



NEC3 Engineering & Construction Contract

Between **NTCSA SOC Ltd**
(Reg No. 2021/539129/30)

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

for **Design, supply, delivery, installation and
commissioning of an Environmental Alarm System
(EAS) solution on an as and when required for the
basis for a period of five (5) years**

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CONTRACT No. _____

Part C1: Agreements & Contract Data

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C1.1 Form of Offer & Acceptance

Offer

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

Design, supply, delivery, installation and commissioning of an Environmental Alarm System (EAS) solution on an as and when required for the basis for a period of five (5) years

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

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the *Contractor* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data.

Option B	The offered total of the Prices exclusive of VAT is	N/A – as and when required
	Value Added Tax @ 15% is	N/A – as and when required
	The offered total of the amount due inclusive of VAT is ¹	N/A – as and when required
	(in words) N/A – as and when required	

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

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Tenderer's CIDB registration number (if applicable)

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

Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1	Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: Works Information
Part C4	Site Information

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

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

Unless the tenderer (now *Contractor*) within five working days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

Signature(s)

Name(s)

Capacity

**for the
Employer**

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

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

Note:

1. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Employer prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
3. A tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.

No.	Subject	Details
1	[•]	[•]
2	[•]	[•]
3	[•]	[•]
4	[•]	[•]
5	[•]	[•]
6	[•]	[•]
7	[•]	[•]

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

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

For the tenderer:

For the Employer

Signature

Name

Capacity

On behalf
of

(Insert name and address of organisation)

(Insert name and address of organisation)

Name &
signature
of witness

Date

C1.2 ECC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		B: Priced contract with bill of quantities
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	
		X1: Price adjustment for inflation
		X2: Changes in the law
		X3: Multiple currencies
		X7: Delay damages
		X15: Limitation of <i>Contractor's</i> liability for design to reasonable skill and care
		X17: Low performance damages
		X18: Limitation of liability
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Engineering and Construction Contract, April 2013 (ECC3)	
10.1	The <i>Employer</i> is (Name):	NTCSA SOC Ltd (reg no: 2021/539129/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
10.1	The <i>Project Manager</i> is: (Name)	TBC
	Address	[•]
	Tel	[•]
	Fax	[•]
	e-mail	[•]
10.1	The <i>Supervisor</i> is: (Name)	TBC
	Address	[•]
	Tel No.	[•]

	Fax No.	[•]
	e-mail	[•]
11.2(13)	The <i>works</i> are	DESIGN, SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF AN EAS SOLUTION
11.2(14)	The following matters will be included in the Risk Register	[•]
11.2(15)	The <i>boundaries of the site</i> are	National
11.2(16)	The Site Information is in	Part 4: Site Information
11.2(19)	The Works Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	2 calendar weeks
2	The Contractor's main responsibilities	Data required by this section of the core clauses is provided by the <i>Contractor</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.
3	Time	
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	Five (5) years from the start date of the contract or as indicated on each individual task order / SAP purchase order in accordance with the delivery lead time / SLA response time. The contract will expire either at the end of the contract period or when the maximum cumulative purchase order value is reached, whichever comes first.
	Delivery Lead time for equipment	[•] Tenderer to populate
	Delivery Address	Delivery to NTCSA – Simmerpan Complex
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	As per each individual task order / SAP purchase order
30.1	The <i>access dates</i> are:	As per each individual task order / SAP purchase order
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	2 weeks from the date of receipt of task order / SAP purchase order.
31.2	The <i>starting date</i> is	TBC
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	4 weeks.
4	Testing and Defects	
42.2	The <i>defects date</i> is	52 weeks after Completion of the whole of the

		works.
43.2	The <i>defect correction period</i> is	4 weeks
5	Payment	
50.1	The <i>assessment interval</i> is	Upon completion of each individual task order / SAP purchase order.
51.1	The <i>currency of this contract</i> is the	South African Rand.
51.2	The period within which payments are made is	30 days from receipt of an acceptable invoice by NTCSA's Accounts Payable Department for estimated contract value below R50Mil and 60 days from receipt of an acceptable invoice by NTCSA's Accounts Payable Department for estimated contract value above R50Mil
51.4	The <i>interest rate</i> is	the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and (ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.
6	Compensation events	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
7	Title	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
8	Risks and insurance	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.

