

NEC4 Engineering & Construction Contract (ECC4)

Between SOUTH AFRICAN AIRWAYS SOC LIMITED

Reg No. 1997/022444/30 (the *Client*)

and [Insert *Contractor's* registered name at award stage]

Reg No. (the *Contractor*)

for Supply and Installation of 800KVA Simulator Generator

(the *works*)

Contents:

Page No

Part C1 Agreements & Contract Data

5

C1.1 Form of Offer and Acceptance

C1.2 Contract Data

C1.3 Forms of Sureties (if applicable)

Part C2 Pricing Data

Annexure A

C2.1 Pricing assumptions

C2.2 The Activity Schedule (If Option A or C applies)

C2.2 The Bill of Quantities (if Option B or D applies)

Part C3 Scope of Work

Annexure B

C3.1 *Client's* Scope

C3.2 Scope provided by the *Contractor* for its design

Part C4 Site Information

35

Contract No. [Insert at award stage]

Prepared By: [Insert author / company]

This page left blank in case user wishes to add a Contents page.

Part C1: Agreements and Contract Data

C1.1 Form of Offer and Acceptance

Offer

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

Supply and Installation of 800KVA Simulator Generator

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 Tender¹.

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

Option B	The offered total of the Prices exclusive of VAT is		
	Value Added Tax @ 15% is		
	The offered total of the Prices inclusive of VAT is ²		
	(in words)		

This Offer may be accepted by the Client 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:	<i>(Insert name and address of organisation)</i>		
		Date	

¹ Conditions of Tender are those included in SANS 10845-3 2015 available from <https://store.sabs.co.za>

² This total is required by the *Client* for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*.

Name &
signature of
witness

--	--	--

Acceptance

By signing this part of this Form of Offer and Acceptance, the Client identified below accepts the tenderer's Offer. In consideration thereof, the Client 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 Client and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

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

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

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Client 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 Client'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).

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

Signature(s)				
Name(s)				
Capacity				
for the Client	<i>(Insert name and address of organisation)</i>			
Name & signature of witness		Date		

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

Schedule of Deviations to be completed by the *Client* 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 *Client* 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. Insert particulars in place of this symbol and delete rows not required.

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

By the duly authorised representatives signing this Schedule of Deviations below, the Client 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 Client 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 *Client*

Signature	
Name	
Capacity	
On behalf of	<i>(Insert name and address of organisation)</i>
Name & signature of witness	
Date	

