

T2.2 RETURNABLE SCHEDULES

- Certificate of Attendance at Clarification meeting
- Schedule of Tenderers experience
- Schedule of proposed Sub-Contractors
- Schedule of Plant and Equipment (Tools and Machinery)
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- Proposed amendments and qualifications
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- Experience of key staff in the form of Curriculum Vitae.
- Certificate of authority for joint ventures (where applicable)
- Supplier Declaration form
- Transnet Limited: Contractual Safety clauses which will form part of any resulting contract
- RFP Declaration form

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Certificate of attendance at Clarification Meeting

This is to certify that

(Tenderer)

of

(address)

was represented by the person(s) named below at the compulsory meeting held for all tenderers at _____ (location) on _____ (date), starting at _____. We acknowledge that the purpose of the meeting was to acquaint ourselves with the Site of the Works and/or matters incidental to doing the work specified in the tender documents in order for us to take account of everything necessary when compiling our rates and prices included in the tender.

Particulars of person(s) attending the meeting:

Name: _____ Signature _____

Capacity: _____

Name: _____ Signature _____

Capacity _____

Attendance of the above persons at the meeting is confirmed by the Employer's representative, namely:

Name: _____ Signature _____

Capacity: _____ Date and time _____

Schedule of the Tenderer's Experience

The following is a statement of similar work successfully executed by myself/ourselves:

Employer, contact person and telephone number	Description of contract	Value of work inclusive of VAT (Rand)	Date completed
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Signed _____

Date _____

Name _____

Position _____

Tenderer _____

Schedule of Proposed Sub-Contractors

We notify you that it is our intention to employ the following Sub-Contractors for work in this contract.

If we are awarded a contract we agree that this notification does not change the requirement for us to submit the names of proposed Sub-Contractors in accordance with requirements in the contract for such appointments. If there are no such requirements in the contract, then your written acceptance of this list shall be binding between us.

We confirm that all Sub-Contractors who are contracted to construct a house are registered as home builders with the National Home Builders Registration Council.

	Name and address of proposed Sub-Contractor	Nature and extent of work	Previous experience with Sub-Contractor.
1.			
2.			
3.			
4.			
5.			

Signed

Date

Name

Position

Tenderer

Schedule of Plant and Equipment

The following are lists of major items of relevant Equipment that I/we presently own or lease and will have available for this contract or will acquire or hire for this contract if my/our tender is accepted.

(a) Details of major Equipment that is owned by and immediately available for this contract.

Quantity	Description, size, capacity, etc.

Attach additional pages if more space is required.

(b) Details of major Equipment that will be hired, or acquired for this contract if my/our tender is acceptable.

Quantity	Description, size, capacity, etc.

Attach additional pages if more space is required.

Signed

Date

Name

Position

Tenderer

Curriculum Vitae of Key Personnel

Name:	Date of birth:
Profession:	Nationality:
Qualifications:	
Professional registration number:	
Name of employer (firm):	
Current Position:	Years with the firm:
Employment record: (list in chronological order starting with earliest work experience)	
Experience record pertinent to required service	
Certification: <p>I, the undersigned, certify that to the best of my knowledge and belief, this data correctly describes me, my qualifications and my experience.</p>	
<p>_____</p> <p><i>[Signature of person named in schedule]</i></p>	<p>_____</p> <p>Date</p>

Record of Addenda to tender documents

We confirm that the following communications received from the Employer before the submission of this tender offer, amending the tender documents, have been taken into account in this tender offer:

	Date	Title or Details
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Attach additional pages if more space is required.

Signed

Date

Name

Position

Tenderer

Proposed amendments and qualifications

The Tenderer should record any deviations or qualifications he may wish to make to the tender documents in this Returnable Schedule. Alternatively, a tenderer may state such deviations and qualifications in a covering letter to his tender and reference such letter in this schedule.

The Tenderer's attention is drawn to clause F.3.8 of the Standard Conditions of Tender referenced in the Tender Data regarding the employer's handling of material deviations and qualifications.

Page	Clause or item	Proposal

Signed

Date

Name

Position

Tenderer

Compulsory Enterprise Questionnaire

The following particulars must be furnished. In the case of a joint venture, separate enterprise questionnaires in respect of each partner must be completed and submitted.

Section 1: Name of enterprise:

Section 2: VAT registration number, if any:

Section 3: CIDB registration number, if any:

Section 4: Particulars of sole proprietors and partners in partnerships

Name*	Identity number*	Personal income tax number*

* Complete only if sole proprietor or partnership and attach separate page if more than 3 partners

Section 5: Particulars of companies and close corporations

Company registration number

Close corporation number

Tax reference number

Section 6: Record in the service of the state

Indicate by marking the relevant boxes with a cross, if any sole proprietor, partner in a partnership or director, manager, principal shareholder or stakeholder in a company or close corporation is currently or has been within the last 12 months in the service of any of the following:

- | | |
|--|---|
| <input type="checkbox"/> a member of any municipal council | <input type="checkbox"/> an employee of any provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999) |
| <input type="checkbox"/> a member of any provincial legislature | |
| <input type="checkbox"/> a member of the National Assembly or the National Council of Province | <input type="checkbox"/> a member of an accounting authority of any national or provincial public entity |
| <input type="checkbox"/> a member of the board of directors of any municipal entity | <input type="checkbox"/> an employee of Parliament or a provincial legislature |
| <input type="checkbox"/> an official of any municipality or municipal entity | |

If any of the above boxes are marked, disclose the following:

Name of sole proprietor, partner, director, manager, principal shareholder or stakeholder	Name of institution, public office, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months

*insert separate page if necessary

Section 7: Record of spouses, children and parents in the service of the state

Indicate by marking the relevant boxes with a cross, if any spouse, child or parent of a sole proprietor, partner in a partnership or director, manager, principal shareholder or stakeholder in a company or close corporation is currently or has been within the last 12 months been in the service of any of the following:

- | | |
|--|---|
| <input type="checkbox"/> a member of any municipal council | <input type="checkbox"/> an employee of any provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999) |
| <input type="checkbox"/> a member of any provincial legislature | <input type="checkbox"/> a member of an accounting authority of any national or provincial public entity |
| <input type="checkbox"/> a member of the National Assembly or the National Council of Province | <input type="checkbox"/> an employee of Parliament or a provincial legislature |
| <input type="checkbox"/> a member of the board of directors of any municipal entity | |
| <input type="checkbox"/> an official of any municipality or municipal entity | |

Name of spouse, child or parent	Name of institution, public office, board or organ of state and position held	Status of service (tick appropriate column)	
		Current	Within last 12 months

*insert separate page if necessary

The undersigned, who warrants that he / she is duly authorised to do so on behalf of the enterprise:

- authorizes the Employer to obtain a tax clearance certificate from the South African Revenue Services that my / our tax matters are in order;
- confirms that the neither the name of the enterprise or the name of any partner, manager, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears on the Register of Tender Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004;
- confirms that no partner, member, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears, has within the last five years been convicted of fraud or corruption;
- confirms that I / we are not associated, linked or involved with any other tendering entities submitting tender offers and have no other relationship with any of the Tenderers or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest; and
- confirms that the contents of this questionnaire are within my personal knowledge and are to the best of my belief both true and correct.

