



## NEC3 Engineering & Construction Contract

Between **NATIONAL TRANSMISSION COMPANY SOUTH AFRICA SOC LIMITED (NTCSA)**  
(Reg No. 2021/539129/30)

and **[Insert at award stage]**  
(Reg No. \_\_\_\_\_ )

for **Design, Supply, Delivery, Installation and Commissioning of MSAP Equipment on an as and when required basis for a period of Five (5) years.**

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**CONTRACT No. [Insert at award stage]**

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## Part C1: Agreements & Contract Data

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[to be inserted from Returnable Documents at award stage]	
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# 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:

### **Design, Supply, Delivery, Installation and Commissioning of MSAP Equipment on an as and when required basis for a period of Five (5) years.**

The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto and by submitting this Offer has accepted the Conditions of Tender.

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.

Options A	The offered total of the Prices exclusive of VAT is	<b>Not Applicable – as and when required basis</b>
	Sub total	<b>Not Applicable – as and when required basis</b>
	Value Added Tax @ 15% is	<b>Not Applicable – as and when required basis</b>
	The offered total of the amount due inclusive of VAT is <sup>1</sup>	<b>Not Applicable – as and when required basis</b>
	(in words) <b>Not Applicable – as and when required basis.</b>	

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 (if applicable)

Not applicable

<sup>1</sup> This total is required by the *Employer* for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*.

**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 signed between them 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**

Name & signature of witness \_\_\_\_\_  
*(Insert name and address of organisation)*

Date \_\_\_\_\_

Note: If a tenderer wishes to submit alternative tenders, use another copy of this Form of Offer and Acceptance.

**Schedule of Deviations to be completed by the Employer prior to contract award**

Note:

1. 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	[•]	[•]

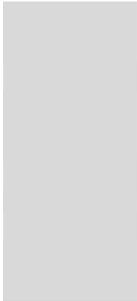
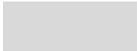
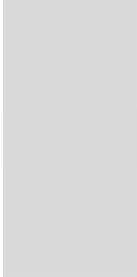
By the duly authorised representatives signing this Schedule of Deviations below, the Employer and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, 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.

	<b>For the tenderer:</b>	<b>For the Employer</b>
Signature	_____	_____
Name	_____	_____
Capacity	_____	Senior Manager Telecommunications - System Operator
On behalf of	<i>(Insert name and address of organisation)</i>	<i>(Insert name and address of organisation)</i>
Name & signature of witness	_____	_____
Date	_____	_____

# C1.2 ECC3 Contract Data

## Part one - Data provided by the *Employer*

Clause	Statement	Data
1	<b>General</b>	
	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>X7: Delay damages</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>Z: <i>Additional conditions of contract</i></b>
	of the NEC3 Engineering and Construction Contract, April 2013 (ECC3)	
10.1	The <i>Employer</i> is (Name):	<b>NTCSA (reg no: 2021/539129/30)a state owned company incorporated in terms of the company laws of the Republic of South Africa</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
10.1	The <i>Project Manager</i> is: (Name)	<b>To be advised at task order stage/SAP Purchase Order</b>

10.1	The <i>Supervisor</i> is: (Name)	To be advised at task order stage/SAP Purchase Order
11.2(13)	The <i>works</i> are	<b>Design, Supply, Delivery, Installation and Commissioning of MSAP Equipment on an as and when required basis for a period of Five (5) years.</b>
11.2(14)	The following matters will be included in the Risk Register	<b>Management of Equipment Delivery and Installation Process. Management of the Installation Standards. Management of the Design Standards. Management of SHEQ processes.</b>
11.2(15)	The <i>boundaries of the site</i> are	<b>National</b>
11.2(16)	The Site Information is in	<b>Part 4: Site Information</b>
11.2(19)	The Works Information is in	<b>Part 3: Scope of Work and all documents and drawings to which it makes reference.</b>
12.2	The <i>law of the contract</i> is the law of	<b>the Republic 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>Two (2) weeks</b>
<b>2</b>	<b>The <i>Contractor's</i> main responsibilities</b>	<b>Data required by this section of the core clauses is provided by the <i>Contractor</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.</b>
<b>3</b>	<b>Time</b>	
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	<b>Five (5) years from the start date of the contract or as indicated on each individual task order / SAP purchase order in accordance with the delivery lead time / SLA response time.</b>  <b><i>The contract will expire either at the end of the contract period or when the maximum cumulative purchase order value is reached, whichever comes first.</i></b>

	Delivery Lead Time	<b>8 Weeks with a forecast 12 Weeks without a forecast.</b>
	Delivery to Simmerpan / Incoterm?	<b>Simmerpan or any other designated sites specified in the task order.</b>
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<b>To be advised at task order stage/SAP Purchase order</b>
30.1	The <i>access dates</i> are:	<b>To be advised at task order stage/ SAP Purchase order</b>
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	<b>Two (2) weeks of the Contract Date.</b>
31.2	The <i>starting date</i> is	<b>TBC</b>
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	<b>Four (4) weeks.</b>
35.1	The <i>Employer</i> is not willing to take over the <i>works</i> before the Completion Date.	<b>Completion date as per task order/SAP Purchase Order.</b>
<b>4</b>	<b>Testing and Defects</b>	
42.2	The <i>defects date</i> is	<b>Fifty two (52) weeks from the date of Completion of section of works (each task order) and hand over to the <i>Employer</i> or 18 months from the notification that the section of works (per task order) is ready for handover</b>
43.2	The <i>defect correction period</i> is	<b>Four (4) weeks</b>
<b>5</b>	<b>Payment</b>	
50.1	The <i>assessment interval</i> is	<b>On the last 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>Sixty (60) days for Orders placed for values above R50 Million. Thirty (30) days for Orders placed for values below R50 Million paid as follows:  100% Payment on completion of an activity as per the task order/SAP purchase order. Payment will be done on presentation of a valid and acceptable invoice at the Employer (Accounts Payable)</b>
51.4	The <i>interest rate</i> is	<b>Zero%</b>
<b>6</b>	<b>Compensation events</b>	
<b>7</b>	<b>Title</b>	<b>Ownership in all equipment, goods, etc which are required for the Works, but do not form part of the Works shall remain the full property of the Contractor.</b>

<b>8</b>	<b>Risks and insurance</b>			
<b>9</b>	<b>Termination</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.		
<b>10</b>	<b>Data for main Option clause</b>			
<b>B</b>	<b>Priced contract with bill of quantities</b>			
<b>11</b>	<b>Data for Option W1</b>			
W1.1	The <i>Adjudicator</i> is	Will be appointed if or when the need arises.		
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the London Institution of Civil Engineers. (See <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ) or its successor body.		
W1.4(2)	The <i>tribunal</i> is:	arbitration.		
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.		
	The place where arbitration is to be held is	South Africa		
	The person or organisation who will choose an arbitrator	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.		
	- if the Parties cannot agree a choice or			
	- if the arbitration procedure does not state who selects an arbitrator, is			
<b>12</b>	<b>Data for secondary Option clauses</b>			
<b>X1</b>	<b>Price adjustment for inflation</b>			
X1.1(a)	The <i>base date</i> for indices is	The base date index shall be one month prior to date of tender.		
X1.1(c)	The proportions used to calculate the Price Adjustment Factor are:	Proportion	Linked to index	Index prepared
	CPA will be applicable 16 months from tender closing date. Please refer to the attached Excel Pricing Schedule named Annexure: AB for population of Contract Price Adjustment in full breakdown.			
<b>X2</b>	<b>Changes in the law</b>	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.		
<b>X3</b>	<b>Multiple currencies</b>			
X3.1	The <i>Employer</i> will pay for these items or activities in the currencies stated	Items & activities		Maximum payment in

