



**CONTRACT FOR JOINT MONITORING TEAM (JMT) SERVICES
FOR THE REPLACEMENT OF 19 ESCALATORS, AND THE (EPC)
ENGINEERING, PROCUREMENT, AND CONSTRUCTION OF
ELEVATORS L9A, L9B**

TENDERER'S DETAILS

1.	NAME OF TENDERER (BIDDING ENTITY)	(FULL NAME, i.e. (CC, (Pty) Ltd, JV, SOLE PROPRIETOR)
.2.	TEL NUMBER	
.3.	FAX NUMBER	
.4.	EMAIL	
5.	NAME OF CONTACT	
6.	NATIONAL TREASURY CSD REGISTRATION NUMBER	



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C1.1 Form of Offer and Acceptance

Offer

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

JOINT MONITORING TEAM (JMT) SERVICES FOR THE REPLACEMENT OF 19 ESCALATORS, AND THE (EPC) ENGINEERING, PROCUREMENT, AND CONSTRUCTION OF ELEVATORS L9A, L9B

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

The tenderer, identified in the Offer signature block, has examined the draft contract as listed in the Acceptance section and agreed to provide this Offer.

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 **Consultant** under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the Contract Data.

The offered total of the Prices exclusive of VAT is	
Value Added Tax @ 15% is	
The total offered amount due inclusive of VAT is	
(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 **Consultant** 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



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 *Consultant* 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
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. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the Schedule of Deviations (if any). Unless the tenderer (now **Consultant**) 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.

Notwithstanding anything contained herein, this agreement comes into effect two working days after the submission by the employer of one fully completed original copy of this document including the schedule of deviations (if any), to a courier-to-counter delivery / counter-to-counter delivery / door-to-counter delivery /door-to-door delivery /courier service (delete that which is not applicable), provided that the employer notifies the tenderer of the tracking number within 24 hours of such submission. Unless the tenderer (now **Consultant**) within seven working days of the date of such submission 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



Schedule of Deviations

1 Subject

Details

.....

.....

.....

2 Subject

Details

.....

.....

.....

3 Subject

Details

.....

.....

.....

4 Subject

Details

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.....

.....

5 Subject

Details

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By the duly authorised representatives signing this agreement, the Employer and the Tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the Tender Data and addenda thereto as listed in the returnable 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 Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.

Signature(s)

Name(s)

Capacity

for the *Employer* For the *Consultant*

.....

(Insert name and address of organisation)

Name & signature of witness Date

C1.2 Contract Data

The Conditions of Contract are selected from the NEC3 Professional Services Contract (Third edition of June 2005 with amendments June 2006 – see www.neccontract.com/useful_downloads/NEC_Amendments_June_2006.asp) published by the Institution of Mechanical Engineers, copies of which may be obtained from Engineering Contract Strategies (telephone 011-803 3008)

Each item of data given below is cross-referenced to the clause in the NEC3 Professional Services Contract which requires it.

Part one - Data provided by the Employer

General

The *conditions of contract* are the core clauses and the clauses for main Option:

A: Priced contract with activity schedule

dispute resolution Option W1: Dispute resolution procedure

and secondary Options

X2: Changes in the law

X5: Sectional Completion

X7: Delay damages

X9: Transfer of rights

X10: Employer's Agent

X11: Termination by the Employer

X13: Performance Bond

X18: Limitation of liability

Z: Additional conditions of contract

of the NEC3 Professional Services Contract June 2005 (with amendments June 2006)

The *project stages* are:

<i>project stage</i>		Key deliverable at end of each stage as described in the Scope and accepted by the Employer
No	Description	
3	Design development	Design development report
4	Design Documentation	Design Documentation Report
5	Works	Works Completion Report
6	Handover	Handover/Record Information Report
7	Close-out	Close-out Report

10.1 The Employer is (Name):



Airports Company South Africa SOC Ltd (Reg. no: 1993/004149/06), a juristic person incorporated in terms of the company laws of the Republic of South Africa

Address:

Airports Company South Africa
O R Tambo International Airport
ACSA Admin. Building
4th Floor North Wing Offices
Kempton Park
1627

11.2(9)	The <i>services</i> are	Professional Construction Project Management Services for Engineering, Procurement, And Construction of Elevators L9A, L9B, And Replacement of 19 Escalators
11.2(10)	The following matters will be included in the Risk Register	<ol style="list-style-type: none"> 1. The service and the works will be conducted in the vicinity of International Arrivals and through the Airport Terminal 2. Availability of As Built information 3. Access to Site 4. Statutory approvals and ACSA approvals 5. Site Constraints and Constructability 6. Financial and Procurement
11.2(11)	The Scope is in the document called Part C3: Scope of Work	
12.2	The <i>law of the contract</i> is	the law of the Republic of South Africa subject to the jurisdiction of the Courts of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	3 working days
13.6	The <i>period for retention</i> is	N/A

2 The Parties' main responsibilities

25.2 The *Employer* provides access to the following persons, places and things

access to Site	Access date
The site (the Consultant must obtain a permit at own cost)	Upon signing of the contract by ACSA
The contractor responsible for Construction Health and Safety Professional Services	Upon signing of the contract by ACSA
The contractor responsible for the (EPC) Replacement of Escalators	Upon signing of the contract by ACSA
The contractor responsible for the (EPC) Engineering, Procurement, And Construction Of 2 X Elevators (L9A And L9B)	Upon signing of the contract by ACSA

3 Time

31.2	The <i>starting date</i> is	Upon signing of the contract by ACSA
11.2(3)	The completion date for the whole of the services is	18 Months from the <i>starting date</i>
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	
	Condition to be met	key date
1	Coordinating all statutory notifications, requirements and effecting all necessary submissions in terms of the Construction Regulations	As and when required
2	Coordinating Design Development and Report submission to Employer for Acceptance	As per accepted program
3	Coordinating, Design Documentation and Report submission to <i>Employer</i> .	As per accepted program
4	Works Completion Report submission to <i>Employer</i> .	As per accepted program
5	Handover/Record Information Report submission to Employer.	As per accepted program
6	Close-out Report submission to Employer.	As per accepted program
7	Preparing, submitting, and presenting project board reports	As and when required
31.1	The <i>Consultant</i> is to submit a first programme for acceptance	within 1 week of the Contract Date.
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	4 weeks

4 Quality

40.2	The quality policy statement and quality plan are provided within	4 weeks of the Contract Date.
41.1	The <i>defects date</i> is	1 year after Completion of the whole of the services.

5 Payment

50.1	The <i>assessment interval</i> is	4 weeks
51.1	The period within which payments are made is.	4 weeks from date of invoice
51.2	The <i>currency of this contract</i> is the	South African Rand.
51.5	The <i>interest rate</i> is	The publicly quoted prime rate of interest (calculated on a 365-day year) charged by Nedbank of South Africa, from time to time, as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove.

6 Compensation events

No data required for this section of the *conditions of contract*.

7	Rights to material	
	No data required for this section of the conditions of contract.	
8	Indemnity, insurance and liability	
81.1	The amounts of insurance and the periods for which the <i>Consultant</i> maintains insurance are	
81.1	The <i>Employer</i> provides the following insurances	Refer to Insurance Schedule, Section C1.4
82.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	Refer to Insurance Schedule, Section C1.4
	The <i>Consultant</i> provides these additional insurances.	Refer to Insurance Schedule, Section C1.4
9	Termination	Refer to Secondary Clause X11.
10	Data for main Option clauses	
A	Priced contract with activity schedule	
21.3	The <i>Consultant</i> prepares forecasts of the total of the <i>expenses</i> at intervals of no longer than	4 weeks.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is	To be jointly appointed by the <i>Employer</i> and the <i>Consultant</i> in terms of the NEC Adjudicators Contractors when a dispute arises
	Address	N/A
	Tel No.	N/A
	Fax No.	N/A
	e-mail	www.jointcivils.co.za
W1.2(3)	The <i>adjudicator nominating body</i> is	The Chairman of the time being of the Joint Civils Divisions of the South African Institution of Civil Engineering (or his successor) or his nominee (see www.jointcivils.co.za).
W1.4(2)	The <i>tribunal</i> is	Arbitration.
W1.4(5)	The <i>arbitration procedure</i> is	The Rules for the Conduct of Arbitrations published by the Arbitration Foundation of South Africa (AFSA) (or its successor).
	The place where arbitration is to be held is	Johannesburg, South Africa.