<i>(Insert name and address of organisation)</i>

C1.2 ECC4 Contract Data

Part one - Data provided by the *Client*

Data for the Core Clauses

<u>Clause number</u>	<u>Identified statement and data</u>						
11.1	<p>The <i>conditions of contract</i> are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract, June 2017 with amendments October 2023.</p> <table border="1"> <tr> <td>Main Option</td> <td>B</td> </tr> <tr> <td>Option for resolving and avoiding disputes</td> <td>W1</td> </tr> <tr> <td>Secondary Options</td> <td>X2, X4, X11, X13, X16</td> </tr> </table>	Main Option	B	Option for resolving and avoiding disputes	W1	Secondary Options	X2, X4, X11, X13, X16
Main Option	B						
Option for resolving and avoiding disputes	W1						
Secondary Options	X2, X4, X11, X13, X16						
11.2(15)	<p>The <i>works</i> are</p> <table border="1"> <tr> <td>Supply and Installation of 800KVA Simulator Generator</td> </tr> </table>	Supply and Installation of 800KVA Simulator Generator					
Supply and Installation of 800KVA Simulator Generator							
10.1	<p>The <i>Client</i> is</p> <table border="1"> <tr> <td>Name</td> <td>SOUTH AFRICAN AIRWAYS SOC LIMITED</td> </tr> <tr> <td>Address for communications</td> <td>32 JONES Road, Airways Park, OR Tambo International Airport, Johannesburg</td> </tr> <tr> <td>Address for electronic communications</td> <td>AlexPhakathi@flysaa.com</td> </tr> </table>	Name	SOUTH AFRICAN AIRWAYS SOC LIMITED	Address for communications	32 JONES Road, Airways Park, OR Tambo International Airport, Johannesburg	Address for electronic communications	AlexPhakathi@flysaa.com
Name	SOUTH AFRICAN AIRWAYS SOC LIMITED						
Address for communications	32 JONES Road, Airways Park, OR Tambo International Airport, Johannesburg						
Address for electronic communications	AlexPhakathi@flysaa.com						
10.1	<p>The <i>Project Manager</i> is</p> <table border="1"> <tr> <td>Name</td> <td>KATLEGO MABUA</td> </tr> <tr> <td>Address for communications</td> <td>32 JONES Road, Airways Park, OR Tambo International Airport, Johannesburg</td> </tr> <tr> <td>Address for electronic communications</td> <td>KatlegoMabua@flysaa.com</td> </tr> </table>	Name	KATLEGO MABUA	Address for communications	32 JONES Road, Airways Park, OR Tambo International Airport, Johannesburg	Address for electronic communications	KatlegoMabua@flysaa.com
Name	KATLEGO MABUA						
Address for communications	32 JONES Road, Airways Park, OR Tambo International Airport, Johannesburg						
Address for electronic communications	KatlegoMabua@flysaa.com						
10.1	<p>The <i>Supervisor</i> is</p> <table border="1"> <tr> <td>Name</td> <td>Tinyiko Mashele</td> </tr> <tr> <td>Address for communications</td> <td>32 JONES Road, Airways Park, OR Tambo International Airport, Johannesburg</td> </tr> <tr> <td>Address for electronic communications</td> <td>TinyikoMashele@flysaa.com</td> </tr> </table>	Name	Tinyiko Mashele	Address for communications	32 JONES Road, Airways Park, OR Tambo International Airport, Johannesburg	Address for electronic communications	TinyikoMashele@flysaa.com
Name	Tinyiko Mashele						
Address for communications	32 JONES Road, Airways Park, OR Tambo International Airport, Johannesburg						
Address for electronic communications	TinyikoMashele@flysaa.com						

11.2(16) The Scope is in

Part 3: Scope of Work and all documents and drawings to which it refers. Also Annexure B
--

11.2(18) The Site Information is in

Part 4: Site Information and all documents and drawings to which it refers.

11.2(17) The boundaries of the site are

SAA AIRWAYS PARK BLOCK H as shown in Part 4: Site information

13.1 The language of the contract is

English

12.2 The law of the contract is the law of

the Republic of South Africa

13.3 The period for reply is

7 working days	except that
• The period for reply for Emergency	is 24 hours

15.2 The following matters will be included in the Early Warning Register

<ul style="list-style-type: none"> • Interface issues with Low Voltage Switchgear • Interface clashes with the current simulator power system • Health and safety incidents • Site access • Failure during factory acceptance testing (FAT) and site acceptance test (SAT) • Inclement weather • Copper and steel price increase

15.2 Early warning meetings are to be held at intervals no longer than

Weekly

31.2 The starting date is

Contract Signature date

30.1 The access dates are:

part of the Site	date
(1) Airways Park	1 week after start date
(2) Block H	2 weeks after start date
(3) Simulator Substation	2 weeks after date

