C1.1: Form of Offer & Acceptance

Offer

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

PROVISION OF THE SERVICES FOR THE RESURFACING OF ROADWAYS, UNDERGROUND SERVICES UPGRADE, PROVISION OF ACCESS CONTROL, SALT RIVER, CAPE TOWN

The tenderer, identified in the Offer signature block, has

By the representative of the tenderer, deemed to be duly authorised, 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 offered total of the Prices exclusive of VAT is	**R**
Value Added Tax @ 15% is	**R**
The offered total of the Prices inclusive of VAT is	**R**
(in words)	

This Offer may be accepted by the Employer by signing the Acceptance part 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 & signature of witness		Date
Tenderer's CIDB registration number:		

Acceptance

By signing this part 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 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 just 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 SOC Ltd		
	(Insert name and address of organisation)		
Name & signature of witness		Date	

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.

No.	Subject	Details
1		
2		
3		
4		

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 Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

	For the tenderer:	**For the Employer**
Signature		
Name		
Capacity		
On behalf of	*(Insert name and address of organisation)*	Transnet SOC Ltd
Name & signature of witness		
Date		

C1.2 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	**General**	
	The *conditions of contract* 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	**X2 Changes in the law** **X7: Delay damages** **X16: Retention** **X18: Limitation of liability** **Z: *Additional conditions of contract***
	of the NEC3 Engineering and Construction Contract June 2005 (amended June 2006 and April 2013)	
10.1	The *Employer* is:	**Transnet SOC Ltd (Registration No. 1990/000900/30)**

	Address	Registered address: **Transnet Corporate Centre** **138 Eloff Street** **Braamfontein** **Johannesburg** **2000**
	Having elected its Contractual Address for the purposes of this contract as:	**Transnet Property** **Corner Robert Sobukwe and Macdonald Road** **Bellville** **Cape Town** **7530**
10.1	The *Project Manager* is: (Name)	**Neo Thage**
	Address	**Transnet Park, Bellville**
	Tel	**021 940 3833**
	e-mail	**seipati.sebakamotse@transnet.net**
10.1	The *Supervisor* is: (Name)	**Neo Thage**
	Address	**Transnet Park, Bellville**
	Tel No.	**021 940 3833**
	e-mail	**seipati.sebakamotse@transnet.net**
11.2(13)	The *works* are	**Resurfacing of roadways, underground services upgrade, provision of access control at Salt River, Cape Town**
11.2(14)	The following matters will be included in the Risk Register	**Site Traffic accommodation**
11.2(15)	The *boundaries of the site* are	**As stated in Part C4.1."Description of the Site and it surroundings"**
11.2(16)	The Site Information is in	**Part C4 (Site information)**
11.2(19)	The Works Information is in	**Part C3 (Scope of work)**
12.2	The *law of the contract* is the law of	**the Republic of South Africa subject to the jurisdiction of the Courts of South Africa.**
13.1	The *language of this contract* is	**English**
13.3	The *period for reply* is	**2 weeks**

2	**The *Contractor*'s main responsibilities**	**No additional data is required for this section of the *conditions of contract*.**
3	**Time**	
11.2(3)	The *completion date* for the whole of the *works* is	
31.1	The *Contractor* is to submit a first programme for acceptance within	**2 weeks of the Contract Date.**
31.2	The *starting date* is	
32.2	The *Contractor* submits revised programmes at intervals no longer than	**2 weeks.**
35.1	The *Employer* is not willing to take over the *works* before the Completion Date.	
4	**Testing and Defects**	
42.2	The *defects date* is	**52 (fifty-two) weeks after Completion of the whole of the *works*.**
43.2	The *defect correction period* is	**4 weeks**
5	**Payment**	
50.1	The *assessment interval* is monthly on the	**25th (twenty fifth) day of each successive month.**
51.1	The *currency of this contract* is the	**South African Rand.**
51.2	The period within which payments are made is	**Payment will be affected 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 *interest rate* is	**the prime lending rate of FNB Bank of South Africa.**
6	**Compensation events**	