Signed

Date

Name

Position

Enterprise
name

Certificate of Authority for Joint Ventures

This Returnable Schedule is to be completed by joint ventures.

We, the undersigned, are submitting this tender offer in Joint Venture and hereby authorise Mr/Ms . . .
 , authorised signatory of the company
 , acting in the capacity of lead
 partner, to sign all documents in connection with the tender offer and any contract resulting from it on
 our behalf.

NAME OF FIRM	ADDRESS	DULY SIGNATORY	AUTHORISED
Lead partner		Signature. Name Designation	
		Signature. Name Designation	
		Signature. Name Designation	
		Signature. Name Designation	

Transnet Supplier Declaration/Application

The Financial Director or Company Secretary

Transnet Vendor Management has received a request to load your company on to the Transnet vendor database. Please furnish us with the following to enable us to process this request:

1. Complete the "Supplier Declaration Form" (**SDF**) on page 2 of this letter
2. **Original** cancelled cheque **OR** letter from the bank verifying banking details (**with bank stamp**)
3. **Certified** copy of Identity document of Shareholders/Directors/Members (where applicable)
4. **Certified** copy of certificate of incorporation, CM29 / CM9 (name change)
5. **Certified** copy of share Certificates of Shareholders, CK1 / CK2 (if CC)
6. A letter with the company's letterhead confirming physical and postal addresses
7. **Original** or **certified** copy of SARS Tax Clearance certificate and Vat registration certificate
8. A signed letter from the Auditor / Accountant confirming most recent annual turnover and percentage black ownership in the company **AND/OR** BBBEE certificate and detailed scorecard from an accredited rating agency (SANAS member).

NB: *▪ Failure to submit the above documentation will delay the vendor creation process.
▪ Where applicable, the respective Transnet business unit processing your application may request further information from you. E.g. proof of an existence of a Service/Business contract between your business and the respective Transnet business unit etc.*

IMPORTANT NOTES:

- a) **If your annual turnover is less than R5 million**, then in terms of the DTI codes, you are classified as an Exempted Micro Enterprise (EME). If your company is classified as an EME, please include in your submission, a signed letter from your Auditor / Accountant confirming your company's most recent annual turnover is less than R5 million and percentage of black ownership and black female ownership in the company AND/OR BBBEE certificate and detailed scorecard from an accredited rating agency (e.g. permanent SANAS Member), should you feel you will be able to attain a better BBBEE score.
- b) **If your annual turnover is between R5 million and R35million**, then in terms of the DTI codes, you are classified as a Qualifying Small Enterprise (QSE) and you claim a specific BBBEE level based on any 4 of the 7 elements of the BBBEE score-card, please include your BEE certificate in your submission as confirmation of your status.
NB: BBBEE certificate and detailed scorecard should be obtained from an accredited rating agency e.g. permanent SANAS Member).
- c) **If your annual turnover is in excess of R35million**, then in terms of the DTI codes, you are classified as a Large Enterprise and you claim a specific BEE level based on all seven elements of the BBBEE generic score-card. Please include your BEE certificate in your submission as confirmation of your status.
NB: BBBEE certificate and detailed scorecard should be obtained from an accredited rating agency (permanent SANAS Member).
- d) **To avoid PAYE tax being automatically deducted from any invoices received from you**, you must also contact the Transnet person who lodged this request on your behalf, so as to be correctly classified in terms of Tax legislation.
- e) Unfortunately, **No payments can be made to a vendor** until the vendor has been registered, and no vendor can be registered until the vendor application form, together with its supporting documentation, has been received and processed.
- f) **Please return the completed Supplier Declaration Form (SDF) together with the required supporting documents mentioned above to the Transnet Official who is intending to procure your company's services/products in order that he/she should complete and Internal Transnet Departmental Questionnaire before referring the matter to the appropriate Transnet Vendor Master Office.**

Regards,
Transnet Vendor/Supplier Management *[please substitute this with your relevant Transnet department before sending this document out]*

Supplier Declaration Form

Company Trading Name							
Company Registered Name							
Company Registration Number Or ID Number If A Sole Proprietor							
Form of entity	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor	
VAT number (if registered)							
Company Telephone Number							
Company Fax Number							
Company E-Mail Address							
Company Website Address							
Bank Name				Bank Account Number			
Postal Address							Code
Physical Address							Code
Contact Person							
Designation							
Telephone							
Email							
Annual Turnover Range (Last Financial Year)		< R5 Million	R5-35 million	> R35 million			
Does Your Company Provide		Products	Services	Both			
Area Of Delivery		National	Provincial	Local			
Is Your Company A Public Or Private Entity		Public	Private				
Does Your Company Have A Tax Directive Or IRP30 Certificate		Yes	No				
Main Product Or Service Supplied (E.G.: Stationery/Consulting)							
BEE Ownership Details							
% Black Ownership	% Black women ownership	% Disabled person/s ownership					
Does your company have a BEE certificate	Yes	No					
What is your broad based BEE status (Level 1 to 9 / Unknown)							
How many personnel does the firm employ	Permanent	Part time					
Transnet Contact Person							
Contact number							
Transnet operating division							
Duly Authorised To Sign For And On Behalf Of Firm / Organisation							
Name				Designation			
Signature				Date			
Stamp And Signature Of Commissioner Of Oath							
Name				Date			
Signature				Telephone No.			

NB: Please return the completed Supplier Declaration Form (SDF) together with the required supporting documents mentioned above to the Transnet Official who is intending to procure your company's services/products.