32.2 The Contractor submits revised programmes at intervals no longer than

1 Week

11.2(2) & 11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	15 months from start date
35.1	The <i>Client</i> willing to take over the <i>works</i> before the Completion Date.	is not
31.1	The period after the Contract Date within which the <i>Contractor</i> is to submit a first programme for acceptance is	1 Week
40.2	The period after the Contract Date within which the <i>Contractor</i> is to submit a quality policy statement and quality plan is	1 Week
43.1 & 43.2	The period between Completion of the whole of the <i>works</i> and the <i>defects date</i> is	12 months
44.2	The <i>defect correction period</i> is	4 Weeks
51.1	The <i>currency of the contract</i> is the	ZAR
50.1	The <i>assessment interval</i> is	4 weeks
51.4	The <i>interest rate</i> is	__N/A__% per annum (not less than 2) above the
	N/A rate of the	N/A (bank)
51.2	The period within which payments are made is	30 Days
60.1(13)	The place where weather is to be recorded is	Johannesburg
60.1(13)	The <i>weather measurements</i> to be recorded for each calendar month are	
	<ul style="list-style-type: none"> the cumulative rainfall (mm) the number of days with rainfall more than 10 mm 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	
	N/A	

The *weather measurements* are supplied by

South African Weather Service (SAWS)

60.1(13) The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at

Johannesburg

 and which are available from:

the South African Weather Services (SAWS)

60.1(13) Where no recorded data are available, assumed values for the ten-year return *weather data* for each *weather measurement* for each calendar month are:

N/A

60.1(21) These are additional compensation events

N/A

(1)

--

(2)

--

(3)

--

80.1 These are additional *Client's* liabilities

N/A

(1)

--

(2)

--

(3)

--

83.3 Insurance Table row 3 The minimum amount of cover for insurance against loss of or damage to property (except the *works*, Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Works for any one event is:

TBC

83.3 Insurance Table row 4 The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is:

TBC

83.3 Insurance Table row 1 The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Client* for an amount of

TBC

83.1 The *Client* provides these insurances from the Insurance Table

(1) Insurance against

TBC

Minimum amount of cover is	
The deductibles are	
(2) Insurance against	
Minimum amount of cover is	
The deductibles are	
(3) Insurance against	
Minimum amount of cover is	
The deductibles are	

83.1

The *Client* provides these additional insurances

(1) Insurance against	
Minimum amount of cover is	.
The deductibles are	
(2) Insurance against	
Minimum amount of cover is	
The deductibles are	

83.2

The *Contractor* provides these additional insurances

(1) Insurance against	Whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Client</i>
Minimum amount of cover is	
The deductibles are	
(2) Insurance against	
Minimum amount of cover is	
The deductibles are	

Data for the main Option clauses

Clause number Identified statement and data

Data for Option B Priced contract with bill of quantities

60.6 The *method of measurement* is published by
and amended as stated in Part C2.1, Pricing Assumptions.

63.12 The *value engineering percentage* is 50%, unless another percentage
is stated here, in which case it is %

Data for resolving and avoiding disputes.

W1.4(1), and W3.3(1)	The <i>tribunal</i> is	arbitration
W1.4(5), and W3.3(4)	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.
W1.4(5)	The place where arbitration is to be held is	_JHB_____ South Africa
W1.4(5)	The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the <i>arbitration procedure</i> 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.

If Option W1 is used

W1.1(1)	The <i>Senior Representatives</i> of the <i>Client</i> are	
	Name (1)	Alex Phakathi (Head of CRES)
	Address for communications	32 JONES Road, Airways Park, OR Tambo International Airport, Johannesburg
	Address for electronic communications	AlexPhakathi@flysaa.com
	Name (2)	
	Address for communications	
	Address for electronic communications	
W1.2	The <i>Adjudicator</i> is (Name) [It is always preferable to name the <i>Adjudicator</i> at time of award. If this can be done delete this data and insert the name and contact details below.]	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)
	Address for communications	
	Address for electronic communications	
	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.

Data for the secondary Option clauses

Clause number Identified statement and data

X2: Changes in the law

There is no reference to Contract Data in this Option

X4: Ultimate holding company guarantee

There is no reference to Contract Data in this Option

X11: Termination by the *Client*

There is no reference to Contract Data in this Option

X13: Performance bond

X13.1 The amount of the performance bond is

10% of contract value

X16 Retention

X16.1 The *retention free amount* is

X16.1 The *retention percentage* is

___10___ %

X16.3 The *Contractor* **may** give the *Client* a retention bond.

