

SCHEDULE K (PERFORMANCE BOND)

This document contains confidential and proprietary information of Eskom and is “Eskom Confidential Information” for the purposes of the non-disclosure agreement entered into between Eskom and Supplier in relation to this Project. It is furnished for contract evaluation and award purposes only. Except with the express prior written permission of Eskom, this document and the information contained herein may not be published, disclosed, or used for any other purpose.

INSTRUCTIONS FOR RESPONDING TO THIS DOCUMENT:

General Guidelines

- These RFP documents contain the key legal terms and conditions that the Supplier will be required to comply with in relation to this Project.
- Eskom requires the Supplier to comply with the requirements as written, and compliance with these RFP documents will be a critical component of Supplier's response to the RFP.
- The Supplier must complete Schedule Q (Supplementary Terms), as it is a mandatory requirement. Non-compliance will result in the Supplier being disqualified from further evaluation.

(to be reproduced on the letterhead of the Bank providing the Bond / Guarantee)

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

Bank reference No.

Date:

Dear Sirs,

Performance Bond – Demand Guarantee for [Drafting Note: Insert name of Supplier] required in terms of the Agreement between Eskom Holdings SOC Ltd and [Drafting Note: Insert name of Supplier]

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 “**Agreement**” means the written agreement relating to providing the Services (**Drafting Note: Supplier to note the description of the Services to be described here and Contract/Agreement Reference Number**), entered into between Eskom and the Supplier, on or about the [●] day of [●] 200[●], Contract Reference number (**Drafting note: Reference number to be inserted**), as amended, varied, restated, novated or substituted from time to time;

1.4 “**Eskom**” Eskom Holdings SOC Ltd, a company incorporated in South Africa with registered number 2002/015527/30 and having its registered office at Megawatt Park, Maxwell Drive, Sunninghill, Sandton;

1.5 “**Supplier**” means;

[●], a company incorporated in [●] with registered number [●] and having its registered office at [●]

1.6 “**Expiry Date**” means the earlier of

- the date that the Bank receives a notice from Eskom stating that all amounts due from the Supplier as certified in terms of the Agreement have been received by Eskom and that the Supplier has fulfilled all its obligations under the Agreement, or
- the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by Eskom;

1.7 “**Guaranteed Sum**” means the sum of R[●], ([●] Rand (**Drafting Note: The amount to be inserted**) (**Note to Supplier: 10% of the total Agreement value**))

1.6 “**Services means**” (**Drafting note: insert as applicable**)

2. At the instance of the Supplier, 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 Supplier of all of its obligations in terms of and arising from the Agreement 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:
- be signed on behalf of Eskom by a Group Executive, General Manager or its delegate;
 - state the amount claimed ("the **Demand Amount**");
 - state that the Demand Amount is payable to Eskom in the circumstances contemplated in the Agreement.
4. Notwithstanding the reference herein to the Agreement, 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 Eskom and the Supplier.
6. Eskom shall be entitled to arrange its affairs with the Supplier 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 Supplier or any variation under or to the Agreement.
7. Should Eskom cede its rights against the Supplier to a third party where such cession is permitted under the Agreement, 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:
- shall expire on the Expiry Date until which time it is irrevocable;
 - is, save as provided for in 7 above, personal to *Eskom* and is neither negotiable nor transferable;
 - shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
 - shall be regarded as a liquid document for the purpose of obtaining a court order;
 - 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; and
 - 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 _____ on this _____ day of _____ 20__
at _____

For and on behalf of the Bank

Bank Signatories(s)

Name(s) (printed)

Witness(s)

Bank's seal or stamp