



NEC3 Engineering & Construction Contract

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

and [_____]
(Reg No. _____)

for THE DESIGN, DETAILED ENGINEERING, MANUFACTURING, TESTING AT SUPPLIER'S FACTORY, SUPPLY, DELIVERY, OFFLOADING, INSTALLATION, TESTING AND COMMISSIONING OF VARIOUS CLASS 1 POWER TRANSFORMERS FOR DISTRIBUTION DIVISION FOR A PERIOD OF 24 MONTHS.

Contents:

Part C1 Agreements & Contract Data

Part C2 Pricing Data

Part C3 Scope of Work

Part C3 Site Information

CONTRACT No. [_____]

Part C1: Agreements & Contract Data

Contents:

C1.1 Form of Offer and Acceptance

C1.2a Contract Data provided by the *Employer*

C1.2b Contract Data provided by the *Contractor*

C1.3 Proforma Guarantees

C1.1 Form of Offer & Acceptance

Offer

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

FOR DESIGN, DETAILED ENGINEERING, MANUFACTURING, TESTING AT SUPPLIER'S FACTORY, SUPPLY, DELIVERY, OFFLOADING, INSTALLATION, TESTING AND COMMISSIONING OF VARIOUS CLASS 1 POWER TRANSFORMERS FOR DISTRIBUTION DIVISION FOR A PERIOD OF 24 MONTHS.

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.

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| Options A | The offered total of the Prices exclusive of VAT is | Not Applicable |
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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:**

Name &
signature of
witness

Date

Tenderer's CIDB registration number

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**

Eskom Holding SOC, Megawatt Park, Maxwell Drive, Sandton, Johannesburg

Name &
signature of
witness

Date

C1.2 ECC3 Contract Data

Part one - Data provided by the *Employer*

| Clause | Statement | Data |
|--------|--|--|
| 1 | General | |
| | The <i>conditions of contract</i> are the core clauses and the clauses for main Option | |
| | dispute resolution Option | A: Priced contract with activity schedule |
| | and secondary Options | W1: Dispute resolution procedure |
| | | X1: Price adjustment for inflation |
| | | X2: Changes in the law |
| | | X5: Sectional Completion |
| | | X7: Delay damages |
| | | X15: Limitation of <i>Contractor's</i> liability for design to reasonable skill and care |
| | | X16: Retention |
| | | 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 : | 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. |
| | Employers Representative | Shu-aib Martin |
| | Email Address | MartinS@eskom.co.za |
| 10.1 | The <i>Project Manager</i> is: | Will be stated on the Purchase order. |

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| 10.1 | The <i>Supervisor</i> is: (Name) | Will be stated on the Purchase order. |
| 11.2(13) | The <i>works</i> are | The design, detailed engineering, manufacture, testing at works, supply, delivery, placement on foundation, installation, erection, testing, commissioning of Class 1 power transformers at various sites. |
| 11.2(14) | The following matters will be included in the Risk Register | <ol style="list-style-type: none"> 1. Design Complications 2. Reliability and performance of equipment 3. Sea freight risks 4. Inadequate storage 5. Transportation damage 6. Road Transport Embargo 7. Commodity price fluctuations 8. Supplier Failure to deliver 9. Late Deliveries 10. Weather 11. Installation is dependent on availability of outages 12. Integration between Local and Off-shore Project Management <p>Additional risks will be managed by the Parties as they arise.</p> <ol style="list-style-type: none"> 13. Labour strikes. 14. non-availability of supervisors for installation and commissioning. 15. Safety files. |
| 11.2(15) | The <i>boundaries of the site</i> are | Within the Eskom site security area or the designated storage area. |
| 11.2(16) | The Site Information is in | Site Information to be advised per Purchase order. |
| 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 | 1 (one) week. |
| 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 | The completion date will be stated on the Purchase order. |
| 11.2(9) | The <i>key dates</i> and the <i>conditions</i> to be met are: | Condition to be met will be stated on Purchase order. |