Z: Additional conditions of contract

The *additional conditions of contract* are

1 **If secondary Option X3 is chosen**

1.1 The items & activities will be paid in the other currency to a foreign Bank account nominated by the *Contractor*, or to a valid SARB approved CFC account in South Africa.
If no selection is made by the *Contractor* before the Contract Date, the items and activities will be paid for in accordance with a payment method determined by the *Client*.

2

3

Part 2 – Data provided by the Contractor.

Please read both the NEC4 Engineering and Construction Contract (June 2017) and the relevant parts of its User Guide “Preparing an Engineering and Construction Contract” (ECC4-Prep)³ in order to understand the implications of this Data which the tenderer is required to complete. A discussion about completing the Data is provided on pages 4 to 39 of the User Guide.

The number of the clause which requires the data is shown in the left-hand column for each statement however other clauses may also use the same data.

Boxes like this are used to denote where data is inserted

Where appropriate dashes like this _____ are also used. **Double click** on the dash to enter the required data.

In the left-hand column where a note begins, “If _____ ” either complete the data and delete the note if the option applies or delete the note and the rows of data relevant to that note if the option has not been selected.

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

Data for the Core Clauses

Clause number

Identified statement and data

10.1

The *Contractor* is

Name

Address for communications

Address for electronic communications

11.2(10) & 52.1

The *fee percentage* is

 %

11.2(20) & 16.3

The *working areas* are the Site and

24.1

The *key persons* are

Name (1)

Job

Responsibilities

Qualifications

Experience

Name (2)

Job

³ Available from ECS Associates (Pty) Ltd Tel 011 803 3008, or see www.ecs.co.za

Responsibilities

Qualifications

Experience

11.2(8)

The following matters will be included in the Early Warning Register:

If the Contractor is to provide Scope for its design

11.2(16) and 21.1

The Scope provided by the Contractor for its design is in

If a programme is to be identified in the Contract Data

31.1

The programme identified in Contract Data is

If the Contractor is to decide the completion date for the whole of the works

11.2(3)

The completion date for the whole of the works

Data for the main Option clauses

Clause number

Identified statement and data

Option B priced contract with bill of quantities

11.2(22)

The bill of quantities is in

The tendered total of the Prices excluding VAT is

Data for resolving and avoiding disputes.

Option W1

W1.1(1)

The Senior Representatives of the Contractor are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

Data for the secondary Option clauses

Clause number

Identified statement and data

X10 Information modelling

If an *information execution plan* is to be identified in the Contract Data

The *information execution plan* identified in the Contract Data is in

--

Data for Short Schedule of Cost Components

11.2(28) and SSCC 11

The *people rates* are

Category of person	unit	rate

SSCC 21

The published list of Equipment is the edition current at the Contract Date of the list published by

The percentage for adjustment for Equipment in the published list is

% (state plus or minus)

SSCC 22

The rates for other Equipment are

Equipment rate

SSCC 61 The rates for Defined Cost of manufacture and fabrication outside the Working Areas by the *Contractor* are

Category of person	rate

SSCC 71 The rates for Defined Cost of design outside the Working Areas are

Category of person	rate

SSCC 72 The categories of design people whose travelling expenses to and from the Working Areas are included in Defined Cost are

--

C1.3 Forms of Securities

Pro formas for Bonds & Guarantees for use with the NEC4 Engineering & Construction Contract (ECC4)

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

Option X4: Ultimate holding company guarantee
Option X13: Performance bond

Each of these secondary Options requires a bond or guarantee “in the form set out in the Scope”. Pro forma documents for these bonds and guarantees are provided here for convenience but are to be treated as part of the Scope.

Option X16: Retention (not used with Option F)

The *Contractor* may provide a retention bond in the form stated here. In terms of clause X16.3 any amount retained after the *Contractor* gives the *Client* a retention bond is paid to the *Contractor* in the next assessment.