The person or organisation who will choose an arbitrator
 - if the Parties cannot agree on a choice or
 - if the *arbitration procedure* does not state who selects an arbitrator,
 is

The Chairman for the time being of the Arbitration Foundation of South Africa (AFSA) (or its successor) or his nominee.

12 Data for secondary Option clauses

X2 Changes in the law

X2.1 *The law of the project is* **the law of the Republic of South Africa subject to the jurisdiction of the Courts of South Africa.**

X5 Sectional Completion

X5.1 *The completion date for each section of the services is:*

section	description	completion date
1	Coordinating all statutory notifications, requirements and effecting all necessary submissions in terms of the Construction Regulations	As and when required
2	Coordinating Design Development and Report submission to Employer for Acceptance	As per accepted program
3	Coordinating, Design Documentation and Report submission to <i>Employer</i> .	As per accepted program
4	Works Completion Report submission to Employer.	As per accepted program
5	Handover/Record Information Report submission to Employer.	As per accepted program
6	Close-out Report submission to Employer.	As per accepted program
5	Preparing, submitting, and presenting project board reports	As per accepted program

X5 and X7 Sectional Completion and delay damages used together

X7.1 *Delay damages for late Completion of each section of the services*
 X5.1 *are:*

section	description	amount per day
1	Coordinating all statutory notifications, requirements and effecting all necessary submissions in terms of the Construction Regulations	Amount per day is 0.05% of the contract value, up to the maximum of 10% of the contract value



2	Coordinating Design Development and Report submission to Employer for Acceptance		Amount per day is 0.05% of the contract value, up to the maximum of 10% of the contract value
3	Coordinating, Documentation and submission to Employer.	Design Report	Amount per day is 0.05% of the contract value, up to the maximum of 10% of the contract value
4	Works Completion submission to Employer.	Report	Amount per day is 0.05% of the contract value, up to the maximum of 10% of the contract value
5	Handover/Record Information Report submission to Employer		Amount per day is 0.05% of the contract value, up to the maximum of 10% of the contract value
6	Close-out Report submission to Employer.		Amount per day is 0.05% of the contract value, up to the maximum of 10% of the contract value
7	Preparing, submitting, and presenting project board reports		Amount per day is 0.05% of the contract value, up to the maximum of 10% of the contract value

X7 Delay damages

X7.1 Delay damages for late Completion of the whole of the services are **R 2,000.00 per day**

X10 The Employer's Agent

X10.1 The *Employer's Agent* is

Name:

TBD

Address

**O R Tambo International Airport
International Terminal Building
Mezzanine Floor ACSA Maintenance
Offices
Kempton Park
1627**



The authority of the *Employer's Agent*

includes but is not limited to the following:

1. To assess and process all invoices payable by the *Employer*
2. To manage this contract on behalf of the *Employer* in terms of meeting with and giving lawful instructions to the *Consultant*.

It is the *Employer's* sole discretion to amend the authority of the *Employer's Agent* under this contract through prior written communication to the *Consultant*.

X13	Performance bond The form of the performance bond is in terms of the NEC PSC3: Performance Bond published on the website www.jointcivils.co.za	
X13.1	The amount of the performance bond is	N/A
X18	Limitation of liability	
X18.1	The <i>Consultant's</i> liability to the Employer for indirect or consequential loss is limited to	R 0.00
X18.2	The <i>Consultant's</i> liability to the Employer for Defects that are not found until after the defects date is limited to	R 0.00
X18.3	The end of liability date is	1 year after Completion of the whole of the services.

AMENDMENTS TO THE CORE CLAUSES

Z1 Interpretation of the law

Z1.1 Add to core clause 12.3: Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Project Manager*, the *Supervisor*, or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z2 Providing the Works: Delete core clause 20.1 and replace with the following:

Z2.1 The *Consultant* provides the works in accordance with the Works Information and warrants that the results of the Works, when complete, shall be fit for their intended purpose.

Z3. Other responsibilities: add the following at the end of core clause 27:

Z3.1 The *Consultant* shall have satisfied himself, prior to the Contract Date, as to the completeness, sufficiency and accuracy of all information and drawings provided to him as at the Contract Date.

Z3.2 The *Consultant* shall be responsible for the correct setting out of the Works in accordance with the original points, lines and levels stated in the Works Information or notified by the Project Manager, Supervisor or the Employer. Any errors in the positioning of the Works shall be rectified by the *Consultant* at the *Consultant's* own costs.

Z4. Extending the defects date: add the following as a new core clause 46:

Z4.1 If the Employer cannot use the works due to a Defect, which arises after Completion and before the defects date, the defects date is delayed by a period equal to that during which the Employer, due to a Defect, is unable to use the works.

Z4.2 If part of the works is replaced due to a Defect arising after Completion and before the defects date, the defects date for the part of the works which is replaced is delayed by a period equal to that between Completion and the date by when the part has been replaced.

Z4.3 The Project Manager notifies the *Consultant* of the change to a defect date when the delay occurs. The period between Completion and an extended defects date does not exceed twice the period between Completion and the defects date stated in the Contract Data.

Z5. Termination

Add the following to core clause 91.1, at the second main bullet, fifth sub-bullet point, after the words "assets or": "business rescue proceedings are initiated or steps are taken to initiate business rescue proceedings".

AMENDMENTS TO THE SECONDARY OPTION CLAUSES

Z6. Changes in Law: Add the following clause to secondary option X2 as X2.2:

Z6.1 A change in law is defined as:

Z6.1.1 the adoption, enactment, promulgation, coming into effect, repeal, amendment, reinterpretation, change in application or other modification after the Contract Date of any law, excluding (i) the enactment of any bill inside the country, but only if such bill is enacted without any material changes being made to the contents of such bill from the form published in the Gazette (as defined in the Interpretation Act, 1957) as at the Contract Date, and (ii) any such modification in law relating to any taxes, charges, imposts, duties, levies or deductions that are assessed in relation to a person's income

Z6.1.2 any permit being terminated, withdrawn, amended, modified or replaced, other than (i) in accordance with the terms upon which it was originally granted, (ii) as a result of the failure by the *Consultant* to comply with any condition set out therein, or (iii) as a result of any act or omission of the *Consultant*, any Sub-Consultant or any affiliate to the *Consultant*.

Z7. Performance Bond

Amend the first sentence of clause X13.1 to read as follows: The *Consultant* gives the *Employer* an unconditional, on-demand performance bond, provided by a bank or insurer which the *Employer's Agent* and the *Employer* have accepted, for the amount stated in the Contract Data and in the form set out in Section C1.3 – Sureties of this Contract Data.

Add the following new clause as Option X13.2: The *Consultant ensures* that the performance bond is valid and enforceable until the end of the *contract period*. If the terms of the performance bond specify its expiry date and the end of the *contract period* does not coincide with such expiry date, four weeks prior to the said expiry date, the *Consultant* extends the validity of the performance bond until the end of the *contract period*. If the *Consultant* fails to so extend the validity of the performance bond, the *Employer* may claim the full amount of the performance bond and retain the proceeds as cash security

Z8. Limitation of liability: Insert the following new clause as Option X18.6:

Z8.1 The Employer's liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to R0.00.

Z8.2 Notwithstanding any other clause in this contract, any proceeds received from any insurances or any proceeds which would have been received from any insurances but for the conduct of the *Consultant* shall be excluded from the calculation of the limitations of liability listed in the contract.

ADDITIONAL Z CLAUSES

Z9. Cession, delegation and assignment

The *Consultant* shall not cede, delegate or assign any of its rights or obligations to any person without the written consent of the Employer, which consent shall not be unreasonably withheld. This clause shall be binding on the liquidator/business rescue practitioner /trustee (whether provisional or not) of the *Consultant*.

The Employer may, on written notice to the *Consultant*, cede and delegate its rights and obligations under this contract to any person or entity.

Z10. Joint and several liability

If the *Consultant* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons, these persons are deemed to be jointly and severally liable to the Employer for the performance of the Contract.

The *Consultant* shall, within 1 week of the Contract Date, notify the Project Manager and the Employer of the key person who has the authority to bind the *Consultant* on their behalf.

