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# Part C1: Agreements and contract data

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## C1.1 FORM OF OFFER AND ACCEPTANCE (ECC3)

### OFFER

The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract for the **Replacement of 3kV High Speed Circuit Breakers at Traction Substations Countrywide**.

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.

Price offered for <b>Durban Depot (EMC)</b> exclusive of VAT	<b>R</b>
Price offered for <b>Ermelo Depot (Secheron)</b> exclusive of VAT	<b>R</b>
The offered total of the Prices exclusive of VAT is	<b>R</b>
Value Added Tax @ 14% is	<b>R</b>
The offered total of the Prices inclusive of VAT is	<b>R</b>
(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 of this Form of Offer and Acceptance 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):



**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 signing this Schedule of Deviations below, 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.

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## 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*

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

#### Statements given in all contracts

##### 1. General

- (a) The conditions of contract are the core clauses and the clause X3 for main Option **B**, dispute resolution Option **W1** and secondary Options **X7, X13 & X16 and option Z** of the NEC3 Engineering and Construction Contract June 2005 (with amendments June 2006).
- (b) **The Contractor's Offer and the Employer's Acceptance are in the document called Form of Offer and Acceptance – Part 1 (C1.1).**
- (c) The *works* are the **Replacement of 3kv DC High Speed Circuit Breakers at Various Traction Substations, Countrywide.**
- (d) The *Employer* is

Name **Transnet Limited trading as Transnet Freight Rail**

Address **49th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg, 2000.**

- (e) The *Project Manager* is

Name **Malibongwe Mlonzi**

Address **Room 209, 138 Eloff Street, Braamfontein, JHB**

(f) The *Supervisor* is

Name **Cecil Nene**

Address **Room 206, 138 Eloff Street, Braamfontein, JHB**

- (g) The *Adjudicator* **will be appointed as mutually agreed upon between the parties**
- (h) The Works Information is in **the document called “Scope of Work” – Part 3 (C3).**
- (i) The Site Information is in **the document called “Site Information” – Part 4 (C4).**
- (j) The boundaries of the site **are the area within the perimeter fence of the substation.**
- (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. (Matters to be referred to Acquisition Council for approval will take longer).**
- (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
- i. Delays in the delivery of Replacement Circuit Breakers.
  - ii. Cancellation of working permits.
  - iii. Lack of staff for supervision.
  - iv. Work near live electrical equipment (OHTE and other) holds a danger of electrocution for workers.
  - v. Theft of equipment before handover.
  - vi. Site Accessibility (road conditions, vegetation, etc).

### 3 Time

- (a) The *starting date* is **to be announced upon awarding of the contract**
- (b) The *Contractor* submits revised programmes at intervals no longer than **4 weeks**.

### 4 Testing and Defects

- (a) the *defects date* is **52 weeks** after completion of each site.
- (b) the defect correction period is **2 weeks** after notification thereof.

### 5 Payment

- (a) The *currency of this contract* is the **South African Rand (ZAR)**.
- (b) The *assessment interval* is **on the 10<sup>th</sup> of each calendar month**.
- (c) Payments will be made once a month for completed installations.
- (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 at the town closest to the substation where work is being carried out.
- (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
  - (iii) the number of days temperature below zero
  - (iv) the number of days snow lying on the ground at 09h00
- (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 town closest to the substation where work is being carried out, and which are available from **SA Weather Service**.

### 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) Arbitration

- The arbitration procedure is the **Rules for the Conduct of Arbitrations issued by the Association of Arbitrators (Southern Africa)**. The Arbitrator is mutually agreed to by the parties and is appointed by the association of Arbitrators.
- 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 is **The Chairman of the Association of Arbitrators (Southern Africa)**.

(b) The completion date for the whole of the *works* is **the period stated in the scope of Work, after the starting date.**

(c) The *Contractor* is to submit a first programme for acceptance within **4 weeks** of the Contract Start Date.

