



NEC3 Supply Contract (SC3)

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

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

- for
1. The supply and delivery of multi-function test sets; software modules and accessories as required by Eskom, for testing protection and metering schemes.
 2. The supply and delivery of cyber security and IEC 61850 testing, monitoring and analysing tools.
 3. The development and supply of automated test templates for the MFT, on an "as and when required" basis for use in Eskom Transmission substations
 4. The repair and calibration of the supplied units.

For use in Eskom Transmission substations, on an "as and when required" basis over a period of (five) 5 years with an option to extend for a further (five) 5 years.

Contents:	No of pages
Part C1 Agreements & Contract Data	20
Part C2 Pricing Data	4
Part C3 Scope of Work	15

CONTRACT No. MWP1701TX

PART C1: AGREEMENTS & CONTRACT DATA

Contents:	No of pages
C1.1 Form of Offer and Acceptance	4
C1.2a Contract Data provided by the <i>Purchaser</i>	10
C1.2b Contract Data provided by the <i>Supplier</i>	1
C1.3 Proforma Guarantees	6

C1.1 Form of Offer & Acceptance

Offer

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

1. The supply and delivery of multi-function test sets; software modules and accessories as required by Eskom, for testing protection and metering schemes.
2. The supply and delivery of cyber security and IEC 61850 testing, monitoring and analysing tools.
3. The development and supply of automated test templates for the MFT, on an “as and when required” basis for use in Eskom Transmission substations
4. The repair and calibration of the supplied units.
For use in Eskom Transmission substations, on an “as and when required” basis over a period of (five) 5 years with an option to extend for a further (five) 5 years.

Title of the Contract:

1. **The supply and delivery of multi-function test sets; software modules and accessories as required by Eskom, for testing protection and metering schemes.**
2. **The supply and delivery of cyber security and IEC 61850 testing, monitoring and analysing tools.**
3. **The development and supply of automated test templates for the MFT, on an “as and when required” basis for use in Eskom Transmission substations**
4. **The repair and calibration of the supplied units.**

For use in Eskom Transmission substations, on an “as and when required” basis over a period of (five) 5 years with an option to extend for a further (five) 5 years.

The tenderer, identified in the Offer signature block, has

<i>either</i>	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.
<i>or</i>	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 *Supplier* 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 offered total of the amount due inclusive of VAT is ¹	
	(in words)	

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

This Offer may be accepted by the Purchaser 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 *Supplier* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

Name &
signature of
witness

Date

CONTRACT TITLE

Acceptance

By signing this part of this Form of Offer and Acceptance, the Purchaser identified below accepts the tenderer's Offer. In consideration thereof, the Purchaser shall pay the Supplier 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 Purchaser 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: Goods Information including Supply Requirements

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 Purchaser 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 Purchaser'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 of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)

Capacity

**for the
Purchaser**

**Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sandton, Johannesburg,
2199**

Name &
signature of
witness

Date

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

1 Schedule of Deviations to be completed by the *Purchaser* 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 Purchaser 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 Purchaser 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 Purchaser 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 Purchaser

Signature

.....

Name

.....

Capacity

.....

On behalf of *(Insert name and address of organisation)*

**Eskom Holdings SOC Ltd, Megawatt
Park, Maxwell Drive, Sandton,
Johannesburg, 2199**

Name & signature
of witness

.....

Date

.....

CONTRACT TITLE

C1.2 SC3 Contract Data

Part one - Data provided by the *Purchaser*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for Options	
		X1: Price adjustment for inflation
		X2 Changes in the law
		X3: Multiple currencies
		X4: Parent company guarantee
		X7: Delay damages
		X13: Performance bond
		Z: Additional conditions of contract

of the NEC3 Supply Contract (April 2013) ²

(If the December 2009 edition is to be used delete April 2013 and replace by December 2013)

10.1	The <i>Purchaser</i> is (name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	011 800 8111
10.1	The <i>Supply Manager</i> is (name):	Hlayisani Mathebula
	Address	Eskom Holdings SOC Limited Megawatt Park, Maxwell Drive Sandton Johannesburg
	Tel	+27 11 800 5506
	e-mail	
11.2(13)	The <i>goods</i> are	1. The supply and delivery (Purchasers Option) of multi-

² Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902, www.ecs.co.za.

		function tests set; software modules and accessories as required by Eskom, for testing protection and metering schemes.
		2. The supply of cyber security and IEC 61850 testing, monitoring and analysing tools.
		3. as per the attached C3.1 Purchaser's Goods Information.
11.2(13)	The <i>services</i> are	4. The development and supply of automated test templates for the MFT, on an "as and when required" basis for use in Eskom Transmission substations 5. The repair and calibration of the supplied units. 6. as per the attached C3.1 Purchaser's Goods Information.
11.2(14)	The following matters will be included in the Risk Register	1. Late deliveries 2. Delays in development of automated templates 3. Incorrect handling 4. Quality issues
11.2(15)	The Goods Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.
11.2(15)	The Supply Requirements as part of the Goods Information is in	Annexure A to this Contract Data
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	1 Week
2	The Supplier's main responsibilities	Data required by this section of the core clauses is provided by the <i>Supplier</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.
3	Time	
30.1	The <i>starting date</i> is.	To be communicated
30.1	The <i>delivery date</i> of the <i>goods and services</i> is:	<i>goods and services</i> <i>delivery date</i> As stated on each Purchase Order
30.2	The <i>Supplier</i> does not bring the <i>goods</i> to the Delivery Place more than one week before the Delivery Date.	The <i>Supplier</i> does not bring the <i>goods</i> to the Delivery Place more than one week before the Delivery Date.
31.1	The <i>Supplier</i> is to submit a first programme for acceptance within	The <i>Supplier</i> is to submit a first programme for acceptance within 10 days of Contract signing
32.2	The <i>Supplier</i> submits revised programmes at intervals no longer than	The <i>Supplier</i> submits revised programmes at intervals no longer than 14 days

