# AIR TRAFFIC AND NAVIGATION SERVICES COMPANY SOC LTD
# REPUBLIC OF SOUTH AFRICA

## REQUEST FOR PROPOSALS (RFP):
## ATNS/RFP/17/07/2026/27HO_TII_INVERTERS -WAM PROGRAMME SITES

## APPOINTMENT OF A SERVICE PROVIDER TO SUPPLY, DELIVER, INSTALL AND COMMISSION 53 HYBRID LITHIUM BATTERY POWERED INVERTERS FOR THE WIDE AREA MULTILATERATION ("WAM") PROGRAM SITES AND PROVIDE THREE (3) YEARS OF ASSOCIATED MAINTENANCE AND SUPPORT.

## VOLUME 1B

## CONDITIONS AND FORM OF CONTRACT
## (SUPPLY CONTRACT FOR GOODS AND SERVICES)
## NOVEMBER 2026

**The information contained within this document is confidential to ATNS in all respects and it is hereby acknowledged that the information provided shall only be used for the preparation of a response to this document. The information furnished will not be used for any other purpose than stated and that the information will not directly or indirectly, by agent, employee or representative, be disclosed either in whole or in part, to any other third party without the express written consent by ATNS or its representative.**

## CONDITIONS AND FORM OF CONTRACT


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# CHAPTER 1

# DEFINITIONS AND INTERPRETATIONS

# CHAPTER 1: DEFINITIONS AND INTERPRETATION

## 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions defined below shall, when used in these Tender Documents have the meanings hereby assigned to them unless such meanings are inconsistent with the context or an alternative meaning is stated:

1.1.1 "**Acceptance**" or "**Accepted**" means the issuance of an Acceptance Certificate by the Engineer to the Supplier signifying that Acceptance Testing and Inspection of Goods and/or Services have been successful;

1.1.2 "**Acceptance Certificate**" means either an Interim, Substantial Completion or Final Acceptance Certificate issued to the Supplier by the Engineer stating that Goods and/or Services presented by the Supplier for testing or inspection have been accepted by the Engineer as satisfying the requirements of the Contract and have passed, where required the Site Acceptance Test (SAT), Final Acceptance, or other inspections, tests or re-tests as required by the Engineer; and in accordance with the Project Management Schedule;

1.1.3 "**Acceptance Testing and Inspection**" means the act of testing or inspecting the Goods and/or Services provided by the Supplier under the Contract, using agreed test procedures in accordance with the Project Management Schedule, or other tests and inspections required by the Engineer;

1.1.4 "**Acquisition Phase**" means the period from Effective Date to the end of the Warranty Period;

1.1.5 "**ACSA**" means Airports Company South Africa SOC Ltd;

1.1.6 "**ATA**" means ATNS Aviation Training Academy;

1.1.7 "**ATNS**" means Air Traffic and Navigation Services Company SOC Ltd, with registration number 1993/004150/30;

1.1.8 "**ATNS' Representative**" in the first instance means the Chief Executive Officer of ATNS, but further includes any person appointed by ATNS to act as ATNS' Representative such as the Engineer**.** ATNS shall notify the Supplier of all appointments in writing;

1.1.9 "**B-BBEE**" means broad-based black economic empowerment as contemplated in the B-BBEE Act and any regulations promulgated thereunder as amended or replaced from time to time;

1.1.10 "**B-BBEE Act**" means Broad-Based Black Economic Empowerment Act No, 53 of 2003, as amended or replaced from time to time;

1.1.11 "**B-BBEE Requirements**" means the broad-based black economic empowerment requirements in respect of Black People under the B-BBEE Scorecard which are applicable to the Parties and which are binding from time to time on the Parties, and those which are not binding on the Parties but which are of substantial general application and non-compliance therewith would have a material adverse impact on the Parties, including the requirements contained in the B-BBEE Act and the codes of good practice on B-BBEE, as amended or replaced from time to time;

1.1.12 "**BEE Scorecard**" means the generic scorecard which is used as a basis for the measurement of an entity's B-BBEE status, or such other scorecard or mechanism as may be prescribed in terms of the codes of good practice on B-BBEE, as amended or replaced from time to time, as a basis for the measurement of the Parties' B-BBEE status;

1.1.13 "**B-BBEE Status**" means the B-BBEE rating, standing, classification and/or measurement (or its equivalent) as contemplated under the codes of good practice on B-BBEE, as the case may be, attributable to any entity;

