PASSENGER RAIL AGENCY
OF SOUTH AFRICA

CONDITIONS OF CONTRACT

CONTRACT NUMBER :

CONTRACTOR :

NATURE OF WORK :

LOCALITY OR PLACE :

DATE OF ACCEPTANCE :

DATE OF COMMENCEMENT :

DATE OF DUE COMPLETION :

APPROVED CONTRACT RATE : Inclusive of VAT. **This is a measurable (rates-based) contract. All payments will be made strictly in accordance with the approved rate and actual quantities executed on site. The agreed rates are attached hereto as Annexure**

Commented [MM1]: This Section is added, legal to review and advice.

Commented [NM2R1]: Please refer to the Annexure

CONDITIONS OF CONTRACT

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1 DEFINITIONS AND INTERPRETATIONS

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

1.1.1 "**Agreed**" means agreed between the Employer and the Contractor, unless specifically stated otherwise;

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

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

1.1.5 "**Bill of Quantities**" means the bill of quantities submitted by the Contractor as part of the Contractor's Bid;

1.1.6 "**Certificate of Completion"** means the certificate issued by the Employer stating the date on which Completion was achieved;

1.1.7 "**Certificate of Practical Completion"** means the certificate issued by the Employer stating the date on which Practical Completion was achieved;

1.1.8 **"Chief Executiv**e **Officer" means** the chief executive officer of PRASA Technical a division of PRASA;

1.1.9 "**Commencement Date**" means the Signature Date;

1.1.10 "**Construction Equipment**" means all equipment or things of whatsoever nature required in or for the execution, completion or defects correction of the Works but does not include materials, Plant or other things that are part of, or intended to form part of the Permanent Works;

1.1.11 "**Contract**" means this contract agreement and Annexures thereto.

1.1.12 "**Contractor**" means

1.1.13 "**Contractors Bid**" means the documents submitted by the Contractor in response to the RFT which is attached hereto as Annexure "E" to this Contract.

1.1.14 "**Contract Price**" means the Contract Sum subject to such addition thereto or deduction there from as may be made from time to time under the provisions of the Contract.

1.1.15 "**Contract Sum**" means the amount and the rates as set out in Clause 24.4 payable by the Employer to the Contractor in terms of this Contract.

1.1.16 "**Contract Period**" means months being the period agreed between the Parties for the Contractor to complete the works.

1.1.17 "**Day**" means a calendar day;

1.1.18 "**Defects Liability Period**" means the period during which the Contractor has both the right and the obligation to make good defects in the materials, Plant and workmanship covered by the Contract, which period commences upon the issue of the Certificate(s) of Completion, as stated in clause 23.10.34, and shall terminate 12 (twelve) months thereafter;

1.1.19 "**Due Completion Date**" means the date of expiry of the time stated in the Scope of Works in Annexure "B" for achieving Practical Completion of the Works, calculated from the Commencement Date and as adjusted by such extensions of time or acceleration as may be allowed in terms of the Contract;

1.1.20 "**Employer**" means Passenger Rail Agency of South Africa (PRASA) a public entity established in terms of the Legal Succession to the South African Transport Services Act 9 of 1989 and the legal successors in title thereto;

1.1.21 "**Final Approval Certificate**" means the certificate issued by the Project Manager stating the date on which the Works were completed and all defects corrected in accordance with the Contract;

1.1.22 **"Group Chief Executive Officer"** means the group chief executive officer of the Employer;

1.1.23 "**Mobilisation Fee**" means an amount equal to 10% of the Contract Sum payable to the Contractor, as an advance payment in accordance with clause 24.5 of this Contract **(Not applicable for this contract)**;

1.1.24 "**National Heritage Resources Act**" means the National Heritage Resources Act, 1999;

1.1.25 "**Nominated Subcontractor**" means a Subcontractor as defined in clause 12.3.1

1.1.26 "**Occupational Health and Safety Act"** means the Occupational Health and Safety Act 85 of 1993;

1.1.27 "**On-or Off Tracking Facility**" means a place where the machine could be put on the track or removed from the track. It will exclude an off-track platform constructed of rails or other material that is used for the off tracking of tamping machines;

1.1.28 **"Order"** means any instruction, Order or directive.

1.1.29 "**Permanent Works**" means the Permanent Works to be constructed in accordance with the Contract.

1.1.30 "**Performance Bond**" means an unconditional and on demand bank guarantee to the value of 10% of the Contract Sum as indicated under Sub-Clause 24.8 (Security) issued by a South African Bank; (not applicable)

1.1.31 "**Project**" means The appointment of a service Provider for emergency procurement of the Geotechnical Investigations and Rehabilitation work to the reoccurrence of sinkholes sites in the Centurion 45 km area for a period of Twelve (12) months.

1.1.32 "**Project Manager**" means the person appointed by the Employer to be the Project Manager for the Project.

1.1.33 "**Plant**" means machinery, apparatus, articles and things of all kind that become part of the Permanent Works to be provided in accordance with the Contract;

1.1.34 "**Practical Completion**" means that the whole or portion of the Works has reached a state of readiness, fit for the intended purpose, and occupation without danger or undue inconvenience to the Employer, although some work may be outstanding;

1.1.35 "**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;

1.1.36 "**Request for Tender (RFT)**" means the request for tender issued by the Employer for the appointment of a Contractor for the Project;

1.1.37 "**Scope of Work**" means the document that specifies and describes the Works which are to be provided, and any other requirements and constraints relating to the manner in which the work is to be carried out;

1.1.38 "**Site**" means the land and other places made available by the Employer, for the purposes this Contract, on, under, over, in or through which the Works are to be executed;

1.1.39 "**Site Access Certificate**" means the certificate, issued by the Employer's operation division, which Site Access Certificate is a prerequisite to the Contractor being able to proceed onto the Site, in order to effect the Works;

1.1.40 "**Site Information**" means the document that describes the Site as at the time of the RFT to enable the respective bidders to submit proposals to the Employer in respect of the Works;

1.1.41 "**Signature Date**" means the date of signature of this Contract by the last Party signing;

1.1.42 "**South Africa**" means the Republic of South Africa;

1.1.43 "**Subcontractors**" means any person named in the Contract as a Subcontractor as listed in Annexure "C" of this Contract and the legal successors in title to each of these persons;

1.1.44 "**SAHRA**" means the South African Resources Agency established in terms of the National Heritage Resources Act of 1994;

1.1.45 "**Temporary Works**" means the Temporary Works required for or in connection with the execution of the Permanent Works and shall include items which are not intended to be permanent or to form part of the Permanent Works;

1.1.46 **"Working Hours"** means the hours of work as stipulated in the project specification/Scope of Work in Annexure "'B" and where no wage regulating measures are in force, the hours will be 07h00 to 17h00 Mondays to Fridays, excluding a daily meal break

1.1.47 "**Works**" means the Permanent Works together with such Temporary Works as may be necessary for the execution of the Works; and

1.1.48 "**Writing**" means any hand-written, typed or printed communication (comprising works, figures or drawings) including facsimiles, electronic communication or any similar communication resulting in a permanent record. In writing" and "written" shall have corresponding meanings.

2 INTERPRETATIONS

2.1 This Contract shall be interpreted according to the following provisions, unless the context requires otherwise:

2.1.1 references to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies, or is capable of applying, to any transaction entered into under this Contract;

2.1.2 references to "Month" shall be to a calendar month;

2.1.3 references to "Parties" shall include the Parties' respective successors-in-title and, if permitted in this Contract, their respective cessionaries and assignees;

2.1.4 references to a "person" shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust, organization, association or partnership, whether or not having separate legal personality;

2.1.5 references to any "Responsible Authority" or any public or professional organization shall include a reference to any of its successors or any organization or entity, which takes over its functions or responsibilities;

2.1.6 references to "clauses", "sub-clauses" and "Schedules" are references to the clauses, sub-clauses and Annexures of this Contract;

2.1.7 the headings of clauses, sub-clauses and Schedules are included for convenience only and shall not affect the interpretation of this Contract;

2.1.8 the Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Contract, and agree that no provision or word used in this Contract shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this Contract or any part of it;

2.1.9 words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter;

2.1.10 references to "this Contract" shall include this Contract as amended, varied, novated or substituted in writing from time to time;

2.1.11 any reference to any enactment, Order, regulation or similar instrument shall be construed as a reference to enactment, regulation or instrument as amended, re-enacted or replaced from time to time;

2.1.12 when any number of days is prescribed in this Contract, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day in which case the last day shall be the immediately following Business Day; and

2.2 The common or statute law shall determine whether any person acting or purporting to act on behalf of the Employer, Project Manager or Contractor is duly authorised, save to the extent that a party shall, by written notice to each of the others, designate a person or the holder of any office, to the exclusion of another person or holder of office, to have such authority, or to limit in any way, or terminate the authority of such designated person or holder of office.

2.3 The marginal notes or headings in these General Conditions shall not be deemed to be part thereof nor be taken into consideration in the interpretation or construction thereof, or of the Contract.

3 ACKNOWLEDGEMENT

Although this Agreement has been developed specifically for the purposes of projects undertaken by the Employer. Some of the clauses used in this Agreement were based on the General Conditions of Contract for Construction Works (Second Edition 2010) and the FIDIC.

4 GENERAL PROVISIONS

4.1 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.

4.2 The law which is to apply to the Contract, and according to which the Contract is to be interpreted, shall be the law of the Republic of South Africa.

4.3 The language of the Contract and of written communications shall be English.

4.4 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 24.9, but to be a separate contract. The value of such additional work shall, for the purposes of Clause 24.10, 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.

4.5 Except where otherwise provided in this Contract, the Contractor shall retain the copyright and other intellectual property rights in documents supplied to the Employer or Project Manager under this Contract.

4.6 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, including making and using modifications of such documents for the purposes of further work required to the Works.

5 CONDITION PRECEDENT (NOT APPLICABLE)

5.1 The provisions of this Contract (other than clauses 1 to 4, 10, 11, 37 to 43 which will come into effect from the Signature Date) are subject to the fulfilment of the condition precedent within 30 (thirty) Business Days of the Signature Date (or such other date agreed by the Parties in writing),namely;

5.2 The delivery by the Contractor to the Employer of a Performance Bond, which shall be substantially the same as draft issued with the RFT; and

5.3 The obtaining of all necessary Construction Work Permits, issued in accordance with South African law, including compliance with the Occupational Health and Safety Act, 1993 and the Construction Regulations,

5.4 The Parties shall, where it is within their respective power and control to do do, use their respective reasonable commercial endeavours to procure the fulfilment of the condition precedents, including compliance with all applicable South African laws and regulations relating to construction work permits, within the time period permitted therefore in Clause 5.1

5.5 If the condition precedent is not fulfilled on or prior to the date stipulated in Clause 5.1 for such fulfilment, including the obtaining of the Construction Work Permits in compliance with South African law, this agreement shall not come into full 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 the documents shall be in accordance with the following sequence:

6.1.1 the Contract; including Annexures and Schedules thereto;

6.1.2 the RFT; and

6.1.3 the Contractor's Bid.

6.2 If an ambiguity or discrepancy is found in the documents, the agreement will take precedence.

7 DURATION OF CONTRACT

Subject to the provisions of clause 5 and any other clause in this Contract which entitles the Contractor to an extension of time, this Contract shall be valid from Signature Date and shall endure for Contract Period, where after 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.

8 SCOPE WORKS

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

8.2 The Works to be undertaken by the Contractor shall include but not limited to the following:

Supply and Delivery of uniform and personnel Protective Equipment (PPE)

9 CONTRACTORS WARRANTIES

9.1 The Contractor warrants that as at the Signature Date:

9.1.1 it is a legal entity duly incorporated and validly existing under the Applicable Laws and has taken all necessary actions to authorise its execution of and to fulfil its obligations under this Contract;

9.1.2 no litigation, arbitration, investigation or administrative proceeding is in progress as at the Signature Date or, to the knowledge of the Contractor as at the Signature Date, threatened against it or the Subcontractors, which is likely to have a material adverse effect on the ability of the Contractor to provide the Works;

9.1.3 the Contractor is not subject to any obligation or non-compliance which is likely to have a material adverse effect on its ability to conduct the Works;

9.1.4 no proceedings or any other steps have been taken or, to the knowledge of the Contractor, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final) or deregistration of the Contractor, or under business rescue; or for the appointment of a liquidator, judicial manager or similar officer over it or over any of its assets;

9.1.5 its obligations under this Contract are legal, valid, binding and enforceable against it in accordance with the terms of this Contract;

9.1.6 all information disclosed by or on behalf of the Contractor at any time up to the Signature Date and up to the end of the Contract Period and, in particular, when submitting the quotation 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 Employer which would, if disclosed, be likely to have an adverse effect on Employer's decision (acting reasonably) to award this Contract to the Contractor;

9.1.7 the execution and performance of this Contract by the Employers 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 Contractor as at the Signature Date;

9.1.8 it has the necessary skill, expertise and capacity to deliver the Works required on the terms set out in this Contract as read together with the RFT, and Contractor's Bid, including any sub-contractors whom it might appoint;

9.1.9 it will use reasonable care and skill in carrying out its obligations under this Contract;

9.1.10 it is not a Restricted Enterprise;

9.1.11 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

9.1.12 it has all the insurances required in terms of this Contract.

10 EMPLOYER WARRANTIES

10.1 The Employer hereby warrants that:

10.1.1 it has taken all necessary actions to authorise the execution and the fulfilment of its obligations under this Contract; and

10.1.2 its obligations under this Contract are legal, valid, binding and enforceable against it, in accordance with the terms of this Contract.

11 INDEMNITIES

11.1 The Contractor:

11.1.1 indemnifies the Employer against any liability in respect of damage to, or physical loss of the property, or injury to or death of any person, and

11.1.2 shall be liable to the Employer for damage to or physical loss of all property of the Employer on site arising directly from the execution of the Works;

11.2 The Contractor shall not be liable in respect of:

11.2.1 the permanent use or occupation of land by reason of the Works or any part thereof,

11.2.2 any nuisance, disturbance or interference arising necessarily by reason of the construction of the Works,

11.2.3 interference, whether temporary or permanent, with any servitude or any other right which is the unavoidable result of the construction of the Works in accordance with the Contract, or

11.2.4 injuries or damage to persons or property resulting from any act, omission or neglect of the Employer, his agents, employees or other contractors (not being employed by the Contractor).

12 ASSIGNMENT AND SUBCONTRACTING

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.

12.1 Subcontracting

12.1.1 The Contractor shall not subcontract the whole Contract and shall only subcontract a portion of the Works subject to the written approval of the Employer.

