

**PART C1: AGREEMENTS AND CONTRACT
DATA**

“PREVIEW COPY ONLY”

C1.1 FORM OF OFFER AND ACCEPTANCE (TSC)

OFFER

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

For the maintenance of permanent track with one on-track ballast tamping machine and track stabilising machine, Iron Ore line.

The tenderer, identified in the Offer signature block, has

<i>either</i>	examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.
<i>or</i>	Examined the draft contract as listed in the Acceptance section and agreed to provide this Offer.

By the representative of the tenderer, signing this part as well as the Schedule of Deviations of this Form of Offer and Acceptance, the tenderer offers to perform all of the obligations and liabilities of the *Contractor* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data. The representative, when signing this part of the Form of Offer and Acceptance, shall be deemed to be duly authorised by a Resolution of the Board of Directors/Certificate of Partners, a certified copy to be included in the Returnable Documents.

The offered total of the Prices exclusive of VAT is	R
Value Added Tax @ 14% is	R
The offered total of the Prices inclusive of VAT is	R
(in words)	

If Option E or F (Cost reimbursable or management contract) applies, replace table with following sentence: "The offered prices are the Actual Cost plus the fee contained in the Contract Data".

This Offer may be accepted by the Employer by signing the Acceptance part as well as the Schedule of Deviations of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Contractor* in the *conditions of contract* identified in the Contract Data.

Signature(s) _____
 Name(s) _____
 Capacity _____

For the tenderer: _____
(Insert name and address of organisation)

Name of witness _____
 Signature of witness _____
 Date _____
 Tenderer's CIDB registration number (if any):



ACCEPTANCE

By signing this part as well as the Schedule of Deviations of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1	Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: Works Information
Part C4	Site Information

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto as listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Agreement. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or immediately after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

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

Signature(s) _____

Name(s) _____

Capacity _____

for the
Employer

**Transnet Limited trading as Transnet Freight Rail, 49th floor, Carlton Centre, 150
Commissioner Street, Johannesburg, 2000**

(Insert name and address of Employer)

Name of
witness _____

Signature of
witness _____

Date _____

Note: If a tenderer wishes to submit alternative tenders, use another copy of this Form of Offer and Acceptance.

SCHEDULE OF DEVIATIONS

Note:

1. To be completed by the Employer prior to award of contract. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Employer prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
3. A tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.
4. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the parties become an obligation of the contract, shall also be recorded here.

No.	Subject	Details
1		
2		
3		
4		
5		
6		

By the duly authorised representatives signing this Agreement, the Employer and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance.

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

C1.2 Contract Data

Part one - Data provided by the Employer

Please read the relevant clauses in the conditions of contract before you enter data. The number of the principal clause is shown for each statement however other clauses may also use the same data.

Rows containing the statement and data for options in the core clauses and for main & secondary option clauses, according to the options chosen, are identified by shading in the left-hand column.

Completion of this data in full, according to the Options chosen, is essential to create a complete contract.

Clause	Statement	Data
PART 1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option: dispute resolution Option and secondary Options	A: Priced contract with price list W1: Dispute resolution procedure X13: Performance bond X17: Low performance damages Z: Additional conditions of contract
	of the NEC3 Term Service Contract (June 2005)	
10.1	The <i>Employer</i> is (name): Address Tel No. Fax No.	Transnet Freight Rail, A Division of Transnet Ltd. 49th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg (011) 3082435 (011) 3082430
10.1	The <i>Service Manager</i> is (name): Address Tel Fax e-mail	Mr Chris Norden Room 318, 138 Eloff Street, Braamfontein (011) 773-8872 (011) 773-7717 Chris.Norden@transnet.net
11.2(2)	The Affected Property is	Various regions, Countrywide
11.2(13)	The <i>service</i> is	Maintenance of permanent track with on-track ballast tamping machine and track stabilising machine. Refer to clause Z.5.1.1

11.2(14)	The following matters will be included in the Risk Register	i. Cancellation of track occupations at short notice. ii. The shortage of wagons, locomotives and locomotive driver crews may disrupt logistics to move material, equipment and staff on railway lines. iii. Work on railway track near live OHTE electrical equipment holds a danger of electrocution for workers. iv. Working on a railway lines adjacent to lines on which rail traffic continue to run holds the risk of injury or death to workers. v. Dry vegetation at or near most worksites is a fire hazard.
11.2(15)	The Service Information is in	Part C3 : Service Information (Works Information)
12.2	The <i>law of the contract</i> is the law of	The Republic of South Africa subject to the jurisdiction of the Courts of South Africa.
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	2 weeks
PART 2	The Contractor's main responsibilities	Refer to option Z.5.1
PART 3	Time	
30.1	The starting date is	The Contract date
	The <i>service period</i> is	As stated in the service information.
PART 4	Testing and defects	No data is required for this section of the conditions of contract.
PART 5	Payment	
51.1	The <i>currency of this contract</i> is the	South African Rand (ZAR).
51.2	The period within which payments are made is	Payment will be made 30 days from invoice date. The assessment interval is a calendar month.
51.4	The <i>interest rate</i> is	1% Per annum above the prime lending rate of the Standard Bank of South Africa Ltd as determined from time to time.
PART 6	Compensation events	No data is required for this section of the conditions of contract.
PART 7	Use of Equipment Plant and Materials	No data is required for this section of the conditions of contract.
PART 8	Risks and insurance	
8.3.1	The <i>Employer</i> provides these insurances	

