Letters: Supply evidence of previous experience in the form of completed projects/services/contracts. Examples of Similar Works include but is not limited to: - Ballast Screening by means Heavy on Track Machinery - Ballast Tamping by means of Heavy on Track Machinery - Rail Grinding by means Heavy on Track Machinery. Attached is a reference letter template that can be used. The reference letter must be sent to the company/business where services were previously rendered for. Should the bidder be in possession of existing letter, the letter shall cover all aspects shown below: C. Previous client and completed works/services information i. Name of Organisation ii Description of works/goods/services that were	Note 20% of points allocated for this criteria 0 projects completed with 0 reference letters	Note 40% of points allocated for this criteria 1 project successfully completed with 1 relevant reference letter NOTE: The reference letter must be signed and stamped by the company/business where the services were previously rendered to) and comply with the two listed criteria. If the reference letter does not feature all criteria, then the tenderer will be given the lowest	Note 60% of points allocated for this criteria 2 project successfully completed with 2 relevant reference letter NOTE: The reference letter must be signed and stamped by the company/business where the services were previously rendered to) and comply with the two listed criteria. If the reference letter does not feature all criteria, then the tenderer will be given the lower	Note 80% of points allocated for this criteria 3 project successfully completed with 3 relevant reference letter NOTE: The reference letter must be signed and stamped by the company/business where the services were previously rendered to) and comply with the two listed criteria. If the reference letter does not feature all criteria, then the tenderer will be given the lower	Note 100% of points allocated for this criteria 4 project successfully completed with 4 relevant reference letter NOTE: The reference letter must be signed and stamped by the company/business where the services were previously rendered to) and comply with the two listed criteria. If the reference letter does not feature all criteria, then the tenderer will be given the lowest score

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ID	QUALITY CRITERIA	INDICATORS				
	provided. iii. Year iv. Duration D. Evaluation of service providers performance: i. Name of the organisation ii. Description of works/goods/services that were provided		score	score	score	

STAGE 3: PRICING AND B-BBEE

The following formula, stipulated in the approved PRASA conditions of contract, shall be used by the Bid Evaluation Committee to allocate scores to the interested bidders on pricing:

$$P_s = 80 \frac{\{1 P_t - P_{min}\}}{P_{min}}$$

OR

$$P_s = 90 \frac{\{1 P_t - P_{min}\}}{P_{min}}$$

Where:

P_s = Points scored for the price of tender under consideration;

P_t = Rand value of the tender under consideration;

P_{min} = Rand value of the lowest acceptable tender.

The minimum qualifying criteria for pricing is 65 points as per the standard Evaluation Criteria presented in Table 1.

The BBBEE component of the evaluation process is weighted at 20 points in Table 1 of the standard Evaluation Criteria outlined above. Bidders will be awarded points based on the level of their BBBEE status in their BBBEE Certificate issued by an approved agency certified by SANAS. Details of the allocation of points by the Evaluation Committee are presented in Table 3

B-BBEE Status Level of Contributor	Number of points (80/20 system) below R50 Million
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-Compliant Contributor	0

Table 5: BBBEE Evaluation Criteria

OR

B-BBEE Status Level of Contributor	Number of points (90/10 system) more than R50 Million
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-Compliant Contributor	0

7 PREFERENTIAL PROCUREMENT REGULATIONS

The Preferential Procurement Regulations, issued by the Minister of Finance in 2017, were revised to align with certain changes to the Broad-Based Black Economic Empowerment (B-BBEE) legislation. They encourage procurement from Small Enterprises, particularly through subcontracting if a tender is set above the R30 million threshold.

If it is feasible to subcontract for a contract above R30 million, an organ of state must apply subcontracting to advance designated groups.

In compliance with the new regulation, this project will require that a minimum of 30% be subcontracted to one of the following types of enterprises:

- an EME or QSE which is at least 51% owned by black people;
- an EME or QSE which is at least 51% owned by black people who are youth;
- an EME or QSE which is at least 51% owned by black people who are women;
- an EME or QSE which is at least 51% owned by black people with disabilities;
- an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
- a cooperative which is at least 51% owned by black people; or
- an EME or QSE which is at least 51% owned by black people who are military veterans.

Before contracting with the successful Bidder, PRASA will insist on being provided with copies of formal signed subcontracting agreements that make up the legislated 30% of the contract value. The subcontractors shall be registered on the National Treasury Central Supplier Database (CSD). All agreements to state that PRASA will not be held responsible or liable should the successful Bidder breach contract with the subcontracted companies.

8 VALIDITY PERIOD

This RFP shall be valid for *[90 days]* calculated from Bid closing date.

9 B-BBEE REQUIREMENTS

A Bidder must submit proof of its B-BBEE status level contributor, a Bidder failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified and will score 0 points out of 20 for B-BBEE.

10 LOCAL CONTENT - NATIONAL TREASURY STIPULATED MINIMUM THRESHOLDS FOR LOCAL PRODUCTION

10.1 LOCAL CONTENT

- Bids will be subject to local content requirements in terms of Regulation 8(1) of the Preferential Procurement Regulations, 2017.
- Only locally produced or manufactured goods with a stipulated minimum threshold as stated in the table below for local production and content will be considered. Bidders who do not meet the stipulated minimum threshold will be automatically disqualified and not be considered further for evaluation.
- Bidders may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- The exchange rate to be used for the calculation of local content (local content and local production are used interchangeably) must be the exchange rate published by the SARB on the date of the advertisement of the tender.
- The Declaration Certificate for Local Content (SBD 6.2) must be completed and duly signed. **Bidders who do not complete this form will be automatically disqualified.**
- For further guidance with the above requirements, bidders may refer to DTI website, www.theDTI.gov.za and National Treasury Designated Sectors Instruction Number 15 of 2016/2017.

10.2 EXEMPTION REQUESTS

If the quantity of the components to be used for this work as listed in figure 14.1 cannot wholly be sourced from South African based manufacturers, bidders should obtain written exemption from the **dti** to supply the remaining portion of the components at a lower content threshold. The **dti**, in consultation with the procuring organ of state, will grant exemption on a case-by-case basis and will consider the following:

- a) Required volumes in the particular tender;
- b) Available collective SA industry manufacturing capacity at that time;
- c) Delivery times;
- d) Availability of input material and components;

- e) Security of supply and emergencies;
- f) Materials of construction;
- g) Technical considerations including operating conditions;
- h) Localisation plans aimed at establishing and / or increasing local manufacturing capacity through ramping-up of capital investments in the initial phase ; and
- i) warranties and guarantees.

Replacement of components on the existing infrastructure in order to honour the

10.3 THE PROCESS TO BE FOLLOWED IN REQUESTING EXEMPTIONS

The following tender information must be provided on the bidder's letterhead when requesting an exemption request to the DTi:

- a) Procuring entity;
- b) Tender description;
- c) Bid reference number;
- d) Closing date of bid;
- e) Detailed specifications of items for which the exemption is requested for (kindly attach specifications);
- f) Products / inputs / components to be imported;
- g) Reasons for the request; and
- h) Supporting letters from local bidders' suppliers and manufacturers.

The turnaround time for processing of exemption requests is **10 working days** from the date of receipt.

11 THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME

11.1 National Industrial Participation Programme (NIPP) requirements:

The National Industrial Participation (NIP) Programme, which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIP requirements. NIP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of

the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

Bidders are therefore required to complete SBD 5 to give effect to the above. **Bidders who do not complete this form will be automatically disqualified.**

12 POST TENDER NEGOTIATION (IF APPLICABLE)

PRASA reserves the right to conduct post tender negotiations with a shortlist of Respondent(s). The shortlist could comprise of one or more Respondents. Should PRASA conduct post tender negotiations, Respondents will be requested to provide their best and final offers to PRASA based on such negotiations. A final evaluation will be conducted in terms of 80/20.

13 BEST AND FINAL OFFER

PRASA reserves the right to embark on the Best and Final Offer (BAFO) Process where:

- a) None of the proposals meet the RFP requirements;
- b) None of the responses to RFP are affordable and demonstrate value for money; and
- c) There is no clear preferred Response to this RFP.

Upon the decision by PRASA to embark on a BAFO process it shall notify the response to RFP.

14 FINAL CONTRACT AWARD

PRASA will negotiate the final terms and condition the contract with the successful Respondent(s). This may include aspects such as Supplier Development, the B-BBEE Improvement Plan, price and delivery. Thereafter the final contract will be awarded to the successful Respondent(s).

15 FAIRNESS AND TRANSPARENCY

PRASA views fairness and transparency during the RFP Process as an absolute on which PRASA will not compromise. PRASA will ensure that all members of evaluation committees declare any conflicting or undue interest in the process and provide confidentiality undertakings to PRASA.

The evaluation process will be tightly monitored and controlled by PRASA to assure integrity and transparency throughout, with all processes and decisions taken being approved and auditable.

SECTION 3

PRICING AND DELIVERY SCHEDULE

Respondents are required to complete the Pricing Schedule/ BOQ **Annexure:**
(Volume 2 /Envelope 2)

1 PRICING

- 1.1. Prices must be quoted in South African Rand, inclusive of VAT.
- 1.2. Price offer is firm and clearly indicate the basis thereof.
- 1.3. Pricing Bill of Quantity is completed in line with schedule if applicable.
- 1.4. Cost breakdown must be indicated.
- 1.5. Price escalation basis and formula must be indicated.
- 1.6. To facilitate like-for like comparison bidders must submit pricing strictly in accordance with this price schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being declared non-responsive.
- 1.7. Please note that should you have offered a discounted price(s), PRASA will only consider such price discount(s) in the final evaluation stage on an unconditional basis.
- 1.8. Respondents are to note that if price offered by the highest scoring bidder is not market related, PRASA may not award the contract to the Respondent. PRASA may:
 - 1.8.1. negotiate a market-related price with the Respondent scoring the highest points or cancel the RFP;
 - 1.8.2. if that Respondent does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the second highest points or cancel the RFP; and
 - 1.8.3. if the Respondent scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the third highest points or cancel the RFP.
 - 1.8.4. If a market-related price is not agreed with the Respondent scoring the third highest points, PRASA must cancel the RFP.

2 DISCLOSURE OF PRICES QUOTED

Respondents are to note that, on award of business, PRASA is required to publish the tendered prices and preferences claimed of the successful and unsuccessful Respondents inter alia on the National Treasury e-Tender Publication Portal, (www.etenders.gov.za), as required per National Treasury Instruction Note 01 of 2015/2016.

3 PERFORMANCE AND BID BONDS (WHERE APPLICABLE)

- 3.1. The preferred Bidder shall where applicable provide PRASA with a performance bond which shall be 10% of the value of the entire Project price offered and it shall be issued with 30 days of receipt of notice of appointment. The Performance Bond shall be valid for the Contract period. The format of the Performance Bond is attached as **Annexure**

[Bidders are required to submit their Bid with a Bid Bond. The Bid Bond shall be due and payable if a bidder decides not to continue with the RFP process after submission of its Bid. The format of the Bid Bond is attached as Annexure(where applicable)]

4 OWNERSHIP OF DESIGN

- 4.1. The plans and design developed and to be provided by PRASA shall at all times remain the property of PRASA.]

5 SERVICE LEVELS

- 5.1. An experienced national account representative(s) is required to work with PRASA's procurement department. [No sales representatives are needed for individual department or locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.
- 5.2. PRASA will have quarterly reviews with the Service provider's account representative on an on-going basis.
- 5.3. PRASA reserves the right to request that any member of the Service provider's team involved on the PRASA account be replaced if deemed not to be adding value for PRASA.
- 5.4. The Service provider guarantees that it will achieve a 100% [hundred per cent] service level on the following measures:
- a) Random checks on compliance with quality/quantity/specifications
 - b) On time delivery.

- 5.5. The Service provider must provide a telephone number for customer service calls.
- 5.6. Failure of the Service provider to comply with stated service level requirements will give PRASA the right to cancel the contract in whole, without penalty to PRASA, giving 30 [thirty] calendar days' notice to the Service provider of its intention to do so.

Acceptance of Service Levels:

YES	
-----	--

6 TOTAL COST OF OWNERSHIP (TCO)

- 6.1. PRASA will strive to procure goods, services and works which contribute to its mission. In order to achieve this, PRASA must be committed to working with suppliers who share its goals of continuous improvement in service, quality and reduction of Total Cost of Ownership (TCO).
- 6.2. Respondents shall indicate whether they would be committed, for the duration of any contract which may be awarded through this RFP process, to participate with PRASA in its continuous improvement initiatives to reduce the total cost of ownership [TCO], which will reduce the overall cost of transportation services and related logistics provided by PRASA's operating divisions within South Africa to the ultimate benefit of all end-users.

7 FINANCIAL STABILITY

Respondents are required to submit their latest financial statements prepared and signed off by a professional accountant for the past years with their Proposal in order to enable PRASA to establish financial stability.

SIGNED at _____ on this _____ day of _____
20.....

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

NAME: _____

DESIGNATION: _____

8 VALIDITY OF RETURNABLE DOCUMENTS

The successful Respondent will be required to ensure the validity of all returnable documents, including but not limited to its Tax Clearance Certificate and valid B-BBEE Verification Certificate, for the duration of any contract emanating from this RFP. Should the Respondent be awarded the contract [the Agreement] and fail to present PRASA with such renewals as and when they become due, PRASA shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate such Agreement forthwith without any liability and without prejudice to any claims which PRASA may have for damages against the Respondent.

SIGNED at _____ on this _____ day of _____ 20.....

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

2 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

9 CERTIFICATE OF ACQUAINTANCE WITH RFP TERMS & CONDITIONS & APPLICABLE DOCUMENTS

By signing this certificate the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with, and agrees with all the conditions governing this RFP, including those contained in any printed form stated to form part hereof, including but not limited to the documents stated below and PRASA will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed properly to take it into account for the purpose of calculating tendered prices or any other purpose:

1. PRASA's General Bid Conditions*

2. Standard RFP Terms and Conditions for the supply of Goods or Services or Works to PRASA

Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the RFP unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Bid. Any such submission shall be subject to review by PRASA's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be. A material deviation from the Standard terms or conditions could result in disqualification.

Bidders accept that an obligation rests on them to clarify any uncertainties regarding any bid to which they intend to respond, before submitting the bid. The Bidder agrees that he/she will have no claim based on an allegation that any aspect of this RFP was unclear but in respect of which he/she failed to obtain clarity.

The bidder understands that his/her Bid will be disqualified if this Certificate of Acquaintance with RFP documents included in the RFP as a returnable document, is found not to be true and complete in every respect.

SIGNED at _____ on this _____ day of _____ 20....

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 _____

Name _____

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: _____

NAME: _____

DESIGNATION: _____

10 GENERAL CONDITIONS

10.1 ALTERNATIVE BIDS

Bidders may submit alternative Bid only if a main Bid, strictly in accordance with all the requirements of the RFP is also submitted. The alternative Bid is submitted with the main Bid together with a schedule that compares the requirements of the RFP with the alternative requirements the Bidders proposes. Bidders must note that in submitting an alternative Bid they accept that PRASA may accept or reject the alternative Bid and shall be evaluated in accordance with the criteria stipulated in this RFP.

10.2 PRASA'S TENDER FORMS

Bidders must sign and complete the PRASA's Bid Forms and attach all the required documents. Failure by Bidders to adhere to this requirement may lead to their disqualification.

10.3 PRECEDENT

In case of any conflict with this RFP and Bidders response, this RFP and its briefing notes shall take precedence.

10.4 RESPONSE TO RFP-CONFIDENTIALITY

Response to RFPs must clearly indicate whether any information conveyed to or requested from PRASA is confidential or should be treated confidentially by PRASA. In the absence of any such clear indication in writing from a response to RFP, PRASA shall deem the response to RFP to have waived any right to confidentiality and treat such information as public in nature.

Where a Bidder at any stage during the RFP Process indicates to PRASA that information or any response to RFP requested from PRASA is or should be treated confidentially, PRASA shall treat such information or response to RFP confidentially, unless PRASA believes that to ensure the transparency and competitiveness of the RFP Process the content of the information or response to RFP should be conveyed to all Bidders, in which event it shall apply the following process:

- PRASA shall confirm with the Bidder whether the raising of confidentiality applies to the entire response to the RFP or only specific elements or sections of the response;
- Where confidentiality is maintained by the Bidder and PRASA is of the opinion that the information or response to RFP if made publicly available would affect the commercial interests of the Bidder or is commercially sensitive information, PRASA shall not release such information to other Bidders if providing such information or response to the RFP would prejudice the competitiveness and transparency of the RFP Process;

- Where PRASA is of the opinion that information provided is not commercially sensitive or would have no impact on the commercial interests of the relevant Bidder if released and fairness and transparency requires that such information be released to all Bidders, PRASA may:
 - i. inform the relevant Bidder of the necessity to release such information and/or response to RFP and request the Bidder to consent to the release thereof by PRASA; or
 - ii. obtain legal advice regarding the confidentiality of the relevant information and/or response to RFP and the legal ability of PRASA to release such information; or
 - iii. refrain from releasing the information and/or response to RFP, in which event PRASA shall not take account of the contents of such information in the evaluation of the relevant response to RFP.

The above procedures regarding confidentiality shall not apply to any information which is already public knowledge or available in the public domain or in the hands of PRASA or is required to be disclosed by any legal or regulatory requirements or order of any competent court, tribunal or forum.

10.5 RESPONSE TO THE RFP – RFP DISQUALIFICATION

Responses to RFP which do not comply with the RFP requirements, formalities, terms and conditions may be disqualified by PRASA from further participation in the RFP Process.

In particular (but without prejudice to the generality of the foregoing) PRASA may disqualify, at its sole discretion and without prejudice to any other remedy it may have, a Bidder where the Bidder, or any of its consortium members, subcontractors or advisors have committed any act of misrepresentation, bad faith or dishonest conduct in any of its dealings with or information provided to PRASA.

10.6 CORRUPTION, GIFTS AND PAYMENTS

Neither the Bidders to RFPs, its equity members, the sub-contractors, consortium members nor any of their agents, lenders or advisors shall directly or indirectly offer or give to any person in the employment of PRASA or any other Government official or any of the Advisory Team any gift or consideration of any kind as an inducement or reward for appointing a particular Bidder, or for showing or omitting to show favour or disfavour to any of the Bidders, its equity members or the sub-contractors in relation to the Project.

In the event that any of the prohibited practices contemplated under the above paragraph is committed, PRASA shall be entitled to terminate any Response to RFP's status and to prohibit such Response to RFP, its equity members, its SPV members, its Sub Contractors and their agents, lenders and advisors from participating in any further part of the procurement of the Project.

10.7 INSURANCE

Unless specifically provided for in this RFP or draft contracts, Bidders will be required to submit with their Bid for services professional indemnity insurance and works insurance to an extent (if any) if insurance provided by PRASA may not be for the full cover required in terms of the relevant category listed in this RFP. The Bidder is advised to seek qualified advice regarding insurance.

10.8 NO CONTACT POLICY

Bidders may only contact the bid administrator of PRASA as per the terms of the Communication Structure established by this RFP, except in the case of pre-existing commercial relationships, in which case contact may be maintained only with respect thereto and, in making such contact, no party may make reference to the Project or this RFP.

10.9 CONFLICT OF INTEREST

No Bidder member, subcontractor or advisor of the response to RFP may be a member of or in any other way participate or be involved, either directly or indirectly in more than one response to RFP or response to RFP during any stage of the Project procurement process, but excluding specialist suppliers of systems and equipment, non-core service providers or financial or commercial institutions whose role is limited purely to lending money or advancing credit to the response to RFP. Bidders are to sign the declaration of interest form. In order to prevent the conflict or potential conflict of interest between Lenders and Bidders to RFP, no advisors or the Contractor/s or Consortium/s to any response to RFP, consortium member or subcontractor may fulfil the role of arranger, underwriter and/or lead bank to the response to RFP. PRASA may disqualify the response to RFP from further participation in the event of a failure to comply with this provision. PRASA views the potential conflict of interest so great as to warrant the reduction of competition for advisory services.

10.10 COLLUSION AND CORRUPTION

Any Bidder shall, without prejudice to any other remedy available to PRASA, be disqualified, where the response to RFP –

- communicates to a person other than persons nominated by PRASA a material part of its response to RFP; or
- Enters into any Contract or arrangement with any other person or entity that it shall refrain from submitting a response to RFP to this RFP or as to any material part of its Response to RFP to this RFP (refer the prohibition contained in Section 4(1)(b)(iii) of the Competition Act 89 of 1998). . The Bidders represents that the Bidder has not, directly or indirectly, entered into any agreement, arrangement or understanding or any such like for the purpose of, with the intention to, enter into collusive Biding or with reasonable appreciation that, collusive

any agreement, arrangement or understanding or any such like may result in or have the effect of collusive Bidding. The Bidder undertakes that in the process of the Bid but prior to PRASA awarding the Bid to a preferred bidder become involved in or be aware of or do or caused to be done any agreement, arrangement or understanding or any such like for the purpose of or which may result in or have the effect of a collusive Bid, the Bidder will notify PRASA of such any agreement, arrangement or understanding or any such like.; or

- offers or agrees to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done, or causing, or having caused to be done any act or omission in relation to the RFP Process or any proposed response to RFP (provided nothing contained in this paragraph shall prevent a response to RFP from paying any market-related commission or bonus to its employees or contractors within the agreed terms of their employment or contract).

10.11 CONSORTIUM CHANGES

If exceptional circumstances should arise in which a after the submission to the bid and after closing date of submission of bids, there is change in the composition of the Bidder, either through substitution or omission of any member of the Bidder:

- The Response to RFP must notify PRASA in writing of the proposed changes supported by complete details of the material reasons for the changes, the parties impacted by the changes and the impact on the response to RFP.
- PRASA shall evaluate the reasons advanced by the Bidder for the requested changes to the Bidder structure and where PRASA is not satisfied that the reasons advanced are reasonable or material, refuse to accept the change and disqualify the response to RFP, or notify the Bidder in writing of its non-acceptance of the changes and require the Bidder to propose a suitable alternative to PRASA within 10 (TEN) days of its receipt of the decision of PRASA, upon receipt of which PRASA shall -
 - i. Evaluate the alternative proposed for suitability to PRASA, and where the alternative is accepted by PRASA, inform the Bidder in writing of such acceptance and PRASA shall reassess the response to RFP against the RFP requirements and criteria; or
 - ii. Where the alternative is not accepted by PRASA, inform the Bidder in writing of such non-acceptance as well as its disqualification from the RFP Process.
 - iii. Where PRASA is satisfied that the changes requested under (i) above are reasonable and material, the response to RFP, shall be allowed to effect the required changes and PRASA shall reassess the response to RFP against the RFP requirements and criteria.

10.12 COSTS OF RESPONSE TO THE RFP SUBMISSION

All costs and expenses associated with or incurred by the Bidder in relation to any stage of the Project, shall be borne by the Bidder. PRASA shall not be liable for any such costs or expenses or any claim for reimbursement of such costs or expenses.

To avoid doubt, PRASA shall not be liable for any samples submitted by the Bidder in support of their Responses to RFP and reserves the right not to return to them such samples and to dispose of them at its discretion.

10.13 RESPONSE TO THE RFP WARRANTY

Bidders must provide a warranty as part of their Responses to RFP that their Responses to RFP are true and correct in all respects, that it does not contain a misrepresentation of any kind and that the taxes of all members of the Bidder company, consortium members and or subcontractors are in order and none of the members are undergoing corruption or any criminal-related investigations or have any past convictions for fraud or corruption.

11

CONDITIONS OF TENDER

General

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| Actions | 1 | PRASA's <i>Representative</i> and each <i>tenderer</i> submitting a tender shall act as stated in these Conditions of Tender and in a manner which is fair, equitable, transparent, competitive and cost-effective. |
| Interpretation | 2 | Terms shown in <i>italics</i> vary for each tender. The details of each term for this tender are identified in the Request for Tender / Scope of work/ specification. Terms shown in capital initials are defined terms in the appropriate conditions of contract. |
| | 3 | Any additional or amended requirements in the Scope of work/ specification, and additional requirements given in the Schedules in the <i>tender returnables</i> are deemed to be part of these Conditions of Tender. |
| | 4 | The Conditions of Tender and the Scope of work/ specification shall form part of any contract arising from this invitation to tender. |
| Communication | 5 | Each communication between PRASA and a <i>tenderer</i> shall be to or from PRASA's <i>Representative</i> only, and in a form that can be read, copied and recorded. Communication shall be in the English language. PRASA takes no responsibility for non-receipt of communications from or by a <i>tenderer</i> . |
| PRASA's rights to accept or reject any tender | 6 | PRASA may accept or reject any variation, deviation, tender, or alternative tender, and may cancel the tender process and reject all tenders at any time prior to the formation of a contract. PRASA or PRASA's <i>Representative</i> will not accept or incur any liability to a <i>tenderer</i> for such cancellation and rejection, but will give reasons for the action. PRASA reserves the right to accept the whole or any part of any tender. |
| | 7 | After the cancellation of the tender process or the rejection of all tenders PRASA may abandon the proposed work and services, have it performed in any other manner, or re-issue a similar invitation to tender at any time. |

Tenderer's obligations

The *tenderer* shall comply with the following obligations when submitting a tender and shall:

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| Eligibility | 1 | Submit a tender only if the <i>tenderer</i> complies with the criteria stated in the Scope of work/ specification. |
| Cost of tendering | 2 | Accept that PRASA will not compensate the <i>tenderer</i> for any costs incurred in the preparation and submission of a tender. |
| Check documents | 3 | Check the <i>tender documents</i> on receipt, including pages within them, and notify PRASA's <i>Representative</i> of any discrepancy or omissions in writing. |
| Copyright of documents | 4 | Use and copy the documents provided by PRASA only for the purpose of preparing and submitting a tender in response to this invitation. |
| Standardised specifications and other publications | 5 | Obtain, as necessary for submitting a tender, copies of the latest revision of standardised specifications and other publications, which are not attached but which are incorporated into the <i>tender documents</i> by reference. |
| Acknowledge receipt | 6 | Preferably complete the Receipt of invitation to submit a tender form attached to the Letter of Invitation and return it within five days of receipt of the invitation. |
| | 7 | Acknowledge receipt of Addenda / Tender Briefing Notes to the <i>tender documents</i> , which PRASA's <i>Representative</i> may issue, and if necessary apply for an extension to the <i>deadline for tender submission</i> , in order to take the Addenda into account. |
| Site visit and / or clarification meeting | 8 | Attend a site visit and/or clarification meeting at which <i>tenderers</i> may familiarise themselves with the proposed work, services or supply, location, etc. and raise questions, if provided for in the Scope of work/ specification. Details of the meeting are stated in the RFP document, i-tender website and CIDB website. |
| Seek clarification | 9 | Request clarification of the <i>tender documents</i> , if necessary, by notifying PRASA's <i>Representative</i> earlier than the <i>closing time for clarification of queries</i> . |
| Insurance | 10 | Be informed of the risk that needs to be covered by insurance policy. The <i>tenderer</i> is advised to seek qualified advice regarding insurance. |

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| Pricing the tender | <p>11 Include in the rates, prices, and the tendered total of the prices (if any) all duties, taxes (except VAT), and other levies payable by the successful <i>tenderer</i>. Such duties, taxes and levies are those applicable 14 days prior to the <i>deadline for tender submission</i>.</p> <p>12 Show Value Added Tax (VAT) payable by PRASA separately as an addition to the tendered total of the prices.</p> <p>13 Provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the <i>conditions of contract</i>.</p> <p>14 State the rates and Prices in South African Rand unless instructed otherwise as an additional condition in the Scope of work/ specification. The selected <i>conditions of contract</i> may provide for part payment in other currencies.</p> |
| Alterations to documents | <p>15 Not make any alterations or an addition to the tender documents, except to comply with instructions issued by PRASA's <i>Representative</i> or if necessary to correct errors made by the <i>tenderer</i>. All such alterations shall be initialled by all signatories to the tender. Corrections may not be made using correction fluid, correction tape or the like.</p> |
| Alternative tenders | <p>16 Submit alternative tenders only if a main tender, strictly in accordance with all the requirements of the <i>tender documents</i> is also submitted. The alternative tender is submitted with the main tender together with a schedule that compares the requirements of the <i>tender documents</i> with the alternative requirements the <i>tenderer</i> proposes.</p> <p>17 Accept that an alternative tender may be based only on the criteria stated in the Scope of work/ specification and as acceptable to PRASA.</p> |
| Submitting a tender | <p>18 Submit a tender for providing the whole of the works, services or supply identified in the Contract Data unless stated otherwise as an additional condition in the Scope of work/ specification.</p> |
| NOTE: | <p>19 <u>Return the completed and signed PRASA Tender Forms and SBD forms provided with the tender. Failure to submit all the required documentation will lead to disqualification</u></p> <p>20 <u>Submit the tender as an original</u> plus 1 copy and an electronic version which must be contained in CDs or Memory Cards clearly marked in the Bidders name as stated in the RFP and</p> |

provide an English translation for documentation submitted in a language other than English. Tenders may not be written in pencil but must be completed in ink.

- 21 Sign and initial the original and all copies of the tender where indicated. PRASA will hold the signatory duly authorised and liable on behalf of the *tenderer*.
- 22 Seal the original and each copy of the tender as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside PRASA's address and invitation to tender number stated in the Scope of work/ specification, **as well as the tenderer's name and contact address**. Where the tender is based on a two envelop system tenderers must further indicate in the package whether the document is **envelope / box 1 or 2**.
- 23 Seal original and copies together in an outer package that states on the outside only PRASA's address and invitation to tender number as stated in the Scope of work/ specification. The outer package must be marked "CONFIDENTIAL"
- 24 Accept that PRASA will not assume any responsibility for the misplacement or premature opening of the tender if the outer package is not sealed and marked as stated.

Note:

PRASA prefers not to receive tenders by post, and takes no responsibility for delays in the postal system or in transit within or between PRASA offices.

PRASA prefers not to receive tenders by fax, PRASA takes no responsibility for difficulties in transmission caused by line or equipment faults.

Where tenders are sent via courier, PRASA takes no responsibility for tenders delivered to any other site than the tender office.

PRASA employees are not permitted to deposit a tender into the PRASA tender box on behalf of a tenderer, except those lodged by post or courier.

- Closing time**
- 25 Ensure that PRASA has received the tender at the stated address with the Scope of work / specification no later than the *deadline for tender submission*. Proof of posting will not be taken by PRASA as proof of delivery. PRASA will not accept a tender submitted

telephonically, by Fax, E-mail or by telegraph unless stated otherwise in the Scope of work/ specification.

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| 26 | Accept that, if PRASA extends the <i>deadline for tender submission</i> for any reason, the requirements of these Conditions of Tender apply equally to the extended deadline. |
| Tender validity | <p>27 Hold the tender(s) valid for acceptance by PRASA at any time within the <i>validity period</i> after the <i>deadline for tender submission</i>.</p> <p>28 Extend the <i>validity period</i> for a specified additional period if PRASA requests the <i>tenderer</i> to extend it. A <i>tenderer</i> agreeing to the request will not be required or permitted to modify a tender, except to the extent PRASA may allow for the effects of inflation over the additional period.</p> |
| Clarification of tender after submission | 29 Provide clarification of a tender in response to a request to do so from PRASA's <i>Representative</i> during the evaluation of tenders. This may include providing a breakdown of rates or Prices. No change in the total of the Prices or substance of the tender is sought, offered, or permitted except as required by PRASA's <i>Representative</i> to confirm the correction of arithmetical errors discovered in the evaluation of tenders. The total of the Prices stated by the <i>tenderer</i> as corrected by PRASA's <i>Representative</i> with the concurrence of the <i>tenderer</i> , shall be binding upon the <i>tenderer</i> |
| Submit bonds, policies etc. | <p>30 If instructed by PRASA's <i>Representative</i> (before the formation of a contract), submit for PRASA's acceptance, the bonds, guarantees, policies and certificates of insurance required to be provided by the successful <i>tenderer</i> in terms of the <i>conditions of contract</i>.</p> <p>31 Undertake to check the final draft of the contract provided by PRASA's <i>Representative</i>, and sign the Form of Agreement all within the time required.</p> <p>32 Where an agent on behalf of a principal submits a tender, an authenticated copy of the authority to act as an agent must be submitted with the tender.</p> |
| Fulfil BEE requirements | 33 Comply with PRASA's requirements regarding BBEE Suppliers. |

PRASA'S UNDERTAKINGS

PRASA, and PRASA's *Representative*, shall:

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|---------------------------------|---|--|
| Respond to clarification | 1 | Respond to a request for clarification received earlier than the <i>closing time for clarification of queries</i> . The response is notified to all <i>tenderers</i> . |
| Issue Addenda | 2 | If necessary, issue to each <i>tenderer</i> from time to time during the period from the date of the Letter of Invitation until the <i>closing time for clarification of queries</i> , Addenda that may amend, amplify, or add to the <i>tender documents</i> . If a <i>tenderer</i> applies for an extension to the <i>deadline for tender submission</i> , in order to take Addenda into account in preparing a tender, PRASA may grant such an extension and PRASA's <i>Representative</i> shall notify the extension to all <i>tenderers</i> . |
| Return late tenders | 3 | Return tenders received after the <i>deadline for tender submission</i> unopened to the <i>tenderer</i> submitting a late tender. Tenders will be deemed late if they are not in the designated tender box at the date and time stipulated as the deadline for tender submission. |
| Non-disclosure | 4 | Not disclose to <i>tenderers</i> , or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tenders and recommendations for the award of a contract. |
| Grounds for rejection | 5 | Consider rejecting a tender if there is any effort by a <i>tenderer</i> to influence the processing of tenders or contract award. |
| Disqualification | 6 | Instantly disqualify a <i>tenderer</i> (and his tender) if it is established that the <i>tenderer</i> offered an inducement to any person with a view to influencing the placing of a contract arising from this invitation to tender. |
| Test for responsiveness | 7 | Determine before detailed evaluation, whether each tender properly received <ul style="list-style-type: none"> • meets the requirements of these Conditions of Tender, • has been properly signed, and • is responsive to the requirements of the <i>tender documents</i>. |
| | 8 | Judge a responsive tender as one which conforms to all the terms, conditions, and specifications of the <i>tender documents</i> without material deviation or qualification. A material deviation or qualification is one which, in PRASA 's opinion would <ul style="list-style-type: none"> • detrimentally affect the scope, quality, or performance of the works, services or supply identified in the Contract Data, • change PRASA's or the <i>tenderer's</i> risks and responsibilities under the contract, or |

- affect the competitive position of other *tenderers* presenting responsive tenders, if it were to be rectified.