12.1.2 The Contractor shall be liable for the acts, defaults and negligence of any subcontractor, his agents or employees as fully as if they were the acts, defaults or negligence of the Contractor.

12.1.3 The contractual relationship between the Contractor and any subcontractors selected by the Contractor in consultation with the Employer in accordance with the requirements of and a procedure set out in this Contract, shall be the same as if the Contractor had appointed the subcontractor without consultation with the Employer.

12.1.4 Any appointment of a subcontractor in accordance with Clause 12.1.3 shall not amount to a contract between the Employer and the subcontractor, or a 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.

12.1.5 In the event of termination of the Contract under Clause 35.2, the Contractor shall assign the subcontract it has in place with a subcontractor to the Employer, upon instruction by the Employer.

12.2 **Appointment of Subcontractors**

12.2.1.1 Subject to clause 12.1.1, the Employer hereby consents to the Contractor subcontracting portions of the Works to the Subcontractors. In the event that the Contractor wishes to appoint additional subcontractors or replace any one of the subcontractors, it shall:

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

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

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

12.2.2 Every Sub-contractor shall enter into a sub-contracting agreement with the Contractor which shall provide that -

12.2.2.1 such Sub-contractor shall undertake the same obligations to the Contractor in respect of the sub-contract as those by which the Contractor is bound in respect of the contract;

12.2.2.2 payment for work covered by the sub-contract shall not be due until receipt by the Contractor of the payment certificate which includes the value of such work;

12.2.2.3 within 7 (seven) days of receipt by the Contractor of the Project Manager's payment certificate in which the value of such sub-contractor's work is included, the Contractor shall make payment in full to the sub-contractor for work covered by the sub-contract without discount or deduction, other than retention money as may be specified in the sub-contract.

12.3 **Nominated Subcontractor**

12.3.1 In this clause 12.3, "Nominated Subcontractor" means a Subcontractor whom the Employers acting through the Project Manager instructs the Contractor to employ as a Subcontractor. The Contractor shall not be under any obligation to employ a Nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Project Manager as soon as practicable, with supporting particulars. In the event of the Employer not being satisfied with the Contractor's objection, the Employer acting through the Project Manager shall instruct the Contractor to employ the Nominated Contractor.

12.3.2 The supply and fixing of any material or the execution of work for which a provisional sum is included in the bills of quantities/schedule of quantities/schedule of prices and/or specifications, shall be undertaken by a Nominated Subcontractor or other contractor nominated in writing by the Employer. Notwithstanding that a subcontractor is a Nominated Subcontractor, a such subcontractor shall, for all intents and purposes, be regarded as being employed by the Contractor as a sub-contractor.

12.3.3 Every **Nominated Sub-contractor** shall enter into a sub-contracting agreement with the Contractor which shall provide that -

12.3.3.1 such **Nominated Sub-contractor** shall undertake the same obligations to the Contractor in respect of the sub-contract as those by which the Contractor is bound in respect of the contract;

12.3.3.2 payment for work covered by the sub-contract shall not be due until receipt by the Contractor of the payment certificate which includes the value of such work;

12.3.3.3 within 7 (seven) days of receipt by the Contractor of the Project Manager's payment certificate in which the value of such sub-contractor's work is included, the Contractor shall make payment in full to the sub-contractor for work covered by the sub-contract without discount or deduction, other than retention money as may be specified in the sub-contract.

12.3.4 Before issuing any payment certificate, the Project Manager may call upon the Contractor to furnish satisfactory proof that any **Nominated Sub-contractor's** account included in any previous payment certificate has been duly met, failing which the Employer may pay the account against a certificate of the Project Manager and may deduct the amount thereof from any sum due to the Contractor.

12.3.5 Should the Employer wish to make payment directly to any **Nominated Sub-contractor** in respect of work covered by the sub-contract, it will be entitled to do so. The sum payable to the Contractor in terms of any payment certificate in favour of the Contractor, which includes the value of any Nominated Sub-contractor's work, shall thereupon be reduced by the amount directly paid or payable by Employer to any **Nominated Sub-contractor**, and the Contractor's obligation under clause 12.3.3.3 hereof shall be deemed to have been discharged in so far as such direct payment is concerned.

12.3.6 Should the Employer wish to effect final payment to any **Nominated Sub-contractor** before the final payment is due to the Contractor, the Engineer may include in a payment certificate in favour of the Contractor, an amount to cover the final payment to the sub-contractor, which amount shall thereupon be paid to the **Nominated sub-contractor** by the Contractor.

12.3.7 At the settlement of accounts, any amount paid or payable by the Contractor and/or Employer to a **Nominated Sub-contractor** shall be set against the appropriate provisional sum and the balance, after allowing pro rata for the Contractor's costs as

shown in the bills of quantities/schedule of quantities/-schedule of prices, will be added to or deducted from the contract amount.

12.3.8 The exercise by Employer of the right to nominate a sub-contractor shall not render Employer in any way liable to any such **Nominated Sub-contractor**.

13 JOINT AND SEVERAL LIABILITY

13.1 If the Contractor constitutes (under Applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more persons:

13.1.1 these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Works;

13.1.2 these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and

13.1.3 the Contractor shall not alter its composition or legal status without the prior consent of the Employer.

14 BASIS OF CONTRACT

14.1 Available data and information

14.1.1 The Employer shall have made available to the Contractor, as part of or available data by reference in the Site Information, data relevant to the Works obtained by or on behalf of the Employer, but the Contractor shall be responsible for his own interpretation thereof and deductions thereof.

14.1.2 The Contractor shall be deemed to have inspected the Site and its surroundings and to have studied all available information pertaining the Site before submitting the Contractors Bid. The Contractor shall thus be deemed knowledgeable in respect of:

14.1.2.1 the form and nature of the Site and its surroundings;

14.1.2.2 environmental, hydrological and climatic conditions;

14.1.2.3 The extent and nature of the work and materials required for execution and completion of the Works;

14.1.2.4 the means of access to the Site for purposes of undertaking the Works; and

14.1.2.5 the design of the Works and Site conditions insofar as they affect the execution of the Works with regard to health, safety and the environment.

14.1.3 The Contractor shall, in general, be deemed to have obtained attainable information on risks, contingencies and all other information circumstances which may influence or affect the Works.

14.2 Adverse physical conditions

14.2.1 If, during the execution of the Works, the Contractor shall encounter adverse physical conditions (other than weather conditions at the Site or the direct consequences of those particular weather conditions) or any other conditions or obstructions, which conditions or obstructions could not have been reasonably foreseen by an

experienced contractor at the time of submitting the Contractor's Bid, and the Contractor is of the opinion that additional work will be necessary, which would not have been necessary had the particular physical conditions or obstructions not been encountered, he shall give notice to the Project Manager in writing as soon as he becomes aware of the conditions or obstructions, stating:

14.2.1.1 the nature and extent of the physical conditions and artificial obstructions encountered, and

14.2.1.2 the additional work required by reason thereof.

14.2.2 The Contractor shall, if authorised by the Project Manager, carry out the additional work proposed in the notice under Clause 14.2.1, without limiting the right of the Project Manager to Order a suspension of work in terms of Clause 23.7 or a variation in terms of Clause 24.9.

14.2.3 If the Contractor has duly given the notice referred to in clause 14.2.1 he shall be entitled to claim an extension of time due to the delay to Practical Completion.

15 CONTRACTOR'S GENERAL OBLIGATIONS

15.1 Extent of obligations and liability

15.1.1 The Contractor's general obligations under the Contract shall include the upgrading, modernisation and construction of the Works in accordance with Good Industry Practice and unless otherwise stipulated, the provision at its own expense of all labour, equipment, tools, material, transport, consumables, stores, services, samples and Temporary Works, and everything, whether of a temporary or permanent nature, required in and for the construction, completion and commission of the Works. The Contractor shall remedy any defects in the Works and the completed Works must be fit for the purpose for which the Works are intended as defined in the RFT and this Contract.

15.1.2 The Works shall include any work which is necessary to satisfy the Contract, RFT, Contractor's Bid, and any and all Works which (although not mentioned in the Contract) is necessary for stability or for the completion, or safe and proper operation, of the Works.

15.1.3 The Contractor shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works.

15.2 Legal provisions

15.2.1 The Contractor shall, in fulfilling the Contract, comply with Applicable Laws and contracts, and at the request of the Project Manager, shall provide proof that he has complied with all such Applicable Laws and Contracts.

15.2.2 If required, the Contractor shall provide proof to the Project Manager that it is in good standing with respect to duties, taxes, levies and standing contributions required in terms of the Applicable Laws.

15.3 Notices and Fees

15.3.1 The Contractor:

15.3.1.1 shall in the execution of the Works 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:

15.3.1.2 applicable Law, and

15.3.1.3 the conditions imposed by any other body or person stated in this Contract.

15.3.2 The Contractor indemnifies the Employer against any liability for any breach of the provisions of Clause 15.3.1.1

15.3.3 The Employer shall be responsible for obtaining any planning approval required in respect of the Permanent Works and the Temporary Works, which is specified or designed by the Project Manager.

15.3.4 The Contractor shall be responsible for obtaining all requisite consents and permits for the execution of the Works arising from the approvals consents referred to in Clause 15.3.3.

15.3.5 All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either Party in terms of this Contract or relating to it shall be given in writing and sent by registered post, or delivered by hand, or transmitted by facsimile, e-mail to the recipient Party at its relevant address set out below:

15.3.5.1 if to the Employer at:

Address:	PRASA Umjantshi House
	30 Wolmarans Street
	Braamfontein, 2017
Attention:	Head of the Legal Department- Legal Matters/Notices
	Project Manager- Operational Matters/Notices
Postal address:	Private Bag X101
	Braamfontein
	2017
Legal:	
Facsimile number:	+27 11 013 1600
Telephone:	+27 11 774 6001
Project Manager:	Leepo Sebolai
Telephone:	083 386 8012
Email:	Leepo.Sebolai@prasa.com

15.3.5.2 if to the Contractor:

Address:

Postal address:

Facsimile number: N/A

Telephone number:

E-mail address:

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

15.3.7 Any notice or other communication given by any Party to the other Party which:

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

15.3.7.2 is delivered by hand to the addressee during the normal business hours of the addressee at its specified address shall be refutably presumed to have been received by the addressee at the time of delivery; or

15.3.7.3 is transmitted by facsimile to the addressee during the normal business hours of the addressee at its specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report.

15.3.8 The previous provisions of this clause 15.3 shall not invalidate any notice or other communication actually given and received otherwise than as described in those provisions.

15.3.9 The Parties choose their respective physical addresses in clause 15.3.5 as their respective domicilia citandi et executandi at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in South Africa, then the original address shall remain the *domicilium citandi et executandi* of the relevant Party until it nominates a new physical address within the Republic of South Africa in writing to be its new *domicilium citandi et executandi*.

16 CHANGE IN CONTROL AND BBBEE

16.1 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:

16.1.1 any transfer of any amount of shares of the Contractor;

16.1.2 any change in the composition of the Contractor;

16.1.3 any change in the ownership of the Contractor;

16.1.4 any material change in the constitution, memorandum, articles of association or memorandum of incorporation or similar document providing for the creation, formation or incorporation of the Contractor; or

16.1.5 any change on the BBBEE component of the Contractor.

16.2 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 16.1.1 to 16.1.5, do not have an impact on the BBBEE Status of the Contractor.

16.3 Any breach of this clause 16 by the Contractor shall result in immediate termination by the Employer

17 DRAWINGS

17.1 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 Works.

17.2 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 Project Manager.

17.3 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 17.2 hereof.

17.4 Design, plans and drawings done by the Contractor in accordance with clause 17.3 and paid for by the Employer, including the intellectual rights thereto, shall belong to the Employer.

17.5 In the event that the designs, drawings and/or plans are done by both Employer and Contractor, the intellectual property rights attaching to the work done and paid for by Employer shall vest on the Employer

17.6 Scaled dimensions are not to be used, and where no figure dimensions are given on the drawings or in the Bill of Quantities or any specifications, the Project Manager is to be requested in writing for an instruction regarding the correct dimensions.

17.7 The Contractor shall, in accordance with the Project Manager'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 17.3 hereof.

17.8 The Contractor shall timeously and carefully examine the drawings and shall immediately notify the Project Manager 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.

17.9 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 -

17.9.1 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 the Employer, in connection with the Works;

17.9.2 to make free and unrestricted use thereof for its own purposes;

17.9.3 to provide copies thereof to Project Managers to be used by them for consultations and consulting services to the Employer;

17.9.4 to provide other parties with copies thereof where tenders are invited by the Employer.

17.10 Such non-exclusive licence shall apply *mutatis mutandis* to any plan, diagram, drawing, specification, Bill of Quantities, 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 Works, not apply in respect of documents created for the manufacturing thereof.

17.11 No separate or extra payment shall be made by the Employer in respect of any non-exclusive licence granted in terms hereof.

17.12 Save in respect of the Employer's or the Employer's Project Manager's design of the Works or method of construction and proprietary brand specified by the Employer or its Project Manager, 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 Works.

17.13 Except where otherwise specified in the Contract, the Contractor shall pay all amounts due by him in respect of the rights referred to in Clause 17.

18 HERITAGE OBJECTS AND RESOURCES

18.1 Fossils

18.2 All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site shall, as between the Employer and the Contractor, be deemed to be the absolute property of the Employer.

18.3 Discovery

18.3.1 Upon the discovery of any heritage object or resource (as defined in the National Heritage Resources Act, No.25 of 1999 as amended, or any corresponding provincial legislation) during the course of the Works and SAHRA failing to issue any consent received in terms of the National Heritage Resources Act, No.25 of 1999 as amended, within the time period stipulated in the Schedule of Works, the Contractor shall:

18.3.1.1 promptly notify the Employer of such discovery or delay;

18.3.1.2 take all necessary steps not to disturb the heritage object or resource, including ceasing any Works to the extent that the carrying out of such Works might reasonably endanger the heritage object or resource or prevent or impede its excavation or preservation; and

18.3.1.3 take all necessary steps to preserve the heritage object or resource in the same position and condition in which it was discovered.

18.4 **Action**

18.4.1 The Project Manager acting on instructions of the Employer shall promptly and in any event within 7 (seven) Business Days of the notice in clause 18.3.1.1 issue an instruction to the Contractor specifying what action the Employer requires the Contractor to take in relation to such discovery or delay.