- (a) The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with this contract for any one event is **whatever the Contractor deems desirable in addition to that provided by the Employer.**
- (b) The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event is that **which is prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as amended.**

Indemnities and insurance

- i. The Contractor shall take every precaution not to cause damage to property or injury to any person as a result of his execution of the work.
- ii. Transnet will insure in the joint names of Transnet Freight Rail and the Contractor against all legal liabilities which may arise from the accidental death of or injury to third party persons and/or accidental loss of, or damage to third party property in the course of the Contractor's execution of the Work.
- iii. The insurance policy will be for an indemnity limit as stated in the policy and will be maintained in force during the entire period of the Contract.
- iv. The Contractor shall in the case of a liability arising out of a negligent act or omission on the part of the Contractor be responsible for payment of the amount(s) stated in the policy as being the deductible.
- v. The insurance to be provided in terms of clause 83.1(ii) will have a cross liabilities cover in respect of which each party shall be separately indemnified in respect of claims made by any one of them against the other as though a separate policy has been issued to each of them.
- vi. The Contractor shall insure against loss of or damage to his own machinery, tools, equipment, materials and site establishments and any consequential financial losses arising from such damage. This insurance is to be maintained in force during the entire period of the Contract. The Contractor shall likewise arrange his own insurances in respect of motor vehicle liabilities and employer's common law liabilities of the Contractor.

PART 9 Termination

Refer to Clause Z.5.9

Dispute Resolution

Option W1

W1.1 The *Adjudicator* is (Name)

Will be mutually agreed upon by the parties if a dispute arises.

W1.2(3) The *Adjudicator nominating body* is:

The Association of Arbitrators (Southern Africa)

W1.4(2) The *tribunal* is:

Arbitration

W1.4(5) The *arbitration procedure* is

The Rules for the Conduct of Arbitrators of the Association of Arbitrators (Southern Africa)

The place where arbitration is to be held is **Johannesburg**

The person or organisation who will choose an arbitrator
- if the Parties cannot agree a choice
or
- if the arbitration procedure does not state who selects an arbitrator, is **The Chairman of the Association of Arbitrators (Southern Africa)**

Data for secondary Option clauses

Options X13 and X17

1 OPTION X13: PERFORMANCE BOND:

Transnet Freight Rail requires a Performance Bond of 5% of the total value of the Contract as security for the due and faithful performance by the Contractor of all the duties and obligations resting upon and assumed by him in terms of the Contract.

The Performance Bond is to be returned to the Contractor upon completion of the contract after certification from the Service Manager that all contract requirements have been met.

2 OPTION X17: LOW PERFORMANCE DAMAGES:

2.1. UNSATISFACTORY PERFORMANCE OF THE MACHINERY

2.1.1 The Service Manager's Deputy may terminate the Work and/or order the machinery to be moved to another place of Work and/or order the removal of mechanic(s) and/or operator(s), and/or order the temporary or permanent removal and replacement of a machine under the following conditions:

- When the output of the machinery is less than 70% of the required minimum productivity for a period of two consecutive months, or
- when the percentage availability of the machinery (as described in the Contract data) is less than 75% for a period of two consecutive months.

2.1.2 The Contractor may substitute, either temporarily or for the duration of the Contract, other machinery in place of that listed in the Schedule of Machinery offered. The substitute machinery shall be subject to all the terms and conditions of the Contract and shall in no way be inferior to the original machinery. The Service Manager's Deputy shall be advised of any proposed substitution, which shall be subject to his approval.

2.1.3 Should the Service Manager's Deputy, at any time, be of the opinion that the machinery provided by the Contractor is performing defectively or is incapable of achieving the specified output and availability the Service Manager's Deputy may notify the Contractor in writing, but the Contractor shall not be relieved of any of his contractual obligations if such notification is not given.

2.1.4 The Contractor shall there-upon take steps to improve the output and availability of the machinery to specified performance levels or to replace the machinery with machinery capable of achieving the specified performance, failing which the Employer may act in terms of clause Z.5.9.