1.1.14 "**Black People**" means as stated in the Schedule 1 of the B-BBEE Codes, African, Coloured or Indian persons who are natural persons and who: (i) are citizens of the Republic of South Africa by birth or descent; or (ii) are citizens of the Republic of South Africa by naturalisation before the commencement date of the Constitution of the Republic of South Africa, Act 200 of 1993 ("**Interim Constitution**"); or (iii) became citizens of the Republic of South Africa after the commencement date of the Interim Constitution, but who, but for the Apartheid policy that had been in place prior to that date, would have been entitled to acquire citizenship by naturalisation prior to that date; or shall have such other meaning as may be ascribed to under the B-BBEE Act, the Codes and/or the Charter from time to time, and "**Black Person**" shall be construed accordingly;

1.1.15 "**Beneficial Use**" means the use by ATNS of the accepted Hybrid Lithium Battery Powered Inverter System during the period of time between successful completion of the Site Acceptance Tests (SAT) and Final Acceptance of the Hybrid Lithium Battery Powered Inverter System by ATNS; or at the direction of ATNS;

1.1.16 "**Board**" means the Board of Directors of ATNS;

1.1.17 "**CDR**" means Critical Design Review;

1.1.18 "**Closing Time**" means the date and hour specified in the Tender Documents for the receipt of tenders;

1.1.19 "**Codes**" means the Codes of Good Practice on the Broad Based Black Economic Empowerment published by the Minister of Trade and Industry in terms of section 9(1) of the B-BBEE Act;

1.1.20 "**Commissioning**" means the bringing into operational service a system or part of a system;

1.1.21 "**Communication, Navigation and Surveillance**" or "**CNS**" means the foundational infrastructure and technology framework used to manage and guide air traffic;

1.1.22 "**Contract**" means this supply contract entered into between ATNS and the Supplier for the provision of the Goods and Services and delivery of the Project by the Supplier set out herein including all Schedules specified herein and all annexures to be incorporated herein, as may be amended from time to time;

1.1.23 "**Contract Price**" means the total price for the Goods and/or Services as set out in the Price Schedule to the Contract;

1.1.24 "**Day**" means a calendar day in a Year;

1.1.25 "**DDP**" means Delivered Duty Paid which is the International Commercial Terms (Incoterms) rules used to describe the delivery of goods, as amended from time to time;

1.1.26 "**Delivery**" means in general, delivery in compliance with the conditions of the Contract or Order, or in particular the act of packaging and transporting any part of the Goods and/or Services to the Delivery Site(s) in accordance with the Delivery Schedule;

1.1.27 "**Delivery Date**" means the dates set out in the Delivery Schedule by which the Supplier is to deliver the Goods and/or Services to or at the Delivery Site(s);

1.1.28 "**Delivery Ex Stock**" means immediate Delivery directly from stock actually on hand;

1.1.29 "**Delivery into consignee's store or to its site**" means Delivery and unloading in the specified store or depot or on the specified site in compliance with the conditions of the Contract or Order, the Supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained;

1.1.30 "**Delivery Schedule**" means the component of the Project Management Schedule to the Contract which indicates the Goods and/or Services, their respective quantities, Delivery Date, Delivery Site(s) and Installation Date;

1.1.31 "**Delivery Site**" means the places specified in the Delivery Schedule for the purpose of Delivery of the Goods and/or Services, or any other places nominated by the Engineer and notified in writing to the Supplier;

1.1.32 "**Disaster**" means any sudden unplanned and disruptive events that cannot be managed by the Parties internally and which interruption or disturbs ATNS' data, infrastructure or operations, and/or the supply of the Goods and Service;

1.1.33 "**Documentation**" means the documentation to be supplied by the Supplier in accordance with the Specifications and delivered in accordance with the Delivery timetable;

1.1.34 "**Effective Date**" means the Signature Date;

1.1.35 "**Engineer**" means the person appointed by ATNS for the purpose of representing ATNS for the purpose of the Contract and includes any other person appointed by the Engineer to act as the Engineer's representative. ATNS shall notify the Supplier of all appointments in writing;

1.1.36 "**Exchange Rate Fluctuation**" means all possible changes in the values of currencies quoted in the Tender Documents and/or the Contract relative to each other, arising as a result of market forces, formal devaluation or revaluation of those currencies or from any cause howsoever arising;

1.1.37 "**Final Acceptance**" means the acceptance of the Goods and/or Services by ATNS after the satisfactory validation of the Integrated Logistic Support system at the end of the Warranty Period;

1.1.38 "**Final Acceptance Testing**" means the act of validation of the Integrated Logistic Support system to be carried out by the Supplier in accordance with the Contract as documented in the Integrated Logistic Support Plan;

1.1.39 "**Final Acceptance Test Procedures**" means the tests required to be performed on the Hybrid Lithium Battery Powered Inverter equipment/System as indicated in the Project Management Schedule;

1.1.40 "**Fixed Price**" means the price which cannot be changed and is not subject to adjustment;