The organisation providing the bond or 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 *Client* within the time stated in the contract.

Pro forma: Ultimate holding company guarantee for use with secondary Option X4

(to be reproduced exactly as shown below on the letterhead of the Contractor's ultimate holding company)

[Insert Client's name and registered address]	Date:	
---	-------	--

Dear Sirs,

Ultimate holding company guarantee for Contract No _____

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

{Insert registered name and address of the Client }	(the Client) and
{Insert registered name and address of the Contractor}	(the Contractor), for
{Insert details of the works from the Contract Data}	(the works).

I/We the undersigned on behalf of the Contractor's ultimate holding company (name) of physical address	
---	--

and duly authorised thereto do hereby unconditionally guarantee to the Client that the Contractor shall Provide the Works in accordance with the above numbered Contract.

1. If for any reason the Contractor fails to Provide the Works, we hereby agree to cause to Provide the Works at no additional cost to the Client.
2. If we fail to comply with the terms of this Deed of Guarantee, the Client may itself procure such performance (whether or not the Agreement be formally determined). The Client is to notify us and we shall indemnify the Client 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 Contractor and the Client and/or between us and Contractor; nor any alteration in the obligations undertaken by the Contractor 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 Contractor.
4. The Client shall not be obliged before taking steps to enforce the terms of this Deed of Guarantee to obtain judgement against the Contractor 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 Contractor.
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 Supreme Court of South Africa.

Signed at on this day of 20__

Signature(s)		
Name(s) (printed)		
Position in ultimate holding company		
Signature of Witness(s)		
Name(s) (printed)		

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 Guarantee)

Client's name and address	Reference No. _____	_____ [Bank reference number to be inserted]
	Date: _____	

Dear Sirs,

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

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

1.1	"Bank" means	[Insert name of Bank], _____ Branch, Registration No. _____
1.2	"Bank's Address" means	[Insert physical address of Bank]
1.3	"Contract" means	the written agreement relating to the project works, entered into between the Client and the Contractor, on or about the _____ day of _____ 20_____ (Contract Reference No. _____) as amended, varied, restated, novated or substituted from time to time;
1.4	"Contractor" means	_____ a company registered in accordance with the laws of _____ under Registration No _____ .
1.5	"Client" means	_____ a company registered in accordance with the laws of the Republic of South Africa under Registration Number _____
1.6	"Expiry Date" means	the date on which the Defects Certificate (as defined in the Contract) is due to be issued in terms of the Contract.
1.7	"Guaranteed Sum" means	the sum of R_____, (_____ Rand)
1.8	"Project" means	_____

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 the Client 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 the Client, on written demand from the Client received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.

3. A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:

- be signed on behalf of the Client by a director of the Client;
- state the amount claimed ("the Demand Amount");
- state that the Demand Amount is payable to the Client 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 Client and the Contractor.

6. The Client 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.

7. Should the Client cede its rights against the Contractor to a third party where such cession is permitted under the Contract, then the Client shall be entitled to cede to such third party the rights of the Client 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 Client 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		

Pro forma retention bond (may be used when Option X16 applies)

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

[Insert Client’s name and registered address]	Bank reference no.	
	Date:	

Dear Sirs

Retention bond for Contractor _____ (name)

Project _____ Contract Reference _____

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

1.1 “Bank” means	[Insert name of Bank], _____ Branch, Registration No. _____
1.2 “Bank’s Address” means	[Insert physical address of Bank]
1.3 “Contract” means	the written agreement relating to the project works, entered into between the Client and the Contractor, on or about the _____ day of _____ 20_____ (Contract Reference No. _____) as amended, varied, restated, novated or substituted from time to time;
1.4 “Contractor” means	_____ a company registered in accordance with the laws of _____ under Registration No _____ .
1.5 “Client” means	_____ a company registered in accordance with the laws of the Republic of South Africa under Registration Number _____
1.6 “Expiry Date” means	the date on which the Defects Certificate (as defined in the Contract) is due to be issued in terms of the Contract.
1.7 “Guaranteed Sum” means	the sum of R_____, (_____ Rand)
1.8 “Project” means	_____

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 the Client 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 the Client, on written demand from the Client received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.