Option Z Additional conditions of contract

The Additional conditions of contract are
Definitions:

Z.1 Day

Day is a calendar day and where a specific number of days is allowed in the Contract for the performance of any act or is stipulated for the extinction of any right or the duration of any event or circumstance, public holidays and the annual Christmas break from 20 December to 4 January (both days included) is excluded from the calculation of the number of days concerned.

Z.2 Intellectual property

Intellectual property rights (including patents, copyright, trade marks etc), rests with the party owning them and the Contractor indemnifies the Employer from any liability arising from infringement of such intellectual property rights.

Z.3 Assignment & cession

Neither the *Contractor* nor the *Employer* may, without the written consent of the other, assign the Contract or any part thereof or any obligation under the Contract or cede any right or benefit there under.

Z.4 Non-Waiver

No grant by the *Employer* or the *Contractor* to the other of any concession, waiver, condonation or allowance is, in respect of any specific event or circumstance other than that in respect of which the grant was made to 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 provision of the Contract.

Z.5.1 THE CONTRACTOR'S GENERAL OBLIGATIONS

The following information in addition to Core Clause 2 of the Schedule of Options will apply:

Z.5.1.1 The Contractor's general obligations under the Contract comprise: -

- maintenance of railway track and the provision of on-track maintenance machinery and all accessory tools and equipment of the types and nature stipulated in the Particular Specifications and
- the provision of all labour, Service Manager's Deputy personnel and specialised tradesman required to undertake the duties and functions required in terms of the Contract and everything, whether of a temporary or permanent nature, required for performance of the Work and services to be provided in terms of the Contract.

Z.5.1.2 Transnet Freight Rail shall, in the case of a breach of contract by the Contractor in terms of clause Z.5.9, have a lien over the Contractor's machines and accessory tools and equipment and all temporary buildings of the Contractor used for carrying out the Work.

Z.5.1.3 The clause headings in these conditions of contract are not deemed to be part thereof and will not be taken into consideration in the interpretation of the Contract.

Z.5.1.4 Any grant by Transnet Freight Rail or the Contractor (the Grantor), or by any of the persons authorised to act on their behalf to the other, of any concession, waiver, condonation or allowance shall not, in respect of any specific event or circumstance other than that in respect of which the grant was made, constitute a waiver of the rights of the grantor in terms of the Contract or an *estoppel* of the grantor's right to enforce the provisions of the Contract.

Z.5.1.5 Value-added tax in terms of the Value-added Tax Act No. 89 of 1991 shall be dealt with as follows: -

- In Tendering; Value-added tax shall not be included in the tendered rates and prices.
- In payment; Value-added tax shall not be reflected on monthly contract payment certificates, but paid separately on the presentation of a tax invoice by the Contractor. The value of the work reflected on the tax-invoice must correspond with the netto amount indicated on the contract payment certificate.
- Changes to the VAT rate will be dealt with in terms of sections 67 and 67A of the Act.

Z.5.2 CESSION, ASSIGNMENT AND SUBCONTRACTING

Z.5.2.1 The Contractor shall not cede or assign the Contract or any part thereof without the prior written approval of the Service Manager.

Z.5.2.2 The Contractor shall not enter into any subcontract without the prior written approval of the Service Manager which approval shall not unreasonably be withheld. The subcontractor, in respect of whom approval is so granted and his employees or workmen shall for all the intentions and purposes of the Contract, be deemed to be workmen of the Contractor, as provided in clause Z.5.1 hereof.

Z.5.2.3 Approval given in terms of clauses Z.5.2.1 and Z.5.2.2 hereof shall not relieve the Contractor of any responsibility, duty or obligation imposed upon him by the Contract, and the Contractor shall in particular be and remain solely liable and responsible for all acts, omissions, negligence or breaches of contract on the part of the assignee or any of his employees, and for all acts, omissions or negligence of any subcontractor or any of his employees.

Z.5.3 SUFFICIENCY OF TENDER

Z.5.3.1 The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his tender and of the rates and prices stated in the Price List. These rates shall be sufficient to cover his obligations under the Contract and everything necessary for the proper performance of the Work and services specified here in.

Z.5.4 ACCESS, RIGHTS-OF-WAY AND CAMPSITES

Z.5.4.1 Where entry onto Transnet Freight Rail's property is restricted, permission to enter will be given only for the performing the Work and services included in the Contract and will be subject to the terms and conditions laid down by Transnet Freight Rail.

Z.5.4.2 The Contractor shall arrange for campsites, workplaces and access thereto as well as for any right-of-way over private property to the place of the Work, and for access within the boundaries of Transnet Freight Rail's property. The owners of private property to be traversed shall be approached and treated with tact and courtesy by the Contractor, who shall, if necessary, obtain a letter of introduction to such property owners from the Service Manager's Deputy.

