

PART C1.2: CONTRACT DATA

The Conditions of contract are selected from the NEC3 Engineering and Construction Contract, April 2013. Each item of data given below is cross-referenced to the NEC3 Engineering and Construction Contract which requires it.

PART C1.2A – CONTRACT DATA (PART ONE – DATA PROVIDED BY THE EMPLOYER)

Clause	Statement	Data
–	The conditions of contract are the core clauses and the clauses for Main Option	Main Option A: Priced contract with Activity Schedule (Fixed and Firm Contract)
–	Dispute resolution Option	W1: Dispute resolution procedure
–	Secondary Options (incorporating amendments)	X2: Changes in the law X7: Delay damages X13: Performance bond X14: Advanced payment to the Contractor` X16: Retention X18: Limitation of liability Z: Additional conditions of contract of the NEC3 Engineering and Construction Contract, April 2013
10.1	The Employer is (Name)	National Department of Health
	Address	Dr AB Xuma Building, 1112 Voortrekker Road, Pretoria Townlands 351-JR, PRETORIA, 0187
	Telephone	TBC
	Fax	TBC
10.1	The Project Manager is	To be advised
	Address	To be advised

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	Telephone	To be advised
	E-mail address	To be advise
10.1	The Supervisor is	To be advised
	Address	To be advised
	Telephone	To be advised
	Email	To be advised
11.2(1)	The works are	The works involves the construction (completion) of a new Community Health Centre in Msukaligwa, Mpumalanga, including all associated civil, structural, architectural, electrical, and mechanical works.
11.2(14)	The following matters will be included in the Risk Register	See Part C3 Works Information section of this contract
11.2(19)	The Works Information is in	See Part C3 Works Information section of this contract
11.2(18)	The Site Information is in	See Part C4 'Site Information' section of this contract
11.2(2)	The boundary of the site is	The Msukaligwa Community Health Centre site at Erf 7986, Extension 32 (Sun City), Ermelo, within Msukaligwa Local Municipality, Gert Sibande District, Mpumalanga Province, as described and shown in Part C4: Site Information and the contract drawings.
12.1	The law of the contract is the law of	the Republic of South Africa
13.1	The language of this contract is	English
13.3	The period of reply is	Three (3) working days
3	Time	
31.2	The starting date is	When contract is signed by both parties (or such later date as

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		stated in the Employer's Notice to Start)
11.2(3)	The completion date is	24 months after the starting date or less, depending on the Contractor's tender programme
30.1	The access date is	Two weeks after contract signing
31.1	The Contractor submits a first (preliminary) programme with the tender by the tender closing date	Yes – preliminary programme with the Tender in line with the works information; first contract programme for acceptance within two (2) weeks of the starting date.
32.2	The Contractor submits revised programmes at intervals no longer than	Monthly
35.1	The Employer is not willing to take over the works before the completion date	The Employer and Others will have access to the works during construction or prior to completion. Such access by the Employer and Others shall not relieve the Contractor from liability for the completion of the works in accordance with the Works Information and in terms of this contract.
4	Testing and Defects	
42.2	The defects date is	Twelve (12) months after Completion of the whole of the works
43.2	The defects correction period is	Two (2) weeks
5	Payment	
50.1	The assessment interval is	Monthly
50.1	The currency of this contract is the	South African Rand
51.2	The period within which payment is made is	30 Calendar Days from the date the payment certificate is issued, subject to receipt of a valid tax invoice and required supporting documentation.
51.4	The interest rate is	South African Reserve Bank
6	Compensation events	Refer to Part C3 (Works Information) for project-specific

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		compensation events and risk allocations.
7	Title	No data required for this section of the conditions of contract.
8	Risks and Insurance	
84.2	The Contractor provides the insurances stated in	<p>Clauses 84.1 and 84.2 including:</p> <ul style="list-style-type: none"> I. Professional Indemnity Insurance for all Professionals (i.e. multidisciplinary PI but must state the professions as required for tender) – The Value of PI must be a minimum of R10 million for the consortium per occurrence. II. The tenderer shall make adequate provision in the tender for all insurances required in terms of the Contract Data and the conditions of contract. As a minimum, the successful contractor will be required to maintain, for the duration of the contract: <ul style="list-style-type: none"> ○ Contractor's All Risks (CAR) insurance for an amount not less than the full Contract Price (including escalation and contingencies) + 20%, including SASRIA; ○ Public Liability Insurance for an amount not less than R 10 million per occurrence. <p>It remains the tenderer's responsibility to ensure that its insurance arrangements are adequate for the risks associated with this project.</p>
9	Termination	No data required for this section of the conditions of contract.
10	Data for Main Options	
A	Priced contract with Activity Schedule	Refer to Contract Data Part C2 and C3..