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| 30.1 | The <i>access dates</i> are: | Will be stated on Purchase order. |
| 31.1 | The <i>Contractor</i> is to submit a first programme for acceptance within | 4 (four) weeks after purchase order acknowledgement. |
| 31.2 | The <i>starting date</i> is | tbc |
| 32.2 | The <i>Contractor</i> submits revised programmes at intervals no longer than | 4 (four) weeks. |
| 35.1 | The <i>Employer</i> is not willing to take over the <i>works</i> before the Completion Date. | |

4 Testing and Defects

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| 42.2 | The <i>defects date</i> is | <p>Three (3) years after the completion of the works relative to a transformer in service or five (5) years after DAP for transformers put into long term storage whichever expires first.</p> <p>The <i>Employer</i> complies with the <i>Contractor's</i> instructions for long term storage.</p> <p>Latent defect is seven (7) years from the take-over date relative to a transformer after the three (3) or five (5) years defects period, whichever is applicable.</p> |
| 43.2 | The <i>defect correction period</i> is | One (1) week. The <i>Contractor</i> is to correct the defect within the period or if not possible, then to have responded and submitted a schedule (to be approved by the <i>Project Manager</i>) for the correction period. |

5 Payment

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| 50.1 | The <i>assessment interval</i> is | By the 25th day of each successive month. |
| 51.1 | The <i>currency of this contract</i> is the | South African Rand. |
| 51.2 | The period within which payments are made is | Sixty (60) days after the submission of a valid Tax Invoice with supporting documentation based on the agreed assessment. |
| 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. |

6 Compensation events

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| 60.1(13) | <p>The place where weather is to be recorded is:</p> <p>The <i>weather measurements</i> to be recorded for each calendar month are,</p> | <p>The location of ESKOM site as described in Part 3C Works Information</p> <p>the cumulative rainfall (mm)</p> <p>the number of days with rainfall more than 10 mm</p> |
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the number of days with minimum air temperature less than 0 degrees Celsius

the number of days with snow lying at 09:00 hours South African Time

and these measurements:

The *weather measurements* are supplied by

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

and which are available from:

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

| 7 | Title | | | | | | | | | | | | | | | | | | | |
|---|--|--|-------------------|---|---|--|--------------------------------|--------------------------------------|---|--|------------------------------|--------------------------------------|-------------------------|--------------------------------------|------------------------------|--------------------------------------|-----------|--------------------------------------|-----------------|--------------------------------------|
| 8 | Risks and insurance | | | | | | | | | | | | | | | | | | | |
| 80.1 | These are additional <i>Employer's</i> risks | None. | | | | | | | | | | | | | | | | | | |
| 84.1 | The <i>Employer</i> provides these insurances from the Insurance Table | <div>Insurance Table<table><tr><th>Insurance against</th><th>Minimum amount of cover or minimum limit of indemnity</th></tr><tr><td>Assets All Risk</td><td>As per the insurance policy document</td></tr><tr><td>Project insurance</td><td>As per the insurance policy document</td></tr><tr><td>Environmental Liability</td><td>As per the insurance policy document</td></tr><tr><td>General and Public Liability</td><td>As per the insurance policy document</td></tr><tr><td>Transportation (Marine)</td><td>As per the insurance policy document</td></tr><tr><td>Motor Fleet and Mobile Plant</td><td>As per the insurance policy document</td></tr><tr><td>Terrorism</td><td>As per the insurance policy document</td></tr><tr><td>Cyber Liability</td><td>As per the insurance policy document</td></tr></table></div> | Insurance against | Minimum amount of cover or minimum limit of indemnity | Assets All Risk | As per the insurance policy document | Project insurance | As per the insurance policy document | Environmental Liability | As per the insurance policy document | General and Public Liability | As per the insurance policy document | Transportation (Marine) | As per the insurance policy document | Motor Fleet and Mobile Plant | As per the insurance policy document | Terrorism | As per the insurance policy document | Cyber Liability | As per the insurance policy document |
| Insurance against | Minimum amount of cover or minimum limit of indemnity | | | | | | | | | | | | | | | | | | | |
| Assets All Risk | As per the insurance policy document | | | | | | | | | | | | | | | | | | | |
| Project insurance | As per the insurance policy document | | | | | | | | | | | | | | | | | | | |
| Environmental Liability | As per the insurance policy document | | | | | | | | | | | | | | | | | | | |
| General and Public Liability | As per the insurance policy document | | | | | | | | | | | | | | | | | | | |
| Transportation (Marine) | As per the insurance policy document | | | | | | | | | | | | | | | | | | | |
| Motor Fleet and Mobile Plant | As per the insurance policy document | | | | | | | | | | | | | | | | | | | |
| Terrorism | As per the insurance policy document | | | | | | | | | | | | | | | | | | | |
| Cyber Liability | As per the insurance policy document | | | | | | | | | | | | | | | | | | | |
| 84.1 | The <i>Employer</i> provides these additional insurances | <div>Insurance Table<table><tr><th>Insurance against</th><th>Minimum amount of cover indemnity</th></tr><tr><td>Loss of or damage to the <i>works</i>, Plant and Materials</td><td>The replacement cost where <i>Employer's</i> insurance. The <i>Employer's</i> policy Deductible where covered by the <i>Employer's</i> insurance.</td></tr><tr><td>Loss of or damage to Equipment</td><td>The replacement cost</td></tr><tr><td>Liability for loss of or damage to property</td><td><u>Loss of or damage to <i>Employer's</i></u></td></tr></table></div> | Insurance against | Minimum amount of cover indemnity | Loss of or damage to the <i>works</i> , Plant and Materials | The replacement cost where <i>Employer's</i> insurance. The <i>Employer's</i> policy Deductible 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 | <u>Loss of or damage to <i>Employer's</i></u> | | | | | | | | | | |
| Insurance against | Minimum amount of cover indemnity | | | | | | | | | | | | | | | | | | | |
| Loss of or damage to the <i>works</i> , Plant and Materials | The replacement cost where <i>Employer's</i> insurance. The <i>Employer's</i> policy Deductible 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 | <u>Loss of or damage to <i>Employer's</i></u> | | | | | | | | | | | | | | | | | | | |

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| | | (except the <i>works</i> , Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) caused by activity in connection with this contract | <p>property The replacement cost where not covered by <i>Employer's</i> insurance.</p> <p>The Employer's policy Deductible where covered by the <i>Employer's</i> insurance.</p> <p>Other property The replacement cost.</p> <p>Bodily injury to or death of a person the amount required by applicable law.</p> |
| | | 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. |
| 9 | Termination | There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data. | |
| 10 | Data for main Option clause | | |
| A | Priced contract with activity schedule | | |
| 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 | South Africa | |
| | 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 | the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body. | |

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| 12 | Data for secondary Option clauses | | | |
| X1 | Price adjustment for inflation | | | |
| X1.1(a) | The <i>base date</i> for indices is | November 2024. As stated in PART C2: | | |
| X1.1(c) | The proportions used to calculate the Price Adjustment Factor are: | In compliance with the price adjustment instructions as provided in Part C2: Pricing Data | | |
| X2 | Changes in the law | | | |
| X5 | Sectional Completion | | | |
| X5.1 | The <i>completion date</i> for each <i>section</i> of the <i>works</i> is: | Section | Description | Completion date |
| | | 1. | Ex works | As per Purchase order |
| | | 2. | Handover on site | As per Purchase order |
| X7 | Delay damages (but not if Option X5 is also used) | | | |
| X7.1 | Delay damages for Completion of the whole of the <i>works</i> are | R15,000.00 per day up to 15% of the delayed portion, where after the <i>Employer</i> may terminate the contract. | | |
| 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 | | |
| X16 | Retention | | | |
| X16.1 | The <i>retention free amount</i> is | None | | |
| | The <i>retention percentage</i> is | 2.5% Retention Bond of the purchase order value to be issued and submitted together with the invoice for payment at hand over and will be valid for the Defects Period. | | |
| X17 | Low performance damages | | | |
| X17.1 | The amounts for low performance damages are: | The total additional loss above the guarantee level is multiplied by the R/MW given to obtain the performance damage. Determined by using the criteria in schedules A&B and as provided in the signed and approved specification 240-68973110. | | |
| 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: | R0.0 (zero Rand) – No consequential loss will be applied | | |