CONTRACT TITLE

4	Testing and defects	
42	The <i>defects date</i> is	5 years after delivery.
43.2	The <i>defect correction period</i> is	6 weeks
42.2	The <i>defects access period</i> is	7 working days
5	Payment	
50.1	The <i>assessment interval</i> is	Not applicable
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	Within sixty (60) days from date of submission of a valid tax invoice to Eskom Finance Shared Services.
51.4	The <i>interest rate</i> is	<p>(the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted mutatis mutandis every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.</p>
6	Compensation events	
7	Title	
8	Risks, liabilities, indemnities and insurance	
80.1	These are additional <i>Purchaser's</i> risks	None
88.1	The <i>Supplier's</i> liability to the <i>Purchaser</i> for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to	R0.0 (zero Rand)

88.2	For any one event, the <i>Supplier's</i> liability to the <i>Purchaser</i> for loss of or damage to the <i>Purchaser's</i> property is limited to	(1) for the <i>Purchaser's</i> existing and surrounding property in the care, custody and control of the <i>Supplier</i> the amount of the deductible (first amount payable) relevant to the event and (2) for all other existing <i>Purchaser's</i> property the applicable deductible as at contract date
88.3	The <i>Supplier's</i> liability for Defects due to his design which are not notified before the last <i>defects date</i> is limited to:	Full rand value of the particular item. (if not covered under the warranty/guarantee)
88.4	The <i>Supplier's</i> total liability to the <i>Purchaser</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	Full rand value of the particular item. (eg. Item is damaged during transit)
88.5	The <i>end of liability date</i> is	5 years after delivery.

9 Termination and dispute resolution

94.1	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).
94.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za)
94.4(2)	The <i>tribunal</i> is:	arbitration
94.4(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.
94.4(5)	The place where arbitration is to be held is The person or organisation who will choose an arbitrator - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is	South Africa the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.

10 Data for Option clauses

X1	Price adjustment for inflation			
X1.1	The <i>base date</i> for indices is The proportions used to calculate the Price Adjustment Factor for the local portions are:	proportion	linked to index for	Index prepared by

		non-adjustable		
X2	Changes in the law			
X2.1	A change in the law of	The Republic of South Africa is a compensation event if it occurs after the Contract Date		
X3	Multiple currencies			
X3.1	The <i>Purchaser</i> will pay for these items in the currencies stated	Items	Other currency	Total maximum payment in the currency
X3.1	The <i>exchange rates</i> are those published in	South African Reserve Bank at 12h00 South African Standard Time (SAST) on the date of tender advertisement. The items will be paid in the other currency - to a foreign Bank account nominated by the Supplier - to a valid SARB approved CFC account in South Africa - in accordance with an alternative payment method agreed with the Purchaser before the Contract Date. (select one of the three methods as agreed with the successful tenderer prior to contract award and delete the others and this note)		
X7	Delay damages			
X7.1	Delay damages for Delivery are	Delivery of	amount per day	
		Test Set	Per day interest of the capital amount of the test set	
		IEC61850 Test Tools	Per day interest of the capital amount of the test tools.	
X13	Performance bond			
X13.1	The amount of the performance bond is	1 % of the contract value		
Z	The <i>additional conditions of</i>	Z1 to Z15 always apply for Eskom		

contract are

Z1 Cession delegation and assignment

- Z1.1 The *Supplier* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Purchaser*.
- Z1.2 Notwithstanding the above, the *Purchaser* may on written notice to the *Supplier* 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 *Supplier* 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 *Purchaser* for the performance of this contract.
- Z2.2 Unless already notified to the *Purchaser*, the persons or organisations notify the *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Supplier* on their behalf.
- Z2.3 The *Supplier* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Purchaser* having been given to the *Supplier* in writing.

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

- Z3.1 Where a change in the *Supplier's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Supplier's* B-BBEE status, the *Supplier* notifies the *Purchaser* within seven days of the change.
- Z3.2 The *Supplier* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Supply Manager* within thirty days of the notification or as otherwise instructed by the *Supply Manager*.
- Z3.3 Where, as a result, the *Supplier's* B-BBEE status has decreased since the Contract Date the *Purchaser* may either re-negotiate this contract or alternatively, terminate the *Supplier's* obligation to Provide the Goods and Services.
- Z3.4 Failure by the *Supplier* to notify the *Purchaser* of a change in its B-BBEE status may constitute a reason for termination. If the *Purchaser* 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 *Supplier* 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 *Supplier*, enters the public domain or to information which was already in the possession of the *Supplier* at the time of disclosure (evidenced by written records in existence at that time). Should the *Supplier* disclose information to Others in terms of clause 23.1, the *Supplier* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Supplier* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*.
- Z4.3 In the event that the *Supplier* is, at any time, required by law to disclose any such information

CONTRACT TITLE

which is required to be kept confidential, the *Supplier*, to the extent permitted by law prior to disclosure, notifies the *Purchaser* 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 *Supplier* 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 *goods* or any portion thereof, in the course of Providing the Goods and Services and after Delivery, requires the prior written consent of the *Supply Manager*. All rights in and to all such images vests exclusively in the *Purchaser*.

Z4.5 The *Supplier* 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 *Supply Manager* 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 25.4

Z6.1 The *Supplier* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the provision of the *goods* and execution of the *services*.

Without limitation the *Supplier*:

warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with 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 supply and undertakes, in and about the execution of the supply, to comply 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 *Supplier's* direction and control, likewise observe and comply with the foregoing.

Z6.2 The *Supplier*, in and about the execution of the supply, 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 *Supplier'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 *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser's* procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate.

Z7.2 If the *Supplier* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Purchaser* 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 *Purchaser* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

- Z7.3 The *Supplier* (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 *Purchaser's* VAT number 4740101508 on each invoice he submits for payment.