		Other currency	other currency
	<p>Please refer to the attached Excel Pricing Schedule named Annexure: AB for population of Currencies in full breakdown.</p>		
X3.1	<p>The <i>exchange rates</i> are those published in SA Reserve Bank] on [•] (date)</p> <p>The items &amp; activities will be paid in the other currency</p> <ul style="list-style-type: none"> <li>- to a foreign Bank account nominated by the Contractor</li> <li>- to a valid SARB approved CFC account in South Africa</li> <li>- in accordance with an alternative payment method agreed with the Employer before the Contract Date.</li> </ul> <p>(select one of the three methods as agreed with successful tenderer and delete the others and this note)</p>		
<b>X7</b>	<b>Delay damages</b>		
X7.1	<p>Delay damages for Completion of the whole of the <i>works</i> are</p>	<p>0.5% per week to a maximum of 15% of individual task order/SAP Purchase Order issued, and so for the right to terminate in the event of expiry of such period shall be the sole and exclusive remedy of the Employer in such event</p>	
X13.1	<p>The amount of the performance bond is</p>	R[•].	
<b>X15</b>	<b>Limitation of the Contractor's liability for his design to reasonable skill &amp; care</b>	<p>There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.</p>	
<b>X16</b>	<b>Retention</b>		
X16.1	<p>The <i>retention free amount</i> is</p> <p>The <i>retention percentage</i> is</p>	<p>Not applicable</p> <p>10% of each individual task order issued and to be paid back to the supplier after 52 weeks</p>	
<b>X17</b>	<b>Low performance damages</b>		
X17.1	<p>The amounts for low performance damages are:</p>	<p>On page 19 of the Data by Employer (following the Z clauses)</p>	
<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:	<b>R0.0 (zero Rand)</b>
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:	<b>the amount of the deductibles relevant to the event</b>
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	<b>The greater of the total of the Prices at the Contract Date and the amounts excluded and unrecoverable from the <i>Employer's</i> assets policy for correcting the Defect (other than the resulting physical damage which is not excluded) plus the applicable deductible as at contract date.</b>
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:	<p><b>the total of the Prices other than for the additional excluded matters.</b></p> <p><b>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</b></p> <p><b>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</b></p> <ul style="list-style-type: none"> <li>• <b>Defects due to his design which arise before the Defects Certificate is issued,</b></li> <li>• <b>Defects due to manufacture and fabrication outside the Site,</b></li> <li>• <b>loss of or damage to property (other than the <i>works</i>, Plant and Materials),</b></li> <li>• <b>death of or injury to a person and</b></li> <li>• <b>infringement of an intellectual property right.</b></li> </ul>
X18.5	The <i>end of liability date</i> is	<p><b>(i)One [1] year after the <i>defects date</i> for latent Defects and</b></p> <p><b>(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.</b></p> <p><b>A latent Defect is a Defect which would not have been discovered on reasonable inspection by the <i>Employer</i> or the <i>Supervisor</i> before the <i>defects date</i>, without requiring any inspection not ordinarily carried out by the <i>Employer</i> or the <i>Supervisor</i> during that period. If the <i>Employer</i> or the <i>Supervisor</i> do undertake any inspection over and above the reasonable inspection, this does not place a greater responsibility on the <i>Employer</i> or the <i>Supervisor</i> to have discovered the Defect.</b></p>

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**Z**      **The *Additional conditions of contract* are**      **Z1 to Z15 always apply.**

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**Z1**      **Cession delegation and assignment**

- Z1.1      The *Contractor* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Z1.2      Notwithstanding the above, the *Employer* may on written notice to the *Contractor* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

**Z2**      **Joint ventures**

- Z2.1      If the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract.
- Z2.2      Unless already notified to the *Employer*, the persons or organisations notify the *Project Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf.
- Z2.3      The *Contractor* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Contractor* in writing.

**Z3**      **Change of Broad Based Black Economic Empowerment (B-BBEE) status**

- Z3.1      Where a change in the *Contractor's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor's* B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change.
- Z3.2      The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Project Manager* within thirty days of the notification or as otherwise instructed by the *Project Manager*.
- Z3.3      Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor's* obligation to Provide the Works.
- Z3.4      Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

**Z4**      **Confidentiality**

- Z4.1      The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.

- Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Project Manager*.
- Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or 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*.
- Z4.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

**Z5 Waiver and estoppel: Add to core clause 12.3:**

- Z5.1 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.

**Z6 Health, safety and the environment: Add to core clause 27.4**

- Z6.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *works*. Without limitation the *Contractor*:
- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Site;
  - warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of *works*; and
  - undertakes, in and about the execution of the *works*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.
- Z6.2 The *Contractor*, in and about the execution of the *works*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

**Z7 Provision of a Tax Invoice and interest. Add to core clause 51**

- Z7.1 Within one week of receiving a payment certificate from the *Project Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.

Z7.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z7.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

**Z8 Notifying compensation events**

Z8.1 Delete from the last sentence in core clause 61.3, "unless the *Project Manager* should have notified the event to the *Contractor* but did not".

**Z9 Employer's limitation of liability**

Z9.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z9.2 The *Contractor's* entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the *Employer's* liability under the indemnity is limited.

**Z10 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":**

Z10.1 or had a business rescue order granted against it.

**Z11 Addition to secondary Option X7 Delay damages (if applicable in this contract)**

Z11.1 If the amount due for the *Contractor's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Contractor's* obligation to Provide the Works using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

**Z12 Ethics**

For the purposes of this Z-clause, the following definitions apply:

**Affected Party** means, as the context requires, any party, irrespective of whether it is the *Contractor* or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,

**Coercive Action** means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,

**Collusive Action** means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,

**Committing Party** means, as the context requires, the *Contractor*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractor or the Subcontractor's employees,

**Corrupt Action** means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,

**Fraudulent Action** means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,

**Obstructive Action** means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and

**Prohibited Action** means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

Z12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z12.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Services for this reason.

Z12.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.

Z12.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

**Z13 Insurance**

**Z 13.1 Replace core clause 84 with the following:**

**Insurance cover 84**

**84.1** When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.

**84.2** The *Contractor* provides the insurances stated in the Insurance Table A.

**84.3** The insurances provide cover for events which are at the *Contractor's* risk from the *starting date* until the earlier of Completion and the date of the termination certificate.

**INSURANCE TABLE A**

<b>Insurance against</b>	<b>Minimum amount of cover or minimum limit of indemnity</b>
Loss of or damage to the <i>works</i> , Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurar  The <i>Employer's</i> policy deductible, at Contract Date, where covered b the <i>Employer's</i> insurance
Loss of or damage to Equipment	The replacement cost
Liability for loss of or damage to property (except the <i>works</i> , Plant and Materials and Equipment) and liability	<b>Loss of or damage to property</b> <u><i>Employer's</i> property</u>

<p>for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) caused by activity in connection with this contract</p>	<p>The replacement cost where not covered by the <i>Employer's</i> insurance</p> <p>The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance</p> <p><u>Other property</u> The replacement cost</p> <p><b><u>Bodily injury to or death of a person</u></b> The amount required by applicable law</p>
<p>Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract</p>	<p>The amount required by the applicable law</p>

**Z 13.2**

**Replace core clause 87 with the following:**

The *Employer* provides the insurances stated in the Insurance Table B.

**INSURANCE TABLE B**

<p><b>Insurance against or name of policy</b></p>	<p><b>Minimum amount of cover or minimum of indemnity</b></p>
<p>Assets All Risk</p>	<p>Per the insurance policy document</p>
<p>Contract Works insurance</p>	<p>Per the insurance policy document</p>
<p>Environmental Liability</p>	<p>Per the insurance policy document</p>
<p>General and Public Liability</p>	<p>Per the insurance policy document</p>
<p>Transportation (Marine)</p>	<p>Per the insurance policy document</p>
<p>Motor Fleet and Mobile Plant</p>	<p>Per the insurance policy document</p>
<p>Terrorism</p>	<p>Per the insurance policy document</p>
<p>Cyber Liability</p>	<p>Per the insurance policy document</p>
<p>Nuclear Material Damage and Business Interruption</p>	<p>Per the insurance policy document</p>
<p>Nuclear Material Damage Terrorism</p>	<p>Per the insurance policy document</p>

**Z14 Nuclear Liability**

Z14.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.