Z.5.4.3 The Contractor shall be responsible for the closing of all gates on roads and tracks used by him or his employees. Except with the prior approval of the Service Manager's Deputy and the owner or occupier of any private land to be traversed, the Contractor shall not cut, lower, damage, remove or otherwise interfere with any fence or gate which is either on Transnet Freight Rail's property or on private property and which restricts access to the Work.

Z.5.4.4 Where such approval has been given, the Contractor shall prevent entry of animals or unauthorised persons onto Transnet Freight Rail's or private property and shall make the fences safe against trespass at the close of each day's work.

Z.5.4.5 The Contractor shall take all reasonable steps to confine the movement of vehicles and plant to the approved right-of-way to minimise damage to property, crops and natural vegetation.

Z.5.4.6 When access is no longer required and before completion of the Work, the Contractor shall repair, restore or replace any fence or gate damaged during execution of the Work and services to the satisfaction of the Service Manager's Deputy.

Z.5.5 WORKMEN

- Z.5.5.1 All persons employed by the Contractor to carry out the Contract shall be competent, responsible and of good character.
- Z.5.5.2 If, in the opinion of the Service Manager's Deputy, any person employed by the Contractor is inefficient, negligent, disrespectful or objectionable, the Service Manager's Deputy may, after consultation with the Contractor, instruct that such person be removed from the Contract Work.
- Z.5.5.3 During the currency of the Contract, the Contractor shall not approach any employee of Transnet Freight Rail with a view to offering him employment in any capacity whatsoever.
- Z.5.5.4 The Contractor shall, upon request, provide the Service Manager's Deputy with a weekly statement of the number of persons employed on the Work each day by the Contractor and any sub-contractor, the capacity in which employed, the total number of hours worked in that week for each grade of staff separately and details of any incentive or bonus payment schemes introduced. The statement shall be supported by documentary evidence when so required by the Service Manager's Deputy.
- Z.5.5.5 The Contractor shall ensure that all staff transported on on-track machines and Transnet Freight Rail wagons or coaches, shall at all times be transported in a safe and responsible way. Only authorised staff shall be transported.
- Z.5.5.6 The attention of the Contractor is directed to the requirements of safety legislation and regulations with regard to storage and transport of dangerous substances, accommodation and transport of people.
- Z.5.5.7 Staff shall only be allowed to travel on a train or machine in approved accommodation or cabin facilities.
- ## Z.5.6 HOUSING OF EMPLOYEES
- Z.5.6.1 The Contractor shall, where necessary, make his own arrangements for suitable housing of his employees. Where temporary housing is permitted by the Service Manager's Deputy on Transnet Freight Rail land the Contractor shall provide suitable sanitation, lighting and portable water supplies.
- Z.5.6.2 The Contractor may, where available and subject to the approval of the Service Manager's Deputy, use Transnet Freight Rail campsites and sanitary services. The Contractor may in such case use Transnet Freight Rail waste disposal service if available at such campsite.
- Z.5.6.3 Fouling of the area inside or outside Transnet Freight Rail's boundaries must be prevented. The Contractor may be called upon by the Service Manager's Deputy to dispose of any foul or waste matter generated by the Contractor.
- ## Z.5.7 HOURS OF WORK
- Z.5.7.1 The Contractor shall conform to the hours of duty laid down by the Service Manager's Deputy. When required, the Contractor shall work either overtime or shifts, on paid public holidays, Saturdays or Sundays. The machinery will not be required to work more than 6 shifts in any 7-day period or 11 shifts in any 14-day period.
- Z.5.7.2 Work shall not be suspended for rain or inclement weather unless otherwise agreed by the Service Manager's Deputy. Before the end of each day's work the Contractor will be advised in writing of the commencement time and duration of the following day's occupation(s). The duration of the occupation will be subject to train operating conditions.
- Z.5.7.3 The Contractor may be required to work SPLIT occupations as defined in clause 3.10 of the Service Information when a 2 hour period will be allowed between occupation periods for servicing of the machines.

Z.5.7.4 The Contractor will be allowed sufficient time on-track to calibrate and adjust the machine as part of the preventive maintenance of the machine. This time will be outside the scheduled occupation periods and will not be included in any of the contract measurements.

Z.5.8 COMPLIANCE WITH STATUTES AND SAFETY RULES

Z.5.8.1 The Contractor shall comply with all applicable legislation and the Transnet safety requirements. The cost of such compliance shall be borne by the Contractor and shall be deemed to have been allowed for in the rates and prices in the Contract.

