THE SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LIMITED

SANRAL HO 1002/53000/2026/M-ST/SP

FOR THE APPOINTMENT OF A TRAFFIC MONITORING MANAGING SERVICE PROVIDER FOR THE PROVISION OF MANUAL AND SHORT-TERM TRAFFIC COUNTS

GENERAL CONDITIONS OF CONTRACT
AND
CONTRACT DATA

VOLUME 1
BOOK 1

GENERAL CONDITIONS OF CONTRACT AND CONTRACT DATA

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GENERAL CONDITIONS OF CONTRACT AND CONTRACT DATA

1 DEFINITIONS

In the Contract, the following words and expressions shall have the meanings indicated, except where the context otherwise requires. Defined terms and words are signified in the text of the Contract by the use of capital initial letters.

Agent
The Service Provider appointed in terms of the Occupational Health and Safety Act No. 85 of 1993, including the relevant Regulations.

Monitoring/ supervision
The process of managing and co-ordinating the Works Contract and over-seeing and/or inspecting the Works in accordance with the Employer's requirements.

Contract
The Contract signed by the Parties and of which these General Conditions of Contract form part.

Contract Data
Specific data, which together with these General Conditions of Contract, collectively describe the risks, liabilities and obligations of the contracting Parties and the procedures for the administration of the contract. See paragraph 16.

Contract Price
The price to be paid for the performance of the Services in accordance with the Pricing Data.

Day
All references to days shall mean days of 24 (twenty-four) hours duration commencing at midnight (00h00) and which shall include non-working days unless otherwise stated

Defect
A part of the Services, as performed, which does not comply with the requirements of the Contract.

Deliverable
Any measurable, tangible, verifiable outcome, result or item that must be produced or completed.

Employer
The contracting party named in the Contract Data who employs the Service Provider who may be represented by a person, or persons nominated in writing, to monitor and manage the contract.

Force Majeure

"For the purpose of this Contract the expression 'Force Majeure' shall mean an event or circumstance described in clause 8.3.1.

Key Persons
Persons who are named as such in the Contract Data who will be engaged in the performance of the Services.

Mobilisation Period
The period as stated in the Contract Data, or the period between the Commencement Date and the date that the Service Provider starts with the execution of the Permanent Works, whichever is the shortest.

Others
Persons or organisations who are not the Employer, the Service Provider or any employee, Subcontractor, or supplier of the Service Provider.

Parties
The Employer and the Service Provider.

Period of Performance
The period within which the Services are to be performed and completed.

Personnel
Persons hired by the Service Provider as employees and assigned to the performance of the Services or any part thereof.

Personnel Schedule
A schedule naming all personnel and key persons.

Pricing Data
Data that establishes the criteria and assumptions that were taken into account when developing the Contract Price and the record of the components that make up of the Contract Price.

Project
The project named in the Contract Data for which the Services are to be provided.

Scope of Work
The document which defines the Employer's objectives and requirements and specifies the Services which must, or may, be provided under the Contract.

Service Provider
The contracting party named in the Contract Data who is employed by the Employer to perform the Services described in the Contract, and legal successors to the Service Provider and legally permitted

assignees and includes the Service Provider's legally appointed representatives, heirs, successors, assignees, executors, administrators, trustees or sureties of such person, persons, partnership, company or firm.

Services

The work to be performed by the Service Provider pursuant to the Contract as described in the Scope of Work and specifications.

Subcontractors

Subcontractors shall mean those parties engaged by the Service Provider to perform duties covered under the Specifications (supplemented by special conditions and project specifications), for which the Service Provider may claim the expenses incurred on a reimbursement basis.

Third Parties / /Nominated / Selected subcontractors

Third Parties / nominated/ selected subcontractors shall mean those parties engaged by the Service Provider to perform duties that are not covered by the Specifications, and for which a different term of reference, or specification must be compiled and for which the Service Provider may claim the expenses incurred on a reimbursement basis.

Time for Completion

Time for Completion means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2.1 as stated in the Contract Data.

Works or Work

That project or part of a project that the employer wishes to have delivered and for which the Service Provider has been appointed for the performance of the services specified in this contract.

2 INTERPRETATION

2.1 Unless inconsistent with the context, an expression which denotes:

a) any gender includes the other genders;
b) a natural person includes a juristic person and vice versa;
c) the singular includes the plural and vice versa.

2.2 If there is any conflict between the provisions of these General Conditions of Contract and the Contract Data, the provisions of the Contract Data shall prevail.

2.3 The clause headings shall not limit, alter or affect the meaning of the Contract.

2.4 In the Contract unless inconsistent with the context, the words "notice", "notify"," notification", "certification" and "issue" shall connote an act to be carried out in writing.

3 GENERAL

3.1 Governing laws

"Law" means all national (or other spheres of Government) legislation, statutes , ordinances and other laws including the South African Common Law, and regulations and by-laws of any legally constituted public authority.

3.2 Change in legislation

If after the commencement of the Contract, the cost or duration of the Services is altered as a result of changes in, or additions to, any statute, regulation or bye-law, or the requirements of any authority having jurisdiction over any matter in respect of the Project, then the Contract Price and time for completion shall be adjusted in order to reflect the impact of those changes, provided that, within 14 days of first having become aware of the change, the Service Provider furnished the Employer with detailed justification for the adjustment to the Contract Price.

3.3 Language

3.3.1 The language of the contract and of all communications between the parties shall be English.

3.3.2 All reports, recommendations and reports prepared by the Service Provider under the Contract shall be in English.

3.4 Notices

3.4.1 Any notice, request, consent, or other communication made between the parties pursuant to the contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the party to whom the communication is addressed, or when delivered to such party at the address stated in the contract data, or one week after having been sent by registered post.

3.4.2 If the sender requires evidence of receipt, he shall state such requirement in his communication and, wherever there is deadline for the receipt of the communication, he may demand evidence of receipt of his communication. In any event, the sender shall take all the necessary measures to ensure receipt of communications.

3.4.3 A Party may change its address for receipt of communications by giving the other Party 30 days advance notice of such change.

3.5 Location

The Services shall be performed at such locations as are deemed necessary for the performance of a particular task, and if not applicable, at such locations as the Employer may direct.

