

C1.2 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General The <i>conditions of contract</i> are the core clauses and the clauses for main Option	B: Priced contract with Bill of quantities
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	X1: Price adjustment for inflation X2 Changes in the law X7: Delay damages X16: Retention X18: Limitation of liability X20: Key performance indicators Z: <i>Additional conditions of contract</i>
10.1	The <i>Employer</i> is:	Transnet SOC Ltd (Registration No. 1990/000900/30)

	Address	Registered address: Registered address: 138 Elloff Street Braamfontein Johannesburg 2000
	Having elected its Contractual Address for the purposes of this contract as:	Transnet Property North Union Street Gqeberha 6025
10.1	The <i>Project Manager</i> is: (Name)	Lerato Legae
	Address	Transnet Property North Union Street Gqeberha 6025
	Tel	
	e-mail	Lerato.legae@transnet.net
10.1	The <i>Supervisor</i> is: (Name)	Philasande Pandle
	Address	Transnet Building Spoorweg opposite Hemmingway's East London 5201
	Tel No.	
	e-mail	Philasande.Pandle@transnet.net
11.2(13)	The <i>works</i> are	Provision of water proofing and minor refurbishments at Cambridge
11.2(14)	The following matters will be included in the Risk Register	none
11.2(15)	The <i>boundaries of the site</i> are	As stated in Part C4.1."Description of the Site and it surroundings"
11.2(16)	The Site Information is in	Part C4
11.2(19)	The Works Information is in	Part C3
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	
2	The <i>Contractor's</i> main responsibilities	No additional data is required for this section of the <i>conditions of contract</i>.	
3	Time		
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	TBA	
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	key date
		1 Start Date	TBA
		2 Complete Date	TBA
30.1	The <i>access dates</i> are	Part of the Site	Date TBA
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	2 weeks of the Contract Date.	
31.2	The <i>starting date</i> is	TBA	
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	2 weeks.	
35.1	The <i>Employer</i> is not willing to take over the <i>works</i> before the Completion Date.		
4	Testing and Defects		
42.2	The <i>defects date</i> is	52 (fifty two) weeks after Completion of the whole of the <i>works</i>.	
43.2	The <i>defect correction period</i> is	2 weeks	
5	Payment		
50.1	The <i>assessment interval</i> is	25th (twenty fifth) day of each successive month.	

51.1	The <i>currency of this contract</i> is the	South African Rand.
51.2	The period within which payments are made is	Payment will be effected on or before the last day of the month following the month during which a valid Tax Invoice and Statement were received.
51.4	The <i>interest rate</i> is	the prime lending rate of Standard Bank of South Africa.

6 Compensation events

60.1(13)	The <i>weather measurements</i> to be recorded for each calendar month are,	the cumulative rainfall (mm)
		the number of days with rainfall more than 10 mm
		the number of days with minimum air temperature less than 0 degrees Celsius
		the number of days with snow lying at 08:00 hours South African Time
		and these measurements:
	The place where weather is to be recorded (on the Site) is:	The <i>Contractor's</i> Site establishment area
	The <i>weather data</i> are the records of past <i>weather measurements</i> for each calendar month which were recorded at:	Not Applicable
	and which are available from:	South African Weather Service 012 367 6023 or info3@weathersa.co.za.

7	Title	No additional data is required for this section of the <i>conditions of contract</i>.
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	