Z8 Notifying compensation events

- Z8.1 Delete from the last sentence in core clause 61.3 the words, “unless the event arises from the *Supply Manager* giving an instruction, changing an earlier decision or correcting an assumption”.

Z9 *Purchaser's* limitation of liability

- Z9.1 The *Purchaser's* liability to the *Supplier* for the *Supplier's* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z9.2 The *Supplier's* entitlement under the indemnity in 83.1 is provided for in 60.1(12) and the *Purchaser'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 *Supplier's* payment of delay damages reaches the limits stated in this Contract Data for Option X7, the *Purchaser* may terminate the *Supplier's* obligation to Provide the Goods and Services 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 <i>Supplier</i> 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 <i>Supplier</i> , or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors 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,

CONTRACT TITLE

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 *Purchaser* may terminate the *Supplier's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Supplier* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Purchaser* 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 *Purchaser* can terminate the *Supplier's* obligation to Provide the Services for this reason.
- Z12.3 If the *Purchaser* terminates the *Supplier'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 *Purchaser* does not have a contractual bond with the Committing Party, the *Supplier* ensures that the Committing Party co-operates fully with an investigation.

Z13Insurance**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 *Supplier* provides the insurances stated in the Insurance Table A for events which are at the *Supplier's* risk from the *starting date* until the last *defects date* or a termination certificate has been issued.

INSURANCE TABLE A

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage to the <i>goods</i> , plant and materials	The replacement cost where not covered by the <i>Purchaser's</i> insurance. The <i>Purchaser's</i> policy deductible as at Contract Date, where covered by the <i>Purchaser's</i> insurance.
Liability for loss of or damage to property (except the <i>goods</i> , plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Supplier</i>) caused by activity in connection with this contract	<u>Loss of or damage to property</u> <u>Purchaser's property</u> The replacement cost where not covered by the <i>Purchaser's</i> insurance. The <i>Purchaser's</i> policy deductible as at Contract Date, where covered by the <i>Purchaser's</i> insurance. <u>Other property</u> The replacement cost <u>Death of or bodily injury</u> The amount required by the applicable law.
Liability for death of or bodily injury to employees of the <i>Supplier</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:**Insurance by
the *Purchaser***

87

87.1 The *Purchaser* provides the insurances stated in the Insurance Table B**INSURANCE TABLE B**

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

CONTRACT TITLE

Nuclear Material Damage Terrorism	Per the insurance policy document
--------------------------------------	-----------------------------------

Z14 Nuclear Liability

- Z14.1 The *Purchaser* 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 *Purchaser* is solely responsible for and indemnifies the *Supplier* or any other person against any and all liabilities which the *Supplier* 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 *Supplier* or any other person or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.
- Z14.3 Subject to clause Z14.4 below, the *Purchaser* 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 *Supplier* or any other person, or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.
- Z14.4 The *Purchaser* 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	means measurements performed in parallel, yet separately, to existing

Measurements	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>Purchaser'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 *Purchaser* ensures that the Ambient Air in the area where the *Supplier* 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 *Supplier*, the *Purchaser* 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 *Supplier* may perform Parallel Measurements and related control measures at the *Supplier'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 *Purchaser* 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 *Supplier'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 *Supplier* 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.
- Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Purchaser* at the *Purchaser's* expense, and conducted in line with South African legislation.

CONTRACT TITLE

z16. Annexure C: Main Option G - Term contract

Identified and defined terms	11	11.2	<p>(17) A Task is <i>goods</i> and <i>services</i> which the <i>Purchaser</i> may order from the <i>Supplier</i>, from time to time, but before the Completion Date.</p> <p>(18) Task Completion is when the <i>Supplier</i> has provided all the <i>goods</i> and <i>services</i> which the Task Order requires him to do by the Task Completion Date, and corrected Defects which would have prevented the <i>Purchaser</i> or Others from using the <i>goods</i> and <i>services</i> and Others from doing their work.</p> <p>(19) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with this contract.</p> <p>(20) A Task Order is the <i>Purchaser's</i> instruction to provide <i>goods</i> and <i>services</i>.</p>
Interpretation and the law	12	12.1	Each condition of the NEC 3 Supply Contract applies to each Task and Task Order, with the necessary amendments to give practical effect to such conditions.
Content of Tasks and Task Orders	54	54.1	<p>A Task Order includes</p> <ul style="list-style-type: none"> a detailed description of the <i>goods</i> and <i>services</i> to be provided, and a priced list of items of <i>goods</i> and <i>services</i> in the Task in which items taken from the Price Schedule are identified, the starting and completion dates for the Task. the amount of delay damages for late completion of the Task and the total of the Prices for the Task <p>54.2 The <i>Supplier</i> does not provide any <i>goods</i> or <i>services</i> until he has received the Task Order, and provides the <i>goods</i> and <i>services</i> so that Task Completion is on or before the Task Completion Date. No Task Order is issued after the Completion Date.</p> <p>54.3 The <i>Purchaser</i> consults the <i>Supplier</i> about the contents of a Task Order before he issues it.</p>

Compensation events

60

60.1 The following are compensation events.

(16) The *Purchaser* issues an instruction changing a Task Order. If the effect of a compensation event which is an instruction changing a Task Order is to reduce the Prices, the Prices are reduced.

(17) The *Supplier* receives the Task Order after the starting date stated in the Task Order.

(18) A Task Completion Date is later than the Completion Date.

60.2 The *Purchaser* corrects mistakes in the Task Schedule which arise from an ambiguity or inconsistency in or between the documents which are part of this contract. Each such correction is a compensation event.

Quotations for**compensation events** 62

62.7 The cost of preparing quotations for compensation events is not included in the assessment of compensation events.

Z17. The Covid-19 pandemic may impact the Supplier's ability to fulfil its obligations under this contract.