Non-responsive tenders	10	Reject a non-responsive tender, and not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.
Arithmetical errors	11	Check responsive tenders for arithmetical errors, correcting them as follows: • Where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern. • If a bill of quantities applies and there is a discrepancy between the rate and the line item total, resulting from multiplying the rate by the quantity, the rate as quoted shall govern. Where there is an obviously gross misplacement of the decimal point in the rate, the line item total as quoted shall govern, and the rate will be corrected. • Where there is an error in the total of the Prices, either as a result of other corrections required by this checking process or in the <i>tenderer's</i> addition of prices, the total of the Prices, if any, will be corrected.
	12	Reject a tender if the <i>tenderer</i> does not accept the corrected total of the Prices (if any).
Evaluating the tender	13	Evaluate responsive tenders in accordance with the procedure stated in the RFP / Scope of work/ specification. The evaluated tender price will be disclosed only to the relevant PRASA tender committee and will not be disclosed to <i>tenderers</i> or any other person.
Clarification of a tender	14	Obtain from a <i>tenderer</i> clarification of any matter in the tender which may not be clear or could give rise to ambiguity in a contract arising from this tender if the matter were not to be clarified.
Acceptance of tender	15	Notify PRASA's acceptance to the successful <i>tenderer</i> before the expiry of the <i>validity period</i> , or agreed additional period. Providing the notice of acceptance does not contain any qualifying statements, it will constitute the formation of a contract between PRASA and the successful <i>tenderer</i> .
Notice to unsuccessful tenderers	16	After the successful <i>tenderer</i> has acknowledged PRASA's notice of acceptance, notify other <i>tenderers</i> that their tenders have not been accepted, following PRASA's current procedures.
Prepare	17	Revise the contract documents issued by PRASA as part of the

contract documents		<i>tender documents</i> to take account of • Addenda issued during the tender period, • inclusion of some of the <i>tender returnables</i>, and • other revisions agreed between PRASA and the successful <i>tenderer</i>, before the issue of PRASA's notice of acceptance (of the tender).
Issue final contract	18	Issue the final contract documents to the successful <i>tenderer</i> for acceptance within one week of the date of PRASA's notice of acceptance.
Sign Form of Agreement	19	Arrange for authorised signatories of both parties to complete and sign the original and one copy of the Form of Agreement within two weeks of the date of PRASA's notice of acceptance of the tender. If either party requires the signatories to initial every page of the contract documents, the signatories for the other party shall comply with the request.
Provide copies of the contracts	20	Provide to the successful <i>tenderer</i> the number of copies stated in the Scope of work/ specification of the signed copy of the contracts within three weeks of the date of PRASA's acceptance of the tender.

12 SPECIFICATION E4E PRASA (2004)

PASSENGER RAIL AGENCY OF SOUTH AFRICA

SAFETY ARRANGEMENTS AND PROCEDURAL COMPLIANCE WITH THE OCCUPATIONAL HEALTH AND SAFETY ACT (ACT 85 OF 1993), CONSTRUCTION REGULATIONS, 2014 AND OTHER APPLICABLE REGULATIONS

1. General

- 1.1 The Contractor and PRASA are individual employers, each in its own right, with their respective duties and obligations set out in the Occupational Health and Safety Act, Act 85 of 1993 (the Act) and applicable Regulations.
- 1.2 The Contractor accepts, in terms of the General Conditions of Contract and in terms of the Act, his obligations as an employer in respect of all persons in his employ, other persons on the premises or the Site or place of work or on the work to be executed by him, and under his control. He shall, before commencement with the execution of the contract work, comply with the provisions set out in the Act, and shall implement and maintain a Health and Safety Plan as described in the Construction Regulations, 2014 and as approved by PRASA, on the Site and place of work for the duration of the Contract.
- 1.3 The Contractor accepts his obligation to complying fully with the Act and applicable Regulations notwithstanding the omission of some of the provisions of the Act and the Regulations from this document.
- 1.4 PRASA accepts, in terms of the Act, its obligations as an employer of its own employees working on or associated with the site or place of work, and the Contractor and Project Manager or his deputy shall at all times, co-operate in respect of the health and safety management of the site, and shall agree on the practical arrangements and procedures to be implemented and maintained during execution of the Works.
- 1.3 In the event of any discrepancies between any legislation and this specification, the applicable legislation will take precedence

1. Definitions

- 2.1 In this Specification any word or expression to which a meaning has been assigned in the Construction Regulations, shall have the meaning so assigned to it, unless the context otherwise indicates: -
- 2.2 The work included in this Contract shall for the purposes of compliance with the Act be deemed to be "**Construction Work**", which, in terms of the Construction Regulations, 2014 means any work in connection with: -
- (a) the construction, erection, maintenance, alteration, renovation, repair, demolition or dismantling of or addition to a building or any similar structure;
 - (b) the construction, erection, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, runway, sewer or water reticulation system or the moving of earth, clearing of land, the making of excavation, piling or any similar civil engineering structure or type of work
- 2.3 "**competent person**" means a person who---
- (a) has in respect of the work or task to be performed the required knowledge, training and experience and where applicable qualifications specific to the work or task being performed: Provided that where appropriate qualifications and training are registered as per the South African Qualifications Authority Act, 2000 (Act No 67 of 2000) those qualifications and training must be regarded as the required qualifications and training; and
 - (b) is familiar with the Act with the applicable regulations made under the Act
- 2.4 "**Contractor**" means a principal contractor appointed by the client to perform construction work and a "sub contractor" means an employer who performs construction work as defined by the Construction Regulations, 2014.
- 2.5 "**fall protection plan**" means a documented plan, of all risks relating to working from fall risk position, considering the nature of work undertaken, and setting out the procedures and methods applied in order to eliminate the risk; and a rescue plan and procedures.
- 2.6 "**health and safety file**" means a file, or other record in permanent form, containing the information required to be kept on site in accordance with the Act and applicable Regulations;
- 2.7 "**Health and Safety Plan**" means a site, activity or project specific documented plan which addresses the hazards identified and include safe work procedures to mitigate, reduce or control the hazards identified, in accordance with clients health and safety specifications;
- 2.8 "**Risk Assessment**" means a programme to determine any risk associated with any hazard at a construction site, in order to identify the steps needed to be taken to remove,

reduce or control such hazard;

- 2.9 **“the Act”** means the Occupational Health and Safety Act No. 85 of 1993.
- 2.10 **“Client”** means any person for whom construction work is being performed
- 2.11 **“construction work permit”** means a document issued in terms of regulation 3 of the construction regulations
- 2.12 **“fall risk” means any potential exposure to falling either from, off or into**

3. Procedural Compliance

- 3.1 The Client who intends to carry out any construction work must at least 30 days before carrying out such work, apply to the Provincial Director in writing for a construction work permit if the construction work will:-
- (a) exceed 180 days,
 - (b) will involve more than 1800 person days of construction work, or
 - (c) the works contract is of the value equal to or exceeding thirteen million rand, or Construction Industry Development Board (CIDB) grading level 6
- 3.2 The notification to the Provincial Director shall be on a form similar to Annexure 1 of the Construction Regulations, 2014, also shown in Annexure 1 to Annexure P of this Specification. The Contractor shall ensure that a copy of the completed notification form is kept on site for inspection by an inspector, Project Manager or employee.
- 3.3 The provincial director must issue the construction work permit in writing and assign a site specific work number for each construction site, the principal contractor must display the number issued by the Provincial Director on the main entrants to the site for which that number is assigned. The work permit number is not transferable.
- 3.4 The copy of the construction work permit must be kept on the health and safety file for inspection by the provincial director, or employee
- 3.5 The Contractor who intends to carry out any construction work other than work contemplated in 3.1 above must at least 7 days before carrying out such work, notify the Provincial Director in writing in a form similar to Annexure 2 to Annexure P if the intended construction work will;
- (a) include excavation work;
 - (b) the working at height where there is risk of falling;
 - (c) will include the demolition of a structure; or
 - (d) includes the use of explosives to perform construction work
- 3.6 The Contractor shall, in accordance with the Act and applicable Regulations, make all the necessary appointments of competent persons in writing on a form similar to Annexure 3 of this Specification and deliver copies thereof to the Project Manager and/or Consultant. Copies should also be retained on the health and safety file. The principal contractor

must be appointed in writing.

- 3.7 Subcontractors shall also make the above written appointments and the Contractor shall deliver copies thereof to the Project Manager and/or Consultant.
- 3.8 In the case of a self-employed Contractor or any subcontractor who has the appropriate competencies and supervises the work himself, the appointment of a construction supervisor in terms of regulation 6.1 of the Construction Regulations, 2014 will not be necessary. The Contractor shall in such a case execute and sign a declaration, as in Annexure 4, by which he personally undertakes the duties and obligations of the "Chief Executive Officer" in terms of section 16(1) of the Act.
- 3.9 The Contractor shall, before commencing any work, obtain from the Project Manager and/or Consultant an access certificate as in Annexure 5 executed and signed by him, permitting and limiting access to the designated site or place of work by the Contractor and any subcontractors under his control.
- 3.10 Procedural compliance with Act and Regulations, as above, shall also apply to any subcontractors as employers in their own right. The Contractor shall furnish the Project Manager and/or Consultant with full particulars of such subcontractors and shall ensure that they comply with the Act and Regulations and PRASA's safety requirements and procedures.

4. Special Permits

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

5. Health and Safety Programme

- 5.1 The Tenderer shall, with his tender, submit a Health and Safety Programme setting out the practical arrangements and procedures to be implemented by him to ensure compliance with the OHS Act and Regulations and particularly in respect of: -
- (i) The provision, as far as is reasonably practical, of a working environment that is safe and without risk to the health of his employees and subcontractors in terms of Section 8 of the Act;
 - (ii) the execution of the contract work in such a manner as to ensure in terms of section 9 of the Act that persons other than those in the Contractor's employment, who may be directly affected by the contract work are not thereby exposed to hazards to their health and safety;
 - (iii) ensuring, as far as is reasonably practical, in terms of section 37 of the Act that no employee or Contractor does or omits to do any act which would be an offence for

the Principal Contractor to do or omit to do.

- 5.2 The Contractor's Health and Safety Programme shall be based on a risk assessment in respect of the hazards to health and safety of his employees and other persons under his control that are associated with or directly affected by the Contractor's activities in performing the contract work and shall establish precautionary measures as are reasonable and practical in protecting the safety and health of such employees and persons.
- 5.3 The Contractor shall cause a risk assessment contemplated in clause 5.2 above to be performed by a competent person, appointed in writing, before commencement of any Construction Work and reviewed during construction. The Risk Assessments shall form part of the Health and Safety programme to be applied on the site and shall include at least the following:
- (a) The identification of the risks and hazards that persons may be exposed to;
 - (b) the analysis and evaluation of the hazards identified;
 - (c) a documented Health and Safety Plan, including safe work procedures to mitigate, reduce or control the risks identified;
 - (d) a monitoring and review plan.
- 5.4 The Health and Safety Plan shall include full particulars in respect of: -
- (a) The safety management structure to be instituted on site or place of work and the names of the Contractor's health and safety representatives and members of safety committees where applicable;
 - (b) the safe working methods and procedures to be implemented to ensure the work is performed in compliance with the Act and Regulations;
 - (c) the safety equipment, devices and clothing to be made available by the Contractor to his employees;
 - (d) the site access control measures pertaining to health and safety to be implemented; open and keep a health and safety file on site with all the documentation required by the Act
 - (e) the arrangements in respect of communication of health and safety related matters and incidents between the Principal Contractor, his employees, contractors and the Project Manager and/or Consultant with particular reference to the reporting of incidents in compliance with Section 24 and General Administrative Regulation 8 of the Act and with the pertinent clause of the General Conditions of Contract forming part of the Contract and;
 - (f) the introduction of control measures for ensuring that the Safety Plan is maintained and monitored for the duration of the Contract.

- 5.5 The Health and Safety programme shall be subject to the Project Manager's and/or

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

- 5.6 The Contractor shall take reasonable steps to ensure that each subcontractor's Health and Safety Plan is implemented and maintained on the construction site: Provided that the steps taken, shall include periodic audits at intervals mutually agreed to between the them, but at least once every month.
- 5.7 The Principal Contractor shall stop any contractor from executing any construction work, which is not in accordance with the Principal Contractor's, and/or contractor's Health and Safety Plan for the site or which poses a threat to the health and safety of persons.
- 5.8 The Principal Contractor shall ensure that a copy of the Health and Safety Plan is available on site for inspection by an inspector, Project Manager and/or Consultant, agent, subcontractor, employee, registered employee organisation, health and safety representative or any member of the health and safety committee.
- 5.9 The Principal Contractor shall consult with the health and safety committee or, if no health and safety committee exists, with a representative group of employees, on the development, monitoring and review of the Risk Assessment.
- 5.10 The Principal Contractor shall ensure that all employees under his control are informed, instructed and trained by a competent person regarding any hazard and the related work procedures before any work commences, and thereafter at such times as may be determined in the Risk Assessment
- 5.11 The Principal Contractor shall ensure that all contractors are informed regarding any hazard as stipulated in the Risk Assessment before any work commences, and thereafter at such times as may be determined in the Risk Assessment.
- 5.12 The Principal Contractor shall ensure that all visitors to a construction site undergoes health and safety induction pertaining to the hazards prevalent on the site and shall be provided with the necessary personal protective equipment

6. Fall Protection Plan

- 6.1 In the event of the risk and hazard identification, as required in terms of clause 5.3 of this Specification, revealing risks relating to working from an elevated position the contractor shall cause the designation of a competent person, responsible for the preparation of a fall protection plan;
- 6.2 The Contractor shall implement, maintain and monitor the fall protection plan for the

duration of Contract. The Contractor shall also take such steps to ensure the continued adherence to the fall protection plan.

6.3 The fall protection plan shall include: -

- (a) A Risk Assessment of all work carried out from fall risk position;
- (b) the procedures and methods to address all the identified risks per location;
- (c) the process for the evaluation of the employees medical fitness necessary to work at fall risk positions and records thereof;
- (d) the training of employees working from fall risk positions and records thereof; the procedure addressing the inspection, testing and maintenance of all fall protection equipment.
The rescue plan detailing the necessary procedure, personnel and suitable equipment required to affect a rescue of the person in the event of the fall incident to ensure that the rescue procedure is implemented immediately following the incident

7. Hazards and Potential Hazardous Situations

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

8. Health and Safety File

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

9. Structures

- 9.1 The Contractor must ensure that all reasonable steps are taken to prevent the uncontrolled collapse of new or existing structures or any part thereof, and that no structure or part of the structure is loaded in a manner which will render it unsafe.

Inspections of the structures should be done periodically by a competent person and the structure must be maintained in such a manner that it remains safe for continued use.

- 9.2 The drawings pertaining to the design of such structures are kept on site and are available on request to the chief inspector, or any employee.

10. Temporary Works

- 10.1 The Contractor must appoint a temporary works designer in writing, to design, inspect approve erected temporary works on site before use. The contractor must ensure that all temporary works operations are carried out under the supervision of the appointed competent person for that purpose. No contractor may use a temporary works design and drawing for any works other than its intended purpose. Adequate training must be provided for persons required to move, erect or dismantle temporary works to perform those functions safely. Inspections of the temporary works structures should be done before, during and after the placement of concrete, after inclement weather or any other imposed load and periodically by a competent person and the temporary works structure must be maintained in such a manner that it remains safe for continued use.
- 10.2 The detailed activity specific drawings pertaining to the design of such temporary works structures are kept on site and are available on request to the chief inspector, or any employee.

11. Excavation

- 11.1 The Contractor must ensure that excavation work is carried out under the supervision of the appointed competent person for that purpose and evaluate, as far as reasonably practicable, the stability of the ground before excavation works begins. The contractor must take reasonable and sufficient steps, in order to prevent any person from being buried or trapped by a fall or dislodgement of material in an excavation. Accessible excavation work must be adequately protected by a barrier or fence with an applicable warning for employees or public persons.
- 11.2 The contractor must ensure that all requirements of the Construction Regulations as promulgated in 2014 are adhered to.

12. Demolition Works

- 12.1 The Contractor must appoint a competent person in writing to supervise and control all demolition work on site. The contractor must ensure that before any demolition works is carried out, and in order to ascertain the method of demolition to be used, a detailed structural engineering survey of the structure to be demolished is carried out by a competent person and that a method statement on the procedure to be followed in demolishing the structure is developed by that person. During a demolition, the competent person must check the structural integrity at intervals determined by the method statement to avoid any premature collapses. The contractor must ensure that no material is dropped to any point, which falls outside the exterior walls of the structure, unless the area is effectively protected. Where a risk assessment indicates the presence of asbestos and lead, a contractor must ensure that work is conducted in accordance with the promulgated Asbestos Regulation and Lead Regulations respectively. Waste

and debris of such work are as soon as reasonably applicable removed and disposed of from the site in accordance with the applicable legislation.

- 12.2 The promulgated construction regulations must be adhered to all times during demolition work.

13. Scaffolding

- 13.1 The Contractor must appoint a competent person in writing to ensure that all scaffolding work operations are carried out under his or her supervision and that all scaffold erectors, team leaders and inspectors are competent to carry out their work.
- 13.2 A contractor using access scaffolding must ensure that such scaffolding when in use, complies with the safety standards incorporated for this purpose into these Regulations under section 44 of the Act.

14. Suspended Platforms

- 14.1 The Contractor must appoint a competent person in writing to ensure that all suspended platforms work operations are carried out under his or her supervision and that all suspended platforms erectors, team leaders and inspectors are competent to carry out their work.
- 14.2 No contractor may use or permit the use of suspended platforms unless: -
- (a) the design, stability and construction thereof complies with safety standards;
 - (b) he or she is in possession of the certificate of system design issued by a professional engineer, certified engineer or a professional technologist for the use of the suspended platform systems;
 - (c) before any commencement of work appoint a competent person for such work, ensure competency of erectors, operators and inspectors, performance test results are available, ensure that procedures and records of inspections and maintenance have been carried out.
- 14.3 The Contractor must submit a copy of a suspended works system design including a copy of operational design calculations, sketches and test results to the provincial director before commencement of the use of the system and must further indicate the intended type of work that the system will be used for
- 14.2 The contractor must ensure that all requirements of the Construction Regulations as promulgated in 2014 are adhered to.

15. Rope Access Work

- 15.1 The Contractor must appoint a competent person in writing to supervise all rope access work on site, including the duty of ensuring occupational health and safety compliance in

relation to rope access work. Rope access operators must be competent and licensed to carry out their work.

15.2 No contractor may use or permit the use of rope access unless: -

the design, selection and use of equipment and anchors complies with safety standards;

he or she is in possession of the site specific fall protection plan developed by a competent person applicable to the specific work and environment prior to commencement of the work;

15.3 The contractor must ensure that adequate measures are in place to allow rescue procedures to commence immediately in the event of a fall incident taking place.

16. Bulk Mixing Plant

16.1 The Contractor must ensure that the operation of a bulk mixing plant is supervised by a competent person who has been appointed in writing.

16.2 No person supervising or operating the bulk mixing plant may authorize any other person to operate the plant unless competent to operate the bulk mixing plant.

16.3 The contractor must ensure that all requirements of the bulk mixing plant are complied with.

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993

Regulation 3(2) of the Construction Regulations, 2014

APPLICATION FOR A PERMIT TO DO CONSTRUCTION WORK

1 Name and postal address of the client:

2 Details of the Agent/ Consultant

(a) Title, Surname and Initials

(b) Identity number/Passport number:

(c) Registration number with SACPCMP:

(d) Office tel. number and/or mobile number:

(e) Postal Address:

3. Name, postal address and tel. number of appointed principal contractor:

4. Name, postal address and tel. number of designer(s) of the project:

5. Name, postal address tel. number of the following persons:

(a) Construction Manager.

(b) Construction Health and Safety Manager:

(c) Construction Health and Safety Officer:

6. Exact physical address of the construction and site office:

7. Nature of the construction work:

8. Expected commencement date: _____
9. Expected completion date: _____
10. Estimated maximum number of persons on the construction site: _____
11. Planned number of contractors on site accountable to the principle contractor:

12. Name(s) of contractors appointed. _____

Signature of Client/Clients Agent/ Consultant

Signature of Principal Contractor

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993

Regulation 4 of the Construction Regulations, 2014

NOTIFICATION OF CONSTRUCTION WORK

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

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

2. Principal contractor's compensation registration number:

3. (a) Name and postal address of client:

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

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

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

5. Name and telephone number of principal contractor's construction supervisor on site appointed in terms of regulation 8(1)

6. Name/s of principal contractor's construction sub-ordinate supervisors on site appointed in terms of regulation 8(2).

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

8. Nature of the construction work:

9. Expected commencement date: _____

10. Expected completion date: _____

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

Total: _____ Male: _____ Female: _____

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

13. Name(s) of contractors already selected:

Principal Contractor

Date

Clients Agent / Consultant (where applicable)

Date

Client

Date

THIS DOCUMENT IS TO BE FORWARDED TO THE OFFICE OF THE DEPARTMENT OF
LABOUR **PRIOR TO COMMENCEMENT** OF WORK ON SITE.

ALL PRINCIPAL CONTRACTORS THAT QUALIFY TO NOTIFY MUST DO SO EVEN IF
ANOTHER PRINCIPAL CONTRACTOR ON THE SAME SITE HAD DONE SO PRIOR TO THE
COMMENCEMENT OF WORK.

(COMPANY LETTER HEAD)

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

SECTION/REGULATION: Construction Regulations, 2014

REQUIRED COMPETENCY: Fall protection, temporary works designer, excavation supervisor, demolition works supervisor, scaffolding operator, suspended platform operator, rope access supervisor, bulk mixing plant supervisor, construction vehicle and mobile plant operator _____

In terms of _____, I, _____

representing the Employer) do hereby appoint _____

As the Competent Person on the premises at _____

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

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

Date: _____

Signature: - _____

Designation: - _____

ACCEPTANCE OF DESIGNATION

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

Date: _____

Signature: - _____

Designation: - _____

(COMPANY LETTER HEAD)

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

DECLARATION

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

Signature: - _____

Date: _____

(LETTER HEAD OF BUSINESS DIVISION OR UNIT OF PRASA)

SITE ACCESS CERTIFICATE

Access to: _____ (Area)

Name of Contractor/Builder: - _____

Contract/Order No.: _____

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

In terms of your contract/order with

(Company) _____

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

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

Signed: _____

Date: _____

PROJECT MANAGER

ACKNOWLEDGEMENT OF RECEIPT

*Name of Contractor/Builder: - _____ I,
_____ do hereby
acknowledge and accept the duties and obligations in respect of the Safety of the
site/area of Work in terms of the Occupational Health and Safety Act; Act 85 of 1993.*

Name: _____

Designation: _____

Signature: _____

Date: _____

13 E7/1 2012



PASSENGER RAIL AGENCY OF SOUTH AFRICA

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



ISSUED BY : The Executive Manager
Asset Management and Development
PRASA

September 1999

Page i of ii

Issue

1



PASSENGER RAIL AGENCY OF SOUTH AFRICA

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

LINES AND NEAR HIGH VOLTAGE EQUIPMENT

(E7/1 2012)

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September 1999

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Issue 1

E7/1 2012



PASSENGER RAIL AGENCY OF SOUTH AFRICA

APPROVAL SHEET

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



PASSENGER RAIL AGENCY OF SOUTH AFRICA

E7/1 2012

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

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

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1 DEFINITIONS

The following definitions shall apply:

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

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

Bond: A short conductor installed to provide electrical continuity.

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

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

Dead: Isolated and earthed.

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

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

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

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

Live: A conductor is said to be "live" when it is at a potential different from that of the

earth or any other conductor of the system of which it forms a part.

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

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

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

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

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

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

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

Work Permit: A combined written application and authority to proceed with work on or near dead electrical equipment.

PART A - GENERAL SPECIFICATION

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

2.1 The Contractor shall co-operate with the authorised personnel of Transnet or PRASA'S maintenance and/or operating Contractor and shall comply with all instructions issued and restrictions imposed with respect to the Services which bear on the presence and operation of Transnet or PRASA'S railway lines and high-voltage equipment.

2.2 Without limiting the generality of the provisions of 2.1, any duly authorised representative of Transnet or PRASA, having identified himself, may stop the work if, in his opinion, the safe passage of trains or the safety of Transnet or PRASA assets or any person is affected. **CONSIDERATIONS OF SAFETY SHALL TAKE PRECEDENCE OVER ALL OTHER CONSIDERATIONS.**

3. CONTRACTOR'S REPRESENTATIVES

3.1 The Contractor shall nominate Responsible Representatives of whom at least one shall be available at any hour for call-out in cases of emergency. The Contractor shall provide the Engineer with the names, addresses and telephone numbers of the representatives.

3.2 The Contractor guarantees that he has satisfied himself that the Responsible Representative is fully conversant with this specification and that he shall comply with all his obligations in respect thereof.

3.3 The Responsible Representative shall be familiar with the contents and provisions of the ELECTRICAL SAFETY INSTRUCTIONS, copies of which they shall keep in their possession for the duration of the contract.

4. OCCUPATIONS AND WORK PERMITS

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

4.2 The Contractor shall organise the Services in a manner, which will minimise the number and duration of occupations and work permits required.

4.3 PRASA shall not be liable for any financial or other loss suffered by the Contractor arising from his failure to complete any work scheduled during the period of an

occupation or work permit.

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

Representative shall read and sign portion C of Annexure 8.1 of the ELECTRICAL SAFETY INSTRUCTIONS, presented by an authorised person, signifying that he is aware of the limits within which work may be undertaken. After the work for which the permit was granted has been completed, or when the work permit is due to be terminated, or if the permit is cancelled after the start, the same person who signed portion C shall sign portion D of Annexure 8.1 of the ELECTRICAL SAFETY INSTRUCTIONS, thereby acknowledging that he is aware that the electrical equipment is to be made "live". The Responsible Representative shall advise all his workmen accordingly.

5. SPEED RESTRICTIONS AND PROTECTION

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

6. ROADS ON TRANSNET OR PRASA PROPERTY

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

7. CLEARANCES

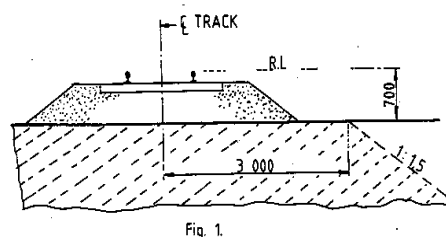
- 7.1 No temporary Services shall encroach on the appropriate minimum clearances set out in Transnet's publications, PERMANENT WAY INSTRUCTIONS and ELECTRICAL SAFETY INSTRUCTIONS.

8. STACKING OF MATERIAL

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

9. EXCAVATION, SHORING, DEWATERING AND DRAINAGE

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



Formation level

- 9.2 The Contractor shall provide, at his own cost, any shoring, dewatering or drainage of any excavation unless otherwise stipulated elsewhere in the Contract.
- 9.3 Where required by the Engineer, drawings of shoring for any excavation under or adjacent to a railway line shall be submitted and permission to proceed obtained, before the excavation is commenced.
- 9.4 The Contractor shall prevent ingress of water to the excavation but where water does enter, he shall dispose of it as directed by the Engineer.
- 9.5 The Contractor shall not block, obstruct or damage any existing drains either above or below ground level unless he has made adequate prior arrangements to deal with

drainage.

10. FALSEWORK FOR STRUCTURES

10.1 Drawings of falsework for the construction of any structure over, under or adjacent to any railway line shall be submitted to the Engineer and his permission to proceed obtained before the falsework is erected. Each drawing shall be given a title and a distinguishing number and shall be signed by a registered professional engineer certifying that he has checked the design of the falsework and that the drawings are correct and in accordance with the design.

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

11. PILING

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

12. UNDERGROUND SERVICES

12.1 No pegs or stakes shall be driven or any excavation made before the Contractor has established that there are no underground services, which may be damaged thereby.

12.2 Any damage shall be reported immediately to the Engineer, or to the personnel in charge at the nearest station, or to the traffic controller in the case of centralised traffic control.

12.3 Any previously uncharted underground services encountered by the Contractor during the course of his activities shall be reported immediately to the Engineer who shall ensure the necessary inclusion in the “as built” drawings.

13. BLASTING

13.1 No blasting in the vicinity of a railway line shall be carried out except with the prior written permission of the Engineer and under such conditions as he may impose.

- 13.2 The Contractor shall make arrangements for the supply, transport, storage and use of explosives.
- 13.3 The Contractor shall have labour, tools and plant, to the satisfaction of the Engineer, available on the site to clear immediately any stone or debris deposited on the track or formation by blasting, and to repair any damage to the track or formation immediately after blasting. Repairs to the track shall be carried out only under the supervision of a duly authorised representative of the PRASA's maintenance and/or operating Contractor.
- 13.4 The Contractor shall advise the Engineer of his intention to blast at least 21 days prior to the commencement of any blasting operations.
- 13.5 Before any blasting is undertaken, the Contractor and the Engineer shall jointly examine and measure up any buildings, houses or structures in the vicinity of the proposed blasting to establish the extent of any cracking or damage that exists. The Contractor, at his own expense shall make good any deterioration of such buildings, houses, or structures, which, in the opinion of the Engineer, is a direct result of the blasting.
- 13.6 All claims shall be settled by the Contractor as soon as possible. Should unreasonable delays occur, the PRASA will have the right to settle any such claims and recover the costs from the Contractor.
- 13.7 Within a reasonable time after completion of the blasting, the Contractor shall obtain a written clearance from each land owner in the vicinity of the blasting operations to the effect that all claims for compensation in respect of damage caused by the blasting operations to their respective properties have been settled.
- 13.8 The Contractor shall provide proof that he has complied with the provisions of clauses 10.17.1 to 10.17.4 of the Explosives Regulations (Act 26 of 1956 as amended).
- 13.9 Blasting within 500 metres of a railway line will only be permitted during intervals between trains. A person appointed by the Engineer, assisted by flagmen with the necessary protective equipment, will be in communication with the controlling railway station. Only this person will be authorised to give the Contractor permission to blast, and the Contractor shall obey his instructions implicitly regarding the time during which blasting may take place.
- 3.10 The flagmen described in clause 13.9 above, where provided by Transnet or PRASA'S maintenance and/or operating Contractor, are for the protection of trains and Transnet or PRASA property and personnel only, and their presence does not relieve the

Contractor in any manner of his responsibilities in terms of Explosives Act or Regulations, or any obligation in terms of this Contract.

13.11 The person described in clause 13.9 above will record in a book provided and retained by the Engineer the dates and times:

- (i) when each request is made by him to the controlling station for permission to blast;
- (ii) when blasting may take place;
- (iii) when blasting actually takes place; and
- (iv) when he advises the controlling station that the line is safe for the passage of trains.

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

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

14. RAIL TROLLEYS

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

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

15. ANCILLARY TRACKSIDE EQUIPMENT AND FACILITIES.

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

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

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

16. PENALTY FOR DELAYS TO TRAINS

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

17. COMPLIANCE WITH STATUTES AND REGULATIONS

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

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

and all regulations framed under these acts.

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

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

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

18. TEMPORARY LEVEL CROSSINGS

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

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

18.3 The Contractor at his own cost, shall arrange the construction by a nominated

specialist subcontractor of the entire approved temporary level crossing, including all level crossing signs and height gauges and alterations to communication, power and signal equipment as well as drainage.

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

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

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

PART B - ADDITIONAL SPECIFICATION FOR WORK NEAR HIGH-VOLTAGE

ELECTRICAL EQUIPMENT

1 GENERAL

- 1.1 This specification is based on the contents of Spoornet's publication **ELECTRICAL SAFETY INSTRUCTIONS**, as amended, a copy of which will be made available on loan to the Contractor for the duration of the contract on request only. These instructions apply to all work near live high-voltage equipment maintained and/or operated by Transnet or PRASA'S maintenance contractor, and the onus rests on the Contractor to ensure that he obtains a copy.
- 1.2 The Contractor's attention is drawn in particular to the contents of Sections 1 and 2 of the publication **ELECTRICAL SAFETY INSTRUCTIONS**.
- 1.3 The publication **ELECTRICAL SAFETY INSTRUCTIONS** covers the minimum safety precautions which must be taken to ensure safe working on or near high-voltage electrical equipment, and must be observed at all times. Should additional safety measures be considered necessary because of peculiar local conditions, these may be ordered by and at the discretion of the Electrical Officer (Contracts).
- 1.4 This specification must be read in conjunction with and not in lieu of the publication **ELECTRICAL SAFETY INSTRUCTIONS**.
- 1.5 The Contractor shall obtain the approval of the Electrical Officer (Contracts) before any work is done which causes or could cause any portion of a person's body or the tools he is using or any equipment he is handling, to come within 3 metres of any live high-voltage equipment.
- 1.6 The Contractor shall regard all high-voltage equipment as live unless a work permit is in force.
- 1.7 Safety precautions taken or barriers erected shall comply with the requirements of the Electrical Officer (Contracts), and shall be approved by him before the work to be protected is undertaken by the Contractor. The Contractor shall, unless otherwise agreed, bear the cost of the provision of the barriers and other safety precautions required, including the attendance of Transnet or PRASA's maintenance contractor where this is necessary.
- 1.8 No barrier shall be removed unless authorised by the Electrical Officer (Contracts).

2. WORK ON BUILDINGS OR FIXED STRUCTURES

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

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

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

- (i) the floor level of trucks;
- (ii) external walkways on diesel, steam and electric locomotives, steam heat vans, etc. and
- (iii) walkways between coaches and locomotives.

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

- 3.2 In cases where the Contractor operates his own rail mounted equipment, he shall arrange for the walkways on this plant to be inspected by the Electrical Officer (Contracts) and approved, before commencement of work.
- 3.3 The handling of long lengths of material such as metal pipes, reinforcing bars, etc. should be avoided, but if essential they shall be handled as nearly as possible in a horizontal position below head height.
- 3.4 The Responsible Representative shall warn all persons under his control of the danger of being near live high-voltage equipment, and shall ensure that the warning is fully understood.
- 3.5 Where the conditions in clauses 3.1 to 3.3 above cannot be observed the Electrical Officer (Contracts), shall be notified. He will arrange for suitable safety measures to be taken. The Electrical Officer (Contracts), may in his discretion and in appropriate circumstances, arrange for a suitable employee of the Contractor to be specially trained by the relevant authority at the Contractor's costs, as an Authorised Person to work closer than 3 metres from live overhead conductors and under such conditions as may be imposed by the responsible Electrical Engineer in Transnet or PRASA'S

maintenance contractor.