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

1	Insurance against:	Loss of or damage to the <i>works</i>, Plant and Materials is as stated in the Insurance policy for Contract Works/ Public Liability.
	Cover / indemnity:	to the extent as stated in the insurance policy for Contract Works / Public Liability
	The deductibles are:	as stated in the insurance policy for Contract Works / Public Liability
2	Insurance against:	Loss of or damage to property (except the <i>works</i>, Plant and Materials & Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising out of or in connection with the performance of the Contract as stated in the insurance policy for Contract Works / Public Liability
	Cover / indemnity	Is to the extent as stated in the insurance policy for Contract Works / Public Liability
	The deductibles are	as stated in the insurance policy for Contract Works / Public Liability
3	Insurance against:	Loss of or damage to Equipment (Temporary Works only) as stated in the insurance policy for contract Works and Public Liability
	Cover / indemnity	Is to the extent as stated in the insurance policy for Contract Works / Public Liability
	The deductibles are:	As stated in the insurance policy for Contract Works / Public Liability
4	Insurance against:	Contract Works SASRIA insurance subject to the terms, exceptions and conditions of the SASRIA coupon
	Cover / indemnity	Cover / indemnity is to the extent provided by the SASRIA coupon

The deductibles are

The deductibles are, in respect of each and every theft claim, 0,1% of the contract value subject to a minimum of R2,500 and a maximum of R25,000.

Note:

The deductibles for the insurance as stated above are listed in the document titled "Certificate of Insurance: Transnet (SOC) Limited Principal Controlled Insurance."

Please append to Insurance Returnable (delete sentence)

84.1

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

The *Contractor* must comply at a minimum with the provisions of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as amended.

The *Contractor* provides these additional Insurances

- 1 Where the contract requires that the design of any part of the *works* shall be provided by the *Contractor* the *Contractor* 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 & 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 & materials, components or other goods for incorporation in the *works* are adequately insured during manufacture and/or fabrication and transportation to the site.**
- 3 Should the *Employer* have an insurable interest in such items during manufacture, and/or fabrication, such interest shall be noted by endorsement to the *Contractor's* policies of insurance as well as those of any sub-contractor**

- 4 Motor Vehicle Liability Insurance comprising (as a minimum) "Balance of Third Party" Risks including Passenger and Unauthorised Passenger Liability indemnity with a minimum indemnity limit of R 5 000 000/R10 000 000.**
- 5 Marine Craft Hull insurance in respect of all marine craft or vessels utilised in performance of the Works for a sum sufficient to provide for their replacement**
- 6 Protection and Indemnity Insurance in respect of all marine craft or vessels utilised in performance of the Works extended for Specialist Operations with a minimum indemnity limit of R 20,000,000**
- 7 The insurance coverage referred to in 1, 2, 3, 4, 5 and 6 above shall be obtained from an insurer(s) 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 the 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*.**

84.2 The minimum limit of indemnity for insurance in respect of 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 for any one event is

Whatever the *Contractor* requires in addition to the amount of insurance taken out by the *Employer* for the same risk.

84.2	The insurance against loss of or damage to the works, Plant and Materials as stated in the insurance policy for contract works and public liability selected from:	Principal Controlled Insurance policy for Contract OR Project Specific Insurance for the contract
9	Termination	There is no additional Contract Data required for this section of the <i>conditions of contract</i>.
10	Data for main Option clause	
A or B	Priced contract with Activity Schedule or Bill of Quantities	No additional data is required for this Option.
60.6	The <i>method of measurement</i> is	The Bill of Quantities have been measured in accordance with SANS 1200 unless indicated otherwise.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is	Both parties will agree as and when a dispute arises. If the parties cannot reach an agreement on the <i>Adjudicator</i>, the Chairman of the Association of Arbitrators will appoint an <i>Adjudicator</i>.
W1.2(3)	The <i>Adjudicator nominating body</i> is: If no <i>Adjudicator nominating body</i> is entered, it is:	The Chairman of the Association of Arbitrators (Southern Africa) 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 Arbitrations of the Association of Arbitrators (Southern Africa)
	The place where arbitration is to be held is	Johannesburg, South Africa

	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)
12	Data for secondary Option clauses
X2	Changes in the law No additional data is required for this Option
X7	Delay damages (but not if Option X5 is also used)
X7.1	Delay damages for Completion of the whole of the <i>works</i> are To be equated to the actual monetary loss of Transnet per day
X16	Retention
X16.1	The retention free amount is Nil
	The retention percentage is 10% on all payments certified.
X18	Limitation of liability