3.6 Publicity and publication

Unless otherwise agreed, the Service Provider shall not release public or media statements or publish material related to the Services or Project within two (2) years of completion of the Services without the written approval of the Employer, which approval shall not be unreasonably withheld.

3.7 Confidentiality

Both Parties shall keep all commercially sensitive information obtained by them in the context of the Contract confidential and shall not divulge it without the written approval of the other Party except to the extent strictly necessary to carry out obligations under this Contract or to comply with applicable laws.

3.8 Variations

3.8.1 The employer may, without changing the objectives or fundamental scope of the contract, order variations to the services or may request the service provider to submit proposals, including the time and cost implications, for variations to the services. No variation shall have any force or effect unless reduced to writing and signed by both parties.

3.8.2 The reasonable cost of preparation and submission of such proposals and the incorporation into the Contract of any variations to the Services ordered by the Employer, including any change in the Contract Price, shall be agreed in writing between the Service Provider and the Employer, prior to the change being implemented.

3.8.3 Where a variation is necessitated by default or breach of Contract by the Service Provider, any additional cost attributable to such variation shall be borne by the Service Provider.

3.9 Sole agreement

The Contract constitutes the sole agreement between the Parties for the performance of the Services and no representation not contained therein shall be of any force or effect. No amendments will be of any force or effect unless reduced to writing and signed by both Parties.

3.10 Indemnification

The Service Provider shall, at his own expense, indemnify, protect and defend the Employer, its agents and employees, from and against all actions, claims, losses and damage arising from any wilful or negligent act or omission by the Service Provider or his subcontractors in the performance of the Services, including any violation of legal provisions, or rights of others, in respect of patents, trademarks and other forms of intellectual property such as copyrights.

3.11 Penalty

3.11.1 The penalty regime will be as set out in the specifications.

3.11.2 If the Employer has become entitled to the maximum penalty amount referred to in 3.11.1, he may after giving notice to the Service Provider:

a) terminate the Contract
b) complete the Services by a third Party at the Service Provider's cost.
c) Call upon the Performance Guarantee

3.12 Equipment and materials furnished by the employer

3.12.1 Equipment and materials made available to the service provider by the employer or purchased by the service provider with funds provided by the employer for the performance of the services shall be the property of the employer and shall be marked accordingly. Upon termination or expiration of the contract, the service provider shall make available to the employer an inventory of such equipment and materials and shall dispose of them in accordance with the employer's instructions.

3.12.2 unless otherwise stated in the contract data, the service provider shall, at his own expense, insure the equipment and materials referred to in 3.12.1 for their full replacement value.

3.13 Illegal and impossible requirements

The Service Provider shall notify the Employer immediately, should he become aware that the Contract requires him to undertake anything which is illegal or impossible.

3.14 Programme

3.14.1 The Service Provider shall, within the time period set out in the Specifications, submit to the Employer any or all required programmes for the performance of the Services which shall, inter alia, include:

a) the order and timing of operations by the Service Provider and any actions required of the Employer and Others;
b) the dates by which the Service Provider plans to complete work needed to allow the Employer and Others to undertake work required of them; and
c) other information as required in terms of the Scope of Work or Specifications.

3.14.2 The Employer may, during the course of the Contract, request the Service Provider to amend any approved programme. Where this is not practicable, the Service Provider shall advise the Employer accordingly and advise him of alternative measures, if any, which might be taken.

3.14.3 The Service Provider shall regularly update any approved programme to reflect actual progress to date and expected future progress.

3.15 Severability

If a court of competent jurisdiction holds that any provision of this Contract is severable by reason of it being invalid, illegal, unlawful or unenforceable and as a consequence of which prevents the accomplishment of the purpose of this Contract, the Employer and the Service Provider shall meet and review the matter to adopt means to fulfil the purpose of the Contract.

3.16 Waiver

No defence of a waiver of any of the provisions of this contract shall be effective unless it is expressly stated in writing, by the Party against whom such defence is raised, to be a waiver of such provisions and is communicated to the other Party in writing in accordance with the provisions of Clause 3.4.

4 EMPLOYER'S OBLIGATIONS

4.1 Information

4.1.1 The Employer shall timeously provide to the Service Provider, free of cost, all available information and data in the Employer's possession which may be required for the performance of the Services.

4.1.2 The Employer shall provide the Service Provider with any assistance required outside of the scope of the specifications and this contract, in obtaining other relevant information that the latter may require in order to perform the Services, provided that such assistance will be at the sole discretion of the Employer.

4.1.3 The Service Provider shall not be entitled to rely on the accuracy and completeness of any or all information furnished by or on behalf of the Employer.

4.2 Decisions

The Employer shall, within a reasonable time, give his decision on any matter properly referred to him in writing by the Service Provider so as not to delay the performance of Services.

4.3 Assistance

The Employer shall co-operate with the Service Provider and shall not interfere with or obstruct the proper performance of the Services. The Employer shall as soon as practicable:

4.3.1 authorise the Service Provider to act as his agent insofar as may be necessary for the performance of the Services;

4.3.2 provide all relevant data, information, reports, correspondence and the like, which become available;

4.3.3 assist the Service Provider, in the Employers sole discretion, to obtain access to premises, or sites, necessary for the performance of the Services;

4.3.4 assist in the seeking of all approvals, licenses and permits from state, regional and municipal authorities having jurisdiction over the Project, unless otherwise stated or not provided for in the Specifications;

4.3.5 designate in writing a person/s to act with his complete authority in giving instructions and receiving communications on his behalf and interpreting and defining his policies and requirements in regard to the Services.

4.4 Services of others and third parties

4.4.1 The Employer shall, at his own cost, engage such Others or Third Parties as may be necessary for the execution of work necessary for the completion of the Project, save for those Others or Third Parties for which provision has been made in the Specifications.

4.4.2 The Employer shall not enter into an agreement or contract with Others or Third Parties which describes any of the duties and responsibilities of the Service Provider in terms of the Contract and/or specifications or which imposes obligations on him, without first obtaining the Service Provider's written agreement thereto.