(d) The period within which payments are made is **30 days within receipt of the necessary tax invoice.**

(e) 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)**, which is available on the following website:

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

Cover/indemnity is **to the extent as stated in the insurance policy for contract works and public liability**

(Principal Controlled Insurance), which is available on the following website:

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

The deductibles are **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance)**, which is available on the following website:

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

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), which is available on the following website:

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

Cover/indemnity is to the extent as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), which is available on the following website:

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

The deductibles are **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance)**, which is available on the following website:

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

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)**, which is available on the following website:

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

Cover/indemnity is to the extent as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), which is available on the following website:

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

The deductibles are **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance)**, which is available on the following website:

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

**(g) 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 **in respect of each and every theft claim 0, 1% of Contract Value subject to a minimum of R2 500 and a maximum of R25 000.**

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 effected.
- 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*.

**Option B**

All Option B Clauses apply with the following amplification:-

- (a) The last sentence of Clause 63.13 of Option B to be deleted and the following substituted:-  
 “The *Employer* and the *Contractor* agree, rates and lump sums to be used to assess a compensation event instead of Defined Cost”
- (b) When agreed rates and lump sums are used, Compensation Events are assessed as follows:-
  - (i) Where in the opinion of the *Project Manager* work is of a similar character and executed under similar conditions to work priced in the Bill of Quantities, it is to be valued at such rates and prices (including General Items) contained therein as may be applicable; or
  - (ii) Where work is not of a similar character or is not executed under similar conditions, the rates and prices in the Bill of Quantities are to be used as the basis for valuation as far as may be reasonable; or
  - (iii) Where work cannot reasonably be valued in accordance with Clauses (c)(i) and (c)(ii) above, suitable rates or prices are agreed upon between the *Project Manager* and the *Contractor* after due consultation by the *Project Manager* with the *Employer* and the *Contractor*; or
  - (iv) In respect of additional or substituted work, the *Project Manager* may, if in his opinion it is necessary or desirable, issue an instruction that the work be executed in some other appropriate manner.
  - (v) If the parties cannot agree, the *Project Manager* notifies the *Contractor* accordingly and makes his own assessment.

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**Option X3: Multiple Currencies:**

a) The employer will pay for the items or activities listed below in the currencies stated

Items and activities	other currency	total maximum payment in the currency
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....



- (a) The amount payable to the Contractor in respect of rate exchange will be adjusted for increases and decreases in costs of imported materials, due to fluctuations in foreign currency exchange rates after the conclusion of the Contract. Tenderers shall indicate whether or not their tenders or part(s) thereof are subject to variation on account of exchange rate fluctuations.
- (b) Where no particulars are furnished, such tenders will be deemed to be not subject to variation on account of exchange rate fluctuations.
- (c) The rate of exchange to be used by Tenderers in the computation of their tender rates and/or prices and which is to be quoted in the appendix is the rate of exchange on the day 7 days prior to the date on which tenders close.
- (d) Forward cover to be arranged by the contractor within 2 weeks after notification of award.

#### **Option X7: Delay Damages:**

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

- (a) Penalty for late Completion of the whole of the *works* is **R3,000.00** per day

#### **Option X13: Performance Bond**

- (a) The amount of the Guarantee (Performance Bond) is to be calculated as **5 %** or **10%** of the tender price. (Excl. VAT).

The Contractor has the option of either providing the guarantee of 5% and having retention money of 10% deducted from each claim, or alternatively, providing a guarantee of 10% and having retention money of 5% deducted from each claim.

- (b) The Form of Guarantee (or Performance Bond) is in Clause C 1.3 of Part C1.

### Option X16: Retention:

(a) The retention free amount is **Nil**

The retention percentage is **5 or 10 %**, depending on the option exercised in option X13 above.

### Option Z

The additional Conditions of Contract are:-

#### Z1.1 Clause 11.2 (34) – 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 16 December to 5 January (both days included) is excluded from the calculation of the number of days concerned.

#### Z1.2 Clause 28.1 – Intellectual property

Intellectual property rights (including patents, copyright, trade marks etc) rest with the party owning them and the *Contractor* indemnifies the *Employer* from any liability arising from infringement of such intellectual property rights. [See Clauses 80.1, 83.1 and 83.2]

#### Z1.3 Clause 28.2 – 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.

#### Z1.4 Clause 28.3 – 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.

#### Z1.5 Clause 28.4 – Limitation of the authority of the Project Manager

- i. The Project Manager is authorised to agree to increases to the contract value to a maximum of R300, 000.00, or 10% of the Total Contract Value, whichever is the lesser amount, without referring it to the management of the Employer.
- ii. If referral to management is necessary, a period of 6 weeks over and above any times allowed for in the contract is to be provided.