CONTRACT TITLE

Annexure A: Supply Requirements**The Supply Requirements for this contract are based on the use of INCOTERMS:**

The *Supplier* supplies the *goods* in accordance with INCOTERMS 2010³ as follows:

Group	Category	Term	Delivery Place
D	arrival	DDP	As per the Employer's Named Place

The Parties obligations described in Incoterms for the category and term selected are now incorporated into this contract as part of the Supply Requirements and hence the Goods Information.

The obligations of seller and buyer for the selected Incoterm determine each Party's costs, risks and insurance requirements incidental to the supply and transport of the *goods* from *Supplier* to *Purchaser*.

For each of the thirteen terms, Incoterms set out obligations of the seller (the *Supplier*) in ten paragraphs identified as A1 to A10 and the corresponding obligations of the buyer (the *Purchaser*) in paragraphs B1 to B10. These obligations cover the following subjects:

A	The <i>Supplier's</i> obligations	B	The <i>Purchaser's</i> obligations
A1	Provision of goods in conformity with contract	B1	Payment of the price
A2	Licences, authorisations and formalities	B2	Licences, authorisations and formalities
A3	Contracts of carriage and insurance	B3	Contracts of carriage and insurance
A4	Delivery	B4	Taking delivery
A5	Transfer of risks	B5	Transfer of risks
A6	Division of costs	B6	Division of costs
A7	Notice to the buyer	B7	Notice to the seller
A8	Proof of delivery, transport document or equivalent electronic message	B8	Proof of delivery, transport document or equivalent electronic message
A9	Checking - packing - marking	B9	Inspection of goods
A10	Other obligations	B10	Other obligations

[Should there be a need to amplify any of the published obligations listed above for the chosen INCOTERM, add them here.]

All other information NOT pertinent to the above is given in the balance of the Goods Information

³ International Chamber of Commerce, Incoterms 2010, Paris, January 2011

• **The Supply Requirements for this contract are as follows:**

[Use these when INCOTERMS do not apply].

1. The requirements for the supply are	The <i>Supplier</i> supplies the <i>goods</i> in accordance to the specification, criteria, and <i>Purchasers</i> requirements.	
2. The requirements for transport are	The <i>Supplier</i> to: Arrange transport delivery, including all necessary road permits, to <i>Purchaser's</i> named place Provide proof of delivery, transport document or equivalent electronic message Responsible for transport costs to all stakeholders involved until destination	
3. The delivery place is	Named place as per Purchase Order.	
4. Actions of the Parties during supply	Action	Party which does it
	Giving notice of Delivery	Purchaser
	Checking packing and marking before dispatch	Supplier
	Contracting for transport	Supplier
	Pay costs of transport	Purchaser
	Arrange access to delivery place	Purchaser
	Loading the <i>goods</i>	Supplier
	Unloading the <i>goods</i>	Supplier
For international procurement	Undertake export requirements	Not applicable
	Undertake import requirements	Supplier
5. Information to be provided by the <i>Supplier</i>	Title of document	
	Packing lists for cases and their contents	
	Copy of invoice for the <i>goods</i>	
	Delivery Note	
	Test results and maintenance manuals	
For international procurement	Licences, authorisations and other formalities associated with export of the <i>goods</i>	
	Air Waybill or Bill of Lading with associated landing, delivery and forwarding order	
	The Bill of Entry endorsed by the importation authority	
	Customs work sheets, showing tax, duties and surcharges which the law of the country into which the <i>goods</i> are being imported requires the importer to pay	
	Invoice from the importation clearing agent showing airline fees, landing charges, wharfage and dock dues as applicable	
	Specify other import documents required by authorised officials.	

All other information NOT pertinent to the above is given in the balance of the Goods Information

CONTRACT TITLE

C1.2 Contract Data

Part two - Data provided by the *Supplier*

Clause	Statement	Data
10.1	The <i>Supplier</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The Goods Information for the <i>Supplier's</i> design is in:	
11.2(11)	The tendered total of the Prices is	
11.2(12)	The <i>price schedule</i> is in:	C2.2 Price Schedule
11.2(14)	The following matters will be included in the Risk Register	
	The restrictions to access for the <i>Supply Manager</i> and Others to work being done for this contract are	
30.1	The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is:	
31.1	The programme identified in the Contract Data is contained in:	
63.2	The <i>percentage for overheads and profit</i> added to the Defined Cost is	

C1.3 Forms of Securities

Pro formas for Bonds & Guarantees

For use with the NEC3 Supply Contract (SC3)

[Note to contract compiler:

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

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

- Option X4: Parent company guarantee
- Option X13: Performance bond
- Option X14: Advanced payment to the *Supplier*

These Options require a bond or guarantee “in the form set out in the Goods Information”.

Pro forma documents for these bonds and guarantees are provided here for convenience but are to be treated as part of the Goods Information.

The organisation providing the bond / guarantee does so by copying the pro forma document onto its letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Purchaser* within the time stated in the contract.

1. Pro forma Parent Company Guarantee (for use with Option X4)

(to be reproduced exactly as shown below on the letterhead of the Supplier's Parent Company)

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

Date:

Dear Sirs,

2. Parent Company Guarantee for Contract No

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

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

(the *Purchaser*) and

[Insert registered name and address of the *Supplier*]

(the *Supplier*), for

[Insert details of the *goods* and *services* from the Contract Data]

(the *goods* and *services*).

I/We the undersigned

on behalf of the *Supplier's*
parent company (name)

of physical address

and duly authorised thereto do hereby unconditionally guarantee to the *Purchaser* that the *Supplier* shall Provide the Goods and Services in accordance with the above numbered Contract.

