

# 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:

### Rehabilitation of the Outer Caisson at Dry Dock in the Port of Durban for a period of four (4) months

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.
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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	<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 apply, for each offered total insert in brackets, "(Not Applicable – Cost reimbursable)"

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: .....



## 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		
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 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 National Ports Authority, a division of Transnet SOC Limited  
30 Wellington Road  
Parktown  
Gauteng  
South Africa  
2196

Name & signature of witness .....

.....

Date .....

.....

## 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>B: Priced contract with bill of quantities</b>
	dispute resolution Option and secondary Options	<b>W1: Dispute resolution procedure</b>
		<b>X1: Price adjustment for inflation</b>
		<b>X2 Changes in the law</b>
		<b>X3: Multiple currencies</b>
		<b>X4: Parent company guarantee</b>
		<b>X5: Sectional Completion</b>
		<b>X6: Bonus for early Completion</b>
		<b>X7: Delay damages</b>
		<b>X12: Partnering</b>
		<b>X13: Performance Bond</b>
		<b>X14: Advance payment to the <i>Contractor</i></b>
		<b>X15: Limitation of <i>Contractor's</i> liability for design to reasonable skill and care</b>
		<b>X16: Retention</b>
		<b>X17: Low performance damages</b>
		<b>X18: Limitation of liability</b>
		<b>X20: Key performance indicators</b>
		<b>Z: Additional conditions of contract</b>
		<b>Z1: Intellectual property</b>
		<b>Z2: Assignment and Waiver</b>
		<b>Z3: Supplier Development Initiatives</b>

of the NEC3 Engineering and Construction  
Contract June 2005 (with amendments June  
2006)<sup>1</sup>

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10.1	The <i>Employer</i> is:	<b>Transnet SOC Ltd (Reg no. 1990/000900/30)</b>
	Address	<b>Carlton Centre, 150 Commissioner Street, Johannesburg, 2001</b>
	Having elected its Contractual Address for the purposes of this contract as:	<b>Transnet National Ports Authority Quayside Road Ocean Terminal Building, Room 301 DURBAN 4001</b>
		<b>Postal Address:</b>
		<b>P.O. Box 1027 DURBAN South Africa 4000</b>
	Tel No.	<b>031 361 8589</b>
	Fax No.	<b>031 361 8930</b>
10.1	The <i>Project Manager</i> is: (Name)	<b>Dumisani Mkhize</b>
	Address	<b>Port of Durban, Suite 103I, Ocean Terminal Building, Durban, 4001</b>
	Tel	<b>031 361 8813</b>
	Fax	<b>086 673 6861</b>
	e-mail	<b>Dumisani.Mkhize@transnet.net</b>
10.1	The <i>Supervisor</i> is: (Name)	<b>Nandi Mtsokoba</b>
	Address	<b>Port of Durban, Ocean Terminal Building, Durban, 4001</b>
	Tel No.	<b>031 361 8806</b>
	Fax No.	

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<sup>1</sup> Available from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009

	e-mail	<b>Nandi.Mtsokoba@transnet.net</b>	
11.2(13)	The <i>works</i> are	<b>REHABILITATION OF THE OUTER CAISSON AT THE DRY DOCK IN THE PORT OF DURBAN</b>	
11.2(14)	The following matters will be included in the Risk Register		
11.2(15)	The <i>boundaries of the site</i> are		
11.2(16)	The Site Information is in	<b>Part C4</b>	
11.2(19)	The Works Information is in	<b>Part C3</b>	
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa subject to the jurisdiction of the Courts of South Africa.</b>	
13.1	The <i>language of this contract</i> is	<b>English</b>	
13.3	The <i>period for reply</i> is	<b>weeks</b>	
2	The Contractor's main responsibilities	<b>No additional data is required for this section of the <i>conditions of contract</i>.</b>	
3	Time		
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	<b>30 September 2015</b>	
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<b>Condition to be met</b>	<b>key date</b>
		1	
		2	
		3	
30.1	The <i>access dates</i> are	<b>Part of the Site</b>	<b>Date</b>
		1	
		2	
		3	
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	<b>With the tender</b>	
31.2	The <i>starting date</i> is.	<b>01 June 2015</b>	
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	<b>weeks.</b>	
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	<b>52 (fifty two) weeks after Completion of the whole of the <i>works</i>.</b>	