4.5 Notice of change by employer

On becoming aware of any matter which will materially change, or has changed, the scope, cost or timing of the Services, or on becoming aware of any defect or deficiency in the Services, the Employer shall immediately advise the Service Provider thereof.

4.6 Issue of instructions

Where the Service Provider is required to administer the work or services of Others, or any contract or agreement, on behalf of the Employer, then the Employer shall issue instructions related to such work, services, contract or agreement only through the Service Provider.

4.7 Payment of service provider

The Employer shall pay the Service Provider the Contract Price in accordance with the provisions of the Contract.

5 SERVICE PROVIDER'S OBLIGATIONS

5.1 General

5.1.1 The Service Provider shall perform the Services in accordance with the Scope of Work and the Specifications with all reasonable care, diligence and skill in accordance with generally accepted professional techniques and standards and shall be responsible for breach of professional duty by reason of any error, omission or neglect in connection with delivering the services

5.1.2 Where the Services include the exercise of powers to certify, decide or otherwise exercise discretion in regard to a contract or agreement between the Employer and Others, then the Service Provider shall act in respect of that contract or agreement as an independent professional.

5.1.3 If the Service Provider is a joint venture or consortium of two or more persons, the Service Provider shall designate one person to act as leader with authority to bind the joint venture or consortium. Neither the composition nor the constitution of the joint venture or consortium shall be altered without the prior consent in writing of the Employer, which shall not be unreasonably withheld.

5.1.4 The Service Provider shall be specifically delegated as the Employer's "Mandatary" in terms of the Occupational Health and Safety Act (Act no. 85 of 1993), and as the Employer's Agent as defined in any relevant Regulations of the said Act.

5.1.5 The Service Provider, if requested by the Employer, shall provide any plans and calculations for checking by Others.

5.1.6 All calculations of whatsoever nature shall be kept and safeguarded for the duration of the insurance(s) required in terms of clause 5.4.1.

5.2 Exercise of authority

5.2.1 The Service Provider shall have no authority to relieve Others appointed by the Employer to undertake work on the Project of any of their duties, obligations, or responsibilities under their respective agreements or contracts, unless expressly authorised by the Employer in response to an application by the Service Provider in writing to do so.

5.2.2 Whenever necessary to enter upon land for the performance of the Contract the service Provider shall do so in accordance with the provisions of the SANRAL Act, (Act 7 of 1998) and shall indemnify the Employer from all costs arising from any transgression committed by the Service Provider.

5.3 Designated representative

The Service Provider shall designate in writing a person to act as his representative and such person shall have complete authority to receive instructions from and give information to the Employer on behalf of the Service Provider.

5.4 Insurances to be taken out by the Service Provider

5.4.1 The Service Provider shall, at his own cost, unless otherwise agreed, take out and maintain in force such insurance policies in respect of their own risks in performing the Services as are stipulated in the Contract Data, subject to the approval of the Employer, which approval shall not be unreasonably withheld.

5.4.2 The Service Provider shall, at the Employer's request, provide evidence to the Employer showing that the insurance required in terms of Clause 5.4.1 has been taken out with an insurance company registered in the Republic of South Africa, or as otherwise approved by the Employer and maintained in force.

5.5 Service Provider's actions requiring Employer's prior approval

The Service Provider shall obtain the Employer's prior approval in writing before taking, inter alia, any of the following actions:

a) appointing Nominated or Selected Subcontractors and Third Parties for the performance of any part of the Services,
b) appointing Key Persons not listed by name in the Contract Data.
c) any other action that may be specified in the Contract Data or specifications.

5.6 Co-operation with others

If the Service Provider is required to perform the Services in co-operation with Others he may make recommendations to the Employer in respect of the appointment of such Others. The Service Provider shall, however, only be responsible for his own performance and the performance of Subcontractors appointed by the Service Provider unless otherwise provided for.

5.7 Notice of change by Service Provider

On becoming aware of any matter which will materially change or has changed the scope, cost or timing of the Services, the Service Provider shall give notice thereof to the Employer, save that the Service Provider is empowered to make minor changes or variations within the overall programme or budget and within such parameters as are defined by the Employer, provided that such changes are reported timeously to the Employer.

5.8 Safeguarding the Employer's data

5.8.1 The Parties shall take reasonable precautions (each having regard to the nature of the other's respective obligations under the Contract) to preserve the integrity of the Employer's data including appropriate back-up procedures.

5.8.2 In the event that the Employer's data is corrupted or lost as a result of any default by the Service Provider, the Employer shall at the Service Provider's expense, have the option to:

a) require the Service Provider to restore or procure the restoration of such data; or;
b) itself restore or procure restoration of such data.

5.9 Performance guarantee

Where required, the Service Provider shall obtain (at his cost) a Performance Guarantee for proper performance in the amount and currencies stated in the Contract Data. If an amount is not stated in the Contract Data, this sub-clause shall not apply.

The Service Provider shall deliver the Performance Guarantee to the Employer within 14 days of the date of issue of the Letter of Acceptance. The Performance Guarantee shall be issued by an insurance company or bank registered or licensed as an insurance company or bank to do business in the Republic of South Africa and approved by the Employer and having an office or banking facility in the Republic of South Africa. The Performance Security shall be subject to approval by the Employer and shall be in the form prescribed in the tender documents.

6 CONFLICTS OF INTEREST, CORRUPTION AND FRAUD

6.1 Service Provider not to benefit from commissions, discounts, etc.

The remuneration of the Service Provider under the Contract shall constitute the Service Provider's sole remuneration in connection with the Contract, or the Services, and the Service Provider shall not accept for his own benefit any trade commission, discount, or similar payment in connection with activities pursuant to the Contract, or in the discharge of his obligations under the Contract, and shall use his best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them shall, similarly, not receive any additional remuneration.

6.2 Royalties and the like

The Service Provider shall not have the benefit, whether directly or indirectly, of any royalty or of any gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the Contract, or Project, unless so agreed by the Employer in writing.

6.3 Independence

The Service Provider shall refrain from entering into any relationship which could be perceived as compromising his independence of judgment, or that of Subcontractors or Personnel.