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| 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 described in the insurance policy format selected in the data for clause 84.1 above. |
| 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 total of the each purchase order Price. |
| 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: | <p>The total of the each purchase order Price other than for the additional excluded matters.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for loss of or damage to third party property (other than the works, Plant and Materials), death of or injury due to manufacture and fabrication outside of the works site and infringement of an intellectual property right.</p> <p>Exclusion or limitation of liability in this contract applies in contract, delict and otherwise and to the maximum extent permitted by law.</p> |
| X18.5 | The <i>end of liability date</i> is | <p>(i) 7 years after the <i>defects date</i> for latent Defects and</p> <p>(ii) the date on which the liability in question prescribes in accordance with the Prescription Act No. 68 of 1969 (as amended or in terms of any replacement legislation) for any other matter.</p> <p>A latent Defect is a Defect which would not have been discovered on reasonable inspection by the <i>Employer</i> or the <i>Supervisor</i> before the <i>defects date</i>, without requiring any inspection not ordinarily carried out by the <i>Employer</i> or the <i>Supervisor</i> during that period.</p> <p>If the <i>Employer</i> or the <i>Supervisor</i> do undertake any inspection over and above the reasonable inspection, this does not place a greater responsibility on the <i>Employer</i> or the <i>Supervisor</i> to have discovered the Defect.</p> |
| Z | The <i>Additional conditions of contract</i> are | Z1 to Z17 always apply. |
| Z1 | Cession delegation and assignment | |
| Z1.1 | The <i>Contractor</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i> . | |
| Z1.2 | Notwithstanding the above, the <i>Employer</i> may on written notice to the <i>Contractor</i> 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. | |

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| Z2 | Joint ventures |
| Z2.1 | If the <i>Contractor</i> 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 <i>Employer</i> for the performance of this contract. |
| Z2.2 | Unless already notified to the <i>Employer</i> , the persons or organisations notify the <i>Project Manager</i> within two weeks of the Contract Date of the key person who has the authority to bind the <i>Contractor</i> on their behalf. |
| Z2.3 | The <i>Contractor</i> does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the <i>Employer</i> having been given to the <i>Contractor</i> in writing. |
| Z3 | Change of Broad Based Black Economic Empowerment (B-BBEE) status |
| Z3.1 | Where a change in the <i>Contractor's</i> legal status, ownership or any other change to his business composition or business dealings results in a change to the <i>Contractor's</i> B-BBEE status, the <i>Contractor</i> notifies the <i>Employer</i> within seven days of the change. |
| Z3.2 | The <i>Contractor</i> is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the <i>Project Manager</i> within thirty days of the notification or as otherwise instructed by the <i>Project Manager</i> . |
| Z3.3 | Where, as a result, the <i>Contractor's</i> B-BBEE status has decreased since the Contract Date the <i>Employer</i> may either re-negotiate this contract or alternatively, terminate the <i>Contractor's</i> obligation to Provide the Works. |
| Z3.4 | Failure by the <i>Contractor</i> to notify the <i>Employer</i> of a change in its B-BBEE status may constitute a reason for termination. If the <i>Employer</i> 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. |
| Z3.5 | The <i>Employer</i> reserves the right to cancel the contract and claim any losses which it has suffered as a result of having to make less favourable agreements due to the purchasing of the designated material in line with the stipulated thresholds. |
| Z4 | Ethics |
| Z4.1 | Any offer, payment, consideration, or benefit of any kind made by the <i>Contractor</i> , which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the <i>Contractor's</i> obligation to Provide the Works or taking any other action as appropriate against the <i>Contractor</i> (including civil or criminal action). |
| Z4.2 | The <i>Employer</i> may terminate the <i>Contractor's</i> obligation to Provide the Works if the <i>Contractor</i> (or any member of the <i>Contractor</i> where the <i>Contractor</i> constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices. Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the <i>Employer</i> or other people or organisations and including in circumstances where the <i>Contractor</i> or any such member is removed from the an approved vendor data base of the <i>Employer</i> as a consequence of such practice. |