4. USE OF EQUIPMENT

4.1 MEASURING TAPES AND DEVICES.

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

4.2 PORTABLE LADDERS.

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

4.3 SERVICES FROM INSULATED VEHICLES AND TRESTLE TROLLEYS.

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

5. CARRYING AND HANDLING MATERIAL AND EQUIPMENT

- 5.1 Pipes, scaffolding, iron sheets, reinforcing bars and other material, which exceeds 2 metres in length, shall be carried completely below head height near live high-voltage equipment. For maximum safety such material should be carried by two or more persons so as to maintain it as nearly as possible in a horizontal position. The utmost care must be taken to ensure that no part of the material comes within 3 metres of any live high-voltage equipment.
- 5.2 Long lengths of wire or cable shall never be run out in conditions where a part of a wire or cable can come within 3 metres of any live high-voltage equipment unless the

Electrical Officer (Contracts) has been advised and has approved appropriate safety precautions.

- 5.3 The presence of overhead power lines shall always be considered, especially when communications lines or cables or aerial cables, stay wires, etc. are being erected above ground level.

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

- 6.1 A pole may be handled for the purpose of erection or removal near high-voltage equipment under the following conditions:

- (i) If the distance between the point at which the pole is to be erected or removed and the nearest live high-voltage equipment is more than the length of the pole plus 3 metres, the work shall be supervised by the Responsible Representative.
- (ii) If the distance described in (i) is less than the length of the pole plus 3 metres, the Electrical Officer (Contracts) shall be consulted to arrange for an Authorised Person to supervise the work and to ensure that the pole is earthed where possible. The pole shall be kept in contact with the point of erection, and adequate precautions shall be taken to prevent contact with live high-voltage equipment.

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

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

7. USE OF WATER

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

8. USE OF CONSTRUCTION PLANT

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

- 8.2 When work is being undertaken in such a position that it is possible for construction plant or its load to come within 3 metres of live high-voltage equipment, the Electrical

Officer (Contracts) shall be consulted. He will arrange for an Authorised Person to supervise the work and to ensure that the plant is adequately earthed. The Electrical Officer (Contracts) will decide whether further safety measures are necessary.

- 8.3 The cost of any supervision by an Authorised Person and the provision of earthing shall, unless otherwise agreed, be borne by the Contractor.
- 8.4 When loads are handled by cranes, non-metallic rope hand lines shall be used, affixed to such loads so as to prevent their swinging and coming within 3 metres of live high-voltage equipment.
- 8.5 Clauses 8.1 to 8.4 above shall apply mutatis mutandis to the use of maintenance machines of any nature.

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

- 9.1 If the Responsible Representative finds that the work cannot be done in safety with the high voltage electrical equipment live, he shall consult the Electrical Officer (Contracts) who will decide on the action to be taken.
- 9.2 If a work permit is issued the Responsible Representative shall:
- (i) before commencement of work ensure that the limits within which work may be carried out have been explained to him by the Authorised Person who issued the permit to him, and that he fully understands these limits.
 - (ii) sign portion C of the permit before commencement of work;
 - (iii) explain to all persons under his control the limits within which work may be carried out, and ensure that they fully understand these limits;
 - (iv) care for the safety of all persons under his control whilst work is in progress; and
 - (v) withdraw all personnel under his control from the equipment on completion of the work before he signs portion D of the work permit.

10. TRACTION RETURN CIRCUITS IN RAILS

10.1 DANGEROUS CONDITIONS CAN BE CREATED BY REMOVING OR SEVERING ANY BOND.

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

- 10.3 The Contractor shall not break any permanent bonds between rails or between rails and any structure. He shall give the Engineer at least 21 days written notice when removal of such bonds is necessary.
- 10.4 No work on the track, which involves interference with the traction return rail circuit, either by cutting or removing the rails, or by removal of bonds shall be done unless the Electrical Officer (Contracts) is consulted. He will take such precautions as may be necessary to ensure continuity of the return circuit before permitting the work to be commenced.

11. BLASTING

- 11.1 The Contractor shall obtain the permission of the Electrical Officer (Contracts) before blasting, and shall give at least 21 days notice of his intention to blast. The Electrical Officer (Contracts) shall then decide whether it is necessary to have an Authorised Person in attendance during such operations.
- 11.2 The terms of clause 13 of SPK7/1 Part A or clause 15 of the SPK7/2 Part A, as applicable, shall be strictly adhered to.

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

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

Such equipment includes:

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

ANNEXURE S

SERVICE PAYMENT SCHEDULE

Signed by THE CONTRACTOR at CAPE TOWN on this day of 2022

in the presence of the undersigned witnesses.

_____ AS WITNESSES: (1) _____
THE BIDDER

(.....)
who warrants that he/she is
duly authorized to sign

(2) _____

Signed on behalf of THE CLIENT at on this day of
..... 2022.... in the presence of the undersigned witnesses.

_____ AS WITNESSES: (1) _____
THE CLIENT
(PASSENGER RAIL AGENCY
OF SOUTH AFRICA)

(2) _____

ANNEXURE T

REDESIGN PAYMENT SCHEDULE

Engineering Project Payment Schedule		Deliverable	Condition for payment/ Milestone
1	1 st Progress Payment	- New Design or Modification - Service performance improvement	Preliminary design concept and documentation or Asset performance improvement initiative
2	Completion Payment	Prototype	After PRASA Representative acceptance and the issuing of design. Completion payment minus 10% retention
		Individual Asset	After PRASA Representative acceptance and the issuing of final design. This is classified as a final payment.
3	Retention Release	Applicable project	RAMS analysis fault free declaration <u>and</u> Compliance Certificate
		Final documentation and detailed 3D Model	Applicable on service design improvement

**PASSANGER RAIL AGENCY OF SOUTH AFRICA
E5 (FEB 2008)**

CONTRACT

CONTRACT NUMBER : _____

CONTRACTOR : _____

NATURE OF WORK : _____

LOCALITY OR PLACE : _____

DATE OF ACCEPTANCE
OF TENDER : _____

DATE OF COMPLETION
DUE : _____ 20__

APPROXIMATE VALUE : _____

14 GENERAL CONDITIONS OF CONTRACT E5

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- INSURANCE SCHEDULE TO E5 (PRASA) CONDITIONS OF CONTRACT**

PASSENGER RAIL AGENCY OF SOUTH AFRICA

GENERAL CONDITIONS OF CONTRACT (E5)

1. DEFINITIONS, INTERPRETATIONS AND GENERAL PROVISIONS

1.1 In this Contract, unless inconsistent with the context: -

ADVERSE SUBSURFACE CONDITIONS means any latent condition of an extraordinary nature and/or extent which exists under the site, but which could not reasonably have been foreseen by anyone experienced in the type of work tendered for, and which results in material and/or method of construction being so different from that which was contemplated at the time of conclusion of this Contract as to materially affect the cost of the WORKS and the sufficiency and/or applicability of the rates and/or prices in the Bill.

BILL means any document titled Schedule of Quantities, Bill of Quantities, Schedule of Prices or Schedule of Quantities and Prices, forming part of the documents constituting the Contract, either by incorporation into the Project Specification or as a separate document and by which the amount to be paid to the Contractor for the performance of the Works is ascertained or to be ascertained.

CONSTRUCTION PLANT means any machine, excluding a tool, and any vehicle, excluding a passenger vehicle, used on the site for the carrying out of the WORKS.

DAY shall mean a calendar day. Where a specific number of days is allowed in the Contract for the performance of any act or is stipulated for the extinction of any right or the duration of any event or circumstance, the days between 16 December and 5 January (both days included) and the day from which the period concerned is stated to commence shall be excluded from the calculation of the number of days concerned.

DRAWINGS means all the drawings referred to in the contract documents, made by the Project Manager and furnished to the Contractor, or submitted by the Contractor and approved in writing by the Project Manager, any revisions of such drawings and any such other drawings as may from time to time be furnished or approved by the Project Manager.

EXECUTIVE OFFICER means the person appointed by PRASA from time to time as the executive officer to act according to the rights, powers held by, and obligations placed upon him in terms of the Contract.

EQUIPMENT means any machine, appliance, apparatus, device or installation of a mechanical, electrical or electronic nature to be incorporated, provided or installed as part of the WORKS or any device used on site for the carrying out of the WORKS.

MATERIAL means any constructional substance or ingredient, which will form a permanent part of the WORKS, and the substances in or that has been removed from, excavations and earthworks.

NOMINATED CONTRACTOR means a Contractor appointed by PRASA in terms of clause 31.1.

NOMINATED SUPPLIER means a person, firm or company nominated by PRASA in terms of clause 32.1 hereof.

NORMAL WORKING HOURS means the hours of work, as determined by a wage regulating measure or statutory enactment for any trade or activity, in respect of which the basic minimum rate of pay is applicable, and excludes all time for which a higher rate of pay is obligatory. Where no wage regulating measure is in force, the normal hours will be 07h00 to 17h00 Mondays to Fridays, including a daily meal break.

OPEN LINE means a railway line in use for the movement of railway traffic.

PROJECT MANAGER means the person or juristic person appointed by PRASA from time to time as the Project Manager, to administer the Contract according to the powers and rights held by and obligations placed upon him in terms of the Contract.

PROJECT SPECIFICATION means any document titled Project Specification, Special Conditions of Contract and Specifications, Special Conditions and Specifications, or Special Conditions, forming part of the documents constituting the Contract and which stipulates the special contract provisions and specifications pertaining to the Contract.

SITE means the land and other place, including any river- or seabed, on, under, over, in or through which the WORKS are to be executed or carried out, and any other land or place made available by PRASA in connection with the WORKS.

SITE INSTRUCTION means any instruction, direction, order or clarification, other than a Variation Order, given by the Technical Officer or his duly authorised deputy, by way of the Site Instruction Book.

TECHNICAL OFFICER means the person or juristic person appointed by PRASA from time to time as the Technical Officer, to administer the Contractor's performance and execution of the WORKS according to the powers and rights held by and obligations placed upon the Technical Officer in terms of the Contract.

TEMPORARY WORKS means any work(s) or installation(s) required for or concerning the construction or installation of the WORKS, but not forming part of the permanent WORKS.

TOOL means any instrument, powered or otherwise, which is accepted as a hand tool by the industry concerned and which is normally used in a manual operation.

VARIATION ORDER means a written order given by the competent PRASA authority in terms of clause 14.11 hereof, and also in the form of a written addendum by which new and/or adjusted rates and/or prices are incorporated into the Contract in terms of clause 30.9 hereof.

WORKS means the works to be executed in terms of the Contract.

- 1.2 Where the context requires, a word importing the singular also includes the plural and vice versa and the male gender likewise includes the female gender.
- 1.3 The clause headings in these general conditions of contract are not deemed to be part thereof and will not be taken into consideration in the interpretation of the Contract.
- 1.4 Any grant by PRASA or the Contractor (the grantor), or by any of the persons authorised to act on their behalf, to the other of any concession, waiver, condonation or allowance shall not, in respect of any specific event or circumstance other than that in respect of which the grant was made, constitute a waiver of the rights of the grantor in terms of the Contract or an estoppel of the grantor's right to enforce the provisions of the Contract.

1.5 The law which is to govern the Contract and in terms of which the Contract is to be interpreted shall be the law of the Republic of South Africa unless otherwise stated in the Project Specification.

1.6 Value-added tax in terms of the Value-added Tax Act No. 89 of 1991 shall be dealt with as follows: -

1.6.1 In Tendering;

Value-added tax shall not be included in the tendered rates and prices.

1.6.2 In payment;

Value-added tax shall not be reflected on monthly contract payment certificates, but paid separately on the presentation of a tax-invoice by the Contractor.

The value of the work reflected on the tax-invoice must correspond with the nett amount indicated on the contract payment certificate.

1.6.3 Changes to the VAT rate will be dealt with in accordance with sections 67 and 67A of the Act.

2. CESSION, ASSIGNMENT AND SUBCONTRACTING

2.1 The Contractor shall not cede or assign the Contract or any part thereof without the prior written approval of the Executive Officer.

2.2 The Contractor shall not enter into any subcontract without the prior written approval of the Project Manager, which approval will not unreasonably be withheld. The subcontractor, in respect of whom approval is so granted and his employees or workmen, shall for all the intentions and purposes of the Contract, be deemed to be workmen of the Contractor, as provided in clause 7 hereof.

2.3 Approval given in terms of clauses 2.1 and 2.2 hereof shall not relieve the Contractor of any responsibility, duty or obligation imposed upon him by the Contract, and the Contractor shall in particular be and remain solely liable and responsible for all acts,

omissions, negligence or breaches of contract on the part of the assignee or any of his employees, and for all acts, omissions or negligence of any subcontractor or any of his employees.

2.4 The Contractor shall during the term of this agreement not be allowed to proceed with any of the following matters before the prior written consent of PRASA Tender and Procurement Committee has been obtained:

2.4.1 any transfer of any amount of shares of the Contractor;

2.4.2 any change in the composition of the Contractor;

2.4.3 any change in the ownership of the Contractor; or

2.4.4 any material change in the constitution, memorandum, articles of association of similar document providing for the creation, formation or incorporation of the Contractor.

2.4.5 any change on the BEE component of the Contractor.

3. CONTRACTOR'S GENERAL OBLIGATIONS

3.1 The Contractor's general obligations under the Contract comprise the design (to the extent stipulated in the Contract), construction, manufacture, installation, completion and maintenance of the WORKS and, unless otherwise stipulated, the provision at his own expense of all supervision, labour, plant, tools, equipment, material, transport, consumable stores, services, samples and temporary works, and everything, whether of a temporary or permanent nature, required in and for the construction, installation, completion and maintenance of the WORKS.

3.2 Where the Contract expressly provides that part of or the whole of the WORKS shall be designed by the Contractor, he shall, notwithstanding any approval of the Project Manager, be liable for any error or deficiency in such design and in any drawing or document supplied by him in respect thereof, and for any loss or damage arising out of such error or deficiency.

3.3 Save in respect of PRASA's design of the WORKS or specified method of construction and proprietary brand materials, the Contractor shall, and hereby does indemnify PRASA against -

- (i) liability for infringement of any patent, design, trade mark, name, or other protected right; and
- (ii) any legal costs or disbursements incurred in connection with any of the matters referred to in subparagraph (i) hereof, whenever the liability contemplated in subparagraph (i) hereof is due to or arises out of anything done, omitted or undertaken, or the use of any plant, process, machine or material, in terms of or for the purpose of the Contract.

The indemnification shall cover all claims, demands proceedings, damages, costs, charges and expenses in relation thereto and arising therefrom.

4. DRAWINGS

- 4.1 The drawings will remain in the sole custody of the Technical Officer. Three copies thereof will be furnished to the Contractor free of cost, but any further copies shall be paid for by the Contractor. The Contractor shall give reasonable notice in writing to the Technical Officer of any further drawing or specification that may be required for the execution of the WORKS.

One copy of the drawings furnished to the Contractor as aforesaid shall be kept by the Contractor on the site, and shall at all reasonable times be available for inspection and use by the Technical Officer and his deputies appointed in terms of clause 13.2 hereof.

- 4.2 Where the design of the WORKS or part of the WORKS is done by the Contractor, he shall, unless otherwise directed, submit paper prints, in triplicate, of all plans or drawings of such WORKS to the Project Manager whose written approval must be obtained before the work concerned is commenced. Such approval shall be subject to clause 3.2 hereof.
- 4.3 Scaled dimensions are not to be used, and where no figure dimensions are given on the drawings or in the Bill or any specifications, the Technical Officer is to be requested in writing for an instruction regarding the correct dimensions.
- 4.4 The Contractor shall, in accordance with the Technical Officer's written instructions, maintain a register on site of all drawings and revisions thereof in the chronological order in which they are delivered to him or approved in terms of clause 4.2 hereof.

- 4.5 The Contractor shall timeously and carefully examine all drawings and shall immediately notify the Technical Officer in writing of any error, inaccuracy, discrepancy or inconsistency detected by him, or raise an objection thereto in order that it may be rectified or decided upon without disruption or delays to the progress of the work.
- 4.6 The Contractor hereby grants to PRASA a non-exclusive licence, in accordance with the provisions of section 22 of the Copyright Act, 1978 -
- (i) to copy any plan, diagram, drawing, specification, bill of quantities, design calculation or other similar document made by the Contractor, other than under the direction or control of PRASA, in connection with the WORKS;
 - (ii) to make free and unrestricted use thereof for its own purposes;
 - (iii) to provide copies thereof to consultants to be used by them for consultations and consulting services to PRASA;
 - (iv) to provide other parties with copies thereof where tenders are invited by PRASA.

Such non-exclusive licence shall apply mutatis mutandis to any plan, diagram, drawing, specification, bill, design calculation or other similar document made, other than under the direction or control of PRASA, by any subcontractor of the Contractor. The provisions of this clause shall in the case of materials, machines or equipment to be provided as part of the WORKS, not apply in respect of documents created for the manufacturing thereof.

No separate or extra payment shall be made by PRASA in respect of any non-exclusive licence granted in terms hereof.

5. SITE AND SUFFICIENCY OF TENDER

- 5.1 The Contractor shall be held to have inspected and examined the site and its surroundings and to have satisfied himself before submitting his tender as to the nature of the ground and sub-surface, the underground services, the form and nature of the site, the extent and nature of the WORKS, the quantities and the materials necessary for the completion of the WORKS, the means of access to the site, the accommodation and camping sites he may require, and in general, to have obtained all requisite information as to the risks, contingencies and other circumstances including the local climatic conditions and environmental requirements which may influence or affect his tender.

- 5.2 Disclosure by PRASA of any information in respect of investigations into or exploratory work of whatever nature in regard to the site of the WORKS, either by reference to such investigation or exploratory work or reports thereon, or by inclusion of information in the tender/contract documents, shall not relieve the Contractor of his obligations under clause 5.1 hereof.
- 5.2.1 The Contractor shall be held to have satisfied himself before tendering as to the correctness and sufficiency of his tender and of the rates and prices stated in the Bill. These rates and prices shall be sufficient to cover all his obligations under the contract and everything necessary for the proper completion and maintenance of the WORKS, and shall not be conditional upon the correctness of any opinion or interpretation given in any information disclosed or provided by PRASA.
- 5.2.2 No claim by the Contractor will be considered in respect of any of the rates and prices being insufficient or inapplicable on account of the materials, methods of construction and site and/or subsurface conditions being different from those assumed by him in tendering for the Contract, except in the case of adverse subsurface conditions.
- 5.4 If, during the execution of the WORKS, the Contractor encounters or becomes aware of adverse subsurface conditions which in his opinion give rise to a claim in terms of clause 5.3.2 hereof, he shall notify the Project Manager within 2 days of the occurrence thereof.

The Contractor shall, within 14 days of giving such notification, deliver to the Project Manager full particulars of such claims or intended claims, with copies thereof to be delivered to the Technical Officer, stating: -

- (i) the nature and extent of the adverse subsurface conditions encountered;
- (ii) what effect they will have on the work and completion time of WORKS;
- (iii) the extent to which the sufficiency and/or applicability of the rates and prices in the Bill are affected thereby and
- (iv) whether or not he intends to lodge a claim in terms of clause 5.3.2 hereof.

Unless or until otherwise instructed by the Project Manager the Contractor shall continue with the execution of the WORKS and carry out such work as may be reasonable in the encountered subsurface conditions.

- 5.5 The Project Manager, shall, upon receipt of the Contractor's notification and particulars of claims or intended claims, in terms of clause 5.4 hereof, after having examined the site and the subsurface and after having considered the claims and the Technical Officer's comments and recommendations in respect thereof, report the circumstances to the Executive Officer, together with his own comments and recommendations. Thereafter, and subject to a special mandate from the Executive Officer, he may, either;
- (i) instruct the Contractor to suspend the further execution of the whole or part of the WORKS pending further investigation and redesign of the whole or part of the WORKS and determination of additional remuneration and additional time for executing the work in the adverse subsurface conditions encountered, all in terms of clauses 14.11, 17.2 and 30 hereof, or
 - (ii) instruct that the Contractor continues with the whole or part of the WORKS on the basis that the effect of the adverse subsurface conditions will constitute a variation to be dealt with in terms of clauses 14.11, 17.2 and 30 hereof, or
 - (iii) notify the Contractor that the contract is terminated in terms of clause 38.1.3 hereof.

Any instruction or notification, given in terms hereof shall not in any way affect or diminish the Project Manager's right to reject or deny the Contractor's claims in part or in full, should he disagree with any aspect thereof.

- 5.6 PRASA will make the site available to the Contractor in accordance with the programme of work submitted and approved in terms of clause 14.6 hereof. The site the Contractor occupies shall be as pointed out or agreed to by the Technical Officer or as shown on the drawings. The Contractor shall make his own arrangements for occupation or use of any area outside the designated site.
- 5.7 The Contractor shall clear the site of the WORKS to enable him to carry out and complete the Contract.
- 5.8 Should it be necessary to maintain, discontinue, disconnect, remove or relocate any installation or service on, under or above the site, the Contractor, with the prior approval of the Technical Officer and other person or authority concerned, shall cause it to be maintained, discontinued, disconnected, removed or relocated as the case may be in such a manner as may be required either by the owner of a private installation or by the local authority or statutory authority in the case of a public utility installation. The Contractor shall be responsible for sending all requisite notices to any person or authority

concerned, and for making arrangements for the maintenance, discontinuance, disconnection, removal or relocation of the said installation or service as the case may be.

The Contractor shall be responsible for the payment of any fee or charge that may become payable to any person, local authority or statutory authority concerned in connection with any of the above-mentioned matters or arrangements. PRASA will reimburse the Contractor for these payments unless otherwise stipulated in the contract documents. Any alteration required to an installation controlled by PRASA or Telkom S.A. Limited will be arranged by PRASA at no cost to the Contractor. Where the existence or location of a service or installation was unknown or unforeseeable, the Technical Officer may order the removal or relocation thereof by the Contractor as a variation to be dealt with in terms of clauses 14.11 and 30, or on dayworks in terms of clause 16 hereof.

- 5.9 All fossils, coins, articles of value or antiquity and structures or other remains or things of archaeological interest discovered on the site shall, as between PRASA and the Contractor, be deemed to be the absolute property of PRASA.

The Contractor shall take reasonable precautions to prevent his workmen or any other person from removing or damaging any such article or thing and shall, immediately upon discovery thereof and before removal, inform the Technical Officer of such discovery and carry out the Technical Officer's orders as to the disposal thereof where necessary, at the expense of PRASA as a variation order in terms of clauses 14.11 and 30, or on a dayworks basis in terms of clause 16 hereof.

- 5.10 The Contractor shall not advertise or trade on PRASA property unless the written authority of the Project Manager has first been obtained. All information to be displayed on notice and advertising boards on the site regarding the nature of business to be conducted by the Contractor shall be submitted for approval before the boards are erected or trading is commenced.

6. ACCESS, RIGHTS-OF-WAY AND CAMPSITES

- 6.1 Where entry onto PRASA's property is restricted, permission to enter will be given only for the purpose of carrying out the WORKS and will be subject to the terms and conditions lay down by PRASA.

- 6.2 The Contractor shall arrange for campsites, workplaces and access thereto as well as for any right-of-way over private property to the site of the WORKS, and for access within the boundaries of PRASA's property. The owners of private property to be traversed shall be approached and treated with tact and courtesy by the Contractor, who shall, if necessary, obtain a letter of introduction to such property owners from the Technical Officer.

The Contractor shall be responsible for the closing of all gates on roads and tracks used by him or his employees. Except with the prior approval of the Technical Officer and the owner or occupier of any private land to be traversed, the Contractor shall not cut, lower, damage, remove or otherwise interfere with any fence or gate which is either on PRASA's property or on private property and which restricts access to the WORKS. Where such approval has been given, the Contractor shall prevent entry of animals or unauthorised persons onto PRASA's or private property, and shall make the fences safe against trespass at the close of each day's work.

- 6.3 The Contractor shall take all reasonable steps to confine the movement of vehicles and plant to the approved right-of-way to minimise damage to property, crops and natural vegetation.
- 6.4 When access is no longer required, and before completion of the WORKS, the Contractor shall repair, restore or replace any fence or gate damaged during execution of the WORKS to the satisfaction of the Technical Officer and shall furnish the Technical Officer with a certificate signed by the owner and occupier of land over which he has gained access to a campsite, workplace and the WORKS, certifying that the owner and occupier have no claim against the Contractor or PRASA arising from the Contractor's use of the land. Should the Contractor be unable to obtain the required certificate, he shall report the circumstances to the Technical Officer.
- 6.5 Security fences erected in the vicinity of commuter stations shall not be cut or interfered with in any way without the express approval of PRASA.

7. WORKMEN

- 7.1 All persons employed by the Contractor to carry out the Contract shall be competent, responsible and of good character.

- 7.2 If, in the opinion of the Technical Officer, any person employed by the Contractor is inefficient, negligent, disrespectful or objectionable, the Technical Officer may, after consultation with the Contractor, instruct that such person be removed from the WORKS.
- 7.3 During the currency of the Contract, the Contractor shall not approach any employee of PRASA with a view to offering him employment in any capacity whatsoever.
- 7.4 The Contractor shall, upon request, provide the Technical Officer with a weekly statement of the number of persons employed on the WORKS each day by the Contractor and any subcontractor, the capacity in which employed and the total number of hours worked in that week for each grade of staff separately. The statement shall be supported by documentary evidence when so required by the Technical Officer.

8. HOUSING OF EMPLOYEES

- 8.1 The Contractor shall make his own arrangements for the housing of his employees.
- 8.2 Where the Contractor accommodates his employees in an area under the jurisdiction of a local authority, he shall observe all the requirements of the controlling authority.
- 8.3 Fouling of the area inside or outside PRASA's boundaries must be prevented. The Contractor may be called upon by the Technical Officer to dispose of any foul or waste matter.

9. HOURS OF WORK

- 9.1 The Contractor shall confine his work to normal working hours except when work outside these hours is:
- (i) specifically provided for in the Contract, or
 - (ii) permitted by the Technical Officer at the Contractor's request, or
 - (iii) ordered by the Technical Officer, or
 - (iv) normally carried out in multiple shifts.
- 9.2 When the Contractor proposes to work outside normal working hours, he shall apply to the Technical Officer at least seven days before he proposes to introduce such working. Permission will not be withheld unreasonably, and will be subject to such conditions as

the Technical Officer may impose to protect PRASA's interests. Such permission may be withdrawn at any time. The Contractor shall not be entitled to any claim for additional payment arising from either the refusal to permit such working or the granting of such permission or withdrawal of permission.

- 9.3 Where the Contractor is ordered to work outside normal working hours, and where no specific provision exists in the Contract for such work, the work shall be carried out in terms of clause 16.1 hereof.

10. COMPLIANCE WITH STATUTES AND SAFETY RULES

- 10.1 The Contractor shall comply with all applicable legislation and PRASA safety requirements. The costs of such compliance shall be borne by the Contractor and shall be deemed to have been allowed for in the rates and prices in the Contract.

- 10.2 The Contractor shall, in particular, comply with the following Acts: -

- (i) The Compensation for Occupational Injuries and Diseases Act, (Act 130 of 1993); The Contractor shall produce proof of his registration and good standing with the Compensation Commissioner in terms of the Act.
- (ii) The Occupational Health and Safety Act (Act 85 of 1993); The Contractor is in terms of section 37(2) of the Occupational Health and Safety Act 85 of 1993, deemed to be an employer in his own right with duties as prescribed in the Act, and agrees to ensure that all work will be performed or machinery and plant used in accordance with the provisions of the Act in respect of all persons in his employ, other persons on the premises or the site or place of the works or on the works to be executed by him and under his control in terms of the Contract. The agreements in this Contract and all documents attached or referred to, form an integral part of the arrangements and procedures mentioned in the aforementioned section.
- (iii) The Explosives Act (Act. 15 of 2003) and applicable regulations, as well the Blasting regulations from the Occupational Health and Safety Act (Act 85 of 1993); The Contractor shall when applicable, furnish the Project Manager with copies of the permits authorising him or his employee, to establish an explosives magazine on or near the site and to undertake blasting operations in compliance with the Act.

- (iv) The Labour Relations Act, 1995 (Act No. 66 of 1995);

- (v) The Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
- (vi) The Employment Equity Act, 1998 (Act No. 55 of 1998);
- (vii) Value-added Tax Act, 1991 (Act. No. 89 of 1991);
- (viii) Income Tax Act, 1962 (Act No. 58 of 1962);
- (ix) National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002); and
- (x) Provincial Ordinances and Local Authority By-laws, and all relevant Regulations framed there under having an effect on his business or the operator provided in terms of this agreement.

10.3 The Contractor shall comply with the Specification E.4E, Safety Arrangements and Procedural Compliance with the Occupational Health and Safety Act, Act 85 of 1993 and Regulations, and shall, before commencement with the execution of the Contract, which shall include site establishment and delivery of construction plant, equipment or materials, submit to the Technical Officer,

- documentary proof of his procedural compliance with the Act and
- particulars of the Health and Safety Programme to be implemented on the site in accordance with the Specification E.4E.

The Contractor's Health and Safety Programme will be subject to agreement by the Technical Officer, who may order supplementary and/or additional safety arrangements and/or different safe working methods to ensure full compliance by the Contractor with his obligations as an employer in terms of the Act.

10.4 The Contractor shall comply with the current Specification for Works On, Over, Under or Adjacent to Railway Lines and near High Voltage Equipment - E7/1, if applicable, and shall take particular care of the safety of his employees working on or in close proximity to a railway line during track occupations as well as under normal operational conditions. He shall also comply with all other safety requirements, regulations and guidelines of PRASA applicable to the nature of WORKS carried out under the Contract, and as instructed by the Technical Officer from time to time.

10.5 In addition to compliance with clause 10.2 hereof, the Contractor shall report all incidents contemplated by Section 24 of Act. 85 of 1993 to the Technical Officer. Any incident resulting in the death of or injury to any person on the WORKS shall be reported within 24 hours of its occurrence and any other incident shall be reported within 48 hours of its occurrence.

11. CONSTRUCTION PLANT, EQUIPMENT AND MATERIAL

- 11.1 The Contractor shall supply and use suitable and sufficient construction plant, tools, equipment and material as may be required to carry out the WORKS efficiently. Only the construction plant, tools, equipment and material which are required for this purpose shall be brought onto the site and shall be stored, stacked or erected in such a way as not to interfere with other work or traffic. The Contractor shall furnish statements showing details of construction plant, tools, equipment and material employed or used on the WORKS on a day to day basis indicating types, numbers, quantities, hours worked, idle time, etc. all as stipulated in the Project Specification or as directed by the Technical Officer.
- 11.2 PRASA will not be responsible for any loss of or damage to any such plant, tools, and equipment or material, excepting loss or damage of which the proximate cause is the negligence of PRASA or its employees.
- 11.3 No construction plant, tools or equipment brought onto the site shall be removed from the site without the written consent of the Technical Officer, which consent will not be withheld unreasonably
- 11.4 PRASA shall, in the case of material breach of the Contract by the Contractor and cancellation thereof by PRASA in terms of Clause 37, have a lien over all the Contractor's site establishment and temporary buildings, construction plant, tools, equipment and material brought onto site by the Contractor or on his behalf.
- 11.5 The Contractor shall take all reasonable care to prevent loss of or damage to any material supplied by PRASA and shall use the material in the most economical way. Materials supplied by PRASA shall at all times be and remain the property of PRASA. Material lost or damaged through negligence on the part of the Contractor or his employees shall be made good by the Contractor, or the value thereof will be deducted from money falling due to him.
- 11.6 Receipts for all material supplied by PRASA shall be provided by the Contractor at the time of delivery thereof.
- 11.7 Material supplied by PRASA, which has become surplus to requirements, shall be handed back to PRASA and receipts obtained therefore.

- 11.8 When trucks consigned to PRASA or the Contractor are to be off-loaded by the Contractor, the Technical Officer will give the Contractor at least 24 hours notice of the place and expected date and time of placing of trucks for off-loading.

The Contractor shall off-load the trucks as expeditiously as possible, but if he fails to off-load any truck within 24 hours of it being placed for off-loading, he shall be liable to pay the penalties specified in the Project Specification for all the time between the expiry of the 24 hour period allowed and the time the truck is finally off-loaded.

As soon as he has off-loaded any truck, the Contractor shall advise the nearest trains operations centre and the Technical Officer giving the date, time and the number of the truck off-loaded.

The same conditions and penalties will apply to empty trucks into which the Contractor is to load released material or material supplied by PRASA surplus to requirements.

- 11.9 PRASA will not provide any rolling stock, plant or equipment for use on the contract works, save where such provision is expressly agreed to in terms of a special provision of the Contract, in which case the provision of such rolling stock, plant and equipment and the use thereof shall be subject to the following terms and conditions.

- (i) Specialised items of rolling stock essential to the WORKS, together with the necessary locomotive will be provided at the cost of PRASA.
- (ii) The use of such rolling stock shall be limited to the periods and sections of track indicated by PRASA.
- (iii) The Contractor shall pay PRASA a penalty for the use of the specified rolling stock for any period in excess of that determined in terms of paragraph (ii) hereof. The penalty shall be a fixed hourly charge based on the estimated all-inclusive hourly cost.
- (iv) The Contractor shall not use the rolling stock for purposes other than for those expressly stipulated in the Project Specification without permission of the Technical Officer.

Should the Contractor wish to hire from PRASA rolling stock other than that envisaged herein with or without a locomotive, or any other plant and equipment, for the purpose of the fulfilment of the Contractor's obligations under the Contract, a request from the

Contractor to such effect will not be unreasonably refused by PRASA, provided that the parties are able to reach agreement as to the terms and conditions of such hire.

12. TRANSPORT

- 12.1 PRASA shall have the right of first refusal to contract for the provision of its rail, road, air and harbour services for the transport of material, plant, equipment and personnel required for the purposes of the Contract, both nationally and internationally, when applicable.

The use by the Contractor of such services shall be subject to the tariffs and conditions of contract applicable to the use of such services.

13. SUPERVISION

- 13.1 The Technical Officer will provide overall technical superintendence of the WORKS, and may direct the Contractor in terms of the provisions of the Contract or in respect of any measures which the Technical Officer may require for the operations of PRASA, the safety of trains, property and workmen of PRASA, and for the safety of other property and persons. The Contractor shall carry out the directions of the Technical Officer. The superintendence exercised by the Technical Officer, including any agreement, approval, refusal or withdrawal of any approval given, shall not relieve the Contractor of any of his duties and liabilities under the Contract, and shall not imply any assumption by PRASA or by the Technical Officer of the legal and other responsibilities of the Contractor in carrying out the WORKS.
- 13.2 The Technical Officer may delegate to any deputy or other person, any of his duties or functions under the Contract. On receiving notice in writing of such delegation, the Contractor shall recognise and obey the deputy or person to whom any such duties or functions have been delegated as if he were the Technical Officer.
- 13.3 The Contractor shall exercise supervision over the WORKS at all times when work is performed or shall be represented by an agent having full power and authority to act on behalf of the Contractor. Such agent shall be competent and responsible, and have adequate experience in carrying out work of a similar nature to the WORKS, and shall

exercise personal supervision on behalf of the Contractor. The Technical Officer shall be notified in writing of such appointment which will be subject to his approval.