6.4 Corruption and Fraud

6.4.1 The Service Provider shall neither:

a) Offer or give or agree to give any person of the Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forbore to do any act in relation to the obtaining or performance of this contract or any other contract with the Employer

or for showing or forbearing to show favour or disfavour to any person in relation to this contract; nor

b) Enter into this contract if in connection with it commission or a reward of any type has been paid, offered or agreed to be paid to any person of the Employer by the Service Provider or on his behalf or knowledge.

6.4.2 In the event that the Employer, in good faith and on reasonable grounds, comes to the opinion, that a breach of any of the provisions of Clause 6.4.1 has been perpetrated by the Service Provider or anyone employed by him or acting on his behalf in relation to this contract or any other agreement with the Employer, the Employer may:

a) summarily suspend the operation of this Contract by notice in writing to the Service Provider, informing him of the Employer's opinion and the grounds and reasons upon which it is based, and calling upon the Service Provider to show cause, in writing, within fourteen (14) days of receipt of the written notice why the Employer should not terminate this Contract on the grounds of the alleged breach(es) of Clause 6.4.1 of this Contract;
b) withhold all payments due;
c) terminate this Contract by notice in writing to the Service Provider, if the Service Provider fails to respond to the Employer's written response, to satisfy the Employer that his opinion is unfounded. Provided always that such termination shall not prejudice or affect any right of action or remedy, which shall have accrued or shall accrue thereafter to the Employer and provided also that the Employer may recover from the Service Provider such sum as the Employer deems equivalent to the amount or value of any such gift, consideration or commission.

6.4.3 In the event that the Employer, in good faith and on reasonable grounds, comes to the opinion that any contract with a Government or public sector body has been or was obtained by the Service Provider through actions that mutatis mutandis are similar in nature to those barred in terms of Clause 6.4.2 by the Service Provider or by anyone employed by the Service Provider or acting on the Service Provider's behalf in relation to such Contract, the Employer may:

a) summarily suspend the operation of this Contract by notice in writing to the Service Provider, informing him of the Employer's opinion and the grounds and reasons upon which it is based, and calling upon the Service Provider to show cause, in writing within fourteen (14) days of receipt of the written notice why the Employer should not terminate this Contract on the grounds of the alleged breach(es) of Clause 6.4.1 of this contract;
b) withholds all payments due
c) terminate this Contract by notice in writing to the Service Provider, if the Service Provider fails to respond to the Employer's written notice within the prescribed time, or fails, in his written response, to satisfy the Employer that this opinion is unfounded. Provided always that such termination shall not prejudice or affect any right of action or remedy, which shall have accrued or shall accrue thereafter to the Employer.

7 SERVICE PROVIDER'S PERSONNEL

7.1 Provision of personnel

7.1.1 The Service Provider shall provide appropriate Personnel for such time periods as required in terms of the Contract and shall enter all data pertaining to Personnel including titles, job descriptions, qualifications and estimated periods of engagement on the performance of the Services in the Personnel Schedule.

7.1.2 The Services shall be performed by the Personnel listed in the Personnel Schedule for the periods of time indicated therein. The Service Provider may, subject to the approval of the Employer, make such adjustments to the data provided in terms of Clause 7.1.1 above as may be appropriate to ensure the efficient performance of the Services, provided that the adjustments will not cause payments to exceed any limit placed on the Contract Price.

7.1.3 The Service Provider shall:

a) forward to the Employer for approval, within 15 days of the award of the Contract, the Personnel Schedule and a timetable for the placement of Personnel.
b) inform the Employer of the date of commencement and departure of each member of Personnel during the course of the Project.
c) submit to the Employer for his approval a timely request for any proposed change to Personnel, or timetables.

7.2 Staff and equipment

7.2.1 The Service Provider shall employ and provide all qualified and experienced Personnel required to perform the Services.

7.2.2 Where required in terms of the Contract, the Service Provider shall provide Key Persons as listed in the Contract and specifications to perform specific duties. If at any time, a particular Key Person cannot be made available, the Service Provider may engage a replacement who is equally or better qualified to perform the stated duty, subject to the Employer's approval, which approval shall not be unreasonably withheld.

7.2.3 Where the Service Provider proposes to utilise a person not named in the Personnel Schedule, he shall submit the name, relevant qualifications and experience of the proposed replacement person to the Employer for approval. Should the Employer not object in writing within 10 days of receipt of such notification, the replacement shall be deemed to have been approved by the Employer.

7.2.4 Where the fees for the Services are time-based, the fee payable for a person provided as a replacement shall not exceed that which would have been payable to the person replaced.

7.2.5 Except in the case of replacement resulting from death or where the Employer requests a replacement not provided for by the Contract, the Service Provider shall bear all additional costs arising out of or incidental to such replacement.

7.2.6 The Service Provider shall take all measures necessary and shall provide all materials and equipment necessary to enable Personnel to perform their duties in an efficient manner.

7.3 Working hours, overtime and leave

Where the fee for the Services is time-based, working hours, leave entitlement and holidays for Personnel provided in terms of Clause 7 are to be as stated in the Specifications, or, if not stated, to be determined by the Service Provider. The Employer will not be responsible for overtime payments to Personnel unless agreed to by the Employer.

8 COMMENCEMENT, COMPLETION, MODIFICATION SUSPENSION AND TERMINATION OF THE CONTRACT

8.1 Commencement

The Contract shall come into effect 14 days after signing of the Contract. The Service Provider shall commence the performance of the Services as of the date that the Contract becomes effective. It will be required from the Service Provider to take on all new work but not to carry on any work that may still be performed by other Contractors, the details of which are described in the General Specifications, unless otherwise agreed to between the Parties.

8.2 Completion

8.2.1 Unless terminated in terms of the Contract, the Contract shall be concluded at the date stated in the Contract Data .