- Z4.3 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P3 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

Z5 Confidentiality

- Z5.1 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.
- Z5.2 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*.
- Z5.3 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.
- Z5.4 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*.
- Z5.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z6 Waiver and estoppel: Add to core clause 12.3:

- Z6.1 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.

Z7 Health, safety and the environment: Add to core clause 27.4

- Z7.1 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.
- The following act relating to COVID 19 will apply:
 - Disaster management ACT No 57 of 2002
 - Consolidated Directions on Occupational Health and Safety Measures in Certain Workplaces – Government Gazette 43751, GNR 1031

Z7.2 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.

Z8 Provision of a Tax Invoice and interest. Add to core clause 51

Z8.1 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.

Z8.2 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.

Z8.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z9 Notifying compensation events

Z9.1 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".

Z10 Employer's limitation of liability

Z10.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z10.2 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.

Z11 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z11.1 or had a business rescue order granted against it.

Z12 Addition to secondary Option X7 Delay damages (if applicable in this contract)

Z12.1 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.

| | |
|------------|--|
| Z13 | This clause has been moved to Z3 |
| Z14 | Purchase Order |
| Z14.1 | Purchase Order "means a document from the <i>Project Manager</i> to the <i>Contractor</i> requesting the <i>Contractor</i> to provide the works. |
| Z14.2 | The <i>Contractor</i> acknowledges and accepts that the Purchase Orders are subject to the provisions of the contract and that in carrying out its obligations in terms of the Purchase Order it is subject to the provisions of the contract". |
| Z14.3 | The information required for clauses: 10.1 ,11.2(14); 11.2 (15), 11.2 (16); 11.2(19); 11.2(3), 11.2 (9); 30.1, 31.1 , X5.1 ; X 13.1 ; X 16.1 shall be included in the Purchase Order." |
| Z15 | Contractor's Obligations |
| Z15.1 | In the event that the <i>Contractor</i> is unable to meet the <i>Employer's</i> full requirements and/or quality requirements of a Purchase Order, the <i>Employer</i> shall give the <i>Contractor</i> a reasonable time period to fulfil the order requirements. Should the <i>Contractor</i> fail to remedy the situation within the agreed period of time, the <i>Employer</i> reserves the right to procure compatible materials from the Alternative <i>Contractor</i> and claim the price difference from the <i>Contractor</i> . In the premises, the <i>Employer</i> shall procure the materials first from the tenderers who participated in the tender process that gave rise to this contract following the tenderers' pricing order of merit prior to approaching suppliers beyond the supplier list. |
| Z15.2 | In the event that the <i>Employer</i> , due to non-performance of the <i>Contractor</i> , has invoked clause Z15.1 and the <i>Contractor</i> is now obligated to pay the price difference of the Alternative <i>Contractor</i> who supplied the materials, and the <i>Contractor</i> is unable to meet the price difference obligation, the <i>Employer</i> reserves the right to give the <i>Contractor</i> a reasonable 7 (seven) working days to remedy the situation, failure of which will result in the <i>Employer</i> , declaring this act as non-performance and constitute termination of the Purchase Order. |
| Z15.3 | Should the situation mentioned in Z15.1 and/or Z15.2 above persists for 3 (three) consecutive periods, the <i>Employer</i> reserves the right to declare these actions as non-performance and therefore constitute a reason for termination of the contract for the full supply of the materials beyond the <i>Contractor's</i> capacity and/or technical capability. In this instance of a right to terminate the contract for the full supply of the materials beyond the <i>Contractor's</i> capacity and/or technical capability, the <i>Employer</i> , will reduce the contract value of the <i>Contractor</i> by the number of items that are beyond the <i>Contractor's</i> capacity and/or technical capability. The contract value will be the value at the time of reduction. |
| Z16 | Time : Addition to core clause 30.1 |
| Z16.1 | This contract is a value or time term based and the expiry of the contract shall be either by the exhaustion of the contract value OR the time period of 24 months. Whichever occurs first between the contract value OR the 24 months term period shall take the pre-eminence and render the contract expired. The value of this contract shall not exceed R.....(in words.....), excluding VAT, CPA and transport, the time period shall not exceed 24 months. |
| Z17 | Supply Development, Localisation and Industrialization (SDL&I) Obligations |