- 13.4 The Contractor or his duly authorised agent shall be available on the site at all times while the WORKS are in progress to receive the orders and directions of the Technical Officer.

14. EXECUTION OF WORK

- 14.1 The Contractor shall, before commencing work, ascertain from the Technical Officer whether overhead or underground electrical conductors are affected by the WORKS, and he shall ensure that any precautionary measures required by the Technical Officer are strictly observed.
- 14.2 The Contractor shall be responsible for the detailed sitting of his temporary buildings and stocks of material. Where such sitting is on PRASA property, the Contractor shall occupy only the sites indicated to him by the Technical Officer.
- 14.3 The Technical Officer will supply the basic lines and levels for the WORKS. These shall be maintained and protected by the Contractor, who shall arrange for their replacement at his own cost if disturbed. The Contractor shall set out the WORKS from such lines and levels. The Contractor shall check the basic lines and levels supplied by the Technical Officer and, if any errors are found, shall notify the Technical Officer of such errors. He shall not do any further setting out or carry out any of the WORKS until these errors have been corrected.

Should the Technical Officer assist the Contractor at any time by setting out any portion of the WORKS, this will be at the entire risk and responsibility of the Contractor. Such setting out of the WORKS shall not relieve the Contractor of his responsibility for the correct setting out of the WORKS or provide any basis for a claim by the Contractor against PRASA. Any error by the Contractor in the setting out of the WORKS, at whatever time it may be discovered, shall forthwith be rectified by the Contractor at his own expense.

- 14.4 All instructions to the Contractor will be in writing and shall be deemed to have been received if left with the Contractor or his agent at the WORKS or at the business premises of the Contractor or at his office on the site.

The Contractor shall supply and have available on the site at all times two A4 size triplicate carbon copy books. In one book, site instructions will be recorded. The other book shall be used by the Contractor as a diary for recording day by day the state of the weather, the work done each day and full details of any circumstance which may affect the progress of the WORKS. The original sheet of each set of 3 pages will be removed from both books and retained by the Technical Officer. The Contractor may remove the second sheet but the third sheet shall be retained on the site until completion of the WORKS, when it shall be handed over to the Technical Officer.

14.5 Except as provided for in clause 40 hereof, the Contractor shall not communicate with the Project Manager or the Executive Officer except through the Technical Officer.

14.6 A programme of work showing the order thereof shall be submitted for approval as follows: -

14.6.1 The Contractor shall, within 3 weeks of the date of acceptance of his tender, submit a programme of work in the form of a bar chart or other means acceptable to the Technical Officer, showing, inter alia, the duration, expected delivery dates of materials, plant and equipment, and the starting and completion dates of each major activity in the Contract. Where the activity is ongoing and not of a one-off nature the proposed weekly production rate shall be indicated.

14.6.2 A cash flow diagram showing the estimated monthly value of work based on the programme shall be submitted with the programme.

14.6.3 The programme will be subject to approval by the Technical Officer, but such approval will not relieve the Contractor of his obligations to undertake the work in an order and manner to ensure proper completion by the date/s specified in the Contract.

14.6.4 The Contractor shall, on an ongoing basis during the course of the Contract, monitor his progress against the programme which shall be reviewed and updated when necessary with the consent or at the direction of the Technical Officer. Details of such progress control shall be provided to the Technical Officer. Except where the provisions of clauses 17.1 to 17.7 and 28 hereof apply, a revision of the programme will not relieve the Contractor of his obligation to complete the WORKS by the specified date/s.

Neither the submission by the Contractor nor the approval by the Technical Officer of a revised programme shall imply either that the Contractor is in any way relieved of his obligations in terms of the Contract, or that he is entitled to any extensions of time or compensation.

- 14.7 Should the Technical Officer, at any time, be of the opinion that the rate of progress of the WORKS or any part thereof is too slow to achieve the completion of the WORKS or any part thereof by the stipulated date or such extended date of completion as may have been determined in terms of clauses 17.1 to 17.7 and 28 hereof, and that such lack of progress will have a serious adverse effect on any of PRASA 's interests or activities, he may notify the Contractor in writing, but the Contractor shall not be relieved of his obligations if such notice is not given.

The Contractor shall thereupon take steps to expedite progress to complete the WORKS or any part thereof by the stipulated date or extended date of completion. The Contractor shall advise the Technical Officer in writing immediately it becomes apparent to him that there will be a delay in the execution of the WORKS.

- 14.8 The Contractor and his employees shall give, without additional remuneration, safe and proper facilities as and when required to authorised officers of PRASA to enable them to inspect the WORKS or to perform any other duties or functions connected with the WORKS. The Contractor shall allow the Technical Officer access to workshops or other places where work is being prepared for the Contract, for the purpose of inspecting such work.
- 14.9 Specialist advisors may be appointed by PRASA in connection with matters relating to specialist portions of the WORKS or special work which may be required to be executed on the WORKS. Such specialist advisors will be referred to in the Project Specification by appropriate designations describing the nature of their functions.

Any instruction of such specialist advisor which involves a variation to or departure from the Contract, will be given in writing to the Contractor through the Technical Officer provided, however, that should an emergency arise during the execution of the WORKS, the advisor concerned will have authority to give instructions direct to the Contractor on behalf of PRASA for taking such steps as he may deem necessary to deal with such emergency.

The Contractor shall carry out these instructions which will be confirmed in writing by the Technical Officer within 7 days after the date that they were given. In the absence of receipt of such confirmation, the Contractor shall notify the Technical Officer, in writing, within the following 7 days that he has received such instructions from the specialist concerned.

14.10 The Project Manager may, at any time, execute or cause to be executed by persons other than the Contractor, any portion of the WORKS if he considers it necessary to carry out such portion of the WORKS to accelerate the programme for completion of the WORKS or in the interest of safety or to suit the requirements of PRASA. The portion of the WORKS executed by the Project Manager or by persons other than the Contractor shall be treated as an omission and the provisions of clauses 14.11, 30.1 and 30.2 hereof shall apply.

14.11 The Project Manager and, by his authority, the Technical Officer may order alterations, extras, additions to or omissions from the WORKS.

14.11.1 Such orders shall include, but not be limited to, any variation of the form, quality, quantity or execution of the WORKS or any part thereof that may in the Project Manager's discretion be necessary for the purposes of PRASA and/or for dealing with changed circumstances and conditions such as those provided for under clauses 5.3.1 to 5.5 hereof. These orders may, inter alia, result in:

- (i) an increase or decrease in the quantity of any work,
- (ii) an omission of any work,
- (iii) a change in the design, character, quality or kind of any work,
- (iv) a change in the levels, lines, position and dimensions of any part of the WORKS,
- (v) the execution of additional work of any kind necessary for completion of the WORKS,
- (vi) a change in any specified or approved sequence or timing of construction of any part of the WORKS,
- (vii) a suspension of the execution and/or construction of the whole or part of the WORKS or
- (viii) a change in the method of construction and/or execution of the WORKS.

14.11.2 The Contractor shall carry out or give effect to the orders of the Project Manager or Technical Officer in accordance with the drawings and specifications that may from time to time be issued in conjunction with such orders. The Contractor shall obtain written confirmation of all verbal orders given to him.

14.11.3 The Contractor shall not make any variation and shall not substitute new items of material and/or equipment without an instruction from the Project Manager or Technical Officer. He shall submit fully detailed and motivated proposals of any intended variation or substitution to the Technical Officer for his approval.

14.11.4 Where the quantity of work increases or decreases as a result of an instruction given in terms of this clause or as a result of the measured quantities exceeding or being less than those stated in the Bill, and where the amount to be paid to the Contractor is ascertained from the quantities of work carried out at schedule rates, a variation order is not required except where,

- due to the final measured quantity differing from the estimated quantity by more than 20%, or
- due to adverse subsurface conditions or different conditions the rate(s) and/or price(s) being insufficient or inapplicable,

adjusted/new rates are to be determined in terms of clauses 30.2, 30.3 and 30.5, a variation order will be issued in terms of clause 30.9.

14.11.5 When the amount to be paid to the Contractor for the performance of the WORKS is a lumpsum and a Bill do not form part of the Contract, variation orders will be issued in respect of all instructions given in terms of clause 14.11.1 and which affect the amount to be paid to the Contractor.

14.12 The Contractor shall carry out the WORKS in a proper and workmanlike manner with the materials and to the quality standards described in the Bill and/or the Project Specification and shall complete the work to the satisfaction of the Technical Officer.

14.13 The Contractor shall, when required to do so in terms of a special provision of the Contract or by an order of the Project Manager, attend upon nominated suppliers, nominated and other contractors and PRASA workers performing work that are part of or contiguous to the WORKS. He shall, when requested, assist with their requirements for

the effective performance of such works and shall afford such facilities, as may be available in his own site establishment, for the execution of such work.

14.14 Except where provision is made in the Bill for payment for attendance upon a Nominated Contractor in terms of clause 31.4, the Contractor will, be reimbursed for direct expenses incurred by him in complying with the provisions of clause 14.13. Any dispute arising between the Contractor and PRASA workmen or other contractors in connection with such associated or contiguous work, will be settled by the Project Manager who will convey his decision to the Contractor and other parties concerned.

15.15 The Contractor shall co-ordinate the execution of the WORKS and ensure that close collaboration is achieved between all workmen and subcontractors under his supervision and control and nominated suppliers, nominated and other contractors and PRASA workers performing contiguous work or part of the WORKS.

14.16 No work, including excavations and foundations, shall be covered up or put out of view without the approval of the Technical Officer. The Contractor shall give due notice to the Technical Officer whenever any such work is ready or about to be ready for examination, and the Technical Officer will, without unreasonable delay, examine such work, unless he considers it unnecessary and advises the Contractor accordingly.

14.17 The Contractor shall uncover any part of the WORKS or make any opening in or through the WORKS as the Technical Officer may direct, and shall reinstate or make good such work to the satisfaction of the Technical Officer. If any part of the WORKS has been covered up or put out of view after compliance with the requirements of clause 14.16 hereof and, after such uncovering, is found to be executed in accordance with the Contract, the direct expenses of uncovering, making any opening in or through the WORKS and the reinstating and making good thereof will be borne by PRASA, but in any other case all such expenses shall be borne by the Contractor or will be recovered from the Contractor.

15. SAMPLING AND TESTING OF MATERIAL AND INSTALLATIONS

15.1 The Contractor shall furnish such samples or prototypes of materials or equipment as may be called for by the Technical Officer who may, in his discretion, require the Contractor to subject any such samples or prototypes to appropriate tests.

When required by the Technical Officer, the Contractor shall afford every facility for the inspection and testing of such materials or equipment and shall supply all material, instruments, assistance and facilities that may be required for the purpose of such inspection or tests.

- 15.2 Only materials and equipment, which comply in all respects with the approved samples and prototypes, shall be brought on to the site or used on the WORKS. Material and equipment, which do not comply in all respects with the approved samples and prototypes, may be rejected by the Technical Officer. The Contractor, at his own cost, shall remove and replace any rejected material or equipment together with that portion of the WORKS affected by it.
- 15.3 The Contractor shall arrange to carry out such further tests on completed works and equipment installed as ordered by the Technical Officer.
- 15.4 The direct cost of any sampling and testing ordered that is different from and/or additional to testing and sampling stipulated in the Project Specification, shall be reimbursed to the Contractor save in the event that the materials and workmanship tested do not comply with the Contract or where previous testing and sampling done by the Contractor did not comply with specified procedures or methods.
- 15.5 The approval by the Technical Officer of any materials or equipment shall not relieve the Contractor of his obligation to comply fully with the contract specifications for the complete WORKS.

16. DAYWORK

- 16.1 The Technical Officer may order that any additional or substituted work or work ordered in terms of clauses 9.1 (iii) and 9.3, be executed on a dayworks basis. For work so ordered and executed, the Contractor shall be paid in accordance with the dayworks schedules and at the rates and prices quoted by him in the Bill or, in the absence of provision in the daywork schedules for any particular item, the Contractor shall be paid-

- (i) the gross actual wages and benefits paid by him to and/or on behalf of the workmen for the period they were engaged on the additional or substituted work plus 30 percent, and
- (ii) the direct cost at the site of material supplied by the Contractor and actually used in the additional or substituted work plus 12 percent.

These payments will be held to fully recompense the Contractor for all costs for the use of tools and equipment and financial charges of any description incurred by him and his subcontractors, and will include all overhead costs and profits.

The use of construction plant will be charged out separately on a plant hire basis at the rates quoted in the Bill or, where no such rates exist, at rates agreed upon between the Project Manager and the Contractor. Rates for the hire of plant shall be deemed to cover all costs for the supply, operation, maintenance and repair of the plant.

- 16.2 The Contractor shall submit to the Technical Officer by Tuesday of each week, a detailed statement in triplicate, covering the work done on a daywork basis during the preceding week up to midnight on Saturday.

This statement shall show the actual time worked, the rates of pay, the actual amounts earned by the workmen and the material and plant used on the WORKS. It shall be countersigned by the Technical Officer and shall be the sole source of information used to calculate payments due for such work.

17. ADDITIONAL TIME

- 17.1 When the Contractor considers that for any reason stipulated in clause 17.2 hereof he is entitled to additional time to complete the WORKS or portions of the WORKS, he shall submit an application in writing to the Technical Officer, setting out in detail the reasons for the application and stating the specific additional time required.

- 17.2 Applications for additional time will only be considered in respect of-

- (i) alterations, extras, or additions to the WORKS ordered by the Project Manager or the Technical Officer in terms of clause 14.11 hereof;
- (ii) an increase in the quantities shown in the Bill;

(iii) delays caused by encountering adverse subsurface conditions in terms of clause 5.3.2 hereof;

(iv) delays where the Contractor can prove to the reasonable satisfaction of the Project Manager that-

the circumstance that caused the delay was unforeseeable at the time of tendering, and that the Contractor had taken steps and/or displayed reasonable care and diligence in attempting to avoid or minimise the delay and consequences thereof, or the circumstance, if foreseeable, was such that it was beyond the Contractor's control, and that he could not have been reasonably expected to have taken it into account in undertaking his obligations under the contract.

The extent of any additional time granted shall be commensurate with the delay attributable to such circumstance. (Delays attributable to PRASA, the Project Manager or Technical Officer are to be dealt with in terms of clause 28 hereof.)

17.3 No additional time will be granted unless the application is made in writing within 28 days after –

- (i) receipt of the order from the Project Manager or Technical Officer for alterations, extras or additions to the WORKS; or
- (ii) receipt of the Project Manager's payment certificate in which quantities are increased beyond those shown in the Bill; or
- (iii) the commencement of a delay qualifying in terms of clauses 17.2 (iii) and 17.2 (iv) hereof.

17.4 The application shall be for a specific additional time except in those cases where, in the opinion of the Project Manager, circumstances are such that a specific time cannot yet be determined, when written notice of intention to claim will be accepted as meeting the requirements of clause 17.3 hereof. In such cases, the Contractor shall submit the request for a definite period of time within the period stipulated by the Project Manager.

17.5 The entries in the site diary shall be deemed to be a comprehensive record of any and all facts/circumstances to be relied upon by the Contractor in respect of any application for additional time and/or compensation. Without detracting from the foregoing the Project

Manager may, in his sole discretion, require the Contractor to supply and/or record any further information.

17.6 The Project Manager will advise the Contractor in writing what additional time, if any will be allowed. This additional time will not necessarily apply to the whole of the WORKS, but may in specific cases apply to only particular portions of the WORKS.

17.7 Compensation for increased costs related to additional time granted in terms hereof, will be payable only in respect of delays caused by circumstances and events stipulated in clauses 17.2 (i), (ii) and (iii) hereof and shall be determined as follows: -

- (i) Additional time-related preliminary and general allowances as are appropriate and applicable having regard to other compensation which may have been determined in respect of the circumstances concerned, but not exceeding the amounts payable in terms of the rates and prices in the Bill for such time-related preliminary and general costs.
- (ii) Additional time-related expenses as are included in the determination of additional compensation in terms of clauses 30.1 to 30.6 hereof, where applicable and justifiable.

18. CARE OF THE WORKS AND REPAIRS

18.1 From commencement to completion of the WORKS, the Contractor shall take full responsibility for the care thereof and of all, material and temporary worker works.

18.2 In the event of the WORKS or any part thereof or any material or temporary works being destroyed or damaged through any cause, except through any of the excepted risks as defined in clause 18.3 hereof, the Contractor shall, at his own cost and subject to the provisions of clause 39, repair and make good such damage so that, on completion, the WORKS shall be in good order and condition and in conformity in every respect with the requirements of the Contract.

In the event of destruction or damage occurring through any of the excepted risks, the Contractor shall repair and make good the damage to the extent ordered by the Project Manager or Technical Officer in terms of clause 14.11 and/or 16 hereof at the cost of PRASA. Compensation will be determined in terms of clauses 30.1 to 30.6 or 16.1 hereof.

18.3 The "excepted risks" are –

- (i) any perils insurable through the South African Special Risks Insurance Association (SASRIA), such as riot, strike or public disorder or any act or activity which is calculated or directed to bring about such perils, but excluding any such perils as strike, public disorder, act or activity which is committed, caused or instigated by the Contractor, his employees and/or any subcontractors;
- (ii) war hostilities including mutiny or military uprising or usurped power, insurrection, rebellion or revolution/or proclamation of martial law (whether war be declared or not);
- (iii) any event which, after the closing date of tenders, is defined as a risk in terms of insurance offered by SASRIA;
- (iv) any event for which a fund has been established in terms of the War Damage Insurance and Compensation Act, No 85 of 1976 as amended;
- (v) a cause due solely to use or occupation by PRASA of any portion of the WORKS;
- (vi) a cause due solely to the design of the WORKS when the Contractor did not provide the design.

18.4 The Contractor shall be responsible for damage caused by him during the period of defects liability and maintenance in terms of clause 27 hereof.

19. SURVEY BEACONS AND PEGS

19.1 The Contractor shall not on any account move or damage any beacon, bench mark, reference mark, signal or trigonometrical station in the execution of the WORKS without the written approval of the Technical Officer.

Should the Contractor be responsible for any such occurrence, he shall report the circumstances to the Technical Officer who will arrange with the Director-General of Surveys for replacement of the beacon or mark at the cost of the Contractor.

19.2 The Contractor shall not move or damage any cadastral or mining beacon without the written approval of the Technical Officer and before it has been referenced by a registered land surveyor. Any old boundary beacon, which becomes an internal beacon on creation of new boundaries, shall not be moved without the written approval of the Technical Officer.

Should the Contractor move or damage any cadastral or mining beacon without authority, he shall be responsible for having it replaced, at his cost, by a land surveyor.

19.3 The Contractor shall preserve all pegs and bench marks. Such survey points shall not be removed without the written approval of the Technical Officer. Should any peg or benchmark be removed without authority, the Technical Officer will arrange for its replacement and the cost will be recovered from the Contractor. No claim will be considered for delay in replacing any such peg or bench mark. Each peg replaced shall be checked by the Contractor.

19.4 Where a new boundary has been established, beacons on the fence line shall not be disturbed, and fence posts or anchors may not be placed or excavations made within 0,6 m of any beacon without the prior written approval of the Technical Officer.

20. TAKING OVER PORTIONS OF THE WORKS

20.1 Before completion of the whole contract, PRASA may take over any completed portion of the WORKS. The terms and conditions under which such completed portion will be taken over shall be as specified in the Contract and where no such terms and conditions are specified, the Project Manager will, after consultation with the Contractor, advise him in writing of the terms and conditions of such take-over. This will not relieve the Contractor of his obligation to complete the WORKS by the stipulated date or such extended date of completion as may have been agreed upon in terms of clauses 17.1 to 17.7 and 28 hereof.

20.2 If PRASA's interests are adversely affected by the failure of the Contractor to adhere to the approved programme of work, PRASA reserves the right to take over, occupy or use any uncompleted portion of the WORKS. The Contractor will be advised in writing by the Project Manager of the terms and conditions of such take-over, occupation or use, but this will not relieve the Contractor of his obligation to complete the WORKS by the stipulated date or such extended date of completion as may have been determined in terms of clauses 17.1 to 17.7 and 28 hereof.

21. COMPLETION OF THE WORKS

21.1 The whole of the WORKS, including all alterations, extras, additions and omissions, shall be completed and delivered to PRASA by the stipulated date or such extended date of

completion as may have been determined in terms of clauses 17.1 to 17.7 and/or clause 28 hereof.

- 21.2 When the WORKS or portions thereof have been completed to the satisfaction of the Technical Officer and left in a clean, neat and tidy condition, the Technical Officer will give the Contractor a CERTIFICATE OF COMPLETION confirming that the WORKS or portions thereof have been completed and stating the date on which the defects liability and maintenance period referred to in clauses 27.5 and 27.6 hereof is to commence. Separate CERTIFICATES OF COMPLETION will be given for completed portions of the WORKS in cases where completion of such portions is specified in the Contract as being required before the completion of the entire WORKS, or for completed portions of the WORKS taken over by PRASA in terms of clause 20.1 hereof.

Until the Technical Officer, issues a CERTIFICATE OF COMPLETION, the WORKS or specified portions thereof shall not be deemed to have been completed.

- 21.3 On receipt of a CERTIFICATE OF COMPLETION for the entire WORKS or the finally completed portion thereof the Contractor shall, unless otherwise ordered by the Technical Officer, remove from the site all construction plant, material and temporary works not required for making good of defects in the WORKS or portions thereof covered by such CERTIFICATE, other than material which is the property of PRASA.
- 21.4 After expiry of the defects liability and maintenance period(s), and when all making good under clauses 27.5 and 27.6 hereof has been completed, the Contractor shall remove all the remaining construction plant and material from the site, other than material which is the property of PRASA, and leave the site in a clean, neat and tidy condition.

22. TEMPORARY LEVEL CROSSINGS

- 22.1 The Technical Officer may, on request of the Contractor, and if necessary for the purpose of execution of the WORKS, permit the construction of a temporary level crossing over a railway a line at a position approved by the Technical Officer and at the Contractor's cost. The period for which the temporary level crossing is permitted will be at the discretion of the Technical Officer.

- 22.2 PRASA will, at its own cost, provide protection and supervise the construction of the road over the track(s) and for a distance of 3 metres beyond the outermost rails, as well as the erection of all road signs and height gauges.

The Contractor shall exercise extreme caution in carrying out this work, especially in respect of damage to tracks, services, overhead power and communications routes and contact with "live" overhead electrical equipment.

All PRASA electrical, telecommunications and signal services deviations or alterations to accommodate the level crossing will be done by PRASA at its own cost. All other work required by the Technical Officer to establish the temporary level crossing, including protection, deviation or support of other services and drainage, shall be carried out by the Contractor at his own cost.

- 22.3 The Contractor shall take all necessary steps including the provision of gates, locks and, where necessary, watchmen to restrict the use of the temporary level crossing to himself and his employees, his subcontractors and their employees, the staff of PRASA and to such other persons as the Technical Officer may permit and of whose identity the Contractor will be advised. If so ordered by the Technical Officer, the Contractor shall provide persons to control road traffic using the temporary level crossing. Such persons shall stop all road traffic when any approaching train is within seven hundred and fifty metres of the temporary level crossing, and shall not allow road traffic to proceed over it until the lines are clear.

- 22.4 The Contractor shall maintain the temporary level crossing in good condition for the period it is in use. Maintenance of the portion of the temporary level crossing over the tracks and three metres beyond the outermost rail shall be done under the supervision and protection of PRASA, and at the cost of the Contractor.

- 22.5 When the temporary level crossing is no longer required by the Contractor, or permitted by PRASA, the Contractor shall remove it and restore the site to its original condition. Work over the tracks and up to three metres beyond the outermost tracks will be supervised by PRASA.

Such supervision and restoration of PRASA electrical, telecommunication and signalling services to their original position will be undertaken by PRASA at its own cost. The Contractor at his own cost shall restore other services.

23. BLASTING AND USE OF EXPLOSIVES

- 23.1 No blasting shall be carried out except with the prior written permission of the Technical Officer and under such conditions as he may impose.
- 23.2 The Contractor shall arrange for the supply, transport storage and use of explosives.
- 23.3 The Contractor shall have labour, tools and plant, to the satisfaction of the Technical Officer, available on the site to clear immediately any stones or debris deposited on the track or formation by blasting, and to repair any damage to the track or formation immediately after blasting. Repairs to the track shall be carried out only under the supervision of a duly authorised representative of PRASA.
- 23.4 The Contractor shall notify the Technical Officer of his intention to blast at least 14 days before the commencement of any blasting operations.
- 23.5 Before any blasting is undertaken, the Contractor and the Technical Officer shall jointly examine and measure up any buildings, houses or structures in the vicinity of the proposed blasting to establish the extent of any existing cracking or damage to such structures, etc. The Contractor, shall, subject to the provisions stipulated in the Insurance Policy in terms of clause 39 hereof, make good any deterioration of such buildings, houses, or structures, which, in the opinion of the Technical Officer, was directly caused by the blasting.
- 23.6 When blasting within 500m of a railway line, the Contractor shall observe the requirements stipulated in PRASA's current specification E7/1 for Works On, Over, Under or Adjacent to Railway Lines and near High Voltage Equipment.
- 23.7 After completion of the blasting the Contractor shall obtain a written clearance from each landowner in the vicinity of the blasting operations to the effect that all claims for compensation in respect of damage caused by the blasting operations to their respective properties, have been settled.

24. PROTECTION OF PERSONS AND PROPERTY

24.1 The Contractor shall provide and maintain all lights, guards, barriers, fencing and watchmen when and where necessary or as required by the Technical Officer or by any statutory authority, for the protection of the WORKS and for the safety and convenience of the public.

Red, yellow, green or blue lights, and red, yellow, green or white flags shall not be used by the Contractor in such a position that they can be mistaken for railway signals. The Contractor shall obtain the permission of the Port Captain before installing any light within the precincts of a port.

24.2 The Contractor shall take all the requisite measures and precautions during the course of the WORKS to –

- (i) protect the public and property of the public,
- (ii) protect the property and workmen of both PRASA and the Contractor,
- (iii) avoid damage to and prevent trespass on adjoining properties, and
- (iv) ensure compliance with any instruction issued by the Technical Officer or other authorised person, and with any stipulation embodied in the contract documents which affects the safety of any person or thing.

24.3 PRASA will provide, at its own cost, protection for the safe working of trains during such operations as the Technical Officer may consider necessary. Protection by PRASA for any purpose whatsoever, does not absolve the Contractor of his responsibilities in terms of the Contract.

24.4 The Contractor shall take all precautions and appoint guards, watchmen and compound managers for prevention of disorder among and misconduct by the persons employed on the WORKS and by any other persons, whether employees or not, on the site of the WORKS and for the preservation of the peace and protection of persons and property in the neighbourhood of the WORKS. Any relocation of camps because of disorder shall be at the Contractor's expense.

24.5 All operations necessary for the execution of the WORKS, including the provision of any temporary works and camping sites, shall be carried out so as not to cause veld fires, ground and environmental pollution, soil erosion or restriction of or interference with streams, furrows, drains and water supplies.

If the original surface of the ground is disturbed in connection with the WORKS, it shall be made good by the Contractor to the satisfaction of the land owner, occupier or responsible authority. The Contractor shall take all reasonable steps to minimise noise and disturbance when carrying out the WORKS, including work permitted outside normal working hours.

- 24.6 Dumping of waste or excess materials by the Contractor shall, in urban areas, be done under the direction and control of, and at sites made available by the local authority. Dumping outside local authority boundaries shall be done only with the express permission and under the direction and control of the Technical Officer. The Contractor shall comply with environmental protection measures and specifications stipulated by the Technical Officer and/or local and environmental authorities.

25. USE OF EXISTING ROADS

- 25.1 The Contractor shall take every reasonable precaution to prevent damage to any roads or bridges used to obtain access to the site, and shall select routes, use vehicles, and restrict loads so that any extraordinary traffic as may arise from the moving of plant or material to or from the site shall be limited as far as is reasonably possible.
- 25.2 The Contractor shall not occupy or interfere in any way with the free use of any public or private road, right-of-way, path or street unless the Technical Officer has obtained the approval of the road authority concerned.

26. INTERFERENCE WITH PRASA'S ASSETS AND WORK ON OPEN LINES

- 26.1 The Contractor shall not interfere in any manner whatsoever with an open line, nor shall he carry out any work or perform any act which affects the security, use or safety of an open line except with the authority of the Technical Officer and in the presence of a duly authorised representative of PRASA.
- 26.2 The Contractor shall not carry out any work or operate any plant, or place any material whatsoever nearer than three metres from the centre line of any open line except with the written permission of the Technical Officer and subject to such conditions as he may impose.

26.3 Care must be taken not to interfere with or damage any services such as overhead wire routes, cables or pipes, except as provided for in clauses 5.7 and 5.8 hereof. The Contractor will be held responsible for any damage to or interruption of such services arising from any act or omission on his part or of any of his employees, or persons engaged by him on the WORKS. The cost of repairing, replacing or restoring the services, as well as all other costs arising from any damage to services, shall be borne by, and will be recovered from the Contractor.

26.4 Authority granted by the Technical Officer and the presence of an authorised representative of PRASA in terms hereof, shall not relieve the Contractor of his duty to comply with PRASA's current specification E7/1 for Works On, Over, Under or Adjacent to Railway Lines and near High Voltage Equipment.

27. DEFECTS LIABILITY AND MAINTENANCE

27.1 When, in the opinion of the Technical Officer, any part of the work done or any items of material used or equipment installed or intended for use or installation is not in accordance with the requirements of the Contract, whether or not payment for such work, equipment or material has been made, he may order the Contractor in writing to remove any such objectionable part, item or component thereof, to replace it with an acceptable part, item or component and to rectify or reconstruct the WORKS without cost to PRASA.

27.2 If the Contractor fails to comply with such an order within 10 days of the date thereof, the Technical Officer may cause the rejected parts or items to be removed, the defective work to be demolished and replaced by proper work, and the cost thereof to be recovered from the Contractor.

27.3 If requested in writing by the Technical Officer, the Contractor shall search for the cause of any defect, imperfection or fault under the direction of the Technical Officer. When such defect, imperfection or fault is one for which the Contractor is not liable, the actual direct cost of the work carried out by the Contractor in searching as aforesaid and making good thereof will be borne by PRASA.

27.4 PRASA will not accept the WORKS as complete until all defects of every kind have been made good to the satisfaction of the Technical Officer.

27.5 Within a reasonable time after receipt of written instructions from the Technical Officer, the Contractor shall make good to the satisfaction of the Technical Officer all defective material and workmanship which are not in accordance with the Contract and which may appear within a period of 6 months, or such other period as stipulated in the Project Specification, after the date stated in the CERTIFICATE OF COMPLETION, and shall repair all damage caused thereby.

27.6 Where it is expressly stipulated, in respect of any particular work included in the Contract that certain obligations are to continue beyond the period of six months and after the issue of the CERTIFICATE OF COMPLETION, the extended period shall apply in respect of such work.

Where such continuing obligations are to be undertaken by a subcontractor alone and not jointly with the Contractor, PRASA shall have the right to enforce compliance with such obligations, and where any cession of the Contractor's rights against such subcontractor may be required for this purpose, such rights shall be deemed to have been duly ceded to PRASA by the Contractor.

27.7 Should the Contractor fail to comply with the provisions of clauses 27.5 and 27.6 hereof, PRASA may cause the required work to be carried out at the expense of the Contractor and may recover the cost thereof from the Contractor.

Nothing contained in this clause shall be construed as absolving the Contractor from fulfilling the general obligations imposed on him in terms of clause 3 hereof, or any particular obligations stipulated elsewhere in the Contract.

28. DELAYS ATTRIBUTABLE TO PRASA OR THE TECHNICAL OFFICER

28.1 If the Contractor suffers delay and/or incurs extra expense as a result of: -

- (i) failure by PRASA to make available the site or part of the site or any right of access thereto which may have been agreed upon;
- (ii) delay on the part of PRASA in supplying such material as is to be provided by it;
- (iii) delay on the part of PRASA or the Technical Officer in giving or supplying orders or drawings or in complying with any of their respective duties and obligations under the

Contract, with which compliance is necessary to enable the WORKS to proceed in accordance with any approved programme;

- (iv) the necessity for PRASA to correct or resolve any inaccuracy, discrepancy or inconsistency in drawings or other documents forming part of the Contract;

he shall, within 2 days of the commencement of such circumstances, notify the Technical Officer in writing of the delay, the particulars and the consequences thereof.

- 28.2 The Contractor may submit a claim for additional time and compensation in respect of the direct losses and additional expenses caused by the delay, provided that such claim will be considered only if the full claim details are submitted to the Project Manager within 28 days after the delay has ended. The particulars of the delay and the consequences thereof shall be recorded in the site diary, which shall be deemed to be a comprehensive record of any and all circumstances relating to the claim.

The Contractor shall provide the Project Manager with such further information as he may require to investigate the claim and determine the amount of additional time and/or compensation. The Contractor will be advised in writing by the Project Manager what additional time, if any, will be allowed for delay, and what sum, if any, will be paid to the Contractor to compensate him for any direct loss and/or expense incurred by him as a consequence of the delay.

29. SECURITY AND RETENTION MONEY

- 29.1 Security in the amount equal to either ten per cent or five per cent of the contract price, as elected by the Contractor, shall be provided by the Contractor for the due and faithful performance by him of all the duties and obligations resting upon and assumed by him in terms of the Contract. Such security shall be in the form of –
- (i) Government or approved Municipal stocks in negotiable form, or
 - (ii) a deed of suretyship furnished by an approved bank, insurance or guarantee corporation in such form as may be prescribed by PRASA, provided however that the Project Manager may, upon written application by the Contractor, return to the Contractor the whole or part of such security held by PRASA when the retention money, more fully described in clauses 29.2 and 29.3 hereof, has reached an amount which the Project Manager in his sole discretion considers sufficient for the protection

of PRASA. PRASA is entitled to hold all or portion of the security until the completion of the Contract and the expiry of the defects liability and maintenance period.

29.2 Either five or ten per cent of the value of the work completed, as reflected by the nett monthly amounts certified for payment, will be retained by PRASA for the due and proper fulfilment of the Contract, until such retention money is sufficient, in the opinion of the Project Manager, for the protection of PRASA. PRASA is entitled to hold all or portion of the retention money until the completion of the Contract and the expiry of the maintenance period.

29.3 Retention money shall be 5 percent when the security referred to in clause 29.1 hereof is 10 percent and 10 percent when the said security is 5 percent.

