

**PART C1: AGREEMENTS AND CONTRACT
DATA**

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C1.1 FORM OF OFFER AND ACCEPTANCE (TSC)

OFFER

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

For the testing and analysis of transformer oil on an as and when contract basis, for a two year period, Countrywide.

The tenderer, identified in the Offer signature block, has

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

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

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

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

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

Signature(s) _____

Name(s) _____

Capacity _____

For the tenderer:

(Insert name and address of organisation)

Name of witness _____

Signature of witness _____

Date _____

Tenderer's CIDB registration number (if any): _____



ACCEPTANCE

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

for the
Employer

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

(Insert name and address of Employer)

Name of
witness

Signature of
witness

Date

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

SCHEDULE OF DEVIATIONS

Note:

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

No.	Subject	Details
1		
2		
3		
4		
5		
6		

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

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

C1.2 Contract Data

Part one - Data provided by the *Employer*

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

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

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

Clause	Statement	Data
PART 1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option: dispute resolution Option and secondary Options	A: Priced contract with price list W1: Dispute resolution procedure X13: Performance bond Z: Additional conditions of contract
	of the NEC3 Term Service Contract (June 2005)	
10.1	The <i>Employer</i> is (name): Address Tel No. Fax No.	Transnet Freight Rail, A Division of Transnet Ltd. 49th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg (011) 3082435 (011) 3082430
10.1	The <i>Service Manager</i> is (name): Address Tel Fax e-mail	Mr Len Webb Room 304, 138 Eloff Street, Braamfontein (011) 773-3624 (011) 773-8269 Len.webb@transnet.net
11.2(2)	The Affected Property is	Countrywide
11.2(13)	The <i>service</i> is	For the testing and analysis of transformer oil on an "As & When" contract for a two year period

11.2(14)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> i. Shortage of vehicles to transport equipment to central distribution point (small to medium risk) ii. Unavailability of equipment for maintenance work due to depots sending in batches of unfixed equipment (medium risk) iii. Unavailability of spares to fix equipment (medium risk)
11.2(15)	The Service Information is in	Part C3 : Service Information (Works Information)
12.2	The <i>law of the contract</i> is the law of	The Republic of South Africa subject to the jurisdiction of the Courts of South Africa.
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	2 weeks
PART 2	The Contractor's main responsibilities	Refer to option Z.5.1
PART 3	Time	
30.1	The starting date is	The Contract date
	The <i>service period</i> is	As stated in the service information.
PART 4	Testing and defects	No data is required for this section of the conditions of contract.
PART 5	Payment	
51.1	The <i>currency of this contract</i> is the	South African Rand (ZAR).
51.2	The period within which payments are made is	Payment will be made 45 days from month end statement. The assessment interval is a calendar month.
51.4	The <i>interest rate</i> is	2% Per annum above the prime lending rate of the Standard Bank of South Africa Ltd as determined from time to time.
PART 6	Compensation events	No data is required for this section of the conditions of contract.
PART 7	Use of Equipment Plant and Materials	No data is required for this section of the conditions of contract.
PART 8	Risks and insurance	
8.3.1	The <i>Employer</i> provides these insurances	

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

Indemnities and insurance

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

PART 9	Termination	Refer to Clause Z.5.9
Dispute Resolution	Option W1	
W1.1	The <i>Adjudicator</i> is (Name)	Will be mutually agreed upon by the parties if a dispute arises.
W1.2(3)	The <i>Adjudicator nominating body</i> is:	The Association of Arbitrators (Southern Africa)
W1.4(2)	The <i>tribunal</i> is:	Arbitration
W1.4(5)	The <i>arbitration procedure</i> is	The Rules for the Conduct of Arbitrators of the Association of Arbitrators (Southern Africa)
	The place where arbitration is to be held is	Johannesburg

- The person or organisation who will choose an arbitrator
- if the Parties cannot agree a choice or
 - if the arbitration procedure does not state who selects an arbitrator, is

The Chairman of the Association of Arbitrators (Southern Africa)

Data for secondary Option clauses

Option X13

3 OPTION X13: PERFORMANCE BOND:

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

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

Option Z Additional conditions of contract

The Additional conditions of contract are Definitions:

Z.1 Day

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

Z.2 Intellectual property

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

Z.3 Assignment & cession

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

Z.4 Non-Waiver

No grant by the *Employer* or the *Contractor* to the other of any concession, waiver, condonation or allowance is, in respect of any specific event or circumstance other than that in respect of which the grant was made to constitute a waiver of the rights of the grantor in terms of the Contract or an *estoppel* of the grantor's right to enforce the provision of the Contract.

C1.2 CONTRACT DATA

Part Two – Data Provided by the Contractor

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

Statements given in all contracts

(a) The Contractor is

Name
Address
.....
.....

(b) The *direct fee percentage* is %

(c) The *subcontracted fee percentage* is %

(d) The *working areas* are the Site and
.....

(e) The key people are

(1) Name
Job
Responsibilities
.....
Qualifications
Experience
.....
.....

(2) Name
Job
Responsibilities
.....



Qualifications
Experience

(3) Name
Job
Responsibilities

Qualifications
Experience

(4) Name
Job
Responsibilities

Qualifications
Experience

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

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

Optional statements

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

The Works Information for the Contractor's design is in

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

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

The programme identified in the Contract Data is

.....

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



The *completion date* for the whole of *works* is

.....

If Option A or B is used

Data for SSCC

- (a) The percentage for people overheads is%.
- (b) The published list of Equipment is the last edition of the list published by
- (c) The percentage for adjustment for Equipment in the published list is% (state plus or minus).
- (d) The rates for other Equipment are
Equipment size or capacity rate
.....
.....
.....
.....
- (e) The hourly rates for Defined Cost of design outside the Working Areas are
category of employee hourly rate
.....
.....
.....
.....
- (f) The percentage of design overheads is%
- (g) The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are **all of the categories listed above.**

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