8.2.2 The Employer shall have the sole discretion to extend the Contract with the agreement of the Service Provider.

8.3 Force majeure

8.3.1 In this clause “Force Majeure” means an exceptional event or circumstance:

a) which is beyond party’s control,
b) which such a party could not reasonably have provided against before entering into the Contract,
c) which, having arisen, such Party could not reasonably have avoided or overcome, and
d) which is not substantially attributable to the other Party

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below;

(i) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity

(ii) war, hostilities (whether war to be declared or not), invasion, act of foreign enemies,
(iii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
(iv) riot, commotion, disorder, strike or lockout by persons other than the Service Provider's Personnel or other employees of the Service Provider and Sub-contractors,

An event or circumstance which is attributable to a wilful act, neglect or failure to take reasonable precautions by the affected party, his employees agents, subcontractors or others shall, under no circumstances, be considered Force Majeure.

8.3.2 The failure of a Party to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order to meet the terms and conditions of this Contract, and has notified the other Party within 10 days of its occurrence and within a reasonable time of its estimated duration and consequences. Failure to so notify shall terminate that Party's right to release from his obligations.

8.3.3 In the event that the performance of the Services has to be suspended on the grounds of Force Majeure, the time for completion shall be extended by the extent of the delay plus a reasonable period for the resumption of work or, if the speed of performing certain Services has to be reduced, the time for their completion shall be extended as may be necessary in the circumstances.

8.3.4 During the period of his inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of the Contract and shall be reimbursed for additional costs reasonably and necessarily incurred by him in suspending, delaying and re-activating the performance of the Services.

8.3.5 If the Force Majeure event continues for more than 90 (ninety) days, either Party shall have the right to terminate this Contract with immediate effect.

8.4 Termination

8.4.1 The Employer may in addition to his rights under sub-clauses 6.4.2, 6.4.3 and 10.5 terminate the Contract by giving not less than thirty (30) days written notice thereof to the Service Provider after the occurrence of any of the following events:

a) if the Service Provider does not remedy a failure in the performance of his obligations under the Contract within thirty (30) days after having been notified thereof, or within any further period as the Employer may have subsequently approved in writing;
b) if the Service Provider becomes insolvent or bankrupt; or
c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days;
d) commission of an offence in terms of clauses 6.1 and 6.4.

Upon delivery of such notice to the Service Provider he shall immediately cease all work and deliver to the Employer all drawings, documents, data and papers relating to the Services and shall within fourteen (14) days after the date of termination submit an account for the Services satisfactorily performed prior to the date of notice. The Employer shall not be liable to the Service Provider for any loss of profit or damages suffered as a result of cancellation of the contract as contemplated in this clause.

8.4.2 The Service Provider may terminate the Contract, by giving not less than thirty (30) days written notice to the Employer after the occurrence of any of the following events:

a) if the Employer fails to pay any monies due to the Service Provider in terms of the Contract and not subject to dispute pursuant to Clause 12 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue;

or

b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

c) when the Services have been suspended under Clause 8.5 and the period of suspension exceeds 6 months, or it is clear to the Service Provider that it will be impossible or impractical to resume the suspended Services before the period of suspension has exceeded 6 months; or

d) if the Employer is in material breach of a term of the Contract and fails to rectify such breach within 30 days of the receipt of written notice requiring him to do so.

8.4.3 Upon termination of this Contract pursuant to Clauses 8.4.1 or 8.4.2, the Employer shall make the following payments to the Service Provider:

a) remuneration in terms of the Contract for Services satisfactorily performed prior to the effective date of termination less any costs arising from termination.

b) except in the case of termination pursuant to events (a) and (b) of Clause 8.4.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Contract.

8.4.4 Should the Service Provider, being an individual or the last surviving principal of a partnership or body corporate, die or be prevented by illness or any other circumstances beyond his control from performing the obligations implied by the Contract, the Contract shall be terminated without prejudice to the accrued rights of either Party against the other.

8.4.5 Where required in terms of the contract data the surety delivered by the Service Provider in terms of this Contract shall remain in force until the completion of the project.

8.5 Suspension

8.5.1 The Employer may temporarily suspend all or part of the Services by notice to the Service Provider who shall immediately make arrangements to stop the performance of the Services and minimise further expenditure.

8.5.2 When Services are suspended, the Service Provider shall be entitled to pro-rata payment for the Services carried out and reimbursement of all reasonable cost incidental to the prompt and orderly suspension of the Contract.

8.6 Rights and liabilities of the parties

Completion, suspension or termination of the Contract shall not prejudice or affect the accrued rights or liabilities of the Parties.

9 OWNERSHIP OF DOCUMENTS AND COPYRIGHT

9.1 Copyright of all documents prepared by the service provider in accordance with the relevant provisions of the copyright act (act 98 of 1978) relating to project shall be vested in the party named in the contract data. Where copyright is vested in the Service Provider, the employer shall be entitled to use the documents or copy them only for the purposes for which they are intended in regard to the project and need not obtain the service provider's permission to copy for such use. Where copyright is vested in the employer, the service provider shall not be liable in any way for the use of any of the information other than as originally intended for the project and the employer hereby indemnifies the service provider against any claim which may be made against him by any party arising from the use of such documentation for other purposes.

9.2 The ownership of data and factual information collected by the Service Provider and paid for by the Employer shall, after payment by the Employer, lie with the Employer.

9.3 The Employer shall have no right to use any documents prepared by the Service Provider whilst the payment of any fees and expenses due to the Service Provider in terms of the Contract is overdue.

10 SUCCESSION AND ASSIGNMENT

10.1 Except as defined in Clause 8.4.4 above, each Party binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other Party and to the other partners, successors, executors, administrators, assigns and legal representatives of the other Party in respect of all obligations and liabilities of the Contract.

10.2 An assignment shall be valid only if it is a written agreement, by which the Parties transfer their rights and obligations under the Contract, or part thereof, to others.

10.3 The Service Provider shall not, without the prior written consent of the Employer, assign the Contract or any part thereof, or any benefit or interest there under, except in the following cases:

a) by a charge in favour of the Service Provider's bankers of any monies due or to become due under the Contract; or

b) by assignment to the Service Provider's insurers of the Service Provider's right to obtain relief against any other person liable in cases where the insurers have discharged the Service Provider's loss or liability.

10.4 The approval of an assignment by the Employer shall not relieve the Service Provider of his obligations for the part of the Contract already performed or the part not assigned.

10.5 If the Service Provider has assigned his Contract or part thereof without authorization, the Employer may forthwith terminate the Contract.