18.4.2 The Contractor shall promptly and diligently comply with any lawful instruction so issued (save to the extent that such instruction constitutes a proposal by the Project Manager acting on instructions of the Employer for a variation as provided in clause 18.4.4 below, in which case the variation procedure provided for in clause 24.9 (Variations) shall apply) at its own cost.

18.4.3 If so directed by the responsible authority, the Contractor shall allow representatives of the responsible authority to enter into the Site for the purposes of removal or disposal of such discovery; provided that such entry shall be subject to the responsible authority complying with all relevant safety procedures which shall include any relevant health and safety plans for the construction of the Works and any reasonable directions regarding the safety of the Site that may be issued by or on behalf of the Contractor.

18.4.4 If the discovery constitutes a contractors claim in accordance with clause 35.4, and any instruction from the Project Manager acting on instructions of the Employer in connection with the discovery includes the requirement for the Contractor to carry out Works (being any work of alteration, addition, demolition or extension or variation in the Works or Facilities) which are not Works that would be necessary for the purpose of compliance with any Law or any Consents, then such Works shall be deemed to be a variation and the provisions of clause 24.9 (Variations) shall apply.

19 FACILITIES FOR OTHERS

19.1 The Contractor shall, in accordance with the Contract afford on the Site all reasonable opportunities for carrying out their work to:

19.1.1 the Employer,

19.1.2 any other contractors employed and other persons authorised by the Employer, and

19.1.3 any local or other statutory authorities,

19.2 who may be engaged in the execution on the Site of any work not included in the Contract, provided that adequate notice of the necessity thereof is given to the Contractor.

19.3 Pursuant to Clause 19.1 the Contractor shall, on the written instruction by the Project Manager:

19.3.1 make available to the Employer, or to any such contractor or any such authority, any roads or ways for the maintenance of which the Contractor is responsible, or

19.3.2 provide any other facility or service of whatsoever nature to any of the said persons or authorities.

19.4 The Contractor shall, unless otherwise provided in the Contract, be entitled to make a claim in accordance with Clause 35.4 for the delay to Practical Completion.

19.5 **Construction Equipment**

All Construction Equipment provided by the Contractor shall, when brought onto the Site, be deemed to be exclusively intended for the execution of the Works and the Contractor shall not remove the same from the Site without the written consent of the Project Manager, which consent shall not be unreasonably withheld. On delivery to the Site of such Construction Equipment the Contractor shall notify the Project Manager, in writing, of the name and address of the owner of any such Construction Equipment not owned by the Contractor.

19.6 **Contractor's employees**

19.6.1 The Contractor shall be responsible for, or make suitable arrangements for the payment, housing and feeding whilst on site and transport to and from the Site in accordance with Good Industry Practice(provided that any use of any part of the Site for the said purposes shall be subject to the prior approval of the Project Manager) of its employees and indemnifies the Employer against any liability arising out of the Contractor's said arrangements, whether such arrangements involve the use of the Site or not.

19.6.2 The Contractor shall, if instructed by the Project Manager, deliver to the Project Manager information, in such form and at such intervals as the Project Manager may prescribe, in respect of employees employed by the Contractor on the Site from time to time.

19.7 **Competent employees**

19.7.1 The Contractor shall employ on the Site, for the execution and competent completion of the Works, persons that are careful, competent and efficient in their various trades and professions.

19.7.2 The Project Manager shall be entitled to instruct the Contractor to remove forthwith from the Works any person employed by the Contractor in or about the execution of the Works if, in the opinion of the Project Manager, such person is incompetent or negligent in the performance of his duties, or whose presence on the Site is undesirable, and such person shall not again be employed on the Works without the permission of the Project Manager.

19.8 **Contractor's superintendence**

19.8.1 The Contractor shall provide all necessary superintendence during the execution of the Works.

19.8.2 The Contractor or a competent and authorised agent or representative approved in writing by the Project Manager (which approval may at any time be withdrawn in writing), hereinafter called the Contractor's Site Agent, shall be on the Site at all times when work is being performed or when the Project Manager shall, with reason, require his presence.

19.8.3 The Contractor's Site Agent 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.

20 TIME AND RELATED MATTERS

20.1 Commencement of the Contract

The Contract shall commence on the Signature date.

20.2 Commencement of the Works

20.2.1 Upon 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 Works. Such instruction shall be subject to the submission by the Contractor, and approval by the Project Manager, of documentation required before commencement with Works execution which information shall be as follows:

20.2.1.1 Project Plan;

20.2.1.2 Any Consents required;

20.2.1.3 Proof of insurance;

20.2.1.4 The documentation referred to in Clause 20.2.1 above shall be made available within 30 (thirty) days from the Commencement Date.

20.2.1.5 If the documentation referred to in Clause 20.2.1 is not submitted within the number of days stipulated in Clause 20.2.1.4 from the Commencement Date, or is found to be unacceptable, the Employer may terminate the Contract in terms of Clause 35.2.

20.2.1.6 If the Project Manager's instruction to commence executing the Works, 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 20.2.1, commencement of the Works shall be deemed to be on the expiry of such 7 (seven) days.

21 SUPERVISION

21.1 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 and the contract between the Project Manager and the Employer. 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 and the contract between the Project Manager and the Employer.

21.2 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 make a decision in accordance with this Contract, taking into account all relevant facts and circumstances.

21.3 The Project Manager shall obtain all approvals required form the Employer.

21.4 The Project Manager will provide overall technical superintendence of the Works, 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 Works.

21.5 The Project Manager may in terms of the delegation of authority sub-delegate to any person as its representative ("the Project Manager's Representative"), any of his duties or functions under the Contract. On receiving notice in writing of such delegation, the Contractor shall recognise and obey the Project Manager's Representative or person to whom any such duties or functions have been delegated as if he were the Project Manager.

21.6 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 Project Manager shall be notified in writing of such appointment which will be subject to his approval.

21.7 The Contractor or the Contractor's Site Agent shall always be available on the Site while the Works are in progress to receive the Orders and directions of the Project Manager.

21.8 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.

22 ACCESS TO THE SITE

22.1 The Employer shall, upon confirmation from the Project Manager that the Contractor is ready to commence the Works referred to in Clause 20.2.1, as well as subject to the Contractor having been issued with a Site Access Certificate, give to the Contractor possession of right of access to the Site (including physical access to the extent stipulated in the Site Information) and possession of the whole of the Site, subject to any provision to grant the Contractor possession of the Site in portions and/or any requirements as to the Order in which the Works shall be executed, all as stipulated in the Site Information.

23 TIME FOR PRACTICAL COMPLETION

23.1 The whole of the Works shall be completed within the Due Completion Date.

23.2 **Programme**

23.2.1 The Contractor shall deliver to the Project Manager as part of the documentation required before commencement with Works execution in accordance with Clause 20.2.1, an initial programme of carrying out the Works (hereafter known as the “Project Plan”) in Order to meet the Due Completion Date. Whenever the approved Project Plan no longer reflects that actual progress will meet the Due Completion Date, the Contractor shall deliver to the Project Manager an revised Project Plan.

23.2.2 The initial Project Plan and all subsequent revised Project Plan shall show and, when relevant, describe in statements, the entire scope of the work to be performed including but not limited to:

23.2.2.1 the Commencement Date, commencement of the Works;

23.2.2.2 the Completion Due Date, and the planned completion date;

23.2.2.3 the sequence, timing and resources for carrying out the Works;

23.2.2.4 the dates for Site accesses and possessions, approvals, instructions, inspections, tests and all information required to execute the Works;

23.2.2.5 The events influencing the execution of the Works;

23.2.2.6 other programming information set out in the Scope of Work; and

23.2.2.7 on revised Project Plan, the actual progress achieved for the various parts of the Works and the amounts paid.

23.2.3 In the event that the Contractor is not able to complete the Works in line with the Project Plan the Contractor shall submit the revised Project Plan to the Project Manager for approval indicating the changes to the initial Project Plan.

23.2.4 The Project Manager shall, within 7 (seven) Business Days after the Contractor has submitted revised Project Plan, approve such Project Plan or, giving his reasons, instruct the Contractor to amend it, failing which, the submitted Project Plan shall be deemed to be the approved Project Plan.

23.2.5 The submission to and approval by the Project Manager of such Project Plan or its revised Project Plan, or the delivery of any relevant particulars, shall not relieve the Contractor of any of his duties or responsibilities under the Contractor's Contract.

23.3 **Progress of the Works**

23.3.1 The Project Manager may if, at any time the rate of progress of the Works or rate of any part thereof that has fallen behind the approved Project Plan, making his own assessment, he shall so notify the Contractor in writing, with specific reference to this Clause 23.3.1. The Contractor shall thereupon, subject to the approval of the Project Manager, which approval shall not be unreasonably withheld, take the necessary steps to expedite progress so as to complete the Works, or the part thereof, by the Due Completion Date. The Project Manager may instruct the Contractor to submit an adjusted programme to accommodate the steps agreed upon between them to meet the Due Completion Date.

23.3.2 No instruction by the Project Manager to the Contractor to improve his rate of progress in this regard will qualify for additional compensation.

23.3.3 In respect of any action arising from Clause 23.3.1, if the work is not being carried out by day and by night and the Contractor requests permission to work by night as well as by day then, if the Project Manager grants permission, the Contractor shall not be entitled to any additional payment for night work and all such work shall be carried out without excessive noise and disturbance.

23.3.4 In such an event the Contractor shall pay the additional attendance costs incurred by the Project Manager or the Employer in acceding to the Contractor's request.

23.3.5 The Contractor indemnifies the Employer against any liability resulting from noise or other disturbance created if the work is carried out at night.

23.3.6 The Project Manager may request the Contractor to submit, or the Contractor may submit to the Project Manager, a revised programme for accelerating the rate of progress to achieve Practical Completion before the Due Completion Date, if accepted by the Employer, the Due Completion Date shall be adjusted accordingly and shall be agreed in writing by the Project Manager.

23.4 **Non-working times**

23.4.1 Working Hours

23.4.1.1 No work shall be carried out on the Site on locally recognised days of rest, or outside the normal working hours stated in Annexure “D” [Working Hours and Days], unless:

23.4.1.2 otherwise stated in the Contract;

23.4.1.3 the Project Manager acting on instructions of the Employer gives consent, or

23.4.1.4 the work is unavoidable, or necessary for the protection of life; or property or for the safety of the Works, in which case the Contractor shall immediately advise the Project Manager.

23.5 **Instructions**

23.5.1 On the Commencement Date, the Project Manager shall deliver to the Contractor copies of the drawings and any instructions required for the commencement of the Works.

23.5.2 The Project Manager shall deliver to the Contractor from time to time, during the progress of the Works, drawings for construction purposes or instructions as shall be necessary for the proper and adequate construction, completion and defect correction of the Works.

23.5.3 The Contractor shall give adequate written notice to the Project Manager of any requirements additional to that contained in the Scope of Work or specifications or drawings, which the Contractor may require for the execution of the Works and the Project Manager shall deliver such instructions and/or specifications and/or drawings to the Contractor.

23.5.4 The aforesaid instructions and/or specification and/or drawings referred to in Clause 23.5.3 shall be delivered in good time taking the approved programme into account.

23.5.5 The Contractor shall give effect to and be bound by any specifications or drawing or instruction given in terms of this Clause and, if such specification or drawing or

instruction shall require any variation of, addition to, or omission from the Works, Clause 24.9 shall apply.

23.5.6 If by reason of a failure by the Project Manager, after his receipt of written notice from the Contractor in terms of Clause 23.5.3, to comply in good time with the provisions of Clause 23.5.4, the Contractor suffers delay to Practical Completion and, he shall be entitled to make a claim for additional time in accordance with Clause 35.4, 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 clam and of the extension of time and/or additional payment claimed.

23.6 **Delays attributable to the Employer**

If the Contractor suffers delay to Practical Completion from failure or delay on the part of the Employer, his agents, employees or other contractors (not employed by the Contractor) in fulfilling any necessary obligations in Order to enable the Works to proceed in accordance with the Contract, the Contractor shall be entitled to make a claim in accordance with Clause 35.4. The Contractor shall make such claim within 28 (twenty eight) days of such failure by the Employer to meet its contractual obligation. The Contractors claim shall be submitted to the Project Manager stating in detail such failure by the Employer.

23.7 **Suspension of the Works**

23.7.1 The Contractor shall, on the written Order of the Project Manager stating the cause for suspension(other than force majeure), suspend the progress of the Works 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 Works as far as is necessary unless such suspension is by reason of some default or breach of the Contract by the Contractor, the Contractor shall in respect of delay to Practical Completion be entitled to make a claim in accordance with Clause 35.4 for additional time in Order to reach Practical Completion.

23.7.2 If the progress of the Works 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 Works or that part thereof in respect of which progress is suspended.

23.7.3 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 Works, as a repudiation of the Contract by the Employer, in which case Clause 35.3 shall apply.

23.8 **Extension of time for Practical Completion**

23.8.1 If the Contractor considers himself entitled to an extension of time for circumstances of any kind whatsoever which may occur that will, in fact, delay Practical Completion of the Works, the Contractor shall claim in accordance with Clause 35.4 for extension of time. Such extension of time shall take into account any special non-working days and all relevant circumstances, including concurrent delays or savings of time which might apply in respect of such claim.

23.8.2 Without limiting the generality of Clause 35.4.1 the circumstances referred to in that Clause include:

23.8.2.1 the nature of additional work, time;

23.8.2.2 abnormal climatic conditions; and

23.8.2.3 any disruption which is entirely beyond the Contractor's control.

23.8.3 Instead of granting extension of time, if feasible, the Project Manager may without compensation instruct the Contractor to accelerate the rate of progress to achieve Practical Completion without extension of time.

23.9 **Penalty for delay**

23.9.1 If the Contractor fails to complete the Works to the extent which entitles him to receive a Certificate of Practical Completion in terms of Clause 23.10.2, by the Due Completion Date, the Contractor shall be liable to the Employer for an amount calculated 0.3% of the Contract Price per delayed day, which shall be paid for every day which shall elapse between the Due Completion Date and the date stated in the Certificate of Practical Completion. However, the total amount due under this Sub-Clause shall not exceed the maximum of 10% of the Contract Price.

23.9.2 The imposition of such penalty shall not relieve the Contractor from his obligation to complete the Works or from any of his obligations and liabilities under the Contract,

23.9.3 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 23.9.1.

23.9.4 If, before the issue of the Certificate of Practical Completion the whole of the Works, any part of the Works has been:

23.9.4.1 Certified by the Project Manager as complete in terms of a Certificate of Completion, or

23.9.4.2 Occupied or used by the Employer, his agents, employees or other contractors (not employed by the Contractor),

23.9.5 the penalty for delay shall be reduced by an amount which is determined by the Project Manager to be appropriate in the circumstances.