43.2	The <i>defect correction period</i> is	<b>weeks</b>
	except that the <i>defect correction period</i> for	<b>is weeks</b>
	and the <i>defect correction period</i> for	<b>is weeks</b>
5	Payment	
50.1	The <i>assessment interval</i> is monthly on the	<b>25<sup>th</sup> (twenty fifth) day of each successive month.</b>
51.1	The <i>currency of this contract</i> is the	<b>South African Rand.</b>
51.2	The period within which payments are made is	<b>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.</b>
51.4	The <i>interest rate</i> is	<b>the prime lending rate of the Standard Bank of South Africa.</b>
6	Compensation events	
60.1(13)	The <i>weather measurements</i> to be recorded for each calendar month are,	<p><b>the cumulative rainfall (mm)</b></p> <p><b>the number of days with rainfall more than 10 mm</b></p> <p><b>the number of days with minimum air temperature less than 0 degrees Celsius</b></p> <p><b>the number of days with snow lying at 08:00 hours South African Time</b></p> <p><b>and these measurements:</b></p>
	The place where weather is to be recorded (on the Site) is:	<b>Port of Durban</b>
	The <i>weather data</i> are the records of past <i>weather measurements</i> for each calendar month which were recorded at:	<b>Nearest Weather Recording Station</b>
	and which are available from:	<b>South African Weather Services</b>
60.1(13)	Assumed values for the ten year return <i>weather data</i> for each <i>weather measurement</i> for each calendar month are:	
	These are additional compensation events:	<p><b>1</b></p> <p><b>2</b></p> <p><b>3</b></p>
7	Title	<b>No additional data is required for this section of the <i>conditions of contract</i>.</b>

8 Risks and insurance

84.1	<p><b>The <i>Employer</i> provides these insurances from the Insurance Table</b></p> <p><b>1. Principal Controlled Insurance (PCI)</b>                  Insurance against: <b>Loss or damage to the <i>works</i>, temporary works, including wet works and Materials for incorporation into the works while in (land) transit to the contract site and at the contract site as stated in the PCI Insurance policy for Contract Works/ Public Liability.</b></p> <p>Cover / indemnity: <b>to the extent as stated in the PCI insurance policy for Contract Works / Public Liability, Limited up to Maximum: R1,000,000,000.00 per project/contract on Contract works R500,000,000.00 per project/contract on Wet works</b></p> <p>The deductibles are: <b>as stated in the PCI insurance policy for Contract Works / Public Liability. The contractor is responsible for the payment of the deductible on all PCI claims</b></p> <p><b>2. PCI Public Liability</b>                  Insurance against: <b>Liability resulting from loss of or damage to third party property 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 PCI insurance policy for Contract Works / Public Liability</b></p> <p>Cover / indemnity <b>Is to the extent as stated in the PCI insurance policy for Contract Works / Public Liability. Limited up to maximum R500,000,000.00 per incident</b></p> <p>The deductibles are <b>as stated in the PCI insurance policy for Contract Works / Public Liability. The contractor is responsible for the payment of the deductible on all PCI claims</b></p>
	<p><b>3. PCI:SASRIA</b>                  Insurance against: <b>Contract Works SASRIA insurance subject to the terms, exceptions and conditions of the SASRIA coupon</b></p> <p>Cover / indemnity <b>Cover / indemnity is to the extent provided by the SASRIA coupon</b></p> <p>The deductibles are <b>as stated in the PCI insurance policy for Contract Works / Public Liability. The contractor is responsible for the payment of the deductible on all PCI claims.</b></p>
84.1	The <i>Contractor</i> provides these additional insurances.



		<p><b>1</b> Where the contract requires that the design of any part of the <i>works</i> shall be provided by the <i>Contractor</i> he shall satisfy the Employer that professional indemnity insurance cover in connection therewith has been affected. The minimum limit required for Professional Indemnity is R5,000,000.00</p> <p><b>2</b> Where the contract involves manufacture, and/or fabrication of Plant &amp; Materials, components or other goods to be incorporated into the <i>works</i> at premises other than the site, the <i>Contractor</i> shall satisfy the <i>Employer</i> that such plant &amp; materials, components or other goods for incorporation in the <i>works</i> are adequately insured during manufacture and/or fabrication.</p> <p><b>3</b> The <i>Contractor</i> must comply with the provisions of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as amended and Employers common law liability.</p> <p><b>4</b> Full comprehensive insurance covering the contractor's Property; Equipment, Tools; Motor Vehicle, Plant and Machinery and Liability Insurance comprising (as a minimum) "Balance of Third Party" Risks including Passenger and Unauthorised Passenger Liability indemnity with a minimum indemnity limit of R10,000,000</p> <p><b>7</b> 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 <i>Employer</i>. The <i>Contractor</i> shall arrange with the insurer to submit to the <i>Project Manager</i> 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 <i>Contractor</i></p>
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
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<b>B</b>	<b>Priced contract with bill of quantities</b>		
60.6	The <i>method of measurement</i> is	<b>published by</b>	<b>and amended as stated in the preambles to the bill of quantities.</b>
11	Data for Option W1		
W1.1	The <i>Adjudicator</i> is	<b>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>.</b>	
W1.2(3)	The <i>Adjudicator nominating body</i> is:  If no <i>Adjudicator nominating body</i> is entered, it is:	<b>The Chairman of the Association of Arbitrators (Southern Africa)</b>  <b>the Association of Arbitrators (Southern Africa)</b>	
W1.4(2)	The <i>tribunal</i> is:	<b>Arbitration</b>	
W1.4(5)	The <i>arbitration procedure</i> is  The place where arbitration is to be held is  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	<b>The Rules for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa)</b>  <b>Durban, KwaZulu Natal</b>  <b>The Chairman of the Association of Arbitrators (Southern Africa)</b>	
12	Data for secondary Option clauses		
<b>X1</b>	<b>Price adjustment for inflation</b>		
X1.1(a)	The <i>base date</i> for indices is	.	
X1.1(c)	The proportions used to calculate the Price Adjustment Factor are:	<b>propo r t i o n</b>	<b>linked to index for</b>  <b>Index prepared by</b>
		<b>0.</b>	
		<b>0.</b>	
		<b>0.</b>	
		<b>0.</b>	
		<b>0.</b>	
		<b>1.00</b>	<b>non-adjustable</b>
<b>X2</b>	<b>Changes in the law</b>	<b>No additional data is required for this Option</b>	