30. RATES AND PRICES FOR INCREASES OR DECREASES IN QUANTITIES OR VARIATIONS

30.1 Where the final measured quantity of any scheduled item differs from the estimated quantity by 20 percent or less, the rate quoted in the Bill shall apply to the whole of the final measured quantity.

30.2 Where the final measured quantity of any scheduled item differs from the estimated quantity by more than 20 percent, either the Project Manager or the Contractor may request an adjustment of the scheduled rate for such item.

Where the quantity is increased, the adjustment shall be in respect only of that portion of the final measured quantity, which exceeds the original quantity plus 20 percent. Such rate adjustment shall be agreed between the Project Manager and the Contractor.

30.3 When, as a consequence of an order of the Project Manager or the Technical Officer given in terms of clauses 5.5 and/or 14.11 hereof, the WORKS or any part thereof which is covered by a scheduled item or items, is to be carried out in adverse subsurface conditions as provided in clause 5.3 hereof or under conditions which are different from those specified in the Contract, and as a consequence of such adverse or different conditions the respective rate(s) and/or price(s) are caused to be insufficient and/or inapplicable, sufficient and/or new rates and prices shall be determined in terms of clause 30.5 hereof.

30.4 When alterations, extras or additions ordered in terms of clauses 5.5 and/or 14.11 hereof, are similar in character and carried out under conditions similar to work which has been specified in the Contract and for which the Contractor has tendered rates in the items scheduled in the Bill, such rates shall apply to the alterations, extras or additions, subject to the provisions of clause 30.2 hereof.

30.5 When alterations, extras or additions are not of a character similar to work for which rates and prices were tendered, or are not executed under conditions similar to those specified in the Contract, the alterations, extras or additions shall be treated as new payment items for which rates and prices have to be determined by negotiation between the Contractor and the Project Manager.

In the determination of such rates and prices, the rates quoted in the Bill shall form the basis, as far as may be reasonable, of such determination, failing which fair rates and/or prices shall be determined and agreed between the Project Manager and the Contractor.

30.6 When called upon to do so by the Project Manager for the purpose of the determination of adjusted and/or new rates and prices in terms of clauses 30.2, 30.3 and 30.5 hereof, the Contractor shall submit to the Project Manager full particulars of his tender assumptions and of the composite tender make-up of the appropriate rates and prices in the Bill so as to provide a basis for such determination.

30.7 Where the Project Manager and the Contractor cannot reach a negotiated agreement, the Project Manager will determine new rates and/or prices which he considers to be fair and reasonable, and shall issue a provisional variation order on the basis of such new rates and/or prices.

30.8 The determination of new and/or adjusted rates and prices, whether or not by way of a negotiated agreement between the Project Manager and the Contractor in terms of clauses 30.2, 30.3 and/or 30.5, or on a provisional basis by the Project Manager in terms of clause 30.7 hereof, shall all be provisional and subject to the approval of the Executive Officer.

The Executive Officer shall have the power, subject to the provisions of clause 40, to vary and/or amend any or all such new and/or adjusted and varied rates and prices and to replace them with such rates and/or prices as he may deem reasonable and/or appropriate in the circumstances.

30.9 The incorporation into the Contract of all new or revised rates/prices shall be effected by way of a written variation order issued by the Project Manager.

31. NOMINATED CONTRACT WORKS

31.1 Any work, for which an "estimated cost" is included in the Bill, may be undertaken by a contractor appointed by PRASA. Such contractor shall hereinafter be referred to as a Nominated Contractor. The "estimated cost" will represent an estimated cost of the nominated contract work. The amount of the estimated cost shall not be included in the contract amount. Any nominated contractor will be employed in consultation with the Contractor and paid by PRASA. The Contractor, the Nominated Contractor and PRASA shall be the parties to the nominated contract.

31.2 The Contractor shall supervise, attend upon and work in conjunction with the Nominated Contractor and shall provide such access, services and facilities to him as he may require for the proper performance of the part of the WORKS included in the nominated contract.

31.3 The supervision of and attendance upon the Nominated Contractor by the Contractor, shall include the following duties and obligations in respect of the WORKS performed by the Nominated Contractor, all as provided for in the General Conditions of Contract for Works undertaken by Nominated Contract, SPK5M (N), a copy of which is available for inspection by the Contractor at the offices of the Project Manager.

- (i) The supervision and control of the Nominated Contractor's conformance to specification and quality during the execution of the nominated contract works and during the defects liability and maintenance period after completion thereof.
- (ii) The taking over and incorporation of the nominated contract works into the WORKS and providing custody and protection thereof as part and parcel of the WORKS for the duration of the Contract and defects liability and maintenance periods.
- (iii) On satisfactory completion thereof, to issue a CERTIFICATE OF COMPLETION and to advise the Technical Officer in respect of payments to be made by PRASA in terms of the nominated contract provisions.

31.4 The Contractor will be paid for such supervision and attendance upon the Nominated Contractor at the percentage fee tendered pro rata to the estimated cost in the Bill or to the contract price of the nominated contract, whichever is the highest.

32. NOMINATED SUPPLIERS AND PRIME COST SUMS

- 32.1 Any material for which a prime cost sum is included in the Bill and which is to be incorporated or installed in the WORKS by the Contractor, shall be supplied by the person or firm nominated in writing by PRASA. Such prime cost sum (hereinafter referred to as a "P.C. sum") is the net sum to be paid to the supplier.

Such supplier hereinafter referred to as a "Nominated Supplier" shall be appointed and paid either by the Contractor or PRASA, as agreed between the Project Manager and the Contractor. PRASA may, alternatively, elect to supply such material itself.

- 32.2 At the settlement of accounts, any amount paid or payable by the Contractor to a Nominated Supplier will be set against the appropriate P.C. sum and the balance, after allowing pro rata for the Contractor's attendance fee and profit, as shown in the Bill, will be added to or deducted from the contract amount as the case may be. Where, however, the Nominated Supplier is appointed and paid directly by PRASA, or the material has been supplied by PRASA in terms of clause 32.1 hereof, the amount of the P.C. sum will be deducted in full from the contract amount. If the Bill provides for the Contractor's attendance fee and profit on such P.C. sum, such provisions will remain unaltered.

- 32.3 The provisions of clauses 31.2 and 31.3 hereof relating to a Nominated Contractor and work executed by him shall apply mutatis mutandis to and in respect of a Nominated Supplier and material supplied by him.

33. PROVISIONAL WORK

- 33.1 Any item marked "provisional", the quantity of which may be nil or either more or less than that stated in the Bill when compared with the actual amount of work/material necessary and executed/supplied, shall be measured by the Technical Officer from time to time as the work proceeds, and in the presence of the Contractor or the Contractor's agent. The quantity of such work executed/material supplied, shall be paid for at the rates quoted in the Bill, and shall not be subject to the provisions of clause 30.2 hereof.

- 33.2 Where, in the case of a provisional item, the nature or amount of any variation or increase or decrease of the quantities stated in the Bill is such that it results in a change in method, process of construction or source of supply relative to the nature or amount of the whole

or part of the work stated in the Contract, and which renders the rate or price for such item unreasonable or inapplicable, either the Project Manager or the Contractor shall be entitled, in compliance with clause 33.3, to require that a new rate or price be fixed which in the circumstances is fair and reasonable.

33.3 No change in terms of this clause shall be made to the Contract Price or to any rate or price unless, as soon as is practicable and, in the case of extra or additional work, before the commencement of such work, notice shall have been given in writing –

- (i) by the Contractor to the Project Manager of his intention to claim a new or varied rate or price in terms of clause 33.2 or
- (ii) by the Project Manager to the Contractor of his intention to vary a rate or price in terms of clause 33.2.

The provisions of clauses 30.4 to 30.9 inclusive shall apply mutatis mutandis to the determination of any new or varied rate or price in terms hereof.

34. RECOVERY OF MONEY FROM THE CONTRACTOR

All money, whether a liquidated amount or not, that may become payable to PRASA by the Contractor in terms of any clause or condition incorporated in the Contract may be recovered from the Contractor by deduction or recovery:

- (i) from money, including retention money, due to or to become due to the Contractor under this or any other contract he may have with PRASA, or
- (ii) from any money realised as a result of the sale of any stocks provided in terms of clause 29.1 hereof, or from the guarantor in the case of a deed of suretyship; or
- (iii) in any manner provided for in the Contract or decided upon by PRASA, provided that nothing herein contained shall affect the operation of setoff as between PRASA and the Contractor.

35. INCREASE OR DECREASE IN COSTS

35.1 Unless otherwise provided for in the Project Specification or unless a fixed contract price was tendered in the tender letter and accepted by PRASA, the amount payable under the Contract will be determined by the application of the contract price adjustment factor(s) derived from the formula (e) described in the Project Specification to allow for any

increases or decreases, which may occur after the closing date of the submission of tenders and before the stipulated date or such extended date of completion as may have been determined in terms of clauses 17.1 to 17.7 and/or clause 28 hereof.

- 35.2 If a new rate or price is negotiated during the period of the Contract, the calendar month in which the new rates were applicable shall be clearly stipulated in the variation order. The amounts arising from the application of the new rate to the affected quantity will be subject to the contract price adjustment factor based on the indexes ruling for the calendar month so stipulated.
- 35.3 The contract price adjustment factor to be applied after the stipulated completion date or such extended date of completion as may have been determined in terms of clauses 17.1 to 17.7 and/or 28 hereof, shall be half that applicable at the stipulated date or extended date of completion, except in respect of work completed prior to such date or extended date, and certified in terms of clause 36.3 hereof for payment thereafter, in which event the contract price adjustment factors applicable at the date of completion will be applied.
- 35.4 Any additions to or deductions from the amount payable, brought about by the application of the contract price adjustment factor, shall be deemed to have made full allowance for all increases or decreases in cost from any cause whatsoever, including all overhead costs and any increases and decreases therein, and profit.

36. PAYMENT CERTIFICATES AND CLAIMS PROCEDURE

- 36.1 On or about the fifteenth day of each month, the Technical Officer shall make either a progress measurement or an estimate of the work done, including any duly authorised alteration, extra, addition or omission.
- 36.2 Thereafter the Project Manager will issue a certificate authorising payment of such sum of money as he may consider represents the value of the work referred to in clause 36.1 hereof.
- 36.3 The Contractor shall be entitled to receive payment of the amount authorised in the said certificate, subject to the deduction of retention money in terms of clauses 29.2 and 29.3 hereof, within 30 days after the day of progress measurement or estimate by the Technical Officer or receipt of a VAT-invoice from the Contractor, whichever is the later.

Such payment shall be regarded as an open payment and both certificate and payment shall be subject to revision and adjustment by the Project Manager, if at any time he is of the opinion that the certificate does not represent accurately the proportion or value of work completed, having regard to the remaining portion of the WORKS still to be executed by the Contractor.

- 36.4 In the event of failure by PRASA to make payment within the time stipulated in clause 36.3, he shall pay to the Contractor interest at prime overdraft rate as certified by the Contractor's bankers upon all overdue payments of such certified amounts, from the date on which such payments should have been made.
- 36.5 The Project Manager's certificate authorising payment in respect of any work referred to in clause 36.1 hereof shall not imply acceptance of the work or of the material used, and shall not prejudice the right of the Technical Officer or Project Manager to reject work or material not in accordance with the Contract, nor the right of PRASA to recover any amounts paid to the Contractor in respect of such rejected work or material.
- 36.6 Notwithstanding any outstanding undetermined disputes, arbitrations and claims that may still exist, the Project Manager shall, within 28 days after the expiry of the defects liability and maintenance period/s or completion of the rectification of defects under clauses 27.5 and 27.6 hereof, whichever is the later, submit a Final Certificate for approval by the Executive Officer, together with a statement of Particulars of Outstanding Matters such as undetermined claims, disputes and arbitrations.
- 36.7 The Project Manager shall, within 14 days after approval by the Executive Officer, issue the Final Certificate together with the Particulars of Outstanding Matters to the Contractor, authorising payment of all money due for completed work and payment of all retention money and return of all surety as is then held by PRASA, after deducting any money due by the Contractor to PRASA.
- 36.8 After receipt of the Final Certificate and the Particulars of Outstanding Matters, the Contractor, shall, by countersigning both documents, certify his acceptance and confirmation of the correctness of the amounts shown and particulars given and that no further claims or unresolved matters are outstanding in respect of the Contract.

- 36.9 After receipt of the Contractor's certification in terms of clause 36.8 hereof no new claims or matters will be permitted or considered by the Project Manager or PRASA.
- 36.10 Within 30 days after the receipt of the Contractor's certification, PRASA will pay to the Contractor the balance of all money due under the Contract in terms of the Final Certificate after deductions in terms of clause 36.7 have been effected.
- 36.11 Where the Contractor fails to certify the Final Certificate and Particulars of Outstanding Matters, and has not disputed the correctness thereof within 3 months after their receipt by him, the Contractor shall be deemed to be in agreement with such certificate and particulars, and PRASA will effect payment in terms thereof. Any claim arising from the Final Certificate or in connection with the Contract, whether contractual or delictual, which has not been lodged with the Project Manager previously or within a period of 3 months after receipt by the Contractor of the Final Certificate, will not be considered or admitted by PRASA, and the Contractor accepts and acknowledges that, by his failure to lodge a fully detailed and motivated claim within the above stipulated period of 3 months, he waives such claim and relieves PRASA of responsibility for, or any obligation to consider such claim.
- 36.12 Neither the issue of the Final Certificate nor any payment made thereunder shall release the Contractor from any liability, whether arising under the Contract or in common law, to indemnify PRASA against, and to reimburse it in respect of, any claim made or to be made against it by a third party for damage or loss sustained by such third party in consequence of any wrongful act or omission of the Contractor, his subcontractors or his or their employees or representatives during execution of the WORKS.
- 36.13 The following procedure shall apply to claims for additional payments in terms of the provisions of the Contract;
- 36.13.1 If the Contractor intends to claim any additional payment in terms of any clause in the Contract other than clauses 5, 17.1 to 17.7 and clause 28 hereof, he shall submit his claim, or give notice in writing of his intention to claim, to the Project Manager within 14 days of the commencement of the events giving rise to the claim.

The notice of intention to claim shall include the grounds upon which the claim will be based. From the commencement of these events, the Contractor shall keep all such contemporary records as are necessary to support any claim he may submit.

36.13.2 Without necessarily admitting liability, the Project Manager may instruct the Contractor to keep such further contemporary records of events as are material to a possible claim.

36.13.3 If the Contractor fails to comply with the provisions of clauses 36.13.1 and 36.13.2 hereof in respect of any claim or intended claim, such claim will not be considered.

36.13.4 If a notice of intention to claim has been submitted in terms of clause 36.13.1, the amount of the claim and detailed documentation in support thereof shall be submitted by the Contractor to the Project Manager within 28 days after the events giving rise to the claim have ceased. If it is not reasonably possible to assess the amount of the claim within this period, the Project Manager may agree in writing to such extended period as may be necessary.

36.14 Save for the provisions for interest payments in clause 36.4 hereof and, if provided in the Bill, for continuing finance charges, no liability will be accepted by PRASA in respect of interest or financing costs in respect of any unliquidated claims and unresolved matters arising and accumulating during the contract period or such extended period as determined in terms of clauses 17 or 28 hereof.

36.15 Payment of the amounts due by PRASA to the Contractor, save where expressly otherwise agreed, will be made by cheque and sent by registered post to the Contractor's postal address or any other address requested in writing by the Contractor. The Contractor authorises the S.A. Post Office Limited to act as his delivery agent, and the risk that payment may not be received transfers to the Contractor upon the posting thereof. The date of postage of the cheque shall be deemed to be the date of payment for the purposes of clause 36.4 hereof.

37. BREACHES AND REMEDIES

37.1 Should the Contractor commit any breach or default of any kind mentioned in clause 37.2 hereof, the Executive Officer may exercise, subject to the provisions of clause 40 hereof, for and on behalf of PRASA, immediately, in whole or in part and consecutively or

concurrently, all or any of the options, rights and powers set out in clause 37.3 hereof.

37.2 Breaches or defaults entitling the Executive Officer to act in terms of clause 37.3 hereof shall be the following: -

37.2.1 Insolvency of the Contractor or an act of insolvency comprising, inter alia, the following: -

- (i) liquidation or sequestration of the Contractor's estate (provisionally or finally); or
- (ii) the Contractor publishing a notice of surrender of his estate as insolvent; or
- (iii) the Contractor entering into a compromise with the general body of his creditors; or
- (iv) the Contractor having an execution levied on his goods.

37.2.2 Material breach of the Contract by the Contractor comprising, inter alia: -

- (i) the abandonment or repudiation of the Contract;
- (ii) suspension of progress of the WORKS without contractual cause;
- (iii) failure to remove materials from the site or to demolish and replace work, which materials or work has been condemned or rejected by the Technical Officer;
- (iv) failure, after he has been notified in terms of clause 14.7 hereof to achieve a rate of progress on the WORKS which will ensure completion by the stipulated date or such extended date of completion as may have been determined in terms of clauses 17.1 to 17.7 and 28 hereof;
- (v) assigning of the Contract without the consent in writing of the Executive Officer having first been obtained;
- (vi) subcontracting any part of the Contract without the Project Manager's approval;
- (vii) failing to provide the deed of suretyship in terms of clause 29 hereof;
- (viii) failing to satisfy any judgement or arbitrator's award entered against him within 7 days after such judgement or award is so entered or to satisfy any attachment order against property within 3 days of its issue;
- (ix) conviction of the Contractor or any of his employees in a court of law for any offence which adversely affects the interests of PRASA.

37.3 In the event of any breach or default mentioned in clause 37.2 hereof, the Executive Officer may exercise any of the following options, rights and powers: -

- (i) To cancel the Contract and to invoke PRASA's lien over the Contractor's site

establishment, temporary buildings, construction plant, equipment and materials, and any indemnities or safeguards in favour of PRASA in terms of the Contract.

- (ii) To take over full possession and control of the whole or any portion of the WORKS and the Contractor's construction plant, equipment, tools and material used thereon, and control of any or all of the Contractor's employees (with or without accepting any liability for arrear salaries or wages, or for any contracts of personal service) and to continue and complete the WORKS, by employment of such of the Contractor's employees and using such of his site establishment, temporary buildings, construction plant, equipment, tools and materials, as are necessary in the discretion of the Project Manager, all for the account of and at the cost and risk of the Contractor.
- (iii) To remove and dismiss any person employed by the Contractor and, for the account of and at the cost and risk of the Contractor, to engage or appoint any other person under such conditions and to pay him such salary or wage as the Project Manager may deem fit
- (iv) To obtain from any source whatsoever, at the cost of the Contractor, such construction plant, tools equipment and material as are necessary, in the opinion of the Project Manager, for the proper completion of the Contract.
- (v) To dismiss the Contractor from any further control of the execution of the Contract, and thereafter to take over full control of and to utilise the whole or any portion of the construction plant, equipment, tools and material belonging to the Contractor, and to employ any person other than the Contractor to complete the Contract, in each case for the account of and at the risk and cost of the Contractor, after or without offering such work for tender and without the interference or intervention in any way by the Contractor.
- (vi) After the said work has been completed by such other person and such other person has been paid therefore, the Project Manager shall issue the Final Certificate when so authorised by the Executive Officer. Should any money be shown to be due by the Contractor to PRASA, the Contractor and/or his guarantor shall forthwith pay such money to PRASA, failing which PRASA may recover the said amount from the Contractor.
- (vii) To reduce, in the case where the Contractor's defective materials, workmanship and/or performance is accepted by PRASA, any one or all of the rates and prices in the Contract by the amounts of PRASA's losses, or by the costs of rectifying such defective materials, workmanship and/or performance of the Contractor, or by the amounts that the Contract WORKS are reduced in value as a consequence of the

deficiencies.

- 37.4 All wages, salaries, costs, expenses and damages paid, incurred or sustained by PRASA for which the Contractor is liable in terms of the Contract, shall be paid by the Contractor on demand or shall be recovered as provided for in clause 34 hereof.
- 37.5 In any action taken or instituted by PRASA in terms of clauses 37.1 to 37.4 hereof, or any clause of the Contract read alone or in conjunction with these clauses, a certificate issued by the Project Manager shall be deemed to be proof of any amount due by the Contractor to PRASA or by PRASA to the Contractor.
- 37.6 No action taken or instituted by PRASA in terms of clauses 37.1 to 37.4 hereof or any clause of the Contract read alone or in conjunction with these clauses, shall prejudice or detract from PRASA 's right to recover penalties for late completion or damages for any other breach or default committed by the Contractor in respect of the Contract.

38. VOLUNTARY TERMINATION OF THE CONTRACT AND REMEDIES IN CONSEQUENCE THEREOF

- 38.1 The occurrence of the following circumstances shall, subject to the provisions of clause 40, entitle either of the parties to voluntarily terminate the Contract by mutual agreement or by giving the other party 30 days written notice of such termination: -
- 38.1.1 The outbreak of war or armed hostilities (whether war be declared or not) in any part of the world, or the imposition of economic sanctions between governments or any other action of a like kind and if any such event will materially affect the execution or cost of the WORKS;
- 38.1.2 The declaration of a state of emergency by the Government, riots, commotion, politically motivated sabotage, acts of terrorism or disorder, which are all beyond the control of either the Contractor or PRASA, and which will materially affect the execution of the works or the supply of labour or materials or materially interfere with access to the site or constitute a material risk to persons or property associated with the Contract;

38.1.3 The occurrence of unforeseeable adverse subsurface conditions as envisaged in clause 5.3 hereof and which materially affects the cost of the WORKS to the extent that the entire project or the Contract is rendered uneconomical for either one or both of the parties;

38.1.4 A change of circumstances beyond the control of the parties and external to the contract provisions, to the extent that the viability or cost of the project or the Contract is materially and adversely affected to such an extent that the continued performance of the Contract would materially prejudice any one or both of the parties and that it would be reasonable to allow the prejudiced party to withdraw from the Contract.

38.2 Upon such notice of termination: -

38.2.1 the parties shall continue with the execution of the Contract during the period of notification unless otherwise directed by the Project Manager;

38.2.2 all the provisions of the Contract, including this clause shall continue to apply for the purpose of: -

- (i) resolving any dispute, and
- (ii) ascertaining the amounts payable by either PRASA or the Contractor to the other;

38.2.3 the Project Manager will be entitled to take possession and occupation of the site, the WORKS and any materials which are the property of PRASA; and

38.2.4 the Contractor and his subcontractors and all their employees and agents shall, within 7 days after the date of termination stipulated in the notice or as agreed, remove all construction plant materials and other assets, belonging to them from the site.

38.3 If the Contract is terminated as aforesaid, the Contractor shall be paid by PRASA such amounts or items that have not already been covered by payments made to the Contractor, for all the work executed prior to the date of termination, at the rates and prices provided in the Contract, and in addition

38.3.1 the amounts payable in respect of any provisional items and PC sums, referred to in the Bill, in so far as the work or service comprised therein has been carried out or performed

by the Contractor, and a proper proportion of any such items which have been partially carried out or performed; plus

38.3.2 the cost of materials, plant or goods reasonably ordered for the WORKS, which have been delivered to the site and paid for by the Contractor, or of which the Contractor is legally liable to accept delivery, such materials, plant or goods becoming the property of PRASA upon such payments being made; plus

38.3.3 a sum, being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the WORKS in so far as such expenditure has not been covered by any other payments referred to in this clause.

38.4 In the event of termination of the Contract by PRASA in the circumstances described in clause 38.1.4 hereof, the Contractor shall be entitled to additional payment amounting to 12 percent of the total contract amount as tendered, after the total sum of the amounts determined in accordance with clauses 38.3, 38.3.1, 38.3.2 and 38.3.3 hereof has been deducted.

38.5 In the event of termination of the Contract by the Contractor in circumstances described in clause 38.1.4 hereof, the Contractor shall not be entitled to any payments in terms of clause 38.3.3 hereof, but he shall instead pay to PRASA an amount equal to 12 percent of the total contract amount as tendered after the total sum of the amounts determined in accordance with clauses 38.3, 38.3.1 and 38.3.2 hereof has been deducted.

38.6 PRASA shall, against any payments due under clause 38, be entitled to be credited with any outstanding balances due from the Contractor, for advances in respect of the Contractor's equipment, materials and construction plant and any other sums which, at the date of termination, were recoverable by PRASA from the Contractor under the terms of the Contract. Any sums payable under this clause shall be determined by the Executive Officer in conjunction with the Project Manager and the Contractor, and he shall notify the Contractor accordingly.

39. INDEMNITIES AND INSURANCE

39.1 The Contractor shall, and hereby does indemnify PRASA against -

- (i) liability for infringement of any patent, design, trade mark, name, or other protected right; and
- (ii) any legal costs or disbursements incurred in connection with any of the matters referred to in paragraph (i) hereof,

whenever the liability contemplated in paragraph (i) hereof is due to arise out of anything done, omitted or undertaken, or the use of any plant, process, machine or material, in terms of or for the purpose of the contract.

39.2 The Contractor hereby indemnifies and holds harmless PRASA against any loss, liability, damage, harm, which the PRASA may suffer and/or any claim which may be brought against PRASA whether it be a claim by the Contractor, the Contractor's members, employees, agents, or representatives, or by any third party, or the estate of such person or entity; arising from or connected directly or indirectly to:

39.2.1 the Contractor's performance, non-performance or mal-performance of any of the terms of this agreement (including without limitation the provision, performance, rendering or supply of the Services, and the breach of any warranty contained in this agreement, or the use or occupation of the Premises, and/or the Service Area, or the Contractor not having disclosed any fact or circumstance material to this agreement, or the Contractor not having the necessary authority or approvals to enter into this agreement); and/or

39.2.2 any act or omission of any or all of the Contractor's members, employees, agents, representatives, and/or suppliers;

39.2.3 any damage to, loss of, and/or destruction of property belonging to or in the possession of a commuter, harm, loss, theft, or destruction to property belonging to, in the possession of, and/or under the control of PRASA;

39.2.4 any harm, injury or death suffered or sustained by a commuter, where such harm arises from, is connected to or is caused by an act or omission of the Contractor's employees, agents, representatives, or by an act of any third party where such act occurs near or within the proximity of any employee, agent, representative of the Contractor and such employee, agent, representative could or should have prevented same from occurring.

39.3 Such indemnity shall extend also to all expenditure, disbursements, and all legal costs on an Attorney and Own-Client basis which may be incurred by PRASA as result of such loss, liability, damage or claim including without limitation the cost of opposing any action, motion, or prosecuting any appeal, and the cost of obtaining professional opinion relating to any aspect of same, as well as but not limited to any of the following:

39.3.1 any damage to the PRASA property, whether movable or immovable;

39.3.2 loss, harm, or destruction of property belonging to PRASA, whether movable or immovable;

39.2.3 liability in respect of any damage, loss, harm or destruction of property, whether moveable or immovable, belonging to commuters and/or third parties;

39.2.4 liability in respect of death, injury, unlawful/wrongful arrest, malicious prosecution, assault, defamation, unlawful search, illness or disease to commuters, PRASA employees and/or third parties.

39.4 Insurance Effected by PRASA

- a) Notwithstanding anything elsewhere contained in this Contract and without limiting the obligations, liabilities or responsibilities of the Contractor in any way whatsoever (including but not limited to any requirement for the provision by the Contractor of any other insurances) PRASA shall effect and maintain as appropriate in the joint names of PRASA, the Contractor and where relevant Sub-contractors the following insurances which are subject to the terms, limits, exceptions and conditions of the Policy.

CONTRACT WORKS Insurance - which will provide cover against accidental physical loss of or damage to the Works, Temporary Works and materials intended for incorporation in the Works.

PUBLIC LIABILITY Insurance - which will provide indemnity against legal liability in the event of accidental death of or injury to third party persons and/or loss of or damage to third party property arising directly from the execution of the contract and occurring during the period of insurance with a limit of indemnity in respect of all

claims arising from any one occurrence or series of occurrences consequent on or attributable to one source or original cause as specified in the Schedule hereto.

- b) PRASA shall pay the premium and stamp duty in connection with the insurance effected by PRASA
- c) The Contractor shall not include any premium charges for this insurance except to the extent which he may deem necessary in his own interests to effect supplementary insurance to the insurance effected by PRASA. PRASA reserves the right to call for full information regarding insurance costs included by the Contractor.
- d) The Contractor shall give all notices and observe all conditions and requirements of such insurances and shall communicate to PRASA's Insurance Brokers any facts or information known to him which may in any way affect the validity or enforceability of the policies.
- e) Any further clarification of the scope of cover provided by the Policies arranged by PRASA should be obtained from PRASA or their Insurance Brokers.

39.5 In the event of any occurrence which is likely to or could give rise to a claim under the insurances arranged by PRASA the Contractor shall:

- a) in addition to any statutory requirement or other requirements contained in the Contract, immediately notify PRASA's Insurance Brokers or the Insurers by telephone, telex, or telefax giving the circumstances, nature and an estimate of the loss or damage or liability.
- b) complete a Claims Advice Form available from the Insurance Brokers to whom the form must be returned without delay.
- c) negotiate the settlement of claims with the Insurers through PRASA's Insurance Brokers and shall when required to do so obtain PRASA's approval of such settlement.

PRASA and Insurers shall have the right to make all and any enquiries on the site of the Works or elsewhere as to the cause and results of any such occurrence and the Contractor shall co-operate in the carrying out of such enquiries.

- 39.6 The Contractor will be liable for the amount of the Deductible (First Amount Payable) in respect of any claim made by or against the Contractor or Sub-contractors under the insurances effected by PRASA

The Deductibles (First Amount Payable) for which the Contractors are responsible and which the Contractors are responsible and which are applicable in respect of each and every occurrence or series of occurrence attributable to one source or original cause giving rise to loss or damage or liability indemnifiable shall be as specified in the Schedule hereto.

Any amount which becomes payable to the Contractor or any of his Sub-contractors as a result of a claim under the Contract Works Insurance shall, if required by PRASA, be paid net of the Deductible to PRASA who shall pay the Contractor from the proceeds of such payment upon rectification, repair or reinstatement of the loss or damage but this provision shall not in any way affect the Contractor's obligations, liabilities or responsibilities in terms of the Contract.

39.7 Insurance Effected by the Contractor

The Contractor and Sub-contractor shall, where applicable, provide as a minimum the following:

- a) Insurance of Construction Plant and Equipment (including tools, offices and other temporary structures and contents) and other things (except those intended for incorporation into the Works) brought onto the site for a sum sufficient to provide for their replacement.
- b) Insurance in terms of the provisions of the Compensation for Occupational Injuries and Diseases Act, (Act 130 of 1993) as amended.
- c) Employer's Common Law Liability Insurance with a limit of indemnity of not less than the amount specified in the Schedule hereto.

- d) Motor Vehicle Liability Insurance comprising (as a minimum) "Balance of Third Party" Risks including Passenger Liability indemnity with a limit of indemnity of not less than the amount specified in the Schedule hereto.
 - e) Where the Contract involves manufacturing and/or fabrication of the Works or parts thereof at premises other than at the Contract Site PRASA shall be entitled to require the Contractor to satisfy PRASA that adequate Professional Indemnity Insurance in respect of liability arising from any act, omission or neglect in such design work has been arranged.
- 39.8 a) The insurances to be provided by the Contractor and his Sub-contractor shall be effected with Insurers and on terms approved by PRASA (which approval shall not be unreasonably withheld) and shall be maintained in force for the duration required (including any period of maintenance). The Contractor shall within fourteen (14) days of commencement of the contract produce to PRASA the relevant Policy of Policies of Insurance.
- b) If the Contractor fails to effect and keep in force the insurances referred to then PRASA may effect and keep in force any such insurances and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount paid by PRASA from any monies due or which may become due to the Contractor or recover same as a debt from the Contractor.

39.9 Sub-contractors

The Contractor shall:

- a) ensure that all potential and appointed Sub-contractors are aware of the whole contents of this clause, and
- b) enforce the compliance by Sub-contractors with this clause where applicable.

39.10 Riot Insurance

PRASA shall arrange cover for any damage caused as a result of riot only in respect of those works for which in its opinion, it is deemed necessary. This shall be indicated on the attached Insurance Schedule.

40. RESOLUTION OF DISPUTES

- 40.1 If a dispute of any kind arises between the Contractor and the Technical Officer, in connection with or arising out of the Contract or the execution of the WORKS, whether during the execution of the WORKS or after their completion, and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation, the matter in dispute shall, within 14 days of dispute having arisen, be referred to the Project Manager with a copy to the Executive Officer. The Project Manager shall decide the matter within 28 days of receipt of the reference and notify the Contractor and Technical Officer of his decision.
- 40.2 If a dispute arises between the Project Manager and the Contractor, including a dispute arising out of the Project Manager's decision in terms of clause 40.1 hereof, or if the Contractor is dissatisfied with any instruction, assessment, determination, valuation, variation or ruling given or made by the Executive Officer in terms of his powers under the Contract, the matter shall be referred in writing to the Executive Officer within 28 days of the decision of the Project Manager or of the dispute or dissatisfaction, as the case may be, having arisen.
- 40.3 The parties shall thereafter endeavour to settle the dispute by way of negotiation.

The procedure and forum for the negotiations shall be subject to agreement between the parties. The negotiations shall be without prejudice to either of the parties and neither shall be entitled to rely upon admissions or concessions made during such procedures in any ensuing arbitration and/or litigation proceedings.

Either of the parties may elect that the negotiation proceedings be facilitated by an independent Mediator. In such case, the provisions of Clause 40.7 shall apply mutatis mutandis to the appointment of the Mediator. Each party shall bear its own costs in respect of the mediation and pay half of the Mediator's agreed fees and expenses.

- 40.4 If the parties fail to reach a negotiated settlement, or negotiations break down on account of a deadlock, the Executive Officer shall decide the dispute on behalf of PRASA and shall advise his decision in writing to the Project Manager and the Contractor within 42 days after the day of receipt by him of the reference in terms of clause 40.2. The

Executive Officer's decision shall forthwith be given effect to by the Project Manager, the Technical Officer and the Contractor.

- 40.5 Unless the Contract has already been completed, repudiated or otherwise terminated, the Contractor shall, in every case proceed with the WORKS with all due diligence, unless and until the Executive Officer's decision has been revised, as hereinafter provided for, by an arbitral award.

The Executive Officer's decision shall be final and binding on the parties unless it is disputed by the Contractor in terms of clause 40.6 hereof.

- 40.6 Should the Contractor be dissatisfied with the decision of the Executive Officer in terms of clause 40.4, he may, within 28 days after the receipt thereof, declare the matter to be in dispute by written notification to the Executive Officer. Unless otherwise agreed, the matter shall be referred to an Arbitrator appointed in terms of clause 40.7 hereof.

