



NEC3 Engineering & Construction Contract

Between **ESKOM HOLDINGS LIMITED**
(Reg No. 2002/015527/30)

and [Insert at award stage]
(Reg No. _____)

for **SSC Upgrade Project for two units at Tutuka Power
Station**

Contents:	No of pages
Part C1 Agreements & Contract Data	[•]
Part C2 Pricing Data	[•]
Part C3 Scope of Work	[•]
Part C4 Site Information	[•]

CONTRACT No. [Insert at award stage]

Part C1: Agreements & Contract Data

Contents:	No of pages
C1.1 Form of Offer and Acceptance	[•]
[to be inserted from Returnable Documents at award stage]	
C1.2a Contract Data provided by the <i>Employer</i>	[•]
C1.2b Contract Data provided by the <i>Contractor</i>	[•]
[to be inserted from Returnable Documents at award stage]	
C1.3 Proforma Guarantees	[•]

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:

SSC Upgrade Project for two units at Tutuka Power Station

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 B, C or D	The offered total of the Prices exclusive of VAT is	R [•]
Option E or F	The first forecast of the total Defined Cost plus the Fee exclusive of VAT is	R [•]
	Sub total	R [•]
	Value Added Tax @ 15% is	R [•]
	The offered total of the amount due inclusive of VAT is ¹	R [•]
	(in words) [•]	

This Offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Contractor* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

¹ The Employer requires this total for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*.

Name &
signature of
witness

Date

Tenderer's CIDB registration number (if applicable)

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**

(Insert name and address of organisation)

Name &
signature of
witness

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 afore said 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	[•]	[•]

By the duly authorised representatives signing this Schedule of Deviations below, the Employer and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

For the tenderer:

For the Employer

Signature

Name

Capacity

On behalf
of

(Insert name and address of organisation)

(Insert name and address of organisation)

Name &
signature
of witness

Date

C1.2 ECC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
	dispute resolution Option	<p>A: Priced contract with activity schedule</p> <p>W1: Dispute resolution procedure</p>
	and secondary Options	
		<p>X1: Price adjustment for inflation</p> <p>X2: Changes in the law</p> <p>X5: Sectional Completion</p> <p>X7: Delay damages</p> <p>X15: Limitation of <i>Contractor's</i> liability for design to reasonable skill and care</p> <p>X16: Retention</p> <p>X18: Limitation of liability</p> <p>Z: <i>Additional conditions of contract</i></p>
10.1	The <i>Employer</i> is (Name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
10.1	The <i>Project Manager</i> is: (Name)	
	Address	Bethal – Standerton Road, Private bag x2016 Standerton
	Tel	

Fax

e-mail

10.1	The <i>Supervisor</i> is: (Name) Address Tel No. Fax No. e-mail	
11.2(13)	The <i>works</i> are	Dismantling, design, procurement, fabrication, manufacturing, workshop assembly, factory testing, storage, labelling, packing, delivery to Tutuka Power Station, erection, installation, site testing, cold and hot commissioning, quality control and project management of the entire engineering works to ensure a fully functional system, herein after referred to as the Works.
11.2(14)	The following matters will be included in the Risk Register	<p>1. Outage plan movements</p> <p>2. Unforeseen work stoppages</p> <p>3. Community unrest and Labour strike</p> <p>4. Installed equipment not working</p> <p>5. Availability of resources</p> <p>6. Restriction of access to other areas</p>
11.2(15)	The <i>boundaries of the site</i> are	Boiler side of the unit being worked on
11.2(16)	The Site Information is in	Part 4: Site Information
11.2(19)	The Works Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	2 working days

2 The Contractor's main responsibilities

Data required by this section of the core clauses is provided by the *Contractor* in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.

3 Time

11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	06 November 2023.	
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	key date
		1 All Designs to be completed	As per accepted programme in 2022
30.1	The <i>access dates</i> are:	Part of the Site	Date
		1 Tutuka first unit	As per accepted programme
		2 Tutuka second unit	As per the accepted programme
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	2 weeks of the Contract signing as per the clause.	
31.2	The <i>starting date</i> is	Date of last party signing contract	
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	4 weeks during non-outage periods 5 working days during outage periods	
35.1	The <i>Employer</i> is not willing to take over the <i>works</i> before the Completion Date.	[No data needed if this statement is included]	

4 Testing and Defects

42.2	The <i>defects date</i> is	52 weeks after Sectional Completion of the works.	
43.2	The <i>defect correction period</i> is	5 days	
	except that the <i>defect correction period</i> for	Defects causing production loss is 24hrs from date of instruction	
	and the <i>defect correction period</i> for	Normal defects is 5 days	

5 Payment

50.1	The <i>assessment interval</i> is	Between the 25 day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand.
51.2	The period within which payments are made is	4 week after submission of invoice
51.4	The <i>interest rate</i> is	<p>the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.</p>

6 Compensation events

60.1(13)	<p>The place where weather is to be recorded is:</p> <p>The <i>weather measurements</i> to be recorded for each calendar month are,</p>	<p>At the site</p> <p>the cumulative rainfall (mm)</p> <p>the number of days with rainfall more than 10 mm</p> <p>the number of days with minimum air temperature less than 0 degrees Celsius</p> <p>the number of days with snow lying at 09:00 hours South African Time</p>
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and these measurements:

The *weather measurements* are supplied by

South African Weather Bureau

The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at:

Standerton weather station

and which are available from:

the South African Weather Bureau and included in Annexure A to this Contract Data provided by the *Employer*

