



UNIVERSITY OF THE  
WITWATERSRAND,  
JOHANNESBURG

**University of the Witwatersrand, Johannesburg**

**Contract No: Contract / Project No**

*Insert contract, tender or project number*


**Supply, Installation and Maintenance of a Least Cost Routing Voice Traffic Solution**

**CONTRACT DOCUMENT**


(Based on NEC3 Term Service Contract)

July 2018

<b>Issued by:</b> <b>The Chief Information Officer</b>	
<b>University of the Witwatersrand, Johannesburg</b>	
<b>Name of Contractor:</b>	

		<b>Guidance notes</b> (delete column when document has been compiled) Delete this page if documents C1, C2 and C3 are combined in a tender document
 UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG	<b>University of the Witwatersrand, Johannesburg</b>	
	<b>Contract No: Contract / Project No</b>	<i>Insert project number</i>
	<b>Supply, Installation and Maintenance of a Least Cost Routing Voice Traffic Solution</b>	
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C5	Site Information	

		<b>Guidance notes</b> (delete column when document has been compiled)
 <p>UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG</p>	<b>University of the Witwatersrand, Johannesburg</b>	
	<b>Contract / Project No</b>	<i>Insert project number</i>
	<b>Supply, Installation and Maintenance of a Least Cost Routing Voice Traffic Solution</b>	
<b>C1.1 Form of Offer and Acceptance</b>		
<b>Offer</b>		<b>Guidance notes</b> (delete column when document has been compiled)
The <i>Employer</i> , identified in the Acceptance signature block, has solicited offers to enter into a contract for the provision of services as described in Part 1 of the Contract Data.		
The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.		<i>Use this wording where tenders are called for using the CIDB standard conditions of tender. Delete row if not applicable.</i>
<b>&lt;&lt;OR&gt;&gt;</b> The tenderer, identified in the Offer signature block, has examined the draft contract as listed in the Acceptance section and agreed to provide this Offer.		<i>Use this wording where a contract is negotiated with a single tenderer. Delete row if not applicable.</i>
By the representative of the Contractor, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance, the Contractor offers to perform all of the obligations and liabilities of the <i>Contractor</i> under the contract for an amount set out in the conditions of contract identified in the Contract Data.		

Signature(s)			
Name(s)			
Capacity			
<b>For the Contractor:</b>			
Name & signature of witness	(Insert name and address of organisation)	Date	.....

## Acceptance

	<b>Guidance notes</b> (delete column when document has been compiled)
By signing this part of this Form of Offer and Acceptance, the <i>Employer</i> identified below accepts the tenderer's Offer. In consideration thereof, the <i>Employer</i> shall pay the <i>Contractor</i> the amount due in accordance with the <i>conditions of contract</i> identified in the Contract Data. Acceptance of the tenderer's Offer shall form an agreement between the <i>Employer</i> and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.	
<p>The terms of the contract, are contained in:</p> <p>Part C1      Agreements and Contract Data, (which includes this Form of Offer and Acceptance)</p> <p>Part C2      Pricing Data</p> <p>Part C3      Scope of Work</p> <p>Part C4      Other Annexures</p> <p>Part C5      Site Information</p> <p>and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.</p>	

<p>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 <i>Employer</i> during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and form part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.</p> <p>&lt;&lt;OR&gt;&gt;</p>	<p><i>Use this wording where tenders are called for using the CIDB standard conditions of tender. Delete row if not applicable.</i></p>
<p>Deviations from and amendments to the draft contract as well as any changes to the terms of the Offer agreed by the tenderer and the <i>Employer</i> during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and form part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.</p>	<p><i>Use this wording where a contract is negotiated with a single tenderer. Delete row if not applicable.</i></p>
<p>The <i>Contractor</i> shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the <i>Employer's</i> 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 <i>conditions of contract</i> identified in the Contract Data. At the <i>Employer's</i> option, failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.</p>	
<p>Notwithstanding anything contained herein, this agreement comes into effect on the date set out in 30.1. The <i>Contractor</i> accepts the contents of this agreement which constitutes a binding contract between the Parties.</p>	
<p>This Contract, including its annexures and addendums, and Task Orders (<b>Agreement</b>), is the complete and exclusive agreement between the Parties regarding the subject matter of the Contract and the Parties waive the right to rely on any other oral or written provisions not contained in the Contract.</p>	

Signature	.....			<i>Amend details if necessary</i>
Name				
Capacity				
<b>for the Employer</b>	University of the Witwatersrand, Johannesburg Private Bag 3 Wits 2050 1 Jan Smuts Avenue Braamfontein Johannesburg			

Name & signature of witness	.....	Date:	.....	
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# Schedule of Deviations

- 1. Subject .....  
Details .....  
.....  
.....
- 2. Subject .....  
Details .....  
.....  
.....
- 3. Subject .....  
Details .....  
.....  
.....
- 4. Subject .....  
Details .....  
.....  
.....
- 5. Subject .....  
Details .....  
.....  
.....

By the duly authorised representatives signing this agreement, the *Employer* and the Tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the Tender Data and addenda thereto as listed in the returnable schedules, and any confirmation, clarification or changes to the terms of the offer agreed by the Tenderer and the *Employer* during this process of offer and acceptance.

**Guidance notes** (delete column when document has been compiled)

		<b>Guidance notes</b> (delete column when document has been compiled and change Page Setup from landscape to portrait))
 UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG	<b>University of the Witwatersrand, Johannesburg</b>	
	<b>Contract / Project No</b>	<i>Insert project number</i>
	<b>Title of Contract / Project</b>	

### C.1.2 Contract Data

The Conditions of Contract are the NEC3 Term Service Contract (First edition, June 2005 with amendments June 2006) published by the Institution of Civil Engineers, copies of which may be obtained from [www.ecs.co.za](http://www.ecs.co.za) (telephone 011-803-3008).