2. VENDOR TYPE OF BUSINESS

(Please tick as applicable) (* - Minimum requirements)

2.1	Indicate the business sector in which your company is involved/operating:									
Agriculture		Mining and Quarrying								
Manufacturing		Construction								
Electricity, Gas and Water		Finance and Business Services								
Retail, Motor Trade and Repair Services		Wholesale Trade, Commercial Agents and Allied Services								
Catering, accommodation and Other Trade		Transport, Storage and Communications								
Community, Social and Personal Services		Other (Specify)								
Principal Business Activity *										
Types of Services Provided										
Since when has the firm been in business?										
2.2	What is your company's annual turnover (excluding VAT)? *									
<R20k	>R20k <R0.3m	>R0.3 m <R1m	>R1m <R5m	>R6m <R10m	>R11m <R15m	>R16m <R25m	>R26m <R30m	>R31m <R34m	>R35m	
2.3	Where are your operating/distribution centres situated *									

3. VENDOR OWNERSHIP DETAIL

(Please tick as applicable) (* - Minimum requirements)

3.1	Did the firm previously operate under another name? *		
YES		NO	
3.2	If Yes state its previous name:*		
Registered Name			
Trading Name			
3.3	Who were its previous owners / partners / directors?*		
SURNAME & INITIALS		ID NUMBERS	

3.4	List Details of current partners, proprietors and shareholders by name, identity
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number, citizenship, status and ownership as relevant: *								
SURNAME & INITIALS	IDENTITY NUMBER	CITIZENSHIP	HDI	DIS - ABLED	GENDER	DATE OF OWNERSHIP	% OWNED	% VOTING

3.5	List details of current directors, officers, chairman, secretary etc. of the firm: *						
SURNAME & INITIALS	IDENTITY NUMBER	TITLE	DIS - ABLED	GENDER	% OF TIME DEVOTED TO THE FIRM	CONTACT NUMBER	

3.6	List details of firms personnel who have an ownership interest in another firm: *				
SURNAME & INITIALS	IDENTITY NUMBER	NAME & ADDRESS OF OTHER FIRM	TITLE IN OTHER FIRM	% OWNED	TYPE OF BUSINESS OF OTHER FIRM

4. VENDOR DETAIL

(Please tick as applicable) (* - Minimum requirements)

4.1	How many personnel does the firm employ? *					
	BLACK	WHITE	COLOURED	INDIAN	OTHER	TOTAL
Permanent						
Part Time						

4.1.1	In terms of above kindly provide numbers on women and disabled personnel? *					
	BLACK	WHITE	COLOURED	INDIAN	OTHER	TOTAL
Women						
Disabled						

4.2	Provide Details of Contact Person/s Responsible for Broad Based Black Economic Empowerment (BBBEE) in the Company *					
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SURNAME	INITIALS	DESIGNATION	TELEPHONE NO.

4.2.1	Is your company a value adding supplier (i.e. registered as a vendor under the VAT Act of 1991, where NPAT + total labour cost > 25% of total revenue)?		
YES		NO	

4.2.2	Is your company a recipient of Enterprise Development Contributions?*		
YES		NO	

4.2.3	May the above mentioned information be shared and included in Transnet Supplier Data future reference? *		
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YES		NO	
4.2.4	If you are successful in the tender/contract (where applicable) and this is awarded to your company / organisation, will this have a positive impact on your employment plans? *		
YES		NO	
4.2.5	If yes (above) kindly provide the following information:		
	BLACK	WHITE	COLOURED
Permanent			
Part Time			

4.2.6	In terms of above kindly provide numbers on woman and disabled personnel:					
	BLACK	WHITE	COLOURED	INDIAN	OTHER	TOTAL
Women						
Disabled						

4.2.7	Are any of your members/shareholders/directors ex employees of Transnet?		
YES		NO	
4.2.8	Are any of your family members employees of Transnet?		
YES		NO	

4.2.9	If Yes to points 4.2.7 & 4.2.8, list details of employees/ex-employees				
SURNAME & INITIALS	IDENTITY NUMBER	NAME & ADDRESS OF OTHER FIRM	TITLE IN OTHER FIRM	% OWNED	TYPE OF BUSINESS OF OTHER FIRM

Internal Transnet Departmental Questionnaire (for office use only)

Section 1: To be completed by the Transnet Requesting / Sourcing Department									
TFR		TRE		TPT		TPL		TNPA	
Create		Amend		Block		Unbloc		Once-Off / Emergency	
Exten		Delete		Undele					

Supplier's trading name			
Supplier's registered name			
Please indicate if the Supplier has a contract with sourcing Transnet OD			Yes
If yes please submit a copy of the letter of award			No

a) What is being procured from the supplier?			
i. Products only	Yes		No
ii. Services only	Yes		No
iii. Labour only	Yes		No
iv. Mix of services and products	Yes		No
v. Mix of services and labour	Yes		No

b) If your answer is **YES** to questions II, III, IV or V in paragraph **a)** above, please indicate whether the relevant **PAYE questionnaires** have been forwarded to the appropriate **Transnet Operational Divisions'** decision making bodies / **Strategic Supply Management** team for a directive /decision on tax withholding from payments to this supplier.

Yes		No	
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c) If your reply to (b) is "**NO**", please furnish reasons :

d) Certification and Approval of proposed Vendor Creation/Unblocking/Other Changes by Transnet Official with Appropriate Delegated Authority :

***I HEREBY CERTIFY THAT THE TRANSNET DETAILED PROCUREMENT PROCESS (DPP) /
PROCUREMENT MECHANISM HAS IN ALL RESPECTS BEEN ADHERED TO AND I
THEREFORE APPROVE THE PROPOSED VENDOR CREATION/APPROVAL/OTHER CHANGES
TO BE EFFECTED ON THE VENDOR MASTER***

		Grade	Date								Signature
			Y	Y	Y	Y	M	M	D	D	
Tel No:			Fax								

Section 2: To be completed by the BEE Department (this section is for Confirmation/Determining of

NARROW BASED (NB)				BROADBASED (BBBEE)								
BEE O/S	BWBE	DPBE	MR	CONTR. LEVEL	EME: <R5m	QSE: >R5m <R35m	LARGE: >R35m	VALIDITY DATE				
				Grade	Date				Signature			
					Y	Y	Y	Y	M	M	D	D
					Y	Y	Y	Y	M	M	D	D

TRANSNET LIMITED / CONTRACTORS / SUB-CONTRACTORS

CONTRACTUAL SAFETY CLAUSES WHICH WILL FORM PART OF ANY RESULTING CONTRACT

The parties agree on the following arrangements according to section 37 (2) of the Occupational Health and Safety Act, 1993 (Act 85 of 1993) to ensure compliance by the mandatory with provisions of the Act.