1. If for any reason the *Supplier* fails to Provide the Goods and Services, we hereby agree to cause to Provide the Goods and Services at no additional cost to the *Purchaser*.
2. If we fail to comply with the terms of this Deed of Guarantee, the *Purchaser* may itself procure such performance (whether or not the Agreement be formally determined). The *Purchaser* is to notify us and we shall indemnify the *Purchaser* for any additional cost or expense it incurs.
3. Our liability shall be as primary obligor and not merely as surety and shall not be impaired or discharged by reason of any arrangement or change in relationship made between the *Supplier* and the *Purchaser* and/or between us and *Supplier*; nor any alteration in the obligations undertaken by the *Supplier* or in the terms of the Agreement; nor any indulgence, failure, delay by you as to any matter; nor any dissolution or liquidation or such other analogous event of the *Supplier*.
4. The *Purchaser* shall not be obliged before taking steps to enforce the terms of this Deed of Guarantee to obtain judgement against the *Supplier* in any court or other tribunal, to make or file any claim in liquidation (or analogous proceedings) or to seek any remedy or proceed first against the *Supplier*.
5. This Deed of Guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa and we hereby submit to the non-exclusive jurisdiction of the High Court of South Africa.

CONTRACT TITLE

Signed at _____ on this _____ day of _____ 20__

Signature(s)

Name(s) (printed)

Position in parent company

Signature of Witness(s)

Name(s) (printed)

3. Pro forma Performance Bond – Demand Guarantee (for use with Option X13)

(to be reproduced exactly as shown below 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 [insert name of *Supplier*] required in terms of contract [insert *Supplier'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 providing the <i>goods</i> and <i>services</i> , entered into between the <i>Purchaser</i> and the <i>Supplier</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>Supplier</i> " means	[●] a company registered in accordance with the laws of [●] under Registration No [●].
1.5	" <i>Purchaser</i> " means	Eskom Holdings SOC Ltd 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 <i>Purchaser</i> stating that all amounts due from the <i>Supplier</i> as certified in terms of the contract have been received by the <i>Purchaser</i> and that the <i>Supplier</i> has fulfilled all his obligations under the Contract, orthe date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by the <i>Purchaser</i>.
1.7	"Guaranteed Sum" means	the sum of R[●], ([●] Rand)
1.8	" <i>goods</i> and <i>services</i> " means	[insert details from Contract Data part 1]

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 the *Purchaser* as security for the proper performance by the *Supplier* of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to the *Purchaser*, on written demand from the *Purchaser* 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:

CONTRACT TITLE

- be signed on behalf of the *Purchaser* by a Group Executive, Divisional Executive, Senior General Manager, General Manager or its delegate;
 - state the amount claimed ("the Demand Amount");
 - state that the Demand Amount is payable to the *Purchaser* 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 *Purchaser* and the *Supplier*.
6. The *Purchaser* 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 Contract.
7. Should the *Purchaser* cede its rights against the *Supplier* to a third party where such cession is permitted under the Contract, then the *Purchaser* shall be entitled to cede to such third party the rights of the *Purchaser* 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 *Purchaser* 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

--	--

4. Pro forma Advanced Payment Bond (for use with Option X14)

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

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

Bank ref no. [●]

Date: [●]

Dear Sirs,

5. Advanced Payment Bond for Contract No. [●]

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

Eskom Holdings SOC Ltd

(the *Purchaser*) and

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

(the *Supplier*), for

{Insert details of the *goods and services* from the Contract Data}

(the *goods and services*).

I/We the undersigned [●]

on behalf of the Surety [●]

of physical address [●]

and duly authorised thereto do hereby bind ourselves as Surety and co-principal debtors in solidum for the due and proper repayment by the *Supplier* to the *Purchaser* of the advanced payment made by the *Purchaser* to the *Supplier* under the Contract, and for all losses and expenses that may be suffered or incurred by the *Purchaser* as a result of non-payment by the *Supplier*, subject to the following conditions

6. The terms *Purchaser*, *Supplier*, and the *goods and services* have the meaning as assigned to them by the *conditions of contract* listed in the Contract Data for the aforesaid Contract.
7. We renounce all benefits from the legal exceptions "Benefit of Excussion and Division", "No value received" "Revision of Accounts", "Cession of Action" and any other exceptions which might or could be pleaded against the validity of this bond, with the meaning and effect of which exceptions we declare ourselves to be fully acquainted.
8. The *Purchaser* has the absolute right to arrange his affairs with the *Supplier* in any manner which the *Purchaser* deems fit and without being advised thereof the Surety shall not have the right to claim his release on account of any conduct alleged to be prejudicial to the Surety. Without derogating from the foregoing compromise, extension of the supply period, indulgence, release or variation of the *Supplier's* obligation shall not affect the validity of this Advance Payment bond.

CONTRACT TITLE

9. This bond expires on the date when the Surety receives a notice from the *Supply Manager* stating that the advanced payment has been repaid to the *Purchaser* in terms of the Contract, or liquidated by deductions from other payments due to the *Supplier*.
10. The amount of the bond shall be payable to the *Purchaser* upon the *Purchaser's* demand and no later than 7 days following the submission to the Surety of a certificate signed by the *Supply Manager* stating the amount of the *Purchaser's* losses, damages and expenses incurred as a result of the non-performance aforesaid. The signed certificate shall be deemed to be conclusive proof of the extent of the *Purchaser's* loss, damage and expense.
11. Our total liability hereunder shall not exceed the sum of (R) which is equal to the advance payment.
12. This Advanced Payment Bond is neither negotiable nor transferable and is governed by the laws of the Republic of South Africa.

Signed at _____ on this _____ day of _____ 200_

Signature(s)

Name(s) (printed)

Position in Surety company

Signature of Witness(s)

Name(s) (printed)

PART 2: PRICING DATA
NEC3 Supply Contract

Document reference	Title	No of pages
C2.1	Pricing assumptions	2
C2.2	The <i>price schedule</i>	[•]

C2.1 Pricing assumptions

- **How *goods* and *services* are priced and assessed for payment**

Clause 11 in NEC3 Supply Contract, (SC3) core clauses states:

Identified and defined terms	11	
	11.2	(11) The Prices are the amounts stated in the price column of the Price Schedule. Where a quantity is stated for an item in the Price Schedule, the Price is calculated by multiplying the quantity by the rate.
		(12) The Price Schedule is the <i>price schedule</i> unless later changed in accordance with this contract.
Assessing the amount due	50.2	The amount due is
		the Price for each lump sum item in the Price Schedule which the <i>Supplier</i> has completed, where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the <i>Supplier</i> has completed by the rate, plus other amounts to be paid to the <i>Supplier</i> , less amounts to be paid by or retained from the <i>Supplier</i> .
		Any tax which the law requires the <i>Purchaser</i> to pay to the <i>Supplier</i> is included in the amount due.