7	Title	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.	
8	Risks and insurance		
80.1	These are additional <i>Employer's</i> risks	1. N/A	
9	Termination	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.	
10	Data for main Option clause		
A	Priced contract with activity schedule	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.	
50.6	The <i>exchange rates</i> are those published in	[•] on [•] (date).	
53.1	The <i>Contractor's share percentages</i> and the <i>share ranges</i> are	<i>share range</i> less than [•] % from [•]% to [•]% from [•] to [•]% greater than [•]%	<i>Contractor's share percentage</i> [•]% [•]% [•]% [•]%
11	Data for Option W1		

W1.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
	Address	[•]
	Tel No.	[•]
	Fax No.	[•]
	e-mail	[•]
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 www.ice-sa.org.za) 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.
	<ul style="list-style-type: none"> - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is 	
12	Data for secondary Option clauses	
X1	Price adjustment for inflation	
X1.1(a)	The <i>base date</i> for indices is	A month prior enquiry closing date

X1.1(c)	The proportions used to calculate the Price Adjustment Factor are:	proportion	linked to index for	Index prepared by
		0. [•]	[•]	[•]
		0. [•]	[•]	[•]
		0. [•]	[•]	[•]
		0. [•]	[•]	[•]
		0. [•]	[•]	[•]
		[•]	non-adjustable	
	Total	1.00		
X2	Changes in the law	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.		
X3	Multiple currencies			
X3.1	The <i>Employer</i> will pay for these items or activities in the currencies stated	Items & activities	Other currency	Maximum payment in other currency
		[•]	[•]	[•]
		[•]	[•]	[•]
		[•]	[•]	[•]
		[•]	[•]	[•]
X3.1	The <i>exchange rates</i> are those published in	[•] on [•] (date)		
		<p>The items & activities will be paid in the other currency</p> <ul style="list-style-type: none"> - to a foreign Bank account nominated by the <i>Contractor</i> - to a valid SARB approved CFC account in South Africa - in accordance with an alternative payment method agreed with the <i>Employer</i> before the Contract Date. <p>(select one of the three methods as agreed with successful tenderer and delete the others and this note)</p>		
X5	Sectional Completion			

X5.1	<p>The <i>completion date</i> for each <i>section</i> of the <i>works</i> is:</p> <table border="1" data-bbox="821 257 1513 801"> <thead> <tr> <th data-bbox="821 257 981 369">Section</th> <th data-bbox="981 257 1289 369">Description</th> <th data-bbox="1289 257 1513 369">Completion date</th> </tr> </thead> <tbody> <tr> <td data-bbox="821 369 981 504">1</td> <td data-bbox="981 369 1289 504">First unit Completion</td> <td data-bbox="1289 369 1513 504">2022</td> </tr> <tr> <td data-bbox="821 504 981 801">2</td> <td data-bbox="981 504 1289 801">Second unit Completion</td> <td data-bbox="1289 504 1513 801">2023</td> </tr> </tbody> </table> <p>Sectional completion dates are subject to change (either delayed start or start brought forward)</p>	Section	Description	Completion date	1	First unit Completion	2022	2	Second unit Completion	2023			
Section	Description	Completion date											
1	First unit Completion	2022											
2	Second unit Completion	2023											
X5 & X7	<p>Sectional Completion and delay damages used together</p>												
X7.1 X5.1	<p>Delay damages for late Completion of the <i>sections</i> of the <i>works</i> are:</p> <table border="1" data-bbox="821 952 1513 1646"> <thead> <tr> <th data-bbox="821 952 981 1019">section</th> <th data-bbox="981 952 1260 1019">Description</th> <th data-bbox="1260 952 1513 1019">Amount per day</th> </tr> </thead> <tbody> <tr> <td data-bbox="821 1019 981 1332">1</td> <td data-bbox="981 1019 1260 1332">Detailed designs</td> <td data-bbox="1260 1019 1513 1332">0.5% per week of the outstanding task order value and capped to 5% of the task order value.</td> </tr> <tr> <td data-bbox="821 1332 981 1444">2</td> <td data-bbox="981 1332 1260 1444">First unit completion</td> <td data-bbox="1260 1332 1513 1444">Same as above</td> </tr> <tr> <td data-bbox="821 1444 981 1646">3</td> <td data-bbox="981 1444 1260 1646">First unit completion</td> <td data-bbox="1260 1444 1513 1646">Same as above</td> </tr> </tbody> </table> <p>Remainder of the <i>works</i></p> <p>The total delay damages payable by the <i>Contractor</i> does not exceed: 6% of the total of tendered sum</p>	section	Description	Amount per day	1	Detailed designs	0.5% per week of the outstanding task order value and capped to 5% of the task order value.	2	First unit completion	Same as above	3	First unit completion	Same as above
section	Description	Amount per day											
1	Detailed designs	0.5% per week of the outstanding task order value and capped to 5% of the task order value.											
2	First unit completion	Same as above											
3	First unit completion	Same as above											
X7.1	<p>Delay damages for Completion of the whole of the <i>works</i> are R[●] per day up to a limit of R[●]</p>												
X15	<p>Limitation of the <i>Contractor's</i> liability for his design to reasonable skill & care</p> <p>There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.</p>												
X16	<p>Retention (not used with Option F)</p>												

X16.1	<p>The <i>retention free amount</i> is</p> <p>The <i>retention percentage</i> is</p>	<p>50% of the tendered price per section.</p> <p>6%</p> <p>Of which will be released after each sectional completion date</p>
X18 Limitation of liability		
X18.1	<p>The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:</p>	<p>R0.0 (zero Rand)</p>
X18.2	<p>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:</p>	<p>the amount of the deductibles relevant to the event</p>
X18.3	<p>The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to</p>	<p>The greater of</p> <ul style="list-style-type: none"> • 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.
X18.4	<p>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>	<p>the total of the Prices other than for the additional excluded matters.</p> <p>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</p> <ul style="list-style-type: none"> • Defects due to his design which arise before the Defects Certificate is issued, • Defects due to manufacture and fabrication outside the Site, • loss of or damage to property (other than the <i>works</i>, Plant and Materials), • death of or injury to a person and • infringement of an intellectual property right.
X18.5	<p>The <i>end of liability date</i> is</p>	<p>(i) 4 years after the <i>defects date</i> for latent Defects and</p>

(ii) the date on which the liability in question prescribes in accordance with the Prescription Act No. 68 of 1969 (as amended or in terms of any replacement legislation) for any other matter.