- 1) That the Contractor is an “employer” in his own right as defined in section 1 of Act 85 of 1993 and that he must fulfil all his obligations as an employer in terms of the Act.
- 2) The Contractor shall comply with the requirements of Act 85 of 1993 in its entirety.
- 3) Where special permits are required, such as electrical switching, hot work permits, etc. the Contractor shall obtain them from a person designated by Transnet Limited for this purpose, and all requirements of the Contractor must rigidly comply with the permit.
- 4) The Contractor shall conduct a risk assessment of the work to be performed by a competent person prior to the commencement of work, to identify risks and hazards that persons may be exposed to, analyse and evaluate identified hazards.
- 5) The Contractor shall have a documented Health and Safety Plan based on the risks and hazards identified before commencement of work.
- 6) The Health and Safety Plan shall include the following:
 - 6.1 The safety management structure to be instituted with all appointments in terms of the Act and Regulations
 - 6.2 The safe working methods and procedures to be implemented to ensure work are performed in compliance to the Act.
 - 6.3 The safety equipment, devices and clothing to be made available by the Contractor to his employees.
 - 6.4 The site access control measures pertaining to health and safety to be implemented.
 - 6.5 Control measures for ensuring that the Health and Safety Plan is maintained and monitored for the duration of the contract.
- 7) The Contractor shall ensure that all work is performed under the close supervision of a person trained to understand the hazards associated with the work performed and who has authority to ensure that the necessary precautionary measures are implemented.
- 8) The Contractor must appoint a Health and Safety Co-ordinator to liaise with Transnet Limited on matters pertaining to occupational health and safety.
- 9) The appointed Safety Co-ordinator must liaise at least once a week with the* Health and Safety Section / Risk Manager /Occupational Risk Manager of Transnet Limited.
- 10) The Contractor shall furnish the* Health and Safety Section/ Risk Manager/ Occupational Risk Manager of Transnet Limited immediately with full particulars of any sub-Contractor which he may involve in the contract in order that the sub-Contractor himself can be made aware of all the clauses in this contract pertaining to health and safety.

- 11) The Contractor shall stop any sub-contractor from executing work which is not in accordance with the Health and Safety Plan or which poses a threat to health and safety of persons.
- 12) The Contractor shall ensure that all his employees and visitors undergoes health and safety induction pertaining to the hazards prevalent, proof of such training must be kept on file.
- 13) In the event where the risk assessment reveals the risk relating to working from an elevated position the Contractor shall cause the designation of a competent person, responsible for the preparation of a Fall Protection Plan.
- 14) The Fall Protection Plan shall include:
 - 14.1 A risk assessment of all work carried out from an elevated position
 - 14.2 Procedures and methods to address all the identified risks per location
 - 14.3 Evaluation of employee's physical and psychological fitness necessary to work at elevated position.
 - 14.4 The training of employees working from an elevated position.
 - 14.5 Procedure addressing the inspection, testing and maintenance of all fall protection equipment.
- 15) The Contractor shall advise the * Health and Safety Section / Risk Manager/ Occupational Risk Manager of Transnet Limited of any hazardous situations which may arise from work being performed either by the Contractor or his sub-Contractor.
- 16) Copies of all appointments required by the act must be given to * Health and Safety Section / Risk Manager / Occupational Risk Manager of Transnet Limited.
- 17) The Contractor shall ensure that a Health and Safety File is available which shall include all documentation as required by the Act, copy of his and his Sub-Contractors Risk Assessment and Health and Safety Plan.
- 18) All incidents referred to in Section 24 of the Act involving the Contractor and his Sub-Contractor on Transnet Ltd premises, shall be reported as prescribed. Transnet Ltd hereby obtains an interest in the issue of any investigation, formal inquiry conducted in terms of Section 31 and 32 of the Act into any incident involving the Contractor, his Sub-Contractor, any person or machinery under his control on Transnet Ltd premises.
- 19) No alcohol or any other intoxicating substance shall be allowed on Transnet Ltd premises. The Contractor shall not allow anyone under or suspected to be under the influence of alcohol or any other intoxicating substance on Transnet Ltd premises.
- 20) Contractor to ensure its employees undergo medical surveillance as required by legislation
- 21) Contractor will be required to provide monthly safety performance reports and statistics
- 22) A letter of good standing in terms of Section 80 (Employer to register with the Compensation Commissioner) of the Compensation for Occupational Injuries and Disease Act 1993 (Act 130 of 1993) must also be furnished.
- 23) All clauses in the contract pertaining health and safety form an integral part of the contract and if not complied with may be construed as breach of contract.

*As applicable

Tenderer OH & S Management System Questionnaire

This questionnaire forms part of TFR tender evaluation process and is to be completed by all Tenderer's and submitted with their tender offer. The objective of the questionnaire is to provide an overview of the status of the Tenderer's OH&S management system. Tenderers will be required to verify their responses noted in their questionnaire by providing evidence of their ability and capacity in relevant matters. **TFR may verify accuracy of this information during the physical visit as part of the tender evaluation.**

The information provided in this questionnaire is an accurate summary of the company's occupational health and safety management system.		
Company Name:		
Signed:	Name:	
Position:	Date:	
Tender Description:		
Tender Number:		
Tenderer OH&S Management System Questionnaire	Yes	No
1. OH&S Policy and Management		
- Is there a written company health and safety policy? - If yes provide a copy of the policy		
- Does the company have an OH&S Management system e.g NOSA, OHSAS, IRCA System etc - If yes provide details		
- Is there a company OH&S Management System, procedures manual or plan? - If yes provide a copy of the content page(s)		
- Are health and safety responsibilities clearly identified for all levels of Management and employees? - If yes provide details		
2. Safe Work Practices and Procedures		
- Are safe operating procedures or specific safety instructions relevant to its operations available? - If yes provide a summary listing of procedures or instructions		
- Is there a register of injury document? If yes provide a copy		
- Are Risk Assessments conducted and appropriate techniques used? - If yes provide details		

3. OH&S Training		
Describe briefly how health and safety training is conducted in your company:		
- Is a record maintained of all training and induction programs undertaken for employees in your company? - If yes provide examples of safety training records		
4. Health and Safety Workplace Inspection		
- Are regular health and safety inspections at worksites undertaken? - If yes provide details		
- Is there a procedure by which employees can report hazards at workplaces? - If yes provide details		
5. Health and Safety Consultation		
- Is there a workplace health and safety committee?		
- Are employees involved in decision making over OH&S matters? - If yes provide details		
- Are there employee elected health and safety representatives? - Comments		
6. OH&S Performance Monitoring		
- Is there a system for recording and analysing health and safety performance statistics including injuries and incidents? - If yes provide details		
- Are employees regularly provided with information on company health and safety performance? - If yes provide details		
- Is company registered with workmen's compensation and up to date? - If yes provide proof of letter of good standing		
- Has the company ever been convicted of an occupational health and safety offence? - If yes provide details		

Safety Performance Report

Monthly DIFR for previous months

Previous Year	No of Disabling Injuries	Total Number of employees	DIFR per month
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

DIFR = Number of Disabling injuries x 200000 divided by number of man hours worked for the period

Signed
(Tenderer)

Part C1: Agreement and Contract Data

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C1.1 FORM OF OFFER AND ACCEPTANCE (ECC3)

OFFER

SUPPLY, INSTALLATION AND COMMISSIONING OF 3 MAIN OPTICAL FIBRE CABLE ROUTES ON TFR OHTE EQUIPMENT:

KIMBERLEY – HOTAZEL
RICHARDS BAY – DURBAN
BRITS – ATLANTA – THABAZIMBI

The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.