23.9.6 If the penalty payable by the Contractor has reached 10% of the Contract Price, then any subsequent breach shall become a material breach and the Employer shall be entitled to terminate the Contract with immediate effect.

23.10 **Completion**

23.10.1 Save as otherwise provided in the Contract, the Contractor shall be entitled to receive a Certificate of Practical Completion when the Works have reached Practical Completion. When the Works are about to reach the said stage, the Contractor shall, in writing, request a Certificate of Practical Completion and the Project Manager shall, if he is not going to issue the Certificate of Practical Completion, within 14 (fourteen) days after receiving such request, issue to the Contractor a written list setting out the work to be completed to justify Practical Completion. Should the Project Manager not issue such a list within the 14 (fourteen) days, Practical Completion shall be deemed to have been achieved on the Due Completion Date.

23.10.2 As soon as the work referred to in the list issued in terms of Clause 23.10.1 has been duly completed, the Project Manager shall deliver to the Contractor and the Employer the Certificate of Practical Completion, together with a further written list setting out the work to be completed to justify Completion.

23.10.3 Upon the issue of the Certificate of Practical Completion:

23.10.3.1 the Works shall be deemed to have been completed for the purposes of Clause 23.9.1, and

23.10.3.2 the Employer shall be entitled to take occupation of the Works, provided that the Contractor is given access to complete the Works in terms of the Contract.

23.10.4 As soon as the work referred to in the further list issued in terms of Certificate of Clause 23.10.2 has been duly completed, the Project Manager shall deliver to the Contractor and the Employer the Certificate of Completion;

23.10.5 Provided that the Project Manager shall be empowered to issue such certificate leaving any work and/or the rectifying of defects, and/or the clearing of the Site as specified therein, to be completed by a date stated in the Certificate of Completion and the Contractor shall be obliged to complete the work specified by that date. Should the Contractor fail to complete the work by the specified date, the Defects Liability Period shall be extended by the amount of the additional time taken by the Contractor to complete the work specified, and the terms of Clause 30.8.5.1 shall apply with the necessary changes.

23.10.6 Upon the issue of a Certificate of Completion:

23.10.6.1 the Defects Liability Period shall commence;

23.10.6.2 the possession of the Site shall revert to the Employer, and

23.10.6.3 insurance taken out in respect of the Works, shall cease, in terms of Clause 34.

23.10.7 The Employer need not occupy the Works before the Due Completion Date. If the Employer takes occupation of the Works or part thereof before the Due Completion Date, the Contractor shall request the Project Manager to check the extent of completeness of the Works and provide a list of the outstanding Works, Defects to be rectified and any clearance to be done by the Contractor ("list of outstanding issues"). Once the Contractor has complied with the list of outstanding issues such date shall be deemed to be the Due Completion Date, unless occupation is due to the Contractor's method of work.

23.11 **Clearance of Site**

On completion of the Works the Contractor shall clear away and remove from the Site all Construction Equipment, surplus materials, rubbish and Temporary Works of every kind and leave the whole of the completion Site and the Works clean and in a safe condition. All streams and watercourses shall be cleaned and restored to the condition as at the commencement of the Works.

23.12 **Approval**

23.12.1 The Works shall not be considered as completed in all respects until a Final Approval Certificate has been delivered by the Project Manager to the Employer and the Contractor stating the date on which the Works were completed and defects corrected, all in accordance with the Contract. Such Final Approval Certificate shall be delivered by the Project Manager as soon as practicable after the completion of the whole of the Works or of the expiration of the Defects Liability Period, or as soon thereafter as any Works Ordered during such period pursuant to Clauses 23.10.4, 30.7 and 30.8 shall have been completed in accordance with the Contract. Full effect shall be given to this Clause, notwithstanding any previous entry on the Permanent Works or the taking possession of, working in or using thereof, or any part thereof, by the Employer;

23.12.2 No certificate other than the Final Approval Certificate referred to in Clause 23.12.1 shall be deemed to constitute approval of the Works or shall be taken as an admission of the due performance of the Contract or any part thereof, nor shall any other certificate exclude or prejudice any of the powers of the Project Manager.

23.12.3 The Contractor's liability for any latent defects shall continue beyond the date of the Final Approval Certificate but the Employer shall have no claim against the Contractor arising out of any latent defect which first manifests itself later than the period of 5 years after the issue of the Final Approval Certificate in terms of this Clause.

24 PRICE, PAYMENT AND RELATED MATTERS

24.1 **Payment to Contractor**

As consideration for the construction, completion and defect correction of the Works, the Employer shall pay the Contractor in terms of the provisions of the Contract.

24.2 **Payments Certificates**

24.2.1 On or about the fifteenth day of each month, the Project Manager shall make either a progress measurement or an estimate of the work done, including any duly authorised alteration, extra, addition or omission.

24.2.2 On or about the fifteenth day of each month, the Contractor shall submit to the Project Manager a detailed list of material which has been properly provided and brought on the Site by him for permanent incorporation in the Works but not yet incorporated, accompanied by a written declaration signed by the Contractor certifying that the said material has been brought on to the Site for the particular work and shall not be removed therefrom. The Project Manager shall check the list of material and place a valuation thereon.

24.2.3 Thereafter the Project Manager shall within 14 Business Days issue a certificate authorising payment ("Payment Certificate") of such sum of money as he may consider represents the value of the work referred to in clause 24.2.1 hereof plus ninety per cent of the valuation placed on the material in terms of clause 24.2.2.

24.2.4 The Contractor shall be entitled to receive payment of the amount authorised in the Payment Certificate. Such payment shall be regarded as an open payment and both certificate and payment shall be subject to revision and adjustment in subsequent certificates by the Project Manager if at any time he is of the opinion that the certificate does not represent accurately -

24.2.4.1 the proportion or value of work completed, and/or

24.2.4.2 the quantity or value of material involved,

having regard to the remaining portion of the works still to be executed by the Contractor. If there is a need for such revision and adjustment, such revision and adjustment shall be reflected as such in subsequent certificates.

24.2.5 The Payment Certificate in respect of any work referred to in clause 24.2.1 hereof, or of any material referred to in clause 24.2.2 hereof, shall not imply acceptance of the work or of the material and shall not prejudice the right of the Project Manager to reject work or material not in accordance with the contract, nor the right of Employer to recover any amounts paid to the Contractor in respect of such rejected work or material.

24.2.6 Where disputes, arbitrations or claims have not been settled, the Project Manager shall, within six weeks after expiry of the maintenance period(s) or completion of the making good under clauses 30.6 hereof, whichever is the later, issue a certificate authorising payment of all money due for completed work and payment of all security as is then held by Employer, after deducting therefrom -

24.2.6.1 any money due by the Contractor to Employer;

24.2.6.2 an amount which, in the opinion of the Project Manager is sufficient to cover any pending or outstanding claims and any expenses likely to be incurred in connection therewith;

24.2.6.3 any money or portion thereof, at the discretion of the Project Manager, due for completed work for which rates have not been mutually agreed upon between the Employer and the Contractor.

24.2.7 Further Payment Certificates may be issued in respect of money withheld in terms of clause 24.2.6.1 and 24.2.6.3 hereof as the outstanding claims are settled and agreement on rates is reached.

24.2.8 The Project Manager shall, within six weeks after the settlement of all disputes or arbitration awards or after expiry of the defects period and completion of the making good (defects liability) under clause 30.6 hereof, whichever is the later, submit for the approval of the Employer, a final certificate which, after approval by the latter, shall be issued, thereby certifying both the final completion of the Works and the amount due to the Contractor, after deducting any money then due by the Contractor to the Employer.

24.2.9 The Project Manager shall send the final Payment Certificate, after approval, to the Contractor who, by countersigning the final Payment Certificate, shall certify his acceptance of the amount shown due to him as being full and final payment.

24.2.10 Within 6 (six) weeks after the receipt of the Contractor's Final Approval Certificate, the Employer will remit to the Contractor the balance of all money so due under the contract in terms of the final certificate.

24.2.11 Where the Contractor fails to counter-sign the final Payment Certificate or has not disputed the correctness of such final certificate within 3 (three) months after its receipt by him, the Contractor shall be deemed to be in agreement with such final certificate and the Employer shall effect payment in terms thereof. 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 3 (three) months after receipt by the Contractor of the final certificate, shall not be considered or admitted by the Employer, 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 (three) months, he waives such claim and relieves the Employer from responsibility for or any obligation to consider such claim.

24.2.12 Neither the issue of the final Payment Certificate nor any payment made thereunder shall release the Contractor from any liability, whether arising under the contract or at common law, to indemnify the Employer 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 sub-contractors or his or their employees or agents.

24.3 **Invoicing**

24.3.1 The Contractor shall issue invoices to the Employer after it has received Payment Certificate from the Project Manager acting on instructions of the Employer in accordance with Sub-Clauses 23.2.3 and 24.2.9 of this Contract.

All invoices shall be paid within 30 Days from the date of issue of the invoice by the Contractor.

24.4 **Price**

24.4.1. The total rates-based amount on this Contract is R 693 393,51 which amount constitutes the maximum approved expenditure under this Agreement. This amount represents a ceiling value only and shall not be construed as a guaranteed minimum payment or financial commitment by the Employer.

24.4.2. The Employer makes no representation or undertaking that the Contractor will be instructed to perform work up to the maximum contract value. Work shall be executed strictly as required, subject to the Employer's operational requirements, written instructions, and the availability of budget.

24.4.3. Payment shall only be made for work performed, satisfactorily completed, and duly measured, verified, and approved in accordance with the terms and conditions of this Agreement. No payment shall be made for work not authorised by the Employer in writing.

24.4.4. The Contractor acknowledges and agrees that:

24.4.4.1. the Employer does not guarantee any minimum value of work under this Agreement;

24.4.4.2. expenditure under this Agreement is subject at all times to budget availability and internal approvals;

24.4.4.3. the Employer reserves the right, at its sole discretion, to reduce, vary, or discontinue the scope of work;

24.4.4.4. should the total value of the work performed be less than the maximum contract value, the Employer shall not be liable for the difference between the actual value of work performed and the contract ceiling amount; and

24.4.4.5. the Contractor shall have no claim of whatsoever nature arising from the Employer not utilising the full contract value.

24.4.5. This clause shall not be interpreted as creating any obligation on the Employer to procure a minimum quantity of services or works.

24.5 **Payment in Applicable Currencies**

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

24.6 **Payment for Mobilisation (Not Applicable to this contract)**

24.6.1 If the Contractors 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 5.

24.6.2 The Contractor shall use the Mobilisation Fee towards the purchase of material and equipment for the Works.

24.6.3 The Contractor shall provide the Employer with documentary proof of purchase of material and equipment purchased pursuant to clause 24.6.2.

24.6.4 The Contractor shall deliver to the Employer the documentary proof of purchase as contemplated in clause 24.6.3 within 30 (thirty) days of payment of the Mobilisation Fee.

24.6.5 Failure by the Contractor to provide the Employer with documentary proof of purchase in accordance with clause 24.6.3 within the time frame stipulated in clause 24.6.4 shall be a breach of this Agreement and the Employer shall also be entitled to Mobilisation Fee paid.

24.7 **Escalation of the Contract Price (Not applicable to this contract)**

24.7.1 All foreign and locally sourced items of the Contract shall escalate using Consumer Price Index ("CPI"), as described in Sub-Clause 24.7. The base date for contract adjustment is the Signature Date of the Contract.

24.7.2 The CPI shall be applicable from the first anniversary of the Commencement Date.

24.7.3 The contract price adjustment factor shall be –

An = Ao * (x + y*Bt/Bo) Bo

where -

x is the proportion of the Contract Sum which is not subject to adjustment and is 0,10 (10%);

y is the proportion of the Contract Sum which is subject to adjustment and is 0,90 (90%);

Ao, represents the value of the monthly situation of works afferent to the "n" month settlement, calculated with prices valid at the date of contract signing.

An – represents the updated value of the monthly situation of works afferent to the “n” month settlement

Bo, is the CPI index ruling for the calendar month immediately after the Signature Date of the Contract,

Bt, is the CPI index ruling for the calendar month before the date on which measurement falls.

24.7.4 The index to be used shall be CPI.

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

24.7.6 The amounts to be added to or subtracted from the Payment Certificates shall be calculated by multiplying the amounts certified for payment by the contract price adjustment factor for that period after the following have been deducted, but before retention money, penalties and other amounts due by the Contractor to the Employer have been deducted and before adjustments have been made in terms of this clause:

24.7.6.1 Amounts paid on previous certificates.

24.7.6.2 Amounts paid for day work if work has been paid for at current rates in terms of paragraphs (i) and (ii).

24.7.7 If a new rate is negotiated during the period of the contract, the calendar month's costs which were used as a basis for the new rate shall be clearly stipulated in the variation Order. The amounts arising from the application of such new rate to the affected quantity will be subject to the contract price adjustment factor from the date stipulated for application of the new rate; provided, however, that the index to be used for Bo, in Clause 24.7.3 hereof shall be the index ruling for the calendar month so stipulated.

24.7.8 The contract price adjustment factor is to be applied after stipulated date or such extended date of completion and shall be 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 for payment thereafter, in which event the contract price adjustment factor applicable to the date of certification will be applied to the un-escalated amount payable for such work. The amount so determined shall be deemed to cover all the Contractor's expenses and costs from any cause whatsoever, including any increases and decreases therein.

24.7.9 Any additions to or deductions from the amount payable, brought about by the application of the contract price adjustment factor, shall be deemed to make full allowance for all increases or decreases in Rand cost from any cause whatsoever.

24.8 **Security (Not Applicable)**

24.8.1 The Contractor shall deliver to the Project Manager, as part of the documentation required before commencement with Works execution in accordance with Clause 5, at his cost, the Performance Bond, in the form similar to that which was attached as to the RFT, a copy of which is also attached hereto marked Annexure “A”.

24.8.2 The Contractor shall ensure the Performance Bond remains valid and enforceable until the Final Approval/Completion Certificate is issued. The Performance Bond

shall specify an expiry date, and if the Contractor has not become entitled to receive the Final Approval/Completion Certificate of the Works by the date 14 (fourteen) days prior to the expiry date, the Contractor shall extend the validity of the Performance Bond until such time that the Works have been completed.