The *Consultant* does not materially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without prior written consent of the Employer.

Z11. Ethics

The *Consultant* undertakes:

Z11.1.1. not to give any offer, payment, consideration, or benefit of any kind, which constitutes or could be construed as an illegal or corrupt practice, either directly or indirectly, as an inducement or reward for the award or in execution of this contract;

Z11.1.2. to comply with all laws, regulations or policies relating to the prevention and combating of bribery, corruption and money laundering to which it or the Employer is subject, including but not limited to the Prevention and Combating of Corrupt Activities Act, 12 of 2004.

The *Consultant's* breach of this clause constitutes grounds for terminating the *Consultant's* obligation to Provide the Works or taking any other action as appropriate against the *Consultant* (including civil or criminal action). However, lawful inducements and rewards shall not constitute grounds for termination.

If the *Consultant* is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices, including but not limited to the making of offers (directly or indirectly), payments, gifts, gratuity, commission or benefits of any kind, which are in any way whatsoever in connection with the contract with the Employer, the Employer shall be entitled to terminate the contract in accordance with the procedures stated in core clause 92.2. the amount due on termination is A1.

Z12. Confidentiality

All information obtained in terms of this contract or arising from the implementation of this contract shall be treated as confidential by the *Consultant* and shall not be used or divulged or published to any person not being a party to this contract, without the prior written consent of the Project Manager or the Employer, which consent shall not be unreasonably withheld.

If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until otherwise notified by the Project Manager.

This undertaking shall not apply to –

Z12.3.1. Information disclosed to the employees of the *Consultant* for the purposes of the implementation of this agreement. The *Consultant* undertakes to procure that its employees are aware of the confidential nature of the information so disclosed and that they comply with the provisions of this clause;

Z12.3.2. Information which the *Consultant* is required by law to disclose, provided that the *Consultant* notifies the Employer prior to disclosure so as to enable the Employer to take the appropriate action to protect such information. The *Consultant* may disclose such information only to the extent required by law and shall use reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed;

Z12.3.3. Information which at the time of disclosure or thereafter, without default on the part of the *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time);

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.

The *Consultant* ensures that all his Sub-Consultants abide by the undertakings in this clause.

Z13. Employer's Step-in rights

If the *Consultant* defaults by failing to comply with his obligations and fails to remedy such default within [●] weeks of the notification of the default by the Project Manager, the Employer, without prejudice to his other rights, powers and remedies under the contract, may remedy the default either himself or procure a third party (including any sub-Consultant or supplier of the *Consultant*) to do so on his behalf. The reasonable costs of such remedial works shall be borne by the *Consultant*.

The *Consultant* co-operates with the Employer and facilitates and permits the use of all required information, materials and other matter (including but not limited to documents and all other drawings, CAD materials, data, software, models, plans, designs, programs, diagrams, evaluations, materials, specifications, schedules, reports, calculations, manuals or other documents or recorded information (electronic or otherwise) which have been or are at any time prepared by or on behalf of the *Consultant* under the contract or otherwise for and/or in connection with the works) and generally does all things required by the Project Manager to achieve this end.

Z14. Liens and Encumbrances

The *Consultant* keeps the Equipment used to Provide the Services free of all liens and other encumbrances at all times. The *Consultant*, vis-a-vis the Employer, waives all and any liens which he may from time to time have, or become entitled to over such Equipment and any part thereof and procures that his Sub-Consultants similarly, vis-a-vis the Employer, waive all liens they may have or become entitled to over such Equipment from time to time

Z15. Intellectual Property

Z15.1 Intellectual Property (“IP”) rights means all rights in and to any patent, design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works.

Z15.2 IP rights remain vested in the originator and shall not be used for any reason whatsoever other than carrying out the works.

Z15.3 The *Consultant* gives the Employer an irrevocable, transferrable, non-exclusive, royalty free licence to use and copy all IP related to the works for the purposes of constructing, repairing, demolishing, operating and maintaining the works.

Z15.4 The written approval of the *Consultant* is to be obtained before the *Consultant's* IP made available to any third party which approval will not be unreasonably withheld or delayed. Prior to making any *Consultant's* IP available to any third party the Employer shall obtain a written confidentiality undertaking from any such third party on terms no less onerous than the terms the Employer would use to protect its IP.

Z15.5 The *Consultant* shall indemnify and hold the Employer harmless against and from any claim alleging an infringement of IP rights (“the claim”), which arises out of or in relation to:

Z15.5. the *Consultant's* design, manufacture, construction or execution of the Works;

Z15.5. the use of the *Consultant's* Equipment, or

Z15.5. the proper use of the Works.

Z15.6 The Employer shall, at the request and cost of the *Consultant*, assist in contesting the claim and the *Consultant* may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it.

Z16. Dispute resolution: The following amendments are made to Option W1:

Z16.1 Under clause W1.3, in the fourth row of the first column of the adjudication table, the following words are added after the words “any other matter”: “excluding disputes relating to termination of the contract”.

Z16.2 The following clauses are added at the end of clause W1.3:

Z16.2. “The Adjudicator shall decide the dispute solely on the written submissions of the parties. No oral submissions shall be heard during adjudication.”



Z16.2. “Disputes relating to or arising from termination of the Contract shall not be determined by an adjudicator. Any such dispute shall be referred directly to arbitration.”

Part two - Data provided by the *Consultant*

The *Consultant* is advised to read the NEC3 Professional Service Contract (Third edition of June 2005 with amendments June 2006 – see www.neccontract.com/useful_downloads/NEC_Amendments_June_2006.asp) and the associated Guidance notes and flow charts, published by the Institution of Civil Engineers, in order to understand the implications of this Data which is required to be completed. Copies of these documents may be obtained from the South African Institution of Civil Engineering (telephone 011-805 5947) or Engineering Contract Strategies (telephone 011-803 3008).

Each item of data given below is cross-referenced to the clause in the NEC3 Professional Service Contract to which it mainly applies.

Clause	Statement
10.1	<p>The <i>Consultant</i> is (Name):</p> <p>Address</p> <p>Tel No</p> <p>Fax No.</p> <p>Email:</p>
22.1	<p>The <i>Consultant's</i> key persons are:</p> <p>1 Name:.</p> <p>Job:</p> <p>Responsibilities:</p> <p>Qualifications:</p> <p>Experience:</p> <p>2 Name:.</p> <p>Job:</p> <p>Responsibilities:</p> <p>Qualifications:</p> <p>Experience:</p> <p>3 Name:.</p> <p>Job:</p> <p>Responsibilities:</p> <p>Qualifications:</p> <p>Experience:</p>
11.2(3)	<p>The completion date for the whole of the services is As required by ACSA</p>

11.2(10)	The following matters (if any) will be included in the Risk Register	1.
11.2(13)	The <i>staff rates</i> are in the Pricing Data	
25.2	The <i>Employer</i> provides access to the following persons, places and things	
	access to	access date
	1 Relevant Engineering, Operational and Maintenance Personnel of ACSA	Contractors
	2 The site (the Consultant must obtain a permit at own cost)	Upon signing of the contract by ACSA
	3 The contractor responsible for Construction Health and Safety Professional Services	Upon signing of the contract by ACSA
	4 The contractor responsible for the (EPC) Replacement of Escalators	Upon signing of the contract by ACSA
	5 The contractor responsible for the (EPC) Engineering, Procurement, And Construction Of Elevators L9A And L9B	Upon signing of the contract by ACSA
31.1	The programme identified in the Contract Data is Contained in the Returnable Documents	
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are in the Pricing Data	
A	Priced contract with activity schedule	
11.2(14)	The <i>activity schedule</i> is in the Pricing Data	
11.2(18)	The tendered total of the Prices is in the Form of Offer and Acceptance	

C1.3 Sureties

Pro forma Performance Bond – Demand Guarantee (for use with Option X13) – Not Applicable

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

[Insert *Employer's* name and registered address]

Bank reference No.