By the representative of the tenderer, signing this part of this Form of Offer and Acceptance, the tenderer offers to perform all of the obligations and liabilities of the *Contractor* under the contract including compliance with all 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

Date

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 Form of Offer and Acceptance. 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		
7		

By the duly authorised representatives, 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 Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

C1.2 CONTRACT DATA PROVIDED BY *EMPLOYER* (ECC3)

The conditions of contract are the NEC3 Engineering and Construction Contract (June 2005), copies of which may be obtained from the South African Institution of Civil Engineering (tel. 011-805 5947) or Engineering Contract Strategies (tel. 011 803-3008).

Part One – Data Provided by the *Employer*

Statements given in all contracts

- 1 General:
- (a) The *conditions of contract* are the core clauses and the clauses for main Option **B**, dispute resolution Option **W1** and secondary Options **X7, X13, X16 & X18** of the NEC3 Engineering and Construction Contract June 2005 (with amendments June 2006).
 - (b) **The *Contractor's Offer* and the *Employer's Acceptance* is in the document called Form of Offer and Acceptance – Part C1.1**
 - (c) **SUPPLY, INSTALLATION AND COMMISSIONING OF 3 MAIN OPTICAL FIBRE CABLE ROUTES ON TFR OHTE EQUIPMENT.**
 - 1. KIMBERLEY – HOTAZEL
 - 2. RICHARDS BAY – DURBAN
 - 3. BRITS – ATLANTA – THABAZIMBI
 - (d) The *Employer* is
 - Name **Transnet SOC Limited trading as Transnet Freight Rail**
 - Address **49th Floor, Carlton Centre**
150 Commissioner Street
Johannesburg
2000
The address of the Employer's finance office is to be advised.
 - (e) The *Project Manager* is:
 - Name **Mr. FJ. Nel (Pr. Tech. Eng.)**

Address Table 1/135,
Inyanda House 3,
12 A St Andrews Rd.
Johannesburg

- (f) The *Supervisor* is
- (g) The *Adjudicator* will be mutually agreed upon by both parties when a dispute arises.
- (h) The Works Information is in the document called **“Scope of Work” – Part C3**
- (i) The Site Information is in the document called **“Site Information” – Part C4**
- (j) The *boundaries of the site* are.
- 1. Kimberley to Hotazel on the TFR rail reserve**
 - 2. Richards Bay – Durban on the TFR rail reserve**
 - 3. Brits – Atlanta and Rustenburg – Thabazimbi on the TFR rail reserve.**
- (k) The *language of this contract* is **English.**
- (l) The *law of the contract* is the law of **the Republic of South Africa.**
- (m) The *period for reply to a communication* is **2 weeks**
- (n) The *Adjudicator nominating body* is **the Association of Arbitrators (Southern Africa).**
- (o) The *tribunal* is **Arbitration.**
- (p) The following matters will be included in the Risk Register
- 1. Emergency contact telephone numbers.**
 - 2. Preparedness and response to emergency situations**
 - 3. Risk Assessment**
 - 4. Site safety plan based on Risk Assessment**

5. Site access Certificate
6. Letter of Good Standing with WCC
7. Structural Appointments
8. Persons responsible for safety on site
9. Policies
10. Training
11. Certificates
12. Minutes of Site Safety Meetings
13. I.O.Ds and Incidents
14. OHS Audits and inspections
15. Written Safe Work Procedures
16. Planned Task Observations
17. Personal Protective Equipment
18. Site instructions issued with regards to safety on site
19. Daily personnel safety check list
20. Toolbox talks.

3 Time: (a) The *starting date* is the contract date.

(b) The *access dates* are

Date of Site Access Certificate

(c) The *Contractor* submits revised programmes at intervals no longer than 1 month. **The programme shall include milestone dates and tracking against a baseline.**

4 Testing and Defects: (a) The *defects date* is **52** weeks after Completion of the whole or handed-over portions of the *works*

- 5 Payment:
- (a) The *currency of this contract* is the **South African Rand (ZAR)**.
 - (b) The *progress assessment interval* is **on the 10th of each month**.
 - (c) The *interest rate* is **two percent** per annum above the **prime lending** rate of the **Standard Bank of South Africa Ltd. as determined from time to time**.

6 Compensation events:

- (a) The place where weather is to be recorded is
- (b) The *weather measurements* to be recorded for each calendar month are
 - (i) the cumulative rainfall (mm)
 - (ii) the number of days with rainfall more than 10mm
- (c) The *weather measurements* are supplied by the **SA Weather Service**.
- (d) The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at **the weather station nearest to the substation sites** and which are available from **SA Weather Service**.
- (e) Where no recorded data are available assumed values for the ten year weather data for each weather measurement for each calendar month are :

8 Risks and insurance.

- (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.**

Optional statements

(a) If the tribunal is arbitration

- The *arbitration procedure* is the **Rules for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa)**
- The place where arbitration is to be held is
To be advised
- The person or organisation who will choose an Arbitrator if the Parties cannot agree a choice is **The Chairman of the Association of Arbitrators (Southern Africa).**

(b) If the **Employer** has decided the completion date for the whole of the *works*

The completion date for the whole of the *works* is the period stated in the Scope of Work.

(c) If the **Employer** is not willing to take over the *works* before the **Completion Date**

The *Employer* is not willing to take over the *works* before the Completion Date.

(d) If no programme is identified in part two of the **Contract Data**

The *Contractor* is to submit a first programme for acceptance within **4 weeks** of the Contract Date. **The programme shall include and show milestone dates covering major milestones as well as monthly progress milestones.**

- (e) If the **Employer** has identified work which is to meet a stated **condition by a key date**.

n/a

- (f) If the period in which payments are made is not three weeks and Y(UK) is not used

The period within which payments are made is **30 days from date of invoice receipt, based on the Progress Certificate prepared and issued by the Project Manager.**

- (g) If there are additional compensation events

These are additional compensation event

1 N/A

2 N/A

3 N/A

- (h) If there are additional Employer's risks

n/a

- (i) If the **Employer** is to provide any of the insurances stated in the **Insurance Table**

The **Employer** provides these insurances from the Insurance Table

1. Insurance against loss of or damage to the *works*, Plant and Materials is **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents**

Cover/indemnity is **to the extent as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance).**

The deductibles are **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance).**

2. Insurance against loss of or damage to Equipment **(Temporary Works only)** as stated in the insurance policy for contract works and public liability **(Principal Controlled Insurance)**.

Cover/indemnity is to the extent as stated in the insurance policy for contract works and public liability **(Principal Controlled Insurance)**.

The deductibles are as stated in the insurance policy for contract works and public liability **(Principal Controlled Insurance)**.