Each item of data given below is cross-referenced to the clause (**Core Clause**) in the NEC3 Term Service Contract (**the Main Contract**) to which it mainly applies.

#### Part one - Data provided by the *Employer*

Clause	Data	
<b>1</b>	<b>General</b>	
	The <i>conditions of contract</i> are the Core Clauses:	
10.1	The <i>Employer</i> is the University of the Witwatersrand, Johannesburg, acting through its Wits ICT Department (Wits ICT)	
	Address: 1 Jan Smuts Avenue, Braamfontein, 2001 Johannesburg	
	Tel No:	<i>Enter the data</i>
	Email:	

10.1	The <i>Employers Service Manager</i> is (Name):	<i>Insert data</i>
	Address:	
	Tel No:	
	Email:	<i>Delete row if email is not permitted as a form of communication</i>
	The <i>Employer's</i> Legal Representative is: The Director: Legal Services, 5 <sup>th</sup> Floor Solomon Mhlanghu House, University of the Witwatersrand, Johannesburg, 1 Jan Smuts Avenue, Braamfontein, Johannesburg	
11.2(2)	The Affected Property is:	<i>Identify the property of the Employer or Others which is affected or used by the Contractor in Providing the Service or identify the document which lists the property e.g. in Annex A to the scope of work.</i>
11.2(13)	The <i>service</i> is: The supply, installation and maintenance of a Least Cost Routing Voice Traffic Solution as more fully described in the Annexures attached hereto.	
11.2(14)	The known risks are included in the Risk Register which is contained in <b>Annexure 1c</b> .  Further risk matters as they become known will be documented during the Project and included in the Project Plan. The risk matters will be included in the Risk Register composed by the Parties during the normal project management process. The Risk Register (or RADE document) contains known risks with corresponding <i>Contractor</i> or <i>Employer</i> responsibility for each risk, and what action is to be taken to reduce or avoid each risk.	
11.2(15)	The Service Information is in the document Part C3: Scope of Work, and includes Goods and Services	
11.2(17)	Additional Defined terms:  <b>Acceptance</b> means, subject to Z4 (Warranty), written acceptance by the <i>Employer</i> that the Services meet the Acceptance Criteria.  <b>Acceptance Criteria</b> means the performance standards and specifications set out in the Scope of Work.  <b>Annexures</b> means the Annexures to this Agreement and any annexure agreed by the Parties that is attached hereto from time to time.  <b>Background Intellectual Property</b> means any Intellectual Property of a Party or its sub-contractor/s which is in existence at the commencement date of this Agreement; or comes into existence after the commencement date otherwise than in connection with this Agreement	

**Delivery Date** means the date of acceptance by the *Employer* that the Goods and Services are installed and that they function according to the Acceptance Criteria.

**Equipment** means the movable equipment described under Goods.

**Foreground Intellectual Property** means such Intellectual Property as may be created or developed, including Background Intellectual Property forming an integral part of the Foreground Intellectual Property and not specifically excluded from the Foreground Intellectual Property, by the *Contractor*:

- a. during and as part of the rendering of the Services and in the fulfilment of its obligations in terms of this Agreement,
- b. in the course and scope of the Services,
- c. directly related to the Services, or
- d. resulting from overall system integration, refinements or resultant research or that which is derived from the Services.

**Goods** means:

- a. the Equipment, machines, hardware, Cabling and UPS', contained in the Bills of Materials (**BoMs**) and Equipment set out in **Annexure ..**,
- b. the, articles and things, including all accessories, appurtenances, materials, parts and components[, and Software] set out in **Annexure ...**,
- c. all ancillary and complementary things and appurtenances, materials, parts, ports, components and Software, which are necessary for the Equipment and Software to function properly,
- d. for the purposes of Services, the description of machine/s machines that are to be maintained under this Agreement, and
- e. the design specifications of the original equipment manufacturer (**OEM**), and, as applicable, the Deliverables, the Project Plans, and other elements contained in the Scope of Work.

**Goods Information** also means the design specifications of the original equipment manufacturer (**OEM**), and, as applicable, the Deliverables, the Project Plans, and other elements contained in the Scope of Work.

**Integrated System** means the provision of all Goods and Services together as an overall solution, and the proper functioning thereof with the existing infrastructure.

**Intellectual Property or IP** means intellectual capital whether or not subject to statutory protection embodied in any and all technical and commercial information, including chemical structures, biological or chemical information, manufacturing techniques and designs, specifications and formulae, know-how, data, database rights, systems and processes, production methods, test results, models, drawings, prototypes, methodologies, trade secrets, undisclosed inventions, financial and marketing information, as well as registered and unregistered intellectual property in the form of patents, utility models, trademarks, designs and plant breeders' rights (whether granted, registered or applied for), and copyright in any works including literary works or computer software programs in source and object code format.

**Milestone** means the scheduled event that indicates the completion of a major deliverable of the Project.

A **Milestone Date** is the date on which a Milestone is reached.

**Owner** means the natural or juristic person that has an enforceable claim or title to, or is the holder of rights in the Goods, and is recognized as such by law.

**OEM** means the original equipment manufacturer of the Goods as described in the Services Information.

**Order** means the *Purchaser's* official purchase order including an order resulting from a Task Order.

**Others** means, in addition to the specification in the Core Clause, those 3<sup>rd</sup> party suppliers and service providers that are contracted to the University.

**Party** means either the *Employer* or the *Contractor* and **Parties** means both of them.

**Personnel** means a party's directors, members, officers, employees, associates, contractors, servants, agents and/or representatives.

**PPI** means the average annual rate of change (expressed as a percentage) in the Producer Price Index [for imported commodities] as published by Statistics South Africa (or such other index reflecting the official rate of inflation in the Republic of South Africa as may replace it), which annual change shall be determined by comparing the most recently published index with the average index published over the 12 months preceding the anniversary of the [Effective Date] <<or>> [starting date specified in clause 30.1] , and applying the lower of the two compared indices.