9	Termination	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.		
10	Data for main Option clause			
B	Priced contract with bill of quantities			
11	Data for Option W1			
W1.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).		
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the London Institution of Civil Engineers. (See www.ice-sa.org.za) or its successor body.		
W1.4(2)	The <i>tribunal</i> is:	arbitration.		
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.		
	The place where arbitration is to be held is	Johannesburg, South Africa		
	The person or organisation who will choose an arbitrator			
	- if the Parties cannot agree a choice or	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.		
	- if the arbitration procedure does not state who selects an arbitrator, is			
12	Data for secondary Option clauses			
X1	Price adjustment for inflation			
X1.1(a)	The <i>base date</i> for indices is	One month before the closing date of the tender.		
X1.1(c)	The proportions used to calculate the Price Adjustment Factor are:	proportion	linked to index for	Index prepared by
	Please refer to the attached excel Pricing Schedule – Annexure: Q where the tenderer is to provide proportions and indices	0. [•]	[•]	[•]
		0. [•]	[•]	[•]
	Please note that NTCSA requires a <u>minimum</u> fixed portion of 15%	0. [•]	[•]	[•]
		0. [•]	[•]	[•]

	The structure of the CPA formula/e is as follows: $P = Po[85\%*(EI/SI)]$ P = New Price Po = Base Price EI = Relevant Index or price at the end of escalation period SI = Relevant Index or price at the start of escalation period	0. [•]	[•]	[•]
		[•]	non-adjustable	
	Total	1.00		
X2	Changes in the law	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.		
X3	Multiple currencies			
X3.1	The <i>Employer</i> will pay for these items or activities in the currencies stated	Items & activities	Other currency	Maximum payment in other currency
	Please refer to the attached excel Pricing Schedule – Annexure: Q	[•]	[•]	[•]
		[•]	[•]	[•]
		[•]	[•]	[•]
		[•]	[•]	[•]
X3.1	The <i>exchange rates</i> are those published in	[•] on [•] (date)		
		The items & activities will be paid in the other currency - to a foreign Bank account nominated by the <i>Contractor</i> - to a valid SARB approved CFC account in South Africa - in accordance with an alternative payment method agreed with the <i>Employer</i> before the Contract Date. (select one of the three methods as agreed with successful tenderer and delete the others and this note)		
X7	Delay damages			
X7.1	Delay damages for Completion of the whole of the works, goods and services are	Delivery of	amount per day	
		< R100 000.00	R150.00 per day: Max penalty value of R6000.00	
		> R100 000.00 < R250 000.00	R250.00 per day: Max penalty value of R10 000.00	
		> R250 000.00 <	R500.00 per day: Max	

		R500 000.00	penalty value of R20 000.00
		> R500 000.00	R1000.00 per day: Max penalty value of R50 000.00
X15	Limitation of the <i>Contractor's</i> liability for his design to reasonable skill & care	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.	
X17	Low performance damages		
X17.1	The amounts for low performance damages are:	On page 14 of the Data by Employer (following the Z clauses)	
X18	Limitation of liability		
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	The total cumulative value spent on the contract	
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to:	the amount of the deductibles relevant to the event	
X18.3	The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to	The greater of • the total of the Prices at the Contract Date and • the amounts excluded and unrecoverable from the <i>Employer's</i> assets policy for correcting the Defect (other than the resulting physical damage which is not excluded) plus the applicable deductible as at contract date.	
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than excluded matters, is limited to:	the total of the Prices other than for the additional excluded matters. The <i>Contractor's</i> total liability for the additional excluded matters is not limited. The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for • Defects due to his design which arise before the Defects Certificate is issued, • Defects due to manufacture and fabrication outside the Site, • loss of or damage to property (other than the <i>works</i>, Plant and Materials), • death of or injury to a person and • infringement of an intellectual property right.	
X18.5	The <i>end of liability date</i> is	(i) 7 years after the <i>defects date</i> for latent Defects and (ii) the date on which the liability in question prescribes in accordance with the Prescription	

Act No. 68 of 1969 (as amended or in terms of any replacement legislation) for any other matter.

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

Z The Additional conditions of contract are

Z1 to Z15 always apply.

Z1 Cession delegation and assignment

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

Z2 Joint ventures

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

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

- Z3.1 Where a change in the *Contractor's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor's* B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change.
- Z3.2 The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Project Manager* within thirty days of the notification or as otherwise instructed by the *Project Manager*.
- Z3.3 Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor's* obligation to Provide the Works.
- Z3.4 Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may

constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

Z4 Confidentiality

- Z4.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Project Manager*.
- Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *works* or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the *Project Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z4.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

- Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Project Manager*, the *Supervisor*, or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

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

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

- Z6.2 The *Contractor*, in and about the execution of the *works*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

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

- Z7.1 Within one week of receiving a payment certificate from the *Project Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z7.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
- Z7.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4710303126 on each invoice he submits for payment.

Z8 Notifying compensation events

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

Z9 Employer's limitation of liability

- Z9.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z9.2 The *Contractor's* entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the *Employer's* liability under the indemnity is limited.