This confirms that the Supply Contract is a priced contract where the Prices are derived from a list of items of *goods* and *services* which can be priced as lump sums or as expected quantities of *goods* and *services* multiplied by a rate, or a mix of both.

- **Function of the Price Schedule**

Clause 53.1 states: "Information in the Price Schedule is not Goods Information". This confirms that instructions to do work or how it is to be done are not included in the Price Schedule but in the Goods Information. This is further confirmed by Clause 20.1 which states, "The *Supplier* Provides the Goods and Services in accordance with the Goods Information". Hence the *Supplier* does **not** Provide the Goods and Services in accordance with the Price Schedule. The Price Schedule is only a pricing document.

- **Preparing the *price schedule***

Items in the *price schedule* may have been inserted by the *Purchaser* and the tendering supplier should insert any additional items which he considers necessary. Whichever party provides the items in the *price schedule* the total of the Prices is assumed to be fully inclusive of everything necessary to Provide the Goods and Services as described at the time of entering into this contract.

It will be assumed that the tendering supplier has

- Read Pages 8, 11, 12 and Appendix 5 of the SC3 Guidance Notes before preparing the *price schedule*;
- Included in his Prices and rates for correction of Defects (core clause 43.1) as there is no compensation event for this unless the Defect is due to a *Supplier's* risk;
- Spread the cost of doing work he chooses not to list as separate items in the *price schedule*

across other Prices and rates in order to fulfil the obligation to Provide the Goods and Services for the tendered total of the Prices;

- Understood that there is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item later turns out to be different to that which the *Supplier* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event per clause 60.1;
- Understood that the *Supplier* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event.

○ **Format of the *price schedule***

Entries in the first four columns in the *price schedule* in section C2.2 are made either by the *Purchaser* or the tendering supplier.

If the *Supplier* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tendering supplier enters the amount in the Price column only, the Unit, Quantity and Rate columns being left blank.

If the *Supplier* is to be paid an amount for the item which is the rate for the item multiplied by the quantity completed, the tendering *Supplier* enters the rate which is then multiplied by the Quantity to produce the Price, which is also entered.

If the *Supplier* is to be paid an amount for an item proportional to the length of time for which the *goods* and *services* are provided, a unit of time is stated in the Unit column and the length of time (as a quantity of the stated units of time) is stated in the Quantity column.

C2.2 the *price schedule*

Item no:	Description	QTY	Unit Price	Total
1	The supply and delivery of multi-function tests set; software modules and accessories as required by Eskom, for testing protection schemes.	69		
2	The supply and delivery of multi-function tests set; software modules and accessories as required by Eskom, for testing metering schemes.	22		
3	The supply and delivery of cyber security and IEC 61850 testing, monitoring and analysing tools.	41		
4	The development and supply of automated test templates for the MFT	As required		
5	The repair and calibration of the supplied units.	91		
6	Training for Eskom personnel	327		
Total				

NB: THE PS5 SCHEDULE ATTACHED MUST BE COMPLETED.

Notes:

- Lead Time is _____
- Transportation of goods will be undertaken by the successful tenderer.
- Prices will be fixed and firm for the first year of the contract thereafter, 15% will be fixed and firm and the remaining 85% will be subject to escalation as per clause X1.
- The unit prices should exclude VAT.
- As security for the fulfilment of all SDL&I obligations, Eskom 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.

Document reference	Title	No of pages
	This cover page	1
C3.1	Purchaser's Goods Information	13
C3.2	Supplier's Goods Information	1
	Total number of pages	48

C3.1: *PURCHASER'S* GOODS INFORMATION

Contents

Part 3: Scope of Work	1
C3.1: Purchaser's Goods Information	1
1 Overview and purpose of the goods and services	3
2 Specification and description of the goods and services	3
2.1 Procedure for submission and acceptance of <i>Supplier's</i> design	3
2.2 Other requirements of the <i>Supplier's</i> design	3
2.3 Automated Test Templates	Error! Bookmark not defined.
2.4 Use of <i>Supplier's</i> Automated Test Template	4
2.5 Practical Demonstration	4
2.6 IEC61850 Digital Substation Network Tests, Monitoring, Simulations & Cyber Security Tools	Error! Bookmark not defined.
2.7 Operating manuals and configuration files	4
3 Supply Requirements	4
4 Specification of the services to be provided	Error! Bookmark not defined.
5 Constraints on how the <i>Supplier</i> Provides the Goods	4
5.1 Work to be done prior to the Delivery Date	4
5.2 Services & other things to be provided by the <i>Purchaser</i> or <i>Supplier</i>	4
5.3 Management meetings	5
5.4 Documentation control	5
5.5 Health and safety risk management	5
5.6 Environmental constraints and management	5
5.7 Invoicing and payment	5
5.8 Insurance provided by the <i>Purchaser</i>	6
5.9 Contract change management	6
5.10 Provision of bonds and guarantees	6
5.11 Records of Defined Cost, payments & assessments of compensation events to be kept by the <i>Supplier</i>	6
6 Procurement	6
6.1 Subcontracting	6
6.1.1 Preferred subcontractors	6
6.1.2 Limitations on subcontracting	6
6.1.3 Other requirements related to procurement	7
6.1.4 Cataloguing requirements by the <i>Supplier</i>	7
6.2 Plant and Materials	7