Z14.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

Z14.3 Subject to clause Z14.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to

the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

Z14.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.

Z14.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

## **Z15 Asbestos**

For the purposes of this Z-clause, the following definitions apply:

<b>AAIA</b>	means approved asbestos inspection authority.
<b>ACM</b>	means asbestos containing materials.
<b>AL</b>	means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
<b>Ambient Air</b>	means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
<b>Compliance Monitoring</b>	means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
<b>OEL</b>	means occupational exposure limit.
<b>Parallel Measurements</b>	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
<b>Safe Levels</b>	means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
<b>Standard</b>	means the <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
<b>SANAS</b>	means the South African National Accreditation System.
<b>TWA</b>	means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

Z15.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.

- Z15.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z15.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z15.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z15.5 The *Contractor's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z15.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

## Low Performance Damages Table

<b>Clause</b> <b>X17</b>	<b>Item</b>	<b>Description of noncompliance to employers' requirements</b>	<b>Damages payable by the contractor to the employer</b>
X17.1.1	Response time for design services	Inability of the contractor to provide design as per agreed project timelines.	5% of Task / Purchase Order value
X17.1.2	Response times for supply and delivery services	Inability of the contractor to supply and deliver equipment/material as per agreed project timelines.	10% of Task / Purchase Order value
X17.1.3	Response times for installation and commissioning services	Inability of the contractor to install and commission equipment/material as per agreed project timelines.	2% of Task / Purchase Order value

# C1.2 Contract Data

## Part two - Data provided by the *Contractor*

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(3)	The <i>completion date</i> for the whole of the <i>works</i> is	
11.2(14)	The following matters will be included in the Risk Register	
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	<b>Rates based Contract</b>
<b>B</b>	<b>Priced contract with bill of quantities</b>	<b>Refer to the Pricing Schedule within the tender advert.</b>

## C1.3 Forms of Securities

### Pro formas for Bonds & Guarantees

For use with the NEC3 Engineering & Construction Contract

**[Note to contract compiler:**

**Once it has been decided which securities are required for this contract delete from this file the ones not required, revise the notes below accordingly and delete this note.]**

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

Option X4: Parent company guarantee  
Option X13: Performance Bond

Each of these secondary Options requires a bond or guarantee “in the form set out in the Works Information”. Pro forma documents for these bonds and guarantees are provided here for convenience but are to be treated as part of the Works Information.

Option X16: Retention (not used with Option F)

The *Contractor* may provide a Retention Money Guarantee in the form stated here. When the *Employer* receives and accepts a Retention Money Guarantee exactly in the form stated he will instruct the *Project Manager* not to assess any amount be retained in terms of secondary Option X16.

The *Contractor* shall guarantee his ASGI-SA Obligations by providing the *Employer* with an ASGI-SA Guarantee in the form provided here.

**[Note to contract compiler: If there are no ASGI-SA Obligations in this contract, delete the above statement]**

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.

**Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
Sandton  
Johannesburg**

Date:

Dear Sirs,

***Parent Company Guarantee for Contract No***

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

**Eskom Holdings SOC Ltd**

(the *Employer*) and

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

(the *Contractor*), for

**{Insert details of the works from the Contract Data}**

(the *works*).

I/We the undersigned

on behalf of the *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 High 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 – Demand Guarantee (for use with Option X13)**  
*(to be reproduced exactly as shown below on the letterhead of the Contractor's Parent Company)*

**Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
Sandton  
Johannesburg**

Date:

Dear Sirs

Reference No. [●] *[Drafting Note: Bank reference number to be inserted]*

**Performance Bond – Demand Guarantee:** *[Drafting Note: Name of Contractor to be inserted]*

Project [ ] Contract Reference: ..... *[Drafting Note: Contractor contract reference number to be inserted]*

In this Guarantee the following words and expressions shall have the following meanings:-

“Bank” - means [●], [●] Branch, (Registration No. [●]); *[Drafting Note: Name of Bank to be inserted]*

“Bank’s Address” - means [●]; *[Drafting Note: Bank’s physical address to be inserted]*

“Contract” – means the written agreement relating to the Project, entered into between Eskom and the Contractor, on or about the [●] day of [●] 200[●] (Contract Reference No. [.] as amended, varied, restated, novated or substituted from time to time; *[Drafting Note: Signature Date and Contract reference number to be inserted]*

“Contractor” – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. *[Drafting Note: Name and details of Contractor to be inserted]*

“Eskom” - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30].

“Expiry Date” - means the date on which the Defects Certificate is issued in terms of the Contract.

“Guaranteed Sum” - means the sum of R [●] ([●] Rand);

“Project” - means [insert if applicable.].

At the instance of the Contractor, we the undersigned \_\_\_\_\_ and \_\_\_\_\_, in our respective capacities as \_\_\_\_\_ and \_\_\_\_\_ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of Eskom, as security for the proper performance by the Contractor of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to Eskom, on written demand from Eskom received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.

A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:

be signed on behalf of Eskom by a Group Executive, Divisional Executive, Senior General Manager, General Manager or its delegate;

state the amount claimed (“the Demand Amount”);

state that the Demand Amount is payable to Eskom in the circumstances contemplated in the Contract.

Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:

is and shall be absolute provided demand is made in terms of this bond in all circumstances; and

is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.

The Bank's obligations in terms of this Guarantee:

shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and

shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between Eskom and the Contractor.

Eskom shall be entitled to arrange its affairs with the Contractor in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the Contractor or any variation under or to the Contract.

Should Eskom cede its rights against the Contractor to a third party where such cession is permitted under the Contract, then Eskom shall be entitled to cede to such third party the rights of Eskom under this Guarantee on written notification to the Bank of such cession.

This Guarantee:

shall expire on the Expiry Date until which time it is irrevocable;

is, save as provided for in 0 above, personal to Eskom and is neither negotiable nor transferable;

shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;

shall be regarded as a liquid document for the purpose of obtaining a court order; and

shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.

Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.

The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at \_\_\_\_\_

Date \_\_\_\_\_

For and behalf of the Bank

Bank Signatory: \_\_\_\_\_

Bank Signatory: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Bank's seal or stamp

**Pro forma Advanced Payment Bond (for use with Option X14)**  
(to be reproduced exactly as shown below on the letterhead of the Bank providing the Bond)

**Eskom Holdings Limited  
Megawatt Park  
Maxwell Drive  
Sandton  
Johannesburg**

Date:

Dear Sirs,

**Advanced Payment Bond for Contract No.**

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

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

I/We the undersigned

on behalf of the Surety

of physical address

and duly authorised thereto do hereby bind ourselves as Surety and co-principal debtors in solidum for the due and 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" "Revision of Accounts", "Cession of Action" and any 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.

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

Signature(s)

Name(s) (printed)

Position in Surety company

Signature of Witness(s)

Name(s) (printed)


**Pro forma Retention Money Guarantee (may be used when Option X16 applies)**  
(to be reproduced exactly as shown below on the letterhead of the Bank providing the Guarantee)

**Eskom Holdings SOC Limited  
Megawatt Park  
Maxwell Drive  
Sandton  
Johannesburg**

Date:

Dear Sirs

Reference No. [●] [Drafting Note: Bank reference number to be inserted]

**Retention Money Guarantee:** [Drafting Note: Name of Contractor to be inserted]

Project [ ] : Contract Reference: [Drafting Note: Contractor contract reference number to be inserted]

In this Guarantee the following words and expressions shall have the following meanings:-

“Bank” - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]

“Bank’s Address” - means [●]; [Drafting Note: Bank’s physical address to be inserted]

“Contract” – means the written agreement relating to the Project, entered into between Eskom and the Contractor, on or about the [●] day of [●] 200[●] (Contract Reference No. .... as amended, varied, restated, novated or substituted from time to time; [Drafting Note: Signature Date and Contract reference number to be inserted])

“Contractor” – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of Contractor to be inserted]

“Eskom” - means Eskom Holdings SOC Limited, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30

“Expiry Date” - means the date on which the Defects Certificate is issued in terms of the Contract.