## Z1.6 Foreign Currency

The contractor shall take forward cover within 2 weeks of contract award.

**Z1.7** Housing of Contractor's staff at Substations will not be permitted.

**Z1.8** The Contractor shall provide for any Electrical Power and Water that may be required during the execution of the works as the availability of these services on site is not guaranteed.

**Z1.9** The Contractor must provide adequate storage, at his own expense to the satisfaction of the Supervisor.

**Z1.10** The Contractor shall, on completion of the Works, clear the site of all leftover items of material to the satisfaction of the Supervisor.

**Z1.11** The Contractor shall attend site meetings when convened by the Supervisor (normally once a month). Such meetings will be for the purpose of discussing progress, planning, delays, materials, conditions and the co-ordination of site activities. The Project Manager or Supervisor or their deputies will chair the meetings and the proceedings shall be minuted and circulated by the Supervisor.

**Z1.12** The Contractor shall attend ad hoc site meetings when convened by the Supervisor.

Such meetings will be for the purpose of discussing specific issues or problems relating to specifications and adherence thereto, quality and contractual matters.

**Z1.13** The Contractor shall supply and have available at all times, at the worksite or in his site office, A4 carbon copy books with detachable numbered sheets in triplicate, to be used as:

**Z1.13.1** Site Instruction book for receiving and recording instructions issued. All instructions recorded shall be signed by the Supervisor and immediately acknowledged by the counter signature of the Contractor or his agent.

**Z1.13.2** Daily diary/record book with a page per day for recording all events affecting the progress of the works such as drawings received on site, arrivals and dispatch of plant, material received or applied for, breakdowns, delays, work done during the day, etc. Entries shall be made by the Contractor or his appointed agent and signed by both parties daily. Those days on which no events take place must be ruled out and "NIL" entered. The site diary will be used as documentary proof to establish the validity of any claims in terms of the execution of the Contract.

**Z1.13.3** The third book will be used as the Risk Register required by the Contract for Engineering and Construction Work, NEC3.

**Z1.14** Site diaries shall be forwarded/ handed to the Supervisor.

**Z1.15** The Contractor and each member of his personnel who may be required to enter high voltage substations for the purpose of performing work in terms of this contract must:

**Z1.15.1 Observe** the safety regulations regarding the entry of maintenance personnel into all buildings, sub- and tie-stations, control rooms and equipment sites accommodating equipment to perform work by him, as stipulated in Transnet Freight Rail's Electrical Safety Instructions as well as the E7/1 Specification for Works On, Over, Under or Adjacent to Railway Lines and near High Voltage

Equipment. Failure to comply with these requirements will render the Contractor liable for the payment of penalties and/or direct or indirect cost resulting from such negligence. The regulations and instructions having been made available to the Contractor, it will be the Contractor's responsibility to make sure that his personnel are in possession of these instructions.