A latent Defect is a Defect, which would not have been discovered on reasonable inspection by the *Employer* or the *Supervisor* before the *defects date*, without requiring any inspection not ordinarily carried out by the *Employer* or the *Supervisor* during that period. If the *Employer* or the *Supervisor* do undertake any inspection over and above the reasonable inspection, this does not place a greater responsibility on the *Employer* or the *Supervisor* to have discovered the Defect.

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

Z1 to Z13 always apply.

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

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage to the <i>works</i> , Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance The <i>Employer's</i> policy deductible, as at Contract Date, where covered by 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 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	<u>Loss of or damage to property</u> <u>Employer's property</u> The replacement cost where not covered by the <i>Employer's</i> insurance The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance <u>Other property</u> The replacement cost

	<u>Bodily injury to or death of a person</u> The amount required by applicable law
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	The amount required by the applicable law

Z 13.2

Replace core clause 87 with the following:

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

INSURANCE TABLE B

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

Annexure A: One-in-ten-year-return *weather data* obtained from SA Weather Bureau for [weather station]

If any one of these *weather measurements* recorded within a calendar month, before the Completion Date for the whole of the *works* and at the place stated in this Contract Data is shown to be more adverse than the amount stated below then the *Contractor* may notify a compensation event.

Month	<i>Weather measurement</i>			
	Cumulative rainfall (mm)	Number of days with rain more than 5mm	Number of days with min air temp < 0 deg.C	Average wind speed in Metres per second
January	122	6.7	0.0	3.8
February	87	4.3	0.0	3.6
March	66	4	0.0	3.4
April	44	2.6	0.8	3.6
May	12	0.9	7.0	3.7
June	9	0.7	21.2	3.8
July	7	0.4	22.4	3.8
August	12	0.6	12.1	4.3
September	29	1.7	2.1	4.5
October	86	4.7	0.1	4.5
November	117	6.1	0.0	4.1
December	104	6.6	0.0	3.9

Only the difference between the more adverse recorded weather and the equivalent measurement given above is taken into account in assessing a compensation event.

C1.2 Contract Data

Part two - Data provided by the *Contractor*

[Instructions to the contract compiler: (delete this notes before issue to tenderers with an enquiry)

Whenever a cell is shaded in the left hand column, it denotes this data is optional. If not required select and delete the whole row, otherwise insert the required Data.]

Notes to a tendering contractor:

1. Please read both the NEC3 Engineering and Construction Contract (April 2013) and the relevant parts of its Guidance Notes (ECC3-GN)² in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 156 to 158 of the ECC3 (April 2013) Guidance Notes.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data
3. Where a form field like this [] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise complete by hand and in ink.

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	%

² Available from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009 or see www.ecs.co.za

11.2(18)	The <i>working areas</i> are the Site and	
24.1	<p>The <i>Contractor's</i> key persons are:</p> <p>1 Name: Job: Responsibilities: Qualifications: Experience:</p> <p>2 Name: Job: Responsibilities: Qualifications: Experience:</p>	<p>CV's (and further key persons data including CVs) are appended to Tender Schedule entitled .</p>
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	
A	Priced contract with activity schedule	
11.2(20)	The <i>activity schedule</i> is in	
11.2(30)	The tendered total of the Prices is	<p>(in figures)</p> <p>(in words), excluding VAT</p>

	Data for Schedules of Cost Components	<i>Note "SCC" means Schedule of Cost Components starting on page 60, and "SSCC" means Shorter Schedule of Cost Components starting on page 63 of ECC3 (April 2013).</i>		
A	Priced contract with activity schedule	Data for the Shorter Schedule of Cost Components		
41 in SSCC	The percentage for people overheads is:	%		
21 in SSCC	The published list of Equipment is the last edition of the list published by The percentage for adjustment for Equipment in the published list is	Minus %		
22 in SSCC	The rates of other Equipment are:	Equipment	Size or capacity	Rate
61 in SSCC	The hourly rates for Defined Cost of design outside the Working Areas are Note: Hourly rates are estimated 'cost to company of the employee' and not selling rates. Please insert another schedule if foreign resources may also be used	Category of employee		Hourly rate
62 in SSCC	The percentage for design overheads is	%		
63 in SSCC	The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are:			

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]*

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 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]*)
 - 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 "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
 - 1.6 "Expiry Date" - means the date on which the Defects Certificate is issued in terms of the Contract.
 - 1.7 "Guaranteed Sum" - means the sum of R [●] ([●] Rand); *[Drafting Note: Insert amount of*

Retention Money Guarantee.].

1.8 "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 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.

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

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

3.2 state the amount claimed ("the Demand Amount");

3.3 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.

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 Eskom and the Contractor.

6. 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.