Z.5.8.2 The Contractor shall, in particular, comply with the following Acts: -

- The Compensation for Occupational Injuries and Diseases Act, (Act 130 of 1993); The Contractor shall produce proof of his registration and good standing with the Compensation Commissioner in terms of the Act.
- The Occupational Health and Safety Act (Act 85 of 1993); The Contractor is in terms of section 37(2) of Act 85 of 1993, deemed to be an employer in his own right with duties as prescribed in the Act and agrees to ensure that all work will be performed or machinery and plant used in accordance with the provisions of the Act in respect of all persons in his employ, other persons on the premises or the site or place of the Work or on the Work to be executed by him and under his control in terms of the Contract. The agreements in this Contract and all documents attached or referred to, form an integral part of the arrangements and procedures stipulated in the aforementioned section.
- The Contractor shall comply with the current Transnet Specification E.4E, Safety Arrangements and Procedural Compliance with the Occupational Health and Safety Act, Act 85 of 1993 and Regulations as applicable, and shall, before commencement with the execution of the Contract, submit to the Service Manager's Deputy, documentary proof of his procedural compliance with the Act and particulars of his Health and Safety Policy and Programme to be implemented on the Work in accordance with Specification E.4E.
- The Contractor's Health and Safety Policy and Programme will be subject to the agreement of the Service Manager's Deputy, who may order supplementary and/or additional safety arrangements and/or different safe working methods to ensure compliance by the Contractor with his obligations as an employer in terms of the Act.
- The Contractor shall comply with the current Specification for Work On, Over, Under or Adjacent to Railway Lines and near High Voltage Equipment - E7/1, where 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 Transnet applicable to the nature of Work carried out under the Contract and shall obtain the particulars thereof from the Service Manager's Deputy.
- In addition to compliance with clause Z.5.8.2 hereof, the Contractor shall report all incidents contemplated by Section 24 of the Act in writing to the Service Manager's Deputy. Any incident resulting in the death of or injury to any person on the WORK shall be reported within 24 hours of its occurrence and any other incident shall be reported within 48 hours of its occurrence.
- The term "safety rules" is used in a generic sense and refers to all Transnet arrangements, procedures and requirements, pertaining to safety, specified or incorporated by reference in the contract documents, such as the Specification for Work On, Over, Under or Adjacent to Railway Lines and near High Voltage Equipment, E7/1, the Electrical Safety Instructions - High Voltage Equipment. (Copies of these documents are available for inspection at the offices of Transnet Freight Rail.

Z.5.9 BREACHES AND REMEDIES

Z.5.9.1 Should the Contractor commit any breach or default of any kind mentioned in clause Z.5.9.2 hereof, the Employer may exercise, subject to the provisions as stated in Option W1 as well as clause Z.5.9.3, for and on behalf of Transnet, immediately, in whole or in part and consecutively or concurrently, all or any of the options, rights and powers set out in clause Z.5.9.3 hereof.

Z.5.9.2 Breaches or defaults entitling the Employer to act in terms of clause Z.5.9.3 hereof shall be the following: -

- Z.5.9.2.1 insolvency of the Contractor or an act of insolvency comprising inter alia, the following: -
 - Z.5.9.2.1.1 liquidation or sequestration of the Contractor's estate (provisionally or finally); or
 - Z.5.9.2.1.2 the Contractor publishing a notice of surrender of his estate as insolvent; or
 - Z.5.9.2.1.3 the Contractor entering into a compromise with the general body of his creditors; or
 - Z.5.9.2.1.4 the Contractor having an execution levied on his goods.

- Z.5.9.2.1 material breach of the Contract by the Contractor comprising inter alia;
 - Z.5.9.2.1.1 the abandonment or repudiation of the Contract;
 - Z.5.9.2.1.2 suspension of progress of the Work without contractual cause;
 - Z.5.9.2.1.3 assigning of the Contract without the consent in writing of the Employer having first being obtained;
 - Z.5.9.2.1.4 subcontracting any part of the Contract without the Service Manager's approval;
 - Z.5.9.2.1.5 failing to provide the performance bond in terms of option X13 hereof;
 - Z.5.9.2.1.6 failing to satisfy any judgment or arbitrator's award entered against him within 7 days after such judgment or award is so entered; or to satisfy any attachment order against property within 3 days of its issue;
 - Z.5.9.2.1.7 failure, after he has been notified in terms of Option X17 clause 4.1.3 to achieve the specified output and/or availability of the machinery; or to rectify defective performance; or
 - Z.5.9.2.1.8 conviction of the Contractor or any of his employees in a court of law for any offence which adversely affects the interests of Transnet.