6.2.1	Quality	7
6.2.2	Plant & Materials provided “free issue” by the <i>Purchaser</i>	7
6.2.3	Supplier’s procurement of Plant and Materials	7
6.2.4	Spares and consumables	7
6.3	Tests and inspections before delivery	7
6.4	Marking Plant and Materials outside the Working Areas	7
6.5	Completion, testing, commissioning and correction of Defects	7
6.5.1	Work to be done by the Completion Date	7
6.5.2	Materials facilities and samples for tests and inspections	7
6.5.3	Commissioning	7
6.5.4	Start-up procedures required to put the goods into operation	8
6.5.5	Take over procedures	8
6.5.6	Access given by the <i>Purchaser</i> for correction of Defects	8
6.5.7	Performance tests after Completion	8
C3.2	Supplier’s Goods Information	8

2 Overview and purpose of the goods and services

This contract is for the:

- The supply and delivery (*Purchasers Option*) of multi-function tests sets, software modules and accessories as required by Eskom, for testing protection and metering schemes.
- The supply of cyber security and IEC 61850 testing, monitoring and analysing tools.
- The development and supply of automated test templates for the MFT.

3 Specification and description of the *goods* and *services*

A detailed specification of the goods and services to be supplied on this contract is provided in the following Eskom standards/instruction/drawings:

- [1] 240-170000773 - Multi function Secondary Plant Test Set Standard
- [2] NEC SC3 – C3.1 Purchaser's Goods Information
- [3] 240-76624513: Standard for the calibration of test instruments used by field staff
- [4] 240-77224537: Standard for calibration and limits of errors for single- and three phase energy meters
- [5] 240-95637584: Work instruction for control of monitoring and measuring equipment
- [6] 240-55410927: Cyber security standard for operational technology

The *Supplier* shall provide the following services, further information can be found in 240-170000773:

1. Development of automated test templates for testing protection and metering schemes.
2. Training for the MFT/s.
3. Training for the cyber security and IEC61850 network analysis tools used during commissioning and maintenance.
4. Calibration and repair of the MFT/s.

3.1 Procedure for submission and acceptance of *Supplier's* design

N/A

3.2 Other requirements of the *Supplier's* design

The *Supplier* shall maintain a record of all products and their constituent electronic devices supplied on this contract. The record shall include product designations, serial numbers and manufactured dates. Details shall be kept of the part/model numbers, serial numbers and firmware versions of all electronic devices. The record shall be available to the *Purchaser* on request at no charge.

3.3 Backward Compatibility to Purchasers Existing Test Templates

Compatibility with the Purchaser's existing automated test templates is required. These templates have been developed to be utilised in conjunction with Omicron 256, 356. Alternatively, *Suppliers* can submit proposals to migrate existing automated test templates to a format that is compatible with their proposed products.

3.4 Use of *Supplier's* Automated Test Template

The Purchaser shall hold the Intellectual Property rights to all test templates developed by the Supplier or his subcontractor(s) in relation to this contract. In particular, the Purchaser shall be entitled to copy part or all of the templates to be used in other test template development, possibly with other suppliers.

3.5 Practical Demonstration.

The tender evaluation will include a physical demonstration of the MFT and software by the supplier to the Eskom technical team on how to setup the software test module and physically testing the supplied product or products.

The demonstration shall be done by the local representative of the vendor. The local representative shall not be supported by an offshore specialist either at the preparation or demonstration stage. All suppliers will be given the same product to test and the same allocated time

The Eskom technical team reserves the right not to proceed with the Practical evaluation if required.

See section 3.3 Practical Evaluation of 240-170000797, for further information.

3.6 Operating manuals and configuration files

MFT manuals, Cyber Security and IEC61850 network analysis tool manuals shall be provided

4 Supply Requirements

The Supply Requirements for this contract are in an Annexure to the Contract Data provided by the *Purchaser*.

5 Constraints on how the *Supplier* Provides the Goods

5.1 Work to be done prior to the Delivery Date

Migration of existing automated test templates, where backward compatibility to *Purchaser's* existing templates is not possible, refer to section 2.3 Backward Compatibility to Purchasers Existing Test Templates.

5.2 Services & other things to be provided by the *Purchaser* or *Supplier*

The Supplier shall issue a corporate software licence to the Purchaser. The licence shall be valid for the lifetime of the MFT, Cyber Security Tools, and IEC61850 network analysis tools, so that licence renewal is not necessary. The Supplier shall provide software support for the full lifetime of the MFT, Cyber Security Tools, and IEC61850 network analysis tools. This shall include bug fixes and software upgrades at no additional cost to the Purchaser.

Refer to 240-170000797 for further software requirements.

The Supplier shall support each MFT for a minimum period of 15 years from the date of purchase order. Product support shall include services to repair or replace any damaged or failed MFT where these fall outside the defects date. The Purchaser shall be liable for all costs associated with these services. Replacement MFT's shall be of the same type, model number and firmware as the failed MFT

The Supplier shall arrange all storage and transport until goods are contained at the correct location at the Purchaser's premises.

5.3 Management meetings

Meetings will be called as and when required.

5.4 Documentation control

Batch orders (drawn out of the SAP system) will be issued by the Purchaser.

5.5 Health and safety risk management

The *Supplier* shall comply with the health and safety requirements contained in the following rules and procedures at all times when working at Eskom sites.