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11	Data for Option W1	
W1.1	The Adjudicator is	The person appointed jointly by the Parties from the list of adjudicators contained in the Z-clauses when a dispute arises.
W1.2	The Adjudicator nominating body is	The Association of Arbitrators
W1.4	The tribunal is	Arbitration
W1.4	If the tribunal is arbitration, the arbitration procedure is	The arbitration procedure is set out in The Rules for the Conduct of Arbitrations 2013 Edition, 7th Edition, published by The Association of Arbitrators (Southern Africa).
W1.4	The place where arbitration is to be held is	Dr AB Xuma Building, 1112 Voortrekker Road, Pretoria Townlands 351-JR, PRETORIA, 0187
W1.4	The person or organisation who will choose an arbitrator	The Arbitrator is the person selected by the Parties as and when a dispute arises in terms of the relevant Z Clause, from the Panel of Arbitrators provided under the relevant Z clause. The Arbitrator nominating body is the Association of Arbitrators.
12	Data for Secondary Option Clauses	
X7	Delay damages of the works are	Amount per day is 0.05%, up to a maximum of 10% of the Contract value.
X13.1	The amount of the performance bond is	10% of the contract value. Pro-forma draft of a performance bond to be used is attached to this contract.
X16.1	The retention percentage is	5% of the Contract value.
X18	Limitation of Liability	
X18.1	The Contractor's liability to the Employer for indirect or consequential loss is limited to	Nil - Neither Party is liable to the other for any consequential or indirect loss, including but not limited to loss of profit, loss of income or loss of revenue.
X18.2	For any one event, the	The total of the Prices.

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	Contractor's liability to the Employer for loss of or damage to the Employer's property is limited to	
X18.3	The Contractor's total liability to the Employer for defects due to his design which are not listed on the Defects Certificate is limited to	The total of the Prices.
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. Excluded matters: Loss of or damage to the Employer's property; Delay damages; Defects liability; Insurance liability to the extent of the Contractor's risks; loss of or damage to property (other than the works, Plant and Materials); death of or injury to a person; damage to third party property; infringement of an intellectual property right.
X18.5	The end of liability date is	<p>(i) 12 months after the defects date for latent Defects and</p> <p>(ii) the date on which the liability in question prescribes in accordance with the Prescription Act No. 68 of 1969 (as amended or in terms of any replacement legislation) for any other matter.</p> <p>A latent Defect is a Defect which would not have been discovered on reasonable inspection by the Employer or the Supervisor before the defects date, without requiring any inspection not ordinarily carried out by the Employer or the Supervisor during that period.</p> <p>If the Employer or the Supervisor do undertake any inspection over and above the reasonable inspection, this does not place a</p>

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		greater responsibility on the Employer or the Supervisor to have discovered the Defect.
Z	The Additional conditions of contract are	
Z1.1	Interpretation of the law	Add to core clause 12.3: Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the Project Manager, the Supervisor, or the Adjudicator does not constitute a waiver of rights and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.
Z2.1	Providing the Works	Delete core clause 20.1 and replace with: The Contractor provides the works in accordance with the Works Information and warrants that the results of the Works, when complete, shall be fit for their intended purpose.
Z3.1	Other responsibilities	Add at the end of core clause 27: The Contractor shall have satisfied himself, prior to the Contract Date, as to the completeness, sufficiency and accuracy of all information and drawings provided to him as at the Contract Date.
Z3.2	Other responsibilities	The Contractor shall be responsible for the correct setting out of the Works in accordance with the original points, lines and levels stated in the Works Information or notified by the Project Manager, Supervisor or the Employer. Any errors in the positioning of the Works shall be rectified by the Contractor at the Contractor's own costs.
Z4.1	Extending the defects date	If the Employer cannot use the works due to a Defect, which arises after Completion and before the defects date, the defects date is delayed by a period equal to that during which the Employer, due to a Defect, is unable to use the works.