**Project** means the Goods and Services described in the **Annexures**..... in this Agreement.

**Project Plan** means the systematic sequencing and scheduling of the tasks that comprise the Project, as may necessarily be modified and agreed by the Parties, and as is contained in **Annexure** ..... or in the Annexures to be annexed hereto from time to time.

**Purpose** means the seamless and continuous supply, installation, support and maintenance of the of a Least Cost Routing Voice Traffic Solution for and on behalf of the University.

**Services** means the performance of tasks, design and development work, provision of advice and counsel, assistance and/or support, the supply, installation, commissioning and integration of the Goods that the *Contractor* provides, as more fully described in the **Annexures**.

**University Rules** means the rules, regulations, policies, procedures, practices, standing orders and the like, approved by the University Senate or Council or both and as amended from time to time.

12.2	The <i>law of the contract</i> is the law of South Africa	
12.3	In addition to the provisions of clause 12.3 of the Conditions of Contract, any terms and conditions on any quotation, delivery note or other documentation provided by the <i>Contractor</i> will be of no force and effect, and the <i>Employer</i> will not be bound by any such terms and conditions. This clause shall mutatis mutandis apply to any <i>Contractor</i> order.	
13	<p>In addition to the provisions of clause 13 of the Conditions of Contract, the following apply:</p> <p>Any notice in connection with this Agreement may be sent to either Party at the applicable addresses set out in clause 10.1 of Part one and Part two of the Contract Data respectively for the <i>Employer</i> and the <i>Contractor</i>. Legal notices required by this Agreement to be given to either Party will be sent to the Legal Representative set out in the same clause above.</p> <p>Notices given in terms of this Agreement shall be sent by registered mail or delivered by hand or (except for legal notices) sent by email and shall be deemed to have been received on the date of delivery or transmission (as the case may be) if same takes place during normal business hours, or if not, on the next following business day, in the case of hand delivery or email transmission, or in the case of forwarding by registered mail, on the 7<sup>th</sup> day after posting.</p> <p>The Parties may, by 14 (fourteen) days' written notice, change their nominated address or email address for the purposes of this clause, to any other physical address, within South Africa.</p>	
13.1	The <i>language of this contract</i> is English	
13.3	The <i>period for reply</i> is 7 days	
<b>2</b>	<b>The Contractor's main responsibilities</b>	
21.1	The <i>Contractor</i> submits a first plan for acceptance within                weeks of the Contract Date	
25.1	The <i>Contractor</i> will also effectively manage Others who are currently contracted to the <i>Employer</i> for goods and services that are being replaced by Goods and Services being provided under this Agreement. In some instances, the <i>Employer</i> may require that the <i>Contractor</i> continue or take over the services of Others where necessary. In such instances, the Parties will agree an appropriate amendment to the Agreement	
<b>3</b>	<b>Time</b>	
30.1	The <i>starting date</i> is Click here to enter a date. [The scheduled ending date for installation and commissioning is Click here to enter a date.. The <i>ending date</i> is Click here to enter a date. [nn months from the <i>starting date</i> .]	<i>Provide a date or state "two weeks after the Contractor receives one fully completed original copy</i>

		<i>of this document, including the schedule of deviations (if any) as contained in the Form of Offer and Acceptance”, as appropriate.</i>
30.1	The <i>service period</i> is number of months	
<b>4</b>	<b>Testing and Defects</b>	
	<p>Subject to Clause Z5 (Warranty) of the Additional Conditions of Contract below, the <i>defects date</i> [is number of years /months after Delivery] [is the <i>ending date</i>]</p> <p>&lt;&lt;AND&gt;&gt;</p> <p>The <i>defects date</i> in respect of Goods is the end of the manufacturer’s warranty period or the above specified <i>defects date</i>, whichever is later [and, in respect of Services, the above specified <i>defects date</i>]</p> <p>[The <i>defects date</i> in respect of the Integrated System is three months after the Delivery Date]</p> <p>&lt;&lt;OR&gt;&gt;</p> <p>No data is required for this section of the <i>conditions of contract</i></p>	
<b>4</b>	<b>Testing and Defects</b>	<ul style="list-style-type: none"> <li>• <i>Use this alternative language when there is a Project</i></li> <li>• <i>Make the above and below lines of the table black</i></li> </ul>
40	<p><b>Acceptance Criteria</b></p> <p><i>Contractor’s services under this Agreement will be considered accepted by the Employer when:</i></p> <ol style="list-style-type: none"> <li>The components are proven to function correctly with each other and with the existing <i>Employer</i> infrastructure. The below tests together with their associated remedies and acceptance criteria will be used to gauge correct function.</li> <li>Criterion 2</li> <li>Criterion 3</li> </ol>	



## Acceptance Testing

### Acceptance Testing Requirements and Procedure

The Equipment, once installed, must be proven to function correctly within the existing *Employer* infrastructure, and must comply with the Acceptance Criteria. The below tests together with their associated remedies and Acceptance Criteria will be used to gauge correct function, according to the following procedure:

- a. Acceptance testing will be carried out by the *Contractor* in the presence of the *Employer*, at such times and places as agreed upon by the Parties in writing.
- b. Following each acceptance testing session, the *Employer* will provide the *Contractor* with a list of defects (if any) to be rectified within the defects correction period and will inform the *Contractor* of the time and place where the acceptance testing may be re-conducted.
- c. The *Contractor* acknowledges that time is of the essence and undertakes to successfully complete the acceptance testing within a further defects correction period.
- d. Upon successful acceptance testing the *Employer* shall confirm its acceptance in writing.
- e. The *Contractor* will provide to the *Employer* all documents and reports, which are developed by the *Contractor* for these acceptance tests.

- Solution Acceptance

The *Employer's* determination of Project success is based on end to end proper function and performance improvement according to the requirements and specifications set out in the **Annexures**. The *Contractor* will be expected to work closely with other Contractors to ensure that this requirement is met.