24.9 **Variations**

24.9.1 If, at any time before the issue of the Certificate of Completion, the Project Manager shall require any variation of the form, quality or quantity of the Works or any part thereof that may be necessary or for any reason appropriate, he shall have power to Order the Contractor to do any of the following:

24.9.1.1 Increase or decrease the quantity of any work included in the Contract;

24.9.1.2 Omit any such work;

24.9.1.3 Change the character or quality of any such work;

24.9.2 Change the levels, lines, position and dimensions of any part of the Works;

24.9.3 Execute additional work of any kind necessary for the completion of the Works; and

24.9.4 Change the specified or approved sequence of construction.

24.9.5 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.

24.9.6 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”;

24.9.7 Provided that:

24.9.7.1 If the Contractor, as soon as possible, but within 7 (seven) days after receiving an oral Order or a written Order which he contends to be a variation Order, confirms, in writing to the Project Manager that it is indeed a variation Order, and such confirmation is not contradicted, in writing, by the Project Manager to the Contractor within 7 (seven) days of receipt thereof, it shall be deemed to be a variation Order within the meaning of this Clause. If the Contractor fails to confirm such Order within the seven day period, such Order shall not be a variation Order.

24.10 **Value of variations**

24.10.1 No variation Orders (cumulative) shall exceed 10% (10 percent) of the Contract Value as required by the Employers procurement policies.

24.10.2 No variation Orders shall be valid unless approved by the Group Chief Executive Officer and the Chief Procurement Officer of the Employer.

24.10.3 The value of all variation Orders shall be calculated by the Project Manager in accordance with the following principles:

24.10.3.1 Where work is of a similar character and executed under similar conditions to work priced in the relevant Bill of Quantities, it shall be valued at such rates and/or prices (including General Items) contained therein as may be applicable;

24.10.3.2 Where work is not of a similar character or is not executed under similar conditions, the rates and/or prices the Parties shall agree the rates prior to the additional Works being undertaken if the rates are not set out in the Bill of Quantities;

24.10.4 The Project Manager shall, within 28 (twenty eight) days after issuing the variation Order or such other period as may be agreed between the parties, in writing, deliver to the Contractor and the Employer, the valuation of the variation Order and apply this valuation in certifying amounts payable to the Contractor, without prejudice to the Contractor's right to raise a dissatisfaction in terms of Clause 21.8.

24.10.5 If the Project Manager's valuation is not received by the Contractor within the time referred to in Clause 24.10.4 the Contractor may in respect of the delivering delay to Practical Completion and/or to proven additional cost of giving valuation effect to the variation Order, be entitled to make a claim in accordance with Clause 35.4.

24.11 **Vesting of Plant and materials**

24.11.1 All Plant and materials:

24.11.1.1 brought on to the Site by or on behalf of the Contractor; and

24.11.1.2 fabricated or stored at places other than the Site and agreed in writing, by the Employer and the Contractor,

24.12 shall, immediately on delivery to the Site or, in the case of Plant and materials not on the Site, immediately on the conclusion of the said written Contract, be deemed to have become the Employer's property and to have been delivered to the Contractor to be held by him on behalf of the Employer and to be in respect of the Works. The risk to such Plant and material shall remain with the Contractor and shall pass to the Employer once it forms part of the Permanent Works.

24.12.1 The expression “materials” used in this Clause shall include all construction materials, commodities, substances, plant, equipment and appliances all of which are to be incorporated in the Works.

24.12.2 The Contractor shall hold, or cause to be held, on behalf of the Employer as owner, and be responsible for the care of all the Plant and materials referred to in Clause 24.11.1.1 and shall, in the case of Plant and materials referred to in Clause 24.11.1.2, take such steps as the Project Manager shall Order to identify the Plant and materials as being the property of the Employer.

24.12.3 The Contractor shall not remove from the Site any such Plant and materials which are on the Site or which are brought there from such removal of place of fabrication or storage and shall use all such Plant and materials exclusively for incorporation in the Permanent Works.

24.12.4 The operation of this Clause shall not be deemed to imply any approval by the Project Manager of Plant and materials, nor shall it prevent the rejection of any such Plant and materials at any time by the Project Manager.

25 TEMPORARY LEVEL CROSSING

25.1 The Project Manager 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 line at a position approved by the Project Manager and at the Contractor's

cost. The period for which the temporary level crossing is permitted will be at the discretion of the Project Manager.

25.2 The Contractor will, at its own cost, provide protection and supervise the construction of the road over the track(s) and for a distance of three (3) metres beyond the outermost rails, as well as the erection of all road signs and height gauges.

25.3 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.

25.4 All Employer electrical, telecommunications and signal services deviations or alterations to accommodate the level crossing contemplated in clause 25.1 will be done by Employer at its own cost. All other work required by the Project Manager 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.

25.5 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 Employer and to such other persons as the Project Manager may permit and of whose identity the Contractor will be advised. If so Ordered by the Project Manager,

25.6 The Contractor shall provide persons to control road traffic using the temporary level crossing contemplated in clause 25.1. 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.

25.7 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 3 (three) metres beyond the outermost rail shall be done under the supervision and protection of Employer, and at the cost of the Contractor.

25.8 When the temporary level crossing is no longer required by the Contractor or permitted by Employer, the Contractor shall remove it and restore the Site to its original condition. Work over the tracks and up to 3 (three) metres beyond the outermost tracks will be supervised by Employer.

25.9 Such supervision and restoration of Employer electrical, telecommunication and signalling services to their original position will be undertaken by Employer at its own cost. The Contractor at his own cost shall restore other services.

26 INTERFERENCE WITH EMPLOYER'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 Project Manager and in the presence of a duly authorised representative of Employer.

26.2 The Contractor shall not carry out any work or operate any Plant, or place any material whatsoever nearer than 3 (three) metres from the centre line of any open line except with the written permission of the Project Manager 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. 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 Project Manager and the presence of an authorised representative of Employer in terms hereof, shall not relieve the Contractor of his duty to comply with Employer's current specification E7/1 (2012) for Works, attached to this Contract as Annexures "Q", on, over, under or adjacent to railway lines and near high voltage equipment.

27 BLASTING AND USE OF EXPLOSIVES

27.1 No blasting shall be carried out except with the prior written permission of the Project Manager and under such conditions as he may impose.

27.2 The Contractor shall arrange for the supply, transport storage and use of explosives.

27.3 The Contractor shall have labour, tools and plant, to the satisfaction of the Project Manager, 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 Employer.

27.4 The Contractor shall notify the Project Manager of his intention to blast at least 21 (twenty one) days before the commencement of any blasting operations.

27.5 Before any blasting is undertaken, the Contractor and the Project Manager 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 34 hereof, make good any deterioration of such buildings, houses, or structures, which, in the opinion of the Project Manager, was directly caused by the blasting.

27.6 When blasting within 500m (five hundred meters) of a railway line, the Contractor shall observe the requirements stipulated in Employer 's current specification E7/1 (2012) for Works on, over, under or adjacent to railway lines and near high voltage equipment. A copy of the E7/1 (2012) specification is attached hereto as Annexures "Q".

27.7 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.

28 COMPLIANCE WITH SAFETY LEGISLATION AND POLICIES

28.1 The Contractor shall comply with all applicable legislation and the Employer's safety requirements adopted from time to time and instructed by the Project Manager. Such compliance shall be entirely at the Contractor's own cost, and shall be deemed to have been allowed for in the rates and prices in the contract.

28.2 The Contractor shall, in particular, comply with the following Acts: -

28.2.1 the Compensation for Occupational Injuries and Diseases Act No.130 of 1993, as amended ("COIDA"). The Contractor shall produce proof of registration and good standing with the Compensation Commissioner in terms of COIDA;

28.2.2 the Occupational Health and Safety Act No.85 of 1993, as amended ("OHSA"). The Contractor is in terms of section 37(2) of OHSA, deemed to be an employer in his own right with duties as prescribed in the OHSA, and agrees to ensure that all work will be performed or machinery and plant used in accordance with the provisions of OHSA 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. This Contract and all documents attached or referred to, form an integral part of the arrangements and procedures mentioned in the aforementioned section;

28.2.3 The Explosives Act No.15 of 2003, as amended ("Explosives Act") and applicable regulations, as well as the blasting regulations from the OHSA. 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 Explosives Act.

28.2.4 National Railway Safety Regulator Act No.16 of 2002; as amended; and

28.2.5 Provincial Ordinances and Local Authority By-laws, and all relevant regulations framed thereunder having an effect on his business or the operator provided in terms of this Contract.

28.3 The Contractor shall comply with the safety arrangements and procedural compliance with the OHSA and regulations, as more fully set out in Annexure “K” attached hereto, and shall, before commencement with the execution of the Contract, which shall include Site establishment and delivery of Construction Plant and Equipment or Materials, submit to the Project Manager-

28.3.1.1 documentary proof of his procedural compliance with the OHSA; and

28.3.1.2 particulars of the health and safety programme to be implemented on the Site in accordance with Annexure “K”.

28.4 The Contractor's health and safety programme will be subject to acceptance by the Project Manager, 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 OHSA.

28.5 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 (2012) (Annexure “Q”), 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 Employer applicable to the nature of Works carried out under the Contract, and as instructed by the Project Manager from time to time.

28.6 In addition to compliance with clause 28.2 hereof, the Contractor shall report all incidents contemplated by section 24 of OHSA to the Project Manager. Any incident resulting in the death of or injury to any person on the Works shall be reported within 24 (twenty four) hours of its occurrence and any other incident shall be reported within 48 (forty eight) hours of its occurrence."

29 PROTECTION OF PERSONS AND PROPERTY

29.1 The Contractor shall provide and maintain all lights, guards, barriers, fencing and watchmen when and where necessary or as required by the Project Manager 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.

29.2 The Contractor shall take all the requisite measures and precautions during the course of the Works and during blasting operations to -

29.2.1 protect the public and property of the public;

29.2.2 protect the property and workmen of both Employer and the Contractor;

29.2.3 avoid damage to and prevent trespass on adjoining properties, and

29.2.4 ensure compliance with any instruction issued by the Project Manager or by any person appointed by him, or any instruction embodied in the contract documents, which affects the safety of any person or thing.

29.3 The Employer will provide, at its own cost, protection for the safe working of trains during approved blasting operations and during such other operations as the Project Manager may consider necessary. Protection by Employer, for any purpose whatsoever, does not absolve the Contractor from his responsibilities in terms of the contract.

29.4 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 Worksite camps on account of disorder shall be at the Contractor's expense.

29.5 All operations necessary for the execution of the Works, including the provision of any Temporary Works and Worksite camps, shall be carried out so as not to cause veld fires, ground, water or atmospheric 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 all work, including work permitted outside normal working hours.

29.6 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 Project Manager. The Contractor shall comply with environmental protection measures and specifications stipulated by the Project Manager and/or local and environmental authorities in accordance with all applicable environmental legislation.

30 QUALITY AND RELATED MATTERS

30.1 **Quality of Construction Equipment**

The nature and quality of all Construction Equipment to be provided by the Contractor for the execution and making good of defects of the Construction Works shall be such that it corresponds with the requirements and Equipment scope of the Works. The Construction Equipment shall be in good working Order and shall, in particular, be fit for the purpose for which it is to be used. The Contractor shall provide and maintain sufficient Construction Equipment to meet all the requirements and, when so Ordered by the Project Manager, the Contractor shall remove from the site all unsuitable, outdated and obsolete Construction Equipment.

30.2 **Quality of Plant, workmanship and materials**

All Plant to be supplied as well as the workmanship and materials used during the execution of the Works, shall be provided, manufactured and executed as specified in the Contract and shall comply with the requirements set out in the Scope of Works and/or in the Project Manager's instructions from time to time.

30.3 **Access to the Works**

The Employer, the Project Manager and any person authorised by either the Project Manager or the Employer, shall during working hours, have access to the Works and to the Site and to all workshops and places where work is being prepared or where Plant, materials, manufactured articles and machinery are being manufactured or obtained for the Works, in Order to inspect, examine and test such Plant, materials and workmanship and verify progress in accordance with the programme. The Contractor shall afford any necessary facility for and assistance in obtaining the right to such access.

30.4 **Samples and testing**

30.4.1 The Contractor shall, as set out in the Scope of Work or as instructed by the Project Manager, provide at his own expense samples of materials intended to be incorporated into the Works. The Contractor shall, as set out in the Scope of Works or as instructed by the Project Manager, take and deliver to the Project Manager; specimens from portions of the Works already constructed, and make good any resultant damage to the Works.

30.4.2 The Contractor shall, in accordance with the Scope of Work or if instructed by the Project Manager, carry out tests on Plant and samples of materials intended to be incorporated into the Works and on any test specimens from portions of the Works, and shall carry out any other tests specified in the Scope of Works.

30.4.3 The Contractor shall provide all necessary assistance, labour, materials, electricity, fuel, testing equipment and instruments for the purpose of such tests to be performed by him or, if so specified in the Scope of Work or instructed by the Project Manager, for the purposes of tests to be performed by others.

30.4.4 In respect of the cost of test of the Contractor's services in terms of Clauses 30.4.1 and 30.4.2, the Contractor shall be deemed to have allowed in his rates and/or tests prices for all such services as are required to be rendered by him, provided that the tests have been particularised in the Scope of Work in sufficient detail for him to allow for them.

30.4.5 Provided that, if any test shall establish that the Plant, workmanship or the materials used do not comply with the Contract, the Contractor shall not be paid any amount in respect of the services concerned or making good any resultant damage to the Works, whether or not payment would otherwise have been due in terms of Clause 30.4.4.

30.4.6 The Project Manager and the Contractor shall deliver to each other, when testing has been carried out, accurate and complete copies of all reports on tests carried out by or on behalf of either party.

30.5 **Examination of the Works**

30.5.1 No part of the Works or excavations shall be covered up or put out of view without the consent of the Project Manager, and the Contractor shall afford full opportunity to the Project Manager to examine and measure the Works and to inspect the excavations before any Permanent Works are placed thereon.

30.5.2 No Plant shall be delivered to the Site until such Plant has passed testing in accordance with Clause 30.4.2 and the subsequent written authorization by the Project Manager for delivery to Site has been issued.

30.5.3 The Contractor shall give adequate written notice to the Project Manager whenever Plant or any part of the Works or excavations are ready or almost ready for testing or examination and the Project Manager shall, unless he considers it unnecessary and advises the Contractor accordingly in writing (in which event he shall be deemed to have given the consent required in terms of this Clause 30.5), attend, as soon as practicable, for the purpose of testing such Plant or examining such work or excavations;

30.5.4 Provided that, any delay occasioned by the said attendance of the Project Manager beyond that provided in the approved programme shall entitle the Contractor to make a claim in accordance with Clause 35.4 in respect of the delay to Practical Completion and/or to proven additional cost.