11 SUBCONTRACTING

11.1 A subcontract shall be valid only if it is a written agreement by which the Service Provider entrusts performance of a part of the Services to subcontractors, Third Parties or others.

11.2 The Service Provider shall not subcontract to nor engage a Subcontractor to perform any part of the Services without the prior written authorization of the Employer with the exception of subcontracting specified in the Specifications. The services to be sub-contracted and the identity of the Subcontractor shall be notified to the Employer. The Employer shall, within 14 days of receipt of the notification and a full motivation why such services are to be subcontracted, notify the Service Provider of his decision, stating reasons, should he withhold such authorization, failing which the Subcontractor shall be deemed to be approved by the Employer. If the Service Provider enters into a subcontract with a Subcontractor without prior approval, the Employer may forthwith terminate the Contract.

11.3 The Employer shall have no contractual relationships with Subcontractors including any subcontract required or specified in the specifications. However, if a Subcontractor is found by the Employer to be incompetent, the Employer may request the Service Provider either to provide a Subcontractor with qualifications and experience acceptable to the Employer as a replacement, or to resume the performance of the relevant part of the Services himself.

11.4 The Service Provider shall advise the Employer without delay of the variation or termination of any subcontract for performance of all or part of the Services.

11.5 The Service Provider shall be responsible for the acts, defaults and negligence of Subcontractors and their agents or employees in the performance of the Services, as if they were the acts, defaults or negligence of the Service Provider, his agents or employees. Approval by the Employer of the subcontracting of any part of the Contract or of the engagement by the Service Provider of Subcontractors to perform any part of the Services shall not relieve the Service Provider of any of his obligations under the Contract.

12 RESOLUTION OF DISPUTES

12.1 Settlement

12.1.1 Any dispute between the Parties shall arise by either party presenting to the other in writing the nature of the dispute and the facts to be dealt with. The Parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to the Contract and may not initiate any further proceedings until either Party has, by written notice to the other, declared that such negotiations have failed.

12.1.2 Any dispute or claim arising out of or relating to the Contract which cannot be settled between the Parties shall in the first instance be referred by the Parties to either mediation or adjudication as provided for in the Contract Data.

12.2 Mediation

12.2.1 12.2.1 If the Contract Data does not provide for dispute resolution by adjudication, not earlier than ten working days after having advised the other Party, in terms of Clause 12.1, that negotiations in regard to a dispute have failed, an aggrieved Party may require that the dispute be referred, without legal representation, to mediation by a single mediator. The mediator shall be selected by agreement between the Parties, or, failing such agreement, by the person named for this purpose in the Contract Data. The costs of the mediation shall be borne equally by the Parties.

12.2.2 The mediator shall convene a hearing of the Parties and may hold separate discussions with any Party and shall assist the Parties in reaching a mutually acceptable settlement of their differences through means of reconciliation, interpretation, clarification, suggestion and advice. The Parties shall record such agreement in writing and thereafter they shall be bound by such agreement.

12.2.3 The mediator is authorised to end the mediation process whenever in his opinion further efforts at mediation would not contribute to a resolution of the dispute between the Parties and shall do so, if after a period of ninety days from entering into the mediation process, no resolution has been achieved.

12.2.4 If either Party is dissatisfied with the opinion expressed by the mediator or should the mediation fail, then such Party may require that the dispute be referred to arbitration or litigation in a competent civil court, as provided for in the Contract Data; provided that the dissatisfied Party notifies the other in writing within 28 Days of mediator's decision being issued or the mediator declaring the mediation to have ended, as provided for in the Contract Data. Claims not brought within the time periods set out herein will be deemed to be waived.

12.3 Adjudication

12.3.1 If the Contract does not provide for dispute resolution by mediation, an aggrieved Party may refer the dispute to adjudication.

12.3.2 The adjudicator shall be appointed by agreement between the parties.

12.3.3 The Adjudicator shall be any person agreed to by the parties or, failing such agreement, shall be nominated by the Employer.

12.3.4 If a Party is dissatisfied with the decision of the Adjudicator, the Party may give the other Party written notice of dissatisfaction within 28 days of the receipt of that decision and refer the dispute to arbitration or litigation in a competent civil court as provided for in the Contract Data. If notice of dissatisfaction is not given within the specified time, the decision shall be final and binding on the Parties.

12.4 Arbitration

12.4.1 Arbitration, where provided for in the Contract Data, shall be by a single arbitrator in accordance with the provisions of the Arbitration Act of 1965 as amended and shall be conducted in accordance with such procedure as may be agreed between the Parties or, failing such agreement, in accordance with the Rules for the Conduct of Arbitrations, current at the date of the contract, published by the Association or Arbitrators.

12.4.2 The arbitrator shall be mutually agreed upon or, failing agreement, to be nominated by the person named in the Contract Data.

13 LIABILITY

13.1 Liability of the Service Provider

13.1.1 The Service Provider shall be liable to the Employer arising out of or in connection with the Contract if a breach of Clause 5.1 is established against him.

13.1.2 The Service Provider shall correct a Defect on becoming aware of it. If the Service Provider does not correct a Defect within a reasonable time and the Defect arose from a failure of the Service Provider to comply with his obligation to provide the Services, the Service Provider shall pay to the Employer the amount which the latter assesses as being the cost of having such Defect corrected by Others.

13.2 Liability of the Employer

The Employer shall be liable to the Service Provider arising out of or in connection with the Contract if a breach of an obligation of his in terms of the Contract is established. The Service Provider shall have no separate delictual right of action against the Employer.

13.3 Compensation

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

a) Compensation shall be limited to the amount of reasonably foreseeable loss and damage suffered as a result of the breach.

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

c) In any event, the amount of compensation will be limited to the amount specified in Clause 13.5.

13.4 Duration of liability

Notwithstanding the terms of the Prescription Act No. 68 of 1969 (as amended) or any other applicable statute of limitation neither the Employer nor the Service Provider shall be held liable for any loss or damage resulting from any occurrence unless a claim is formally made within the period stated in the Contract Data or, where no such period is stated, within a period of three years from the date of termination or completion of the Contract whichever is the latest date.