Date:

Dear Sirs,

Performance Bond – Demand Guarantee for [insert name of *Consultant*] required in terms of contract [insert *Consultant's* contract reference number or title]

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

1.1	“Bank” means	[Insert name of Bank], [●] Branch, Registration No. [●]
1.2	“Bank’s Address” means	[Insert physical address of Bank]
1.3	“Contract” means	the written agreement relating to the Services, entered into between the Employer and the <i>Consultant</i> , on or about the [●] day of [●] 200[●] (Contract Reference No. [●]) as amended, varied, restated, novated or substituted from time to time;
1.4	“ <i>Consultant</i> ” means	[●] a company registered in accordance with the laws of [●] under Registration No [●].
1.5	“Employer” means	[●] a company registered in accordance with the laws of the Republic of South Africa under Registration Number [●]
1.6	“Expiry Date” means	the earlier of <ul style="list-style-type: none"> • the date that the Bank receives a notice from the Employer stating that all amounts due from the <i>Consultant</i> as certified in terms of the contract have been received by the Employer and that the <i>Consultant</i> has fulfilled all his obligations under the Contract, or • the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by the Employer.
1.7	“Guaranteed Sum” means	the sum of R[●], ([●] Rand)
1.8	“Services” means	[●]

2. At the instance of the *Consultant*, 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 *Consultant* of all of its obligations in terms of and arising from the Contract 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:

- be signed on behalf of the Employer by a director of the Employer;
- state the amount claimed (“the Demand Amount”);
- 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:
 - 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.
5. 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 the Employer and the *Consultant*.
6. The Employer shall be entitled to arrange its affairs with the *Consultant* 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 *Consultant* or any variation under or to the Contract.
7. Should the Employer cede its rights against the *Consultant* 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:
 - shall expire on the Expiry Date until which time it is irrevocable;
 - is, save as provided for in 7 above, personal to the Employer 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.
 - will be invalid and unenforceable if any claim which arises or demand for payment is received after the Expiry Date.
9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at _____ on this _____ day of _____ 20__

For and on behalf of the Bank

Bank Signatories(s)

Name(s) (printed)

Witness(s)

Bank's seal or stamp

C1.4 Insurance Schedule

Summary of Terms and other Matters Applicable to Employer Provided Insurance

Part 1:

Notes to Schedule:

- The provision of insurance by the *Employer* does not limit the obligations, liabilities or responsibilities of the *Consultant* under this contract in any way whatsoever (including but not limited to any requirement for the provision by the *Consultant* of any other insurances).
- Unless specifically otherwise stated, capitalised terms in this schedule (other than *Employer*, *Consultant* and *works* where written in italics) have the meaning assigned to them in the relevant policy of insurance.
- This Insurance Schedule is a generic term sheet generally applicable to the *Employer's* projects. In the circumstances:
 - If this Insurance Schedule reflects the amount of any cover provided by the *Employer* to be higher than the amount required in the Contract Data, the *Employer's* obligation under this Contract is limited to the lower amount; and
 - If this Insurance Schedule provides for any cover which is not stated to be provided by the *Employer* in the Contract Data, the *Employer's* obligation under this Contract is limited to the cover stated in the Contract Data.
- [The terms governing the Employer provided policies of insurance are the terms detailed in the policies themselves. This schedule is merely a summary of the key terms. It is the responsibility of the tenderer to obtain copies of the policies and satisfy itself of the actual terms as required by the tenderer.]

Part 2:

Insurance to be arranged by the Employer.

Notwithstanding anything contained elsewhere in the Contract and without limiting the obligations, liabilities or responsibilities of the *Consultant* in any way whatsoever (including but not limited to any requirement for the provision by the *Consultant* of any other insurances) the Employer shall effect and maintain as appropriate in the joint names of the Employer, Contractors and Sub-Contractors, Consultants and Sub-Consultants the following insurances which are subject to the terms, limits, exceptions and conditions of the Policy:-

- (a) **CONTRACT WORKS Insurance** – which will provide cover against physical loss of or damage to the Works including Temporary Works, plant and materials intended to form part of the Permanent Works. Blanket cover for Projects below R 50,000,000 and certificates for Projects above R 50,000,000
- (b) **PUBLIC LIABILITY Insurance** – which will provide indemnity against the insured parties legal liability in the event of accidental death of or injury to third party persons and/or accidental loss of or damage to third party property arising directly from the execution of the contract with a limit of indemnity of not less than **R 1,000,000,000** in respect of all claims arising from any one occurrence or series of occurrences consequent upon or attributable to one source or original cause.
- (c) **PROFESSIONAL INDEMNITY Insurance** – which shall be procured on a Project by Project basis covering the Employer, Contractor, Sub-Contractors, Consultants and all other Consultants providing their own services to the project and where relevant Suppliers and Vendors for an amount not less than **R 250,000,000** any one claim but **R 500,000,000** in total for the Project. This insurance will provide indemnity against claims arising out of negligent acts, errors or omissions by the Employer, Consultants, Sub-Consultants, Contractors and Sub-Contractors, and all other Consultants engaged in the Project as designers of the Works and as the parties responsible for the provision of the Services under the Contract and any other services for other aspects of the Project.

“DN” (2): The period of cover need not be for the maximum period but must be aligned with the requirement of the specific contract being entered into. If the contract is a short period, ACSA might elect to have the cover in place for the shorter Period i.e. reduced Liability period. Also ACSA may choose to transfer design risk to the Consultants at the Consultants Cost. This must be reviewed for each contract at tender stage and the Period amended in accordance with ACSA'S contracting and risk philosophy.

The Employer shall maintain such Professional Indemnity insurance for the period of the construction subject to a maximum of 48 (forty-eight) months commencing on the date of award of the Construction Contract. The insurance shall include Retroactive cover to the date of Conceptual Design commencement, maximum 3 (three) years.



- (d) **SASRIA (Riot & Strike) Insurance** – which will provide cover against Riot, Strike and associated risks for physical damage to the Works, including Temporary Works, Plant and Materials intended to form part of the Permanent Works.

“DN” (3): This cover is unique to RSA, in Namibia it is known as NASRIA which carries separate agreement. If the contract is outside of the Territorial Limits of RSA, ACSA will need to purchase separate Political Risks & Terrorism cover. This clause will then be voided and amended accordingly.

- (e) **MARINE AND AIR CARGO Insurance** – which will provide cover in respect of all materials, equipment, machinery, spares and other items for incorporation into the Works against all risks of physical loss or damage while in transit by sea or air (and ongoing transit by road or rail) from country of origin anywhere in the world to the site in the Republic of South Africa.

“DN” (4): The Marine Cargo cover is a unique policy outside of the ACSA annual Contract Works, SASRIA, Third Party Liability and Professional Indemnity insurances. The provision of Marine and Air Cargo Insurance must be deleted if the Contract does not have this requirement.

If the Contract has a Marine Cargo component and it is not an accepted Insurance responsibility of ACSA, then this clause (e) must be moved down to the section below that addresses “Insurance to be arranged by the Contractor as clause (e).

In the event that the insuring responsibility is transferred to the Constructor or Supplier, the following additional wording must also be included in addition to the clause as it stands in (e) above.

“The Contractor shall ensure that the following clause is included in any Marine Insurance policy covering plant, material, equipment and other things to be incorporated into the works imported in terms of the Contract;

Contribution

Notwithstanding anything contained herein to the contrary, it is hereby agreed that in the event of loss or damage to property otherwise insured by any Contract Works or engineering erection policies where such loss or damage is discovered after the termination of the voyage or transit in respect of which this insurance applies, and it is not possible to ascertain whether the cause of such loss or damage happened prior or subsequent to the termination of such voyage or transit, this insurance shall contribute 50 % (fifty percent) to any properly adjusted claim. The Contract Works or engineering erection policies shall likewise contribute 50 % (fifty percent) in the same manner.

Provided that any such Contract Works or engineering erection policies shall contain a contribution clause in like manner to that hereby expressed.

In the event of the Contractor being unable or unwilling to ensure that the above clause is included in any marine insurance policy covering the Works, the Contractor shall be liable to contribute 50 % (fifty percent) of any properly adjusted loss and the Contract Works or engineering erection policies shall contribute 50 % (fifty percent) in like manner.

It being understood that any such contribution made by the Contractor shall not be recoverable under insurance held by the Employer on the Contractor’s and its behalf, and that compliance with this condition shall not derogate from any obligation or liability of the Contractor under Contract.”