3. Insurance against loss of or damage to property (except the works, Plant, 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 as stated in the insurance policy for contract works and public liability **(Principal Controlled Insurance)**.

Cover/indemnity is to the extent as stated in the insurance policy for contract works and public liability **(Principal Controlled Insurance)**.

The deductibles are as stated in the insurance policy for contract works and public liability **(Principal Controlled Insurance)**.

NB: All the above are available on the following website:

<http://www.transnet.co.za/policydocuments.aspx>

(j) **If additional insurances are to be provided**

The *Employer* provides these additional insurances

1. **Contract Works SASRIA insurance subject to the terms exceptions and conditions of the SASRIA coupon policy.**

Cover/indemnity is to the extent provided by the **SASRIA coupon policy**.

The deductibles are as indicated in the attached Insurance policy.*

The *Contractor* provides these additional insurances

- 1 Where the Contract requires that design of any part of the works shall be provided by the *Contractor*, he shall satisfy the *Employer* that professional indemnity insurance cover in connection therewith has been affected.

- 2 Where the Contract involves manufacture, and/or fabrication of Plant and Materials, components or other goods to be incorporated into the *works*, at premises other than the site, the *Contractor* shall satisfy the *Employer* that such Plant and Materials, components or other goods for incorporation in the *works* are adequately insured during manufacture and/or fabrication.
- 3 Should the *Employer* have an insurable interest in such items during manufacture or fabrication, such interest shall be noted by endorsement to the *Contractor's* policies of insurance as well as those of any subcontractor.
4. The insurance coverage referred to in 1 and 2 above shall be obtained from an insurer in terms of an insurance policy approved by the *Employer*. The *Contractor* shall arrange with the insurer to submit to the *Project Manager* the original and duplicate original of the policy or policies of insurance and the receipts for payment of current premiums, together with a certificate from the insurer or insurance broker concerned, confirming that the policy or policies provide the full coverage as required. The original policy will be returned to the *Contractor*.
5. Where the Contract involves loading, shipping and unloading of Plant and Materials the Contractor shall satisfy the Employer that insurance cover in connection therewith has been effected.
6. Where the Contract involves loading, transportation by land and unloading of Plant and Materials the Contractor shall satisfy the Employer that insurance cover in connection therewith has been effected.
7. No claims for payment of insurance cover effected by the Contractor will be paid by the Employer and the Contractor's provisions for insurance shall be included in his scheduled prices.

Main Option B:

Priced contract with bill of Quantities

All Option B Clauses will apply.

Option X7:

Delay damages

Delay damages is a penalty in South African Law and the word penalty is to replace delayed damages throughout the Contract.

- (a) Penalty for Completion of the whole of the *works* is **R1,000.00 per day**.

Option X13: Performance bond

- (a) The amount of the Guarantee (Performance Bond) is to be calculated as **5 %** of the tender price.
- (b) The Form of Guarantee (or Performance Bond) is in Clause C 1.3 of Part C1.

Option X16: Retention

- (a) The retention percentage is **10%**.

Option X18: Limitation of Liabilities:

- a) The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to 10% of the total contract value or R1,000,000.00 (One million Rand), whichever is the higher amount.
- b) For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is limited to the deductible in terms of the Employers arranged insurance as set out in the contract.
- c) The *Contractor's* liability for Defects due to his design of an item of Equipment is limited to R1,000,000.00 (One million Rand).
- d) The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to 10% of the total value of the contract at time of contract award or R1,000,0000 (One million Rand) whichever is the higher amount.
- e) The *end of liability date* is two months after the end of the *defect period*.

Option Z: Additional conditions of contract

The Additional conditions of contract are:

All references made to Spoornet or South African Transport Services in the documentation shall mean Transnet Freight Rail.

Z1 Definitions:

Z1.1 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.

Z1.2 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. The Contractor shall not cede or assign the Contract or any part thereof without the prior written approval of the Project Manager. The Contractor shall not enter into any subcontract without the prior written approval of the Project 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. Approval given 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.

Z1.3 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.

Z1.4 LIMITATION OF THE AUTHORITY OF THE PROJECT MANAGER

The Project Manager is authorised to agree increases to the contract value to a maximum of **R2,000,000.00 or 10%** of the contract amount (excluding VAT) whichever is the lesser amount without referring it to the management of the Employer. If referral to management is necessary, a period of **8 weeks** over and above any times allowed in the Contract is to be provided.

Z1.5 PROJECT MANAGER'S DEPUTY means the person appointed by the Project Manager to administer the Contractor's performance and execution of Works according to the powers and rights held by and obligations placed upon the Project Manager's Deputy in terms of the Contract and the appointment.

Z1.6 BACKGROUND INTELLECTUAL PROPERTY means all Intellectual Property introduced and required by either Party to give effect to their obligations under this Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement.

Z1.7 CONFIDENTIAL INFORMATION means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party (intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises), or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term –

- (a) information relating to methods of operation, data and plans of the disclosing Party;

- (b) the contents of this Agreement;
- (c) private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- (d) any information disclosed by either Party and which is clearly marked as being confidential or secret;
- (e) information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;
- (f) information relating to the past, present and future research and development of the disclosing Party;
- (g) information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;
- (h) information contained in the software and associated material and documentation belonging to the disclosing Party;
- (i) technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;
- (j) Copyright works;
- (k) commercial, financial and marketing information;
- (l) data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;
- m) plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;
- (n) information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

Z1.8 "FOREGROUND INTELLECTUAL PROPERTY" means all Intellectual Property developed by either Party pursuant to this Agreement;

Z1.9 "INTELLECTUAL PROPERTY" means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property.

Z1.10 "TRADE MARKS" mean registered Trade Marks and trade mark applications and includes any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking.

Z1.11 INTELLECTUAL PROPERTY RIGHTS

Title to Confidential Information

- a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Supplier acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt, all the Supplier's Background Intellectual Property shall remain vested in the Supplier.

- b) Transnet shall grant to the Supplier an irrevocable royalty free non-exclusive license to use Transnet's Background Intellectual Property only for the Permitted Purpose. This license shall not permit the Supplier to sub-license to other parties.
- c) The Supplier shall grant to Transnet an irrevocable, royalty free, non-exclusive license to use the Supplier's Background Intellectual Property for the Permitted Purpose. This license shall not permit Transnet to sub-license to other parties.