7. 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.
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 **Error! Reference source not found.** above, personal to Eskom 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 _____ Bank's seal or stamp

For and behalf of the Bank

Bank Signatory: _____

Bank Signatory: _____

Witness: _____

Witness: _____

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]*

PART 2: PRICING DATA

ECC3 Option A

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	
C2.2	<i>The activity schedule</i>	

C2.1 Pricing assumptions: Option A

1. How work is priced and assessed for payment

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

Identified and defined terms	11	
	11.2	(20) The Activity Schedule is the <i>activity schedule</i> unless later changed in accordance with this contract.
		(27) The Price for Work Done to Date is the total of the Prices for <ul style="list-style-type: none">• each group of completed activities and• each completed activity which is not in a group. A completed activity is one which is without Defects which would either delay or be covered by immediately following work.
		(30) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract.

This confirms that Option A is a lump sum form of contract where the work is broken down into activities, each of which is priced by the tendering contractor as a lump sum. Only completed activities are assessed for payment at each assessment date; no part payment is made if the activity is not completed by the assessment date.

2. Function of the Activity Schedule

Clause 54.1 in Option A states: "Information in the Activity Schedule 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 Activity Schedule 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 Activity Schedule. The Activity Schedule is only a pricing document.

3. Link to the programme

Clause 31.4 states that "The *Contractor* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance". Ideally the tendering contractor will develop a high level programme first then resource each activity and thus arrive at the lump sum price for that activity both of which can be entered into the *activity schedule*.

4. Preparing the *activity schedule*

Generally it is the tendering contractor who prepares the *activity schedule* by breaking down the work described within the Works Information into suitable activities which can be well defined, shown on a programme and priced as a lump sum.

The *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items

that he requires the *Contractor* to include in his *activity schedule* and be priced accordingly.

It is assumed that in preparing his *activity schedule* the *Contractor*:

- Has taken account of the guidance given in the ECC3 Guidance Notes pages 19 and 20;
- Understands the function of the Activity Schedule and how work is priced and paid for;
- Is aware of the need to link the Activity Schedule to activities shown on his programme;
- Has listed and priced activities in the *activity schedule* which are inclusive of everything necessary and incidental to Providing the Works in accordance with the Works Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer's* risk;
- Has priced work he decides not to show as a separate activity within the Prices of other listed activities in order to fulfil the obligation to complete the *works* for the tendered total of the Prices.
- Understands there is no adjustment to the lump sum Activity Schedule price if the amount, or quantity, of work within that activity later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event.

C2.2 the *activity schedule*

Item no.	Description	Unit	Quantity	Rate	Price
1.	PRELIMINARY AND GENERAL				
1.1	<u>FIXED CHARGE ITEMS</u>				
1.1.1	<u>Contractual requirements</u>	Sum	1		
1.1.2	<u>Establishment of Facilities on Site</u>				
	<u>Facilities For The Contractor</u>				
	i. Establishment of Facilities on Site	Sum	2		
	ii. Plant & Equipment Hire (e.g. Waste disposal trucks, Forklift, Crane, etc.)	Sum	2		
	iii. Safety File, inductions, Medicals, safety equipment, PPE	Sum	1		
	iv. Safety equipment, PPE	Sum	2		
	v. Removal of site establishment	Sum	2		
1.2	<u>TIME RELATED ITEMS</u>				
1.2.1	<u>Facilities for Contractor</u>				
	i. Offices and Storage sheds	Sum	10		
	ii. Living accommodation	Sum	10		
	iii. Safety Officer	Sum	10		
	iv. Project Management and Supporting Staff	Sum	10		
	v. Company and head office overhead costs for duration of construction (To be listed)	Sum	10		

	vi. Company and head office overhead costs for duration of construction (To be listed)	Sum	10		
	vii. Site & Staff Transport	Sum	2		
2	SSC UPGRADE				
2.2	<u>Designs & Engineering</u> SSC to be refurbished/upgraded as per the technical specifications developed by the Employer. This Bill of Quantities makes provision for a designs, methodology and programme to be proposed by the contractor. This designs are to be reviewed and accepted by the Employer				
	i. Mechanical Designs	Sum	1		
	ii. C&I Designs	Sum	2		
	iii. Electrical Designs	Sum	2		
	iv. Civil Designs	Sum	2		
	v. Process	Sum	2		
2.3	Material Procurement and Transport to site				
2.3.1	Material Procurement				
	i. Mechanical	Sum	2		
	ii. C&I	Sum	2		
	iii. Electrical	Sum	2		
	iv. Civil	Sum	2		
2.3.2	Fabrication and Manufacturing	Sum	2		

2.3.3	Material Transportation to site	Sum	2		
2.4	INSTALLATION OF SSC UPGRADED COMPONENTS				
2.4.1	<u>De-commissioning/Stripping/Removal of SSC Components</u>				
	i. Mechanical	Sum	2		
	ii. C&I	Sum	2		
	iii. Electrical	Sum	2		
	iv. Civil	Sum	2		
2.4.2	INSTALLATION				
	<u>Main Drive System</u>				
	i. Mechanical	Sum	2		
	ii. C&I	Sum	2		
	iii. Electrical	Sum	2		
	iv. Civil	Sum	2		
	TESTING, COMMISSIONING AND TRAINING				
	i. Complete testing and commissioning of equipment	Sum	2		
	ii. Operating manuals, maintenance manuals, Technical Specification and Design Documentation (Data Packs)	Sum	2		
	iii. Training of Eskom Staff	Sum	2		

	iv. Labelling as per approved Eskom Standards	Sum	2		
	<u>Installation/Rigging, Erection on site</u>				
4.	Testing and commissioning	Sum			
9	Safety File, Inductions and Safety Equipment	Sum			
	The total of the Prices (excluding VAT):				

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

1. Description of the works

1.1 Executive overview

Refer to 360-TUT-AABZ28-SP0004-23, page 6.

1.2 Employer's objectives and purpose of the works

Refer to 360-TUT-AABZ28-SP0004-23, pages 7-8.