<b>X3</b>	<b>Multiple currencies</b>			
X3.1	The <i>Employer</i> will pay for these items or activities in the currencies stated	<b>Items &amp; activities</b>	<b>Other currency</b>	<b>Maximum payment in other currency</b>
X3.1	The <i>exchange rates</i> are those published in	<b>on</b>	<b>(date)</b>	
<b>X4</b>	<b>Parent company guarantee</b>	<b>No additional data is required for this Option</b>		
<b>X5</b>	<b>Sectional Completion</b>			
X5.1	The <i>completion date</i> for each <i>section</i> of the <i>works</i> is:	<b>Section</b>	<b>Description</b>	<b>Completion date</b>
		1		
		2		
		3		
<b>X5 &amp; X6</b>	<b>Sectional Completion and bonus for early Completion used together</b>			
X6.1 X5.1	The bonuses for early Completion of the <i>sections</i> of the <i>works</i> are:	<b>section</b>	<b>Description</b>	<b>Amount per day</b>
		1		R
		2		R
		3		R
	Remainder of the <i>works</i>			R
<b>X5 &amp; X7</b>	<b>Sectional Completion and delay damages used together</b>			
X7.1 X5.1	Delay damages for late Completion of the <i>sections</i> of the <i>works</i> are:	<b>section</b>	<b>Description</b>	<b>Amount per day</b>
		1		R
		2		R
		3		R
	Remainder of the <i>works</i>			R
<b>X6</b>	<b>Bonus for early Completion (but not if Option X5 is also used)</b>			

X6.1	The bonus for early Completion of the whole of the <i>works</i> is	<b>per day</b>
<b>X7</b>	<b>Delay damages (but not if Option X5 is also used)</b>	
X7.1	Delay damages for Completion of the whole of the <i>works</i> are	<b>per day</b>
<b>X12</b>	<b>Partnering<sup>2</sup></b>	
X12.1(1)	The <i>Client</i> is (Name)	
	Address	
	Tel	
	Fax	
X12.2(1)	The <i>Client's</i> objective is.	
X12.1(4)	The Partnering Information is in	
<b>X13</b>	<b>Performance bond</b>	
X13.1	The amount of the performance bond is	<b>R .</b>
<b>X14</b>	<b>Advanced payment to the Contractor</b>	
X14.1	The amount of the advanced payment is	<b>R .</b>
X14.2	An advanced payment bond	<b><u>is / is not required.</u></b>
X14.3	The <i>Contractor</i> repays the instalments in assessments starting not less than	<b>weeks after the Contract Date.</b>
X14.3	The instalments are	<b>R (either an amount or a percentage of the payment otherwise due)</b>
	<b>Limitation of the Contractor's liability for his design to reasonable skill &amp; care</b>	<b>No additional data is required for this Option</b>
	<b>Retention (not used with Option F)</b>	
X16.1	The <i>retention free amount</i> is	<b>R .</b>
	The <i>retention percentage</i> is	<b>10% on all payments certified.</b>
<b>X17</b>	<b>Low performance damages</b>	
X17.1	The amounts for low performance damages are:	
	<b>Amount</b>	<b>Performance level</b>
	<b>R</b>	<b>for</b>
	<b>R</b>	<b>for</b>
	<b>R</b>	<b>for</b>

<sup>2</sup> See **Bennett, J and Baird, A** *NEC and Partnering - The Guide to Building Winning Teams*, Thomas Telford London 2001.