THE DESIGN, DETAILED ENGINEERING, MANUFACTURING, TESTING AT SUPPLIER'S FACTORY, SUPPLY, DELIVERY, OFFLOADING, INSTALLATION, TESTING AND COMMISSIONING OF VARIOUS CLASS 1 POWER TRANSFORMERS FOR DISTRIBUTION DIVISION FOR A PERIOD OF 24 MONTHS

C1.2 Contract Data

Part two - Data provided by the *Contractor*

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: | |
| 11.2(3) | The <i>completion date</i> for the whole of the <i>works</i> is | As stated in each purchase order. |
| 11.2(14) | The following matters will be included in the Risk Register | As stated in each purchase order |
| 11.2(19) | The Works Information for the <i>Contractor's</i> design is in: | A&B Technical Schedule, Scope of work and all documents and drawings, |
| 31.1 | The programme identified in the Contract Data is | 4 weeks after purchase order acknowledgement and will be provided in the MS Bar chart. |
| A | Priced contract with activity schedule | |

| | | | | |
|------------|--|---|-------------------------|---|
| 11.2(20) | The <i>activity schedule</i> is in | C2 Pricing Data | | |
| 11.2(30) | The tendered total of the Prices is | Refer to Activity Schedule | | |
| | Data for Schedules of Cost Components | <i>Note "SCC" means Schedule of Cost Components starting on page 60, and "SSCC" means Shorter Schedule of Cost Components starting on page 63 of ECC3 (April 2013).</i> | | |
| A | Priced contract with activity schedule | Data for the Shorter Schedule of Cost Components | | |
| 41 in SSCC | The percentage for people overheads is: | | | |
| 21 in SSCC | The published list of Equipment is the last edition of the list published by The percentage for adjustment for Equipment in the published list is | | | |
| 22 in SSCC | The rates of other Equipment are: | Equipment | Size or capacity | Rate |
| 61 in SSCC | The hourly rates for Defined Cost of design outside the Working Areas are Note: Hourly rates are estimated 'cost to company of the employee' and not selling rates. Please insert another schedule if foreign resources may also be used | Category of employee Field Service Technician | | Hourly rate ZARR250/Hour |
| 62 in SSCC | The percentage for design overheads is | | | |
| 63 in SSCC | The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are: | Field Service Technician | | |
| | | | | |

C1.3 Forms of Securities

Pro formas for Bonds & Guarantees

For use with the NEC3 Engineering & Construction Contract (April 2013)

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

Option X16: Retention

The *retention percentage* is

2.5% Retention Bond of the purchase order value to be issued and submitted together with the invoice for payment at hand over and will be valid for the Defects Period.