1.3 Interpretation and terminology

Refer to 360-TUT-AABZ28-SP0004-23, pages 8-10.

2. Management and start up.

2.1 Management meetings

The *conditions of contract* (e.g. Clause 16.2) require and other sections of the Works Information (e.g. safety risk management) may require (mandate) that a meeting shall be held. However, the intention of all NEC contracts is that the Parties and their agents use the techniques of partnering to manage the contract by holding meetings designed to pro-actively and jointly manage the administration of the contract with the objective of minimising the adverse effects of risks and surprises for both Parties.

Depending on the size and complexity of the *works*, it is probably beneficial for the *Project Manager* to hold a weekly risk register meeting (Clause 16.2). This could be used to discuss safety, compensation events, subcontracting, overall co-ordination and other matters of a general nature. Separate meetings for specialist activities such as programming, engineering and design management, may also be warranted.

Describe here the general meetings and their purpose. Provide particulars of approximate times, days, location, and attendance requirements, stipulating that attendees shall have the necessary delegated authority to make decisions in respect of matters raised at such meetings.

The right to hold specialist meetings should be stated generically and in such a way that ambiguity with other parts of the Works Information is avoided.

The following text could be used as a model for this section:

Regular meetings of a general nature may be convened and chaired by the *Project Manager* as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	As and when required	Projects boardroom	Relevant stakeholders
Overall contract progress and feedback	Weekly	Projects boardroom	<i>Employer, Contractor, Supervisor, and _Safety officer_</i>
Outage meeting	Daily	Production boardroom	Same as above
Safety meeting	Monthly	Production boardroom	Same as above
			Same as above

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.

2.2 Documentation control

Refer to 360-TUT-AABZ28-SP0004-23, pages 38, 40, 42, 60, 61, 62.

The *Contractor* Site Manager must keep daily log of all employees on site and have copies of ID's in the contractors file and some copies handed to the Project Manager or Project Leader

PM-C-O1- "PM" denotes source (Manager),"C" denotes the recipient (Contractor), "01" denotes the communication number

2.3 Health and safety risk management

In addition to the requirements of the laws governing health and safety, Eskom may have some additional requirements particular to the *works* and the Working Areas for this contract. The text below provides for these being attached as an Annexure to this Works Information. PLEASE ALSO READ CORE CLAUSE 27.4 TOGETHER WITH Z7 IN THE ADDITIONAL CONDITIONS OF CONTRACT TO MAKE SURE THAT WHATSOEVER IS INCLUDED IN THE ANNEXURE FOLLOWS ON FROM THOSE CLAUSES.

The Divisional/Regional Safety Risk Manager or his representative having jurisdiction over the *works* must provide the relevant safety, health and environmental (SHE) criteria for incorporation into this Works Information. The SHE specification / scope must be signed off by the Divisional/Regional Safety Risk Manager or his representative confirming that the applicable safety criteria have been taken into account.

The Commodity Manager / Buyer must refer the tender to the Divisional/Regional Safety Risk Manager or his representative in order to evaluate against enquiry-specific safety criteria.

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

- Generation: Roley McIntyre
- Transmission: Tony Patterson
- Distribution: Alex Stramrood
- Enterprises: Jace Naidoo
- Corporate: Kerseri Pather

The *Contractor* shall comply with the health and safety requirements contained in Annexure _____ to this Works Information.

Safety files to be approved before commencement of the work

Prior to the commencement of the contract, the Contractor's personnel to undergo safety induction at Tutuka Power Station

2.4 Environmental constraints and management

The *Contractor* shall comply with the environmental criteria and constraints applicable to your design and also comply with Environmental procedure for handling of waste including redundant and obsolete equipment.

Check station colour coded bins for disposal of refuse

Contractor is responsible for keeping the working area clean at all times

2.5 Quality assurance requirements

Refer to 360-TUT-AABZ28-SP0004-23, pages 39, 42, 56, 59.

The Contractor shall ensure that any witness, hold and inspection points are strictly adhered to.

The Contractor has to ensure that all measuring and testing equipment is calibrated as per the relevant SANS standard at all times & proof thereof must be readily available

All Quality References and Standards as stipulated in this document will be adhered to.

Work will only be conducted with an Employer approved QMP

2.6 Programming constraints

Full project schedule to be supplied for each outage unit and will be managed as per clause 31.2

2.7 Contractor's management, supervision and key people

The Contractor shall provide a site supervisor or project manager to supervise, monitor control and co-ordinate all activities during the execution of the project

This will be based on the information provided under Data by *Contractor*

The *Contractor* shall arrange training with training department on site for Responsible person and Authorised Supervisor who is competent as per Plant Safety Regulation and the Project Manager will aid the *Contractor* with the necessary arrangements

2.8 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 Eskom Holdings 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)

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

2.9 Insurance provided by the *Employer*

Contact details for persons capable of being able to answer any insurance related queries the *Contractor* may have are Dheven Bissety e-mail BisettD@eskom.co.za at 011 800 2714 or Sherlott Lekala at 011 800 5080 e-mail Email: lekalaS@eskom.co.za

2.10 Contract change management

Standard ECC 3 forms to be used for any contract change

2.11 Provision of bonds and guarantees

The form in which a bond or guarantee required by the *conditions of contract* (if any) is to be provided by the *Contractor* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

The *Employer* may withhold payment of amounts due to the *Contractor* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Contractor* by the *Project Manager* to receive and accept such bond or guarantee. Such withholding of payment due to the *Contractor* does not affect the *Employer's* right to termination stated in this contract.

