

## C1.3 Forms of Securities

### Pro formas for Bonds & Guarantees

For use with the NEC3 Term Service Contract (TSC3)

***[Note to contract compiler:***

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

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

Option X4: Parent company guarantee  
Option X13: Performance Bond

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

The *Contractor* shall guarantee his ASGI-SA Obligations by providing the *Employer* with an ASGI-SA Guarantee in the form provided here.

***[Note to contract compiler: If there are no ASGI-SA Obligations in this contract, delete the above statement and the ASGI\_SA bond]***

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.

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

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

<b>Eskom Holdings SOC Ltd                  Megawatt Park                  Maxwell Drive                  Sandton                  Johannesburg</b>	Date:	
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Dear Sirs,

**Parent Company Guarantee for Contract No**

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

<b>Eskom Holdings SOC Ltd</b>	(the <i>Employer</i> ) and
<b>{Insert registered name and address of the Contractor}</b>	(the <i>Contractor</i> ), for
<b>{Insert details of the works from the Contract Data}</b>	(the <i>works</i> ).

I/We the undersigned	
on behalf of the <i>Contractor's</i> parent company	
of physical address	

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

1. If for any reason the *Contractor* fails to Provide the Service, we hereby agree to cause to Provide the Service at no additional cost to the *Employer*.
2. If we fail to comply with the terms of this Deed of Guarantee, the *Employer* may itself procure such performance (whether or not the Agreement be formally determined). The *Employer* is to notify us and we shall indemnify the *Employer* 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 *Employer* 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 *Employer* 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

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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 High Court of South Africa.

Signed at		on this		day of		20_
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Signature(s)		
Name(s) (printed)		
Position in parent 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)

<b>Eskom Holdings SOC Ltd</b> <b>Megawatt Park</b> <b>Maxwell Drive</b> <b>Sandton</b> <b>Johannesburg</b>	Reference No.    Date:	<b>[●] [Drafting Note: Bank reference number to be inserted]</b>
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Dear Sirs

Performance **Bond – Demand Guarantee:** *[Drafting Note: Name of Contractor to be inserted]*

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

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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 Services, 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 Ltd, 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 earlier of
    - the date that the Bank receives a notice from Eskom stating that all amounts due from the Contractor as certified in terms of the contract have been received by Eskom and that the Contractor has fulfilled all his obligations under the Contract, or
    - the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by Eskom
  - 1.7 “Guaranteed Sum” - means the sum of R [●] ([●] Rand);
  - 1.8 “Services” - means [insert as applicable.].

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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:
  - 3.1 be signed on behalf of Eskom by a Group Executive, Divisional Executive, Senior General Manager or its delegate;
  - 3.2 state the amount claimed ("the Demand Amount");
  - 3.3 state that the Demand Amount is payable to Eskom 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:
  - 4.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
  - 4.2 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:
  - 5.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
  - 5.2 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.
6. 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.
7. 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.
8. This Guarantee:
  - 8.1 shall expire on the Expiry Date until which time it is irrevocable;
  - 8.2 is, save as provided for in 7 above, personal to Eskom and is neither negotiable nor transferable;
  - 8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed

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Sum or expiry hereof;

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

8.5 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.

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

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

Signed at \_\_\_\_\_

Date \_\_\_\_\_

For and behalf of the Bank

Bank Signatory: \_\_\_\_\_

Bank Signatory: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Bank's seal or stamp

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**Pro forma ASGI-SA Guarantee**

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

<b>Eskom Holdings SOC Ltd</b> <b>Megawatt Park</b> <b>Maxwell Drive</b> <b>Sandton</b> <b>Johannesburg</b>	Reference No _____  Date: _____	<b>[●] [Drafting Note: Bank reference number to be inserted]</b>
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Dear Sirs

**Pro-Forma ASGI-SA Guarantee:** *[Drafting Note: Name of Contractor to be inserted]*

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

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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 the *Employer* 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 “Contractor’s ASGI-SA Obligations” – means the *Contractor’s ASGI-SA Obligations* under and as defined in the Contract.
  - 1.6 “Employer” - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30.
  - 1.7 “Expiry Date” - means the [●] day of [●] 200[●]; *[Drafting Note: anticipated date of issue of ASGI-SA Performance Certificate to be inserted.]*
  - 1.8 “Guaranteed Sum” - means the sum of R [●] ([●] Rand);
  - 1.9 “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 the *Employer*, as security for the proper performance by the *Contractor* of the *Contractor’s ASGI-SA Obligations* and hereby undertake to pay to the *Employer*, on written demand from the *Employer* received prior to the Expiry Date, any sum or sums not

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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:
  - 3.1 state the amount claimed ("the Demand Amount");
  - 3.2 state that the Demand Amount is payable to the *Employer* 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:
  - 4.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
  - 4.2 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:
  - 5.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
  - 5.2 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 the *Employer* and the *Contractor*.
6. The *Employer* 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 *Employer* cede its rights against the *Contractor* to a third party where such cession is permitted under the Contract, then the *Employer* shall be entitled to cede to such third party the rights of the *Employer* under this Guarantee on written notification to the Bank of such cession.
8. This Guarantee:
  - 8.1 shall expire on the Expiry Date until which time it is irrevocable;
  - 8.2 is, save as provided for in 7 above, personal to the *Employer* and is neither negotiable nor transferable;
  - 8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
  - 8.4 shall be regarded as a liquid document for the purpose of obtaining a court order; and
  - 8.5 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.

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

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

Signed at \_\_\_\_\_

Date \_\_\_\_\_

For and behalf of the Bank

Bank Signatory: \_\_\_\_\_

Bank Signatory: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Bank's seal or stamp