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

Pro forma Retention Money Guarantee (may be used when Option X16 applies)

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

Eskom Holdings SOC Limited
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Date:

Dear Sirs

Reference No. [●] [Drafting Note: Bank reference number to be inserted]

Retention Money Guarantee: [Drafting Note: Name of Contractor to be inserted]

Project [] : Contract Reference: [Drafting Note: Contractor contract reference number to be inserted]

1. In this Guarantee the following words and expressions shall have the following meanings:-
 - 1.1 "Bank" - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]
 - 1.2 "Bank's Address" - means [●]; [Drafting Note: Bank's physical address to be inserted]
 - 1.3 "Contract" – means the written agreement relating to the Project, entered into between Eskom and the Contractor, on or about the [●] day of [●] 200[●] (Contract Reference No. as amended, varied, restated, novated or substituted from time to time; [Drafting Note: Signature Date and Contract reference number to be inserted])
 - 1.4 "Contractor" – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of Contractor to be inserted]
 - 1.5 "Eskom" - means Eskom Holdings SOC Limited, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30
 - 1.6 "Expiry Date" - means the date on which the Defects Certificate is issued in terms of the Contract.
 - 1.7 "Guaranteed Sum" - means the sum of R [●] ([●] Rand); [Drafting Note: Insert amount of Retention Money Guarantee.].
 - 1.8 "Project" - means the.....
2. At the instance of the Contractor, we the undersigned _____ and _____, in our respective capacities as _____ and _____ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of Eskom, as security for the proper performance by the Contractor of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to Eskom, on written demand from Eskom received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.
3. A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:
4. be signed on behalf of Eskom by a director of Eskom or his authorised delegate.
5. state the amount claimed ("the Demand Amount");
6. state that the Contractor has failed to carry out his obligation(s) to rectify certain defect(s) for which he

is responsible under the Contract (and the nature of such defect(s)) alternatively that the Demand Amount is payable to Eskom in the circumstances contemplated in the Contract.

7. 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:

7.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and

7.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.

8. The Bank's obligations in terms of this Guarantee:

8.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and

8.2 shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed by the fact that a dispute may exist between Eskom and the *Contractor*.

9. Eskom shall be entitled to arrange its affairs with the *Contractor* in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the *Contractor* or any variation under or to the Contract.

10. Should Eskom cede its rights against the *Contractor* to a third party where such cession is permitted under the Contract, then Eskom shall be entitled to cede to such third party the rights of Eskom under this Guarantee on written notification to the Bank of such cession.

11. This Guarantee:

11.1 shall expire on the Expiry Date until which time it is irrevocable;

11.2 is, save as provided for in **Error! Reference source not found.** above, personal to Eskom and is neither negotiable nor transferable;

11.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;

11.4 shall be regarded as a liquid document for the purpose of obtaining a court order; and

11.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.

11.6 Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.

12. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at _____

Date _____ Bank's seal or stamp

For and behalf of the Bank

Bank Signatory: _____

Bank Signatory: _____

Witness: _____

Witness: _____

PART 2: PRICING DATA

ECC3 Option A

| Document reference | Title | |
|--------------------|-------------------------------|--|
| C2.1 | Pricing assumptions: Option A | |
| C2.2 | The <i>activity schedule</i> | |

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

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

| | | |
|-------------------------------------|------------|---|
| Identified and defined terms | 11 11.2 | (20) The Activity Schedule is the <i>activity schedule</i> unless later changed in accordance with this contract. |
|-------------------------------------|------------|---|

(27) The Price for Work Done to Date is the total of the Prices for

- each group of completed activities and
- each completed activity which is not in a group.

A completed activity is one which is without Defects which would either delay or be covered by immediately following work.

(30) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract.

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

Function of the Activity Schedule

Clause 54.1 in Option A states: "Information in the Activity Schedule is not Works Information or Site Information". This confirms that specifications and descriptions of the work or any constraints on how it is to be done are not included in the Activity Schedule but in the Works Information. This is further confirmed by Clause 20.1 which states, "The *Contractor* Provides the Works in accordance with the Works Information". Hence the *Contractor* does **not** Provide the Works in accordance with the Activity Schedule. The Activity Schedule is only a pricing document.