“Guaranteed Sum” - means the sum of R [●] ([●] Rand); [Drafting Note: Insert amount of Retention Money Guarantee.].

“Project” - means the.....

At the instance of the Contractor, we the undersigned \_\_\_\_\_ and \_\_\_\_\_, in our respective capacities as \_\_\_\_\_ and \_\_\_\_\_ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of Eskom, as security for the proper performance by the Contractor of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to Eskom, on written demand from Eskom received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.

A demand for payment under this guarantee shall be made in writing at the Bank’s address and shall:

be signed on behalf of Eskom by a director of Eskom or his authorised delegate.

state the amount claimed (“the Demand Amount”);

state that the Contractor has failed to carry out his obligation(s) to rectify certain defect(s) for which he is responsible under the Contract (and the nature of such defect(s)) alternatively that the Demand Amount is payable to Eskom in the circumstances contemplated in the Contract.

Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank’s obligation/s to make payment:

is and shall be absolute provided demand is made in terms of this bond in all circumstances; and

is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.

The Bank's obligations in terms of this Guarantee:

shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and

shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed by the fact that a dispute may exist between Eskom and the Contractor.

Eskom shall be entitled to arrange its affairs with the Contractor in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the Contractor or any variation under or to the Contract.

Should Eskom cede its rights against the Contractor to a third party where such cession is permitted under the Contract, then Eskom shall be entitled to cede to such third party the rights of Eskom under this Guarantee on written notification to the Bank of such cession.

This Guarantee:

shall expire on the Expiry Date until which time it is irrevocable;

is, save as provided for in 0 above, personal to Eskom and is neither negotiable nor transferable;

shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;

shall be regarded as a liquid document for the purpose of obtaining a court order; and

shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.

Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.

The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at \_\_\_\_\_

Date \_\_\_\_\_ Bank's seal or stamp

For and behalf of the Bank

Bank Signatory: \_\_\_\_\_

Bank Signatory: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

**Pro forma ASGI-SA Guarantee**

*(to be reproduced exactly as shown below on the letterhead of the Bank providing the Guarantee)*

**Eskom Holdings Limited  
Megawatt Park  
Maxwell Drive  
Sandton  
Johannesburg**

Date:

Dear Sirs

Reference No. [●] *[Drafting Note: Bank reference number to be inserted]*

**Pro-Forma ASGI-SA Guarantee:** *[Drafting Note: Name of Contractor to be inserted]*

Project [ ] Contract Reference: [●] *[Drafting Note: Contractor contract reference number to be inserted]*

1. In this Guarantee the following words and expressions shall have the following meanings:-
  - 1.1 "Bank" - means [●], [●] Branch, (Registration No. [●]); *[Drafting Note: Name of Bank to be inserted]*
  - 1.2 "Bank's Address" - means [●]; *[Drafting Note: Bank's physical address to be inserted]*
  - 1.3 "Contract" – means the written agreement relating to the Project, entered into between the *Employer* and the *Contractor*, on or about the [●] day of [●] 200[●] (Contract Reference No. [●] as amended, varied, restated, novated or substituted from time to time; *[Drafting Note: Signature Date and Contract reference number to be inserted]*)
  - 1.4 "*Contractor*" – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. *[Drafting Note: Name and details of Contractor to be inserted]*
  - 1.5 "*Contractor's ASGI-SA Obligations*" – means the *Contractor's ASGI-SA Obligations* under and as defined in the Contract.
  - 1.6 "*Employer*" - means Eskom Holdings Limited, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/06.
  - 1.7 "Expiry Date" - means the [●] day of [●] 200[●]; *[Drafting Note: anticipated date of issue of ASGI-SA Performance Certificate to be inserted.]*
  - 1.8 "Guaranteed Sum" - means the sum of R [●] ([●] Rand);
  - 1.9 "Project" – means the .....
2. At the instance of the *Contractor*, we the undersigned \_\_\_\_\_ and \_\_\_\_\_, in our respective capacities as \_\_\_\_\_ and \_\_\_\_\_ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of the *Employer*, as security for the proper performance by the *Contractor* of the *Contractor's ASGI-SA Obligations* and hereby undertake to pay to the *Employer*, on written demand from the *Employer* received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.
3. A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:
  - 3.1 state the amount claimed ("the Demand Amount");
  - 3.2 state that the Demand Amount is payable to the *Employer* in the circumstances contemplated in the Contract.
4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:

- 4.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
- 4.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
5. The Bank's obligations in terms of this Guarantee:
- 5.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
- 5.2 shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between the *Employer* and the *Contractor*.
6. The *Employer* shall be entitled to arrange its affairs with the *Contractor* in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the *Contractor* or any variation under or to the Contract.
7. Should the *Employer* cede its rights against the *Contractor* to a third party where such cession is permitted under the Contract, then the *Employer* shall be entitled to cede to such third party the rights of the *Employer* under this Guarantee on written notification to the Bank of such cession.
8. This Guarantee:
- 8.1 shall expire on the Expiry Date until which time it is irrevocable;
- 8.2 is, save as provided for in **0** above, personal to the *Employer* and is neither negotiable nor transferable;
- 8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
- 8.4 shall be regarded as a liquid document for the purpose of obtaining a court order; and
- 8.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the courts of the Republic of South Africa.
- 8.6 Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.
9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at \_\_\_\_\_

Date \_\_\_\_\_

For and behalf of the Bank

Bank Signatory: \_\_\_\_\_

Bank Signatory: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Bank's seal or stamp

## **PART 2: PRICING DATA**

### **ECC3 Option B**

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
C2.1	Pricing assumptions: Option B	3
C2.2	The <i>bill of quantities</i>	1

## C2.1 Pricing assumptions: Option B

### How work is priced and assessed for payment

Clause 11 in NEC3 Engineering and Construction Contract (ECC3) Option B states:

<b>Identified and defined terms</b>	11	
	11.2	(21) The Bill of Quantities is the <i>bill of quantities</i> as changed in accordance with this contract to accommodate implemented compensation events and for accepted quotations for acceleration.
		(28) The Price for Work Done to Date is the total of
		<ul style="list-style-type: none"><li>• the quantity of the work which the <i>Contractor</i> has completed for each item in the Bill of Quantities multiplied by the rate and</li><li>• a proportion of each lump sum which is the proportion of the work covered by the item which the <i>Contractor</i> has completed.</li></ul>
		Completed work is work without Defects which would either delay or be covered by immediately following work.
		(31) The Prices are the lump sums and the amounts obtained by multiplying the rates by the quantities for the items in the Bill of Quantities.

This confirms that Option B is a re-measurement contract and the bill comprises only items measured using quantities and rates or stated as lump sums. Value related items are not used. Time related items are items measured using rates where the rate is a unit of time. This is a rates-based contract. Quantities shall be provided on official task orders / SAP purchase orders issued, therefore, the works, goods and services are to be provided only in accordance with official task order / SAP purchase orders issued. No work is to commence without an official task orders / SAP purchase orders.

### Function of the Bill of Quantities

Clause 55.1 in Option B states, "Information in the Bill of Quantities is not Works Information or Site Information". This confirms that specifications and descriptions of the work or any constraints on how it is to be done are not included in the Bill, but in the Works Information. This is further confirmed by Clause 20.1 which states, "The *Contractor* Provides the Works in accordance with the Works Information". Hence the *Contractor* does **not** Provide the Works in accordance with the Bill of Quantities. The Bill of Quantities is only a pricing document.

### Guidance before pricing and measuring

Employers preparing tenders or contract documents, and tendering contractors are advised to consult the sections dealing with the bill of quantities in the NEC3 Engineering and Construction Contract Guidance Notes before preparing the *bill of quantities* or before entering rates and lump sums into the *bill*.