30.5.5 Any delay occasioned by the Employer in the dates of delivery of Plant beyond that provided in the approved programme shall entitle the Contractor to make a claim in accordance with Clause 35.4 in respect of the delay to Practical Completion and/or to proven additional cost.

30.5.6 The Contractor shall uncover any part or parts of the Works or make openings in or through the same as the Project Manager may from time to time Order and reinstate and make good such part or parts in accordance with the terms of the Contract. If any such part or parts have been covered up or put out of view after compliance with the requirements of Clauses 30.5.1 and 30.5.3 and are found to have been executed in accordance with the Contract, the Contractor shall in respect of the delay to Practical Completion and/or to proven additional cost, be entitled to make a claim in accordance with Clause 35.4, but in any other case the cost shall be borne by the Contractor and no extension of time shall be given.

30.6 **Defective Plant, materials and work**

30.6.1 The Project Manager shall, during the progress of the Works, have the power to Order, in writing, from time to time, the retesting of the Contract that failed to pass the tests in accordance with Clause 30.4.2, within such time or times as specified in the Order, all at the cost of the Contractor.

30.6.2 If, following retesting of Plant, it again fails to meet the requirements of the Contract the Project Manager shall be entitled to:

30.6.2.1 instruct further making good and retesting of such Plant at such retesting of time or times as specified in the notice, all at the cost of the Plant Contractor,

30.6.2.2 subject to the Employer's written consent, accept such Plant subject to a reduction in the Contract Price as provided for in the Contract or as may be agreed by the Employer and the Contractor, or

30.6.2.3 reject the Plant if the results of the tests show that the Plant is not in accordance with the Contract.

30.6.3 The Project Manager shall, during the progress of the Works, have the power to Order, in writing, from time to time, within such time or times as improper, work specified to have been in Order:

30.6.3.1 the removal from the Site of any materials which are not in accordance with the Contract and the substitution of proper and suitable materials therefor, and

30.6.3.2 the removal and proper re-execution (notwithstanding any previous test thereof or interim payment therefor) of any work which, in respect of materials or workmanship, is not in accordance with the Contract.

30.6.4 In case of failure on the part of the Contractor to carry out any of the Orders referred to in Clauses 30.6.1 within the time period stated by the Project Manager in such Order, the Employer shall be entitled to employ and pay other persons to carry out same and all costs consequent thereon or incidental thereto, in excess of what would have been payable to the Contractor if the Contractor had carried out such Order, shall be borne by the Contractor and shall be recoverable from him by the Employer.

30.7 **Search for defects**

The Contractor shall by written Order from the Project Manager, search for the cause of any defect. If such defect is one for which the Contractor is not liable under the Contract, the cost of the work carried out by the Contractor in the search shall be paid to him. If such defect is one for which the Contractor is liable, the cost of such work shall be borne by the Contractor.

30.8 **Defects**

30.8.1 To the extent that the Permanent Works shall at, or as soon as practicable after the expiration of the Defects Liability Period, be in the condition (fair wear and tear excepted) required by the Contract, the Contractor shall, during the Defects Liability Period, execute all such repair, reconstruction, rectification and making good of defects, shrinkages, settlements or other faults as may be Ordered, in writing, by the Project Manager.

30.8.2 All such work shall be carried out in terms of the Contract and shall be completed during the Defects Liability Period or, if necessary, within such time thereafter as the Project Manager shall, in writing, allow, if the reason why the work is being completed later is not attributable to any fault or failure of performance by the Contractor.

30.8.3 If such work is delayed by the Contractor's own fault, the Defects Liability Period in respect of the work concerned shall be extended by the additional time taken by the Contractor to effect completion of the outstanding work.

30.8.4 All such remedial work shall be carried out by the Contractor, at his own expense, if the necessity therefore is due to Plant, or the use of materials or workmanship not in accordance with the Contract, or to neglect or failure on the part of the Contractor to comply with any obligation under the Contract. However, if such remedial work is

due to any other cause, such work, if carried out by the Contractor, shall be valued and paid for in accordance with Clause 24.10.

30.8.5 If the Contractor fails, within 28 (twenty-eight) days of receipt of written notice from the Project Manager, to do any remedial work required by the Project Manager, the Employer shall be entitled to have such work done by his own workmen or by others, and:

30.8.5.1 if such work should have been done by the Contractor at his own work expense, the Employer shall be entitled to recover from the Contractor the cost thereof, and

30.8.5.2 If the cost of such work, had it been done by the Contractor, would have been assessed and paid for as specified in Clause 30.8.4, the Employer shall be entitled to recover from the Contractor the amount by which the actual cost exceeds the cost which would have been so paid to the Contractor.

30.9 Urgent remedial work

30.9.1 If, by reason of any accident or failure, or other event at, on, or in urgent connection with the Works or any part thereof, either during the remedial or re-execution of the Works or during the Defects Liability Period (if any), any remedial or other repair work is urgently necessary for the safety and protection of the Works, or persons, or property, and the Contractor is not available or is unable to do such work, the Employer may have the necessary work or repair done by his own workmen or by others.

30.9.2 The Project Manager shall, before or as soon as practicable after the occurrence of any such emergency, notify the Contractor thereof, in writing.

30.9.3 If the work so done by the Employer is work which the Contractor was liable to do at his own expense under the Contract, all costs incurred by the Employer in so doing shall be determined by the Project Manager and the Employer shall be entitled to recover from the Contractor such amount.

31 RISKS AND RELATED MATTERS

31.1 Protection of the Works

31.1.1 The Contractor shall protect the Works properly and shall so arrange his operations that they pose no danger, and cause the least possible inconvenience to the public and/or to vehicle and pedestrian traffic. For this purpose, he shall, inter alia, provide and maintain sufficient Temporary Works, road signs, lights, barricades, fencing and guarding as may be necessary or required by any act, regulation, including the South African Road Traffic Signs Manual, or statutory authority.

31.1.2 All operations necessary for the execution of the Works shall, as far as compliance with the requirements of the Contract permits, be carried out in such a manner as not to cause unnecessary noise or pollution, or to interfere unnecessarily or improperly with, or encroach upon the use of public services, or access to, use and occupation of public or private roads and footpaths or properties, whether in the possession of the Employer or of any other person.

31.1.3 The Contractor shall use every reasonable means to prevent any of the roads or bridges to, or in the vicinity of the Site, from being subjected to damage by excessive loads or disruption due to excessive traffic occasioned by the transport arrangements of the Contractor.

31.1.4 The Contractor indemnifies the Employer against any liability arising out of the Contractor's non-compliance with his obligations in terms of this Clause.

31.1.5 The Contractor shall be deemed to have allowed in his rates and/or for prices for all obligations in terms of this Clause except insofar as provision is made in the Pricing Data for payment in respect of specific items pertaining to these obligations.

31.2 **Care of the Works**

31.2.1 From the date on which the Site is handed over to the Contractor to the date of the issue of a Certificate of Completion, the Contractor shall take full responsibility for the care of the Works and of all Plant intended for incorporation into the Works and materials on the Site intended for incorporation into the Works.

31.2.2 Provided that, where the Project Manager issued a Final Approval Certificate in respect; of any part of the Works, the Contractor shall cease to be responsible for the care of such part and responsibility therefore shall pass to the Employer.

31.2.3 If there is any damage to the Works, or any part thereof, or to the said Plant or materials, or physical loss occurs:

31.2.3.1 From any cause whatsoever (other than the "Force Majeure" defined in Clause 32) while the Contractor is responsible for the care thereof, the Contractor shall, at his own cost, repair and make good the same so that, at the issue of the Certificate of Completion, the Works or the portions of the Works to which the Certificate relates shall be in good Order and condition, and in conformity with the Contract.

31.2.3.2 Arising from any of the "Force Majeure", referred to in Clause 32, the Contractor shall, if Ordered by the Project Manager, repair and make good the same and the cost of such work shall be valued and paid in accordance with Clause 24.10

31.3 Occasioned by the Contractor in the course of any operation carried out by him for the purpose of complying with his obligations under Clause 30.8 or in respect of work to be completed in terms of Clause 23.10.2 , the Contractor shall be liable for such damage or loss.

32 FORCE MAJEURE

32.1 **Definition of Force Majeure**

32.1.1 In this Clause, **"Force Majeure"** means an exceptional event or circumstance:

32.1.1.1 which is beyond a Party's control,

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

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

32.1.1.4 which is not substantially attributable to the other Party.

32.1.2 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions 32.1.1.1 to 32.1.1.4 above are satisfied:

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

32.1.2.2 rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,

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

32.1.2.4 natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity, epidemic or plague.

32.2 **Notice of Force Majeure**

32.2.1 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.

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

32.2.3 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.

32.3 **Duty to Minimise Delay**

32.3.1 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.

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

32.4 **Consequences of Force Majeure**

32.4.1 If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 32.2, and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 35.4 to:

32.4.1.1 an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 23.8, and

32.4.1.2 if the event or circumstance is of the kind described in of Sub-Clauses 32.1.2.1 to 32.1.2.4 and occurs in the Country, payment of any such Cost.

32.4.2 After receiving this notice, the Parties shall proceed in accordance with Clause 32.2 to agree or determine these matters.

32.5 **Optional Termination, Payment and Release**

32.5.1 If the execution of substantially all the Works in progress 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 32.2, 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 this event, the termination shall take effect 7 (seven) days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 32.5.2.4 [Cessation of Work and Removal of Contractor's Equipment].

32.5.2 Upon such termination, the Project Manager shall determine the value of the work done and issue a Payment Certificate which shall include:

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

32.5.2.2 the Cost of Equipment and Materials Ordered for the Works which have been delivered to the Employer, this Equipment and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;

32.5.2.3 any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works; and

32.5.2.4 the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost).

32.6 **Release from Performance under the Law**

32.6.1 Notwithstanding any other provision of this Clause 32.6.1, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

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

32.6.1.2 the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 32.5 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 32.5.

33 REPORTING ACCIDENTS

33.1 In addition to any statutory obligations, the Contractor shall, as soon as possible, report to the Project Manager and Employer's insurance department every occurrence on the Works or the Site which causes damage to property, or injury or death to persons including the Contractors employees.

33.2 If required by the Project Manager, the Contractor shall submit a written report to the Project Manager within 48 hours of such requirement, setting out full details of the occurrence. The Project Manager shall have the right to make any enquiries, either on the Site or elsewhere, as to the cause and results of any such occurrence and the Contractor shall make available to the Project Manager the necessary facilities for carrying out such enquiries.

34 INSURANCES

34.1 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) the Employer shall effect and maintain as appropriate in the name of the Employer and where relevant the Contractor and/or Subcontractors the following insurances which are subject to the terms limits exceptions and conditions of the Policy:-

34.1.1 Insurance of the Works, Plant intended for incorporation in the Works, and of all materials on the Site intended for incorporation in the Works against physical loss or damage arising from whatever cause, other than specifically excluded, for the period for which the Contractor is responsible for the Works in terms of Clause 31.2.1 and for a sum insured which shall be the aggregate of:

34.1.1.1 the Contract Price,

34.1.1.2 the amount agreed upon with Project Manager to cover the value of Plant and materials supplied by the Employer for incorporation in the Works and not included in the Contract Price, and

34.1.1.3 the amount for professional fees, not included in the Contract Price, payable in respect of the repair or reinstatement of damage to the Works or said movables.

34.1.2 A Coupon Policy for Special Risks Insurance issued by the South African Special Risks Insurance Association.

34.1.3 Liability insurance that covers the insured parties against their respective liability for the death of, or injury to any person, or loss of, or damage to any property (other than property while it is insured in terms of Clause 34.1.1 arising from or in the course of the fulfilment of the Contract, from the Commencement Date to the date of the end of the Defects Liability Period.

34.1.4 Provided that the insurance shall include a cross-liability clause such that the insurance shall apply to the Contractor and to the Employer as separate insured parties.

34.1.5 Where the execution of the Works involves the risk of removal of or interference with support to adjoining properties including land or structures, or any structures to be altered or added to, the Employer shall effect and maintain insurance against the death or injury to persons, or damage to such property consequent on such removal or interference with support, until such portion of the Works has been completed, for a limit of R10,000,000 in respect of each and every occurrence

34.1.6 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 Subcontractors under the insurances effected by the Employer.

Where more than one Contractor is involved in the same claim the Deductible will be borne in pro-rata amounts by each Contractor in proportion to the extent of each Contractor's admitted claim.

The Deductibles (First Amount Payable) for which the Contractors are responsible and which are applicable in respect of each and every occurrence or series of occurrences attributable to one source or original cause giving rise to loss or damage or liability indemnifiable are as follows:-

(a) under Contract Works Insurance in respect of loss or damage arising out of; major perils, storm , flood, fire etc

(i)	Contracts up to	R 2,500,000			R 5,000
(ii)	Contracts between	R 2,500,000	and	R 5,000,000	R 10,000
(iii)	Contracts between	R 5,000,000	and	R 20,000,000	R 15,000
(iv)	Contracts between	R 20,000,000	and	R 50,000,000	R 20,000
(v)	Contracts between	R 50,000,000	and	R 70,000,000	R 30,000
(vi)	Contracts between	R 70,000,000	and	R 100,000,000	R 50,000
(vii)	Contracts between	R 100,000,000	and	R 300,000,000	R 100,000

(b) under SASRIA (Special Risks) Insurance 0.100% of the Contract Value in respect of theft losses subject to a minimum of R 2,500 and a maximum of R 25,000

(c) under Public Liability Insurance – R5,000 in respect of loss or damage to any property and R10,000 any other occurrence

(d) under Removal of Support Liability – R50,000 in respect of loss or damage to any property

(e) under any other insurances shall be as specified in such insurance policy.

34.1.7 In respect of subcontractors, the Contractor shall ensure that all its subcontractors comply with the provisions of the requirements relating to insurance.

34.1.8 Nothing herein contained shall oblige the Contractor to effect any insurance which is not generally obtainable from a registered insurer in South Africa.

34.1.9 The insurances referred to in Clause 34.1 shall be effected with an insurance company registered in South Africa.

34.1.10 The Employer shall pay any premium due in connection with the insurance affected by the Employer.

34.1.11 The Contractor shall not include any premium charges for this insurance except to the extent that he may deem necessary in his own interests to effect supplementary insurance to the insurance effected by the Employer. The Employer reserves the right to call for full information regarding insurance costs included by the Contractor..