The *Employer* will provide its acceptance when the Goods and Service the *Contractor* is responsible for (and/ or solution as appropriate) performs according to the Acceptance Criteria including *Contractor* performance related to applicable specified Service Levels set out in X20 and in **Annexure** .....

- Tests

For each component of the Project, 'before & after' tests, stress and load tests, and the measurement tools that need to be supplied to perform these tests and other *Contractor*-suggested tests, will be provided and run by the *Contractor* with *Employer* involvement.

The *Contractor* will need to conduct the above tests to prove that

	<ul style="list-style-type: none"> <li>• <u>Remedies</u></li> </ul> <p>Penalties will apply if the solution (or component/s as appropriate) does not function properly or correctly, or Project completion or performance criteria are not met. Such penalties may include withholding payment until proper function is proven, the retention of payments due including the use of escrow accounts for selected portions of the services, and/or the penalties described in X20 and in <b>Annexure .....</b></p> <p>If individual parts of the Equipment do not function properly or correctly, payment will not be made until the Acceptance Criteria are met.</p>	
<b>5</b>	<b>Payment</b>	
50.1	<p>The <i>assessment day</i> is the [last working] day of each month.</p> <p>In respect of the Goods, the <i>assessment date</i> is upon completed installation and commissioning of the Goods and acceptance according to the Acceptance Criteria. In respect of the Services, the <i>assessment interval</i> is the last working day of each month</p>	
50.2	Amounts, including those charges, damages and penalties described herein, to be paid by or retained from the <i>Contractor</i> may, at the <i>Employer's</i> option, be set off against any amounts due by the <i>Employer</i>	
50.2 to 50.5	The amounts due on each payment Milestone Date are as set out in the Installation Payment Schedule	
51.1	The <i>currency of this contract</i> is the South African Rand	
51.2	The period within which payments [of undisputed amounts] are made is 30 days from the date of [receipt of] invoice	
51.4	The interest rate on late payment is the prime lending rate of the University's bank at the time that interest is due	
<b>6</b>	<b>Compensation events</b>	
	<p>Compensation events do not apply. No data required for this section of the <i>conditions of contract</i></p> <p><b>&lt;&lt;OR&gt;&gt;</b></p>	

	<p>Changes to Goods and Services, including scope, resources, quantities and prices, are compensation events.</p> <p>Such changes will be quoted for by the <i>Contractor</i> and contained in a Task Order which will be signed by the Parties and become part of this Agreement.</p>	
<b>7</b>	<b>Use of equipment, Plant and Materials</b>	
	No data is required for this section of the <i>conditions of contract</i> .	
<b>8</b>	<b>Risks and insurance</b>	
80.1	These are additional <i>Employer's</i> risks	
	1.	
	2.	
	3.	
83.1	The <i>Employer</i> provides no insurances	
83.1	<p>Except as set out below, the <i>Employer</i> provides no insurances from the Insurance Table or any additional insurance.</p> <p>The <i>Employer</i> has insured itself against the acts and omissions of persons acting on its behalf and its students and staff are insured during the course and scope of the <i>Employer's</i> business. The <i>Employer's</i> maximum liability will accordingly be limited, whether for a single or for multiple events, to the extent of its insurance cover for this Agreement.</p>	
83.1	<p>The <i>Contractor</i> has insured itself against the acts and omissions of persons acting on its behalf during the course and scope of its business.</p> <p>The insurance cover which the <i>Contractor</i> is required to take out in terms hereof must contain terms acceptable to the <i>Employer's</i> insurance broker. A reason for not accepting the cover is that it does not comply with the contract.</p> <p>The <i>Contractor</i> provides the following insurances which must be acceptable to the <i>Employer's</i> insurers:</p> <ul style="list-style-type: none"> <li>• Insurance against liability for death of or bodily injury to employees, agents or representatives of the <i>Contractor</i>, as contemplated in the Compensation for Occupational Injuries and Diseases Act, 130 of 1993 or any act succeeding it, arising out of and in the course of their employment in connection with this contract for any one event of not less than is R10 million,</li> <li>• Insurance against loss or damage to Goods and Equipment for a sum sufficient to provide for their replacement,</li> </ul>	

	<ul style="list-style-type: none"> <li>• SASRIA Special Risk Insurance in respect of riot and associated risk of damage to the Goods, plant and materials,</li> <li>• Professional Indemnity Insurance,</li> <li>• General and Commercial Liability Insurance. Cover must include defective workmanship, public liability, products and equipment liability, unlimited bodily injury and death, and property damage, and</li> <li>• Any other insurance cover that will adequately make provision for any possible losses and/or claims arising from its, employees, agents or representatives' acts and/or omissions on the <i>Employer</i>.</li> </ul>	
84	The <i>Contractor</i> must maintain the above insurances at all times while this Agreement is in force. The <i>Contractor</i> will provide the <i>Employer's</i> insurance broker with documentary proof of such insurance cover and written notice of any material changes, cancellations or lapses in such insurance. The <i>Employer</i> shall be entitled to request updated current certificates of any changed policies at any time.	
<b>9</b>	<b>Termination</b>	
90	Without prejudice to other remedies available to it in terms of this Agreement or in law, including the right to specific performance, the <i>Employer</i> may cancel this Agreement if the <i>Contractor</i> fails to remedy any material breach within 30 (thirty) days, or such other shorter reasonable period as may be agreed by the Parties, of receipt of written notice calling upon it to remedy such breach.	
<b>W1</b>	<b><i>DISPUTE RESOLUTION</i></b>	
	<b>Data for Option W1</b>	
	Options clauses that are <i>conditions of contract</i>	
	The following replaces Option clause W1 of the Dispute Resolution Option Clauses:	
W1	<p>Disputes arising under or in connection with this contract will not be referred to an Adjudicator as contemplated under clause W1 of the Term Service Contract. Dispute resolution will be according to the following:</p> <p>The Parties will negotiate in good faith to resolve any disputes that may arise out of this Agreement.</p> <p><u>Informal resolution</u></p>	