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

As per NEC Options A

2.13 Training workshops and technology transfer

Training of all relevant stakeholders to be provided e.g. Maintenance team, Engineering team and Operating team

C&I Maintenance and Engineering

Electrical Maintenance & Engineering

Mechanical Maintenance and Engineering

Operating personnel

3. Engineering and the *Contractor's* design

Refer to 360-TUT-AABZ28-SP0004-23, page 7.

3.1 *Employer's* design

Refer to 360-TUT-AABZ28-SP0004-23, pages 10-16.

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

Refer to 360-TUT-AABZ28-SP0004-23, pages 17-28.

Design standards

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

Refer to 360-TUT-AABZ28-SP0004-23, page 59.

3.4 Other requirements of the *Contractor's* design

Refer to 360-TUT-AABZ28-SP0004-23, page 59.

3.5 Use of *Contractor's* design

Refer to 360-TUT-AABZ28-SP0004-23, page 59.

The *Employer* may use the *Contractors* design for any purpose related to the *Employer's* operational requirements

3.6 Design of Equipment

It could be in the Parties best interests that some details of the *Contractor's* design or proposed design of Equipment are shared with the *Project Manager*, not necessarily for his acceptance but as an assurance that the Equipment will be able to allow the *Contractor* to Provide the Works efficiently and without delay.

3.7 Equipment required to be included in the *works*

The defined term 'Equipment' in core clause 11.2(7) requires the *Contractor* to take into consideration any Equipment which the *Contractor* is required to include in the *works*

3.8 As-built drawings, operating manuals and maintenance schedules

Refer to 360-TUT-AABZ28-SP0004-23, pages 60-61.

4. Procurement

4.1 People

4.1.1 Minimum requirements of people employed on the Site

Contractor to have competent Authorised and Responsible person as per Plant Safety Regulation.

Those competent personnel should be able to take out “Permit to Work” so they can be able to work in the Power Station

Courses for this will be presented free of charge to the *Contractor*

4.1.2 BBEE and preferencing scheme PPPFA STRATEGY

Indicate the percentage (%) that is allocated to:

Price	80/90
BBBEE Status	20/10
Designated commodity (Yes/No)	Yes

4.1.3 Suppliers Development, Localisation and Industrialisation

Section 1: Pre-qualification Criteria for Preferential Procurement

SDL&I will apply the following pre-qualification criteria as envisaged in PPPFA 2017 regulation 4

a) Minimum BBBEE status level of contributor?

If Yes, what is the BBBEE status and/or level required

YES	NO
<input type="checkbox"/>	<input checked="" type="checkbox"/>

b) Is there BBBEE category targeted for this enquiry?

If Yes, BBBEE category

YES	NO
<input type="checkbox"/>	<input checked="" type="checkbox"/>

Tender Returnable if the above elements are requirements;

- An original or certified copy of sworn affidavit in the case of EME's must be submitted (affidavit must be completed fully), or
- An original or certified copy of B-BBEE Certificate issued by CIPC for EME's. OR
- An original or certified copy of the B-BBEE certificate / sworn affidavit in the case of QSE's must be submitted, or
- An original or certified copy of the B-BBEE certificate issued by SANAS Accredited Verification Agency must for LME's must be submitted, or

- For JV's only an original or certified copy B-BBEE Certificate issued by a SANAS Accredited Verification Agency will be accepted.

c) Minimum subcontracting requirement for this?

If Yes, what is the minimum percentage?

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

Tender Returnable if the above element is a requirement;

- Proof of a sub-contract agreement/s or letter of intent to sub contract signed by the main and potential subcontractor must be submitted.
- Sub-contractor/s B-BBEE certificate / sworn affidavit must be submitted.
- Sub-contracting agreements can only be concluded with one or more of the following entities;
 - 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 area or townships;
 - a cooperative which is at least 51% owned by black people;
 - a EME or QSE which is at least 51% owned by black people who are military veterans

Section 2: Mandatory Requirements

2.1 Designated Sectors

When applicable the following stipulated minimum threshold for Local Production and Content must be achieved in full by the tenderer

a) Is this Commodity or part of it a Designated Sector?

YES	NO
<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please indicate below Designated Components

Commodity	Components	Local Content Threshold
Electrical cables		90%
Fabricated Steel	Steel	100%

NOTE 1:

Mandatory Returnables:

- (F1) - SBD 6.2 Declaration Form
- (F2) - Annexure C (Local Content Declaration-Summary Schedule)

Non Mandatory Returnables:

- (F3) - Annexure D-Imported Content Declaration – Supporting Schedule to Annexure C
- (F4) - Annexure E-Local Content Declaration- Supporting Schedule to Annexure C.

The DTIC has appointed SABS as the official verification agency for local content in terms of designated products.

A tender that fails to meet the minimum stipulated threshold for local production and content will be disqualified

If the quantity of materials and/or products cannot be wholly sourced in South Africa, the DTIC, in consultation with the procuring entity, will grant exemption on a case-by-case basis. Bidder should request and obtain written exemption from the Department of Trade Industry Competition (DTIC). Such exemption applications should be submitted and approvals be obtained prior to the closure of the bid(s) concerned.

The DTI in consultation with the procuring organ of state and the local industry will consider the exemption application on a case-by-case basis. Bidder should refer to national treasury Designated Sector Instruction Number 12 of 2016/2017 Paragraph 4.2.

2.2 CIDB Skills Development

Continuation of Mandatory Requirements

a) Is there CIDB compulsory training?

If Yes, what is the % of the Construction Skills Development Goal % (CSDG)

YES	NO
<input checked="" type="checkbox"/>	<input type="checkbox"/>
0.25%	

If the answer above is Yes, it will then be mandatory for the supplier to match Eskom's targets

Criteria	Eskom Target	Tenderer Commitment
C&I Technician	1	
Electrician (COC)	2	

Note 3: Failure by the Contractor/Service Provider/Supplier to meet the CIDB CSDG mandatory % will render their tender non-responsive.