		R	for
<b>X18</b>	<b>Limitation of liability</b>		
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	An amount being equal to the total Contract Value inclusive of VAT.	
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:	An amount being equal to the total Contract Value inclusive of VAT.	
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:	An amount being equal to the total Contract Value inclusive of VAT.	
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:	An amount being equal to the total Contract Value inclusive of VAT.	
X18.5	The <i>end of liability date</i> is	<p>A period being 24 (Twenty Four) consecutive months after the completion by the Contractor of the whole of the works to the Employer in terms of the Contract</p> <p>Five years after the defect date for latent defects.</p> <p>Ten Years after completion by the Contractor for corrosion protection for the works</p>	
<b>X20</b>	<b>Key Performance Indicators (not used when Option X12 applies)</b>		
X20.1	The <i>incentive schedule</i> for Key Performance Indicators is in		
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	<b>months</b>	
<b>Z</b>	<b>Additional conditions of contract</b>		
	The <i>additional conditions of contract</i> are:		
<b>Z 1</b>	<b>Intellectual property</b>		
	Intellectual property rights (including patents, copyright, trademarks etc.) rest with the party owning them and the <i>Employer</i> indemnifies the <i>Contractor</i> from any liability arising from infringement of such intellectual property rights. [See Clauses 80.1, 83.1 and 83.2]		
<b>Z 2</b>	<b>Assignment and Waiver</b>		
<b>Z 2.1</b>	Neither the <i>Employer</i> nor the <i>Contractor</i> 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 thereunder		

<b>Z 2.2</b>	No grant by the <i>Contractor</i> or the <i>Employer</i> 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 <i>estoppel</i> of the grantor's right to enforce the provisions of the Contract.
<b>Z3</b>	<b>Obligations in respect of the South African Government's Supplier Development (SD) Programme</b>
<b>Z3.1</b>	It is a fundamental requirement of the tender that the <i>Contractor</i> contributes to the Supplier Development Programme promoted by the Department of Public Enterprises of the Government of South Africa, as applied by the <i>Employer</i> . In response to this requirement, the Contractor undertakes to implement the SD initiatives as described in the Contractor's SD Proposal.
<b>Z3.2</b>	The <i>Contractor</i> shall develop and present for acceptance to the <i>Employer's</i> Project Manager in writing within 30 (thirty) days from the Contract Date, a detailed plan (the SD Plan) setting out the exact nature, extent and estimated monetary value of the SD commitments which the <i>Contractor</i> is prepared to undertake. This shall include mechanisms and procedures to allow for access to information and verification of the <i>Contractor's</i> compliance with the SD commitments it has undertaken to complete, as set out in the SD Plan. The format and details required with regards to the SD Plan will be provided to the <i>Employer</i> by the <i>Contractor</i> .
<b>Z3.3</b>	The parties undertake to negotiate in good faith with a view to agree to the content of the SD Plan within 30 (thirty) days from the date of submission of the initial SD Plan referred to in clause Z3.2 above (or such later date as the <i>Employer</i> may consent to). If the parties fail to reach agreement in respect of the SD Plan within 30 (thirty) days (or such later date that the <i>Employer</i> may consent to) of the date of submission of the SD Plan, it shall constitute a reason for termination as per clause 91.2 (R11) of the NEC3 Engineering and Construction Contract. The <i>Employer</i> reserves the right to re-negotiate in terms of clause 10.1 of the NEC3 Engineering and Construction Contract to the benefit of the <i>Employer</i> .
<b>Z3.4</b>	The local entity/entities selected as the beneficiary of the SD localization initiative will be mutually agreed upon by the <i>Contractor</i> and <i>Employer</i> .
<b>Z3.5</b>	The <i>Contractor</i> must deliver and action its SD commitments as outlined in the SD Plan, which progress will be reported by the <i>Contractor</i> to the <i>Employer</i> and the Department of Public Enterprises (DPE) on a monthly basis during the term of the contract.
<b>Z3.6</b>	The Contractor shall provide a Performance Bond, in the format provided, for the full monetary value of the SD Plan agreed in terms of Z3.3 above. (Above R5mil)

## 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 the relevant parts of its Guidance Notes (ECC3-GN)<sup>3</sup> 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 152 to 154 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:	
		<b>CV's (and further key persons data including CVs) are appended to Tender Schedule entitled .</b>
11.2(14)	The following matters will be included in the Risk Register	

<sup>3</sup> Available from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009

11.2(19)	The Works Information for the <i>Contractor's</i> design is in:		
31.1	The programme identified in the Contract Data is		
<b>B</b>	<b>Priced contract with bill of quantities</b>		
11.2(21)	The <i>bill of quantities</i> is in		
11.2(31)	The tendered total of the Prices is	(in figures)	
		(in words), excluding VAT	
	Data for Schedules of Cost Components	<i>Note "SCC" means Schedule of Cost Components starting on page 56 of ECC3, and "SSCC" means Shorter Schedule of Cost Components starting on page 59 of ECC3.</i>	
<b>B</b>	<b>Priced contract with bill of quantities</b>	<b>Data for the Shorter Schedule of Cost Components</b>	
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		
	The percentage for adjustment for Equipment in the published list is	% (state plus or minus)	
22 in SSCC	The rates of other Equipment are:	<b>Equipment</b>	<b>Size or capacity</b> <b>Rate</b>
61 in SSCC	The hourly rates for Defined Cost of design outside the Working Areas are	<b>Category of employee</b>	<b>Hourly rate</b>
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:		