The Supplier shall grant Transnet access to the Supplier's Background Intellectual Property on terms which shall be bona fide negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

Z1.12 TITLE TO INTELLECTUAL PROPERTY

- a) All right, title and interest in and to Foreground Intellectual Property prepared conceived or developed by the Supplier, its researchers, agents and employees shall vest in Transnet and the Supplier acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. The Supplier shall not at any time during or after the termination or cancellation of this Agreement dispute the validity or enforceability of such Foreground Intellectual Property, or cause to be done any act or anything contesting or in any way impairing or tending to impair any part of that right, title and interest to any of the Foreground Intellectual Property and shall not counsel or assist any person to do so.
- b) Transnet shall be entitled to seek protection in respect of the Foreground Intellectual Property anywhere in the world as it shall decide in its own absolute discretion and the Supplier shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.
- c) Where the Foreground Intellectual Property was created by the Supplier or its researchers, agents and employees and where Transnet elects not to exercise its option to seek protection or decides to discontinue the financial support of the prosecution or maintenance of any such protection, Transnet shall notify the Supplier who shall have the right of first refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Foreground Intellectual Property.
- d) No consideration shall be paid by Transnet to the Supplier for the assignment of any Foreground Intellectual Property from the Supplier to Transnet, over and above the sums payable in terms of this Agreement. The Supplier undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet. Subject to anything contrary contained in this Agreement and/or the prior written consent of Transnet (which consent shall not be unreasonably be withheld), the Supplier shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground intellectual Property.

Z1.13 TITLE TO IMPROVEMENTS

Any improvements, developments, adaptations and/or modifications to the Foreground Intellectual Property, and any and all new inventions or discoveries, based on or resulting from the use of Transnet's Background Intellectual Property and/or Confidential Information shall be exclusively owned by Transnet. The Supplier shall disclose promptly to Transnet all such improvements, developments, adaptations and/or modifications, inventions or discoveries.

The Supplier hereby undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of such improvements, developments, adaptations and/or modifications, inventions or discoveries to Transnet and the Supplier shall reasonably assist Transnet in attaining, maintaining or documenting ownership and/or protection of the improved Foreground Intellectual Property.

Z1.14 UNAUTHORISED USE OF CONFIDENTIAL INFORMATION

The Supplier shall not authorise any party to act on or use in any way any Confidential Information belonging to Transnet whether or not such party is aware of such Confidential Information, and shall promptly notify Transnet of the information if it becomes aware of an party so acting, and shall provide Transnet the information with such assistance as Transnet reasonably requires, at Transnet's cost and expense, to prevent such third party from so acting.

Z1.15 UNAUTHORISED USE OF INTELLECTUAL PROPERTY

The Supplier agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Supplier acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

- a) It shall be within the discretion of Transnet to determine what steps shall be taken against the infringer and the Supplier shall co-operate fully with Transnet, at Transnet's cost, in whatever measure including legal action to bring any infringement of illegal use to an end.
- b) The Supplier shall cooperate to provide Transnet promptly with all relevant ascertainable facts.
- c) If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other award arising out of such proceedings. If proceedings are commenced by both Parties, both Parties will be responsible for the expenses and both Parties shall be entitled to damages or other award arising out of proceedings.

Z1.16 CONFIDENTIALITY

The Parties hereby undertake the following, with regard to Confidential Information

- a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other, without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
- b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this

Agreement;

- c) not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;
- d) not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyze any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement:
 - i. not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;
 - ii. Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of this Agreement, shall be dealt with as “restricted” or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;
 - iii. the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorization to do so has first been obtained from the Party first disclosing such information;
 - iv. each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;
 - v. each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
 - vi. each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by the person or entity; and
 - vii. Each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure

undertaking.

- viii. a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Personnel.
 - ix. was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or
 - x. can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or
 - xi. is independently developed by a Party as proven by its written records.
- e) This clause Z1.16 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 (five) years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Supplier by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation all corporate identity equipment including dies, blocks, labels, advertising matter, printing matter and the like.

Z1.17 FORCE MAJEURE

- a) Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under this Agreement caused by an act of force majeure such as acts of God, fire, flood, war, strike, lockout, industrial dispute, government action, laws or regulations, riots, terrorism or civil disturbance, defaults, delays or discontinuance on the part of independent contractors, suppliers, or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended.
- b) Each Party will take all reasonable steps by whatever lawful means that are available, to resume full performance as soon as practicable and will seek agreement to modification of the relevant provisions of this Agreement in order to accommodate the new circumstances caused by the act of force majeure. If a Party fails to agree to such modifications proposed by the other Party within 90 (ninety) days of the act of force majeure first occurring, either Party may thereafter terminate this Agreement with immediate notice.

Z1.18 EQUALITY AND DIVERSITY

- a. The Supplier will not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.
- b. Both Parties to this Agreement undertake that they will not, and shall procure that its employees, agents and Subcontractors will not breach any applicable

discrimination legislation and any amendments and re-enactments thereof.

Z1.19 VALUE ADDED TAX

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.

Z2 SUFFICIENCY OF TENDER

Z2.1 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 Activity Schedule. 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.

Z3 COMPLIANCE WITH STATUTES AND SAFETY RULES

Z3.1 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.

Z3.2 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 Project 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 Project 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 Project Manager's Deputy.
- In addition to compliance with clause Z3.2 hereof, the Contractor shall report all incidents contemplated by Section 24 of the Act in writing to the Project 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.

Z4 BREACHES AND REMEDIES

- Z4.1** Should the Contractor commit any breach or default of any kind mentioned in clause Z4.2 hereof, the Employer may exercise, subject to the provisions as stated in Option W1 as well as clause Z4.3, 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 Z4.3 hereof.
- Z4.2** Breaches or defaults entitling the Employer to act in terms of clause Z4.3 hereof shall be the following:
- Z4.2.1** insolvency of the Contractor or an act of insolvency comprising inter alia, the following:
- Z4.2.1.1** liquidation or sequestration of the Contractor's estate (provisionally or finally); or
 - Z4.2.1.2** the Contractor publishing a notice of surrender of his estate as insolvent; or
 - Z4.2.1.3** the Contractor entering into a compromise with the general body of his creditors; or
 - Z4.2.1.4** the Contractor having an execution levied on his goods.
- Z4.2.2** material breach of the Contract by the Contractor comprising inter alia;
- Z4.2.2.1** the abandonment or repudiation of the Contract;
 - Z4.2.2.2** suspension of progress of the Work without contractual cause;
 - Z4.2.2.3** assigning of the Contract without the consent in writing of the Employer having first being obtained

- Z4.2.2.4 subcontracting any part of the Contract without the Project Manager's approval;
- Z4.2.2.5 failing to provide the performance bond in terms of option X13 hereof;
- Z4.2.2.6 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;
- Z4.2.2.7 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
- Z4.2.2.8 conviction of the Contractor or any of his employees in a court of law for any offence which adversely affects the interests of Transnet
- Z4.3 In the event of any breach or default mentioned in clause Z.2.9.2 hereof, the Employer may exercise any of the following options, rights and powers:
- Z4.3.1 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.
- Z4.3.2 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 Project Manager, all for the account of and at the cost and risk of the Contractor.
- Z4.3.3 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 Project Manager may deem fit.
- Z4.3.4 To obtain from any source whatsoever, at the cost of the Contractor, tools, equipment and material as are necessary, in the opinion of the Project Manager, for the proper completion of the Contract.
- Z4.3.5 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 Project Manager shall issue the Final Certificate when so authorised by the Employer.
- Z4.3.6 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.