Applicable to Clauses (a) to (e) above

- The Employer shall pay any premium due in connection with the insurance affected by the Employer.
 - (i) The Contractor shall not include any premium charges for this insurance except to the extent that he may deem necessary in his own interests to effect supplementary insurance to the insurance effected by the Employer. The Employer reserves the right to call for full information regarding insurance costs included by the Contractor.
 - (ii) Any further clarification in the scope of cover provided by the Policies arranged by the Employer should be obtained from the Employer.
 - (iii) In the event of any occurrence which is likely to or could give rise to a claim under the insurances arranged by the Employer the Contractor shall:
 - (a) in addition to any statutory requirement or other requirements contained in the Contract immediately notify the Employer and the Employer’s Insurance Broker or the Insurers by e-mail, telephone or telefax giving the circumstances nature and an estimate of the loss or damage or liability – Ref: **Annexure “B” (and copy in The Employer).**



- (b) complete a Claims Advice Form available from the Insurance Brokers to whom the form must be returned without delay. – Ref: **Annexure “B” (and copy in the Employer)**.
- (c) negotiate the settlement of claims with the Insurers through the Employer’s Insurance Brokers and shall when required to do so obtain the Employer’s approval of such settlement.

The Employer and Insurers shall have the right to make all and any enquiries to the site of the Works or elsewhere as to the cause and results of any such occurrence and the Contractor shall co-operate in the carrying out of such enquiries.

- (iv) The Contractor shall be liable for the amount of the Deductible (First Amount Payable) in respect of any claim made by or against the Contractor or his Sub-Contractors under the insurances effected by the Employer.

Where more than one Contractor is involved in the same claim the Deductible will be borne in pro-rata amounts by each Contractor in proportion to the extent of each Contractor’s admitted claim.

The Deductible for which the Contractors are responsible and which are applicable in respect of each and every occurrence or series of occurrences attributable to one source or original cause giving rise to a loss or damage or liability indemnifiable are as stated in **Annexure “A”**.

- (v) Any amount which becomes payable to the Contractor or any of his Sub-Contractors as a result of a claim under the Contact Works Insurance shall if required by the Employer be paid net of the Deductible to the Employer who shall pay the Contractor from the proceeds of such payment upon rectification repair or reinstatement of the loss or damage but this provision shall not in any way affect the Contractor’s obligations liabilities or responsibilities in terms of the Contract.

In respect of any amount which becomes payable as a result of a claim under any Public Liability Insurance the Contractor or his Sub-Contractors shall be required to pay the amount of the Deductible to the Insurer to facilitate settlement of such claim.



Insurance to be arranged by the *Consultant*

Without in any way detracting from any requirements contained elsewhere in this contract the *Consultant* and Sub-Contractors shall where applicable, provide as a minimum the following:

- (a) Insurance of Contractor's Equipment including tools offices and other temporary structures and contents and other things (except those intended for incorporation into the Works) brought onto the Site for a sum sufficient to provide for their replacement.
- (b) Insurance in terms of the provisions of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as may be amended or in terms of any similar Workers Compensation and Unemployment Insurance enactment's in the Suppliers' or Sub Supplier's operational, manufacturing or assembly locations.
- (c) Motor Vehicle Liability Insurance comprising (as a minimum) "Balance of Third Party" Risks including Passenger Liability indemnity.

"DN"(5): on (a) to (c) above - These covers are unique to RSA however in Territories outside of RSA it is legislated and regulated by local authorities which have separate requirements. If the contract is outside of the Territorial Limits of RSA, ACSA will need to review these requirements and advise their contractors on the specific new requirements and the clauses amended accordingly.

- (d) Where the Contract involves manufacturing and/or fabrication of the Works or parts thereof at premises other than at the site, the Supplier shall satisfy the Employer that all Plant and Materials for incorporation in the Works are adequately insured during manufacture and/or fabrication. In the event of the Employer having an insurable interest in such works during manufacture or fabrication then such interest shall be noted by endorsement to the relevant Policies of Insurance of the Supplier.

Imported equipment or component parts or materials to be supplied in terms of this Contract which require any process of assembly or finishing in South Africa prior to delivery to the Site are to be insured by the Contractor up to the commencement of transit to Site of the assembled or finished equipment component parts or materials unless special arrangements are made by the Employer

"DN" (6): Per "DN" (4) above, if the Contract has a Marine Cargo insurance requirement and is not an accepted insurance responsibility of ACSA, then clause (e) MARINE AND AIR CARGO Insurance must be included as part of the "Insurance to be arranged by the Contractor as clause (e).

This is in the event that the Marine Cargo insurance responsibility is transferred to the Contractor or Supplier and remember to add the "50/50 Contribution" clause as quoted in "DN" (4) on page 4 of this document.

- (i) The insurances to be provided by the Contractor and his Sub-Contractors shall:
 - (a) be affected with Insurers and on terms approved by the Employer
 - (b) be maintained in force for whatever period the perils to be insured by the Contractor are at risk (including any defects liability period during which the Contractor is responsible for the care of the Works)
 - (c) submit to the Employer the relevant Policy or Policies of Insurance or evidence acceptable to the Employer that such insurances have been affected.
- (ii) In the event that the Contractor or any of his Sub-Contractors receives any notice of cancellation or restrictive modification to the insurance provided to them they shall immediately notify the Employer in writing of such cancellation or restriction and shall advise what action the Contractor or his Sub-Contractor will take to remedy such action.

If the Contractor fails to effect and keep in force the insurances referred to in this Contract, then the Employer may effect and keep in force any such insurances and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount paid by the Employer from any monies due or which may become due to the Contractor or recover same as a debt from the Contractor.



Sub-Contractors and Sub-Consultants

The *Consultant* shall:

- (a) ensure that all potential and appointed Sub-Contractors and Sub-Consultants are aware of the whole contents of this clause, and
- (b) enforce the compliance by Sub-Contractors with this clause where applicable.

DEDUCTIBLES

1) Contract Works Insurance

- With regards to contract works claims, the *Consultant* is responsible for a deductible (excess) of R250 000.
- Contractors / consultants may re-insure the deductible

2) Public Liability

- In the event of a claim brought against the contractor / Consultant for 3rd party property damage the contractor / Consultant will be responsible for a deductible (excess) of R525 000
- In the event of a claim brought against the contractor / Consultant for removal of lateral support, the contractor / Consultant will be responsible for a deductible (excess) of R750 000
- In the event of a claim brought against the contractor / consultant for damage to aircraft, the contractor / consultant will be responsible for a deductible (excess) of R750 000
- Contractors / consultants may re-insure the deductibles

3) Professional Indemnity

- All consultants are responsible for Professional Indemnity cover of R5million
- Contractors who have a material design element, excluding typical P & G related work, as part of their scope, are responsible for a Professional Indemnity cover of R5million.
- In the event of a claim above R5million, the ACSA PI cover will kick in for the amount in excess of R5million.
- Proof of cover in the form of a certificate of insurance should be provided to ACSA before a contract is signed between ACSA and the contractor and/or consultant.

4) SASRIA (Riot & Strike)

0,100% of Contract Value, minimum R 2,500 and maximum R 25,000 in respect of theft claims only.

5) Marine and Air Cargo - cover is not automatically arranged unless by special request. Refer to ACSA for additional information.

“DN” (7): this section would need to be deleted if not applicable – read “DN” (4) & “DN” (6).



Annex B

INCIDENT ADVICE FORM

NOTE: PLEASE SEND A COPY HEREOF TO ACSA HEAD OFFICE

Send to: *From:

Aon South Africa (Pty) Ltd - Construction & Engineering
Attention: Priscilla Hart
1 Sandton Drive
Sandhurst, Sandton
2196
Tel No: +27 (11) 944 7974
E- mail: priscilla.hart@aon.co.za

*Please provide name of contracting company, site address, telephone, fax numbers and e-mail.

DATE OF LOSS:

REPORTED TO SITE AGENT BY: DATE

REPORTED TO AON SOUTH AFRICA BY: DATE

Locality of Incident:

How did the loss /damage/injury/death occur (cause)?