<b>If Option C, D or E is used</b>		<b>Data for Schedule of Cost Components</b>		
23 in SCC	The listed items of Equipment purchased for work on this contract, with an on cost charge, are:	<b>Equipment</b>	<b>Time related charge</b>	<b>Per time period</b>  per Per Per per per
24 in SCC	The rates of special Equipment are:	<b>Equipment</b>	<b>Size or capacity</b>	<b>Rate</b>
44 in SCC	The percentage for Working Areas overheads is:	:	%	
51 in SCC	The hourly rates for Defined Cost of manufacture or fabrication outside the Working Areas are	<b>Category of employee</b>		<b>Hourly rate</b>
52 in SCC	The percentage for manufacture and fabrication overheads is		%	
<b>If Option C, D, or E is used</b>		<b>Data for both schedules of cost components</b>		
61 in SCC & SSSC	The hourly rates for Defined Cost of design outside the Working Areas are	<b>Category of employee</b>		<b>Hourly rate</b>
62 in SCC & SSSC	The percentage for design overheads is		%	



## C1.3 Forms of Securities

### Pro formas for Bonds & Guarantees

For use with the NEC3 Engineering & Construction Contract - June 2005 (with amendments June 2006).

The *conditions of contract* stated in the Contract Data Part 1 may include one or more of the following Secondary Options:

- Option X4: Parent company guarantee
- Option X13: Performance Bond
- Option Z3: Performance Bond – Supplier Development (SD) commitment
- Option X14: Advanced payment to the *Contractor*

Each of these Secondary Options requires a bond or guarantee “in the form set out in the Works Information”.

Pro forma documents for these bonds and guarantee are provided here for convenience but are to be treated as part of the Works Information.

The organisation providing the bond / guarantee does so by copying the pro forma document onto his letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Employer* within the time stated in the contract.

## Pro forma Parent Company Guarantee (for use with Option X4)

(to be reproduced exactly as shown below on the letterhead of the Contractor's Parent Company)

Transnet National Ports Authority, a division of Transnet  
SOC Limited  
30 Wellington Road  
Parktown  
Gauteng  
South Africa  
2196

Date:

Dear Sirs,

### Parent Company Guarantee for Contract No.

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

**Transnet National Ports Authority, a division of Transnet SOC Limited** (the *Employer*) and  
**30 Wellington Road**  
**Parktown**  
**Gauteng**  
**South Africa**  
**2196**

{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 *Contractor's*  
parent company

of physical address

and duly authorised thereto do hereby unconditionally guarantee to the *Employer* that the *Contractor* shall Provide the Works in accordance with the above numbered Contract.

1. If for any reason the *Contractor* fails to Provide the Works, we hereby agree to cause to Provide the Works at no additional cost to the *Employer*.
2. If we fail to comply with the terms of this Deed of Guarantee, the *Employer* may itself procure such performance (whether or not the Agreement be formally determined). The *Employer* is to notify us and we shall indemnify the *Employer* for any additional cost or expense it incurs.
3. Our liability shall be as primary obligor and not merely as surety and shall not be impaired or discharged by reason of any arrangement or change in relationship made between the *Contractor* and the *Employer* and/or between us and *Contractor*; nor any alteration in the obligations undertaken by the *Contractor* or in the terms of the Agreement; nor any indulgence, failure, delay by you as to any matter; nor any dissolution or liquidation or such other analogous event of the *Contractor*.
4. The *Employer* shall not be obliged before taking steps to enforce the terms of this Deed of Guarantee to obtain judgement against the *Contractor* in any court or other tribunal, to make or file

any claim in liquidation (or analogous proceedings) or to seek any remedy or proceed first against the *Contractor*.

5. This Deed of Guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa and we hereby submit to the non-exclusive jurisdiction of the Supreme Court of South Africa.

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

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

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

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

Transnet National Ports Authority, a division of Transnet  
SOC Limited  
30 Wellington Road  
Parktown  
Gauteng  
South Africa  
2196

Date:

Dear Sirs,

### Performance Bond for Contract No.

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

**Transnet National Ports Authority, a division of Transnet SOC Limited** (the *Employer*) and  
**30 Wellington Road**  
**Parktown**  
**Gauteng**  
**South Africa**  
**2196**

{Insert registered name and address of the *Contractor*} (the *Contractor*), for

**REHABILITATION OF THE OUTER CAISSON AT THE DRY DOCK IN THE** (the *works*).  
**PORT OF DURBAN**

I/We the undersigned

on behalf of the Surety

of physical address

and duly authorised thereto do hereby bind ourselves as Guarantor 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 Completion 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 Excussion 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 Guarantor shall not have the right to claim his release on account of any conduct alleged to be prejudicial to the Guarantor. 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
  - a. the date that the Guarantor receives a notice from the *Project Manager* stating that the Completion Certificate for the whole of the *works* 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
  - b. 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 Guarantor 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 Guarantor 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.
9. An irrevocably, on-demand payment guarantee to be issued substantially in the form of Schedule ..... in favour of the Company by a financial institution reasonably acceptable to the Company with a long term international credit rating (International Institutions) and long term national credit rating (local institutions) (by Moody's Investors Service Limited or Fitch Ratings Limited or any successor to their respective ratings business or any other ratings agency approved by the Company) of at least A- (in the case of Fitch Ratings Limited) and A3 (in the case of Moody's Investor Services Limited) and otherwise acceptable to the Company (in its sole and absolute discretion). In any event if the credit rating of the issuer of the guarantee falls below the required minimum before the expire date, the guarantee should be replaced at the cost of the supplier with an issuer that comply with the minimum required credit rating.