1.1.41 "**Force Majeure Event**" means an event which could not be reasonably foreseen or reasonably overcome by a Party, or to any act or omission on the part of persons acting in any capacity on behalf of a Party, provided such event is not caused by such Party or persons acting in any capacity on behalf of a Party, that causes an interruption of delay in the performance of such Party's obligations under the Contract, including but not limited to states of war, sanctions, embargoes, epidemics, pandemics, quarantines, strikes, lockouts, damage to machinery as a result of accidents, fires, floods or tempests, acts of God or *casus fortuitus*;

1.1.42 "**FRC**" means Fault Reporting Centre;

1.1.43 "**Goods**" means all or part, as the Contract requires, of the tangible items such as equipment, Documentation, Spare Parts, maintenance aids and all other tangible items identified in the Contract;

1.1.44 "**Hybrid Lithium Battery Powered Inverter System**" means an individual hybrid lithium battery powered inverter System comprising of a 10 KVA hybrid inverter unit utilising double-conversion technology, a lithium-ion battery pack and all associated battery storage cabinets and accessories;

1.1.45 "**ICAO**" means International Civil Aviation Organization;

1.1.46 "**Imported Content**" means that portion of the Tender price represented by the costs of components, parts or materials which have been or are still to be imported (whether by the Supplier or Sub-Contractors) and which costs are inclusive of the costs incurred outside South Africa, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty, or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies which have been Tendered for are Manufactured;

1.1.47 "**Indices**" means indices published by Statistics South Africa, Steel and Engineering Industries Federation of Southern Africa ("**SEIFSA**") and other bodies approved by ATNS reflecting price adjustments or changes in cost;

1.1.48 "**Installation**" means the physical installation of the Goods at the designated Installation Site(s);

1.1.49 "**Installation Date**" means the dates set out in the Delivery Schedule by which the Supplier is to install the Goods at the Installation Site(s);

1.1.50 "**Installation Site**" means the location designated in the Delivery Schedule for Installation, contained in the Project Management Schedule;

1.1.51 "**Integrated Logistic Support Plan**" or "**ILSP**" means the documentation covering the entire Life of the Goods and Services that sets out the overall support strategy and assigns responsibilities across all logistics support elements (such as maintenance, training, supply support, and technical data, etc.), and defines how supportability requirements will be met by the Supplier to achieve operational system readiness;

1.1.52 "**Intellectual Property Rights**" means any patent, design, trademark, copyright, trade secret, confidential information, circuit layout, computer software and all other rights result from intellectual activity in the industrial or scientific field both in South Africa and throughout the world;

1.1.53 "**International Commercial Terms**" or "**Incoterms**" means the standards used in international and domestic contracts for the delivery of goods under the International Chamber of Commerce ("**ICC**");

1.1.54 "**Latent Defect**" means any omission from, fault within, deficiency in or any other aspect of the Goods and/or Services which, during the Life of the Goods and/or Services, preclude the Goods and/or Services from meeting the requirements of the Specifications;

1.1.55 "**Legislation**" means acts, ordinances, regulations, by-laws, proclamations and subordinate legislation under by or pursuant to any government statute;

1.1.56 "**Life of the Goods and/or Services**" means in respect of each part of the Goods and/or Services a period of ten (10) Years commencing on the date of Final Acceptance of such part;

1.1.57 "**Local Content**" means that portion of the Tender price which is not included in the Imported Content provided that local Manufacture does take place;

1.1.58 "**Maintenance and Support Phase**" means a period of three (3) Years in respect of each WAM Site commencing on the day immediately following the last day of the Warranty Period of each WAM Site until the end of the maintenance and support period of the last WAM Site of the Project, as contained in the Period of Contract;

1.1.59 "**Maintenance and Support Schedule**" means the maintenance and support scheduled marked Schedule "**D**" that indicates the nature, scope, frequency and manner of maintenance and technical support services to be provided by the Supplier to ATNS in respect of the Project, including but not limited to preventative and corrective maintenance requirements, fault reporting and diagnosis protocols, response and resolution times, service availability and operating hours, escalation procedures, inspection and testing requirements, performance monitoring and reporting obligations, spare part and replacement component arrangements, health and safety requirements, and any other operational parameters, service levels, exclusions and responsibilities applicable to the provision of the maintenance and support services;

1.1.60 "**Manufacture**" means the production of products in a factory using labour, materials, components and machinery and includes fabrication, assembly or processing;

1.1.61 "**Milestone Payment**" means the actual payment of a proportion of the Contract Price. Milestone Payments are based on measurable achievements when the Goods and/or Services are delivered to the Delivery Site(s) or installed at the Installation Site(s) by the Supplier. Milestone Payments shall be effected following Acceptance of the Goods and/or Services, thirty (30) Days after presentation of a correctly produced and presented invoice to the Engineer;