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Z4.2	Extending the defects date	If part of the works is replaced due to a Defect arising after Completion and before the defects date, the defects date for the part of the works which is replaced is delayed by a period equal to that between Completion and the date by when the part has been replaced.
Z4.3	Extending the defects date	The Project Manager notifies the Contractor of the change to a defect date when the delay occurs. The period between Completion and an extended defects date does not exceed twice the period between Completion and the defects date stated in the Contract Data.
Z5.1	Termination	Add to core clause 91.1, at the second main bullet, fifth sub-bullet point, after the words “assets or”: “business rescue proceedings are initiated or steps are taken to initiate business rescue proceedings”.
Z6.1	Performance Bond	Amend the first sentence of clause X13.1 to: The Contractor gives the Employer an unconditional, on-demand performance bond, provided by a bank which the Project Manager and the Employer have accepted, for the amount stated in the Contract Data and in the form set out in Annexure C.ii of this Contract Data.
Z6.2	Performance Bond	Add Option X13.2: The Contractor ensures that the performance bond is valid and enforceable until the end of the contract period. If the terms of the performance bond specify its expiry date and the end of the contract period does not coincide with such expiry date, four weeks prior to the said expiry date, the Contractor extends the validity of the performance bond until the end of the contract period. If the Contractor fails to so extend the validity of the performance bond, the Employer may

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		claim the full amount of the performance bond and retain the proceeds as cash security.
Z7.1	Limitation of liability	Insert Option X18.6: The Employer's liability to the Contractor for the Contractor's indirect or consequential loss is limited to R0.00.
Z7.2	Limitation of liability	Any proceeds received from any insurances or any proceeds which would have been received from any insurances but for the conduct of the Contractor shall be excluded from the calculation of the limitations of liability listed in the contract.
Z8.1	Cession, delegation and assignment	The Contractor shall not cede, delegate or assign any of its rights or obligations to any person without the written consent of the Employer, which consent shall not be unreasonably withheld. This clause shall be binding on the liquidator / business rescue practitioner / trustee (whether provisional or not) of the Contractor.
Z8.2	Cession, delegation and assignment	The Employer may cede and delegate its rights and obligations under this contract to any person or entity.
Z9.1	Joint and several liability	If the Contractor constitutes a joint venture, consortium or other unincorporated grouping of two or more persons, these persons are deemed to be jointly and severally liable to the Employer for the performance of the Contract.
Z9.2	Joint and several liability	The Contractor shall, within 1 week of the Contract Date, notify the Project Manager and the Employer of the key person who has the authority to bind the Contractor on their behalf.
Z9.3	Joint and several liability	The Contractor does not materially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without prior written consent of the Employer.

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Z10.1	Ethics	The Contractor undertakes not to give any offer, payment, consideration, or benefit of any kind, which constitutes or could be construed as an illegal or corrupt practice, either directly or indirectly, as an inducement or reward for the award or in execution of this contract, and to comply with applicable anti-corruption and anti-money laundering laws.
Z10.2	Ethics	The Contractor's breach of this clause constitutes grounds for terminating the Contractor's obligation to Provide the Works or taking any other action as appropriate against the Contractor (including civil or criminal action).
Z10.3	Ethics	If the Contractor is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices in connection with the contract, the Employer may terminate the contract in accordance with core clause 92.2. The amount due on termination is A1.
Z11.1	Confidentiality	All information obtained in terms of this contract or arising from the implementation of this contract shall be treated as confidential by the Contractor and shall not be used or divulged or published to any person not being a party to this contract, without the prior written consent of the Project Manager or the Employer, which consent shall not be unreasonably withheld.
Z11.2	Confidentiality	If the Contractor is uncertain about whether any such information is confidential, it is to be regarded as such until otherwise notified by the Project Manager.
Z11.3	Confidentiality	Sets out exceptions for disclosures to employees, disclosures required by law (with prior notice to Employer), and information already public or already in the Contractor's possession.
Z11.4	Confidentiality	The taking of images (whether photographs, video footage or

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		otherwise) of the works or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the Project Manager. All rights in and to all such images vests exclusively in the Employer.
Z11.5	Confidentiality	The Contractor ensures that all his Subcontractors abide by the undertakings in this clause.
Z12.1	Employer's Step-in rights	If the Contractor defaults by failing to comply with his obligations and fails to remedy such default within 2 weeks of notification by the Project Manager, the Employer may remedy the default himself or procure a third party to do so, at the Contractor's cost.
Z12.2	Employer's Step-in rights	The Contractor co-operates with the Employer and facilitates and permits the use of all required information, materials and other matter, and generally does all things required by the Project Manager to achieve this end.
Z13.1	Liens and Encumbrances	The Contractor keeps the Equipment used to Provide the Services free of all liens and other encumbrances at all times and procures that Subcontractors do the same vis-à-vis the Employer.
Z14.1	Intellectual Property	Defines IP rights as all patents, designs, copyrights, trade marks, trade names, trade secrets and other IP relating to the Works.
Z14.2	Intellectual Property	IP rights remain vested in the originator and shall not be used for any reason whatsoever other than carrying out the works.
Z14.3	Intellectual Property	The Contractor gives the Employer an irrevocable, transferrable, non-exclusive, royalty-free licence to use and copy all IP related to the works for the purposes of constructing, repairing, demolishing, operating and maintaining the works.
Z14.4	Intellectual Property	The written approval of the Contractor is to be obtained before