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

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

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

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

Z12 Ethics

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

Affected Party means, as the context requires, any party, irrespective of whether it is the *Contractor* or

a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,

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

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

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

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

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

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

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

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

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

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

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

Z13 Insurance

Z 13.1 Replace core clause 84 with the following:

Insurance cover 84

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

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

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

termination certificate.

INSURANCE TABLE A

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage to the works, Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance The <i>Employer's</i> policy deductible, as Contract Date, where covered by the <i>Employer's</i> insurance
Loss of or damage to Equipment	The replacement cost
Liability for loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) caused by activity in connection with this contract	<u>Loss of or damage to property</u> <u>Employer's property</u> The replacement cost where not covered by the <i>Employer's</i> insurance The <i>Employer's</i> policy deductible, as Contract Date, where covered by the <i>Employer's</i> insurance <u>Other property</u> The replacement cost <u>Bodily injury to or death of a person</u> The amount required by applicable law
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law

Z 13.2

Replace core clause 87 with the following:

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

INSURANCE TABLE B

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

Business Interruption	
Nuclear Material Damage Terrorism	Per the insurance policy document

Z14 Nuclear Liability

- Z14.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z14.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z14.3 Subject to clause Z14.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z14.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z14.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z15 Asbestos

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

AAIA	means approved asbestos inspection authority.
ACM	means asbestos containing materials.
AL	means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
Ambient Air	means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
Compliance Monitoring	means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
OEL	means occupational exposure limit.
Parallel Measurements	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.

Safe Levels	means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
Standard	means the <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
SANAS	means the South African National Accreditation System.
TWA	means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

- Z15.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
- Z15.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z15.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z15.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z15.5 The *Contractor's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z15.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

Low Performance Damages Table

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

C1.2 Contract Data

Part two - Data provided by the *Contractor*

Notes to a tendering contractor:

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

Completion of the data in full, according to Options chosen, is essential to create a complete contract.

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is	% %
11.2(18)	The <i>working areas</i> are the Site and	
24.1	The <i>Contractor's</i> key persons are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities: Qualifications: Experience:	CV's (and further key persons data including CVs) are appended to Tender Schedule entitled .

¹ Available from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009 or see www.ecs.co.za

11.2(14)	The following matters will be included in the Risk Register	
11.2(19)	The Works Information for the <i>Contractor's</i> design is in:	
31.1	The programme identified in the Contract Data is	
B	Priced contract with bill of quantities	
11.2(21)	The <i>bill of quantities</i> is in	The Pricing Schedule
11.2(31)	The tendered total of the Prices is	N/A – as and when required

PART 2: PRICING DATA
ECC3 Option B

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option B	3
C2.2	The <i>bill of quantities</i>	Please refer to attached Excel Pricing Schedule

C2.1 Pricing assumptions: Option B

1. How work is priced and assessed for payment

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

Identified and defined terms	11	
	11.2	(21) The Bill of Quantities is the <i>bill of quantities</i> as changed in accordance with this contract to accommodate implemented compensation events and for accepted quotations for acceleration.
		(28) The Price for Work Done to Date is the total of - the quantity of the work which the <i>Contractor</i> has completed for each item in the Bill of Quantities multiplied by the rate and - a proportion of each lump sum which is the proportion of the work covered by the item which the <i>Contractor</i> has completed.
		Completed work is work without Defects which would either delay or be covered by immediately following work.
		(31) The Prices are the lump sums and the amounts obtained by multiplying the rates by the quantities for the items in the Bill of Quantities.

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

2. Function of the Bill of Quantities

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

3. Guidance before pricing and measuring

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

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

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

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

4. Measurement and payment

4.1. Symbols

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

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

4.2. General assumptions

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

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

C2.2 the *bill of quantities*

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

PART 3: SCOPE OF WORK

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	<i>Employer's Works Information</i>	16
	Total number of pages	17

C3.1: EMPLOYER'S WORKS INFORMATION

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1 Description of the works

1.1 Executive overview

The contract is for the Design, Supply, Delivery, Installation and Commissioning of Environmental Alarms System (EAS) equipment of various sizes and capabilities including associated Network Management System (NMS) on an as and when required basis for a period of five (5) years. The contract scope includes on-going equipment support, training, optional network design and application design services.

1.2 Employer's objectives and purpose of the works

The purpose of the contract is to establish a system capable of fulfilling the Employer's business objectives which include monitoring of equipment and site alarms in supporting and ensuring reliable operation of the power network. The built system shall be reliable, scalable, and support future requirements and meet all performance requirements as stipulated in the technical specifications.