Z.5.9.3 In the event of any breach or default mentioned in clause Z.5.9.2 hereof, the Employer may exercise any of the following options, rights and powers: -

- Z.5.9.3.1 To cancel the Contract and to invoke the lien over the Contractor's machines, equipment, tools and temporary buildings, and any indemnities or safeguards in favour of Transnet in terms of the Contract.
- Z.5.9.3.2 To take over full possession and control of the whole or any portion of the Work and the Contractor's machinery equipment, tools and material used thereon, and control of any or all of the Contractor's employees (with or without accepting any liability for arrear salaries or wages, or for any contracts of personal service) and to continue and complete the Work, by employment of such of the Contractor's employees and using such of his site establishment, temporary buildings, machinery equipment tools and materials, as is necessary in the discretion of the Service Manager, all for the account of and at the cost and risk of the Contractor.
- Z.5.9.3.3 To remove and dismiss any person employed by the Contractor and, for the account of and at the cost and risk of the Contractor, to engage or appoint any other person under such conditions and to pay him such salary or wage as the Service Manager may deem fit.
- Z.5.9.3.4 To obtain from any source whatsoever, at the cost of the Contractor, tools, equipment and material as are necessary, in the opinion of the Service Manager, for the proper completion of the Contract.

- Z.5.9.3.5 To dismiss the Contractor from any further control of the execution of the Contract, and thereafter to take over full control of and to utilise the whole or any portion of the machinery, equipment, tools and material belonging to the Contractor, and to employ any person other than the Contractor to complete the Contract, in each case for the account of and at the risk and cost of the Contractor, after or without offering such work for tender and without the interference or intervention in any way by the Contractor. After the said work has been completed by such other person and such other person has been paid therefore, the Service Manager shall issue the Final Certificate when so authorised by the Employer.
- Z.5.9.3.6 To reduce, in the case where the Contractor's defective workmanship and/or performance is accepted by Transnet, any one or all of the rates and prices in the Contract by the amounts of Transnet's losses or the costs of rectifying the defective workmanship and/or performance of the Contractor, or by the amounts that the Contract Work is reduced in value as a consequence of the deficiencies.
- Z.5.9.4 Should any money as shown by the final certificate be due by the Contractor to Transnet, the Contractor and/or his guarantor shall forthwith pay such money to Transnet, failing which Transnet may recover the said amount from the Contractor.
- Z.5.9.5 All wages, salaries, costs, expenses and damages paid, incurred or sustained by Transnet for which the Contractor is liable in terms of the Contract, shall be paid by the Contractor on demand or shall be recovered from monies owing to the Contractor or by legal action in a court of appropriate jurisdiction.
- Z.5.9.6 In any action taken or instituted by Transnet in terms of clauses Z.5.9.1 to Z.5.9.4 hereof or any clause of the Contract read alone or in conjunction with these clauses, a certificate issued by the Service Manager shall be deemed to be proof of any amount due by the Contractor to Transnet or by Transnet to the Contractor.
- Z.5.9.7 No action taken or instituted by Transnet in terms of clauses Z.5.9.1 to Z.5.9.4 hereof or any clause of the Contract read alone or in conjunction with these clauses shall prejudice or detract from Transnet's right to recover damages for any other breach or default committed by the Contractor in respect of the Contract. The remedies provided under clauses Z.5.9.3 and Z.5.9.4 hereof are additional to any other rights, claims or remedies that Transnet may have in law or under the Contract against the Contractor.

C1.2 CONTRACT DATA

Part Two – Data Provided by the Contractor

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

Statements given in all contracts

(a) The Contractor is

Name

Address

.....

.....

(b) The direct fee percentage is %

(c) The subcontracted fee percentage is %

(d) The working areas are the Site and

.....

(e) The key people are

(1) Name

Job

Responsibilities

.....

Qualifications

Experience

.....

.....

(2) Name

Job

Responsibilities

Qualifications

Experience

(3) Name

Job

Responsibilities

Qualifications

Experience

(4) Name

Job

Responsibilities

Qualifications

Experience

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(f) The following matters will be included in the Risk Register

.....
.....
.....
.....
.....

Optional statements

(a) If the Contractor is to provide Works Information for his design

The Works Information for the Contractor's design is in

.....
.....
.....
.....



(b) If a programme is to be identified by the Contract Data.

The programme identified in the Contract Data is

.....

(c) If the Contractor is to decide the completion date for the whole of the works

The completion date for the whole of works is

.....

If Option A or B is used

Data for SSCC

(a) The percentage for people overheads is%.

(b) The published list of Equipment is the last edition of the list published by

.....

(c) The percentage for adjustment for Equipment in the published list is% (state plus or minus).