There is no general provision in Option B for payment for materials on Site before incorporation into the *works*. If secondary Option X14 Advanced payment has not been used then the tendering contractor may obtain the same effect by inserting appropriate items in the method related charges where the *method of measurement* allows, or alternatively making allowance in the rates of the *bill of quantities* for the financing of Plant and Materials until they are incorporated in the *works*.

When compensation events arise, the default position is that the Bill of Quantities is not used to calculate

the cost effect of the event. Defined Cost and the resulting Fee is used and Defined Cost includes all components of cost which the *Contractor* is likely to incur, including so called P & G items. Rates and lump sums from the Bill of Quantities, or from any other source, may be used instead of Defined Cost and the Fee only if the *Contractor* and *Project Manager* agree. If they are unable to agree, then Defined Cost plus Fee is used.

## Measurement and payment

### Symbols

The units of measurement described in the Bill of Quantities are metric units abbreviated as follows:

Abbreviation	Unit
%	percent
h	hour
ha	hectare
kg	kilogram
kl	kilolitre
km	kilometre
km-pass	kilometre-pass
kPa	kilopascal
kW	kilowatt
l	litre
m	metre
mm	millimetre
m <sup>2</sup>	square metre
m <sup>2</sup> -pass	square metre pass
m <sup>3</sup>	cubic metre
m <sup>3</sup> -km	cubic metre-kilometre
MN	meganewton
MN.m	meganewton-metre
MPa	megapascal
No.	number
sum	Lump sum
t	tonne (1000kg)

#### 4.2. General assumptions

- 4.2.1. Unless otherwise stated, items are measured net in accordance with the drawings, and no allowance has been made in the quantities for waste.
- 4.2.2. The Prices and rates stated for each item in the Bill of Quantities shall be treated as being fully inclusive of all work, risks, liabilities, obligations, overheads, profit and everything necessary as incurred or required by the Contractor in carrying out or providing that item.
- 4.2.3. An item against which no Price is entered will be treated as covered by other Prices or rates in the bill of quantities.
- 4.2.4. The quantities contained in the Bill of Quantities may not be final and do not necessarily represent the actual amount of work to be done. The quantities of work assessed and certified for payment by the Project Manager at each assessment date will be used for determining payments due.

**4.2.5. The short descriptions of the items of payment given in the bill of quantities are only for the purposes of identifying the items. Detail regarding the extent of the work entailed under each item is provided in the Works Information.**

# C2.2 the *bill of quantities*

Please refer to the attached Excel Pricing Schedule, Annexure: AB

## PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Works Information</i>	
C3.2	<i>Contractor's Works Information</i>	
	Total number of pages	

### **C3.1: Employer's works Information**

#### **Contents**

When the document is complete, insert a 'Table of Contents'. To do this go to: Insert, → Reference, → Index and tables → Table of Contents. Three levels and the title (but not the subtitle) may be shown if the formats used in this template are retained.

## Table of Contents

## Description of the works

### Executive overview

The contract is for the Supply, Delivery, Design, Installation and Commissioning of Multiservice Access Platform (MSAP) Equipment on an as and when required basis for a period of Five (5) years. The contract scope includes network design and application design services.

### Employer's objectives and purpose of the works

The purpose of the contract is to establish a network capable of fulfilling the *Employer's* business objectives which include supporting/carrying mission critical applications such as Teleprotection and Telecontrol and ensuring reliable operation of the power network. The built network shall be reliable, scalable, support legacy and future requirements and meet all performance requirements of power network applications

After installation the network shall be operated and maintained by the *Employer*

### Interpretation and terminology

The following abbreviations are used in this Works Information:

Abbreviation	Meaning given to the abbreviation
MSAP	Multi-Service Access Platform
TDM	Time Division Multiplexing
NMC	NTCSA Telecoms Network Management Centre
URS	User Requirement Specification
OEM	Original Equipment Manufacturer

**Management meetings**

Project progress meetings may be convened by the contractor on as/when required and will be chaired by the Employer (*Project Manager*) as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
<b>Project Progress Meeting</b> Address delivery and installation scheduling Address medium to high risk matters	As and when required	Simmerpan	Contractor and Employer representatives (Project Managers and Engineers)

The *Contractor* shall have liaison meetings (on agreed dates) with the *Employer* and the *Employer* will be represented by designated personnel from Project Management, Technology, Planning, Network Management Centre, Operations and Field Services and Procurement.

These meetings will be chaired by Technology and be held as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
<b>Contractor Meeting</b> Overall contract progress and feedback, technical matters arising, procurement and general issues.	As and when required	Simmerpan	<i>Contractor and Employer</i> representatives

The *Contractor* shall have quarterly executive meetings (on agreed dates) with the *Employer* and the *Employer* will be represented by Executives and Middle management.

These meetings will be chaired by the *Employer* and be held as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
<b>Contractor Executive Meeting</b> Address <i>Contractor</i> relations Address medium to high risk matters	As and when required	Simmerpan	<i>Contractor and Employer</i> representatives at executive/middle management.

Meetings of a specialist nature may be convened as specified elsewhere in this Works Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the *works*.

Records of these meetings shall be submitted to the *Project Manager* by the person convening the meeting within five days of the meeting.

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

### **Documentation control**

All contractual correspondence between *Contractor* and *Employer* shall be in the form of a properly compiled letter, dated and bearing the approved letterhead.

The *Employer* shall maintain a record of all contractual communications.

The *Employer* shall accept documents in Microsoft Office, ADOBE PDF or Visio formats. All electronic communications shall be in a format agreed to between the *Contractor* and *Employer*.

The *Contractor* shall comply with 240-135101235 NTCSA Telecommunications Documentation Template annexed to this Works Information for submission of all documentation (strategies, designs, procedures, processes, policies, protocols, philosophies and guidelines). All documents that shall become the property of the *Employer* shall comply with 240-135101235 NTCSA Telecommunications Documentation Template.

Technology roadmaps including product lifecycle information for specific items, forms part of the contract and any changes shall be communicated and approved by both parties.

### **Health and safety risk management**

In addition to the requirements of the laws governing health and safety, NTCSA may have some additional requirements particular to the service and the Affected Property for this contract. The text below provides for these being attached as an Annexure to this Service Information.

The Safety Risk Manager or his representative having jurisdiction over the service shall provide the relevant Occupational Health & Safety (OHS), Specification, HIRA, Evaluation criteria, Acknowledgement of OHS rules for incorporation into this Service Information. The OHS specification / scope shall be signed off by the Safety Risk Manager or his representative confirming that the applicable safety criteria have been taken into account.

The Commodity Manager / Buyer shall refer the tender to the Safety Risk Manager or his representative to evaluate against enquiry-specific safety criteria.

The Safety Risk Managers who will be responsible for the allocation of resources to assist P&SCM with the above processes are as follows:

System Operator: Telecommunications- Craig Pitt

The Contractor/Contractor shall comply with the health and safety requirements contained in the enquiry documents.

The scope of works will involve sites which form part of the *Employer's* substations or power stations, these sites may impose additional requirements. The *Contractor* shall cater for these requirements which will include, but will not be limited to, site specific induction and SHE documents/file.

### **Environmental constraints and management**

The Contractor/Contractor shall comply with the environmental criteria and constraints stated in the enquiry documents.

The contractor may be subjected to audit within the duration of the contract to verify compliance to the returnable documents.

### **Quality assurance requirements**

The Contractor shall possess ISO9001:2015 Certification.

The Contractor shall manage Documentation and Records in accordance with the requirements of ISO 9001:2015.

The Contractor shall comply with all Quality Assurance requirements, including the Inspection and Test Plan (ITP), Quality Control Plan (QCP), and the Contract/Project Quality Plan. These documents shall be customised by the Contractor to address all Quality Control and Quality Assurance deliverables specified in Sections 3.2, 3.3, 3.4 and 3.5 of the Scope of Work (240-135089195).