- 40.7 The appointment of an arbitrator shall be made by agreement between the parties, after a written submission has been made by either party to the other of a shortlist containing the names of 3 suitably qualified persons.

If the parties fail to agree within 14 days of receipt of the submission, either party may apply for the nomination of a suitably qualified person by the Chairperson for the time being of the Association of Arbitrators of South Africa, or by the Vice Chairperson in the absence of the Chairperson.

- 40.8 The reference to the Arbitrator shall, unless otherwise agreed, be deemed to be a submission to the arbitration of a single arbitrator in terms of the Arbitration Act (Act No. 42 of 1965, as amended), or any legislation passed in substitution thereof. The arbitration shall, unless otherwise agreed, be conducted in accordance with the Rules for the Conduct of Arbitrations published by the Association of Arbitrators.

- 40.9 The Arbitrator shall have full power to open up, review and revise any decision, opinion, direction, certificate or valuation of the Technical Officer, the Project Manager or the Executive Officer in so far as it may in his opinion be necessary to do so for the proper determination of the dispute.

Neither party to the Contract shall be limited in the proceedings before the Arbitrator to the evidence or arguments submitted to the Technical Officer, the Project Manager or the Executive Officer, for the purposes of preceding proceedings. The award of the Arbitrator shall be final and binding on the parties.

40.10 Arbitration proceedings may be entered into after and at any time before the completion or alleged completion of the WORKS, provided always –

- (i) that the preceding dispute resolution procedures stipulated herein have been followed and fully exhausted,
- (ii) that no decision given by the Technical Officer, the Project Manager or the Executive Officer in accordance with the foregoing provisions shall disqualify him as a witness and from giving evidence before the Arbitrator on any matter whatsoever relevant to the dispute so referred to the Arbitrator.

40.11 Any amount which may become payable by the Contractor to PRASA in consequence of any decision by the Executive Officer or of an arbitrator's award, as the case may be, in accordance with the foregoing provisions of this clause, may be recovered in any manner described in clause 34 hereof or by instituting action in a court of competent jurisdiction.

40.12 The Arbitrator's fees and expenses shall be borne by the parties concerned in accordance with the terms of the Arbitrator's award. Should one party pay the Arbitrator's fees, this party will have the right to recover from the other party any amount of such fee for which that party is responsible in terms of the Arbitrator's award.

41. INSOLVENCY

Should the Contractor commit any act of insolvency or being a natural person be sequestrated or assign, surrender or attempt to assign or surrender his estate or being a partnership be dissolved, or be liquidated or placed under judicial management or be wound up (whether provisionally or finally), no payments due and payable from that date shall be made by PRASA to the Contractor direct, but only to the liquidator, trustee or judicial manager as the case may be of the estate.

42. CONFIDENTIALITY

42.1 The Contractor expressly undertakes to keep confidential and not to disclose to any person:

42.1.1 the details of this contract, the details of the negotiations leading to this contract, and the information handed over to such party during the course of negotiations, as well as the details of all the transactions or agreements contemplated in his contract; and

42.1.2 all information relating to the business or the operations and affairs of the parties (together “confidential information”); without the prior written consent of PRASA, which consent may be withheld.

42.2 The Contractor agrees to keep all information confidential and to disclose it only to those officers, directors, employees, consultants and professional advisors in its employ who:

42.2.1 have a need to know (and then only to the extent that each such person has a need to know);

42.2.2 are aware that the confidential information should be kept confidential;

42.2.3 are aware of the disclosing party’s undertaking in relation to such information in terms of this contract; and

42.2.4 have been directed by the disclosing party to keep the confidential information confidential.

42.3 The undertakings given by parties in relation to the maintenance and non-disclosure of confidential information in terms of this contract, do not extend to information that is required by the provisions of any law, statute or regulation or during any court proceedings and subject to the provisions of this contract, the party required to make the disclosure has taken all responsible steps to oppose or prevent the disclosure of and to limit, as far as reasonably possible, the extent of such disclosure and has consulted PRASA prior to making such disclosure.

43. DISCREPANCIES IN DOCUMENTS

- (i) In the event of any discrepancy or inconsistency between the project specification and any other document the project specification and or the special conditions of contract shall prevail.
- (ii) The General Conditions of Contract shall rule over all other documents excepting the project specification and or the special conditions of contract.
- (iii) Where any drawing is inconsistent with the description in the project specification the project specification shall rule in preference to the drawing.
- (iv) The requirements shown on particular drawings shall rule over those shown on standard or type drawings, and particular drawings shall rule over the requirements of standard specifications and SABS 1200 specifications.

Signed by the Contractor at _____
on this _____ day of _____ 20 _____ in the
presence of the undersigned witnesses.

CONTRACTOR

AS WITNESSES:

1. _____
2. _____

Signed _____ on _____ behalf _____ of _____ PRASA _____ at _____
_____ on this _____ day
of _____ 20 _____ in the presence of the undersigned
witnesses.

p.p. PRASA

AS WITNESSES: -

1. _____
2. _____

INSURANCE SCHEDULE TO E5 (PRASA) CONDITIONS OF CONTRACT

1. PRASA INSURANCE BROKERS:

Alexander Forbes & Omnirisk Solutions jointly

c/o Group Executive Manager: Legal and Compliance
Passenger Rail Agency of South Africa (PRASA)
Umjantshi House (Postal address:
30 Woolmarans Street, Private Bag X101,
BRAAMFONTEIN Braamfontein, 2017.)
Tel: (011) 773 1600
Fax: (011) 773 1622

2. INSURANCES ARRANGED BY PRASA

(Only applicable to Contracts which at award do not exceed R 120, 000, 000.00 in value and where the construction period does not exceed 24-months)

2.1 Contract Works Insurance:

In respect of loss or damage-

1.1.1. Limit of indemnity

- Contract works - full value limited up to R120,000,000.00 per contract.

1.1.2. Deductibles

- Contracts up to R2,500,000 R5,000.00
- Contracts between R2,500,001 and R5,000, 000.00 R10,000.00
- Contracts between R5,000, 001 and R20,000,000.00 R15,000.00
- Contracts between R20,000,001 and R50,000,000.00 R 20,000.00
- Contracts between R50,000,001 and R70,000,000.00 R30,000.00
- Contracts between R70,000,001 and R100,000,000.00 R50,000.00
- Contracts between R100,000,001 and R120,000,000.00 R75,000.00

2.2. Public Liability Insurance

1.1.3. Limit of indemnity – R 10, 000, 000.00

1.1.4. Deductibles

In respect of Liability arising out of-

- Loss of or damage to public utilities R 10, 000.00
- Loss of or damage to any property R 5, 000.00

- Loss of or damage due to Spread of Fire R 10, 000.00

2.3. SASRIA Special Risk/ Riot Insurance: Arranged

Note: The above limits and deductibles are renewable annually and the current policy period is for 12 months effective 01/04/2022 to 31/03/2023.

3. INSURANCES TO BE ARRANGED BY CONTRACTORS

Refer to clause 39 of this contract.

3.1 Employer's Common Law Liability Insurance: Limit of Indemnity – not less than R10, 000,000.00

3.2 Motor Vehicle Liability Insurance: Limit of Indemnity – not less than R10, 000, 00

ANNEXURE A

PERFORMANCE BOND

ANNEXURE B

SCOPE OF WORKS

ANNEXURE C

SUBCONTRACTORS

ANNEXURE D

WORKING HOURS AND DAYS

ANNEXURE E

REQUEST FOR TENDER

ANNEXURE F

OCCUPATIONAL HEALTH AND SAFETY ACT 85 of 1993: GENERAL SAFETY REGULATIONS 11(1): SUPERVISION OF CONSTRUCTION/BUILDING WORK: DESIGNATED EMPLOYEE (CONSTRUCTION WORK SUPERVISOR)

a) In terms of the provisions of Regulation 11(1) I, (representing the Contractor) do hereby appoint

b) as the Designated Employee on the premises at (physical address) to assist in enforcing the observance of the Regulations framed under the abovementioned Act. c) Your designated area(s) is/are as follows :

.....

.....

Date

Signature:

Designation :

ACCEPTANCE OF DESIGNATION

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

Date :

Signature:

Designation

ANNEXURE G

OCCUPATIONAL HEALTH AND SAFETY ACT 85 of 1993: CONSTRUCTION REGULATIONS, 2014 AND SANS 10085:1-2004 SUPERVISION OF CONSTRUCTION/BUILDING WORK: SCAFFOLD OPERATOR: COMPETENT PERSON

In terms of the provisions of Regulation 16(1), I,

..... (representing the Contractor) do hereby appoint

..... as the Experienced Person on the premises at

.....

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

Date :

Signature :

Designation :

ACCEPTANCE OF DESIGNATION

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

Date : Signature

: Designation :

.....

ANNEXURE H

OCCUPATIONAL HEALTH AND SAFETY ACT 85 of 1993

DECLARATION

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

Signature :

Date :

Access to : (Area)

Name of Contractor/Builder:

Contract/Order No.

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

.....

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

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

Signed : Date :

ANNEXURE I

CONTRACTOR

ACKNOWLEDGEMENT OF RECEIPT

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

Name: Designation

Signature: Date

ANNEXURE J

PASSENGER RAIL AGENCY OF SOUTH AFRICA (incorporated

in terms of the Legal Sccession Act, 9 of 1989)

SAFETY ON SITE

1.The Contractor shall for the duration of Contract No., in respect of the provision of services to the Region, comply with the provisions of the Occupational Health and Safety Act 85 of 1993 and all regulations promulgated under this Act. For the purposes of the Act and in so far as the Contractor's personnel/employees are concerned, the Site on which the Contractor conducts the services for the Employer occupied by the Contractor, shall for the duration of the aforementioned agreement be deemed to be under the control of the Contractor. As employer, he is in every respect responsible for the compliance, at his own cost, with the provisions of this Act.

2.All records required in terms of this Act, and especially those required in terms of Section 24 of the Act with regard to the reporting of incidents, shall be available for inspection during normal business hours without any prior notice by the designated risk control official(s) of the Employer reportable incidents shall be reported by the Contractor to the Department of Manpower and the designated risk control official(s) of the Employer shall be informed forthwith.

3.The Contractor shall in terms of Sections 17, 18, 19 and 20 of the Act, appoint Safety Representatives and Safety Committees who shall meet as prescribed in Section of the Act. Minutes of the meetings shall be retained as prescribed in Section 7 of the General Administrative Regulations of the Act and shall be made available, on request, to the designated risk control official(s) of the Employer.

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

WITNESS:

TENDERER:

.....

.....

ANNEXURE K

PASSENGER RAIL AGENCY OF SOUTH AFRICA (incorporated in terms of the Legal Succession Act, 9 of 1989)

COMPLIANCE WITH OCCUPATIONAL HEALTH AND SAFETY ACT 85 of 1993 AND REGULATIONS AGREEMENT

I, the undersigned,

(full names and surname), on behalf of

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

in my capacity as

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

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

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

WITNESS :

TENDERER :

.....

.....

ANNEXURE L

PASSENGER RAIL AGENCY OF SOUTH AFRICA (incorporated in terms of the Legal

Succession Act, 9 of 1989) GENERAL INFORMATION

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

Signed at _____ on this _____ day of _____ 20__

WITNESS :

TENDERER :

.....

.....

ANNEXURE M

PASSENGER RAIL AGENCY OF SOUTH AFRICA (incorporated in terms of the Legal

Succession Act, 9 of 1989) COMPLIANCE WITH THE COMPENSATION FOR

OCCUPATIONAL

INJURIES AND DISEASES ACT, 130 of 1993

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

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

WITNESS :

TENDERER :

.....

.....

ANNEXURE N

CONTRACTUAL SAFETY CLAUSES

Between

“THE EMPLOYER” AND “.....”

FOR THE PROJECT:

1. The parties agree on the following arrangements according to section 32 (1...2) of the Occupational Health and Safety Act 85 of 1993 to ensure compliance by the mandatory with the provisions of the Act.
2. That a Principal Contractor is an “employer” in his own rights as defined in section 1 of Act 85 of 1993 as amended and that he must fulfil all his obligations as an Employer in terms of the Act.
3. The “Employer”, and the Project Manager hereby agree, in terms of the provisions of Section 37 (1...2) of the Occupational Health and Safety Act, No 85 of 1993 , hereinafter referred to as the (Act) that the following arrangements and procedures shall apply between them to ensure compliance by the Project Manager with the provisions of the Act, namely:
 - a) The Project Manager undertakes to acquaint the appropriate Officials and Employees of the Contractor/s with all relevant provisions of the Act and the regulations promulgated in terms of the Act.
 - b) The Project Manager undertakes that all relevant duties, obligations and prohibitions imposed in terms of the Act and regulations in terms of the Act and Regulations will be fully complied with.
 - c) The Project Manager hereby accepts sole liability for such due compliance with relevant duties, obligations and prohibitions imposed by the Act and Regulations and expressly absolve the Employer from itself being obliged to comply with any of the aforesaid duties, obligations and prohibitions.
 - d) The Project Manager agrees that any duly authorized officials of the Employer shall be entitled, although not obliged, to take such steps as may be necessary to ensure that the Contractor has complied with his undertakings as set out more fully in paragraphs (a) and (b) above, which steps may include, but will not be limited to, the right to inspect any appropriate records held by the Project Manager/Contractor.

- e) The Project Manager/Contractor shall be obliged to report forthwith to the employer any investigation, complaint or criminal charge which may arise as a consequence of the provisions of the Act and Regulations, pursuant to work performed in terms of this Contract, and shall, on written demand, provide full details in writing of such investigation, complaint or criminal charge.
- f) The Project Manager/Contractor shall comply with the requirements of the Occupational Health and Safety Act, No 85 of 1993, in its entirety.
- 4. Where special permits are required such as electrical switching, hot work permits, etc. the contractor shall obtain them from a person designated by the Employer for this purpose, and all requirements of the permit must be strictly complied with by the Project Manager/Contractor. As well as to comply fully with the general conditions and specifications in E7/1 2012 of April 1991 Annexures "A" & "B" as well as Transnet, Metrorail, Safety Instructions for H.V. Electrical equipment, engineering instructions and E.4E (November 1996) specifications.
- 5. The Project Manager's appointed Health and Safety Co-ordinator must liaise with the Employer on matters pertaining to occupational health and safety and be part of such internal safety committee while on contract.
- 6. The appointed Health and Safety Co-ordinator must liaise at least once a week with the PRASA Tech Risk Manager.
- 7. The Project Manager shall furnish the Risk Manager of the Employer immediately with full particulars of all contractors that he may involve in the contract in order that the contractor himself can be made aware of all the clauses in this contract pertaining to health and safety.
- 8. The Project Manager shall advise the Risk Manager of the Employer Services of any hazardous or potentially hazardous situations that may arise from work being performed either by the Contractor or his sub-contractor.
- 9. Copies of all appointments required by the Act must be given to the Risk Manager of the Employer.
- 10. A letter of good standing in terms of section 80 (Employer to register with the Compensation Commission) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993, must also be furnished.
- 11. All clauses in the contract pertaining to health and safety form an integral part of the contract and if not complied with may be construed as breach of contract.
- 12. The Contractor:
 - a) must identify work processes that will be undertaken during the contract;
 - b) must identify any hazards that might occur due to work processes;
 - c) must provide control processes and mechanisms to prevent hazards developing into incidents.

13. Provision shall be made by the Contractor to ensure that the work does not hinder and/or endanger commuters on the premises. Sufficient room for movement especially during peak times, shall be provided for commuters.
14. An authorized representative of the Employer can stop any unsafe violation being done by the contractor or organize the necessary remedial steps (the cost whereof shall be for the contractor's account) should any deviation from these conditions and or contract come to the attention of the Employer, until the Contractor has complied with such conditions.
15. This document or a copy thereof must be in the possession of the Contractor/Employer or an Employee of the contractor who is in charge of the premises. All Act 85 appointed persons names with their level of responsibility according to Act 85 to be submitted to Risk Manager the Employer as applicable

WHAT IS A SAFETY CASE?

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

PREPARING A SAFETY CASE

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

WHY THE NEED FOR A SAFETY CASE?

1. Act 85 of 1993 requires that the working environment is safe and without risk to the safety and health of employees, clients and public in general. The Safety Case will identify the risks that one Party's activities may expose the other Party's employees, clients and the general public to, and the mechanisms required to address these risks.
2. Because there are two asset owners, viz Intersite and the Project Manager (Project Manager/Contractor assets referred to are scaffolds, machines, vehicles, etc.), the relationships, responsibilities and accountability to ensure safe working are essential, which will be addressed in the Safety Case.
3. Railway operations are large and complex. The mix of technologies, equipment age, the workforce's attitude, all affect safety. The Safety Case is intended to be part of the self-regulatory mechanism in which the parties give confidence to each other that they have the ability, commitment and resources to properly access and effectively manage the risks to health and safety of staff and the general public.
4. The Safety Case is a tool for directing the attitudes and activities of all personnel, from top management to worker. It is therefore essential that all levels be involved in the process to obtain full commitment to ensure that safe practice are in place and carried out.
5. The Safety Case will identify the risks and the mechanism required to address them.

6. A Safety Case is unique to each project or any phase of a project.

General Information

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

ANNEXURE O

“THE EMPLOYER” AND

.....**“MANDATORY”**

FOR THE PROJECT:

I “_____” representing

.....

(Mandatory) do hereby acknowledge that

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

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

Signed at _____ on this _____ day of _____ 20__

Signature _____ on behalf of

..... (Mandatory)

Signature _____ of behalf of (the Employer).

Request for Proposal For The Maintenance of Permanent Track by Means of On-Track Machinery: Ballast Tamping Machine with Wagons

Tender Number: 15/2021/CTN/INFRA



Form A

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)

BID NUMBER:	15/2021/CTN/INFRA	CLOSING DATE:	31 OCTOBER 2021	CLOSING TIME:	12H00 PM
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DESCRIPTION The Maintenance of Permanent Track by Means of On-Track Machinery: Ballast Tamping Machine with Wagons

THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)

PRASA / Metrorail Procurement department

Room 622A, 6th Floor

Propnet Building, 1 Adderley Street

Cape Town, 8001

SUPPLIER INFORMATION

NAME OF BIDDER			
POSTAL ADDRESS			
STREET ADDRESS			
TELEPHONE NUMBER	CODE	NUMBER	
CELLPHONE NUMBER			
FACSIMILE NUMBER	CODE	NUMBER	
E-MAIL ADDRESS			
VAT REGISTRATION NUMBER			
		TCS PIN:	OR CSD No:
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	☐ Yes ☐ No	B-BBEE STATUS LEVEL SWORN AFFIDAVIT	☐ Yes ☐ No
IF YES, WHO WAS THE CERTIFICATE ISSUED BY?			
AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA) AND NAME THE APPLICABLE IN THE TICK BOX	☐	AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)	
	☐	A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS)	
	☐	A REGISTERED AUDITOR	
		NAME:	

[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/SWORN AFFIDAVIT(FOR EMEs& QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]

(a) E YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No	(b) ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS	☐ Yes ☐ No
	[IF YES ENCLOSE PROOF]		[IF YES ANSWER PART B:3 BELOW]

Request for Proposal For The Maintenance of Permanent Track by Means of On-Track Machinery: Ballast Tamping Machine with Wagons

Tender Number: 15/2021/CTN/INFRA



		/SERVICES /WORKS OFFERED?	
(c) SIGNATURE OF BIDDER		(d) DATE	
(e) CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid; e.g. resolution of directors, etc.)			
(f) TOTAL NUMBER OF ITEMS OFFERED		(g) TOTAL BID PRICE (ALL INCLUSIVE)	
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT/ PUBLIC ENTITY	PRASA/SCM	CONTACT PERSON	Waseem Abrahams
CONTACT PERSON	Yoliswa Mgenge	TELEPHONE NUMBER	
TELEPHONE NUMBER	021 449 2925	FACSIMILE NUMBER	
FACSIMILE NUMBER	N/A	E-MAIL ADDRESS	wabrahams@prasa.com
E-MAIL ADDRESS	ymgenge@prasa.com		

1. With effect from **N/A** the tender documents may be collected at:

Address: PRASA / Metrorail Procurement department
Room 622A, 6th floor
Propnet Building
1 Adderley Street
Cape Town
8001

2. A compulsory tender briefing meeting with representatives of the Employer will take place at **Room 163, Infrastructure Building, Salt River, Off Malta Road at 10:00 on the 17 OCTOBER 2022.**
3. Arrangements can be made to make bids available before closing date provided that the prospective bidder has attended the compulsory tender briefing meeting.
 - Bidders must arrange own transport and parking
 - Bidders failing to attend the compulsory tender briefing session will be disqualified
 - PRASA reserves the right to only allow Bidders in possession of a valid tender document at the briefing.
 - A maximum of two representatives per company will be allowed to attend the briefing.
 - Late comers will only be allowed 15 minutes late.

Tender No: 15/2021/CTN/INFRA

Description: The Maintenance of Permanent Track by Means of On-Track Machinery:
Ballast
Tamping Machine with Wagons

I/We declare that I/We have read the above-mentioned notice and that it is understood by me/us.

Signed at _____ on this ____ (day) of _____ (month) 2021.

Bidder: Signature

FORM B

TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED--(NOT TO BE RE-TYPED) OR ONLINE
- 1.3. BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
- 1.4. WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION. B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
- 1.5. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.

2. TAX COMPLIANCE REQUIREMENTS

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER.
- 2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

- 3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?
☐ YES ☐ NO
- 3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA?
☐ YES ☐ NO
- 3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA?
☐ YES ☐ NO
- 3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA?
☐ YES ☐ NO

IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.

FORM C

TENDER FORM

CURRENT TENDER DETAILS	
Request number:	15/2021/CTN/INFRA
Request for:	The Maintenance of Permanent Track by Means of On-Track Machinery: Ballast Tamping Machine with Wagons

I / We

(Insert Name of Tendering Entity)

of _____

(Full address)

conducting business under the style or title of:

represented by:

in my capacity as:

being duly authorised thereto by a Resolution of the Board of Directors / Certificate of Partners, Members or Participants, as the case may be, dated _____, a certified copy of which is annexed hereto, hereby offer to undertake and complete the above-mentioned work (hereinafter called "the WORKS") at the prices quoted in the bills of quantities / schedule of quantities or, where these do not form part of the contract, at a lump sum, in accordance with the terms set forth in the accompanying letter(s) reference _____ and dated _____ (if any) and the documents listed in the accompanying schedule of tender documents for the sum of R _____
(amount in words).

N.B. (i) In the event of any discrepancy, the amount in words will take precedence over the amount in figures.

(ii) Where items in the priced bills of quantities submitted with the tender for the WORKS other than architectural building work are incorrectly extended arithmetically, the unit rate will be treated as decisive.

- (iii) In tenders for architectural building work the total amount will be treated as decisive. If amounts for individual items cannot be reconciled with the total amount, the amounts for individual items shall be adjusted to the satisfaction of the PRASA to conform to the total amount.

I/We accept that should PRASA accept my /our tender and issue me / us with the notice of acceptance, this tender and, if any, its covering letter and any subsequent exchange of correspondence together with the PRASA acceptance thereof, such acceptance shall be subject to a written contract to be concluded between the PRASA and me / us.

I / We undertake to produce acceptable documentary proof of the necessary coverage for Workmen's Compensation, Securities and Insurance within **30 (thirty)** working days of notification of awarding of the contract, and to sign a written contract when called upon to do so by PRASA to do so within **7 (seven)** working days of notification by the PRASA that the contract documents are ready for signature.

I / We undertake to complete the whole of the WORKS within **thirty six months (36)** from the date of notification to me / us of acceptance of the tender, subject to completion in stages if and as laid down in the project specification and to such extensions of time as may be granted. Failing completion of the WORKS or any stage of the WORKS within the period(s) stipulated or by such extended date(s) as may be allowed by the PRASA I / we shall pay to the PRASA in terms of the Conventional Penalties Act 15 of 1962, the penalty for which provision is made in the project specification. The ordering of any alterations, extras, additions or omissions shall not in any way prejudice the PRASA claim for such penalty.

Application for relief from the obligation to pay a penalty will be considered by the PRASA, but shall be granted only if I / we can prove to the reasonable satisfaction of the PRASA that the penalty is out of proportion to the prejudice suffered by the PRASA by reason of the act or omission in respect of which the penalty was stipulated.

I / We declare that this tender holds goods until

(a minimum period of 90 days from closing date is required).

I / We further agree that if, after I / we have been notified of the acceptance of my / our tender, I / we fail to enter into a formal contract if called upon to do so, or fail to furnish satisfactory security for the due and proper completion of the WORKS, the PRASA may, without prejudice to any other legal remedy which it may have, recover from me / us any expense to which it may have been put in calling for tenders afresh and / or having to accept any less favourable tender.

I / We undertake, in the event of my / our tender being accepted, to deposit with the PRASA as security for the due and proper completion of the WORKS, a Performance Bond issued by a South African registered Bank to the value of **ten (10) per cent** of the contract price (VAT inclusive).

I/ We declare that, being a company / partnership / close corporation / joint venture, I / we have duly completed the annexe hereto and certified it as correct.

The several documents involved are to be taken as complementary to each other. In the event of any conflict between the content of any of the documents listed in the schedule of tender documents (other than the project specification) and the project specification, the latter shall prevail. In the event of any conflict between the letter that accompanies the tender or other relevant correspondence and the contents of the documents listed in the schedule of tender documents (including the project specification) such letter or correspondence shall prevail.

THUS DONE and SIGNED at _____

on this _____ day of _____

DULY AUTHORISED SIGNATORY(IES)

WITNESSES

- | | |
|----------|----------|
| 1. _____ | 1. _____ |
| 2. _____ | 2. _____ |
| 3. _____ | 3. _____ |

FORM D

SITE INSPECTION CERTIFICATE / PRE-TENDER BRIEFING

Request number:	15/2021/CTN/INFRA
Request for:	The Maintenance of Permanent Track by Means of On-Track Machinery: Ballast Tamping Machine with Wagons

Attendance

This is to certify that _____ has / have today attended the site inspection / tender briefing session to which this enquiry relates.

THUS DONE and SIGNED at _____ on this _____ day of _____

for / on behalf of PRASA

Signature

Designation

Acknowledgement

This is to certify that the Tenderer has / have acquainted himself / themselves with the Contract, Project Specification / Special Conditions, Specifications and / or Bills of Quantities / Schedule of Quantities / Schedule of Prices, together with the drawings enumerated therein, as laid down by the PRASA for the carrying out of the proposed WORKS to which the enquiry relates

THUS DONE and SIGNED at _____
on this _____ day of _____

DULY AUTHORISED SIGNATORY(IES) WITNESSES

1. _____	1. _____
2. _____	2. _____
3. _____	3. _____

FORM E

STATEMENT OF WORKS SUCCESSFULLY CARRIED OUT BY TENDERER

CURRENT TENDER DETAILS

Request number:	15/2021/CTN/INFRA
Request for:	The Maintenance of Permanent Track by Means of On-Track Machinery: Ballast Tamping Machine with Wagons

Tenderers must state particulars of the works successfully carried out

CLIENT	TEL. NUMBER	NATURE OF WORKS	VALUE OF WORKS WHICH TENDERER WAS DIRECTLY RESPONSIBLE FOR	CONTRACT/ PROJECT PERIOD

If the space provided above is insufficient for all the information, Tenderer should furnish the information separately.

FORM F

SECURITY SCREENING FORM

I/We the under-signed in my/our capacity as indicated below hereby declare that I/we do not have previous conviction/s or civil Judgment/s registered against my/our name/s. I further confirm that there is no criminal or civil proceeding pending or being instituted against me or the Institution. I also declare that there are no Criminal Investigations pending against me or the Institution.

SECTION 1

*to be completed by the Tenderer (Compulsory)

Name of Company/Trust/Partnership	Registration number of Company/Trust No
Physical Address	Vat Registration Number
Name of Auditing Firm	Previous Name/s of Company
Contact no. (Land line)	
Name of Holding Company if any	Tender Number
Tax Number	
	Banking Details
	Bank Name:
	Acc Number:
	Acc Holder:
	Branch Name:
	Branch Code:

SECTION 2

Directors'/Trustees'/Partners' or Principals' Details

Name & Surname	Identity Number	Date of Appointment	Shares
1.			
2.			
3.			
4.			
5.			

*If the company has more than five directors/principals a list of all shareholders must be appended as Annexure "A"

SECTION 3 Only applicable for the Security Providers

Name of Company/Trust/Partnership	PSIRA Registration Number

Please attach a letter of GOOD STANDING from PSIRA

SECTION 4

Declaration of all Judgments (Directors & Company) and Outstanding Debt

Director / Company	Reason for Judgment	Date of Judgment	Nature of Debt	Amount
1.				
2.				
3.				
4.				
5.				

***If more than five incidents are listed, attach a list as annexure "C"**

SECTION 5

I / We the under-mentioned in my / our capacity as indicated hereby declare that I am / we are not insolvent nor have been liquidated or any steps in this regard have been taken or are pending against me / us. I /We further declare that I/We have not been part of an entity which was liquidated in the last 5 years.

Full Name(s)	ID Number	Capacity	Signature
1.			
2.			
3.			

FORM G

SECTION 6

DECLARATION AND ACKNOWLEDGEMENT OF CONSENT

IDeclare that the information provided above is true and correct. I also consent that a security screening be conducted on the company/trust or partnership and directors.

Contact Person :
.....

Tel

no:

BIDDER'S DULY AUTHORISED SIGNATORY

Date

**SBD 4
DECLARATION OF INTEREST**

1. Any legal person, including persons employed by the state*, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority and/or take an oath declaring his/her interest, where-

- the bidder is employed by the state; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

2.1 Full Name of bidder or his or her representative:

.....

2.2 Identity Number:

.....

2.3 Position occupied in the Company (director, shareholder etc):

.....

2.4 Company Registration Number:

.....

2.5 Tax Reference Number:

.....

2.6 VAT Registration Number:

.....

* "State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

2.7 Are you or any person connected with the bidder presently employed by the state?

YES / NO

2.7.1 If so, furnish the following particulars:

Name of person / director / shareholder/ member:

.....

Name of state institution to which the person is connected:

.....

Position occupied in the state institution:

.....

Any other particulars:

.....

.....

.....

2.8 Did you or your spouse, or any of the company's directors / shareholders / members or their spouses conduct business with the state in the previous twelve months?

YES / NO

2.8.1 If so, furnish particulars:

.....

.....

2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid?

2.9.1 If so, furnish particulars.

.....

NO

YES /

.....

2.10 Are you, or any person connected with the bidder,

Aware of any relationship (family, friend, other) between the bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?

2.10.1 If so, furnish particulars.

.....

YES/NO

.....

2.11.1. Do you or any of the directors /shareholders/ members of the company have any interest in any other related companies whether

or not they are bidding for this contract?

2.11.2 If so, furnish particulars:

.....

.....

YES/NO

DECLARATION

I, _____ THE _____ UNDERSIGNED
(NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2.1 TO 2.11.1
ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY ACT AGAINST ME IN TERMS OF PRASA'S
GENERAL CONDITIONS OF TENDER AS STIPULATED IN THE RFT SHOULD THIS
DECLARATION PROVE TO BE FALSE.

.....
SIGNATURE

.....
DATE

.....
POSITION

.....
NAME OF BIDDER

SBD 5

This document must be signed and submitted together with your bid (Only if applicable)

THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME

INTRODUCTION

The National Industrial Participation (NIP) Programme, which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIP requirements. NIP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

1 PILLARS OF THE PROGRAMME

1.1 The NIP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$ 10 million or other currency equivalent to US\$ 10 million will have a NIP obligation. This threshold of US\$ 10 million can be reached as follows:

- (a) Any single contract with imported content exceeding US\$10 million.
or
- (b) Multiple contracts for the same goods, works or services each with imported content exceeding US\$3 million awarded to one seller over a 2 year period which in total exceeds US\$10 million.
or
- (c) A contract with a renewable option clause, where should the option be exercised the total value of the imported content will exceed US\$10 million.
or
- (d) Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US\$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US\$10 million.

1.2 The NIP obligation applicable to suppliers in respect of sub-paragraphs 1.1 (a) to 1.1 (c) above will amount to 30 % of the imported content whilst suppliers in respect of paragraph 1.1 (d) shall incur 30% of the total NIP obligation on a *pro-rata* basis.

1.3 To satisfy the NIP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.

1.4 A period of seven years has been identified as the time frame within which to discharge the obligation.

2 REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY

2.1 In order to ensure effective implementation of the programme, successful bidders (contractors) are required to, immediately after the award of a contract

that is in excess of **R10 million** (ten million Rands), submit details of such a contract to the DTI for reporting purposes.

- 2.2 The purpose for reporting details of contracts in excess of the amount of R10 million (ten million Rands) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 1.1.(b) to 1.1. (d) above.

3 BID SUBMISSION AND CONTRACT REPORTING REQUIREMENTS OF BIDDERS AND SUCCESSFUL BIDDERS (CONTRACTORS)

- 3.1 Bidders are required to sign and submit this Standard Bidding Document (SBD 5) together with the bid on the closing date and time.

- 3.2 In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 1.1 (b) to 1.1

(d) above and to enable the DTI in determining the NIP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in excess of R10 million (ten million Rands), to contact and furnish the DTI with the following information:

- Bid / contract number.
- Description of the goods, works or services.
- Date on which the contract was accepted.
- Name, address and contact details of the government institution.
- Value of the contract.
- Imported content of the contract, if possible.

- 3.3 The information required in paragraph 3.2 above must be sent to the Department of Trade and Industry, Private Bag X 84, Pretoria, 0001 for the attention of Mr Elias Malapane within five (5) working days after award of the contract. Mr Malapane may be contacted on telephone (012) 394 1401, facsimile (012) 394 2401 or e-mail at Elias@thedti.gov.za for further details about the programme.

4 PROCESS TO SATISFY THE NIP OBLIGATION

- 4.1 Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps will be followed:

- a. the contractor and the DTI will determine the NIP obligation;
- b. the contractor and the DTI will sign the NIP obligation agreement;
- c. the contractor will submit a performance guarantee to the DTI;
- d. the contractor will submit a business concept for consideration and approval by the DTI;
- e. upon approval of the business concept by the DTI, the contractor will submit detailed business plans outlining the business concepts;
- f. the contractor will implement the business plans; and
- g. the contractor will submit bi-annual progress reports on approved plans to the DTI.

- 4.2 The NIP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

Bid number 15/2021/CTN/INFRA

Closing date: 31 October 2022

Name of bidder.....

Postal address

.....

Signature..... Name (in print).....

Date.....

SBD 6.1

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

1.1 GENERAL CONDITIONS

- a) The value of this bid is estimated not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable; or

1.2 Points for this bid shall be awarded for:

2.