(d) The rates for other Equipment are

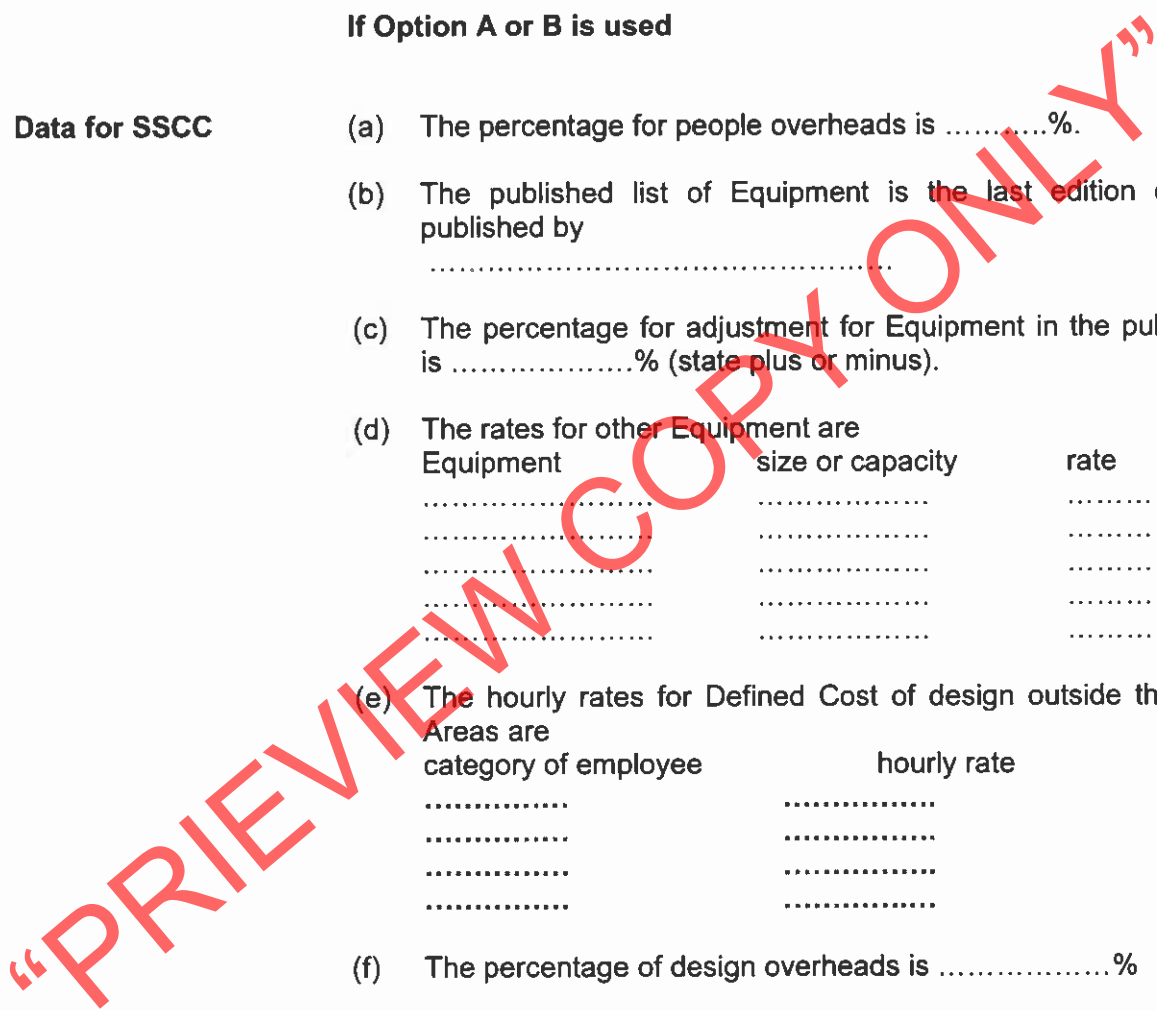
Equipment	size or capacity	rate
.....
.....
.....
.....
.....

(e) The hourly rates for Defined Cost of design outside the Working Areas are

category of employee	hourly rate
.....
.....
.....
.....

(f) The percentage of design overheads is%

(g) The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are **all of the categories listed above.**



C1.3 FORMS OF SECURITIES

Pro-formas for Bonds & Guarantees

For use with the NEC3 Term Service Contract (June 2005) (TSC3)

The *conditions of contract* stated in the Contract Data Part 1 may include one or more of the following Secondary Options:

- Option X4: ~~Parent company guarantee~~
Option X13: Performance Bond
Option X14: ~~Advanced payment to the Contractor~~

Each of these Secondary Options requires a bond or guarantee "in the form set out in the Works Information".

Pro forma documents for these bonds and guarantee are provided here for convenience but are to be treated as part of the Works Information.