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

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



## Pro forma Performance Bond - Supplier Development (SD) commitment (for use with Option Z3)

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

Transnet National Ports Authority, a division of Transnet  
SOC Limited  
30 Wellington Road  
Parktown  
Gauteng  
South Africa  
2196

Date:

Dear Sirs,

### Performance Bond for Contract No.

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

**Transnet National Ports Authority, a division of Transnet SOC Limited**  
**30 Wellington Road**  
**Parktown**  
**Gauteng**  
**South Africa**  
**2196**

(the *Employer*) and

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

(the *Contractor*), for

**REHABILITATION OF THE OUTER CAISSON AT THE DRY DOCK IN THE  
PORT OF DURBAN**

(the *works*).

I/We the undersigned

on behalf of the Surety

of physical address

and duly authorised thereto do hereby bind ourselves as Guarantor 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 Completion 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 Excussion 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 Guarantor shall not have the right to claim his release on account of any conduct alleged to be prejudicial to the Guarantor. 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

- a. the date that the Guarantor receives a notice from the *Project Manager* stating that the Completion Certificate for the whole of the *works* 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
  - b. 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 Guarantor 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 Guarantor 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.
9. An irrevocably, on-demand payment guarantee to be issued substantially in the form of Schedule ..... in favour of the Company by a financial institution reasonably acceptable to the Company with a long term international credit rating (International Institutions) and long term national credit rating (local institutions) (by Moody's Investors Service Limited or Fitch Ratings Limited or any successor to their respective ratings business or any other ratings agency approved by the Company) of at least A- (in the case of Fitch Ratings Limited) and A3 (in the case of Moody's Investor Services Limited) and otherwise acceptable to the Company (in its sole and absolute discretion). In any event if the credit rating of the issuer of the guarantee falls below the required minimum before the expire date, the guarantee should be replaced at the cost of the supplier with an issuer that comply with the minimum required credit rating.

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

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

## **Pro forma Performance Bond (for use with Option X13) – Alternative format**

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

Transnet National Ports Authority, a division of Transnet SOC Limited  
30 Wellington Road  
Parktown  
Gauteng  
South Africa  
2196

**Date** :

**Guarantee number** :

---

### **PERFORMANCE BOND**

#### **FOR CONTRACT NUMBER:**

With reference to the above numbered contract (the Contract) made or to be made between

**Transnet National Ports Authority, a division of Transnet SOC Limited** (the *Employer*) and  
**30 Wellington Road**  
**Parktown**  
**Gauteng**  
**South Africa**  
**2196**

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

(the *Contractor*), for

**REHABILITATION OF THE OUTER CAISSON AT THE DRY DOCK IN THE  
PORT OF DURBAN**

(the *works*).

We, the undersigned, \_\_\_\_\_ and \_\_\_\_\_

on behalf of the Guarantor \_\_\_\_\_ (Bank name) (the Guarantor)

of \_\_\_\_\_ (address)

and duly authorised thereto do hereby bind ourselves as guarantor 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 and *Works* have the meaning as assigned to them above, which meaning we are informed has the same 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 Excussion and Division”, “No value received” and all other exceptions which might or could be pleaded against the validity of this performance 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 Guarantor shall not have the right to claim his release on account of any conduct alleged to be prejudicial to the Guarantor. 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 Performance Bond will lapse on the earlier of
  - a. the date that the Guarantor receives a notice from the Project Manager, whose authority and appointment need not be proved by the Guarantor, stating that the Completion Certificate for the whole of the *works*, 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
  - b. the date that the Guarantor issues a replacement Performance Bond for such lesser or higher amount as may be required by the Project Manager, whose authority and appointment need not be proved by the Guarantor.
5. Always provided that this performance bond will not lapse in the event the Guarantor is notified by the Project Manager (before the dates above), whose authority and appointment need not be proved by the Guarantor, of the *Employer's* intention to institute claims and the particulars thereof, in which event this performance bond shall remain in full force until all such claims are paid and settled.
6. The amount of the performance bond shall be payable to the *Employer* upon the *Employer's* demand and no later than 7 days following the submission to the Guarantor of a certificate signed by the Project Manager, whose authority and appointment need not be proved by the Guarantor, 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. The Guarantors total liability hereunder is limited to the payment of money only and shall not exceed the sum of:  
(Words)  
R
8. This Performance Bond is neither negotiable nor transferable and is governed by the laws of the Republic of South Africa, subject to the jurisdiction of the courts of the Republic of South Africa.
9. An irrevocably, on-demand payment guarantee to be issued substantially in the form of Schedule ..... in favour of the Company by a financial institution reasonably acceptable to the Company with a long term international credit rating (International Institutions) and long term national credit rating (local institutions) (by Moody's Investors Service Limited or Fitch Ratings Limited or any successor to their respective ratings business or any other ratings agency approved by the Company) of at least A- (in the case of Fitch Ratings Limited) and A3 (in the case of Moody's Investor Services Limited) and otherwise acceptable to the Company (in its sole and absolute discretion). In any event if the credit rating of the issuer of the guarantee falls below the required minimum before the expire date, the guarantee should be replaced at the cost of the supplier with an issuer that comply with the minimum required credit rating.