All relevant records and reports shall be submitted to the Employer as evidence of the successful fulfilment of the Quality Assurance requirements for each activity outlined in the MSAP Scope of Work.

The Contractor may be subject to audit during the term of the contract to verify compliance with the returnable documents.

### **Programming constraints**

The *Contractor* shall provide project schedules, progress reports and delivery schedules in Microsoft project format as and when required by the Project Manager.

### **Contractor's management, supervision and key people**

The *Contractor* must provide an organogram showing *Contractor's* people with contact details and lines of authority/communication.

### **Invoicing and payment**

Within one week of receiving a payment certificate from the *Project Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice showing the amount due for payment equal to that stated in the *Project Manager's* payment certificate.

The *Contractor* shall address the tax invoice to NTCSA SOC Ltd and include on each invoice the following information:

Name and address of the *Contractor* and the *Project Manager*.

The contract number and title.

*Contractor's* VAT registration number.

The *Employer's* VAT registration number 4740101508.

Description of service provided for each item invoiced based on the Price List.

Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT.

(add other as required)

Relevant proof of delivery and acceptances (with name, surname, cell number, site name) signed by the *Contractor* and *Employer's* representative.

Purchase Order number.

Add procedures for invoice submission and payment (e.g. electronic payment instructions)

### **Insurance provided by the Employer**

First read ECC3 Core Clause 87.1 and then add anything necessary for the management of insurance related issues such as a cross reference to where procedures for making claims can be found. Also provide contact details for persons capable of being able to answer any insurance related queries the *Contractor* may have, as well as to whom the information required by Marine Insurance may be addressed.

### **Contract change management**

Changes to the contract shall be approved by the relevant authority of the Employer.

### **Records of Defined Cost, payments & assessments of compensation events to be kept by the Contractor**

Records of Defined Cost, payments and assessments of compensation events are to be agreed upon and kept by both parties.

## **Engineering and the Contractor's design**

### **Employer's design**

The *Employer* shall provide the *Contractor* with all information required to complete network designs e.g. required performance specifications, underlying transmission medium performance, hop distances, etc.

The Contractor's design has to comply with the following standards.

1. 240-128505297 Multi-Service Access Network Equipment Specification.
2. 240-86458714 Generic Requirements Specifications for a telecommunications Network Management Solution.
3. 240-135089195 Generic Technical Requirements for Eskom Telecoms Contracts.
4. 240-132190480 Telecommunications Equipment Installation Standard.
5. ST\_240-76666863 Telecommunications Network Architecture Standard.
6. 240-60725641 Specification for Standard (19 Inch) Equipment Cabinets.
7. 559-1932824541- Occupational Health and Safety Specification
8. 240-170000602 Voice and Data Surge Protection cables and materials design guide rev 1
9. Supplier Quality Management Specification
10. Environmental Specification.
11. Annexure B: Acknowledgement form of NTCSA rules
12. Annexure C1 SHE tender Evaluation template.
13. HIRA
14. Form A 2018
15. Schedule of Compliance for 240-170000907\_Desktop.
16. Schedule of Compliance for 240-128505297 Multi-Service Access Network Equipment Specification
17. Schedule of Compliance for 240-86458714 Generic Requirements Specification for a Telecommunications Network Management Solution
18. Schedule of Compliance for 240-135089195 Generic Technical Requirements for Eskom Telecoms Contracts
19. 240-170000907 Technical evaluation criteria for MSAP
20. 240-170000913 Multi-Service Access Network Equipment Test Procedure
21. OEM equipment roadmap template
22. Supplier Tendered Equipment Declaration
23. Client Machines for Network Management System and Simulator addendum Rev 1
24. Schedule of Compliance for 240-170000907\_Mandatory.

The *Employer* shall verify and accept the network designs prior to implementation thereof. However, such inspection and acceptance of the designs shall not relieve the *Contractor* of their responsibility to meet all the network performance requirements, and it shall not prevent subsequent rejection of the design if it is found to perform below specification during commissioning and testing.

For each task order and prior to installation, the *Employer* shall travel to each site and compile a site survey report providing details of the availability of site-specific requirements for successful installations. However the *Employer* may request the *Contractor* to perform this work.

After the *Contractor* site visits and the site visit report has been issued to the *Employer*, the *Employer* shall provide any missing infrastructure and facilities not supplied with the equipment (e.g. DC supply) that are necessary for the completion of the site works as indicated in the *Contractor's* site survey report.

The *Employer* shall organise access to all sites for the *Contractor* as per the agreed programme.

### **Parts of the works which the Contractor is to design**

The *Contractor* shall design the overall structure of the new network, architecture and cut-over plans based on the functional URS submitted by the *Employer*. These designs shall be approved and signed off by the *Employer* prior to implementation.

### **Procedure for submission and acceptance of Contractor's design**

The design shall be submitted to the project manager for the relevant task order. The *Employer (engineer)* shall evaluate submitted design and support/reject the submission for the purpose of supplier presenting the design to the applicable technical governance committee. The *Employer* shall then notify the *Contractor* of support or alternatively provide reasons for not supporting the design for DRT presentation. After support all designs must be submitted to the Design Review Team (DRT) for technical acceptance, using the prescribed Engineering Design Report template. The supplier takes full accountability of the design and shall present the design at the DRT.

### **Other requirements of the Contractor's design**

*Contractor's* design shall take into account existing and future network migration plans as advised by the *Employer*. All designs produced by the contractor must optimised the use of existing infrastructures.eg: DC consumption, tower loading, cooling requirements, space constraints etc

### **Use of Contractor's design**

The *Contractor's* design may be used for other planning purposes (in other technology platforms) internal to the *Employer*.

### **Design of Equipment**

Designs must comply with the *Employer's* requirements listed under Employer's design section.

### **Equipment required to be included in the works**

The contractor will be required to provide all tools, software, testing equipment and work equipment required to complete work on site.

### **As-built drawings, operating manuals and maintenance schedules**

The *Contractor* shall provide an as-built document that is unique to each station in a project after installation, testing, commissioning and acceptance. This document shall provide wiring interconnection tables or drawings, dimensioned sketches of equipment layouts, equipment configurations and similar information. The contractor must submit all as-built drawings to the employer in Microsoft Visio format, using drawing templates to be provided by NTCSA, prior to sign-off for completion certificate. Commissioning test results shall also be placed in the as-built document. An additional copy of these documents shall be supplied to the *Employer* Project Manager on the project.

## **Procurement**

### **People**

#### **Minimum requirements of people employed on the Site**

The Contractor shall ensure that only qualified people will be allowed to work on plant. The employer shall be entitled to verify the qualifications of the key people. The Contractor must be made aware that access to certain sites will only be given after security clearance, which excludes the use of foreign nationals. It is the Contractor's sole responsibility to ensure all its employees have permits to perform work in the Republic of

South Africa. The *Contractor* must be made aware that access to certain sites will only be given after security clearance, which excludes the use of foreign nationals.

Objective criteria are ***applicable***.

**Please note that NTCSA may award the contract to a tenderer other than the highest scoring if objective criteria justify the award.**

The following objective criteria apply to the enquiry:

The inclusion of objective criteria in an enquiry is not mandatory but a condition for contract award, and if included, this must align with the requirements of the PPPFA [clause 2(1)(f)] and be clearly stated in the enquiry together with the consequence of such objective criteria (i.e., if the tenderer does not meet objective criteria; it may lead to the second-ranked tenderer being recommended for award).

**NIPP**

In line with DTI requirements on important content that are above \$5million, the National Industrial Participation Programme has to be applied in order to stimulate local manufacturing capability and job creation. International manufactures have to commit on a minimum thirty percent local participation programme through formalized DTI NIPP obligations agreements. Therefore, in line with NIPP requirements, once the contract is awarded, the international company has to complete SBD 5 form as an undertaking to DTI.