1. EPL 32-36 Eskom Procedure on Smoking
2. EPC 32-93 Eskom Procedure on Vehicle and Driver Safety Management
3. EST 32-136 Eskom Procedure on the Management of Construction Safety, Health and Environmental Aspects
4. ESP 32-345 Eskom Specification on Vehicle Safety
5. 32-421 Eskom Cardinal Rules
6. EST 32-726 SHE Requirements for the Eskom Commercial Process
7. EPL 32-727 / 32-94 Eskom Safety, Health and Environmental Policy
8. 240-5975801 Health, Safety and Environmental Requirements to be met by Contractors Contracted to Eskom Holdings SOC Limited

5.6 Environmental constraints and management

The *Supplier* shall comply with the environmental criteria and constraints stated in the following rules and procedures: TST 41-120 Environmental Requirements for the Procurement of Assets, Goods and Services. In addition, the Contractor is required to ensure that all goods, services or works supplied in terms of this tender also conform to all applicable environment legislation(s), EPC32-727: Eskom SHEQ Policy and ST32-726: SHE Requirements for the Eskom Commercial Process.

Eskom Transmission does not allow MB treated wooden packaging products (crates). For each delivery, the *Supplier* must use Heat Treated packaging in accordance with ISPM No.15.

ISPM 15 is the 'International Standards for Phytosanitary measures publication No: 15 Guidelines for Regulating Wood Packaging Material in International Trade. ISPM 15 regulates the global spread of timber pests by regulating the movement of timber packaging and dunnage in international trade.

Deviations from these requirements will be regarded as a non-conformance. Should there be concerns regarding environmental performance and non-conformance to environmental requirements, management engagements and interventions will be introduced to determine a means to addressing the shortfalls. Once these interventions have been explored and exhausted, then the Eskom supplier disciplinary process must be followed.

5.7 Invoicing and payment

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

The *Supplier* shall address the tax invoice to *Purchaser* and include on each invoice the following information:

- Name and address of the *Supplier* and the *Supply Manager*;
- The contract number and title;
- *Supplier's* VAT registration number;

- The *Purchaser's* VAT registration number.
- Description of *goods and services* provided for each item invoiced based on the Price Schedule;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
(add other as required)

Local invoices (ZAR) has to be sent to fss@eskom.co.za and foreign invoices has to be sent to business forex coordinators.

5.8 Insurance provided by the *Purchaser*

Refer to Clause 8 Risks, liabilities, indemnities and Insurance of "C1.2 SC Contract Data".

Contract change management

Products relating to this contract shall generally be subject to a design freeze for the duration of the contract. This includes standardisation of all hardware, firmware and software of the MFT. Any modification shall be subject to the complete retesting of the product as per its original acceptance by the *Purchaser*, if deemed necessary by the *Purchaser*. In the event of a change request being initiated by the *Supplier*, all costs, except for those associated with witnessing/verification by the *Purchaser*, shall be for the *Supplier's* account.

The *Supplier* shall inform the *Purchaser* of any software, firmware or hardware update that becomes available for the MFT used on the contract, specifically where the update relates to a problem or deficiency which may affect its reliable or safe operation. The *Supplier* shall provide the *Purchaser's* technical representative with reasons for the change, shall provide details of the change, and shall declare all associated effects (e.g. impact on performance, communications, settings, and interoperability with previous versions).

The *Purchaser* shall not be obliged to undertake the evaluation of new firmware versions or new versions of hardware or software for each new version released by the *Supplier*. This decision shall be taken by the *Purchaser's* appointed technical representative. Updated MFT firmware or hardware shall not be considered for evaluation by the *Purchaser* unless supported by updated product documentation describing all new or altered features.

5.9 Provision of bonds and guarantees

N/A

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

Original documentation must be kept by the *Supplier*.

6 Procurement

6.1 Subcontracting

6.1.1 Preferred subcontractors

Refer to SD&L Undertaking

6.1.2 Limitations on subcontracting

Refer to SD&L Undertaking

Engineering services associated with this contract shall be undertaken in South Africa, possibly with assistance from foreign OEMs. MFT's and auxiliary electrical components may be imported, but strong local technical expertise on the products shall be available.

6.1.3 Other requirements related to procurement

Refer to SD&L Undertaking

6.1.4 Cataloguing requirements by the *Supplier*

Not applicable.

6.2 Plant and Materials

6.2.1 Quality

The supplier shall comply with the latest copy of the following quality document:

Eskom 240-12248652 (Supplier Quality Management Specification) – Category 2 requirements.

A quality inspection of the goods shall be conducted, at the Purchaser's discretion, by the Purchaser or the Purchaser's representative prior to packaging for transport.

6.2.2 Plant & Materials provided “free issue” by the *Purchaser*

No free issue items are required to be provided by the *Purchaser*.

All Materials are to be provided by the *Supplier*.

6.2.3 *Supplier's* procurement of Plant and Materials

The *Purchaser* requires that warranties from other suppliers to be in favour of the *Purchaser* and not just to the *Supplier* during the life of the contract.

6.2.4 Spares and consumables

Spare devices shall be available from the *Supplier* for a period of at least 10 years subsequent to the expiry of the contract.

All spares shall be delivered in approved cases suitable for storing such parts over a period of 10 years without damage or deterioration. The *Supplier* shall, at the earliest opportunity, notify the *Purchaser* of the planned discontinuation of any MFT or network analysis tool used in this contract.

6.3 Tests and inspections before delivery

Not applicable.

6.4 Marking Plant and Materials outside the Working Areas

Not applicable.

6.5 Completion, testing, commissioning and correction of Defects

6.5.1 Work to be done by the Completion Date

On or before the Completion Date per order, the *Supplier* shall have done everything required to provide the *goods*. The *goods* shall be free of defects.

6.5.2 Materials facilities and samples for tests and inspections

Not applicable.

6.5.3 Commissioning

Not applicable.

6.5.4 Start-up procedures required to put the goods into operation

The *Supplier* to provide manuals for all MFT's, software and and Tools.

6.5.5 Take over procedures

Not applicable

6.5.6 Access given by the *Purchaser* for correction of Defects

Not Applicable

6.5.7 Performance tests after Completion

Site Acceptance Tests shall be conducted, on site, by the *Purchaser*, after delivery and before commissioning, if deemed necessary by the *Purchaser*.

C3.2 *SUPPLIER'S* GOODS INFORMATION

N/A