34.1.12 Any amount which becomes payable to the Contractor or any of his Subcontractors as a result of a claim under the Contract Works Insurance shall if required by the Employer be paid net of the Deductible to the Employer 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.

In respect of any amount which becomes payable as a result of a claim under any Public Liability Insurances the Contractor or his Subcontractors shall be required to pay the amount of the Deductible to the Insurer to facilitate settlement of such claim.

34.1.13 Any further clarification of the scope of cover provided by the Policies arranged by the Employer should be obtained from the Employer or their Insurance Brokers,

Aon South Africa (Pty) Ltd

Attention: Tshepo Mofubetsoana

P O Box 1874, Parklands, 2121

Telephone: 011- 944 7506

E-mail: tshepo.mofubetsoana @aon.co.za

34.2 Insurance Affected by the Contractor.

34.2.1 Without in any way detracting from any requirements contained elsewhere in this contract the Contractor and Subcontractors shall where applicable provide as a minimum the following:

34.2.1.1 Insurance of Contractor's 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.

34.2.1.2 Insurance in terms of the provisions of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 (COIDA) as may be amended or in terms of any similar Workers Compensation and Unemployment Insurance enactment's.

34.2.1.3 Motor Vehicle Liability Insurance comprising (as a minimum) "Balance of Third Party" Risks including Passenger Liability subject to an Indemnity Limit of no less than R 10,000,000

34.2.1.4 Where the Contract involves manufacturing and/or fabrication of the Works or parts thereof at premises other than at the Site the Contractor shall satisfy the Employer that all Plant and Materials for incorporation in the Works are adequately insured during manufacture and/or fabrication. In the event of the Employer having an insurable interest in such Works during manufacture or fabrication then such interest shall be noted by endorsement to the relevant Policies of Insurance

Imported equipment or component parts or materials to be supplied in terms of this Contract which require any process of assembly or finishing in South Africa prior to delivery to the Site are to be insured by the Contractor up to the commencement of transit to Site of the assembled or finished equipment component parts or materials.

34.2.2 The insurances to be provided by the Contractor and his Subcontractor shall

34.2.2.1 be effected with Insurers and on terms approved by the Employer – these terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause

34.2.2.2 be maintained in force for whatever period the perils to be insured by the Contractor are at risk (including any Defects Liability Period during which the Contractor is responsible for the care of the Works)

34.2.2.3 within the respective periods stated in the Appendix to Tender submit to the Employer the relevant Policy or Policies of Insurance or evidence acceptable to the Employer that such insurances have been effected.

34.2.3 In the event that the Contractor or his Subcontractor receives any notice of cancellation or restrictive modification to the insurance provided to them they shall immediately notify the Employer in writing of such cancellation or restriction and shall advise what action the Contractor or his Subcontractor will take to remedy such action.

If the Contractor fails to effect and keep in force the insurances referred to then the Employer 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 the Employer from any monies due or which may become due to the Contractor or recover same as a debt from the Contractor.

All insurance policies provided by the Contractor or any of its Subcontractors pursuant to the Contract (except for worker's compensation) shall include the Employer as Additional Insured to the extent of liabilities assumed by the Contractor herein.

34.3 Subcontractors.

34.3.1 The Contractor shall;

34.3.1.1 ensure that all potential and appointed Subcontractors are aware of the whole contents of this clause, and

34.3.1.2 enforce the compliance by Subcontractors with this clause where applicable.

35 TERMINATION OF CONTRACT

35.1 Termination of Contract

35.1.1 Where the Contract is for alterations and/or additions to an existing structure and such existing structure is substantially destroyed, the Employer may terminate the Contract on written notice to the Contractor.

35.1.2 If the Contract is terminated for any reason other than the Employer's fault, the Contractor shall be paid by the Employer (insofar as such amounts or items have not already been covered by payments on account made to the Contractor) for all measured work executed prior to the date of termination, the amount (without retention), payable in terms of the Contract and, in addition:

35.1.2.1 the amounts payable in respect of any General Items for the work or service comprised therein that has been carried out or performed and for work and servicing that has been partially carried out or performed, a proper proportion, as certified by the Project Manager, of the General Items;

35.1.2.2 the cost of Plant, materials or goods reasonably Ordered for the Works which shall have been delivered to the Contractor, or of which the Contractor is legally liable to accept delivery (such Plant, materials or goods becoming the property of the Employer upon such payment by him);

35.1.2.3 a sum to be certified by the Project Manager as being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works, insofar as such expenditure shall not have been covered by the payments previously referred to in Clause 35.1.2; and

35.1.2.4 the expense of removal from the Site of Construction Equipment and Temporary Works as are on the Site at the date of termination.

35.1.3 The Project Manager may request any such supporting documentation as he may deem fit in Order to determine whether the amount claimed by the Contractor under Clause 35.1.2 is correct.

35.1.4 The provisions of this Clause shall, in the circumstances described in Clause 35.1.2.1 and 35.1.2.2 apply notwithstanding anything to the contrary contained elsewhere in the Contract.

35.2 **Termination by Employer**

35.2.1 If:

35.2.2 Application is made for the Contractors liquidation, whether provisionally or finally (other than a voluntary liquidation for the purpose of amalgamation or reconstruction) or makes an application for Business Rescue,

35.2.3 The Contractor makes a compromise with his creditors, or assigns in favour of his creditors, or agrees to carry out the Contract under the supervision of a committee representing his creditors, or if the Contractor assigns the Contract without having first obtained the Employer's written consent, or if execution is levied on his goods, or

35.2.4 The Project Manager certifies, in writing, to the Employer and to the Contractor, with specific reference to this Clause, that the Contractor:

35.2.4.1 Has abandoned the Contract,

35.2.4.2 Has failed to commence the Works in terms of Clause 20.2 hereof, or has suspended the progress of the Works for 14 (fourteen) consecutive days after receiving from the Project Manager written notice to proceed,

35.2.4.3 Has failed to proceed with the Works in accordance with the approved programme or in the absence of an approved programme, in the Project Manager's opinion,

35.2.4.4 Has failed to remove Plant or materials from the Site or to demolish and redo work within 14 (fourteen) days after receiving from the Project Manager written notice that the said Plant, materials or work have been condemned and rejected by the Project Manager in terms of these conditions,

35.2.4.5 Is not executing the Works in accordance with the Contract, or is neglecting to carry out his obligations under the Contract,

35.2.4.6 Or anyone, on his behalf has paid, offered or offer as payment to any person in the employ of the Employer or to the Project Manager, or any person in the employ of the Project Manager, a gratuity or reward or commission, or

35.2.4.7 Has furnished inaccurate information in the returnable documents completed at tender stage and forming part of the Contract,

then the Employer may, after giving 14 (fourteen) days written notice to the Contractor, (with specific reference to this Clause) to remedy the default to the extent that the default is capable of being remedied, terminate the Contract and Order the Contractor to vacate the Site and hand it over to the Employer. The Employer may then enter the Site and the Works and expel the Contractor therefrom without thereby affecting the rights and powers conferred on the Employer or the Project Manager by the Contract, The Employer may complete the Works himself or may employ another contractor to complete the Works, and the Employer, or such other contractor, may use for such completion as much of the Construction Equipment, Temporary Works and materials brought onto the Site by the Contractor as the Employer may think proper. If, Clause 35.2.2, is not applicable, the Employer may at any time sell any of the said Construction Equipment, Temporary Works and unused materials and apply the proceeds of sale towards payment of any sums that may be due or become due to the Employer by the Contractor under the Contract. In such circumstances, the Contractor shall forthwith vacate the Site and shall not be entitled to remain on the Site based on a right of retention until amounts due to him have been paid and neither will the Contractor be entitled to any further payments in terms of this Contract.

35.2.5 Notwithstanding anything to the contrary in this Contract, the Employer shall be entitled to terminate this Contract by immediate effect if the Contractor commits breach of clauses 35.2.2 and 35.2.3.

35.2.6 Should the amounts the Employer must pay to complete the Works exceed the sum that would have been payable to the Contractor on due completion by him, the Contractor shall, upon demand, pay to the Employer the difference. This sum shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly:

35.2.6.1 Provided that, should the Contractor on demand not pay the amount of such excess to the Employer, such sum may be determined and deducted by the Employer from any sum due to or that may become due to the Contractor under this or any previous or subsequent contract between the Contractor and the Employer.

35.2.6.2 If the provisions of Clause 35.2.2 apply, any notice or Order referred to Notices to in this Clause shall be delivered to the trustee or liquidator or business rescue practitioner and the trustee/liquidator rights and obligations vested in or binding on the Contractor shall vest in or be binding on the estate under liquidation.

35.3 **Termination by Contractor**

35.3.1 In the event that the Employer:

35.3.2 Persists in:

35.3.2.1 Repudiating the Contract,

35.3.2.2 Failing to pay the Contractor the amount due in terms of any payment certificate issued by the Project Manager, within the time of payment provided in the Contract,

35.3.2.3 Interfering with or obstructing the issue of any certificate, for 14 (fourteen) days after receipt of written notice from the Contractor (with specific reference to this Clause) to remedy the default,

35.3.3 Goes into liquidation (provisionally or finally), or business rescue.

35.3.4 Upon such termination:

35.3.4.1 All the provisions of the Contract, including this Clause, shall apply and continue to apply for the purpose of:

35.3.4.2 Resolving any dispute, and

35.3.4.3 Determining the amounts payable by either the Employer or the Contractor to the other of them.

35.3.5 The ownership of Plant and unused materials brought onto the Site by the Contractor, and for which the Employer has not made any payment, shall revert to the Contractor and he shall, with all reasonable dispatch, remove from the Site such Plant, materials and all Construction Equipment and Temporary Works, without prejudice to the exercise of any lien the Contractor may have acquired over the Employer's property.

35.3.6 The Employer shall be under the same obligations to the Contractor with regard to payment as if the Contract had been terminated under the provisions of Clause 34.1 but, in addition to the payment specified in Clause 35.1.2, the Employer shall pay to the Contractor the amount of any additional loss or damage to the Contractor arising out of or in connection with or in consequence of such termination.

35.3.7 Nothing in this Clause shall prejudice the right of the Contractor to exercise, either in lieu of or in addition to the rights and remedies specified in this Clause, any other rights or remedies to which the Contractor may be entitled under the Contract or common law.

35.3.8 liquidated (provisionally or finally), any notice referred to in this Clause shall be delivered to the trustee, or provisional trustee, or the liquidator or business rescue practitioner, or provisional liquidator, and all rights vesting in or binding on the Employer shall vest in or be binding on the estate under sequestration or liquidation.

35.4 **Contractor's Claims**

35.4.1 If the Contractor considers himself to be entitled to any extension of time for completion of the Works, the Contractor shall give notice to the Project Manager, 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 Contractor with such information within 48 (forty eight hours).

35.4.2 If the Contractor fails to give notice of a claim within such period of 28 (twenty eight) days, the Time for Completion 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 Sub-Clause shall apply.

35.4.3 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.

35.4.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. 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 contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

35.4.5 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 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.

35.4.6 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 Project Manager.

35.4.7 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 Project Manager acting on instructions of the Employer and approved by the Contractor, the Project Manager acting on instructions of the Employer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

35.4.8 The Parties shall agree or determine the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 23.8 [Extension of Time for Completion], to which the Contractor is entitled under the Contract. If either one of the Parties Employers not agree with the determination of the Project Manager it shall refer the matter for determination in accordance with clause 36.

35.4.9 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.

36 DISPUTE RESOLUTION

36.1 If a dispute of any kind arises between the Contractor and the Project Manager, 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 (fourteen) days of dispute having arisen, be referred to the Chief Executive Officer with a copy to the Group Chief Executive Officer. The Chief Executive Officer shall decide the matter within 28 (twenty eight) days of receipt of the reference and notify the Contractor and Project Manager of his decision.

36.2 If a dispute arises between the Project Manager and the Contractor, including a dispute arising out of the Chief Executive Officer's decision in terms of clause 36.1 hereof, or if the Contractor is dissatisfied with any instruction, assessment, determination, valuation, variation or ruling given or made by the Group Chief Executive Officer in terms of his

powers under the Contract, the matter shall be referred in writing to the Group Chief Executive Officer within 28 (twenty eight) days of the decision of the Chief Executive Officer or of the dispute or dissatisfaction, as the case may be, having arisen.

36.3 The parties shall thereafter endeavour to settle the dispute by way of negotiation.

36.3.1 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.

36.3.2 Either of the parties may elect that the negotiation proceedings be facilitated by an independent Mediator. In such case, the provisions of Clause 36.8 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.

36.4 If the parties fail to reach a negotiated settlement, or negotiations break down on account of a deadlock, the Group Chief Executive Officer shall decide the dispute on behalf of the Employer and shall advise his decision in writing to the Chief Executive Officer and the Contractor within 42 (forty two) days after the day of receipt by him of the reference in terms of clause 36.2. The Group Chief Executive Officer's decision shall forthwith be given effect to by the Chief Executive Officer, the Project Manager and the Contractor.

36.5 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 Group Chief Executive Officer's decision has been revised, as hereinafter provided for, by an arbitral award.

36.6 The Group Chief Executive Officer's decision shall be final and binding on the parties unless it is disputed by the Contractor in terms of clause 36.7 hereof.

36.7 Should the Contractor be dissatisfied with the decision of the Group Chief Executive Officer in terms of clause 36.4, he may, within 28 (twenty eight) days after the receipt thereof, declare the matter to be in dispute by written notification to the Group Chief Executive Officer. Unless otherwise agreed, the matter shall be referred to an Arbitrator appointed in terms of clause 36.8 hereof.

36.8 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.

36.9 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 Association of Arbitrators of South Africa, or by the Vice Chairperson in the absence of the Chairperson.

36.10 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.

36.11 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

Group Chief Executive Officer in so far as it may in his opinion be necessary to do so for the proper determination of the dispute.

36.12 Neither party to the Contract shall be limited in the proceedings before the Arbitrator to the evidence or arguments submitted to the Project Manager, the Chief Executive Officer or the Group Chief Executive Officer, for the purposes of preceding proceedings. The award of the Arbitrator shall be final and binding on the parties.

36.13 Arbitration proceedings may be entered into after and at any time before the completion or alleged completion of the Works, provided always –

36.13.1 that the preceding dispute resolution procedures stipulated herein have been followed and fully exhausted,

36.13.2 that no decision given by the Project Manager, the Chief Executive Officer or the Group Chief 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.

36.14 Any amount which may become payable by the Contractor to the Employer in consequence of any decision by the Group Chief 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.