The Contractor is referred to the following documents regarding the project scope, technical specification and other applicable standard/specifications:

- a) 240-88011210 Telecoms Environmental Alarms (EAS) Specification
- b) 240-86458714 Generic Requirements Specification for a Telecommunications Network Management Solution
- c) 240-135089195 Generic Requirements for Telecoms Contracts
- d) 240-60725640 Specification for Standard (19 inch) Equipment Cabinets
- e) 240-79669677 Demilitarized Zone (DMZ) Designs for Operational Technology
- f) 240-132190480 Telecommunications Equipment Installation Standard
- g) 240-55410927 Cybersecurity standard for Operational Technology
- h) 240-56576361 Telecommunication Transport Network Equipment Installation and Commissioning Standard
- i) 32-214 IT OT-Third Party Access Control Procedure
- j) 240-55410927 Cybersecurity Standard for Operational Technology

A separate contract will be established in parallel for the support, maintenance and training.

1.3 Interpretation and terminology

The following abbreviations are used in this Works Information:

Abbreviation	Meaning given to the abbreviation
EAS	Environmental Alarms System
NMC	Network Management Centre
NMS	Network Management System
RTU	Remote Terminal Unit
OEM	Original Equipment Manufacturer

2 Management and start up.

2.1 Management meetings

The *Contractor* shall have project progress meetings as/when required with the *Employer*. The *Employer* will be represented by project managers and engineers.

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

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

Title and purpose	Approximate time & interval	Location	Attendance by:
Project Meeting Progress Address Delivery, installation scheduling, SHEQ and to address medium to high-risk matters	As and when required	To be advised	<i>Contractor</i> and <i>Employer</i> representatives (Project Managers and Engineers)
Supplier Meeting Liaison Overall contract progress and feedback, technical matters arising, procurement, SHEQ and general issues.	As and when required	To be advised	<i>Contractor</i> and <i>Employer Representative</i>
Supplier Meeting Executive Address <i>Contractor</i> relations Address medium to high-risk matters	As and when required	Simmerpan	<i>Contractor</i> and <i>Employer</i> representatives at Middle/Executive Management

Meetings of a specialist nature may be convened as specified elsewhere in this Service Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the service. Records of these meetings shall be submitted to the *Service Manager* by the person convening the meeting within five days of the meeting.

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

2.2 Documentation control

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

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

For all documentation the *Contractor* shall comply with *Employer's* 32-4 Document Template for procedures, standards, work instructions, guidelines, etc. All documents that shall become the property of the *Employer* and shall comply with 32-4 *Employer* Telecommunications Documentation Template

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

2.3 Health and safety risk management

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

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

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

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

System Operator: Telecommunications- Craig Pitt

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

2.4 Environmental constraints and management

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

2.5 Quality assurance requirements

The Contractor shall have an established Quality Management System according to the ISO9001:2015 Requirements. The Contractor shall manage Documentation and Records in accordance with ISO 9001:2015 requirements. The contractor shall have a Quality Method statement based on scope for each activity tendered for detailing the systems that will be implemented to meet the applicable requirements and records/reports to be submitted to the Employer as evidence of successfully meeting the requirements for each activity stated in the EAS scope of work.

The Contractor shall comply with all quality assurance requirements and criteria stated in the enquiry documents.

2.6 Programming constraints

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

2.7 Contractor's management, supervision and key people

Where the Contractor is not the Original Equipment Manufacturer (OEM) of the offered product or parts of the solution, the contractor shall submit a letter of accreditation (or authorization) from the OEM. The letter of accreditation shall clearly indicate what the tendering contractor is authorized for, and the duration thereof.

Points of Contact and Escalation Processes

The contractor shall provide contact information for their service/project manager, which will be the point of reporting for project related matters (including design development and approval). The contact details shall cover at minimum the following information:

- a) RSA Cellphone Number
- b) Email address
- c) Physical office location
- d) Escalation procedure with relevant contacts for each escalation level

2.8 Invoicing and payment

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

The *Contractor* shall address the tax invoice to The Employer – National Transmission Company South Africa SOC Ltd– Accounts Payable Department and include on each invoice the following information:

- Name and address of the *Contractor* and the *Project Manager*;
- The contract number and title;
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number 4710303126;
- Description of service provided for each item invoiced based on the Price List;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;

Invoices to be submitted electronically to invoiceseskomlocal@ntcsa.co.za

Electronically submitted must be sent in PDF format ONLY. Each PDF file should contain only one invoice, however the email may contain more than one PDF file.

Please ensure that the Eskom Order number is clearly indicated on your invoice together with the line number on the order you are billing for.

All queries and follow ups on invoice payments should be made by contacting the Finance Shared Services (FSS) contact Centre on 011 800 5060 or email fss@eskom.co.za

2.9 Insurance provided by the *Employer*

Not Applicable

2.10 Contract change management

NEC Standard Forms and templates to be used.