	<p>Within a period of 14 days after the date on which the dispute arose (the <b>Dispute Date</b>) the Parties will meet to discuss the dispute and will endeavour to resolve the dispute amicably. Each Party undertakes at such meeting to make full disclosure to the other of all information and records relating to the dispute.</p> <p>If the Parties are unable to resolve the dispute amicably within 30 days from the Dispute Date, either Party may refer the dispute to the University's Vice-Chancellor or a Deputy Vice-Chancellor (or their nominee) and the Contractor's Chief Executive Officer or their duly appointed representatives, who will use their best endeavours to resolve the dispute. Their determination will be final and binding and will be carried into effect by the Parties.</p> <p><u>Formal resolution</u></p> <p>If the individuals referred to above are unable to resolve the dispute within a period of 30 days after it had been referred to them, either Party may submit the matter for mediation. The Parties will refer the matter for mediation to a mediator appointed by agreement between the Parties, or, failing agreement, to a mediator appointed by the Chairman of the Bar Council of South Africa on written request by either Party. The costs of mediation will be borne equally by the Parties. The determination by the mediator will be final and binding and must be carried into effect by the Parties.</p> <p>If the mediator is unable to resolve the dispute or difference to the mutual satisfaction of the Parties, the Parties will submit to the jurisdiction of the South Gauteng Local Division of the High Court of South Africa in regard to such dispute or difference.</p> <p><u>Interim relief</u></p> <p>Nothing in this clause W1 will preclude a Party from seeking interim relief from any competent court having jurisdiction pending the institution of any dispute resolution proceedings.</p> <p><u>General</u></p> <p>The successful Party will, in each of the methods of dispute resolution provided for above, be entitled to be awarded a full indemnity for all the costs reasonably incurred by that Party, including attorney and own client costs.</p> <p>The provisions of this clause W1 will survive the termination of the Agreement.</p>	
W2	This Option is not applicable	
<b>X2</b>	<b>Changes in the law</b>	
	No data is required for this Option	
<b>X17</b>	<b>Low service damages</b>	
X17.1	The <i>service level table</i> is in []	

X17.1	<p>Subject to clause Z3 (Force Majeure), low service damages will not be incurred where any delay is caused by circumstances beyond the reasonable control of the <i>Contractor</i>. [The maximum amount for any and all penalties caused by delays on all the [components] will not exceed 5% (five percent) of the contract price.] However, if there are repeated delays by the <i>Contractor</i> which in the aggregate could reasonably be considered material, the <i>Employer</i> may terminate this Agreement and recover damages as are allowable in law.</p> <p>Low service damages for non-delivery of the [xxxxxxx] including [yyyyy] are 0.1% of total contract value per day.</p> <p>&lt;&lt;OR&gt;&gt;</p> <p>Low service damages are</p>	
	<b>Delivery of</b>	<b>amount per day</b>
	<b>Component 1</b>	<b>R nnnnn.00</b>
	<b>Component 2</b>	<b>R nnnnn.00</b>
X17.1	<p>&lt;&lt;OR&gt;&gt;</p> <p>Low performance damages are 0.01% of the total contract value per day (or part thereof) per incident where the specified service levels set out in <b>Annexure 6</b> have not been met.</p>	
<b>X18</b>	<b>Limitation of liability</b>	<i>Delete row if secondary Option does not apply</i>
X18	<p>The following replaces Option clause X18 of the Option Clauses:</p> <p>The <i>Contractor's</i> maximum liability to the <i>Employer</i> for any and all proven and awarded damages (whether direct, actual, indirect, special, consequential or otherwise and whether for a single or for multiple events) arising out of the supply of Goods or the performance of Services under this Agreement will not exceed an amount equal to the value of the <i>Contractor's</i> insurance cover.</p>	
<b>X19</b>	<b>Task Order</b>	<i>Delete row if secondary Option does not apply</i>
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within            days of receiving the Task Order	<i>Insert data</i>
<b>X20</b>	<b>Key Performance Indicators (not used when Option X12 applies)</b>	<i>Delete row if secondary Option does not apply</i>
X20.1	The <i>incentive schedule</i> for Key Performance Indicators are as set out in <b>Annexure</b> .....	<i>Delete row if secondary Option is not selected or enter data</i>
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of            months	<i>Delete row if secondary Option is not selected or enter data</i>

<b>Z</b>	<b>ADDITIONAL CONDITIONS OF CONTRACT</b>	
	The <i>additional conditions of contract</i> are:	
Z1	<p><b>The Contractor's invoice</b></p> <p>Z.1.1 The <i>Contractor</i> submits its original valid VAT tax invoices satisfying the requirements of the Goods Information and having been signed by a member of the <i>Employer's</i> staff who is duly authorised to do so (the <b>Tax Invoices</b>), shall be submitted to the <i>Employer's Service Manager</i> for payment purposes one week after receiving a payment certificate from the <i>Service Manager</i> in terms of clause 51.1.</p> <p>Z.1.2 Where the <i>Contractor</i> does not submit the Tax Invoices within the time required, the period within which payment is made in terms of clause 51.2 is extended by the length of time from the date when the <i>Contractor</i> should have submitted the Tax Invoices to the date when he does submit it.</p> <p>Z.1.3 Tax invoices that are submitted to the <i>Employer</i> shall include the following details:</p> <ul style="list-style-type: none"> <li>• Employer's VAT No: 4390128942</li> <li>• Addressed to: University of the Witwatersrand, Johannesburg P O Box 464 Wits 2050 Attention: Head: Creditors (<a href="mailto:ommesh.bennie@wits.ac.za">ommesh.bennie@wits.ac.za</a>)</li> <li>• <i>Employer's</i> purchase order number</li> <li>• <i>Contractor</i> details including: <ul style="list-style-type: none"> <li>▪ Company registration number if applicable</li> <li>▪ <i>Contractor's</i> VAT number</li> <li>▪ Tax invoice number</li> <li>▪ <i>Contractor's</i> banking details for payment</li> </ul> </li> <li>•</li> </ul>	
Z2	<p><b>Acts or omissions by mandatories</b></p> <p>In terms of Section 37(2) of the Occupational Health and Safety Act of 1993 (Act 85 of 1993), the <i>Contractor</i> hereby agrees that the <i>Employer</i> is relieved of any and all of its liabilities in terms of Section 37(1) of this Act in respect of any acts or omissions of the <i>Contractor</i> and his employees to the extent permitted by this Act, and that this contract comprises the written agreement between the <i>Employer</i> and the <i>Contractor</i> contemplated in section 37(2).</p>	
Z3	<b>Force Majeure</b>	