2.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

2.2 The maximum points for this bid are allocated as follows:

- 2.2.1 Price - 80**
2.2.2 B-BBEE Status Level of Contributor- 20
2.2.3 Total points for Price and B-BBEE - 100

2.3 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

2.4 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

3. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-

Based Black Economic Empowerment Act;

- (f) **“functionality”** means the ability of a bidder to provide goods or services in accordance with specifications as set out in the tender/ RFQ documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
- 1) B-BBEE Status level certificate issued by an authorized body or person;
 - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
 - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

4. POINTS AWARDED FOR PRICE

4.1 THE 80/20 PREFERENCE POINT SYSTEMS

A maximum of 80 points is allocated for price on the following basis:

80/20

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

$P_{\min}$ = Price of lowest acceptable bid

5. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 5.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (80/20 system)
1	20
2	18
3	14
4	12
5	8
6	6
7	4

8	2
Non-compliant contributor	0

OR

B-BBEE Status Level of Contributor	Number of points (90/10 system) more than R50 Million
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-Compliant Contributor	0

6. BID DECLARATION

- 6.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

7. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 4.1 AND 5.1

- 7.1 B-BBEE Status Level of Contributor: =(maximum of 20 or 10 points)
 (Points claimed in respect of paragraph 7.1 must be in accordance with o the table reflected in paragraph 5.1 and must be substantiated by relevant proof of B-BBEE status level of contributor)

8. SUB-CONTRACTING

- 8.1 Will any portion of the contract be sub-contracted?

(Tick applicable box)

YES	☐	NO	☐
-----	--------------------------	----	--------------------------

- 8.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-

- contractor.....
- iv) Whether the sub-contractor is an EME or QSE

(Tick applicable box)

ES		NO	
----	--	----	--

- v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

Designated Group: An EME or QSE which is at last 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

9. DECLARATION WITH REGARD TO COMPANY/FIRM

9.1 Name of company/firm:.....

9.2 VAT registration number:.....

9.3 Company registration number:.....

9.4 TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
- ☐ One person business/sole propriety
- ☐ Close corporation
- ☐ Company
- ☐ (Pty) Limited

[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

COMPANY CLASSIFICATION

- ☐ Manufacturer
- ☐ Supplier
- ☐ Professional service provider
- ☐ Other service providers, e.g. transporter, etc.

9.6 [TICK APPLICABLE BOX]
Total number of years the company/firm has been in business:.....

9.7 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution.

WITNESSES

- 1.
- 2.

.....
SIGNATURE(S) OF BIDDERS(S)

DATE:

ADDRESS

.....

.....

SBD 6.2

DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS

This Standard Bidding Document (SBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2011, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

1. General Conditions

- 1.1. Preferential Procurement Regulations, 2011 (Regulation 9) makes provision for the promotion of local production and content.
- 1.2. Regulation 9.(1) prescribes that in the case of designated sectors, where in the award of bids local production and content is of critical importance, such bids must be advertised with the specific bidding condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3. Where necessary, for bids referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.
- 1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

The SABS approved technical specification number SATS 1286:2011 is accessible on [http://www.thedti.gov.za/industrial development/ip.jsp](http://www.thedti.gov.za/industrial%20development/ip.jsp) at no cost.

- 1.6 A bid may be disqualified if –

(a) this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation; and

(b) the bidder fails to declare that the Local Content Declaration Templates (Annex C, D and E) have been audited and certified as correct.

2. Definitions

2.1. **“bid”** includes written price quotations, advertised competitive bids or proposals;

2.2. **“bid price”** price offered by the bidder, excluding value added tax (VAT);

2.3. **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;

2.4. **“designated sector”** means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content;

2.5. **“duly sign”** means a Declaration Certificate for Local Content that has been signed by the Chief Financial Officer or other legally responsible person nominated in writing by the Chief Executive, or senior member / person with management responsibility(close corporation, partnership or individual).

2.6. **“imported content”** means that portion of the bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad (this includes labour or intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry;

2.7. **“local content”** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;

2.8. **“stipulated minimum threshold”** means that portion of local production and content as determined by the Department of Trade and Industry; and

2.9. **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract.

3. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:

<u>Description of services, works or goods</u>	<u>Stipulated</u>	<u>minimum</u>
<u>threshold</u>		
MAINTENANCE OF PERMANENT TRACK BY MEANS OF ON-TRACK MACHINERY: BALLAST TAMPING MACHINE WITH WAGONS		N/A %

4. Does any portion of the services, works or goods offered have any imported content?

(Tick applicable box)

YES		NO	
-----	--	----	--

- 4.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid **05 October 2018**

The relevant rates of exchange information is accessible on www.reservebank.co.za. Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

Currency	Rates of exchange
US Doll	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

5. Were the Local Content Declaration Templates (Annex C, D and E) audited and certified as correct?

(Tick applicable box)

YES		NO	
-----	--	----	--

- 5.1. If yes, provide the following particulars:

- (a) Full name of auditor:
- (b) Practice number:
- (c) Telephone and cell number:
- (d) Email address:

(Documentary proof regarding the declaration will, when required, be submitted to the satisfaction of the Accounting Officer / Accounting Authority)

6. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

LOCAL CONTENT DECLARATION
(REFER TO ANNEX B OF SATS 1286:2011)

LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)

IN RESPECT OF BID NO. 15/2020/CTN/INFRA

ISSUED BY: (Procurement Authority / Name of Institution):

.....
NB

1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.

2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on <http://www.thdti.gov.za/industrialdevelopment/ip.jsp>. Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, (full names),
do hereby declare, in my capacity as
of(name of bidder
entity), the following:

(a) The facts contained herein are within my own personal knowledge.

(b) I have satisfied myself that:

- (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
- (ii) the declaration templates have been audited and certified to be correct.

(c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	0%
Local content %, as calculated in terms of SATS 1286:2011	

If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above.

The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.

(d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.

(e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 13 of the Preferential Procurement Regulations, 2011 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

SIGNATURE: _____

DATE: _____

WITNESS No. 1 _____

DATE: _____

WITNESS No. 2 _____

DATE: _____

SBD 8

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
 - a. abused the institution's supply chain management system;
 - b. committed fraud or any other improper conduct in relation to such system; or
 - c. failed to perform on any previous contract.
- 4 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). <i>The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.</i>	Yes ☐	No ☐
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? <i>The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.</i>	Yes ☐	No ☐

4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes ☐	No ☐
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes ☐	No ☐
4.4.1	If so, furnish particulars:		

CERTIFICATION

I, THE UNDERSIGNED (FULL NAME).....

CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS
TRUE AND CORRECT.

I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION MAY
BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

COMMISSIONER OF OATHS

I certify that the above has acknowledged that he/she knows and understands the contents of this document, that he/she does not have any objection to taking the oath, and that he/she considers it to be binding on his/her conscience, and which was sworn to and signed before me at _____ on this the _____ day of _____ 20____, and that the administering oath complied with the regulations contained in Government Gazette No. R 1258 of 21 July 1972, as amended.

_____ (Sign – SERVICE PROVIDER)

_____ (Name – SERVICE PROVIDER)

COMMISSIONER OF OATHS STAMP AND DETAILS OF PERSON

STAMP :

NAME & SURNAME:

DESIGNATION/RANK :

PERSAL/EMPLOYEE NO:

PLACE/DATE:

SBD 9

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Standard Bidding Document (SBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I _____ certify, _____ on _____ behalf _____ of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor.
7. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.

8. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

- (a) prices;
- (b) geographical area where product or service will be rendered (market allocation)
- (c) methods, factors or formulas used to calculate prices;
- (d) the intention or decision to submit or not to submit, a bid;
- (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
- (f) bidding with the intention not to win the bid.

9. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.

10. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

³ Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

METRORAIL- WESTERN CAPE

CONTACTABLE REFERENCE FOR TENDERER

TENDER/PROJECT NO 15/2021/CTN/INFRA: MAINTENANCE OF PERMANENT TRACK BY MEANS OF ON-TRACK MACHINERY: BALLAST TAMPING MACHINE WITH WAGONS

To: PRASA – Metrorail – Western Cape

I, the undersigned duly authorized representative, hereby furnish this reference on behalf of the organisation named herein:

A. Previous client and completed works/services information

I. Name of the organisation : _____

II. Description of works/goods/services that were provided : _____

III. Year : _____

IV. Duration : _____

V. Value of works/services/goods : _____

B. Evaluation of service provider's performance

1. Were the works/service/ product completed/delivered within stipulated timeframes Yes ☐ No ☐
If no kindly comment _____

2. Were the works/services/product meet the expected and specified quality Yes ☐ No ☐
If no kindly comment _____

Signature: _____

Telephone: _____

Date: _____

Business stamp with
date

PASSENGER RAIL AGENCY OF SOUTH AFRICA

15 SERVICE CONTRACT FOR THE

**MAINTENANCE OF PERMANENT TRACK BY MEANS OF ON-TRACK MACHINERY:
BALLAST TAMPING MACHINE WITH WAGONS**

CONTRACT NUMBER :

CONTRACTOR :

NATURE OF WORK :

LOCALITY OR PLACE :

DATE OF ACCEPTANCE

OF TENDER :

DATE OF COMMENCEMENT

OF TENDER :

DATE OF COMPLETION

DUE :

CONTRACT PRICE :

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1. DEFINITIONS AND INTERPRETATIONS

- 1.1.1 In this contract (as hereinafter defined) the following words, definitions and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:
- 1.1.2 “Applicable Laws” means the Constitution of the Republic of South Africa, Act No.108 of 1996, and all applicable statutes, regulations, codes of good practice, sector codes, industry charters, ordinances, by-laws, rules (including rules of court) and other secondary legislation, directives, practice notes having force of law in South Africa and the common law arising out of judicial decisions, notifications and with which the Parties are bound to comply;
- 1.1.3 “Bill of Quantities” means the bill of quantities submitted by the Contractor as part of the Contractor’s Bid;
- 1.1.5 “BBBEE” means Broad Based Black Economic Empowerment as defined in the Broad Based Black Economic Empowerment Act No.53 of 2003;
- 1.1.6 “BBBEE Status” means the composition, ownership, make up, level and any other criterion of measurement of BBBEE as indicated in the RFT;
- 1.1.7 “Business Day” means any day other than a Saturday, Sunday or public holiday in South Africa, within the meaning of the Public Holidays Act, 1994;
- 1.1.8 “Chief Executive Officer” means (i) the chief executive officer of the Contractor and (ii) the chief executive officer of PRASA Technical, a division of the Employer;
- 1.1.9 “Chief Procurement Officer” means the chief procurement officer of the Employers;
- 1.1.10 “Commencement Date” means the Business Day following the date on which the Condition Precedent is fulfilled;
- 1.1.11 “Condition Precedent” means the condition precedent in clause 5.1
- 1.1.12 “Construction Equipment” means all appliances or things of whatsoever nature required in or for the execution, correction of defects, or completion of the Services but does not include materials, Plant or other things that are part of, or intended to form part of the Permanent Services;
- 1.1.13 “Contract” means this contract and all Annexures thereto;

- 1.1.14 “Contractor” means
- 1.1.15 “Contractor’s Default” means any of the following events or circumstances –
- 1.1.16 any arrangement, composition or compromise with or for the benefit of creditors (including any voluntary arrangement as defined in the Insolvency Act, 1936 or the Companies Act, 2008) being entered into by or in relation to the Contractor; a liquidator, business rescue practitioner or the like taking possession of or being appointed over, or any, winding-up, execution or other process being levied or enforced upon the whole or any material part of the assets of the Contractor.
- 1.1.17 the Contractor ceases to carry on business; and
- 1.1.18 the Contractor commits a breach of any of its material obligations under this Contract;
- 1.1.19 “Contractor’s Bid” means the documents submitted by the Contractor to the Employer in response to the RFT or Request for Quotation which is attached hereto as Annexure “E” to this Contract;
- 1.1.20 “Contract Sum” means the amount set out in clause 28.9 payable by the Employer to the Contractor in terms of this Contract, subject to such addition thereto or deduction therefrom as may be made from time to time under the provisions of the Contract;
- 1.1.21 “Contract Period” means a period of Twenty Four (24) Months being the period agreed between the Parties for the Contractor to complete the Services, beginning on the Commencement Date;
- 1.1.22 “Consents” mean shall mean all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licenses, permissions required to be issued by or made with any Responsible Authority in connection with the performance of the Works;
- 1.1.23 “Drawings” means the plans, technical diagrams and drawings provided by the Employer to the Contractor from time to time to enable the Contractor to render the Services;
- 1.1.24 “Day” means a calendar day;
- 1.1.25 “Employer” means the Passenger Rail Agency of South Africa, a public entity established in terms of the Legal Succession to the South African Transport Services Act 9 of 1989 and the legal successors in title thereto;
- 1.1.26 “Employer’s Default” occurs if - PRASA fails to make the payment in accordance with the provisions of clause 28.3 PRASA commits a breach of any material term of this Contract.
- 1.1.27 “Final Approval Certificate” means the final approval certificate to be issued by the

Employer on completion of the Service by the Contractor;

- 1.1.128 “Good Industry Practice” means applying, in relation to the manner in which the Services are performed and the services rendered, the standards, practices, methods and procedures conforming to applicable law, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking **under similar circumstances**, irrespective of whether or not it is conducted by or on behalf of an organ of state or the private sector;
- 1.1.129 “Group Chief Executive Officer” means the group chief executive officer of the Employer;
- 1.1.130 “Mobilisation Fee” means an amount equal to 10% of the Contract Price payable to the Contractor by the Employer, as an upfront payment in accordance with clause 29.5 of this Contract;
- 1.1.131 “Occupational Health and Safety Act” means the Occupational Health and Safety Act 85 of 1993;
- 1.1.132 “Option” means the Employers Option as indicated in clause 11 of this Contract;
- 1.1.133 “Performance Bond” means an unconditional and on demand bank guarantee to the value of 10% of the Contract Price as indicated pursuant to **clause 5.2**, to be issued by a South African registered bank in favour of the Employer, substantially in the form set out in the RFT or Request of Quotation;
- 1.1.134 “Party” means the Contractor and the Employer, collectively referred to as the “Parties”;
- 1.1.135 “Permanent Services” means the Services provided by the Contractor and approved by the Employer through issue of the Final Approval Certificate;
- 1.1.136 “Project” means the programmed and non-programmed service work to be undertaken by the Contractor in terms of the provisions of this Contract;
- 1.1.137 “Project Manager” means the person appointed by the Employer to be the project manager for the Project, it being agreed that the Employer shall procure that such project manager discharges the duties, functions and responsibilities required of it in terms of this Contract;
- 1.1.138 “Plant” means machinery, apparatus, articles and things of all kind that become part of the Permanent Services to be provided in accordance with the Contract;
- 1.1.139 “Restricted Enterprise” means an entity restricted from contracting with the Employer or any other public entity as a result of being listed either on the register for tender defaulters compiled in terms of the regulations to the Prevention and Combating of Corrupt Activities

Act 12, of 2004; or any other relevant Applicable Law;

- 1.1.40 “Request for Tender” or “RFT” means the request for tender issued by the Employer for the appointment of a Contractor for the Project, as set out in Annexure “E” to this Contract;
- 1.1.41 “Request for Quotation” means the request for quotation issued by the Employer for the appointment of a Contractor for the Project, as set out in Annexure “E” to this Contract;
- 1.1.42 “Responsible Authority” shall mean any ministry, any minister, any organ of state, any official, any official in the public administration or any other governmental or regulatory Employer, commission, entity, service utility, board of directors, committee, agency, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question;
- 1.1.43 “Scope of Services” means the Services which are to be provided by the Contractor to the Employer in terms of the terms and conditions of this Contract;
- 1.1.44 “Services” means the services to be provided by the Contractor in terms of this Contract in connection with the Project, as set out in Annexure “B” of this Contract;
- 1.1.45 “Service Levels” means the Service levels set out in clause 10;
- 1.1.46 “Signature Date” means the date of signature of this Contract by the last Party signing;
- 1.1.47 “South Africa” means the Republic of South Africa;
- 1.1.48 “Subcontractors” means any person named in the Contract as a subcontractor as listed in Annexure “C” of this Contract and the legal successors in title to each of these persons;
- 1.1.49 “Temporary Services” means the Services provided by the Contractor but not approved by the Employer through issue of the Final Approval Certificate;
- 1.1.50 “Writing” means any hand-written typed or printed communication including facsimiles, electronic communication or any similar communication resulting in a permanent record. The terms “in writing” and “written” shall have corresponding meanings;
- 1.1.51 “Work” means all works to be undertaken for the Services in this Contract.

2. INTERPRETATIONS

- 2.1 This Contract shall be interpreted according to the following provisions, unless the context requires otherwise -

- 2.2 references to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this Contract;
- 2.3 references to “Month” shall be to a calendar month;
- 2.4 references to “Parties” shall include the Parties’ respective successors-in-title and, if permitted in this Contract, their respective cessionaries and assignees;
- 2.5 references to a “person” shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust, organization, association or partnership, whether or not having separate legal personality;
- 2.6 references to any “Responsible Authority” or any public or professional organization shall include a reference to any of its successors or any organization or entity, which takes over its functions or responsibilities;
- 2.7 references to “clauses”, “sub-clauses” and “Schedules” are references to the clauses, sub-clauses and Annexures of this Contract;
- 2.8 the headings of clauses, sub-clauses and Schedules are included for convenience only and shall not affect the interpretation of this Contract;
- 2.9 the Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Contract, and agree that no provision or word used in this Contract shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this Contract or any part of it;
- words importing the singular shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter;
- 2.10 references to “this Contract” shall include this Contract as amended, varied, novated or substituted in Writing from time to time;
- 2.11 any reference to any enactment, order, regulation or similar instrument shall be construed as a reference to enactment, regulation or instrument as amended, re-enacted or replaced from time to time; and
- 2.12 when any number of days is prescribed in this Contract, same shall be reckoned

exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day in which case the last day shall be the immediately following Business Day.

- 2.13 The common or statute law shall determine whether any person acting or purporting to act on behalf of the Employer, Project Manager or Contractor is duly authorised, save to the extent that a party shall, by written notice to each of the others, designate a person or the holder of any office, to the exclusion of another person or holder of office, to have such authority, or to limit in any way, or terminate the authority of such designated person or holder of office.
- 2.14 The marginal notes or headings in this Contract shall not be deemed to be part thereof nor be taken into consideration in the interpretation or construction of the Contract.

3. GENERAL PROVISIONS

- 3.1 No grant by the Employer or the Contractor to the other of any concession, waiver, condonation or allowance shall, in respect of any specific event or circumstance other than that in respect of which the grant was made, constitute a waiver of the rights of the grantor in terms of the Contract or an estoppel of the grantor's right to enforce the provisions of the Contract.
- 3.2 The law which is to apply to the Contract, and according to which the Contract is to be interpreted, shall be the law of South Africa.
- 3.3 The language of the Contract and of written communications shall be English.
- 3.4 In the event that the Contractor and the Employer conclude a supplementary contract, the additional work executed in terms of such a contract shall not be taken to be a variation or addition under **clause 28.6**, but to be a separate contract. The value of such additional work shall, for the purposes of **clause 28.7**, not be taken into account for this Contract, but it shall be taken into account for the separate contract concluded in terms of the supplementary contract.
- 3.5 Except where otherwise provided in this Contract, the Contractor shall retain the copyright and other intellectual property rights in documents supplied by it to the Employer or Project Manager under this Contract.
- 3.6 The Contractor shall be deemed to have given the Employer a non-terminable, non-transferable, non-exclusive, royalty-free licence to copy, use and communicate the Contractor's documents provided to it by the Contractor under this Contract, including making and using modifications of such documents for the purposes of further work required to the Services.

4. INTRODUCTION

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

5. CONDITION PRECEDENT

- 5.1 The provisions of this Contract (other than clauses 1 to 3, 11, 14, 33 to 40 which will come into effect from the Signature Date) are subject to the fulfilment of the condition precedent that must be fulfilled within 30 (thirty) Business Days of the Signature Date (or such other date agreed by the Parties in Writing).
- 5.2 The Contractor shall deliver to the Employer the Performance Bond.
- 5.3 The Parties shall, where it is within their respective power and control to do so, use their respective reasonable commercial endeavours to procure the fulfilment of the Condition Precedent within the time period permitted therefore in clause 5.1.
- 5.4 If the Condition Precedent is not fulfilled on or prior to the date stipulated in clause 5.1 for such fulfilment, this Contract shall not come into force and effect and neither Party shall have any claim against the other Party as a result of or in connection with any such non-fulfilment (other than a claim for a breach by a Party of any of its obligations under clause 5.1).

6. PRIORITY OF DOCUMENTS

- 6.1 The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of such documents shall be in accordance with the following sequence -
- 6.2 the Contract, Annexures and schedules thereto;
- 6.3 the RFT; and
- 6.4 the Contractor's Bid.
- 6.5 If an ambiguity or discrepancy is found in the documents referred to in clause 6.1, the Project Manager shall issue a clarification or instruction. If either Party is not satisfied with the clarification or instruction of the Project Manager, it may refer the matter for dispute resolution in accordance with clause 32.

7. DURATION OF CONTRACT

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

8. SCOPE OF SERVICES

- 8.1 The Contractor shall undertake the Services in accordance with Good Industry Practice and the Scope of Services set in Annexure "B" and this Contract.
- 8.2 The Services to be undertaken by the Contractors shall include the following:

9. SUPPLY OF SERVICES

- 9.1 The Contractor will use adequate numbers of appropriately skilled, qualified and experienced personnel and all equipment, assets and other resources necessary to provide the Services. The Contractor will throughout the Contract Period consider the requirements of the Employer and apply its expertise to ensure that it renders the Services in a manner which, in its expert judgment, meets the needs of the Employer.
- 9.2 Services will be performed during working hours and in accordance with the Service Levels.
- 9.3 Where the performance of the Service requires the Contractor to liaise or co-operate with the Employer's personnel or other contractors rendering services to the Employer, the Contractor must give its full co-operation and deal with all such persons in a professional and courteous manner. The Employer will in turn procure the co-operation of its personnel and other contractors in their interactions with the Contractor.
- 9.4 The Contractor shall provide the Services applying Good Industry Practice.

10. SERVICE LEVELS AND SCHEDULES

- 10.1 All Services costs shall conform to agreed prices.
- 10.2 A schedule reflecting details Services to be undertaken during the next month shall be submitted to the Employer by the Contractor before the end of each month during the

Contract Period.

- 10.3 Work shall be undertaken by the Contractor as per agreed schedule and agreed turnaround times. Special requirements in relation to any work shall be agreed in progress meetings held between the Parties from time to time in accordance with clause 24.
- 10.4 Should additional Work be required, the Employer shall be advised immediately and a separate quotation for this work shall be prepared and submitted to the Employer for approval, prior to commencement of any such Work.

11. EMPLOYERS OPTION

- 11.1 The Employer has appointed the Contractor to provide the Services with the option of the Employer to extend the scope of the Services to include the redesign of the Services.
- 11.2 The Employer shall have a right at its own discretion to extend and/or amend the scope of Services to include the redesign of the Services based of the trends and failure analysis undertaken in accordance with clause 24.2.
- 11.3 Once the Employer has exercised its option to extend the scope of Services in accordance with clause 11.2, both Parties shall agree on the amount to be paid to the Contractor for the redesign of the Services.
- 11.4 The amount to be paid to the Contractor for the redesign of the Services shall be paid in accordance with the Redesign Payment Schedule which is annexure "T" of this Contract.

12. CONTRACTOR'S WARRANTIES

- 12.1 The Contractor warrants that as at the Signature Date -
- 12.2 it is a limited liability company, duly incorporated and validly existing under the Applicable Laws and has taken all necessary actions to authorise its execution of and to fulfilment of its obligations under this Contract;
- 12.3 no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the knowledge of the Contractor as at the Signature Date, threatened against it or the Subcontractors, which is likely to have a material adverse effect on the ability of the Contractor to provide the Services;
- 12.4 the Contractor is not subject to any obligation or non-compliance which is likely to have a material adverse effect on its ability to conduct the Services;
- 12.5 no proceedings or any other steps have been taken or, to the knowledge of the

Contractor, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final) or deregistration of the Contractor, or under business rescue; or for the appointment of a liquidator, judicial manager or similar officer over it or over any of its assets;

- 12.6 its obligations under this Contract are legal, valid, binding and enforceable against it in accordance with the terms of this Contract;
- 12.7 all information disclosed by or on behalf of the Contractor at any time up to the Signature Date and up to the end of the Contract Period and, in particular, when submitting the Contractor's Bid prior to the award of this Contract to the Contractor, is true, complete and accurate in all material respects and the Contractor is not aware of any material facts or circumstances not disclosed to the Employer which would, if disclosed, be likely to have an adverse effect on the Employer's decision (acting reasonably) to award this Contract to the Contractor;
- 12.8 it will use reasonable care and skill in carrying out its obligations under this Contract;
- 12.9 it is not a Restricted Enterprise;
- 12.10 in being awarded its appointment under this Contract, it did not engage, either directly or indirectly, or in any manner participate in the perpetration of a corrupt activity as defined in terms of the Corrupt Activities Act Number 12 of 2004; and
- 12.11 it has all the insurances required in terms of this Contract.

13. EMPLOYER'S WARRANTIES

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

14. INDEMNITIES

- 14.1 The Contractor, in relation to the Services -
- 14.2 indemnifies the Employer against any liability in respect of damage to, or physical loss of the property, or injury to or death of any person; and
- 14.3 shall be liable to the Employer for damage to or physical loss of all property of the Employer, arising directly from the execution of the Services.
- 14.4 The Contractor shall not be liable in respect of -
- 14.5 the permanent use or occupation of land by reason of the Services or any part thereof;
- 14.6 any nuisance, disturbance or interference arising necessarily by reason of the construction of the Services;
- 14.7 interference, whether temporary or permanent, with any servitude or any other right which is the unavoidable result of the construction of the Services in accordance with the Contract; or
- 14.8 death of, or any injuries or damage to persons or property resulting from any act, omission or neglect of the Employer, its agents, employees or other contractors (not being employed by the Contractor).

15. ASSIGNMENT AND SUBCONTRACTING

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

and a procedure set out in this Contract, shall be the same as if the Contractor had appointed the Subcontractor without consultation with the Employer.

- 15.6 Any appointment of a Subcontractor in accordance with clause 15.5 shall not amount to a contract between the Employer and the subcontractor, or any responsibility or liability on the part of the Employer to the subcontractor and shall not relieve the Contractor from any liability or obligation under the Contract.
- 15.7 In the event of termination of the Contract under clause 30, the Contractor shall assign the subcontract it has in place with a Subcontractor to the Employer, upon instruction by the Employer.
- 15.8 Procedure for appointment of Subcontractors
- 15.9 In the event that the Contractor wishes to appoint subcontractors or replace any one of the subcontractors, it shall -
- 15.10 consult with the Employer regarding such proposed subcontractor, including providing details as to such subcontractor's experience, financial standing and empowerment credentials;
- 15.11 obtain the Employer's written consent prior to contracting with any proposed subcontractor, which consent shall not be unreasonably withheld; and
- 15.12 in respect of the replacement of a Subcontractor procure that the terms and conditions upon which any replacement subcontractor is appointed are substantially the same as those on which the Subcontractor was appointed, and provide the Employer with a copy of the duly executed contract with any such proposed subcontractor.
- 15.13 Every Subcontractor shall enter into a subcontracting agreement with the Contractor which shall provide that -
- 15.14 such Subcontractor shall undertake the same obligations to the Contractor in respect of the subcontract as those by which the Contractor is bound in respect of the contract;
- 15.15 payment for work covered by the subcontract shall not be due until receipt by the Contractor of the payment certificate which includes the value of such work;
- 15.16 within 7 (seven) days of receipt by the Contractor of the Project Manager's payment certificate in which the value of such Subcontractor's work is included, the Contractor shall make payment in full to the Subcontractor for work covered by the subcontract without discount or deduction, other than retention money as may be specified in the subcontract.

16. JOINT AND SEVERAL LIABILITY

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

17. BASIS OF CONTRACT

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

18. CONTRACTOR'S GENERAL OBLIGATIONS

- 18.1 Extent of obligations and liability
- 18.2 The Contractor's general obligations under the Contract shall include the provision of the Services at its own expense, including all labour, equipment, tools, material, transport, consumables, stores, services, samples and Temporary Services, and everything, whether of a temporary or permanent nature, required in and for the construction, completion and commission of the Services. The Contractor shall remedy any defects in the Services and the completed Services must be fit for the purpose for which the Services are intended as defined in the RFT and in this Contract.
- 18.3 Legal provisions
- 18.4 The Contractor shall, in fulfilling the Contract, comply with Applicable Laws.
- 18.5 If required, the Contractor shall provide proof to the Project Manager that it is in good standing with respect to duties, taxes, levies and standing contributions required in terms

of the Applicable Laws.

18.6 Notices and Fees

18.7 The Contractor shall in the execution of the Services comply with the provisions of, and give all notices and pay all fees, taxes, levies and other charges required to be given or paid in terms of -

18.8 applicable law, and

18.9 the conditions imposed by any other body or person stated in this Contract.

18.10 The Contractor indemnifies the Employer against any liability for any breach of the provisions of clause 18.7.

18.11 The Employer shall be responsible for obtaining any planning approval required in respect of the Permanent Services and the Temporary Services.

18.12 The Contractor shall be responsible for obtaining all requisite consents and permits for the execution of the Services arising from the approvals consents referred to in clause 18.11.

18.13 All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either Party in terms of this Contract or relating to it shall be given in Writing and sent by registered post, or delivered by hand, or transmitted by facsimile to the recipient Party at its relevant address set out below –

18.14 if to the Employer at:- Address: Umjantshi House
30 Wolmarans Street
Braamfontein, Johannesburg
Attention: Legal Department
Postal address: Private Bag X101
Braamfontein
2017
Facsimile number: 021 – 449 6300
Telephone number: 021 – 449 3264

if to the Contractor:

Address:
Postal address:
Facsimile number: N/A
Telephone number:

- 18.15 Either Party may, by written notice to the other Party, change any of the addresses at which or the designated person for whose attention those notices or other communications are to be given.
- 18.16 Any notice or other communication given by any Party to the other Party which -
- 18.17 is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the 7th (seventh) day after the date of posting; or
- 18.18 is delivered by hand to the addressee during the normal business hours of the addressee at its specified address shall be refutably presumed to have been received by the addressee at the time of delivery; or
- 18.19 is transmitted by facsimile to the addressee during the normal business hours of the addressee at its specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report.

18.20 The provisions of this clause 18.6 shall not invalidate any notice or other communication actually given and received otherwise than as described in those provisions.

18.21 The Parties choose their respective physical addresses in clause 18.6.5 as their respective domicilia citandi et executandi at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in South Africa, then the original address shall remain the domicilium citandi et executandi of the relevant Party until it nominates a new physical address within the Republic of South Africa in Writing to be its new domicilium citandi et executandi.

19. CHANGE IN CONTROL AND BBBEE

19.1 The Contractor shall not, during the term of this Contract, be allowed to proceed with any of the following matters without the prior written consent from the Employer's Chief Procurement Officer and Group Chief Executive Officer -

19.2 any transfer of any amount of shares of the Contractor;

19.3 any change in the composition of the Contractor;

19.4 any change in the ownership of the Contractor;

19.5 any material change in the constitution, memorandum, articles of association or memorandum of incorporation or similar document providing for the creation, formation or incorporation of the Contractor; or

19.6 any change on the BBBEE component of the Contractor.

19.7 provided that the Contractor shall not require any approval and/or consent of the Employer and/or Employer's Chief Procurement Officer and Group Chief Executive Officer where any change as contemplated in clause 19.2 to 19.6 Employers not have impact of the BBBEE Status of the Contractor.

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

20. DRAWINGS AND INTELLECTUAL PROPERTY

20.1 The Drawings will remain in the sole custody of the Project Manager. Three copies thereof will be furnished to the Contractor free of cost, but any further copies shall be paid for by the Contractor. The Contractor shall give reasonable notice in Writing to the Project Manager of any further drawing or specification that may be required for the execution of

the Services.

- 20.2 One copy of the Drawings furnished to the Contractor as aforesaid shall be kept by the Contractor on its site, and shall at all reasonable times be available for inspection and use by the Project Manager and any Subcontractor appointed in terms of clause 15.8 hereof.
- 20.3 Where the design of the Services or part of the Services is performed by the Contractor, it shall, unless otherwise directed, submit paper prints, in triplicate, of all plans or drawings of such Services to the Project Manager whose written approval must be obtained before the Work concerned is commenced. Such approval shall be subject to clause 3.2.
- 20.4 Design, plans and drawings prepared by the Contractor in accordance with clause 20.3 and paid for by the Employer including the intellectual rights thereto shall belong to the Employer.
- 20.5 20In the event that the designs, drawings and/or plans are created by both Employer and Contractor, the intellectual property rights attaching to the Work done and paid for by Employer shall vest on the Employer and the intellectual property rights associated therewith shall vest jointly in the Parties.
- 20.6 The Contractor hereby grants to the Employer a non-exclusive licence, in accordance with the provisions of section 22 of the Copyright Act, No.98 of 1978 -
- 20.7 to copy any plan, diagram, drawing, specification, Bill of Quantity, design calculation or other similar document made by the Contractor, other than under the direction or control of the Employer, in connection with the Services;
- 20.8 to make free and unrestricted use thereof for its own purposes;
- 20.9 to provide copies thereof to the Project Manager to be used by it for consultations and consulting services to the Employer;
- 20.10 to provide other parties with copies thereof where tenders are invited by the Employer.
- 20.11 Such non-exclusive licence shall apply mutatis mutandis to any plan, diagram, drawing, specification, bill, design calculation or other similar document made, other than under the direction or control of the Employer, by any Subcontractor of the Contractor. The provisions of this clause shall in the case of materials, machines or equipment to be provided as part of the Services, not apply in respect of documents created for the manufacturing thereof.
- 20.12 No separate or additional payment shall be made by the Employer in respect of any non-exclusive licence granted in terms hereof.
- 20.13 Save in respect of the Employer's or the Project Manager's design of the Services or

method of construction and proprietary brand specified by the Employer or its Project Manager, or in connection with any Drawings, the Contractor indemnifies the Employer against any liability arising from the infringement of any patent rights, design, trade-mark or name or other protected right in respect of any design work, Construction Equipment, Plant, machine, work, method of construction or material used for or in connection with the Services.

- 20.14 Except where otherwise specified in the Contract, the Contractor shall pay all amounts due by it in respect of the rights referred to in clause 20.