2.11 Provision of bonds and guarantees

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

The *Employer* may withhold payment of amounts due to the *Contractor* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Contractor* by the

Project Manager to receive and accept such bond or guarantee. Such withholding of payment due to the *Contractor* does not affect the *Employer's* right to termination stated in this contract.

2.12 Training workshops and technology transfer

All design/planning, installation and commissioning tasks shall include over the shoulder (on the job) training of the *Employer's* personnel, as described in 240-135089195 Generic Requirements for Telecoms Contracts.

3 Engineering and the *Contractor's* design

3.1 *Employer's* design

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

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

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

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

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

Also refer to the High Level and Low Level Design requirements specified in section 3.2 of 240-135089195 Generic Requirements for Telecoms Contract.

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

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

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

The design shall be submitted to the project manager for the relevant task order.

The *Contractor* will be required to produce both the high level and low-level designs for the EAS solution. The *Contractor* will be required to present these designs to the *Employer's* relevant technical approval committees for acceptance. The *Employer* (technical committees) shall evaluate submitted design and approve/reject the submission. The *Employer* shall then notify the *Contractor* of acceptance or alternatively provide reasons for not accepting the design.

3.4 Other requirements of the *Contractor's* design

The Contractor will need to engage with Employer's personnel via a series of workshops to obtain clarity and/or input into the design. The supplier will be required to take the lead in the workshops to ensure that the design produced are of the good quality as they will be expected to be subject matter expert.

Contractor's design must take into account existing and future network migration plans as advised by the Employer.

3.5 Use of *Contractor's* design

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

3.6 Design of Equipment

Not applicable

3.7 Equipment required to be included in the *works*

Please refer to attached contract pricing schedule.

3.8 As-built drawings, operating manuals and maintenance schedules

The Contractor shall provide an as-built document that is unique to each site in a project after installation, testing, commissioning and acceptance. This document shall provide wiring interconnection tables or drawings, dimensioned sketches of equipment layouts, equipment configurations and similar information. Commissioning test results shall also be placed in the as-built document. An additional copy of these documents shall be supplied to the Employer's Project Manager of the project.

4 Procurement

4.1 People

4.1.1 Minimum requirements of people employed

People employed on site shall have all relevant documents as required by law for employment within the country, i.e. relevant work permits and Identifications. Entry onto site is only permitted after the necessary security clearance and induction training.

4.1.2 BBBEE and preferencing scheme

The Contractor shall comply with the Employers' Broad Based Black Economic Empowerment (B-BBEE) or preferencing scheme measures.

Where a change in the Contractor's legal status, ownership or any other change to his business composition or business dealings results in a change to the Contractor's B-BBEE status, the Contractor notifies the Employer within seven days of the change.

The Contractor is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the Project Manager within thirty days of the notification or as otherwise instructed by the Project Manager.

Where, as a result, the Contractor's B-BBEE status has decreased since the Contract Date the Employer may either re-negotiate this contract or alternatively, terminate the Contractor's obligation to Provide the Works.

Failure by the Contractor to notify the Employer of a change in its B-BBEE status may constitute a reason for termination.

4.1.3 Supplier Development, Localisation and Industrialisation (SDL&I)

SDL&I mandate is to achieve maximum and sustainable local development impact through leveraging NTCSA's procurement spend in a manner that allows flexibility within the business in order to accommodate government local development initiatives and policies

As a State-Owned Enterprise, NTCSA supports Government's socio-economic development initiatives that it addresses through Supplier Development and Localisation objectives, which include enterprise development, transfer of skills, job creation, incubation, localisation of procurement initiatives and industrialisation.

For the purposes of tendering, the *tenderer* must demonstrate the manner in which the SD&L requirements will be met in due course in an implementation program. If the *tender* is awarded all SD&L undertakings (the *Contractor's* SD&L Obligations) must be made by the *Contractor* at the time of contracting.

SDL&I Undertaking

- The SDL&I undertaking generally identifies the following areas for SDL&I evaluation. These are procurement from EMEs, QSEs, LMEs (Generic); local content of the tender as a whole; Job creation and Skills Development commitments of the *tenderer*.
- Targets and weighting are set for each individual project.
- Tenderers who complete and submit the undertaking as required, but who do not meet NTCSA's targets, will not be disqualified. SDL&I undertakings do not form part of scoring but commitments will form part of contractual obligations.

SDL&I Matrix or Undertaking

Definitions and Interpretation

The definitions below shall be referred to in the interpretation of this document. The targets for EMEs, and QSEs are a percentage of the local content portion of the tender only.