Details and nature of loss /damage/injury/death:

Names and address of witnesses:

Estimated cost of repairs, if applicable (Separate records of all costs must be kept):

Who or what appears to be responsible for the loss /damage/injury/death:



Person whom assessor should contact:

Telephone, fax number and e-mail:

SIGNED BY: SIGNATURE:

COMPANY: DATE:

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

Clause 11 in NEC3 Professional Services Contract, June 2005 (PSC3) Option A states:

Identified and defined terms	11	
	11.2	(14) The Activity Schedule is the <i>activity schedule</i> unless later changed in accordance with this contract.
		(15) The Price for Services Provided to Date is the total of the Prices for the activities which have been completed. A completed activity is one which is without Defects which would delay immediately following work.
		(18) 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 consultant 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.

Function of the Activity Schedule

Clause 53.1 in Option A states: "Information in the Activity Schedule is not Scope." This confirms that instructions to do work or how it is to be done are not included in the Activity Schedule but in the Scope. This is further confirmed by Clause 21.1 which states, "The *Consultant* Provides the Services in accordance with the Scope". Hence the *Consultant* does **not** Provide the Services in accordance with the Activity Schedule. The Activity Schedule is only a pricing document.

Link to the programme

Clause 31.4 states that "The *Consultant* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance". Hence when compiling the *activity schedule*, the tendering consultant needs to show each activity on the programme he submits with his tender.

Preparing the activity schedule

The tendering consultant prepares the *activity schedule* and should study the PSC3 Guidance Notes pages 2 and 24 before doing so. The *Employer* may have instructed the tendering consultant to include particular activities which he has specified and requires the *Consultant* to identify them in his *activity schedule*.

1 Generally, it is the *Consultant* who prepares the Activity Schedule as part of his tender by breaking down the work described within the Scope into suitable activities which can be well defined, priced as a lump sum and shown on the programme. The *Employer*, in his Conditions of Tender or in a Tender Schedule, may have listed some items that he requires the *Consultant* to include in his *activity schedule* and be priced accordingly.

2 The Prices are defined in clause 11.2(18) as the lump sum for each activity in the activity schedule and the Price for Services Provided to Date (PSPD) (the amount due to the *Consultant*) is defined in clause 11.2(15) as the total of the Prices for each activity that has been completed. Hence activities in the activity schedule should be structured so as to provide an acceptable monthly cash flow as they are only assessed for payment on the assessment date if they have been completed.

3 As the *Consultant* has an obligation to correct Defects (core clause 41) the lump sum Prices must also include for the correction of Defects except if the Defect is one for which the *Consultant* is not liable which is compensation event 60.1(12).

4 If the *Consultant* has decided not to identify a particular activity, the cost to the *Consultant* of doing the work must be included in, or spread across, the other Prices in order to fulfil the obligation to complete the *services* for the tendered total of the Prices.



5 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 *Consultant* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event. See Clause 60.1.

6 Hence the Prices tendered by the *Consultant* in the *activity schedule* are inclusive of everything necessary and incidental to Providing the Services in accordance with the Scope, as it was at the time of tender, as well as correct any Defects except those for which he is not liable.

7 However, the *Consultant* does not have to allow in his Prices for matters that may arise as a result of a compensation event.

Expenses

Expenses are not included in the activity schedule items and are assessed separately at each assessment date.

Expenses associated with employing a staff member in Providing the Services are listed separately either by the *Employer* in Contract Data provided by the *Employer* or by the *Consultant* in Contract Data provided by the *Consultant*. As only the *expenses* listed may be claimed by the *Consultant*, all other cost to the *Consultant* associated with Providing the Services must be included within the activity schedule or *staff rates*.

Rate adjustment for inflation of *expenses* is explained on page 13 of the Guidance Notes.

Staff rates

When a compensation event occurs changes to the affected Activity Schedule item or new priced items in the Activity Schedule are assessed as the actual Time Charge for work already done and the forecast Time Charge for work not yet done. (See clause 63.1 and 63.14 in Option A)

The Time Charge is the sum of the products of each of the *staff rates* multiplied by the total staff time appropriate to that rate properly spent on work in this contract. (Clause 11.2(13))

Tendering consultants are advised to consult the NEC3 Professional Services Contract (June 2005) Guidance Notes and Flow Charts page 28 before entering *staff rates* into Contract Data, or in C2.2 below.

This is because *staff rates* can be established in one of three ways:

- rates for named staff,
- rates for categories of staff or
- rates related to salaries paid to staff.

Rate adjustment for inflation, if necessary, can be based either on actual salary adjustments or by using Option X1: Price adjustment for inflation. See pages 13, 14 and 28 of the Guidance Notes.

C2.2 The *activity schedule*

Use this page as a cover page to the *Consultant's activity schedule* or include here in this format:

ENGINEERING, PROCUREMENT, AND CONSTRUCTION OF ELEVATORS L9A, L9B BOQ

Item No.	Programme Reference	Activity description	Price (excl. VAT)	Quantity	Subtotal Price (excl. VAT)
1		Induction, parking fees, and permits (Reimbursable at Cost)	25 000	1	25 000
2		all required Travelling (Monthly)		18	
3		Design Development Report submission to Employer for Acceptance		1	
4		Health and safety report as per scope of work (C3) for health and safety (Monthly)		1	
5		Works Completion Report submission to Employer		1	
6		Handover/Record Information report submission to Employer		1	
7		Close-out Report submission to Employer.		1	
8		Ps and Gs (Monthly from ??)		10	
9		Coordinating all internal resources and third parties/vendors for the flawless execution of projects (Monthly)		18	
10		Develop a detailed project plan to track progress, Measure project performance using appropriate systems, tools, and techniques (Monthly)		18	

11		Manage relationships with the Employer and all stakeholders including all meetings (a minimum of 1 meeting per week) (Monthly)		18	
12		Perform all risk management to minimise project risks, report and escalate when required (Monthly)		18	
13		Ensure that the project is delivered on quality, on time, within scope and within budget (Monthly)		18	
14		Ensure the project is delivered according to national treasury FIPDM (Framework for Infrastructure Delivery and Procurement Management) (Monthly)		18	
15		Create and maintain comprehensive project documentation including safety (Monthly)		18	
16		Close out the project and hand over close out documentation	-	1	
17		Project board reports (Monthly)		18	
18		Witnessing the prescribed tests associated with the prescribed annexures (A + B) for the elevators		2	
19		Verifying and accepting on behalf of the <i>Employer</i> the prescribed annexures (A + B) are compliant with the department of labour requirements		2	
				Sub Total A (excl. VAT)	

REPLACEMENT OF ESCALATORS BOQ

Item No.	Programme Reference	Activity description	Price (excl. VAT)	Quantity	Subtotal Price (excl. VAT)
1		Induction, parking fees, and permits (Reimbursable at Cost)	25 000	1	25 000
2		all required Travelling (Monthly)		48	
3		Design Development Report submission to Employer for Acceptance		1	
4		Health and safety report as per scope of work (C3) for health and safety (Monthly)		1	
5		Works Completion Report submission to Employer		1	
6		Handover/Record Information report submission to Employer		1	
7		Project board reports		18	
8		Ps and Gs (Monthly)		10	
9		Coordinating all internal resources and third parties/vendors for the flawless execution of projects (Monthly)		18	
10		Develop a detailed project plan to track progress, Measure project performance using appropriate systems, tools, and techniques (Monthly)		18	
11		Manage relationships with the Employer and all stakeholders including all meetings (a minimum of 1 meetings per week) (Monthly)		18	
12		Perform all risk management to minimise project risks, report and escalate when required (Monthly)		18	

13		Ensure that the project is delivered on quality, on time, within scope and within budget (Monthly)		18	
14		Ensure the project is delivered according to national treasury FIPDM (Framework for Infrastructure Delivery and Procurement Management) (Monthly)		18	
15		Create and maintain comprehensive project documentation including safety (Monthly)		18	
16		Close out the project and hand over close out documentation	-	1	
17		Witnessing the prescribed test associated with the prescribed annexures (A + B) for the escalators (Monthly)		19	
18		Verifying and accepting on behalf of the <i>Employer</i> the prescribed annexures (A + B) are compliant with the department of labour requirements		19	
Sub Total B (excl. VAT)					

Activity Number	Activity Description	Total Price (Excl VAT) [ZAR]
Works		
1	Sub-total A – Engineering, Procurement, and Construction of Elevators L9A And L9B	
2	Sub-total B – Replacement of Escalators	
*Grand Total A		R

***All mounts to entered exclusive of VAT. Grand Total A to be carried over to Form of Offer**

C3.1 *Employer's Scope*

Executive overview

In brief, the Consultant will be responsible for the Professional Construction Project Management Services for Engineering, Procurement, And Construction of Elevators L9A And L9B, and the Replacement of 19 escalators in accordance with the national treasury (FIPDM) Framework for Infrastructure Delivery and Procurement Management.