- Z1.15.2** Ensure that they have entered the relevant details onto the Substation Book prior to entering high voltage substations of the Client.
- Z1.15.3** Ensure compliance with Specification E4E (Safety Appointments, Safety Plan, etc).
- Z1.16** The Maintenance Managers (Electrical) at the Depots must be contacted to arrange for Work Permits or Supervision, names and contact details will be supplied to the contractors on award of contract.
- Z1.17** The Client will perform all switching required, during the contract.
- Z1.18** The Client reserves the right to cancel an authorised occupation or work permit at any time, even during the period of such occupation or work permit.
- Z1.19** Special care shall be exercised when welding or flame cutting operations occur and the Contractor is required to provide suitable fire fighting equipment at close hand to these operations as prescribed by the Machinery and Occupational Health and Safety Act, 1993.
- Z1.20** The Contractor shall provide the necessary number of suitable first aid kits, one set in the camp and one set at each working team. He shall maintain these outfits fully equipped at all times.
- Z1.21** The Contractor shall comply with all applicable legislation, regulations issued in terms thereof and Transnet's safety rules which shall be entirely at the Contractor's cost, and which shall be deemed to have been allowed for in the tendered rates and prices.
- Z1.22** The Contractor shall report all accidents in writing to the Supervisor. Any accident resulting in the death of or injury to any person on the Works shall be reported within 24 hours of its occurrence, and any other accident shall be reported within 48 hours of its occurrence.
- Z1.23** The Contractor shall inform the Supervisor of the names and addresses and telephone numbers of his personnel to be called in emergencies. The Contractor will be responsible for seeing that one or more members of his personnel are available on call at all times to receive fault or failure reports.
- Z1.24** **Members** of the Contractor's personnel shall, while on call, keep the duty personnel in the Infrastructure Control Office informed of their movements in order that they may be contacted without delay in case of an emergency.
- Z1.25** The Contractor will be held responsible and accountable for any delays to the train service that he may cause during the contract period.
- a) Due to direct Supervision being required from Transnet Freight Rail, no work will be undertaken outside normal working hours.
  - b) After completion of the installation, the whole of the works shall be inspected, and the Contractor shall rectify to the satisfaction of the Supervisor any deficiencies that may exist.

- c) Transnet Freight Rail will perform the final inspections with the Contractor.
- d) Acceptance by the Supervisor of satisfactory completion of the work in no way relieves the Contractor from his duty to ensure compliance to specifications.
- e) The Client shall require a guarantee of all the work, equipment and material for a period of twelve calendar months after date of final acceptance of the work.
- f) The Contractor shall make good any defects, due to inferior material, equipment or workmanship, which may arise during this period within 24 hours after notification.
- g) If urgent repairs have to be carried out by the Client's staff to maintain supply during the guarantee period the Contractor shall inspect such repairs to ensure that the guarantee period is not affected and should they be covered by the guarantee, reimburse the Client the cost of material and labour.
- h) The client reserves the right to withdraw a handover certificate should the contractor fail to rectify defects to the satisfaction of the Supervisor.
- i) The Contractor shall be responsible for providing security on site for his personnel, plant and material.
- j) The Contractor shall comply with the requirements of Specification BBB2007 (Environmental Guidelines and Specifications for Electrical Construction Work) during the contract period.

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**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 .....  
.....  
.....

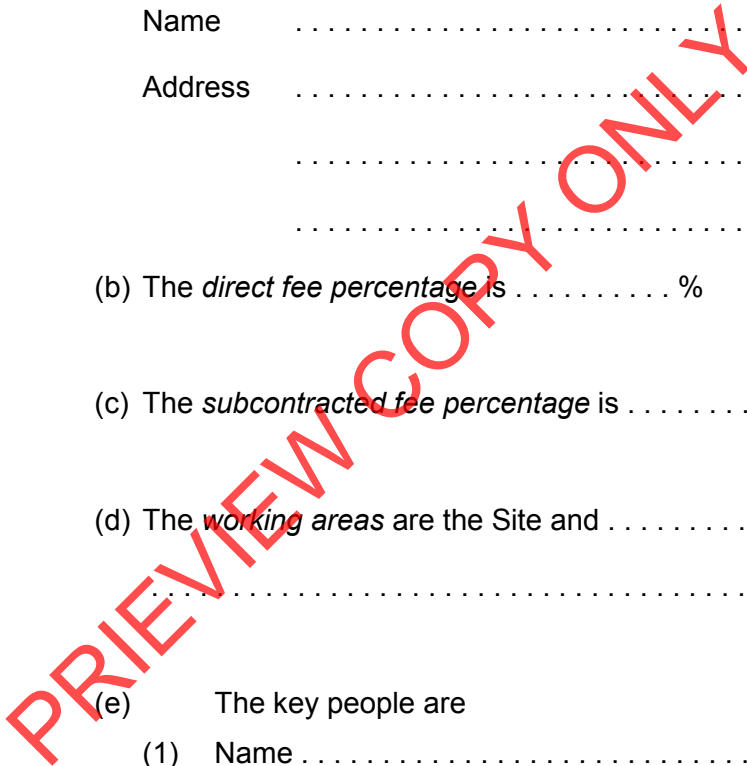
(b) The direct fee percentage is ..... %

(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 .....