60.1(13)	The *weather measurements* 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: N/A**
	The place where weather is to be recorded (on the Site) is:	**The *Contractor*'s Site establishment area**
	The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at:	**Salt River yard, Cape Town**
	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 *conditions of contract*.**
8	**Risks and insurance**	
80.1	These are additional *Employer*'s risks	**None**
84.1	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/ 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 *works*, Plant and Materials & Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor)* 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."**

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**

		7 The insurance coverage referred to in 1, 2, 3 and 4 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**
9	**Termination**	**There is no additional Contract Data required for this section of the *conditions of contract*.**
10	**Data for main Option clause**	
B	**Priced contract with Bill of Quantities**	**No additional data is required for this Option.**

60.6	The *method of measurement* is	**The Bill of Quantities have been measured in accordance with SANS 1200 unless indicated otherwise.**
11	**Data for Option W1**	
W1.1	The *Adjudicator* is	**Both parties will agree as and when a dispute arises. If the parties cannot reach an agreement on the *Adjudicator*, the Chairman of the Association of Arbitrators will appoint an *Adjudicator*.**
W1.2(3)	The *Adjudicator nominating body* is:	**The Chairman of the Association of Arbitrators (Southern Africa)**
	If no *Adjudicator nominating body* is entered, it is:	**the Association of Arbitrators (Southern Africa)**
W1.4(2)	The *tribunal* is:	**Arbitration**
W1.4(5)	The *arbitration procedure* is	**The Rules for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa)**
	The place where arbitration is to be held is	**Cape Town, 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**	
X7.1	Delay damages for Completion of the whole of the *works* are	**R6 500 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 *Contractor*'s liability to the *Employer* for indirect or consequential loss is limited to:	**The Total of the Prices**
X18.2	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 of the relevant insurance policy**
X18.3	The *Contractor's* 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 *Contractor's* total liability to the *Employer* 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 *end of liability date* is	**5 years after Completion of the whole of the *works***
Z	***Additional conditions of contract* are*:***	

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.**

Z3.2 **Insert additional core clause 27.6**

27.6. The *Contractor* shall not alter its composition or legal status of the Joint Venture without the prior approval of the *Employer.*

Z4 **Additional obligations in respect of Termination**

Z4.1 **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)**

Z4.2	**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"**
Z4.3		**Amend "R1 – R15 or R18" to "R1 – R15, R18, R22 or R23."**
Z5	**Right Reserved by the *Employer* to Conduct Vetting through SSA**	
Z5.1		**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.**
Z6	**Additional Clause Relating to Collusion in the Construction Industry**	
Z6.1		**The contract award is made without prejudice to any rights the *Employer* may have to take appropriate action later with regard to any declared tender rigging including blacklisting.**

Z7	**Protection of Personal Information Act**	
Z7.1		**The *Employer* and the *Contractor* 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 *Contractor* is (Name):	
	Address	
	Tel No.	
	Fax No.	
11.2(8)	The *direct fee percentage* is	**%**
	The *subcontracted fee percentage* is	**%**
11.2(18)	The *working areas* are the Site and	
24.1	The *Contractor's* 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)	The *bill of quantities* is in	
11.2(31)	The tendered total of the Prices is	(in figures) (in words), excluding VAT
	Data for Schedules of Cost Components	*Note "SCC" means Schedule of Cost Components starting on page 60 of ECC, and "SSCC" means Shorter Schedule of Cost Components starting on page 63 of ECC.*

B	**Priced contract with bill of quantities**	**Data for the Shorter Schedule of Cost Components**		
41 in SSCC	The percentage for people overheads is:	**%**		
21 in SSCC	The published list of Equipment is the last edition of the list published by	**N/A**		
	The percentage for adjustment for Equipment in the published list is	**%** (state plus or minus)		
22 in SSCC	The rates of other Equipment are:	**Equipment**	**Size or capacity**	**Rate**

61 in SSCC	The hourly rates for Defined Cost of design outside the Working Areas are	**Category of employee**	**Hourly rate**
62 in SSCC	The percentage for design overheads is	**%**	
63 in SSCC	The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are:		