	<p>Neither Party will be held liable to fulfil its obligations under this Agreement if such failure is caused by circumstances beyond its reasonable control, including the failure or load shedding of Eskom's entire grid or vital local telecommunications service providers (such as Telkom), lightning, fire, flood, war (whether declared or not), terrorism, sabotage, revolution, invasion, insurrection, strikes, lock-outs or other industrial action, riot, civil commotion, mob violence, blockade, boycott, the exercising of military power, acts or restraints of government including the imposition or restriction of or embargos on imports or exports, and breakdown of external services.</p> <p>The affected Party must take all reasonable steps in the circumstances to limit the duration of the failure to fulfil its obligations and duties in terms of this Agreement, and should make every effort to provide the best Service possible under the circumstances.</p> <p>If any event that the Force Majeure delays the performance of the obligation for a continuous period of 60 days, the Party not claiming Force Majeure may, at its option and without further obligation, terminate this Agreement upon written notice to the other Party.</p>	
Z4	<p><b>Transfer of rights</b></p> <p>The Parties hereby record that the ownership of rights in and to all Background Intellectual Property will be and remains unaffected by this Agreement.</p> <p>The University grants the <i>Contractor</i> a non-exclusive, non-transferable, revocable royalty free licence to use the University's Background Intellectual Property solely to the extent necessary to enable the <i>Contractor</i> to comply with its obligations hereunder.</p> <p>Foreground Intellectual Property in the deliverables, including but not limited to all specific documentation, manuals, designs, reports and plans specifically created or developed by the <i>Contractor</i> in the course and scope of this Agreement is owned by the University.</p> <p>Unless otherwise agreed, where such Foreground Intellectual Property incorporates the <i>Contractor's</i> Background Intellectual Property, systems, and processes not developed by the <i>Contractor</i>, in the course and scope of performing Services in terms of this Agreement, the <i>Contractor</i> hereby grants to the University (including third party service providers) a royalty-free, perpetual, non-exclusive licence to perform any lawful act, including the right of use of the <i>Contractor's</i> Background Intellectual Property.</p> <p>The <i>Contractor</i> agrees to execute any documents or take any other actions as may reasonably be necessary, or as the University may reasonably request in writing, to perfect the University's ownership of the Foreground Intellectual Property.</p> <p>Any sub-contract the <i>Contractor</i> enters into in relation to this Agreement must contain a condition that the sub-contractor agrees to assign to the University all rights in any Foreground Intellectual Property created by it for the purposes of this Agreement.</p> <p>The provisions of this clause Z4Error! Reference source not found. will survive the termination or expiry of this Agreement.</p>	




Z5	<p><b>Warranty</b></p> <p>The <i>Contractor</i> warrants that all Goods and Services [and Integrated Systems] will be fit for the purposes for which these types of Goods and Services are commonly required and for any other purposes described in this Agreement.</p> <p>This warranty is in addition to any other rights of the <i>Employer</i> and prevails over any conflicting clauses of the Term Service Contract terms.</p>	
Z6	<p><b>Conflict of terms</b></p> <p>If there is a conflict among the terms in the various documents within this Agreement, the following order of precedence will prevail:</p> <ol style="list-style-type: none"> <li>1. Part C1: Main Contract</li> <li>2. These "Z" clauses</li> <li>3. The NEC3 Term Service Contract terms and conditions</li> <li>4. Annexure 1: .....</li> <li>5. ....</li> </ol> <p>The <i>Employer</i> and <i>Contractor</i> negotiated this Agreement jointly, and this Agreement will be construed neither against nor in favour of either, but rather in accordance with its fair meaning.</p>	
Z7	<p><b>Protection of Confidential Information</b></p> <p>Confidential information of either Party which is disclosed as being confidential, is marked with a confidential legend of either Party, is protected under law or is by its nature confidential, and is exchanged between the Parties, is confidential information of the <i>Employer</i> and the <i>Contractor</i>.</p> <p>Such confidential information shall not be disclosed by either Party to any third party without the prior written consent of the other Party, provided that no consent shall be required for disclosure of confidential information to the auditor and professional advisors and employees of either Party to whom disclosure is reasonably necessary for the purposes of the implementation of this Agreement, or to any authorities who by law are entitled thereto.</p>	
Z8	<p><b>Cession and delegation of rights or obligations</b></p> <p>Neither Party may cede and/or assign its rights or obligations under this Agreement including, without limitation, the right to receive payments, without the other Party's prior written consent which will not unreasonably be withheld.</p>	
Z9	<p><b>Non-solicitation of staff</b></p> <p>For the duration of this Agreement and for 12 (twelve) months thereafter, neither Party shall, directly or indirectly, solicit any employee of the other Party who is or was employed or involved in the provision or receipt of the Services,</p>	