For and on behalf of \_\_\_\_\_

## Pro forma Reducing Value Guarantee (for use with Option X13)

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

Transnet National Ports Authority, a division of Transnet  
SOC Limited  
30 Wellington Road  
Parktown  
Gauteng  
South Africa  
2196

Date:

Dear Sirs,

### Reducing Value Guarantee for Contract No.

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

**Transnet National Ports Authority, a division of Transnet SOC Limited** (the *Employer*) and  
**30 Wellington Road**  
**Parktown**  
**Gauteng**  
**South Africa**  
**2196**

{Insert registered name and address of the *Contractor*} (the *Contractor*), for

**REHABILITATION OF THE OUTER CAISSON AT THE DRY DOCK IN THE** (the *works*).  
**PORT OF DURBAN**

I/We the undersigned

on behalf of the Guarantor

of physical address

and duly authorised thereto, do hereby undertake to pay the *Employer* forthwith on receipt of written demand from the *Employer* up to the maximum guaranteed sum of

(say) \_\_\_\_\_

R \_\_\_\_\_

in respect of amounts due by the *Contractor* to the *Employer* for whatever reason in terms of the contract between the *Employer* and the *Contractor* in respect of the *works*. The following further terms shall apply:

- 1 The Guarantor's liability shall be limited to the diminishing amounts of the guaranteed sum as set out below:

Guarantor's Liability	Period of Liability
1. Maximum guaranteed sum: R _____	From the date this demand bond comes into effect and until the date by when the Price for Work Done to Date has reached or exceeds R _____

- |  |   |
|--|---|
| 2. Reducing to the guaranteed sum of:<br>R _____ | From the date by when the Price for Work Done to Date has reached or exceeds the amount stated in 1.1 above and until the date of Completion of the whole of the <i>works</i> |
| 3. Reducing to the guaranteed sum of:<br>R _____ | From the day after the date of Completion of the whole of the <i>works</i> and until the date of issue of the last Defects Certificate.                                       |
| 4. Reducing to the guaranteed sum of:<br>R _____ | From the day after the date of issue of the last Defects Certificate and up to and including the day on which there are no amounts due by either Party to the other.          |
5. Thereafter this demand guarantee shall lapse.
  6. The terms *Employer*, *Contractor*, *Project Manager*, *works*, *Price for Work Done to Date*, *Completion*, *Defects Certificate* and *Party* have the meaning given to them by the *conditions of contract* stated in the Contract Data for the aforesaid Contract.
  7. The *Employer* shall have the absolute right to arrange his affairs with the *Contractor* in any manner which the *Employer* deems fit and the Guarantor shall not have the right to claim his release on account of any conduct alleged to be prejudicial to the Guarantor. Without derogating from the foregoing, any compromise, extension of the Completion Date, indulgence, release or variation of the *Contractor's* obligation shall not affect the validity of this demand guarantee.
  8. The Guarantor chooses domicilium citandi et executandi for all purposes in connection herewith at the address appearing above.
  9. This Reducing Value Guarantee 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.
  10. The *Employer* returns this Guarantee to the Guarantor when it has lapsed in terms of clause 1 above or on payment in full thereof whichever is the earlier.
  11. An irrevocably, on-demand payment guarantee to be issued substantially in the form of Schedule ..... in favour of the Company by a financial institution reasonably acceptable to the Company with a long term international credit rating (International Institutions) and long term national credit rating (local institutions) (by Moody's Investors Service Limited or Fitch Ratings Limited or any successor to their respective ratings business or any other ratings agency approved by the Company) of at least A- (in the case of Fitch Ratings Limited) and A3 (in the case of Moody's Investor Services Limited) and otherwise acceptable to the Company (in its sole and absolute discretion). In any event if the credit rating of the issuer of the guarantee falls below the required minimum before the expire date, the guarantee should be replaced at the cost of the supplier with an issuer that comply with the minimum required credit rating.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Guarantor:

Representative \_\_\_\_\_ Representative \_\_\_\_\_

Name (printed) \_\_\_\_\_ Name (printed) \_\_\_\_\_

TRANSNET NATIONAL PORTS AUTHORITY

CONTRACT NUMBER TNPA598/CIDB

DESCRIPTION OF THE WORKS: REHABILITATION OF THE OUTER CAISSON AT THE DRY DOCK IN THE PORT OF DURBAN

---

Capacity

Capacity

As Witness

As Witness

Guarantor's  
stamp or seal

## Pro forma Advanced Payment Bond (for use with Option X14)

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

Transnet National Ports Authority, a division of Transnet  
SOC Limited  
30 Wellington Road  
Parktown  
Gauteng  
South Africa  
2196

Date:

Dear Sirs,

### Advanced Payment Bond for Contract No.

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

**Transnet National Ports Authority, a division of Transnet SOC Limited** (the *Employer*) and  
**30 Wellington Road**  
**Parktown**  
**Gauteng**  
**South Africa**  
**2196**

{Insert registered name and address of the *Contractor*} (the *Contractor*), for

**REHABILITATION OF THE OUTER CAISSON AT THE DRY DOCK IN THE** (the *works*).  
**PORT OF DURBAN**

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 proper repayment by the *Contractor* to the *Employer* of the advanced payment made by the *Employer* to the *Contractor* under the Contract, and for all losses and expenses that may be suffered or incurred by the *Employer* as a result of non-payment by the *Contractor*, subject to the following conditions

1. The terms *Employer*, *Contractor*, and the *works* have the meaning as assigned to them by the *conditions of contract* listed in the Contract Data for the aforesaid Contract.
2. We renounce all benefits from the legal exceptions "Benefit of Excussion 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 Advance Payment bond.

4. This bond expires on the date when the Surety receives a notice from the *Project Manager* stating that the advanced payment has been repaid to the *Employer* in terms of the Contract, or liquidated by deductions from other payments due to the *Contractor*.
5. 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.
6. Our total liability hereunder shall not exceed the sum of ..... (R .....) which is equal to the advance payment.
7. This Advanced Payment Bond is neither negotiable nor transferable and is governed by the laws of the Republic of South Africa.
8. An irrevocably, on-demand payment guarantee to be issued substantially in the form of Schedule ..... in favour of the Company by a financial institution reasonably acceptable to the Company with a long term international credit rating (International Institutions) and long term national credit rating (local institutions) (by Moody's Investors Service Limited or Fitch Ratings Limited or any successor to their respective ratings business or any other ratings agency approved by the Company) of at least A- (in the case of Fitch Ratings Limited) and A3 (in the case of Moody's Investor Services Limited) and otherwise acceptable to the Company (in its sole and absolute discretion). In any event if the credit rating of the issuer of the guarantee falls below the required minimum before the expire date, the guarantee should be replaced at the cost of the supplier with an issuer that comply with the minimum required credit rating.

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

Signature(s)

Name(s) (printed)

Position in Surety company

Signature of Witness(s)

Name(s) (printed)


## C1.4 NEC3 Adjudicator's Contract

**Contract between**

**and**

**and**

**for**

<b>Contents:</b>	<b>Page No.</b>
<b>Form of Agreement</b>	<b>2</b>
<b>Contract Data</b>	<b>3</b>

**Documentation prepared by:**

## Form of Agreement

This agreement is made on the            day of            20    between

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

and

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

(the Parties) and

**{Insert name and address of the Adjudicator}**

(the *Adjudicator*).

The Parties appoint the Adjudicator in accordance with the conditions of contract stated in the NEC3 Adjudicators Contract (June 2005)<sup>4</sup> and the Contract Data attached to this agreement.

The Adjudicator accepts this appointment and undertakes to carry out the Adjudicator's duties as described in the conditions of contract.

Signed jointly on behalf of the Parties by:

	for the Employer	for the Contractor
Signature(s)		
Name(s) (printed)		
Position in organisation		
On behalf of (name of organisation)		
Signature of Witness(s)		
Name(s) (printed)		
Date:		
and signed by the Adjudicator:		
Signature		Name (print)
Date:		

<sup>4</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009

## Contract Data

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 selected for this contract are identified by shading in the Clause number column.

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

Clause	Statement	Data
1.1	The <i>contract between the Parties</i> is	
1.6	The <i>law of the contract</i> is the law of	<b>South Africa subject to the jurisdiction of the courts of South Africa</b>
1.9	The <i>language of this contract</i> is	<b>English</b>
2.6	The period of retention is	<b>weeks</b>
3.1	The amount of the advanced payment is	<b>R</b>
3.4	The Adjudicator's <i>fee</i> (which also applies to time spent travelling) is.	<b>R per hour excluding value added tax</b>
3.5	The period for payment of invoices (if it is not three weeks), is	<b>weeks</b>
3.6	The <i>currency of this contract</i> is	<b>the South African Rand.</b>
3.7	The <i>interest rate</i> is	<b>% per annum above the prime lending rate of</b>
4.3	The Adjudicator's appointment terminates	<b>on (date)</b>
	The <i>additional conditions of contract</i> are:	
	1	