**Note:** The above NIPP obligation will apply only if the foreign portion is equivalent or more than the stipulated minimum threshold of \$5 million. Suppliers will be encouraged to indicate or declare how much local manufacturing / procurement spend amounts to in this transaction. In an event where the foreign content does not exceed the NIPP threshold of \$5 million, the normal SDL&I targets of skills development, Subcontracting and job creation will be applied.

OR

**2.3 Mandatory Subcontracting as condition of award**

<b>Continuation of Mandatory Requirements</b>			
	<b>YES</b>	<b>NO</b>	
<b>Is subcontracting applicable?</b>	<input checked="" type="checkbox"/>		

**Subcontracting**

Mandatory subcontracting on contracts above R30 million as a condition for contract award  
If feasible to subcontract for a contract above R30 million, NTCSA:

- a) must apply subcontracting to previously designated groups.
- b) must advertise the tender with a specific condition for contract award that the successful tenderer must subcontract a minimum of 30% of the value of the contract to:

- An EME or QSE which is at least 51% owned by black people.
- An EME or QSE which is at least 51% owned by black people who are youth.
- An EME or QSE which is at least 51% owned by black people who are women.
- An EME or QSE which is at least 51% owned by black people with Disabilities.
- An EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships.
- A cooperative which is at least 51% owned by black people.
- An EME or QSE which is at least 51% owned by black people who are military veterans.

Tender Returnable if the above element is a requirement.

Proof of a sub-contract agreement/s must be submitted.

CSD report of subcontractors

Sub-contractor/s B-BBEE certificate / sworn affidavit must be submitted.

Subcontracting, in this instance, will be treated as a condition for contract award. A supplier awarded a contract may not subcontract more than 25% of the value of the contract to any other entity that does not have an equal or higher B-BBEE status level of a contributor than the supplier concerned unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

**2. Local Procurement Content**

“Local Procurement Content” refers to value added in South Africa by South African resources. Where a single contract involves a combination of local and imported goods and/or services, the tender response must be separated into its components as per the Price Schedule included with the tender documents. Local procurement content is total spending minus the imported component.

Tenderers are required to submit their proposals in the table below.

Local Procurement Content	NTCSA target	Tenderer Proposal
	30%	

**Procurement spend on entities with a minimum 51% black ownership:**

The winning tenderer is encouraged to procure/spend on designated groups on the following paid invoices for both:

the indirect expenses (e.g. overheads) on goods and services supplied to the contractor/supplier by designated groups; and direct spend on goods and services supplied by the subcontractors for the execution of the scope of work.

Activities, as a proportion of the local procurement content, which may be subcontracted to designated black owned enterprises must be submitted in a table below.

Procurement from Designated Group	NTCSA Target	Tenderer Proposal
-----------------------------------	--------------	-------------------

Black Owned	4.0%	
Black Women Owned	3.0%	
Black Youth Owned	2.0%	
Black Persons with Disability	1.0%	

**Skills Development**

**Installation & Commissioning:**

Tenderers are required to propose against the following training initiatives.

Category	NTCSA's Target	Supplier proposal
On Job Training for Software Engineers / IT Technicians	20	

\* For every R10M spend skills must be developed to a maximum of 20 trainees

**Jobs.** Tenderers are required to submit proposals for the type and number of jobs that will be created and retained in South Africa as a direct result of being awarded a contract.

Type of Jobs to be created	Number of Jobs to be created

Type of Jobs to be retained	Number of Jobs to be retained

NTCSA will apply a penalty of 2.5% of the Contract Value for failure to meet SDL&I obligations. For the duration of the contract, NTCSA will retain 2.5% of every invoice (excluding VAT) as security for the fulfilment of all SDL&I Obligations. The retained amounts shall only be released to the Contractor upon:

Eskom receives the SDL&I progress report/s from the contractor.

Fulfilment of all SDL&I obligations by the contractor.

Submission of an approved compliance report by SDL&I Department.

**BBBEE and preferencing scheme**

**Transformation – BBBEE Improvement or Retention Plan**

Transformation remains an area of focus, where NTCSA continuously strives to align itself with national transformation imperatives to unlock growth, drive industrialization, create employment and contribute to skills development.

NTCSA encourages its suppliers to constantly strive to improve their B-BBEE rating. Whereas Tenderer/s will be allocated points in terms of a preference point system based on specific goals,

NTCSA also requests that tenderer/s submits their B-BBEE improvement or retention plan within 30 days of signing the contract.

Tenderer/s are therefore requested to indicate the extent to which they will maintain (only if the respondent is a Level 1) or may improve/maintain their B-BBEE status over the contract period if their B-BBEE status is level 2 or 3. Tenderer/s with a B-BBEE status level 4 at the time of contract award, shall migrate and achieve as a non-negotiable a milestone of B-BBEE Level 3 by the end of the first year of the contract and thereafter improve their B-BBEE status level or migrate by one level higher.

Tenderer/s with a B-BBEE recognition status of Level 5 to Level 8 or non-compliant at the time of contract award, shall migrate and achieve as a non-negotiable a milestone of Level 4 by the end of the first year of the contract and thereafter improve at least one B-BBEE Level higher of each year from the second year of the contract.

Tenderer/s are requested to submit their B-BBEE Improvement Plan as an essential document within 30 days of signing the contract.

**NB:** A valid B-BBEE certificate or Sworn Affidavit is a condition for contract award, if your company's annual Total Revenue is R10 Million or less you qualify as an Exempted Micro Enterprise therefore you can submit Sworn Affidavit. If your annual Total Revenue is R50 Million or less, you qualify as Qualifying Small Enterprise and must comply with all of the elements of QSE score card relevant to your sector unless an entity is at least 51% Black owned you are required to obtain a Sworn affidavit. If your Annual Total Revenue is above R50m you need to submit a Valid B-BBEE certificate.

**Accelerated Shared Growth Initiative – South Africa (ASGI-SA)**

Not applicable.

**Subcontracting**

**2.3 Mandatory Subcontracting as condition of award**

Continuation of Mandatory Requirements		
<b>b) Is subcontracting applicable?</b>	<b>YES</b>	<b>NO</b>
	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Subcontracting**

Mandatory subcontracting on contracts above R30 million as a condition for contract award  
If feasible to subcontract for a contract above R30 million, NTCSA:

- a) must apply subcontracting to previously designated groups.
- b) must advertise the tender with a specific condition for contract award that the successful tenderer must subcontract a minimum of 30% of the value of the contract to:

- viii. An EME or QSE which is at least 51% owned by black people.
- ix. An EME or QSE which is at least 51% owned by black people who are youth.
- x. An EME or QSE which is at least 51% owned by black people who are women.
- xi. An EME or QSE which is at least 51% owned by black people with Disabilities.

- xii. An EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships.
- xiii. A cooperative which is at least 51% owned by black people.
- xiv. An EME or QSE which is at least 51% owned by black people who are military veterans.

Tender Returnable if the above element is a requirement.

- Proof of a sub-contract agreement/s must be submitted.
- CSD report of subcontractors
- Sub-contractor/s B-BBEE certificate / sworn affidavit must be submitted.

Subcontracting, in this instance, will be treated as a condition for contract award. A supplier awarded a contract may not subcontract more than 25% of the value of the contract to any other entity that does not have an equal or higher B-BBEE status level of a contributor than the supplier concerned unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

#### **Limitations on subcontracting**

The *Employer* may require that the *Contractor* must subcontract certain specialised work, or that the *Contractor* shall not subcontract more than a specified proportion of the whole of the contract.

#### **Attendance on subcontractors**

As and when required basis.

#### **Plant and Materials**

#### **Spares and consumables**

The *Contractor* should have spares available should the installed equipment malfunction during and after installation while the defects/warranty period is still intact and when a need for replacement equipment arises. The *Contractor* shall submit a list of spares holding to the Project Manager.