Link to the programme

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

Preparing the *activity schedule*

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

The *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Contractor* to include in his *activity schedule* and be priced accordingly.

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

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

C2.2 the activity schedule

Distribution Type Transformers: Class 1

| Item No. | SAP Commodity Code | MVA | HV kV | MV kV | Tertiary |
|----------|--------------------|------|-------|-------|----------|
| 1 | 186140 | 1.25 | 22 | 11 | |
| 2 | 185785 | 2.5 | 22 | 11 | |
| 3 | 588683 | 2.5 | 22 | 6.6 | |
| 4 | 185780 | 2.5 | 33 | 11 | |
| 5 | 227884 | 5 | 22 | 6.6 | |
| 6 | 185786 | 5 | 22 | 11 | |
| 7 | 185781 | 5 | 33 | 11 | |
| 8 | 185784 | 5 | 33 | 22 | |
| 9 | 185774 | 5 | 44 | 11 | |
| 10 | 185777 | 5 | 44 | 22 | |
| 11 | 185770 | 5 | 44 | 6.6 | |
| 12 | 185787 | 10 | 22 | 11 | |
| 13 | 185782 | 10 | 33 | 11 | |
| 14 | 212752 | 10 | 33 | 22 | |
| 15 | 185775 | 10 | 44 | 11 | |
| 16 | 185771 | 10 | 44 | 6.6 | |
| 17 | 185767 | 10 | 66 | 22 | |
| 18 | 185767 | 10 | 66 | 22 | |
| 19 | 185762 | 10 | 66 | 11 | |
| 20 | 185717 | 10 | 88 | 11 | |
| 21 | 185721 | 10 | 88 | 22 | |
| 22 | 185724 | 10 | 88 | 33 | |
| 23 | 185666 | 10 | 132 | 11 | |
| 24 | 185669 | 10 | 132 | 22 | |
| 25 | 185783 | 20 | 33 | 11 | |
| 26 | 185768 | 20 | 66 | 22 | |
| 27 | 185734 | 20 | 88 | 6.6 | |
| 28 | 185718 | 20 | 88 | 11 | |
| 29 | 185722 | 20 | 88 | 22 | |
| 30 | 185725 | 20 | 88 | 33 | |
| 31 | 185667 | 20 | 132 | 11 | |
| 32 | 185670 | 20 | 132 | 22 | |
| 33 | 693687 | 40 | 66 | 11 | |
| 34 | 185719 | 40 | 88 | 11 | |
| 35 | 185726 | 40 | 88 | 33 | |
| 36 | 185711 | 40 | 132 | 22 | |
| 37 | 185714 | 40 | 132 | 33 | |
| 38 | 185739 | 40 | 132 | 66 | 22 |
| 39 | 718931 | 45 | 132 | 22 | 22 |
| 40 | 185715 | 80 | 132 | 33 | |
| 41 | 185740 | 80 | 132 | 66 | 22 |
| 42 | 185754 | 80 | 132 | 88 | 22 |
| 43 | 185736 | 80 | 132 | 88 | |
| 44 | 185751 | 160 | 132 | 66 | 22 |

Pricing Conditions:

- Only one payment will be applicable Sixty (60) days after the submission of a valid Tax Invoice with supporting documentation based on the agreed assessment after hand over of each transformer.
- The above prices are fixed and firm for first 12 months and excludes, installation, local transport to site and Value Added Tax.
- Local Transport to site will be based on actuals plus 5% admin fee. All supporting documents to be submitted at invoice stage to verify the costing and to request for the purchase order to be amended to reflect the actual value.
- Installation, erection, testing and commissioning will be based on actuals plus 5% admin fee. All supporting documents to be submitted at invoice stage and to request for the purchase order to be amended to reflect the actual value.

PART 3: SCOPE OF WORK

| Document reference | Title | |
|--------------------|--|--|
| C3.1 | This cover page <i>Employer's Works Information</i> | |
| | | |

Refer attached Works Information