13.5 Limit of Compensation

13.5.1 The maximum amount of compensation payable by either Party to the other in respect of liability under the Contract is limited to:

a) the sum insured in terms of 5.4. in respect of insurable event; and
b) the sum stated in the Contract Data or, where no such amount is stated, to an amount equal to the Contract Price (inclusive of VAT) payable to the Service Provider under the Contract.

13.5.2 Each Party agrees to waive all claims against the other insofar as the aggregate of compensation which might otherwise be payable exceeds the aforesaid maximum amount payable.

13.5.3 If either Party makes a claim for compensation against the other Party and this is not established, the claimant shall reimburse the other for his reasonable costs incurred as a result of the claim or if proceedings are initiated in terms of Clause 12 for such costs as may be awarded.

13.6 Indemnity by the Employer

The Employer shall indemnify the Service Provider against all claims by third parties which arise out of or in connection with the performance of the Services save to the extent that such claims do not in the aggregate exceed the limit of compensation in Clause 13.5 or are covered by the insurances arranged under the terms of Clause 5.4.

13.7 Exceptions

13.7.1 Clauses 13.5 and 13.6 shall not apply to claims arising from deliberate misconduct.

13.7.2 The Service Provider shall have no liability whatsoever for actions, claims, losses or damages occasioned by:

a) the Employer omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Service Provider, or requiring the Service Provider to implement a decision or recommendation with which the Service Provider disagrees or on which he expresses a serious reservation; or

b) the improper execution of the Service Provider's instructions by agents, employees or independent contractors of the Employer.

14 REMUNERATION AND REIMBURSEMENT OF SERVICE PROVIDER

The Employer shall remunerate and reimburse the Service Provider for the performance of the Services as set out in the Pricing Data, Scope of Works and Specifications. If not otherwise stated in the Pricing Data, the following shall apply:

14.1 The Service Provider shall be entitled to render interim monthly accounts for fees and reimbursements throughout the duration of the Contract. Interim amounts of lump sum fees due (or any specified fixed-progressed payments due that have been delayed by the acts of the Employer) shall be based on progress.

14.2 Amounts due to the Service Provider shall be paid by the Employer within thirty (30) days of receipt by him of the relevant invoices. If the Service Provider does not receive payment by the due date, he shall be entitled to charge interest on the unpaid amount, which is payable by the Employer, at the overdraft rate charged him by his bank plus 2% per annum, compounded monthly and calculated from the due date of payment.

14.3 If any item or part of an item in an invoice submitted by the Service Provider is disputed by the Employer, the latter shall, before the due date of payment, give notice thereof with reasons to the Service Provider, but shall not delay payment of the balance of the invoice. Clause 14.2 shall apply to disputed amounts which are finally determined to be payable to the Service Provider.

14.4 In respect of Services charged for on a time basis and all other reimbursable expenses the Service Provider shall maintain records in support of such charges and expenses for a period of six months after the completion or termination of the Contract. Within this period the Employer may, on not less than 14 days' notice, require that a reputable and independent firm of accountants, nominated by him at his expense, audit any claims made by the Service Provider for time charges and expenses by attending during normal working hours at the office where the records are maintained.

14.5 All accounts presented for payment shall be according to the Employers prescribed format.

14.6 Payments due shall be subject to the deduction of retention monies as stated in the Contract Data. The retention monies so deducted shall be released in accordance with the phases and conditions stated in the Contract Data.

14.7 Contract Price Adjustment will be paid according to the method stated in the Contract Data.

The formula for Contract Price Adjustment shall be as follows:

Escalation factor = $(\mathbf{1} - \boldsymbol{x})\left(\frac{C_t}{C_o} - \mathbf{1}\right)$

The symbols shall have the following meanings:

- "**x**" is the proportion of "**Ac**" which is not subject to adjustment. This proportion shall be 0,15.

- The suffix "**o**" denotes the Consumer Price Index valid for the month in which tenders closed as published in the Statistical Release P0141, Table B1, of Statistics South Africa.

- The suffix "**t**" denotes the Consumer Price Index applicable to the month in which the last day of the period falls to which the relevant payment certificate relates as published in the Statistical Release P0141, Table B1, of Statistics South Africa.

If any index relevant to any particular Payment Certificate is not known at the time when the certificate is prepared, the Contractor may estimate the value of the index. Any correction which may be necessary when the correct indices become known shall be made by the Contractor in subsequent Payment Certificates.

Assessment of amount subject to adjustment

For the purposes of calculating the adjustment to the value of the relevant certificates, the amount "Ac" shall be determined by the formula;

Ac = T – S –W – Ap

In this formula, the symbols have the following meanings:

- "**T**" is the sum of the total value of all work, including preliminary and general items and all work done, as certified in the Payment Certificate under consideration, without any deduction whatsoever and before any adjustment is made in terms of the Schedule.

- "**S**" is the sum of (a), (b), and (c) below, (these amounts are also included in "**T**")

    a) the amounts actually expended and substituted for any Prime Cost sums,
    b) the value of any work done by Nominated Subcontractors,
    c) the value of any work done against Provisional Sums,
    d) the value of any extra or additional work done under a Variation Order, where special arrangements for price adjustments in respect of those amounts are made and recorded at the time that the work was ordered.

- "**W**" is the amount (also included in "**T**") that is claimed for any "**Day work**" executed at Cost, plus percentage allowances, if any, allowed for in the Specifications.

- "**Ap**" is the sum of all "**Ac**" amounts previously paid in respect of all Payment Certificates preceding the Payment Certificate under consideration.

Assessment of indices if payment certificates are not submitted monthly

If more than one month intervenes between the month applicable to any previous payment certificate and the month applicable to the immediately succeeding payment certificate, then the index applicable to the succeeding Payment Certificate shall be taken as the arithmetic mean, rounded off to the second decimal place, of the relevant indices applicable to the month of measurement and to such intervening months."