X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	Nil (this is the default position depending on a risk assessment, therefore this can go up to Total of the Prices)
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to:	The deductible of the relevant insurance policy
X18.3	The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to:	The cost of correcting the Defect
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than excluded matters, is limited to:	The Total of the Prices
X18.5	The <i>end of liability date</i> is	5 years after Completion of the whole of the works

Z ***Additional conditions of contract***
 The *additional conditions of contract* are:

Z.1 **Obligations in respect of Subcontracting (If applicable)**

Z1.1 **It will be a material term of this contract that the *Contractor* must subcontract a minimum of 30% of the value of the contract.**

Z1.2	The <i>Contractor's</i> Subcontracting percentage as indicated in the tender submission Returnable T.2.2 will constitute a binding agreement throughout the duration of the contract until Completion, if not, it will be deemed that the <i>Contractor</i> has failed in full to meet the material term of the contract, which may constitute a reason for termination.
Z1.3	The <i>Contractor</i> shall report to the <i>Employer</i> on a monthly basis during the term of the Contract, the amounts spent on each sub-contractor.
Z1.4	The <i>Contractor</i> shall provide to the <i>Employer</i>, upon receiving an instruction to do so, any documentation and/or evidence required by the <i>Employer</i>, which in the <i>Employer's</i> opinion would be necessary to verify whether the <i>Contractor</i> has maintained the subcontracting percentage. The <i>Contractor</i> shall provide the said documentation and/or evidence within the period stated in the instruction. The provision of the documentation and/or evidence shall not constitute a compensation event.
Z2	Local Production and Content Obligations (If applicable)
Z2.1	In terms of Local Production and Content (SBD 6.2), Annexure A and Annexure C of the Returnable Schedule T2.2..... Eligibility Criteria Schedule: Declaration Certificate of Local Production and Content, the <i>Contractor</i> has undertaken to fulfil its obligations of the Local Production and Content for the following designated sectors: 1.....; 2.....; and 3.....

Z2.2	The <i>Contractor</i> is required to note that the <i>Employer</i>, the Department of Trade and Industry [DTI] and/or the body appointed by the DTI as the verification authority for local content may conduct compliance audits with regard to the Local Production and Content requirements as prescribed in Regulation 8 of the Preferential Procurement Regulations, 2017 issued in terms of the Preferential Procurement Policy Framework Act no. 5 of 2000.
Z2.3	The <i>Contractor</i> is required to continuously update Declarations C, D and E of the Local Production and Content Declaration commitments with the actual local content values for the duration of the contract. The <i>Contractor</i> shall report to the <i>Employer</i> on a monthly basis during the term of the Contract, the amounts spend on Local Production and Content for the designated sectors for the duration of the contract.
Z2.4	The <i>Contractor</i> must refer to Schedule A attached to the Returnable Schedule T2.2..... Eligibility Criteria Schedule: Declaration Certificate of Local Production and Content concerning non-compliance penalties applicable to Local Production and Content.
Z2.5	Breach of Local Production and Content commitments provides the <i>Employer</i> cause to terminate the contract.

**Z3 Additional clauses relating to
Joint Venture**

Z3.1

Insert the additional core clause 27.5

27.5. In the instance that the *Contractor* is a joint venture, the *Contractor* shall provide the *Employer* with a certified copy of its signed joint venture agreement, and in the instance that the joint venture is an 'Incorporated Joint Venture,' the Memorandum of Incorporation, within 4 (four) weeks of the Contract Date. The Joint Venture agreement shall contain but not be limited to the following:

- **A brief description of the Contract and the Deliverables;**
- **The name, physical address, communications addresses and domicilium citandi et executandi of each of the constituents and of the Joint Venture;**
- **The constituent's interests;**
- **A schedule of the insurance policies, sureties, indemnities and guarantees which must be taken out by the Joint Venture and by the individual constituents;**
- **Details of an internal dispute resolution procedure;**
- **Written confirmation by all of the constituents:**
 - i. **of their joint and several liabilities to the *Employer* to Provide the Works;**
 - ii. **identification of the lead partner in the joint venture confirming the authority of the lead partner to bind the joint venture through the *Contractor's* representative;**

		iii. Identification of the roles and responsibilities of the constituents to provide the Works. • Financial requirements for the Joint Venture: iv. the working capital requirements for the Joint Venture and the extent to which and manner whereby this will be provided and/or guaranteed by the constituents from time to time; v. the names of the auditors and others, if any, who will provide auditing and accounting services to the Joint Venture.
Z4.2		Insert additional core clause 27.6 27.6. The <i>Contractor</i> shall not alter its composition or legal status of the Joint Venture without the prior approval of the <i>Employer</i>.
Z5	Additional obligations in respect of Termination	
Z5.1		The following will be included under core clause 91.1: In the second main bullet, after the word 'partnership' add 'joint venture whether incorporate or otherwise (including any constituent of the joint venture)' and Under the second main bullet, insert the following additional bullets after the last sub-bullet: • commenced business rescue proceedings (R22) • repudiated this Contract (R23)

Z5.2	Termination Table	The following will be included under core clause 90.2 Termination Table as follows: Amend "A reason other than R1 – R21" to "A reason other than R1 – R23"
Z5.3		Amend "R1 – R15 or R18" to "R1 – R15, R18, R22 or R23."
Z6	BBBEE Clauses	
Z6.1		Insert additional clause 27.7. 27.7.1. The <i>Employer</i> encourages its <i>Contractors</i> to constantly strive to improve their B-BBEE Contributor Status Levels. To this end, the <i>Contractor</i> is to maintain and/or improve its B-BBEE Improvement Plan over the Contract period as per Returnable Schedule T2.2...BBEE Socio-Economic Obligations and Plan. 27.2.2. The <i>Contractor</i> shall, for the duration of the Works, comply with the B-BBEE Improvement Plan. The accepted <i>Contractor's</i> B-BBEE Improvement Plan, constitutes an offer to perform all its B-BBEE commitments and will constitute a binding agreement. 27.7.3. Breach of B-BBEE Improvement Plan commitments provide the <i>Employer</i> cause to terminate the contract.

27.7.6. The performance of the *Contractor* as compared to with the accepted B-BBEE Improvement Plan, shall be measured on an annual basis within 60 (sixty) days after the Anniversary Date for the duration of the Contract Period. To this end, the *Contractor* shall grant the *Employer* a right of access and provide the underlying data supporting the achievement by the *Contractor* of the targets specified in the accepted B-BBEE Improvement Plan, which underlying data shall be auditable.

27.7.7. The *Contractor* shall ensure that it has the relevant internal mechanisms and procedures in place to allow the *Employer* to measure and verify the *Contractor's* compliance with the accepted B-BBEE Improvement Plan. Without limiting the generality of the foregoing, the *Contractor* shall be obliged to provide the *Employer* with written quarterly status reports specifying the progress made by the *Contractor* in relation to the accepted B-BBEE Improvement Plan.

27.7.10. To the extent of that the *Contractor* has not complied with the accepted B-BBEE Improvement Plan, the *Employer* shall be entitled to levy penalties which shall be determined with reference to the actual aggregate amounts paid by the *Employer* to the *Contractor* in respect of the preceding 12 (twelve) calendar month intervals, such interval period shall commence from the Contract Date as follows:

Interval One	
Interval Two	
Interval Three	
Interval Four	Refer to paragraph 27.7.10 – 27.7.12 below

27.7.11. Penalties will be levied based on the failure of the *Contractor* to achieve the targets specified in the accepted B-BBEE Improvement Plan rather than the failure of any constituent of the *Contractor* to contribute to the achievement of the targets in the accepted B-BBEE improvement plan;

27.7.12. In order to guarantee that the *Contractor* meet its obligations in terms of the accepted B-BBEE Improvement Plan and specifically during intervalthe *Employer* shall be entitled to retain 5% (five percent) of every payment due by the *Employer* to the *Contractor* ("B-BBEE Retention Amount").