21. CONTRACTOR'S SUPERINTENDENCE

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

22. TIME AND RELATED MATTERS

- 22.1 Commencement of the Services
- 22.2 Following the Commencement Date, and on the Project Manager's instruction, the Contractor shall, save as may be otherwise provided in the Contract or legally or physically impossible, commence executing the Services. Such instruction shall be subject to the submission by the Contractor, and approval by the Project Manager, of documentation required before commencement with Services execution which information shall be as follows -
- 22.3 any Consents required;
- 22.4 proof of insurance in accordance with clause 12.11.
- 22.5 The documentation referred to in clause 22.2 above shall be made available within 30 (thirty) days from the Commencement Date.
- 22.6 If the documentation referred to in clause 22.2 is not submitted within the number of days stipulated in clause 22.5 from the Commencement Date, or is found to be unacceptable, the Employer may terminate the Contract on written notice to the Contractor.
- 22.7 If the Project Manager's instruction to commence executing the Services, or to resubmit documentation, is not received by the Contractor within 7 (seven) days from the actual

date of submission of the documentation referred to in clause 22.2, commencement of the Services shall be deemed to be on the expiry of such 7 (seven) days.

23. SUPERVISION

- 23.1 The function of the Project Manager is to control, manage and administer the Contract acting on instructions of the Employer, in accordance with the provisions of the Contract.
- 23.2 Whenever the Project Manager intends, in terms of the Contract, to exercise any discretion or make or issue any ruling, contract interpretation or price determination, he shall first consult with the Contractor and the Employer in an attempt to reach agreement. Failing agreement, the Project Manager shall act impartially and equitably and shall make a decision in accordance with this Contract, taking into account all relevant facts and circumstances.
- 23.3 The Project Manager will provide overall technical superintendence of the Services, and may direct the Contractor in terms of the provisions of this Contract or in respect of any measures which the Project Manager may require for the operations of the Employer on the safety of trains, the property and workmen of the Employer, and for the safety of other property and persons. The Contractor shall carry out the directions of the Project Manager. The superintendence exercised by the Project Manager, including any agreement, approval, refusal or withdrawal of any approval given, shall not relieve the Contractor of any of his duties and liabilities under the Contract, and shall not imply any assumption by the Employer or by the Project Manager of the legal and other responsibilities of the Contractor in carrying out the Services.
- 23.4 The Project Manager may delegate to any deputy or other person, any of his duties or functions under the Contract. On receiving notice in Writing of such delegation, the Contractor shall recognise and obey the deputy or person to whom any such duties or functions have been delegated as if he were the Project Manager.
- 23.5 The Contractor shall exercise supervision over the Services at all times when work is performed or shall be represented by an agent having full power and authority to act on behalf of the Contractor. Such agent shall be competent and responsible, and have adequate experience in carrying out work of a similar nature to the Services, and shall exercise personal supervision on behalf of the Contractor. The Project Manager shall be notified in Writing of such appointment which will be subject to his approval.
- 23.6 The Contractor or the Contractor's Site Agent shall be available on the Site at all times while the Services are in progress to receive the orders and directions of the Project Manager.
- 23.7 If the Contractor is dissatisfied with any order or instruction of the Project Manager's

representative, or any other person appointed by the Project Manager to act on his behalf, he shall be entitled to refer the matter to the Project Manager who shall promptly confirm, reverse or vary such order or instruction.

23.8 Instructions

23.9 On the Commencement Date, the Project Manager shall deliver to the Contractor copies of the Drawings and any instructions required for the commencement of the Services.

23.10 The Project Manager shall deliver to the Contractor from time to time, during the progress of the Services, drawings for construction purposes or instructions as shall be necessary for the proper and adequate construction, completion and defect correction of the Services.

23.11 The Contractor shall give adequate written notice to the Project Manager of any requirements additional to that contained in the Scope of Services or Drawings, which the Contractor may require for the execution of the Services and the Project Manager shall deliver such instructions and/or drawings to the Contractor.

23.12 The aforesaid instructions and/or Drawings referred to in clause 23.11 shall be delivered in good time taking the approved programme into account.

23.13 The Contractor shall give effect to and be bound by any drawing or instruction given in terms of this Clause and, if such drawing or instruction shall require any variation of, addition to, or omission from the Services, clause 28.21 shall apply.

23.14 If by reason of a failure by the Project Manager, after his receipt of written notice from the Contractor in terms of clause 23.11, to comply in good time with the provisions of clause 4, the Contractor suffers delay to Practical Completion and, he shall be entitled to make a claim for additional time in accordance with clause 31, for which purpose the time limit of 28 (twenty eight) days shall commence after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed.

24. MONTHLY PROGRESS MEETINGS: EMPLOYER/CONTRACTOR OBLIGATION

24.1 Monthly progress meetings shall be convened by and between the Employer and the Contractor if required, in order to review the following -

24.2 Review trends and failure analysis;

- 24.3 Specification/work list requirements;
- 24.4 Unit price/Quantity changes;
- 24.5 Drawing amendments;
- 24.6 Delivery schedule;
- 24.7 Quality aspects;
- 24.8 Financial aspects; and
- 24.9 Manage exceptions.
- 24.10 The above-mentioned progress meetings shall be arranged from time to time by mutual agreement by and between the Employer and the Contractor.

25. DELAYS ATTRIBUTABLE TO THE EMPLOYER

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

26. SUSPENSION OF THE SERVICES

- 26.1 The Contractor shall, on the written order of the Project Manager stating the cause for suspension (other than force majeure in terms of clause 30), suspend the progress of the Services or any part thereof for such time or times and in such manner as the Project Manager shall order and shall, during such suspension, properly protect the Services as far as is necessary unless such suspension is by reason of some default or breach of the Contract by the Contractor
- 26.2 If the progress of the Services or any part thereof is so suspended for more than 84 (eighty four) Days in total, the Contractor may deliver a written notice to the Project Manager requiring permission to proceed with the Services or that part thereof in respect of which progress is suspended.
- 26.3 If such permission is not granted within 28 (twenty eight) Days after the Project Manager's

receipt of the written notice, the Contractor may, by a further written notice to the Employer, elect to treat the suspension, where it affects the whole Services, as a repudiation of the Contract by the Employer.

27. EXTENSION OF TIME FOR COMPLETION

- 27.1 If the Contractor considers itself entitled to an extension of time for circumstances of any kind whatsoever which may cause it to fail to comply with any agreed time schedule referred to in clause 10, the Contractor shall claim in accordance with clause 31 for extension of time. Such extension of time shall take into account any non-Business Days and all relevant circumstances, including concurrent delays or savings of time which might apply in respect of such claim.
- 27.2 Without limiting the generality of clause 31.1 the circumstances referred to in that clause include -
- 27.3 the nature of additional work, time; and
- 27.4 any disruption which is entirely beyond the Contractor's control.
- 27.5 Instead of granting extension of time, if feasible, the Project Manager may request the Contractor to accelerate the rate of progress.

28. PENALTY FOR DELAY

- 28.1 If the Contractor fails to complete the Services within the time stipulated in this Contract for completion of Services or a part or portion of Services, the Contractor shall be liable to the Employer for an amount calculated at 0.5% of the Contract Price per delayed Day per order, which shall be paid for every Day which shall elapse between the time for due completion and completion of the relevant Services. However, the total amount due under this sub-clause shall not exceed the maximum of 10% of the Contract Price.
- 28.2 The imposition of such penalty shall not relieve the Contractor from its obligation to complete Services or from any of its obligations and liabilities under the Contract,
- 28.3 The Employer may set off or deduct from the fees due to the Contractor any penalty amounts due and owing by the Contractor in terms of clause 28.1.
- 28.4 **PRICE, PAYMENT, AND RELATED MATTERS**
- 28.5 **Payment to Contractor**
- 28.6 As consideration for the provision of the Services, the Employer shall pay the Contractor

in terms of the provisions of the Contract.

- 28.7 Payment shall be made to the Contractor within thirty (30) Days after receipt of the relevant invoice/s and shall be the amount calculated as being the product of unit price and the quantity accepted as given on the relevant invoice (Refer to Annexure A for the unit prices).
- 28.8 The Employer will verify the invoices and authorize payment on condition that a Final Approval Certificate has been issued.
- 28.9 All invoices shall be paid within thirty (30) Days from the date of issue of the invoice by the Contractor. Price
- 28.10 The Contract Sum for the Services for the Contract Period is
- 28.11 Payment in Applicable Currencies
- 28.12 Payment of all amounts due and payable either to the Contractor or Employer shall be in South African Rand.
- 28.13 Payment for Mobilisation
- 28.14 If the Contractor is going be paid the Mobilisation Fee it shall be paid within 30 (thirty) days of fulfilment of the Condition Precedent set out in clause 4.
- 28.15 The Contractor shall use the Mobilisation Fee towards the purchase of material and equipment for the Services.
- 28.16 The Contractor shall provide the Employer with documentary proof of purchase of material and equipment purchased pursuant to clause 28.15.
- 28.17 The Contractor shall deliver to the Employer the documentary proof of purchase as contemplated in clause 28.16 within 30 (thirty) Days of payment of the Mobilisation Fee.
- 28.18 Failure by the Contractor to provide the Employer with documentary proof of purchase in accordance with clause 28.16 within the time frame stipulated in clause 28.17 shall be a breach of this Contract and the Employer shall also be entitled to Mobilisation Fee paid.
- 28.19 Security
- 28.20 The Contractor shall procure that the Performance Bond remains valid until the expiry of the Contract Period. The Performance Bond shall specify an expiry date not less than 36 Months from Commencement Date, and if the Contractor has not become entitled to receive the Final Approval Certificate of the Services by the date 14 (fourteen) days prior to that date, the Contractor shall procure the extension the validity of the Performance Bond until such time that the Services have been completed.

28.21 Variations

28.22 If, at any time the Project Manager shall require any variation of the form, quality or quantity of the Services or any part thereof that may be necessary or for any reason appropriate, he shall, subject to the terms of the Contract, be entitled to require the Contractor to do any of the following -

28.23 increase or decrease the quantity of any Work;

28.24 omit any such Work;

28.25 change the character or quality of any such Work;

28.26 change the levels, lines, position and dimensions of any part of the Services;

28.27 execute additional Work of any kind necessary for the completion of the Services; and

28.28 change the specified or approved sequence or method of rendering the Services.

28.29 No such variation shall in any way vitiate or invalidate the Contract, but the value, if any, of all such variations shall be taken into account in ascertaining the amount of the Contract Price. Furthermore, no such variation shall be binding on the Parties until reduced to Writing and signed by them.

28.30 No such variation shall be made by the Contractor without written orders from the Project Manager in which it is stated to be a "variation order".

28.31 Value of variations

28.32 No variation orders shall exceed 10% (10 percent) of the Contract Price as required by the Employers procurement policies.

28.33 Subject to clause 28.28, no variation orders shall be valid unless approved by the Group Chief Executive Officer and the Chief Procurement Officer of the Employer.

29. TERMINATION

29.1 This Contract may be terminated by either Party by giving a 90 (ninety) days' notice or following the occurrence of either the Contractor's Default or Employer's Default.

29.2 If termination is as a result of the Employer's Default, the Contractor shall be entitled to payment for all the Services undertaken by the Contractor up to the date of termination.

30. FORCE MAJEURE

30.1 Definition of Force Majeure

30.1.1 In this clause 30, "Force Majeure" means an exceptional event or circumstance -

30.1.2 which is beyond a Party's control,

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

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

30.1.5 which is not substantially attributable to the other Party.

30.1.6 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions 30.1.2 to 30.1.5 above are satisfied -

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

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

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

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

30.2 Notice of Force Majeure

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

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

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

30.2.4 Duty to Minimise Delay

30.2.5 Each Party shall at all times use all reasonable endeavours to minimise any delay in the

performance of the Contract as a result of Force Majeure.

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

30.3 Consequences of Force Majeure

30.3.1 If the Contractor is prevented from performing any of its obligations under the Contract by Force Majeure of which notice has been given under sub-clause 30.2, and suffers delay and/or incurs additional costs by reason of such Force Majeure, the Contractor shall be entitled, subject to sub-clause 31 to an extension of time for any such delay, if completion is or will be delayed, under sub-clause 27, and

30.3.2 if the event or circumstance is of the kind described in of sub-clauses 30.1.7 to 30.1.10, payment of any such additional cost.

30.3.3 After receiving this notice, the Parties shall proceed in accordance with clause 30.2 to agree or determine these matters.

30.3.4 Optional Termination, Payment and Release

30.3.5 If the execution of substantially all the Services is prevented for a continuous period of 84 (eighty four) Days by reason of Force Majeure of which notice has been given under sub-clause 30.2, or for multiple periods which total more than 140 (one hundred and forty) days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In such event, the termination shall take effect 7 (seven) days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 30.3.10 [Cessation of Work and Removal of Contractor's Equipment].

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

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

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

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

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

30.3.11 Release from Performance under the Law

30.3.12 Notwithstanding any other provision of this clause 30.3.1212,, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance -the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and the sum payable by the Employer to the Contractor shall be the same as would have been payable under sub-clause 30.3.4 [Optional Termination, Payment and Release] if the Contract had been terminated under sub-clause 30.3.4.

31. CONTRACTOR'S CLAIMS

31.1 If the Contractor considers itself to be entitled to any extension of time for completion of the Services, the Contractor shall give notice to the Employer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, as and not later than 28 (twenty eight) Days after the Contractor became aware, or should have become aware, of the event or circumstance. All requests for an extension of time shall be granted in the Employer's sole and absolute discretion, having considered the reasons for the request in consultation with the Project Manager. Should the Employer and/or the Project Manager require any additional information substantiating the Contractor's claim, the Contractor shall provide the Employer and/ or Project Manager with such information within 48 (forty eight hours).

31.2 If the Contractor fails to give notice of a claim within such period of 28 (twenty eight) Days, the relevant time for completion of the Services shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this clause 311 shall apply.

31.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

31.4 The Contractor shall keep such records as may be necessary to substantiate any claim made by it in accordance with this clause 31. Without admitting the Employer's liability, the Project Manager acting on instructions of the Employer may, after receiving any notice under this sub-clause, monitor the record-keeping and/or instruct the Contractor to keep further records. The Contractor shall permit the Employer to inspect all these records, and shall (if instructed) submit copies to the Employer.

31.5 Within 28 (twenty eight) Days after the Contractor became aware (or should have become

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

- 31.6 The Contractor shall send a final claim within 28 (twenty eight) Days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Employer.
- 31.7 Within 42 (forty two) Days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Employer acting on instructions of the Employer and approved by the Contractor, the Employer acting on instructions of the Employer shall respond with approval, or with disapproval and detailed comments. It may also request any necessary further particulars but shall nevertheless give his response on the principles of the claim within such time.
- 31.8 The Parties shall agree or determine the extension (if any) of the time for completion of any Services (before or after its expiry) in accordance with sub-clause 27 [Extension of Time for Completion], to which the Contractor is entitled under the Contract. If the Contractor does not agree with the determination of the Employer, it shall refer the matter for determination in accordance with clause 32.
- 31.9 The requirements of this sub-clause are in addition to those of any other sub-clause which may apply to a claim. If the Contractor fails to comply with this or another sub-clause in relation to any claim, any extension of time to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this sub-clause.

32. DISPUTE RESOLUTION

- 32.1 If a dispute of any kind arises between the Contractor and the Employer, in connection with or arising out of the Contract or the execution of the Services, whether during the execution of the Services or after their completion, and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation, the matter in dispute shall, within 14 (fourteen) days of dispute having arisen, be referred to the Project Manager with a copy to the Chief Executive Officers. The Project Manager shall decide the matter within 28 (twenty eight) days of receipt of the reference and notify the Contractor and Project Manager of his decision.
- 32.2 If a dispute arises between the Employer and the Contractor, including a dispute arising out of the Project Manager's decision in terms of clause 32.1 hereof, or if the Contractor is dissatisfied with any instruction, assessment, determination, valuation, variation or ruling

given or made by the Project Manager in terms of his powers under the Contract, the matter shall be referred in Writing to the Chief Executive Officer within 28 (twenty eight) days of the decision of the Project Manager or of the dispute or dissatisfaction, as the case may be, having arisen.

- 32.3 The Parties shall thereafter endeavour to settle the dispute by way of negotiation.
- 32.4 The procedure and forum for the negotiations shall be subject to agreement between the Parties. The negotiations shall be without prejudice to either of the Parties and neither shall be entitled to rely upon admissions or concessions made during such procedures in any ensuing arbitration and/or litigation proceedings.
- 32.5 Either of the Parties may elect that the negotiation proceedings be facilitated by an independent mediator. In such case, the provisions of clause 32.10 shall apply mutatis mutandis to the appointment of such mediator. Each Party shall bear its own costs in respect of the mediation and pay half of the mediator's agreed fees and expenses.
- 32.6 If the Parties fail to reach a negotiated settlement, or negotiations break down on account of a deadlock, the Chief Executive Officers shall decide the dispute and shall advise their decision in Writing to the Project Manager and the Contractor within 42 (forty two) Days after the day of receipt by them of the reference in terms of clause 32.2. The Chief Executive Officers' decision shall forthwith be given effect to by the Project Manager, the Project Manager and the Contractor.
- 32.7 Unless the Contract has already been completed, repudiated or otherwise terminated, the Contractor shall, in every case proceed with the Services with all due diligence, unless and until the Chief Executive Officers' decision has been revised, as hereinafter provided for, by an arbitral award.
- 32.8 The Chief Executive Officers' decision shall be final and binding on the Parties.
- 32.9 Should either of the Parties be dissatisfied with the decision of the Chief Executive Officers in terms of clause 32.6, it may, within 28 (twenty eight) Days after the receipt thereof, declare the matter to be in dispute by written notification to the Chief Executive Officers. Unless otherwise agreed, the matter shall be referred to an arbitrator appointed in terms of clause 33.10 hereof.
- 32.10 The appointment of an arbitrator shall be made by agreement between the Parties, after a written submission has been made by either Party to the other of a shortlist containing the names of 3 (three) suitably qualified persons.
- 32.11 If the Parties fail to agree within 14 (fourteen) Days of receipt of the submission, either Party may apply for the nomination of a suitably qualified person by the Chairperson for the time being of the Arbitration Foundation of Southern Africa ("AFSA"), or by the Vice

Chairperson in the absence of the Chairperson.

- 32.12 The reference to the arbitrator shall, unless otherwise agreed, be deemed to be a submission to the arbitration of a single arbitrator in terms of the Arbitration Act (Act No. 42 of 1965, as amended), or any legislation passed in substitution thereof. The arbitration shall, unless otherwise agreed, be conducted in accordance with the AFSA Rules.
- 32.13 The arbitrator shall have full power to open up, review and revise any decision, opinion, direction, certificate or valuation of the Project Manager, the Project Manager or the Executive Officers in so far as it may in his opinion be necessary to do so for the proper determination of the dispute.
- 32.14 Neither Party shall be limited in the proceedings before the arbitrator to the evidence or arguments submitted to the Project Manager, the Project Manager or the Executive Officers, for the purposes of preceding proceedings. The award of the arbitrator shall be final and binding on the Parties.
- 32.15 Arbitration proceedings may be entered into after and at any time before the completion or alleged completion of the Services, provided always –
- 32.16 that the preceding dispute resolution procedures stipulated herein have been followed and fully exhausted,
- 32.17 that no decision given by the Project Manager, the Project Manager or the Executive Officers in accordance with the foregoing provisions shall disqualify him as a witness and from giving evidence before the Arbitrator on any matter whatsoever relevant to the dispute so referred to the Arbitrator.
- 32.18 Any amount which may become payable by the Contractor to the Employer in consequence of any decision by the Chief Executive Officers or of an arbitrator's award, as the case may be, in accordance with the foregoing provisions of this clause, may be recovered in any manner described in clause 28.3 hereof or by instituting action in a court of competent jurisdiction.
- 32.19 The arbitrator's fees and expenses shall be borne by the parties concerned in accordance with the terms of the arbitrator's award. Should one Party pay the arbitrator's fees, such Party will have the right to recover from the other Party any amount of such fee for which that party is responsible in terms of the arbitrator's award.
- 32.20 Notwithstanding provisions of this clause 32 or any other clause in this Contract, either Party shall be entitled to proceed with court action to a court with relevant jurisdiction if they are not satisfied with the decision Chief Executive Officers.

33. PUBLIC RELATIONS AND PUBLICITY

- 33.1 The Contractor acknowledges that certain information pertaining to the Services is required to be disclosed in accordance with the statutory reporting obligations of the Employer as it may be required to publish from time to time in response to enquiries from -
- 33.2 Parliament and its members and officers in accordance with the provisions of the Public Finance Management Act, of 1999;
- 33.3 the Auditor-General under the Public Audit Act, of 2004; and
- 33.4 persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act, 2000.
- 33.5 Subject to clause 34, neither Party shall communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract without the prior approval of the other Party, such consent not to be unreasonably withheld.

34. CONFIDENTIALITY

- 34.1 Each Party ("the Receiving Party") must treat and hold as confidential all information, which they may receive from the other party ("the Disclosing Party") or which becomes known to them concerning the Disclosing Party during the subsistence of this Contract and any extension thereof.
- 34.2 The confidential information of the disclosing Party shall, without limitation, include software and associated material and documentation, including information contained therein; all information relating to the disclosing Party's past, present and future research and development; the Disclosing Party's business activities, products, services, customers and Employers, as well as its technical knowledge and trade secrets; the terms and conditions of this Contract; and Contractor's data.
- 34.3 The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in its confidential information - it will only make the confidential information available to those of its Personnel who are actively involved in the execution of this Contract;
- 34.4 it will initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorized disclosure and will take all practical steps to impress upon those Personnel who need to be given access to confidential information, the confidential nature thereof;
- 34.5 subject to the right to make the confidential information available to their Personnel under

clause 34.3 above, they will not at any time, whether during this Contract or thereafter, either use any confidential information of the Disclosing Party or directly or indirectly disclose any confidential information of the Disclosing Party to third parties; all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the Disclosing Party which have or will come into the possession of the Receiving Party and its Personnel, will be, and will at all times remain, the sole and absolute property of such Party and shall be promptly handed over to such Party when no longer required for the purposes of this Contract.

- 34.6 Upon termination or expiry of this Contract, the Receiving Party will deliver to the disclosing Party, or at the disclosing Party's option, destroy all originals and copies of the disclosing Party's confidential information in its possession.
- 34.7 The foregoing obligations shall not apply to any information which - is lawfully in the public domain at the time of disclosure; subsequently and lawfully becomes part of the public domain by publication or otherwise; subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information; or is disclosed pursuant to a requirement or request by operation of law, regulation or court order.
- 34.8 Nothing in this Clause shall preclude the Parties from disclosing the confidential information to their professional advisors or financiers in the bona fide course of seeking finance, business and professional advice.
- 34.9 Each Party hereby indemnifies the other Party against any loss or damage, which one Party may suffer as a result of a breach of this Clause by the other Party or its Personnel.

The provisions of this clause 34 are severable from the rest of the provisions of this Contract and shall survive its termination and continue to be of full force and effect for a period of 2 (two) years after the date of termination. Notwithstanding the aforementioned, the obligation to keep confidential business and trade secrets shall remain in force for an unlimited period of time.

35 LIMITATION OF LIABILITY

- 35.1 Under no circumstances shall either Party be liable for any indirect, consequential or like damages which may arise pursuant to this Contract.
- 35.2 Furthermore, and notwithstanding anything to the contrary herein, the maximum total liability of the Parties to the Employer for any loss or damage suffered by the Employer, its agents, employees or sub-contractors, whether in contract, delict or otherwise, from any cause whatsoever, and whether in relation to damages, penalties or indemnities or

otherwise, shall not exceed twice the Contract Price.

35.3 Subject to the foregoing, and to the extent that it relates to the Services, the Contractor indemnifies and shall keep Employer indemnified at all times against all losses sustained by Employer in consequence of any loss of or damage to property; breach of a statutory duty arising under applicable law; claim for or in respect of the death or personal injury of any individual; or any breach by the Contractor of any warranties given by it in this Contract; including, without limitation, any legal fees or costs, arising in connection with the performance or non-performance of any Services; and save to the extent caused by the negligence or wilful misconduct of Employer or by a breach by Employer of an express provision of this Contract.

35.4 The Contractor indemnifies and shall keep Employer indemnified at all times against all losses sustained by Employer in consequence of any claim or action whatsoever of the Contractor, instituted against Employer by a subcontractor of the Contractor. In the event that the Contractor or any of its sub-contractors rendering the Services to Employer, becomes or become involved in arbitration or other proceedings falling under a collective agreement under a bargaining council, then the Contractor shall immediately inform the Employer thereof and on request supply the Employer with a copy of any award made pursuant to such proceedings or agreement and any documentation that the Employer may request in respect thereof.

36 ENTIRE AGREEMENT

36.1 Except where expressly provided otherwise in this Contract, this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

36.2 Each of the Parties acknowledges that -

36.3 it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Contract or not) except those expressly contained in or referred to in this Contract, and the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a remedy available under this Contract; and

36.4 this clause 36 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Contract which was induced by fraud, for which the remedies available shall be all those available under any Law governing this Contract.

37 SEVERABILITY

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

38 INDEPENDENT STATUS

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

39 INDEPENDENT ADVICE

- 41.2 Each of the Parties hereby respectively agrees and acknowledges that -
- 41.3 it has been free to secure independent legal advice as to the nature and effect of each provision of this Contract and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and
- 41.3 each provision of this Contract (and each provision of the Annexures) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Contract.

40 COUNTERPARTS

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

SIGNED at Cape Town on _____ 2022

The Contractor:

For: Contractor

PRINT NAME

Who warrants that he is duly authorised

AS WITNESSES:

1. _____

2. _____

SIGNED at Cape Town on _____

The Employer: THE PASSENGER RAIL AGENCY OF SOUTH AFRICA,

For: THE EMPLOYER

PRINT NAME

Who warrants that he is duly authorised

AS WITNESSES:

1. _____

2. _____

ANNEXURE A

PERFORMANCE BOND

ANNEXURE B

SCOPE OF SERVICES

ANNEXURE C

SUBCONTRACTORS

ANNEXURE D

WORKING HOURS AND DAYS

ANNEXURE E

REQUEST FOR TENDER

ANNEXURE F

Date:

TO: Regional Director

Department of Labour

.....

.....

.....

OCCUPATIONAL HEALTH AND SAFETY ACT 85 of 1993:

GENERAL ADMINISTRATIVE REGULATION:

NOTICE OF CARRYING OUT OF CONSTRUCTION WORK

Dear Sir

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

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

(b) The nature of work to be undertaken:

(c) Expected date on which work will commence: _____

(d) Anticipated date for completion: _____

Kind regards

Signature:

Designation:

Name:

ANNEXURE G

OCCUPATIONAL HEALTH AND SAFETY ACT 85 of 1993:

GENERAL SAFETY REGULATIONS 11(1):

SUPERVISION OF CONSTRUCTION/BUILDING WORK:

DESIGNATED EMPLOYEE (CONSTRUCTION WORK SUPERVISOR)

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

.....

.....

Date

Signature:

Designation :

ACCEPTANCE OF DESIGNATION

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

Date :

Signature:

Designation

ANNEXURE H

OCCUPATIONAL HEALTH AND SAFETY ACT 85 of 1993:

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

SUPERVISION OF CONSTRUCTION/BUILDING WORK:

SCAFFOLD FRAMEWORK: EXPERIENCED PERSON

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

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

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

Date :

Signature :

Designation :

ACCEPTANCE OF DESIGNATION

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

Date :

Signature :

Designation :

ANNEXURE I

OCCUPATIONAL HEALTH AND SAFETY ACT 85 of 1993

DECLARATION

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

Signature :

Date :

Access to : (Area)

Name of Contractor/Builder:

Contract/Order No.

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

.....

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

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

Signed : Date :

PROJECT MANAGER

ACKNOWLEDGEMENT OF RECEIPT

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

Name: Designation

Signature: Date

ANNEXURE J

PASSENGER RAIL AGENCY OF SOUTH AFRICA

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

SAFETY ON SITE

1. The Contractor shall for the duration of Contract 15/2021/CTN/INFRA in respect of the provision of services to the Region, comply with the provisions of the Occupational Health and Safety Act 85 of 1993 and all regulations promulgated under this Act. For the purposes of the Act and in so far as the Contractor's personnel/employees are concerned, the Site on which the Contractor conducts the services for the Employer occupied by the Contractor, shall for the duration of the aforementioned agreement be deemed to be under the control of the Contractor. As employer, he is in every respect responsible for the compliance, at his own cost, with the provisions of this Act.
2. All records required in terms of this Act, and especially those required in terms of Section 24 of the Act with regard to the reporting of incidents, shall be available for inspection during normal business hours without any prior notice by the designated risk control official(s) of the Employer reportable incidents shall be reported by the Contractor to the Department of Manpower and the designated risk control official(s) of the Employer shall be informed forthwith.
3. The Contractor shall in terms of Sections 17, 18, 19 and 20 of the Act, appoint Safety Representatives and Safety Committees who shall meet as prescribed in Section of the Act. Minutes of the meetings shall be retained as prescribed in Section 7 of the General Administrative Regulations of the Act and shall be made available, on request, to the designated risk control official(s) of the Employer.

Signed at on this day of
2021.

WITNESS:

TENDERER:

.....

.....

ANNEXURE K

PASSENGER RAIL AGENCY OF SOUTH AFRICA

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

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

AGREEMENT

I, the undersigned,

(full names and surname), on behalf of

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

in my capacity as

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

The company/close corporation furthermore agrees to comply at all times with the terms and

Request for Proposal for The Maintenance of Permanent Track by Means of On-Track Machinery: Ballast Tamping Machine with Wagons



Tender Number: 15/2021/CTN/INFRA

conditions of the various instructions attached hereto, and which may be amended from time to time. Further instructions may also be added from time to time by the Employer.

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

WITNESS :

TENDERER :

.....

.....

ANNEXURE L

PASSENGER RAIL AGENCY OF SOUTH AFRICA

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

GENERAL INFORMATION

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

Request for Proposal for The Maintenance of Permanent Track by Means of On-Track Machinery: Ballast Tamping Machine with Wagons



Tender Number: 15/2021/CTN/INFRA

7. Be advised that this Contract places the onus on the mandatory to contact the employer in the event of inability to perform as per this Contract. The Employer, however reserves the right to unilaterally take any steps as may be necessary to enforce this Contract.

Signed at _____ on this _____ day of _____ 20__

WITNESS :

TENDERER :

.....

.....

ANNEXURE M

PASSENGER RAIL AGENCY OF SOUTH AFRICA

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

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

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

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

WITNESS :

TENDERER :

.....

.....

ANNEXURE N

CONTRACTUAL SAFETY CLAUSES

Between

“THE EMPLOYER” AND “.....”

FOR THE PROJECT:

1. The parties agree on the following arrangements according to section 32 (1...2) of the Occupational Health and Safety Act 85 of 1993 to ensure compliance by the mandatory with the provisions of the Act.
2. That a Contractor is an “employer” in his own rights as defined in section 1 of Act 85 of 1993 as amended and that he must fulfil all his obligations as an Employer in terms of the Act.
3. The “Employer”, and the Project Manager hereby agree, in terms of the provisions of Section 37 (1...2) of the Occupational Health and Safety Act 85 of 1993 , hereinafter referred to as the (Act) that the following arrangements and procedures shall apply between them to ensure compliance by the Project Manager with the provisions of the Act, namely:
 - a) The Project Manager undertakes to acquaint the appropriate Officials and Employees of the Contractor/s with all relevant provisions of the Act and the regulations promulgated in terms of the Act.
 - b) The Project Manager undertakes that all relevant duties, obligations and prohibitions imposed in terms of the Act and regulations in terms of the Act and Regulations will be fully complied with.
 - c) The Project Manager hereby accepts sole liability for such due compliance with relevant duties, obligations and prohibitions imposed by the Act and Regulations and expressly absolves the Employer from itself being obliged to comply with any of the aforesaid duties, obligations and prohibitions.
 - d) The Project Manager agrees that any duly authorized officials of the Employer shall be entitled, although not obliged, to take such steps as may be necessary to ensure that the

Contractor has complied with his undertakings as set out more fully in paragraphs (a) and (b) above, which steps may include, but will not be limited to, the right to inspect any appropriate records held by the Project Manager/Contractor.

- e) The Project Manager/Contractor shall be obliged to report forthwith to the employer any investigation, complaint or criminal charge which may arise as a consequence of the provisions of the Act and Regulations, pursuant to work performed in terms of this Contract, and shall, on written demand, provide full details in Writing of such investigation, complaint or criminal charge.
- f) The Project Manager/Contractor shall comply with the requirements of Act 85 of 1993, in its entirety.
- 4. Where special permits are required such as electrical switching, hot work permits, etc. the contractor shall obtain them from a person designated by the Employer for this purpose, and all requirements of the permit must be strictly complied with by the Project Manager/Contractor. As well as to comply fully with the general conditions and specifications in E7/1 2012 of April 1991 Annexures "A" & "B" as well as Transnet, Metrorail, Safety Instructions for H.V. Electrical equipment, engineering instructions and E.4E (November 1996) specifications.
- 5. The Project Manager's appointed Health and Safety Co-ordinator must liaise with the Employer on matters pertaining to occupational health and safety and be part of such internal safety committee while on contract.
- 6. The appointed Health and Safety Co-ordinator must liaise at least once a week with the Risk Manager of the Employer.
- 7. The Project Manager shall furnish Risk Manager of the Employer immediately with full particulars of any sub-contractor that he may involve in the contract in order that the sub-contractor himself can be made aware of all the clauses in this contract pertaining to health and safety.
- 8. The Project Manager shall advise the Risk Manager of the Employer Services of any hazardous or potentially hazardous situations that may arise from work being performed either by the Contractor or his sub-contractor.
- 9. Copies of all appointments required by the Act must be given to the Risk Manager of the Employer.

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

WHAT IS A SAFETY CASE?

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

PREPARING A SAFETY CASE

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

WHY THE NEED FOR A SAFETY CASE?

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

self-regulatory mechanism in which the parties give confidence to each other that they have the ability, commitment and resources to properly access and effectively manage the risks to health and safety of staff and the general public.

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

General Information

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

7. Be advised that this Contract places the onus on the mandatory to contact the employer in the event of inability to perform as per this Contract.
8. The Employer, however, reserves the right to unilaterally take any steps as may be necessary to enforce this Contract.

ANNEXURE O

“THE EMPLOYER” AND

“MANDATORY”

FOR THE PROJECT:

I “_____” representing

.....

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

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

Signed at _____ on this _____ day of _____ 20____

Signature _____ on behalf of

..... **(Mandatory)**

Signature _____ of behalf of (the Employer).