3. A demand for payment under this guarantee shall be made in writing at the Bank’s address and shall:

- be signed on behalf of the Client by a director of the Client;
- state the amount claimed (“the Demand Amount”);
- state that the Contractor has failed to carry out its obligation(s) to rectify certain defect(s) for which it is responsible under the Contract (and the nature of such defect(s)) alternatively that the Demand Amount is payable to the Client 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 Client and the Contractor.

6. The Client 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.

7. Should the Client cede its rights against the Contractor to a third party where such cession is permitted under the Contract, then the Client shall be entitled to cede to such third party the rights of the Client 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 Client 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		

Part C2 Pricing Data

C2.1 Pricing assumptions Option B

How work is priced and assessed for payment

Clause 11 in NEC4 Engineering and Construction Contract (ECC4) Option B states:

Identified and defined terms	11	
	11.2	(22) The Bill of Quantities is the <i>bill of quantities</i> unless later changed in accordance with these <i>conditions of contract</i> .
		(30) The Price for Work Done to Date is the total of
		<ul style="list-style-type: none">• the quantity of the work which the <i>Contractor</i> has completed for each item in the Bill of Quantities multiplied by the rate and• a proportion of each lump sum which is the proportion of the work covered by the item which the <i>Contractor</i> has completed.
		Completed work is work which is without notified Defects the correction of which will delay following work.
		(33) The Prices are the lump sums and the amounts obtained by multiplying the rates by the quantities for the items in the Bill of Quantities.

This confirms that Option B is a re-measurement contract and the Bill comprises only items measured using quantities and rates or stated as lump sums. Value related items are not used. Time related items are items measured using rates where the rate is a unit of time.

Function of the Bill of Quantities

Clause 56.1 in Option B states, "Information in the Bill of Quantities is not Scope or Site Information". This confirms that specifications and descriptions of the work or any constraints on how it is to be done are not included in the Bill, but in the Scope. This is further confirmed by Clause 20.1 which states, "The *Contractor* Provides the Works in accordance with the Scope". Hence the *Contractor* does **not** Provide the Works in accordance with the Bill of Quantities. The Bill of Quantities is only a pricing document.

Guidance before pricing and measuring

Clients preparing tenders or contract documents, and tendering contractors are advised to consult page 85 of the "NEC4 User Guide, Preparing an Engineering and Construction Contract" before preparing the *bill of quantities* or before entering rates and lump sums into the *bill*.

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

When compensation events arise, the default position is that the Bill of Quantities is not used to calculate the cost effect of the event. Defined Cost and the resulting Fee is used and Defined Cost includes all components of cost which the

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

Measurement and payment

Symbols

The units of measurement described in the Bill of Quantities are metric units abbreviated as follows:
[add or delete as required]

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

General assumptions

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

Departures from the method of measurement

C2.2 The *bill of quantities* – Option B

The Bill of Quantities can be found in Annexure A

Part C3 Scope of Work

C3.1: The *Client's* scope

The Scope of Work can be found in Annexure B

Part C4 Site Information

SI 100 Site location

SI 105 Site location	SAA Airways Park, Block H, Simulator Substation
----------------------	---

SI 200 Reports and surveys

SI 205 Reports and surveys	N/A
----------------------------	-----

SI 300 Public information

SI 305 Public information	N/A
---------------------------	-----

SI 400 Buried pipes, services and other objects

SI 405 Buried pipes, services and other objects	Electrical SLD
---	----------------

SI 500 Buildings, structures and other things adjacent to the Site

SI 505 Buildings, structures and other things adjacent to the Site	Simulators, Substations, ACSA Airside and Aprons, SAA Parking
--	---