Perform Contract administration on behalf of the <i>Employer</i> for the (EPC) Engineering, Procurement, and Construction of elevators L9A and L9B contract between the <i>Employer</i> and the (EPC) Engineering, Procurement, and Construction of elevators L9A and L9B contractor. Perform Contract administration on behalf of the <i>Employer</i> for the Replacement of Escalator contract between the <i>Employer</i> and the Replacement of Escalator contractor
Perform to an extend feasible, duties of the Employer (Client) as articulated in regulation 5 of the Construction Regulations of 2014.
Ensure compliance to the relevant aspects of the Occupational Health and Safety Act, its Associated Regulations and Gazetted standards throughout the duration of the project.
Management of project stakeholders, Coordinating all internal resources and third parties/vendors for the flawless execution of projects
Management of project communications
Manage the integration of project works
Coordinating Design Development by others and Report submission to Employer for acceptance
Coordinating Design Documentation by others and Report submission to Employer.
Works Completion Report submission to Employer
Handover/Record Information report submission to Employer
Close-out Report submission to Employer.
Develop a detailed project plan to track progress, Measure project performance using appropriate systems, tools, and techniques
Manage relationships with the Employer and all stakeholders including all meetings (a minimum of 2 meetings per week)
Perform all risk management to minimise project risks, report and escalate when required
Ensure that the project is delivered on quality, on time, within scope and within budget
Ensure the project is delivered according to national treasury FIPDM (Framework for Infrastructure Delivery and Procurement Management)
Create and maintain comprehensive project documentation including safety
Close out the project and hand over close out documentation

Witnessing the prescribed test associated with the prescribed annexures (A + B) for the escalators and elevators
--

Verifying and accepting on behalf of the <i>Employer</i> the prescribed annexures (A + B) are compliant with the department of labour requirements
--

Health and safety scope of Work

Review the safety and Health specification of appointed contractors for these projects: Engineering, Procurement, And Construction of Elevators L9A And L9B, and the Replacement of 19 escalators

Perform all the duties of the Client as stated in section 5.1 (a to s) of construction regulations 2014

Perform all the duties of the Client as stated in sections 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, and 5.8 of construction regulations 2014

Principles of cause-and-effect analysis and its application to hazard identification and risk management for the project.

Project health and safety risk profiling

Attendance of site meetings and report on safety and health risks/issues and LTIR statistics

Manage health and safety management system reviews

Carry out Health and Safety compliance reporting during the construction phase

Liaison with the O.R. Tambo safety and compliance department, furnish them with required documents from contractors for the Engineering, Procurement, And Construction of Elevators L9A And L9B, and the Replacement of 19 escalators

Close out report on the health and safety with lessons learned for these projects

The lift inspector's responsibility is to verify that the construction adheres to the Department of Labour's specifications for the designated annexures (A and B)

Employer's objectives and purpose of the works

The objective is to

- Re-design the lift shafts and pits of lifts L9A and L9B to accommodate a suitable standard high-traffic lift and the implementation the modified shaft via civil works or structural works.
- Replace of 19 escalators throughout the terminal building.



The *Consultant* will provide Professional Construction Project Management Services at OR Tambo International Airport. The *Consultant* will be appointed directly by the Airports Company of South Africa.

Generic Specifications

All work shall conform to all relevant SANS standards, OHS ACT 85 of 1993 regulations and all other legislations that might be relevant to this Contract and the execution thereof.

All work shall be carried out in accordance with prevailing industry norms and best practice and will at all times comply with OEM requirements.

Environment

The *Consultant* will keep noise and dust levels to a minimum. At no time shall his/her work result in nuisance, interference or danger to the public or any other person working at the Airport.

At no time shall the *Consultant*:

- allow any pollutive or toxic substance to be released into the air or storm water systems
- interfere with, or put at risk, the functionality of any system or service
- cause a fire or safety hazard

Proof of compliance with the law

The Project Manager may at any time request from the *Consultant* reasonable proof that the *Consultant* is in compliance with applicable laws or regulations.

Cell phones and two-way radios

Use of cell phones on airside is **not** permitted unless the user is in possession of an appropriate Airport permit for the device. Cell phone permit issuing authority lies with the ACSA Security department.

The *Consultant* will **not** be allowed to use two-way radios at the Airport unless these radios are of the type, model and frequency range as approved by the ACSA IT department.

Protection of the public

The *Consultant* shall take special care in order not to harm or endanger the public in any way. Work shall be sufficiently hoarded and guarded in order to safeguard children and the general public from injury relating to machinery, work or other.

Constraints on how the *Consultant* Provides the Services.

Management meetings

The *Consultant* will be expected to attend meetings relating to operations, contract management and other issues that may arise from time to time. As far as is practicable, the *Consultant* will make all required persons available for these meetings. The *Consultant* shall not submit claims for payment for staff attending any of these meetings.

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	Weekly on Mondays at 10H00	Onsite	<i>Employer's Agent, Consultant</i>
Overall contract progress and feedback	Monthly on 1 st Mondays at 10H00	Onsite	<i>Employer's Agent, Consultant and Sub-consultant(s)</i>



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.

Health and safety risk management

The *Consultant* shall comply with the health and safety requirements contained in this document. It shall be the *Consultant's* responsibility to ensure that all relevant labour and safety legislation is adhered to in rostering staff.

All persons on company premises shall obey all health and safety rules, procedures and practices. In particular, NO SMOKING signs and the prohibition of the carrying of smoking materials in designated areas shall always be obeyed. A copy of the Safety Rules booklet is available on request from the ACSA Safety Department.

All the applicable requirements of the Occupational Health and Safety Act (1993) and Regulations and any amendments thereto, shall be met. Where the OHS Act prescribes certification of competency of persons performing certain tasks, proof of such certification shall be provided to the Project Manager.

The *Consultant's* Workmen's Compensation fees must be up to date. A copy of the *Consultant's* WCA registration shall be produced on request.

The following areas in the company are declared as "HOT WORKS PERMIT" areas:

- All airside areas
- All basement areas
- All areas accessible to the public
- All enclosed areas
- The terminal building

Any process in the above mentioned areas involving open flames, sparks, or heat shall be authorised by the issue of a permit to work - obtainable from the ACSA Safety department. Any work done under the protection of a permit to work shall be in strict compliance with every prescription regarding the permit.

Safety equipment shall be used where applicable (e.g. safety, goggles, boots, harness, etc.) The *Consultant*, at his/her own expense shall provide such equipment, for his/her employees. The *Consultant* shall apply the necessary discipline and control to ensure compliance by his workers.

The *Consultant* must ensure that his/her employees are familiar with the existing emergency procedures and must co-operate in any drills or exercises, which might be held. Emergency / fire equipment and extinguishers shall not be obstructed at any time

No person shall perform an unsafe / unhygienic act or operation whilst on the *Employer's* premises.

No unsafe/dangerous equipment or tools may be brought onto or used on the *Employer's* premises. The reserves the right to inspect all equipment/tools at any time and to prevent/prohibit their use, without any penalty to the Company and without affecting the terms of the Contract in any way.

The *Employer* reserves the right to act in any way to ensure the safety/security of any persons, equipment or goods on its premises and will not be liable for any cost or loss evoked by the action. This includes the right to search all vehicles and persons entering, leaving or on the premises and to inspect any parcel, package, handbag and pockets. Persons who are not willing to permit such searches may not bring any such items or vehicles onto the premises.

The *Consultant* shall maintain good housekeeping standards in the area where he is working for the duration of the contract.



At no time must the *Consultant* interfere with, or put at risk, the functionality of any fire prevention system. Care must also be taken so as to prevent fire hazards.

The *Consultant* is required to issue all staff with standard uniforms. This shall as a minimum include: safety shoes, overalls (clearly marked with *Consultant's* company logo) and numbered reflective jackets (as per Airport requirements). All costs relating to uniforms shall be for the *Consultant's* account.