EXEMPTED MICRO ENTERPRISE (EME)

- In terms of the Generic Codes of Good Practice, an enterprise including a sole propriety with annual total revenue of R10 million or less qualifies as an EME.
- In instances where Sector Charters are developed to address the transformation challenges of specific sectors or industries, the threshold for qualification as an EME may be different from the generic threshold of R10 million. In such instances, the relevant Sector Charter thresholds will therefore be used as a basis for a potential bidder to qualify as an EME. (For example the approved thresholds for EMEs for the Tourism and Construction Sector Charters are R2.5 million and R1.5 million respectively).

- An EME automatically qualifies as a level 4 contributor with B-BBEE recognition level of 100% in terms of the Codes of Good Practice.
- An EME with at least 51% black ownership qualifies as Level 2 Contributor with B-BBEE level of 125% in terms of the Codes of Good Practice.
- An EME with 100% black ownership qualifies as a Level 1 contributor with B-BBEE level of 135% in terms of the Codes of Good Practice.
- An EME that is regarded as a specialized enterprise with at least 75% black beneficiaries qualifies as Level 1 contributor with B-BBEE level of 135% in terms of Codes of Good Practice.
- An EME that is regarded as a specialized enterprise with at least 51% black beneficiaries qualifies as a Level 2 contributor with B-BBEE level of 125% in terms of the Codes of Good Practice.
- An EME is required to submit a sworn affidavit confirming their annual total revenue of R10 million or less and level of black ownership to claim points as prescribed by regulation 6 and 7 of the Preferential Procurement Regulations 2017.

QUALIFYING SMALL ENTERPRISES (QSE)

- The Codes define a QSE as any enterprise with annual total revenue of between R10 million and R50 million.
- A QSE with at least 51% black ownership qualifies as a Level 2 contributor.
- A QSE with 100% black ownership qualifies as a Level 1 Contributor.
- A QSE that is regarded as a specialized enterprise with at least 75% black beneficiaries qualifies as a Level 1 contributor with B-BBEE level of 135% in terms of the Codes of Good Practice.
- A QSE that is regarded as a specialized enterprise with at least 51% black beneficiaries qualifies as a Level 2 contributor with B-BBEE level of 125% in terms of the Codes of Good Practice.
- A QSE is required to submit a sworn affidavit confirming their annual total revenue of between R10 million and R50 million and level of black ownership or a B-BBEE level verification certificate to claim points as prescribed by regulation 6 and 7 of the Preferential Procurement Regulations 2017.

LARGE MEASURED ENTITY (LME) /GENERIC

- A generic Enterprise's B-BBEE compliance is measured using the Generic Scorecard. The Generic scorecard is based on five elements each of which has an assigned weighting which correlates with the importance of that specific element and a set target.
- A generic Enterprise has an annual turnover that is more than R 50 million rands.

SDL&I Progress Report

Means the *Contractor's* SDL&I progress report contemplated in clause 7 of this annexure.

Local Content

- Goods made in South Africa (from local raw materials).
- Only good that are made within the borders of SA can be claimed to be local content.
- Local Content (is mainly based on local manufacturing, there must be value addition to

the product.

- LC is measured on the product which must be manufactured in South Africa at a specified minimum threshold (LC).
- LC percentage is determined based on the availability of input materials.
- Assembly of products is considered to have some level of local content.
- Example where 100 local content is required, no imports are allowed all materials including the production process must be local.
- If local content is less than 100 imported raw materials can be used without any Exemption.
- Key to protect local industry against imports, build industrial capacity, create jobs and contribute to the economic growth in South Africa.

Local Procurement

- Goods and services purchased locally irrespective of where they were made or produced.
- It is based on geographical area, may be a region/district/province.
- Local procurement is based on the location of the business.
- Imported goods are considered.
- Using local resources to stimulate growth and development.
- Simply buying from a local supplier.

Imported Goods and Services

"Imported goods and services" means, but is not limited to:

Goods and services directly imported into South Africa;

Goods which although stored in South Africa are produced and/or wholly manufactured outside the borders of South Africa and/or have a minimum of 50% (fifty percent) of production costs (including labour) incurred outside of South Africa and payable to foreign residents and/or foreign registered entities;

Goods that have been "substantially transformed" outside of South Africa. Substantially transformed refers to the irreversible incorporation of imported components in the goods, with the labour costs and profit content earned by foreign residents and/or foreign registered entities exceeding 50% (fifty percent) of the Contract Amount and/or the significant assembly and manufacture of the goods occurring outside of South Africa's borders; and/or

Services with at least 50% (fifty percent) of the labour cost incurred outside of South Africa's borders and/or with at least 50% (fifty percent) of the service fee payable to foreign residents and/or foreign registered entities, regardless of whether the service involves domestic capital goods or other domestic costs

Final Review

Final Review means the review (to be conducted at the *completion* date of the whole of works by the *Project Manager*) of the *Contractor's* performance in respect of the *Contractor* SDL&I Obligations.