36.15 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.

36.16 Notwithstanding provisions of this clause 36 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're not satisfied with the decision of the Group Chief Executive Officer.

37 PUBLIC RELATIONS AND PUBLICITY

37.1 The Contractor acknowledges that certain information pertaining to the Project 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:

37.1.1 Parliament and its members and officers in accordance with the provisions of the Public Finance Management Act, of 1999; and

37.1.2 the Auditor-General under the Public Audit Act, of 2004; and

37.1.3 persons acting in the public interest in accordance with the provisions of the Promotion of Access to Information Act, 2000.

37.2 Subject to clause 38 neither Party shall communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement without the prior approval of the other Party, such consent not to be unreasonably withheld.

38 CONFIDENTIALITY

38.1 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 Agreement and any extension thereof.

38.2 The confidential information of the disclosing Party shall, without limitation, include:

38.2.1 software and associated material and documentation, including information contained therein;

38.2.2 All information relating to :-

38.2.3 the disclosing Party's past, present and future research and development;

38.2.4 the Disclosing Party's business activities, products, services, customers and Employers, as well as its technical knowledge and trade secrets;

38.2.5 the terms and conditions of this Agreement;

38.2.6 Contractors' Data.

38.3 The Receiving Party agrees that in Order to protect the proprietary interests of the Disclosing Party in its confidential information:

38.3.1 it will only make the confidential information available to those of its Personnel who are actively involved in the execution of this Agreement;

38.3.2 it will initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorized disclosure and will take all practical steps to impress upon those Personnel who need to be given access to confidential information, the confidential nature thereof;

38.3.3 subject to the right to make the confidential information available to their Personnel under clause 38.3.1 above, they will not at any time, whether during this Agreement 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;

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

38.4 Upon termination or expiry of this Agreement, 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.

38.5 The foregoing obligations shall not apply to any information which:

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

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

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

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

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

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

38.8 The provisions of this Clause 38 are severable from the rest of the provisions of this Agreement 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.

39 ENTIRE AGREEMENT

39.1 Except where expressly provided otherwise in this Agreement, this Agreement 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 Agreement. No amendment, alteration, addition, variation or consensual cancellation of this Agreement will be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

39.2 Each of the Parties acknowledges that:

39.2.1 it does not enter into this Agreement 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 Agreement or not) except those expressly contained in or referred to in this Agreement, and the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a remedy available under this Agreement; and

39.2.2 this clause 39 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under any Law governing this Agreement.

40 SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in a manner which makes it effective and valid under any Applicable Law, but if any provision of this Agreement 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 Agreement, all of which shall remain in full force.

41 INDEPENDENT STATUS

41.1 Nothing in this Agreement 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.

41.2 It is recorded that it is the intention of the parties to exclude all legal consequences of a partnership.

42 INDEPENDENT ADVICE

42.1 Each of the Parties hereby respectively agrees and acknowledges that:

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

42.1.2 each provision of this Agreement (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 Agreement.

43 COUNTERPARTS

This Agreement 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 Agreement for all purposes.

SIGNED at _____ on _____ 2026

The Contractor:

For:

_____

Who warrants that he is duly authorised

AS WITNESSES:

1. _____

2. _____

SIGNED at _____ on _____2026

The Employer: THE PASSENGER RAIL AGENCY OF SOUTH AFRICA,

For: PASSENGER RAIL AGENCY OF SOUTH AFRICA

_____

Abram Nkgabutle

Regional Manager

Who warrants that he is duly authorised

AS WITNESSES:

1. _____

2. _____

ANNEXURE A

PERFORM BOND

[Insert name and physical address of Beneficiary]
("**the Beneficiary**")

PERFORMANCE GUARANTEE

Guarantee Reference Number: _____

1. You have entered into a written contract with _____**[insert the name and registration number of company and close corporation]** (the "**Applicant**") on _____**[insert date]** (the "**Contract**") in terms of which the Applicant is required to furnish you with a performance guarantee for the maximum amount of R**[insert]** (**[insert amount in words]**).

2. We,_____Bank,_____ registration number_____ _____**[insert address]** (the "**Bank**") hereby guarantees the payment to you on your first written demand of up to a maximum aggregate amount of R**[insert]** (**[insert amount in words]**) (the "**Guarantee Amount**") in the event that the Applicant fails to fulfil any of its obligations under the Contract.

3. The Bank's liability under this guarantee is principal in nature and is not subject to any agreement. The Bank's liability shall not be reduced, or in any way be affected by any alteration of the terms of the Contract or any other arrangements between the Applicant and yourself, whether oral or in writing.

4. The Bank will pay on written demand and will not determine the validity of the demand or become party to any claim or dispute of any nature which any party may allege.

5. Payment will only be made by the Bank against return of this original guarantee by you or your duly authorised agent.

6 This guarantee shall expire at 12:00 at the abovementioned office of the Bank on _____**[insert the expiry date]** ("**Expiry**") and any claim and statement received hereunder must be received at this office before Expiry. After Expiry, this guarantee shall become null and void, whether returned to the Bank for cancellation or not and any claim or statement received after Expiry shall be ineffective.

7. This guarantee is neither negotiable nor transferable and is restricted to the payment of a sum of money only and limited to the Guaranteed Amount.

DRAFT

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

<u>CONTRACTOR</u>

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 Succession Act, 9 of 1989)

SAFETY ON SITE

1. The Contractor shall for the duration of Contract No. ……, in respect of the provision of services to the Region, comply with the provisions of the Occupational Health and Safety Act 85 of 1993 and all regulations promulgated under this Act. For the purposes of the Act and in so far as the Contractor's personnel/employees are concerned, the Site on which the Contractor conducts the services for the Employer occupied by the Contractor, shall for the duration of the aforementioned agreement be deemed to be under the control of the Contractor. As employer, he is in every respect responsible for the compliance, at his own cost, with the provisions of this Act.

2. All records required in terms of this Act, and especially those required in terms of Section 24 of the Act with regard to the reporting of incidents, shall be available for inspection during normal business hours without any prior notice by the designated risk control official(s) of the Employer reportable incidents shall be reported by the Contractor to the Department of Manpower and the designated risk control official(s) of the Employer shall be informed forthwith.

3. The Contractor shall in terms of Sections 17, 18, 19 and 20 of the Act, appoint Safety Representatives and Safety Committees who shall meet as prescribed in Section of the Act. Minutes of the meetings shall be retained as prescribed in Section 7 of the General Administrative Regulations of the Act and shall be made available, on request, to the designated risk control official(s) of the Employer.

Signed at ..... at this ……... day of

..... 20…….

WITNESS: **TENDERER**:

....

ANNEXURE K

PASSENGER RAIL AGENCY OF SOUTH AFRICA (incorporated in terms of the Legal Succession Act, 9 of 1989)

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

AGREEMENT

I, the undersigned, …….....

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

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

in my capacity as .....

and duly authorised hereto by virtue of a resolution by the directors/members dated ..... (an extract of which is attached hereto), agree that the company/close corporation is an employer in its own right with rights and obligations, as set out in the Occupational Health and Safety Act 85 of 1993 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 Sa2fety 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 Commissioned) 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 it's 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).

ANNEXURE P

SPECIFICATION E4E PRASA (2004)

PASSENGER RAIL AGENCY OF SOUTH AFRICA

SAFETY ARRANGEMENTS AND PROCEDURAL COMPLIANCE WITH THE OCCUPATIONAL HEALTH AND SAFETY ACT (ACT 85 OF 1993), 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.

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

2. Definitions

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

2.2 The work included in this Contract shall for the purposes of compliance with the Act be deemed to be "**Construction Work**", which, in terms of the Construction Regulations, 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 that 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 Project Manager . 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 Project Manager.

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 Project Manager 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 Project Manager 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 Project Manager 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 Project Manager 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 Project Manager'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

Project Manager'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 Project Manager 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 Project Manager, 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;

(e) the procedure addressing the inspection, testing and maintenance of all fall protection equipment.

(f) 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 Project Manager 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 Project Manager, 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 Project Manager.

8.3 The Principal Contractor shall hand over a consolidated health and safety file to the Project Manager and/or Project Manager 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: -

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

(b) 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.

ANNEXURE 1 TO ANNEXURE P

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/ Project Manager
(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.

13.

Signature of Client/Clients Agent/ Project Manager

14.

Signature of Principal Contractor

ANNEXURE 2 TO ANNEXURE P

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/ Project Manager:

_____

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 / Project Manager (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.

ANNEXURE 3 TO ANNEXURE P

(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: - _____

ANNEXURE 4 TO ANNEXURE P

(COMPANY LETTER HEAD)

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

DECLARATION

In terms of the above Act I, _____am personally assuming the duties and obligations as Chief Executive Officer 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: _____

ANNEXURE 5 TO ANNEXURE P

(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: _____***

ANNEXURE Q

PASSENGER RAIL AGENCY
OF SOUTH AFRICA

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

(E7/1 2012)

ISSUED BY : The Executive Manager

Asset Management and Development

SPK7/1

PASSENGER RAIL AGENCY OF SOUTH AFRICA

prasa

PASSENGER RAIL AGENCY OF SOUTH AFRICA

ANNEXURE R

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

(E7/1 2012)

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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 (Signals		

PASSENGER RAIL AGENCY OF SOUTH AFRICA

E7/1 2012

SPECIFICATION FOR WORKS 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.

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

Group Executive Officer: The person appointed by PRASA from time to time as the Group 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 Works 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 Works 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 works shall encroach on the appropriate minimum clearances set out in Transnet's publications, PERMANENT WAY 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.

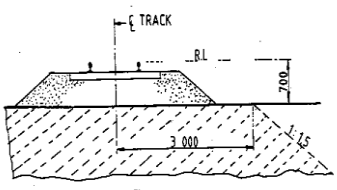

Fig. 1.

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 for permission to blast;

(ii) when blasting may take place;

(iii) when blasting actually takes place; and

(iv) when he advises the controlling 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 Compensation for Injuries and Diseases Act 130 of 1993, as amended

(iv) the Mines Health and Safety Act 29 of 1996, as amended; (v) the

ELECTRICAL SAFETY INSTRUCTIONS, as amended;

and all regulations framed under these acts.

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

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

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

18. TEMPORARY LEVEL CROSSINGS

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

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

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

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

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

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

ART B - ADDITIONAL SPECIFICATION FOR WORK NEAR HIGH-VOLTAGE

ELECTRICAL EQUIPMENT

1 GENERAL

1.1 This specification is based on the contents of Spoornet's publication ELECTRICAL SAFETY INSTRUCTIONS, as amended, a copy of which will be made available on loan to the Contractor for the duration of the contract on request only. These instructions apply to all work near live high- voltage equipment maintained and/or operated by Transnet or PRASA's maintenance contractor, and the onus rests on the Contractor to ensure that he obtains a copy.

1.2 The Contractor's attention is drawn in particular to the contents of Sections 1 and 2 of the publication ELECTRICAL SAFETY INSTRUCTIONS.

1.3 The publication ELECTRICAL SAFETY INSTRUCTIONS covers the minimum safety precautions which must be taken to ensure safe working on or near high-voltage electrical equipment, and must be observed at all times. Should additional safety measures be considered necessary because of peculiar local conditions, these may be Ordered by and at the discretion of the Electrical Officer (Contracts).

1.4 This specification must be read in conjunction with and not in lieu of the publication ELECTRICAL SAFETY INSTRUCTIONS.

1.5 The Contractor shall obtain the approval of the Electrical Officer (Contracts) before any work is done which causes or could cause any portion of a person's body or the tools he is using or any equipment he is handling, to come within 3 metres of any live high-voltage equipment.

1.6 The Contractor shall regard all high-voltage equipment as live unless a work permit is in force.

1.7 Safety precautions taken or barriers erected shall comply with the requirements of the Electrical Officer (Contracts), and shall be approved by him before the work to be protected is undertaken by the Contractor. The Contractor shall, unless otherwise agreed, bear the cost of the provision of the barriers and other safety precautions required, including the attendance of Transnet or PRASA's maintenance contractor where this is necessary.

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

2. WORK ON BUILDINGS OR FIXED STRUCTURES

2.1 Before any work is carried out or measurements are taken on any part of a building, fixed structure or earthworks 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 Works.

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 WORKS FROM INSULATED VEHICLES AND TRESTLE TROLLEYS.

4.3.1 Where specially constructed insulated vehicles or trestle trolleys are available for use, authorised persons, category A, or a person issued with a letter of authority (clause 303.0 of the ELECTRICAL

SAFETY INSTRUCTIONS) may be permitted to work from the top of such vehicles under "live" overhead track equipment.

5. CARRYING AND HANDLING MATERIAL AND EQUIPMENT

5.1 Pipes, scaffolding, iron sheets, reinforcing bars and other material, which exceeds 2 metres in length, shall be carried completely below head height near live high-voltage equipment. For maximum safety such material should be carried by two or more persons so as to maintain it as nearly as possible in a horizontal position. The utmost care must be taken to ensure that no part of the material comes within 3 metres of any live high-voltage equipment.

5.2 Long lengths of wire or cable shall never be run out in conditions where a part of a wire or cable can come within 3 metres of any live high-voltage equipment unless the Electrical Officer (Contracts) has been advised and has approved appropriate safety precautions.

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

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

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

(i) If the distance between the point at which the pole is to be erected or removed and the nearest live high-voltage equipment is more than the length of the pole plus 3 metres, the work shall be supervised by the Responsible Representative.

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

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

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

7. USE OF WATER

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

8. USE OF CONSTRUCTION PLANT

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

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

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

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

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

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

9.1 If the Responsible Representative finds that the work cannot be done in safety with the high voltage electrical equipment live, he shall consult the Electrical Officer (Contracts) who will decide on the action to be taken.

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

(i) before commencement of work ensure that the limits within which work may be carried out have been explained to him by the Authorised Person who issued the permit to him, and that he fully understands these limits.

(ii) sign portion C of the permit before commencement of work;

(iii) explain to all persons under his control the limits within which work may be carried out, and ensure that they fully understand these limits;

(iv) care for the safety of all persons under his control whilst work is in progress; and

(v) withdraw all personnel under his control from the equipment on completion of the work before he signs portion D of the work permit.

10. TRACTION RETURN CIRCUITS IN RAILS

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

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

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

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

11. BLASTING

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

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

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

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

Such equipment includes:

(i) Equipment of Electricity Suppliers**;**

(ii) the Contractor's own power supplies;

(iii) Equipment being installed by, but not yet taken over from the Contractor, and

(iii) Electrified Private Siding equipment.

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