Z4.4 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.

Z4.5 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.

Z4.6 In any action taken or instituted by Transnet in terms of clauses Z4.1 to Z4.4 hereof or any clause of the Contract read alone or in conjunction with these clauses, a certificate issued by the Project Manager shall be deemed to be proof of any amount due by the Contractor to Transnet or by Transnet to the Contractor.

Z4.7 No action taken or instituted by Transnet in terms of clauses Z4.1 to Z4.4 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 Z4.3 and Z4.4 hereof are additional to any other rights, claims or remedies that Transnet may have in law or under the Contract against the Contractor.

END

C1.2 CONTRACT DATA PROVIDED BY CONTRACTOR (ECC3)

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

(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 |
|------------------------|-------------|
| Senior Engineer | |
| Junior Engineer | |
| Draughtsperson | |
| Tracer | |
- (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 Engineering & Construction Contract (June 2005) (ECC3)

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.transnet.net

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
Inyanda House 2, Table 3/71
P O Box 8617
Parktown
2193

Date:

Dear Sirs,

Performance Bond for Contract No. S.I.T 11008

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

Transnet Freight Rail, A Division of Transnet Limited

(the *Employer*) and

{Insert registered name and address of the Contractor}

(the *Contractor*), for

SUPPLY, INSTALLATION AND COMMISSIONING OF 3 MAIN OPTICAL FIBRE CABLE ROUTES ON TFR OHTE EQUIPMENT: (the *works*).

KIMBERLEY – HOTAZEL
RICHARDS BAY – DURBAN
BRITS – ATLANTA – THABAZIMBI

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:
- (Words) _____
- 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 _____ on this _____ day of _____ 2008
at _____

Signature(s)

Name(s) (printed)

Position in Surety company

Signature of Witness(s)

Name(s) (printed)

Part C1.4 Adjudicator's Contract

“PREVIEW COPY ONLY”

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

.....

.....

.....

“PREVIEW COPY ONLY”

Part C2: Pricing Data

“PREVIEW COPY ONLY”

Part C2

Section 1

PRICING INSTRUCTIONS

- 1.1 Tenderers are to submit a *Bill of Quantities* with their tenders. This will be a document headed "*Bill of Quantities*" and will comprise a list of activities with an amount entered against each activity in the Total Price column. This amount is the lump sum due to the Contractor (excluding VAT) on completion of each activity.
- 1.2 Activity descriptions must be clear and complete so that the work included in each activity can be identified and the completion of each activity easily be recognised.
- 1.3 The activities listed in the attached list of activities must be included in the *Bill of Quantities* but may be subdivided.
- 1.4 The prices in the Bill of Quantities are fully inclusive for the work described under the activities. Such prices and rates cover all costs and expenses that may be required in and for the execution of the work described in accordance with the provisions of the Scope of work, and shall cover the cost of all general risks, liabilities, and obligations set forth or implied in the Contract Data, as well as overhead charges and profit. These prices may also be used as a basis for assessment of payment for additional work that may need to be carried out.
- 1.5 For the purpose of the Bill of Quantities, the following words shall have the meanings hereby assigned to them:

Activity no.	Unique number of the activity
Ref Clause	Reference to the clause describing the requirements of an activity in the Scope of Work or reference to the clause in the pricing instructions.
Programme Reference	Reference to item in the programme.
Unit:	The unit of measurement for each activity of work.
Quantity:	The number of units of work for each activity. See 1.6 below
Rate	The sum of the plant/material and labour components.
Total Price:	This amount is the sum due to the Contractor on completion of the activity.

- 1.6 The quantities shown against the activities in the attached list of activities are only estimates to assist tenderers with pricing and are used entirely at the tenderer's own risk. The *Employer* will not be held responsible for their inaccuracy or incompleteness. Quantities must be calculated from the Scope of Work and confirmed by tenderers when the *Bill of Quantities* is compiled.
- 1.6.1 Where quantities are not specified, tenderers shall calculate these quantities.
- 1.7 It will be assumed that prices included in the Bill of Quantities are based on Acts, Ordinances, Regulations, By-laws, International Standards and National Standards that were published 28 days before the closing date for tenders.
- 1.8 The tenderers shall clearly indicate the total costs for each substation and the total costs for each optional offer per substation.
- 1.8.1 ESTABLISHMENT ON SITE
- 1.8.1.1 Provision can be made in the Bill of Quantities for a predetermined lump sum establishment charge which shall be deemed to provide for the costs of establishing the *Contractor*, his staff, office accommodation, plant and materials on the site of the works and for the cost of establishing and maintaining sanitary facilities and services for his staff and labourers in accordance with the requirements of the conditions of contract.
- 1.8.1.2 The payment of the establishment charge will be made as follows:
- 1.8.1.2.1 Thirty percent (30%) of the lump sum will be paid to the *Contractor* when the *Project Manager* is satisfied that the *Contractor* has provided adequate office accommodation, equipment, staff and materials on the site to proceed with the work in terms of the approved works programme and has provided such sanitary facilities and services as are required in terms of the conditions of contract.
- 1.8.1.2.2 For the provision of such extra facilities as may be required during the duration of the contract and for the maintenance of all services in terms of the contract conditions the *Contractor* will be paid the balance of the lump sum as follows:-
- 1.8.1.2.2.1 A monthly amount shall be calculated by dividing the balance of the establishment charge by the number of full months from the date of payment under sub clause Z.1.7(b)1.8.1.2.1 above hereof to the due date of completion of the contract as awarded.
- 1.8.1.2.2.2 This amount shall be paid monthly up to the original completion date provided that all facilities and services have been satisfactorily maintained in terms of the contract conditions during the month concerned and the *Project Manager* has issued a certificate to that effect.
- 1.8.1.2.2.3 In the event that facilities and services have not been maintained satisfactorily in terms of the contract conditions during any of the months referred to in sub clause Z.1.7(b)1.8.1.2.2.2 above, the calculated monthly amount in respect of that particular month shall not be paid and the total contract value shall be reduced accordingly.
- 1.8.1.2.2.4 All prices in the Bill of Quantities shall not be subject to price adjustment for inflation and shall be fixed for the duration of the contract. Invoicing and payment of Plant and Materials delivered to site may be made upon written acceptance by Transnet Freight Rail of the Plant and Materials at site.

END