The organisation providing the bond / guarantee does so by copying the pro forma document onto his letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Employer* within the time stated in the contract.

This pro forma document is available for use by the Surety on the *Employer's* web page at www._____

Drafting instructions:

1. Select the required pro-formas by deleting the ones not required, then complete all the details except that which the bond / guarantee provider is required to complete.
2. There are two pro-formas suitable for use with Option X13, but only one of them can be used; the Reducing Value Guarantee is generally used only for building works.
3. Then delete these drafting instructions. Delete this whole Securities section if none of the above secondary Options have been selected by the *conditions of contract*.

Pro forma Performance Bond (for use with Option X13)

(to be reproduced exactly as shown below on the letterhead of the Surety)

Transnet Freight Rail
A Division of Transnet Limited
Table 3/74, Inyanda House
P O Box 8617
Parktown
2193

Date:

Dear Sirs,

Performance Bond for Contract No. S.I./PC10001

With reference to the above numbered contract made or to be made between

Transnet Freight Rail, A Division of Transnet Limited

(the Employer) and

(the Contractor), for

(the works).

The maintenance of permanent track with one on-track ballast tamping machine & one ballast stabilising machine, Countrywide

I/We the undersigned

on behalf of the Surety

of physical address

and duly authorised thereto do hereby bind ourselves as Surety and co-principal debtors in *solidum* for the due and faithful performance of all the terms and conditions of the Contract by the Contractor and for all losses, damages and expenses that may be suffered or incurred by the Employer as a result of non-performance of the Contract by the Contractor, subject to the following conditions:

1. The terms *Employer*, *Contractor*, *Project Manager*, *works* and *Defects Certificate* have the meaning as assigned to them by the *conditions of contract* stated in the Contract Data for the aforesaid Contract.
2. We renounce all benefits from the legal exceptions "Benefit of Execution and Division", "No value received" and all other exceptions which might or could be pleaded against the validity of this bond, with the meaning and effect of which exceptions we declare ourselves to be fully acquainted.
3. The *Employer* has the absolute right to arrange his affairs with the *Contractor* in any manner, which the Employer deems, fit and without being advised thereof the Surety shall not have the right to claim his release on account of any conduct alleged to be prejudicial to the Surety. Without derogating from the foregoing compromise, extension of the construction period, indulgence, release or variation of the *Contractor's* obligation shall not affect the validity of this performance bond.
4. This bond will lapse on the earlier of
 - the date that the Surety receives a notice from the *Project Manager* stating that the last Defects Certificate has been issued, that all amounts due from the *Contractor* as certified in terms of the contract have been received by the *Employer* and that the *Contractor* has fulfilled all his

obligations under the Contract, or

- the date that the Surety issues a replacement Performance Bond for such lesser or higher amount as may be required by the *Project Manager*.

5. Always provided that this bond will not lapse in the event the Surety is notified by the *Project Manager*, (before the dates above), of the *Employer's* intention to institute claims and the particulars thereof, in which event this bond shall remain in force until all such claims are paid and settled.

6. The amount of the bond shall be payable to the *Employer* upon the *Employer's* demand and no later than 7 days following the submission to the Surety of a certificate signed by the *Project Manager* stating the amount of the *Employer's* losses, damages and expenses incurred as a result of the non-performance aforesaid. The signed certificate shall be deemed to be conclusive proof of the extent of the *Employer's* loss, damage and expense.

7. Our total liability hereunder shall not exceed the sum of:

(say) _____

R _____

8. This Performance Bond is neither negotiable nor transferable and is governed by the laws of the Republic of South Africa, subject to the jurisdiction of the courts of the Republic of South Africa.

Signed at _____ on this _____ day of _____ 200_

Signature(s)	
Name(s) (printed)	
Position in Surety company	
Signature of Witness(s)	
Name(s) (printed)	

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PART C1.4: ADJUDICATOR'S CONTRACT

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CONTRACT DATA

- Statements given in all contracts**
- The *contract between the Parties* is **To be advised**.....
 - The *period of retention* is ...**N/A**..... weeks.
 - The *law of the contract* is the law of **the Republic of South Africa**
 - The *language of this contract* is **English**.....
 - The amount of the advanced payment is **N/A**.....
 - The Adjudicator's *fee* is...**To be advised**.....per hour.
 - The *interest rate* is **2%** per annum above the prime lending rate of the **Standard Bank of South Africa**.
 - The *currency of this contract* is **ZAR**.....
 - The Adjudicator's appointment terminates on **(To be advised)**.....

- Optional statements**
- If the period for payment of invoices is not three weeks**
- The period for payment of invoices is **four**.....weeks.
- If additional conditions of contract are required**
- The *additional conditions of contract* are
- To be advised**
-
-
-
-

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