	<p>nor shall it solicit, entice, encourage or persuade any such employee to terminate his/her employment with the other Party. Notwithstanding the above, either Party shall be entitled to offer employment to any employee of the other Party who responds to <i>bona fide</i> general advertisements placed by the employing Party for positions at the employing Party.</p>	
Z10	<p><b>Intellectual Property indemnity</b></p> <p>The <i>Contractor</i> agrees, in so far as it receives this indemnity from the manufacturer of the Goods, to indemnify the <i>Employer</i> against any action to the extent that such action is based on a claim that intellectual property provided by the <i>Contractor</i>:</p> <ul style="list-style-type: none"> <li>• infringes a copyright perfected under applicable law, or</li> <li>• constitutes an unlawful disclosure, use or misappropriation of another party's intellectual property.</li> </ul> <p>The provisions of this clause Z10 shall not extend to any other intellectual property which has been modified (other than by the <i>Contractor</i>) or has been used incorrectly and not for its intended use or has been utilised in conjunction with any other software or other intellectual property not supplied by the <i>Contractor</i> and such utilisation gives rise to the infringement action referred to above.</p> <p>For purposes of this clause Z10, the <i>Contractor</i> will bear the expense of such defence and pay any damages that are attributable to such claim finally awarded by a court of competent jurisdiction. If any intellectual property becomes the subject of a claim under this clause, or in the <i>Contractor's</i> opinion is likely to become the subject of such a claim, then the <i>Employer</i> may, at its option, require the <i>Contractor</i> to:</p> <ul style="list-style-type: none"> <li>• modify the other intellectual property to make it non-infringing, provided such modification does not adversely affect the functionality of the other intellectual property, or</li> <li>• procure for the <i>Employer</i> the right to continue using the other intellectual property, or</li> <li>• replace the other intellectual property with substantially equivalent intellectual property that is non-infringing.</li> </ul> <p>Any costs associated with implementing any of the alternatives referred to in this clause Z10 shall be borne by the <i>Contractor</i>.</p>	
Z12	<p><b>Change Management</b></p> <p>Notwithstanding clause 12.3, in the event that the scope, schedule, budget and prices, resources, quality and/or any other terms of this contract are required to be changed by either Party, the change management process and documents set out in the Scope of Work will apply and be used. Any such documents that are produced from the change management process must be signed by both parties to be effective.</p>	<i>Insert as appropriate</i>
Z13	<p><b>Compliance with Laws and Regulations</b></p>	

	<p>The <i>Contractor</i> must comply with all relevant Legislation, including but not limited to the Occupational Health and Safety Act, 85 of 1993, the Labour Relations Act 66 of 1995, the Employment Equity Act 55 of 1998, the Basic Conditions of Employment Act 75 of 1997, the Skills Development Act 97 of 1998, the Unemployment Insurance Act 63 of 2001 and the Compensation for Occupational Injuries and Diseases Act 130 of 1993. In particular, the <i>Contractor</i> must comply fully with the provisions of the Labour Relations Act to the extent that section 197 thereof may be held to be applicable to the provision of the Service in terms of this Agreement.</p> <p>The <i>Contractor</i> must ensure that it and its Personnel comply with all applicable laws. Without limiting the generality of this, the <i>Contractor</i> must comply with legislation relating to the Service. The <i>Contractor</i> must keep statistics, minutes and other records required by legislation on file and available for inspection by the <i>Employer</i>.</p> <p>Without prejudice to any of the <i>Employer's</i> rights under the Agreement or at law, if the <i>Contractor</i> breaches any of its obligations specified above and fails to remedy such breach within 7 (seven) days after receiving a demand that it be remedied, the <i>Employer</i> will be entitled to claim a penalty in respect of each instance of such breach in an amount equivalent to 1 (one) day's charges for the Service per day that the <i>Contractor</i> is and remains in such breach. For the purposes of calculating such penalty one day's charges will be deemed to be 1/30 (one thirtieth) of the total charges due to the <i>Contractor</i> in terms of this Agreement for the calendar month preceding the date of such breach.</p> <p>The <i>Employer</i> will be entitled to elect whether to claim damages or the penalty described above from the <i>Contractor</i> in the event of a breach specified above and may without prejudice to any other method of recovery deduct the amount of such penalty from any monies in its hands due or which may become due to the <i>Contractor</i>. The payment or deduction of such penalty will not relieve the <i>Contractor</i> from its obligations to comply with its obligations specified above or from any of its obligations and liabilities under the Agreement or at law.</p> <p>On or before the date set out in 30.1, the <i>Contractor</i> shall produce documentary proof to the <i>Employer</i> that it has complied in all respects with the provisions of COIDA - Compensation for Occupational Injuries and Diseases Act, 130 of 1993. The <i>Contractor</i> shall perform and comply with all the provisions of the Act and more particularly shall render all returns and pay all assessments for which it is liable in terms of such Act.</p>	
Z13	<p><b>Contractor Personnel</b></p> <ol style="list-style-type: none"> <li>1. The <i>Contractor</i> acknowledges that on termination of this Contract, certain personnel employed by the <i>Contractor</i> may be available for employment by a newly appointed Contractor ("<b>New Contractor</b>") and the University may, at that time be desirous that the New <i>Contractor</i> offers such persons employment.</li> <li>2. To the extent that any person as envisaged in clause Z13.1 makes him or herself available for employment by the New <i>Contractor</i>, the New <i>Contractor</i> may employ such person in terms of the requirements of Section 197 of the Labour Relations Act, 66 of 1995, as amended ("<b>the Act</b>").</li> <li>3. The University will not be responsible in any manner whatsoever in respect of any claim, howsoever arising in respect of the employment relationship between the <i>Contractor</i> and such employee/s irrespective of whether those claims arose prior to the commencement of employment with the <i>Contractor</i>. The <i>Contractor</i> indemnifies the University and holds it harmless in respect of any such claim or claims. In so far as the <i>Contractor</i> is not in</li> </ol>	

compliance with the provisions of the Act, the *Contractor* shall be liable for all claims arising out of such non-compliance. This indemnity shall remain in force for the duration of the Contract.