Section 3: SDL&I Undertaking

Tenderers who complete and submit the undertaking as required, but who do not meet Eskom's targets, will not be disqualified. SDL&I undertakings do not form part of scoring but commitments will form part of contractual obligations

B-BBEE Requirements

Tenderers will be required to maintain or improve their B-BBEE Recognition Level for the duration of the contract.

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 spend minus the imported component.

Local Procurement Content	Eskom Target	Tenderer Proposal
	100%	

Job Opportunities

Tenderer to indicate number of Jobs to be created and/or retained from this contract;

Number of Jobs to be created	Number of Jobs to be retained

Subcontracting

The tenderer to subcontract 30% of the contract value to one or more of the following designated groups:

- 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 area or townships;

Section 4: SDL&I Penalty

- Eskom will apply a penalty of 2.5% of the Contract Value for failure to meet SDL&I obligations.
- For the duration of the contract, Eskom 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 fulfilment of all SDL&I obligations at the end of the contract.
- Alternatively the Contractor shall submit a bond equivalent to 2.5% of the Contract Value and shall only be released to the Contractor upon fulfilment of all SDL&I Obligations

Section 5: Reporting and Monitoring

- The suppliers shall on a monthly/quarterly basis submit a report to Eskom in accordance with Data Collection Template on their compliance with the SDL&I obligations described above.
- Eskom shall review the SDL&I reports submitted by the suppliers within 60 (sixty) days of receipt of the reports and notify the suppliers in writing if their SDL&I obligations have not been met.
- Upon notification by Eskom that the suppliers have not met their SDL&I obligations, the suppliers shall be required to implement corrective measures to meet those SDL&I obligations before the commencement of the following report, failing which Retention clauses shall be invoked.

- Every contract shall be accompanied by the SDL&I Implementation Schedule which must be completed by the suppliers and returned to SDL&I representative for acceptance 28 days after contract award. This will be used as a reference document for monitoring, measuring and reporting on the supplier's progress in delivering on their stated SDL&I commitments

Section 7: General Information on Validity of Sworn Affidavits

The following must be considered when it comes to validity of Affidavits;

Tenderers submitting B-BBEE Sworn Affidavits must ensure that the affidavits meet the following key pointers to ensure their validity:

- Name/s of deponent as they appear in the identity document and the identity number.
- Designation of the deponent as the **director, owner** or **member** must be indicated in order to know that person is duly authorised to depose of an affidavit. **(Mark the applicable option).**
- Name of enterprise as per enterprise registration documents issued by the CIPC, where applicable, and enterprise business address.
- Percentage of black ownership, black female ownership and designated group. In the case of specialised enterprises as per Statement 004, the percentage of black beneficiaries must be reflected. **(No blank spaces to be left).**
- Indicate total revenue for the year under review and whether it is based on **audited financial statements** or **management account. (Mark the applicable option).**
- Financial year end as per the **enterprise's registration documents**, which was used to determine the total revenue. **(Financial year end to be stipulated by day/month/year).**
- B-BBEE Status level. An enterprise can only have one status level. **(Tick applicable level)**
- Empowering supplier status must be indicated. For QSEs, the deponent must select the basis for the empowering supplier status.
- Date deponent signed and date of Commissioner of Oath must be the same. **(The sworn affidavit must be signed in the presence of the Commissioner of Oath. Furthermore the Commissioner must also sign and stamp)**
- Commissioner of Oath cannot be an employee or ex officio of the enterprise because, a person cannot by law, commission a sworn affidavit in which they have an interest.

4.2 Subcontracting

4.2.1 Preferred subcontractors

No restriction on who should be used as long as quality job is produced and the main contractor is still responsible for quality of work

4.2.2 Subcontract documentation, and assessment of subcontract tenders

The *Contractor* is to prepare subcontract documentation and the use of NEC system is recommended where necessary

4.2.3 Limitations on subcontracting

The Supplier can indicate any intention to subcontract specific elements and with who.

4.3 Plant and Materials

Quality

Quality is usually designed in or specified in the technical specifications referred to in section 6 of this Works Information.

4.3.1 Plant & Materials provided "free issue" by the Employer

All other Plant and Materials are to be provided by the *Contractor* for the execution of the works

Employer will provide power and where necessary the *Contractor* to have back up

4.3.2 Contractor's procurement of Plant and Materials

It is the *Contractor's* responsibility to know how to order, codify, expedite, freight, import, transport to Site and any other requirements for delivery and storage before installation

The contractor shall make use of SABS approved plant and material. Test certificates shall be submitted to the Project Manager.

4.3.3 Spares and consumables

Some contracts may need to include provision for the supply of a minimum category of spares, fuel, oil or other feed stock and consumables which the *Employer* may need at or just after take over and that it is best the *Contractor* provide these initially as part of his Providing the Works.

Spares list to be provided by *Contractor*

4.4 Tests and inspections before delivery

Refer to 360-TUT-AABZ28-SP0004-23 3.2.10.13

4.5 Marking Plant and Materials outside the Working Areas

Plant and materials to be labelled with a statement that they are the property of the *Employer* in terms of the contract and indicate how the marking will be verified to the *Employer* where necessary

4.6 Contractor's Equipment (including temporary works).

Equipment required by the *Contractor* to execute the work will be supplied by the *Contractor*

4.7 Cataloguing requirements by the Contractor

Not applicable.