Skills Development

This is the requirement that *tenderers* commit to train certain individuals in specified trades.

The requirement is that the targeted numbers of individuals are trained and complete practical tasks to achieve the outcome of passing a trade test and qualifying as an artisan, or the equivalent for any other required skill.

Contractor's SDL&I Commitments

Means those commitments regarding local content, skills development, Job creation and procurement from EMEs and QSEs made by the *Contractor* in his tender submission and used by the *Employer* for the purposes of calculating the *Contractor's* SD&L score in the tender evaluation process.

Contractor's SDL&I Obligations

Means those obligations of the *Contractor* regarding local content, skills development and procurement from QSEs and EMEs derived from *Contractor's* SDL&I Commitments and agreed between the *Contractor* and the Employer.

Certificate of Fulfilment

Means the certificate issued by the *Employer* after the Final Review as evidence of the *Contractor's* successful fulfilment of the *Contractor* SDL&I Obligations.

Monitoring and Reporting

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

Every contract shall be accompanied by the SDL&I Implementation Schedule which must be completed by the suppliers and returned to SDL&I representative for acceptance 28 days after contract award.

SDL&I Progress Reports

The *Contractor* shall submit monthly SDL&I progress reports to the *Project Manager*. SDL&I progress reports shall be submitted by the 7th (seventh) day of the month following the months to which the report relates. Each report shall include:

An executive summary;

Charts and detailed descriptions of the progress in narrative format, including each stage of progress of the *Contractor* SDL&I Obligations, the meeting (or delay in the meeting) of anticipated dates and targets (as set out in the program) and any documents, statistics or other form of verification of the dates and targets to be provided in respect thereof;

Percentage progress and the actual or expected dates of commencement of any of the major stages making up the *Contractor* SDL&I Obligations;

Schedule of forecast and actual, together with a 3 (three) month look-ahead of major activities and events;

Comparisons of actual and planned progress in terms of the Implementation Program;

Details of actual and planned resources;

An Affidavit from the sub-Contractors stating the work that has been subcontracted to meet the *Contractor's* SDL&I obligations;

a schedule identifying all details of persons in the process of undergoing or who have successfully completed the Skills Transfer for the relevant period (including details of their personal information and certified copies of their test results and certificates received);

a risk register and assessment dealing with all areas of concern which may cause delays to the fulfilment of the SDL&I obligations and details of the corrective or other measures being adopted, or to be adopted to mitigate or overcome such delay; and such other matters and information (including schedules and charts) as the *Project Manager* may require to be included in the SDL&I progress report from time to time.

An electronic copy and two hard copies of each SDL&I progress report shall be submitted to the Project Manager.
Additional Reports

The *Project Manager* shall be entitled to request the *Contractor* to provide additional reports when in his opinion they are warranted to monitor the progress of the fulfilment of the *Contractor* SD&L obligations.

The Final Review

The parties' record that the purpose of the final review is for the *Project Manager* to determine whether the *Contractor* has fulfilled the *Contractor's* SDL&I obligations as at *completion date*.

The *Contractor* shall provide the *Project Manager* with the following documentation to be used by the *Project Manager* as a basis for the final review:

A consolidated SDL&I progress report recording all steps taken to meet the *Contractor's* SD&L obligations from the *starting date* to the *completion date* including all information and documentation referred to in clause 8.1 above;

All of the SDL&I progress reports provided by the *Contractor* during the course of the contract and any other additional report, documentation or information that the *Project Manager* deems to be reasonably relevant to the conduct of the final review (to be provided by the *Contractor* at least 21 (twenty one) business days prior to the final review). The *Project Manager* shall notify the *Contractor* of such request by way of written notice at least 30 (thirty) business days prior to the final review.

The *Employer* shall, in its reasonable discretion, conduct the final review by comparing those *Contractor's* SDL&I obligations actually fulfilled by the *Contractor* as at the time of the final review against with the *Contractor's* SDL&I obligations as a whole.

The *Project Manager* shall notify the *Contractor* of its findings on the final review by way of written notice within 30 (thirty) business days of the final review. The notice shall contain the *Project Manager's* reasons for its findings.

Should the final review reveal that the *Contractor* has not fulfilled and/or complied with any of the *Contractor's* SD&L obligations as at the *completion date*:

The *Contractor* shall be in breach of a material obligation under the contract and the *employer* shall be entitled to have immediate recourse to and make a claim against the whole of the retention as the penalty for the *Contractor's* breach of the *Contractor* SDL&I obligations.

Should the final review reveal that the *Contractor* has fulfilled and/or complied with all of the *Contractor's* SDL&I obligations as at the *completion date*, the *employer* shall issue a certificate of fulfilment.