27.7.13. The B-BBEE Retention amount shall be retained by the *Employer* as guarantee for the remaining obligations of the *Contractor* in terms of the accepted B-BBEE Improvement Plan;

27.7.14 The B-BBEE Retention Amount shall be deducted as part of the Retention in X16.1. The Retention in X16.1 shall be reduced to accommodate the B-BBEE Retention Amount. As

such total Retention for the *works* shall not exceed 10%;

27.7.15. Should the *Contractor's* obligations:

- be met in terms of the accepted B-BBEE Improvement Plan, the B-BBEE Retention amount shall be released within 30 (thirty) days of the date of verification of compliance by the *Contractor* of its obligations in terms of the accepted B-BBEE Improvement Plan, at which time the monies shall be paid over to the *Contractor*;
- not be met, unless such failure is an attributable occurrence of an event which:
 - stops the *Contractor* Providing the *works* or
 - stops the *Contractor* Providing the *works* by the date shown on the Accepted Programmeand which
 - neither Party could prevent and
 - an experienced *Contractor* would have judged at the Contract to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it

the *Contractor* shall forfeit the B-BBEE Retention Amount and shall have no further claim against the *Employer* for the repayment of such amount.

27.7.16. Should the contract be extended the same provisions as applicable in the last interval shall continue to apply until Completion Date.

Z7 **Right Reserved by the
Employer to Conduct Vetting
through SSA**

Z7.1

The *Employer* reserves the right to conduct vetting through State Security Agency (SSA) for security clearances of any *Contractor* who has access to National Key Points for the following without limitations:

1. Confidential – this clearance is based on any information which may be used by malicious, opposing or hostile elements to harm the objectives and functions of an organ of state.
2. Secret – clearance is based on any information which may be used by malicious, opposing or hostile elements to disrupt the objectives and functions of an organ of state.
3. Top Secret – this clearance is based on information which may be used by malicious, opposing or hostile elements to neutralise the objectives and functions of an organ of state.

Z8	Additional Clause Relating to Collusion in the Construction Industry	The contract award is made without prejudice to any rights the <i>Employer</i> may have to take appropriate action later with regard to any declared tender rigging including blacklisting.
Z9	Protection of Personal Information Act	The <i>Employer</i> and the <i>Contractor</i> are required to process information obtained for the duration of the Agreement in a manner that is aligned to the Protection of Personal Information Act.

C1.2 Contract Data

Part two - Data provided by the *Contractor*

The tendering *Contractor* is advised to read both the NEC3 Engineering and Construction Contract - June 2005 (with amendments June 2006 and April 2013) and the relevant parts of its Guidance Notes (ECC3-GN) in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 156 to 158 of the ECC3 Guidance Notes.

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

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name):	
	Address	
	Tel No.	
	Fax No.	
11.2(8)	The <i>direct fee percentage</i> is	%
	The <i>subcontracted fee percentage</i> is	%
11.2(18)	The <i>working areas</i> are the Site and	
24.1	The <i>Contractor's</i> key persons are:	
	1 Name:	
	Job:	
	Responsibilities:	
	Qualifications:	
	Experience:	
	2 Name:	
	Job	
	Responsibilities:	
	Qualifications:	
	Experience:	

		CV's (and further key persons data including CVs) are appended to Tender Schedule entitled .
11.2(14)	The following matters will be included in the Risk Register	
31.1	The programme identified in the Contract Data is	
B	Priced contract with Bill of quantities	
11.2(21)	Bill of quantities	
11.2(30)	The tendered total of the Prices is	(in figures) (in words), excluding VAT