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

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



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

The Works Information for the Contractor's design is in

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

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

The programme identified in the Contract Data is

.....

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

The completion date for the whole of works is

Depot	Completion Period (Months)
Ermelo	
Durban	
*Total Period if one Contract is awarded for both Depots.	

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**If Option A or B is used**

**Data for SSCC**

(a) The percentage for people overheads is .....%

(a) 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
<b>Senior engineer</b>	.....
<b>Junior engineer</b>	.....
<b>Draughtsperson</b>	.....
<b>Tracer</b>	.....

(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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## 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 X13: Performance Bond

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.\\_\\_\\_\\_\\_](http://www._____)

#### **Drafting instructions:**

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

**Pro forma Performance Bond (for use with Option X13)**

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

**{Insert name and registered address of the Employer}**

Date:

Dear Sirs,

**Performance Bond for Contract No.**

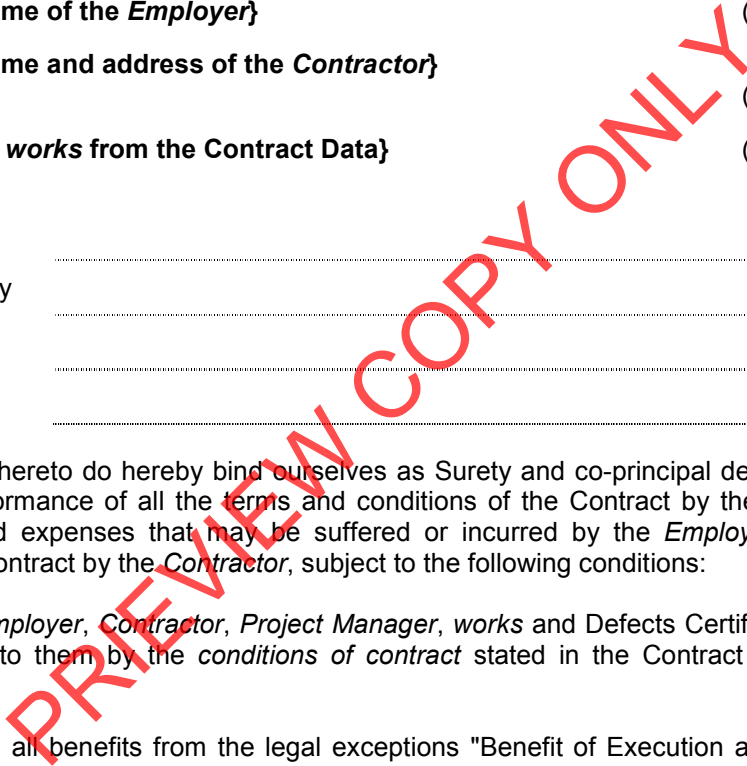
With reference to the above numbered contract made or to be made between

**{Insert registered name of the Employer}** (the *Employer*) and  
**{Insert registered name and address of the Contractor}** (the *Contractor*), for  
**{Insert details of the works from the Contract Data}** (the *works*).

I/We the undersigned

on behalf of the Surety

of physical address



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

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

- 5. Always provided that this bond will not lapse in the event the Surety is notified by the *Project Manager*, (before the dates above), of the *Employer's* intention to institute claims and the particulars thereof, in which event this bond shall remain in force until all such claims are paid and settled.
- 6. The amount of the bond shall be payable to the *Employer* upon the *Employer's* demand and no later than 7 days following the submission to the Surety of a certificate signed by the *Project Manager* stating the amount of the *Employer's* losses, damages and expenses incurred as a result of the non-performance aforesaid. The signed certificate shall be deemed to be conclusive proof of the extent of the *Employer's* loss, damage and expense.
- 7. Our total liability hereunder shall not exceed the sum of:  
  
(say) \_\_\_\_\_  
  
R \_\_\_\_\_
- 8. This Performance Bond is neither negotiable nor transferable and is governed by the laws of the Republic of South Africa, subject to the jurisdiction of the courts of the Republic of South Africa.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 200\_

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

PREVIEW COPY ONLY