SDL&I Penalty and Performance Security

As security for the fulfilment of all SDL&I obligations, NTCSA will apply a penalty of 2.5% of every invoice amount (excluding VAT) for failure to submit SDL&I performance reports every quarter; or failure to meet the SDL&I obligations in a contract.

B-BBEE

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

Where a change in the *Contractor's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor's* B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change.

The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Project Manager* within thirty days of the notification or as otherwise instructed by the *Project Manager*.

Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor's* obligation to Provide the Works.

Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination.

4.2 Subcontracting

4.2.1 Preferred subcontractors

The Employer reserves the right to approve all subcontractors that the Contractor intends to enter into subcontracts with, in order to make sure that the subcontractor complies with operational standards. The Contractor shall not subcontract more than twenty five percent (25%) of the whole of the contract.

4.2.2 Subcontract documentation, and assessment of subcontract tenders

The NEC system is compulsory for all subcontract documentation.

4.2.3 Limitations on subcontracting

The Employer reserves the right to approve all subcontractors that the Contractor intends to enter into subcontracts within order to make sure that the subcontractor complies with operational standards. The Contractor shall not subcontract more than twenty five percent (25%) of the whole of the contract.

4.2.4 Attendance on subcontractors

The Contractor is responsible for providing the Works as if he had not subcontracted.

4.3 Plant and Materials

4.3.1 Specifications

Not Applicable

4.3.2 Correction of defects

Not Applicable

4.3.3 Contractor's procurement of Plant and Materials

Not Applicable

4.3.4 Tests and inspections before delivery

Not Applicable

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

Not Applicable

4.3.6 Cataloguing requirements by the Contractor

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

5 Construction

5.1 Temporary works, Site services & construction constraints

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

Operating Regulations for High Voltage Systems (ORHVS) training may be required to access substation environments.

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

Operating Regulations for High Voltage Systems (ORHVS) training may be required to access substation environments. In cases where the contractor is not authorised they may have to be accompanied by an authorised person from the Employer.

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

The Contractor is to keep records of his people on Site, including those of his Subcontractors which the Employer's Project Manager have access to at any time. These records may be needed when assessing compensation events.

5.1.4 Health and safety facilities on Site

The Contractor shall comply with SHE file requirements and will need to have an approved SHE file before entering any NTCSA site or commencing work.

5.1.5 Environmental controls, fauna & flora, dealing with objects of historical interest

The Contractor shall comply with SHE file requirements and will need to have an approved SHE file before entering any NTCSA site or commencing work.

5.1.6 Title to materials from demolition and excavation

Not Applicable

5.1.7 Cooperating with and obtaining acceptance of Others

Not Applicable

5.1.8 Publicity and progress photographs

Taking and sharing of photographs at Eskom and NTCSA sites, especially near critical and sensitive infrastructure is not allowed without prior permission being obtained from the Employer.

5.1.9 *Contractor's* Equipment

Not Applicable

5.1.10 Equipment provided by the *Employer*

Not Applicable

5.1.11 Site services and facilities

Not Applicable

5.1.12 Facilities provided by the *Contractor*

Not Applicable

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

Not Applicable

5.1.14 Survey control and setting out of the *works*

Not Applicable

5.1.15 Excavations and associated water control

Not Applicable

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

Not Applicable

5.1.17 Control of noise, dust, water and waste

Not Applicable

5.1.18 Sequences of construction or installation

Not Applicable

5.1.19 Giving notice of work to be covered up

Not Applicable

5.1.20 Hook ups to existing works

Not Applicable

5.2 Completion, testing, commissioning and correction of Defects

5.2.1 Work to be done by the Completion Date

On or before the Completion Date the *Contractor* shall have done everything required to Provide the Works. The *Project Manager* cannot certify Completion until all the work has been done and is also free of Defects which would have, in his opinion, prevented the *Employer* from using the *works* and Others from doing their work.

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

Not Applicable

5.2.3 Materials facilities and samples for tests and inspections

Not Applicable

5.2.4 Commissioning

Not Applicable

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

Not Applicable

5.2.6 Take over procedures

Not Applicable

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

Not Applicable

5.2.8 Performance tests after Completion

Not Applicable

5.2.9 Training and technology transfer

A separate support, maintenance and training contract will be established in parallel to this one.

5.2.10 Operational maintenance after Completion

Not Applicable

6 Plant and Materials standards and workmanship

Not Applicable

6.1 Investigation, survey and Site clearance

Not Applicable

6.2 Building works

Not Applicable

6.3 Civil engineering and structural works

Not Applicable

6.4 Electrical & mechanical engineering works

Not Applicable

6.5 Process control and IT works

Not Applicable

6.6 Other

Not Applicable