### **Tests and inspections before delivery**

The *Contractor* shall demonstrate that the works can operate as guaranteed by the *Contractor* (in *Contractor's Works Information*) or specified by the *Employer* either here or elsewhere in this Works Information.

The *Contractor* shall provide the *Employer* with a full set quality test certificates or proof of testing against relevant standards for all equipment supplied on or before delivery. These should indicate that the equipment meets its specification. The equipment shall not be dispatched from the factory for delivery to the *Employer* until it has passed its Factory Acceptance Tests.

The *Employer* shall appoint a representative to inspect and accept the equipment on delivery both at the *Contractor's* stores and at site prior to installation where applicable. Such inspection shall not relieve the *Contractor* of their responsibility to meet all the requirements of the various specifications, and it shall not prevent subsequent rejection if equipment is later found to be defective when tested after installation.

### **Marking Plant and Materials outside the Working Areas**

Not applicable

### ***Contractor's* Equipment (including temporary works).**

Not applicable

### **Cataloguing requirements by the *Contractor***

The *Contractor* shall provide all information necessary for the *Employer* to catalogue all offered equipment, goods and services as required.

**Temporary works, Site services & construction constraints**  
***Employer's Site entry and security control, permits, and Site regulations***

Contractor to take note of access gate practices in site located in farms and comply with security access control protocols in office sites and power stations

**Restrictions to access on Site, roads, walkways and barricades**

In addition to the above there may be other restrictions once on the Site, plus rules relating to roads, walkways and the provision of barricades

**People restrictions on Site; hours of work, conduct and records**

Restrictions and hours of work may apply on some Sites. It is very important that the *Contractor* keeps records of his people on Site, including those of his Subcontractors which the *Project Manager* or *Supervisor* have access to at any time. These records may be needed when assessing compensation events.

**Cooperating with and obtaining acceptance of Others**

Not applicable.

**Publicity and progress photographs**

Not applicable

***Contractor's Equipment***

Not Applicable.

**Equipment provided by the *Employer***

Not Applicable.

**Site services and facilities**

Portable Water-The contractor may utilize water points on Site.  
Electrical Power-Contractor may utilise power on site

**Facilities provided by the *Contractor***

Not Applicable

**Existing premises, inspection of adjoining properties and checking work of Others**

Not Applicable.

**Survey control and setting out of the works**

Not Applicable

**Excavations and associated water control**

Not Applicable

**Underground services, other existing services, cable and pipe trenches and covers**

Not Applicable

**Control of noise, dust, water and waste**

Not Applicable

**Sequences of construction or installation**

Not applicable

**Giving notice of work to be covered up**

Not Applicable

**Hook ups to existing works**

For all works that integrate to the existing NTCSA telecommunications infrastructure, the supplier shall adhere to the specified/listed architecture and Cyber Security Standards.

**Completion, testing, commissioning and correction of Defects**

**Work to be done by the Completion Date**

All work is to be done by the completion date except:

	<b>Item of work</b>	<b>To be completed by</b>
1.	As built drawings of installed network equipment and cabinet layouts.	Within 14 days after Completion

### **Use of the works before Completion has been certified**

The *Employer* may use any part of the *works* before Completion has been certified but if he does so he takes over the part of the *works* except if the use is for a reason stated below:

- If the *Employer's* network stability or services are at risk.
- A partial completion certificate is to be signed to enable payment of a portion on the equipment and services in the case where snags are noted but do not impact on the services.

### **Materials facilities and samples for tests and inspections**

The *Contractor* shall supply equipment for the demonstration of the equipment capabilities prior to installation and commissioning.

The *Contractor* shall make available any new equipment samples required for integration and compatibility tests.

### **Commissioning**

Commissioning shall be done before completion and the *Contractor* shall supply detailed commissioning, acceptance procedures

### **Start-up procedures required to put the works into operation**

In order to put the *works* into operation the *Employer* requires the *Contractor* to submit start-up procedures. *Contractor* shall be in attendance when the *Employer* switches on the services running on the equipment.

### **Take over procedures**

The *Employer* may require the *Contractor* to provide assistance in taking over the works.

### **Access given by the *Employer* for correction of Defects**

The *Employer* shall grant the *Contractor* access to complete any noted snags and for correction of Defects.

### **Performance tests after Completion**

All test equipment used for the tests shall be controlled, calibrated and maintained in accordance with applicable standards.

The *Contractor* shall provide multiple sets of test equipment during rollout.

After installation, the *Contractor* shall perform tests to verify that equipment is operationally within specification and that the overall systems and sub-systems meet the *Employer's* requirements and OEM specifications. The *Employer* reserves the right to be present during such tests.

The *Contractor* shall request the *Employer's* presence at the Commissioning Acceptance Tests once satisfied that the pre-commissioning test results are acceptable.

The *Contractor* shall conduct Commissioning Acceptance Tests as per the Commissioning Acceptance Test Procedures as a formal demonstration to the *Employer* that the requirements of all applicable specifications have been met. Testing shall be carried out only in the presence of formally nominated *Employer* representative. Such representative/s shall then sign the test result sheets to confirm the correctness of the test procedures and their acceptance on behalf of the *Employer*.

All test records shall be clear, legible and complete. Handwritten results shall not be accepted.

The system design specification shall be met during this period; particular regard shall be paid to the Bit Error Rate (BER) performance of the system. A test report shall then be signed off by the *Employer's* representative.

No system shall be accepted for final payment until the Commissioning Acceptance Test results have been approved.

In the event of any Commissioning Acceptance Test results being rejected by the *Employer*, the discrepancy shall be investigated by the *Contractor* and an investigation report shall be submitted to the *Employer*. Once the matter has been satisfactorily resolved another series of the relevant Commissioning Acceptance Tests shall be performed.

The *Contractor* shall clean-up after the completion of the *works* on a site and dispose of all disposable materials as stated in the annexed SHE specification.

The cutover of the traffic from the old system into the new shall be done in collaboration between *Employer* and the *Contractor*.

A *Contractor* shall provide a cut-over plan at sign-off with the Employer.

### **Operational maintenance after Completion**

The *Employer* may require the *Contractor* before the defects date to perform certain duties after Completion which relate to maintenance of the works.

### **Investigation, survey and Site clearance**

Site information shall require the following information:

- Cabinet space
- DC and power requirements
- Site layout (floor drawings and cabinet layout)
- Condition of existing equipment
- Scope of work per site
- Interface cabling
- Health and Safety documents
- Circuit breakers

### **Building works**

Not Applicable

### **Civil engineering and structural works**

Not applicable.

### **Electrical & mechanical engineering works**

1. The *Contractor* shall power installed equipment from existing power supply and ensure that all installed equipment is properly earthed as per 240-132190480 Telecommunications Equipment Installation Standard.

### **Process control and IT works**

The *Contractor* shall ensure that the site equipment is properly configured and integrated to the data communications network such that the management information is properly carried to the central NTCSA Telecoms Network Management Centre.

**Other [as required]**

The *Employer* shall issue task orders per request and the overall process is as illustrated below:



**List of drawings**

**Drawings issued by the *Employer***

This is the list of drawings issued by the *Employer* at or before the Contract Date and which apply to this contract.

Note: Some drawings may contain both Works Information and Site Information.

Drawing number	Revision	Title

### **C3.2 Contractor's Works Information**

This section of the Works Information will always be contract specific depending on the nature of the *works*.

It is most likely to be required for design and construct contracts where the tendering contractor will have proposed specifications and schedules for items of Plant and Materials and workmanship, which once accepted by the *Employer* prior to award of contract now become obligations of the *Contractor* per core clause 20.1.

Typical sub headings could be

- a) *Contractor's* design
- b) Plant and Materials specifications and schedules
- c) Other

This section could also be compiled as a separate file.

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## PART 4: SITE INFORMATION

Document reference	Title	No of pages
C4	This cover page Site Information	1
	Total number of pages	

**Part 4: Site Information**

Site information will be provided with each individual task order.