4. If applicable, the *Contractor* shall meet with the *New Contractor* to determine and agree on the extent of the potential liability and/or claims that will be inherited by the *New Contractor* in terms of Section 197 of the Act. The terms agreed to by the *Contractor* and the *New Contractor* shall be recorded in writing in an agreement. A copy of such agreement between the *Contractor* and the *New Contractor* shall be provided to the University for its records.
5. The *Contractor* shall ensure that the process of concluding the said agreement is finalised within 30 days of the *New Contractor* being appointed (“**the Prescribed Period**”). In the event that the *Contractor* and *New Contractor* fail to conclude the transfer agreement within the Prescribed Period due to any disputes arising out of the Section 197 transfer process, the University reserves the right to refer the matter to arbitration, at the cost of the *Contractor* and *New Contractor*.
6. The *Contractor* acknowledges the importance of an orderly transition from the *Contractor* to the *New Contractor*. On termination of this Contract the *Contractor* undertakes to cooperate with, and assist the University and any *New Contractor* appointed by the University to comply with the requirements of paragraph Z13.2. In complying with the requirements of paragraph Z13.2, the *Contractor* shall provide the University with all information, data and documentation pertaining to its staff complement including the grades, task allocations and remuneration details of the relevant staff members. The *Contractor* further acknowledges that the obligation to cooperate and assist the University may extend beyond the termination date and that the obligation will arise irrespective of whether the Contract is terminated due to breach of the Contract or the effluxion of time, at the prevailing rates in effect at that time or as may otherwise be agreed by the Parties.

 UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG	<b>University of the Witwatersrand, Johannesburg</b>	
	<b>Contract / Project No</b>	<i>Insert project number</i>
	<b>Title of Contract / Project</b>	<i>Insert title of project</i>

### C.1.2 Contract Data


The Conditions of Contract are the NEC3 Term Service Contract (First edition, June 2005 with amendments June 2006), published by the Institution of Civil Engineers, copies of which may be obtained from [www.ecs.co.za](http://www.ecs.co.za), telephone 011-803-3008.

Each item of data given below is cross-referenced to the clause (**Core Clause**) in the NEC3 Term Service Contract (**the Main Contract**) to which it mainly applies.

#### Part two - Data provided by the *Contractor*

10.1	The <i>Contractor</i> is (Name):	
	Address:	
	Tel No:	
	E-mail address: The <i>Contractor's</i> Project Manager is:	
	The <i>Contractor's</i> Legal Representative is:	

11.2(15)	The Service Information for the <i>Contractor's</i> plan is in Part C.....: Scope of Work	<i>Include where the Contractor is to provide Service Information for his plan. Include requirement for provision of this information in the List of Returnable Documents that will be included in the contract and include accepted Service Information in annex ... of Scope of Work when contract is compiled. .</i>
21.1	The plan identified in the Contract Data is contained in <b>Annexure</b> .....	<i>Include where the Contractor is to submit a plan prior to the formation of the contract. Include requirement for the provision of a plan in List of Returnable Documents that will be included in the contract and include accepted plan in annex ... of Scope of Work when contract is compiled..</i>

		<i>Guidance notes (delete column when document has been compiled)</i>
 <p>UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG</p>	<b>University of the Witwatersrand, Johannesburg</b>	
	<b>Contract / Project No</b>	<i>Insert project number</i>
	<b>Title of Contract / Project</b>	<i>Insert title of project</i>
<b>C2: Pricing Data</b>		
<b>C2.1 Pricing assumptions and terms</b>		
<b>C.2.1.1</b>	<p>The prices are as set out in the Pricing Schedule contained in <b>Annexure 2: Pricing and Goods Schedule</b>. Prices include the supply, installation, maintenance and support costs of the Goods and Services and all ancillary and complementary goods and services which are necessary for the performance of the Project.</p> <p>Charges are calculated on..... and will be billed.....</p>	
<b>C.2.1.2</b>	Prices for Goods set out in the Pricing Schedule, including all exchange rate fluctuations, are fixed for the duration of this Agreement.	
<b>C.2.1.3</b>	Prices for purchases of additional Goods and Services will be based on and limited to actual cost. Any such additional purchase/s will be the subject of a Goods and Services Variance Order.	
<b>C.2.1.4</b>	Prices for services related to additional Goods and Services will be based on the contract prices then in effect on a time and materials or sub-project basis as determined by the University. Any such additional services will be the subject of a Goods and Services Variance Order.	
<b>C.2.1.5</b>	There is no adjustment to any price amount in this Agreement resulting from currency exchange rate fluctuations.	

<b>C.2.1.6</b>	The prices for Goods and Services in this Agreement remain unchanged for the duration of this Agreement. Should there however be a reduction in service costs (such as ICASA Interconnect Rates) during the service period this must be transferred to the University.
<b>C.2.1.7</b>	The <i>Supplier</i> is paid an amount in accordance with the Milestone Dates specified in the Project Plan after acceptance by the <i>Purchaser</i> that the relevant Goods and Services have been properly supplied and are functional according to the Acceptance Criteria.
<b>C.2.1.8</b>	As the <i>Supplier</i> has an obligation to correct Defects (Core Clause 43.1) and there is no change to the prices set out in the Pricing Schedules, other than those adjustments described above, such Prices and rates must also incorporate the correction of Defects unless the Defect was due to a <i>Purchaser's</i> risk.
<b>C.2.1.9</b>	The Prices in the <i>price schedule</i> are inclusive of everything necessary (including sufficient quantities of Goods) and incidental to Provide the Goods and Services in accordance with the Goods Information.
<b>C.2.1.10</b>	All prices in the Pricing Schedule are inclusive of VAT.





UNIVERSITY OF THE  
WITWATERSRAND,  
JOHANNESBURG

**University of the Witwatersrand, Johannesburg**

**Contract / Project No**

*Insert project number*

**Title of Contract / Project**

*Insert title of project*

**C...: Site information**

The services will be delivered at the *Employer's* sites shown in the diagrams and maps in **Annexure** .....

**C.....: Annexures**