Environmental constraints and management

The *Consultant* shall comply with the environmental criteria and constraints stated in this document

Quality assurance requirements

All work must be executed in accordance with prevailing industry norms and standards relating to quality. In this regard, the *Consultant* will be expected to draft quality plans for the *Employer's Agent* from time to time.

Invoicing and payment

Within two days of receiving a payment certificate from the *Employer's Agent* in terms of core clause 51.1, the *Consultant* provides the *Employer* with a tax invoice showing the amount due for payment equal to that stated in the *Employer's Agent's* payment certificate.

The *Consultant* shall address the tax invoice to the following Address,

Airports Company South Africa SOC Ltd
Private Bag X1,
OR Tambo International Airport
Kempton Park
1627

and include on each invoice the following information:

Name and address of the *Consultant* and the *Employer's Agent*;
The contract number and title;
Consultant's VAT registration number;
The *Employer's* VAT registration number 4930138393;
Description of work done by cross reference to *Employer's Agent's* certificate;
Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
Quote PO number as a reference

The *Consultant* should arrange with ACSA's finance department for making all payments electronically.

Invoices should be submitted via email to Invoices.Acsa@airports.co.za

Provision of bonds and guarantees

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

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

Subcontracting

Should any part of the *services* be subcontracted, the *Consultant* will be responsible for all *services* as if it was done so by the *Consultant*.

No casual labour (i.e. “off the street” labour) may be employed by the Consultant unless pre-arranged with ACSA. Whenever this is required, the Consultant shall come to a suitable arrangement with ACSA regarding sourcing and screening of such individuals.

Consultant's key persons

Minimum requirements of people employed on the Site

A schedule of *key persons* to this contract will be provided to the *Employer's Agent* on or before the *starting date* of this contract. This will, as a minimum, include all persons from draughtsman level to management level. For the full duration of this contract, none of these persons will be replaced by a person of lesser ability or qualification. All on-site staff leaves shall be reported and agreed with the *Employer's Agent*. The *Employer's Agent* may request the replacement of any person with unsatisfactory performance or who fails to comply with this contract.

It is the *Consultant's* responsibility to ensure that there is always sufficient and competent staff to perform the *services* as planned. It shall be the *Consultant's* responsibility to ensure that all relevant labour and safety legislation is adhered to in rostering staff.

All *key persons* are required to have an access permit to access the site and Airside Vehicle Operators Permit to drive on the airside (AVOP)

The *Consultant* shall not be compensated for costs relating to ACSA required permits, nor for labour/time spent in obtaining it. An allowance must be made in the tendered price in this regard.

The *Consultant* must ensure that he/she is, at all times, familiar with ACSA's safety and security requirements relating to permits in order for no work to be delayed as a result thereof. This will include the permit application process.

Note that (within reason) the *Consultant* will have no claim against ACSA in the event that a permit request is refused.

The following table is not all inclusive, but is provided for illustration purposes:

Permit	Required by/for	Department
AVOP – Airside Vehicle Operator permit	All drivers of vehicles on airside	ACSA Safety
Airside Vehicle Permit	All vehicles that enter airside	ACSA Safety
Basement Parking permit	All vehicles allowed to enter the delivery basement	ACSA Parking
Personal permit	All persons employed on the airport	ACSA Security
Cell phone permit	All persons taking cell phones to airside	ACSA Security
Lap top permit	All persons taking lap top computers to airside	ACSA Security
Camera permit	All persons taking cameras or camera equipment to airside	ACSA Security
Hot Works Permit	All welding and/metal cutting work	ACSA Safety

Proof of having attended the airside induction training course is required for all personal permit applications. Persons applying for an AVOP must provide proof of having attended an AVOP course and having had all required medical examinations performed by a qualified medical practitioner. Fees are levied for these courses. Fees are further levied for all permit renewals and refresher courses - where applicable

Construction

Completion, testing, commissioning and correction of Defects



Services to be done by the Completion Date

On or before the Completion Date the *Consultant* shall have done everything required to provide the *services* except for the work listed below which may be done after the completion of *section 2* but in any case before the dates stated. The *Employer's Agent* cannot certify Completion until all the *services* 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 *services* and works and Others from doing their work.

	Item of work	To be completed by
	Handover and Closure Report	Within 5 days after Completion



C3.2 *Consultant's Scope*

The Consultant confirms that the Employer's scope is a full and accurate representation of the scope of work



C4 Site Information

C4.1: Information about the *site* at time of tender which may affect the work in this contract

The Works are located at OR Tambo International Airport, which is a restricted and access controlled area. It is crucial for the Contractor to note that OR Tambo International Airport is a National Key Point and governed as such. The contractor will have to adhere to all airport requirements regarding access control, security, fire, health and safety.

4.1.1 Access limitations

a. General

- The works is within the security area of the Airports Company South Africa (ACSA) and access to the site is governed by the terms and conditions laid down by ACSA Security Officials from time to time. The *Contractor* shall satisfy himself as to these terms and conditions.
- The *Contractor* shall liaise with the ACSA Security Staff in order to obtain access permits for his staff and vehicle, which will be working within the airport. Personnel and vehicles entering and leaving the site are subject to routine searches.
- The *Contractor* will have to obtain a “gate permit” from the *Project/Service Manager*, before materials and equipment can be removed from the site. The “gate permit” gives an itemized list of materials and equipment to be removed from site.
- The *Contractor* shall make his own assessment of, and shall allow in his rates for those access problems which may be encountered and no extra payment or claim of any kind will be allowed on account of difficulties of access to the Works.

b. Permits

- The Contractor shall ensure that he/she is, at all times, familiar with ACSA's safety and security requirements relating to permits in order prevent work delay as a result thereof.
- This shall include the permit application process.
- The Contractor shall have no claim against ACSA in the event that a permit request is refused.
- The following table is not all inclusive, but is provided for illustration purposes:

Permit	Required by/for	Department
AVOP – Airside Vehicle Operator permit	All drivers of vehicles on airside	ACSA Safety
Airside Vehicle Permit	All vehicles that enter airside	ACSA Safety
Basement Parking permit	All vehicles allowed to enter the delivery basement	ACSA Parking
Personal permit	All persons employed on the airport	ACSA Security
Cell phone permit	All persons taking cell phones to	ACSA Security



	airside	
Tools permit	All persons taking cell phones to airside	ACSA Security
Lap top permit	All persons taking lap top computers to airside	ACSA Security
Camera permit	All persons taking cameras or camera equipment to airside	ACSA Security
Hot Works Permit	All welding and/metal cutting work	ACSA Safety
Airside Projects/Works Permit	For All projects on the Airside	ACSA Airport Operations/Safety
Low /Medium Voltage Permit to Work	For all work on Substation, Distribution Boards and Cables	ACSA Electrical Maintenance

- Proof of having attended the airside induction training course is required for all personal permit applications.
- Persons applying for an AVOP must provide proof of having attended an AVOP course.
- Fees are levied for these courses. Fees are further levied for all permit renewals and refresher courses - where applicable.
- No work shall be done without a written permission in the form of a permit/works order, displayed on the wall or in a visible area in the work area.

c. Cell phones and two-way radios

- Use of cell phones on airside is **not** permitted unless the user is in possession of an appropriate Airport permit for the device.
- Cell phone permit issuing authority lies with the ACSA Security department.
- The Contractor will **not** be allowed to use two-way radios at the Airport unless these radios are of the type, model and frequency range as approved by the ACSA IT department.
- Approved radios may be arranged via said department - payment will be for the account of the Contractor.

4.1.2 Ground conditions in areas affected by work in this contract

There are no excavations activities in this project.

4.1.3 Hidden and other services within the site

There might be water and sewer pipes crossing under or above the substation. Also there are a lot of other cables going through the substation 5 to other substations and these must be treated as live cables. There are also communication cables connecting the substation with the other substations.

4.1.4 Safety Management

- The *Contractor* must be registered with the Occupational Health and Safety Commission.



- The *Contractor* submits a Health and Safety Plan to the *Employer* for work to be performed.
- The Health and Safety plan must include a Risk Assessment of the activities with mitigating methods that will be used to prevent accidents.
- The Health and Safety plan must be implemented and monitored to ensure its integrity.
- Details of *Contractor's* appointed Health and Safety Committee members must be included and appointed in writing.
- The *Contractor* in writing must appoint all competent person/s.