5. Construction

5.1 Temporary works, Site services & construction constraints

5.1.1 Employer's Site entry and security control, permits, and Site regulations

Access permits are required to enter site

Application for access permits to be done 2 days in advance or during induction

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

Walkways to be used where they are provided

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

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

5.1.4 Health and safety facilities on Site

Medical station is provided in the station and all incidents to be reported following the incident investigation procedure

5.1.5 Title to materials from demolition and excavation

Clause 73.2 states that the *Contractor* has no title to materials from excavation and demolition

5.1.6 Cooperating with and obtaining acceptance of Others

The cross reference from core clause 25.1 Cooperation with Others with may be required from the *Contractor* to share the working areas

Clause 11.2(10) definition of Others

5.1.7 Publicity and progress photographs

N/A

5.1.8 Contractor's Equipment

All *Contractors* equipment brought to site should be registered with security so that it can be noted when required to be taken out of site

5.1.9 Equipment provided by the Employer

N/A

5.1.10 Site services and facilities

The *Employer* will provide power, water, waste disposal and access to the existing toilet facilities

5.1.11 Facilities provided by the Contractor

The *Contractor* to supply facilities they deem necessary for the execution of work

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

5.1.13 Survey control and setting out of the works

N/A

5.1.14 Excavations and associated water control

N/A

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

Where underground cables and pipes are present in the area, care must be exercised to ensure that they are not damaged

5.1.16 Control of noise, dust, water and waste

Wear full protective gear for the working area

5.1.17 Sequences of construction or installation

Not applicable

5.1.18 Giving notice of work to be covered up

Supplier to make sure that communication to the workers is via the *Supervisor*.

5.1.19 Hook ups to existing works

Comply with Eskom lifesaving rules

5.2 Completion, testing, commissioning and correction of Defects

5.2.1 Work to be done by the Completion Date

On or before the Completion Date the *Contractor* shall have done everything required to Provide the Works except for the work listed below which may be done after the Completion Date but in any case before the dates stated. The *Project Manager* cannot certify Completion until all the work except that listed below has been done and is also free of Defects which would have, in his opinion, prevented the *Employer* from using the *works* and Others from doing their work.

	Item of work	To be completed by
	As built drawings of all required Designs	Contractor in the presence of relevant stakeholders e.g. Engineer, Project Manager
	Performance testing of the <i>works</i> in use as specified in paragraph of this Works Information.	See performance testing requirements.

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

N/A

5.2.3 Materials facilities and samples for tests and inspections

Provide any materials facilities and samples for tests and inspections as per core clause 40.2 where necessary

5.2.4 Commissioning

Cold and hot commissioning to be done

The purpose of cold commissioning is that, following completion of no-load checks, the equipment is run without load to confirm that the plant is complete in all respects prior to the introduction of any media.

Cold commissioning of a plant or system commences when a Safety Clearance Certificate has been issued and is concluded when the total erection completion inspection certificate is issued for that section of plant or system.

It shall be the responsibility of the Contractor's Project/Commissioning Manager and his discipline engineers, assisted by Eskom's discipline engineer and suppliers, to ensure that the above is carried out.

The purpose of hot commissioning is to provide feedstock to the plant, build up stocks and production levels, and handover the plant to Eskom. The Contractor's Project/Commissioning Manager and his engineers, assisted by Eskom's discipline engineers, shall be responsible for hot commissioning.

5.2.5 Start-up procedures required to put the works into operation

In order to put the *works* into operation the *Employer* may require the *Contractor* to carry out sufficient checks to satisfy himself that the materials used and the workmanship comply consistently with the specified requirements and the results of those checks shall, if so ordered, be made available to the Engineer

5.2.6 Take over procedures

Take-over is at Completion. The *Contractor* shall have done everything required to provide the works and the Engineer would have done all necessary inspection and the approval of work done.

5.2.7 Access given by the Employer for correction of Defects

Clause 43.4 requires that the *Project Manager* arrange for the *Employer* to allow the *Contractor* access and use of a part of the *works* which has been taken over if needed to correct a Defect

5.2.8 Performance tests after Completion

The contractor shall perform any performance test after installation in the presence of Project Manager and the Engineer according to the QCP to demonstrate that the *works* can operate as guaranteed by the *Contractor* (in *Contractor's* Works Information) or specified by the *Employer* either here.

5.2.9 Training and technology transfer

The *Contractor* shall provide any associated transfer of technology and knowledge to *the Employer*

5.2.10 Operational maintenance after Completion

The *Employer* may require the *Contractor* before the *defects date* to perform certain duties after Completion and take over which relate to maintenance of the *works*. (Not to be confused with Defect correction) For example oil and filter changes

6. Plant and Materials standards and workmanship

All materials to comply with all requirements as laid down in the applicable SABS or other standards

6.1 Investigation, survey and Site clearance

The *Contractor* may carry out further investigation of existing facilities or of the Site before commencing final design once arrangement is done with Project Manager

6.2 Building works

Refer to 360-TUT-AABZ28-SP0004-23 Page 63

6.3 Civil engineering and structural works

Refer to 360-TUT-AABZ28-SP0004-23, page 14, 32, 63.

6.4 Electrical & mechanical engineering works

Refer to 360-TUT-AABZ28-SP0004-23, refer to page 22, 34.

6.5 Process control and IT works

Not applicable

7. List of drawings

7.1 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.

Refer to 360-TUT-AABZ28-SP0004-23, refer to page 64.

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

Drawing number	Revision	Title
8553783443		Electrical circuits of units 1- 6.

0.61-BMH-SSC-012		Table 7 new chain and scraper

Refer to 360-TUT-AABZ28-SP0004-23 Page 65

C3.2 CONTRACTOR'S WORKS INFORMATION

The tendering contractor to propose specifications and schedules for items of Plant and Materials and workmanship as per core clause 20.1. Typical sub headings could be:

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