15 SPECIAL CONDITIONS APPLICABLE TO THIS TENDER

15.1 Notwithstanding anything to the contrary in this Tender Document, the Service Provider shall first be appointed for a one (1) months probationary period. During such period the Service Provider must satisfy the Employer that it is capable of performing all of the requirements set out in this Tender and show progress as tendered. Such adjudication of whether the Service Provider is capable of performing the work lies within the sole discretion of the Employer. The Employer will notify the Service Provider within the first three months of appointment whether the Employer is satisfied with the work performed or whether performance is not up to the standards as set out in this tender. If after the expiry of the first six months the Employer is satisfied in its sole discretion, that the Service Provider is not meeting the expectations of this Tender, the Employer will have the right to forthwith cancel the agreement and the Service Provider will not have any recourse against such cancellation except for the Service Provider's rights to claim compensation for work done. For the measuring of the performance of the Service Provider in terms of this clause, the Employer will take into consideration the following:

a) The insurances required for this Tender must be in place,
b) The proposed Staff complement and organisational structure must be in place within three months after commencement date of this Contract,
c) The Service Provider should not have incurred more than R75 000-00 of all applicable penalties as set out in the Specifications within the first six months,
d) The Service Provider should not have exceeded more than 14 days of any deadline set by the Employer in terms of the Specifications and any programme as defined in the Specifications for the first six months.

15.2 In the event of a Joint Venture, the Service Provider shall acquaint himself of all and any legislation and rules of Professional Bodies that might prohibit any entering into of Ventures, Partnerships or any other rule whatsoever and shall provide the Employer with an alternative Organisational Structure to satisfy such rules and/or obtain at his own cost a ruling or exemption required to enter into any such venture.

15.3 The Service Provider shall acquaint himself of all requirements of any Legislation and/or any Rule/s of Governing Bodies and shall adhere to such Legislation and/or Rule/s that it may enter into this agreement and shall inform the Employer of any such requirements and produce the necessary proof that it complies with same.

15.4 In the event of a Joint Venture the Joint Venture shall ensure that it is in place for at least a period of 5(five) years from the commencement of this agreement.

15.5 The Performance guarantee shall be surrendered to the Guarantor when;

a) All requirements of the Scope of work and Specifications at the end of the contract have been satisfactorily completed, the work has been transferred to the next Service Provider or, the Employer at the Employer's direction, and financial records (if any) are in order, subject to amounts being withheld in terms of the General Conditions,
b) A Completion Certificate has been issued.

15.6 The Service Provider shall complete monthly reports regarding training, empowerment, capacity building, small contractor development, labour and staff returns and any such aspects on the Employer's Integrated Transportation Information System (ITIS) or any other format as required by the Employer. This information shall also be reported on monthly for all sub-contractors employed.

ITIS is an integrated approach to the sharing and inter-relating of technical performance information for the Employer and relies on people following procedures to populate system with data. ITIS currently consist of the following platforms:

- **ITIS Web** – Web enabled portal providing online access to various functions, workflows, and reports.
- **ITIS Desktop** – Offline data capture tool enabling the capture of information offline, validation and then synchronisation of data with the ITIS database.
- **ITIS Mobile** – Application (Android 6 or later) that allows the in-field capture of information using a smart phone or tablet (must have camera and GPS), validation and then synchronisation of data with the ITIS database.

The Employer has several ITIS modules running on any of the above ITIS platforms which affect the Contractor, who will need to use these modules to perform certain procedures and to provide required information. The current module applicable to this contract is:

- Project Information Module – employment and training data.
- Data Loader Webservice – Loading of data through webservice

The above information shall form part of supporting documentation required for making interim payments in terms of the General Conditions of Contract.

Allowance has been made for these requirements in the Pricing Schedule under pay item C.3.3.7.(c) Monthly Reporting. Failure to comply may result in payments being withheld.

User manuals for the various functions can be downloaded from https://itis.nra.co.za/Portal/Account/Login?ReturnUrl=%2fportal%2fDefault%2fIndex, **Login, Modules myACCOUNT**, User Manuals after the successful registration as a Public user.
No Interim Payment Certificate will be issued or paid unless the monthly progress reports are not submitted. After the Employer has certified the Interim Payment Certificate, the Contractor shall issue a tax invoice to accompany the certified Interim Payment Certificate.

All accounts presented for payment shall be according to the Employers prescribed format with proof of ITIS data capture.

16 CONTRACT DATA - INFORMATION PROVIDED BY THE EMPLOYER

Item	***Cl No***	***Data***
Employer	Definitions	means the South African National Roads Agency SOC Limited instituted in terms of the South African National Roads Agency Limited and National Roads Act (Act No. 7 of 1998) or a person delegated by the South African National Roads Agency SOC Limited to act on its behalf. The Employer's address is: The South African National Roads Agency SOC Limited 48 Tambotie Avenue Val De Grace Pretoria, 0184
Time for Completion	Definitions	48 months maximum (including the contractor's holidays in December and January) of which 9 months maximum will be the Mobilisation Period
Mobilisation Period	Definitions	9 months maximum commencing on the Commencement Date. See **Volume 2 paragraph 18.5** for reference.
Insurances	5.4	Not applicable
Performance Security	5.9	Not applicable
Key Persons	7.2.2	The Service Provider shall provide the key personnel (as indicated in RFT document under Section 3 paragraph 3.4. The Service Provider must list the names on Form B8 of the returnable schedules. Where the key personnel are no longer available to undertake the necessary work after the award of the contract, the Contractor shall within a period of 14 working days

Item	***Cl No***	***Data***
		replace the key personnel stated in the Appendix to Tender with personnel with equivalent competencies and subject to approval by the Employer. Such approval shall not be unreasonably withheld. a)
Special non-working hours/days	7.3	b) Day before Easter Weekend c) Day of State school term closure and day prior to State school term start d) Between sunset and sunrise e) Abnormal days as stated in TMH3
Commencement Date	8.1	As stated in the Form of Acceptance
Completion Date	8.2	48 Months after signing letter of award.
Duration of liability	13.4	Not applicable
Limit of Compensation	13.5	Not applicable
Adjustments for Changes in Cost	14.7	Statistical Release P0141, Table B as published by Statistics South Africa Base date for this contract is 28 days prior to the closing date of tender. x = 0.15
Retention money: Percentage	14.6	10% of value of completed work
Limit	14.6	R 300 000.00