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		the Contractor's IP is made available to any third party; the Employer secures confidentiality undertakings from such third parties.
Z14.5	Intellectual Property	The Contractor indemnifies and holds the Employer harmless against claims alleging infringement of IP arising from the Contractor's design, manufacture, construction or execution of the Works, the use of the Contractor's Equipment, or the proper use of the Works.
Z14.6	Intellectual Property	The Employer assists in contesting any such claim at the Contractor's request and cost; the Contractor may conduct negotiations and any litigation or arbitration which may arise.
Z16.1	Dispute resolution – Appointment of the Adjudicator	An Adjudicator is appointed when a dispute arises, from the Panel of Adjudicators. The referring party nominates an Adjudicator; if rejected, the deadlock is referred to the Association of Arbitrators, who appoints an Adjudicator from the Panel. The Parties appoint the Adjudicator under the NEC3 Adjudicator's Contract, April 2013. Panel of Adjudicators: to be inserted.
Z16.2	Dispute resolution – Appointment of the Arbitrator	An Arbitrator is appointed when a dispute arises from the Panel of Arbitrators. The referring party nominates an Arbitrator; if rejected, the deadlock is referred to the Association of Arbitrators, who appoints an Arbitrator from the Panel. Panel of Arbitrators: to be inserted.
Z17.1	Notification of a compensation event	Delete "eight weeks" in clause 61.3 and replace with "four weeks". Delete the words "unless the event arises from the Project Manager or the Supervisor giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption."

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Z18.1	BBBEE Certificate	The Contractor shall be expected to annually present a compliant BEE Certificate. Failure to adhere to these requirements shall be considered a material breach of the conditions of this Contract, the sanction for which may be a cancellation of this Contract.
Z19.1	Communication	Add Core Clauses 14.5 and 14.6 to read as follows: The Project Manager requires the written consent of the Employer if an action will result in a change to the design, scope, and Works Information that is 5% or more.
Z19.2	Communication	The Project Manager requires the written consent of the Employer if an action will result in the Completion Date being extended by more than 30 days.
Z20.1	Delegation	As part of this contract the Contractor acknowledges that it (mandatory) is an employer in its own right with duties as prescribed in the Occupational Health and Safety Act No 85 of 1993 as amended and agrees to ensure that all work being performed, or Equipment, Plant and Materials being used, are in accordance with the provisions of the said Act, and in particular with regard to the Construction Regulations.

PART C1.2B – CONTRACT DATA (PART TWO – DATA PROVIDED BY THE CONTRACTOR)

10.1	The Contractor is (Name):	To be completed by the Contractor.
	Address:	To be completed by the Contractor
	Telephone No.	To be completed by the Contractor
	Fax No.	To be completed by the Contractor

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11.2(20)	The working areas are	Only the Site Area. See C4 'Site Information'.
24.1	The Contractor's Key people are	CV's to be appended to Tender Schedule.
	Key person 1	Name: Job: Responsibility: Qualifications: Experience:
	Key person 2	Name: Job: Responsibility: Qualifications: Experience:
	Key person 3	Name: Job: Responsibility: Qualifications: Experience:
	Key person 4	Name: Job: Responsibility: Qualifications: Experience:
	Key person 5	Name: Job: Responsibility: Qualifications: Experience:

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Key person 6	Name: Job: Responsibility: Qualifications: Experience:
Key person 7	Name: Job: Responsibility: Qualifications: Experience:
Key person 8	Name: Job: Responsibility: Qualifications: Experience:
11.2(3) The completion date is	24 months after the starting date or less, depending on the Contractor's tender programme.
11.2(14) The following matters will be included in the Risk Register	See Part C3 Works Information section of this contract
11.2(19) The Works Information is in	See Part C3 Works Information section of this contract
31.1 The programme identified in the	Programme schedule as per tender submission.