1.1.62 "**Milestone Payment Schedule**" means the payment schedule marked Schedule "**A1**" that indicates the points in the Delivery Schedule at which ATNS is required to pay instalments of the Contract Price to the Supplier upon achievement of the milestones;

1.1.63 "**Month**" means a calendar month;

1.1.64 "**Notice of Rejection**" means a fully detailed written notice issued by the Engineer to the Supplier stating that the Goods and/or Services are not in accordance with the requirements of the Contract;

1.1.65 "**Order**" means an official written order issued for the supply of Goods and/or Services by ATNS to the Supplier;

1.1.66 "**Parties**" means ATNS and the Supplier**.** "**Party**" means each of them;

1.1.67 "**PDR**" means Preliminary Design Review;

1.1.68 "**Performance Guarantee"** means an unconditional bank guarantee issued on behalf of the Supplier to ATNS, wherein the Supplier guarantees the full and due performance of the Contract according to the plans and Specifications, for an amount not less than twenty per cent (20%) of the Acquisition Phase price excluding the price of the Warranty;

1.1.69 "**Period of Contract**" means the period of **five (5) Years and six (6) Months** which shall be made up as follows:

1.1.69.1 **two (2) Years and six (6) Months** for the Acquisition Phase (one (1) Year and six (6) Months for acquisition and one (1) Year for the Warranty Period); and

1.1.69.2 **three (3) Years** for the Maintenance and Support Phase;

1.1.70 "**Personal Information**" means data that can be used to identify a person, including but not limited to biometrics;

1.1.71 "**Physical Inspection**" means the visual inspection of the Goods and/or Services by the Engineer to ensure the Goods and/or Services meet the requirements of the Specifications;

1.1.72 "**Price**" means the amount payable by ATNS to the Supplier for the satisfactory supply of the Goods and/or Services in the currency stated in the Contract and which may be fixed or not fixed;

1.1.73 "**Price not fixed**" means the Price which is subject to adjustment or, if clearly indicated in the Contract, a budgetary price;

1.1.74 "**Price Schedule**" means the price schedule marked Schedule "**A**" that indicates the total Contract Price;

1.1.75 "**Project**" means the Hybrid Lithium Battery Powered Inverters project for identified WAM Sites, which shall consist of a complete turnkey solution, including but not limited to the following:

1.1.75.1 Detailed design and engineering of the Hybrid Lithium Battery Powered Inverter System;

1.1.75.2 Supply and Delivery of all Hybrid Lithium Battery Powered Inverter System components and supporting infrastructure;

1.1.75.3 Installation and integration of the Hybrid Lithium Battery Powered Inverter System with existing infrastructure;

1.1.75.4 Electrical works required for installation of the Hybrid Lithium Battery Powered Inverter System;

1.1.75.5 Testing, commissioning and certification of the Hybrid Lithium Battery Powered Inverter System;

1.1.75.6 Training of ATNS employees on the operation of the Hybrid Lithium Battery Powered Inverter System; and

1.1.75.7 Provision of maintenance and support services of the Hybrid Lithium Battery Powered Inverter System for three (3) Years.

1.1.76 "**Project Management Schedule**" means project management schedule marked Schedule "**C**" that constitutes the overarching management plan for the Project incorporating *inter alia* the Installation, Transitioning and Commissioning Plan, the Systems Engineering Management Plan, the Test and Evaluation Master Plan, the Integrated Logistic Support Plan; Reliability, Availability and Maintainability Plan;

1.1.77 "**Provisional Sum**" a sum allocated by ATNS for the optional supply and incorporation into the Contract of an identified item. It is up to the Supplier to confirm whether this sum is adequate and agreed in the Tender Documents;

1.1.78 "**Rand**" or "**R**" mean the lawful currency of the Republic of South Africa;

1.1.79 "**Remedial Work**" means the correction of any defect in the Goods and/or Services during the Period of Contract, including the provision or replacement of any Spare Parts during the Warranty Period in order to satisfy the requirements of the Specifications;

1.1.80 "**SACAA**" means the South African Civil Aviation Authority, or any successors in title;

1.1.81 "**Schedule**" or "**Appendix**" means a Schedule/Appendix to the Contract forming part of the Contract and derived from the Tender Documents and subsequent clarifications by the Parties;

1.1.82 "**Services**" means all or part, as the Contract requires, of the intangible items such as commissioning services, Delivery services, Installation services, Training Services, decommissioning and removal services, and/or maintenance and support services and all other intangible items identified in the Contract;

1.1.83 "**Signature Date**" means the date on which the Contract is signed by the last Party to do so, whether in counterpart or not;

1.1.84 "**Site Acceptance Test**" or "**SAT**" means the act of performing the technical and operational tests required to be carried out on the Hybrid Lithium Battery Powered Inverter equipment/System at the Delivery Site(s) or Installation Site(s) to determine acceptability for full operational use in accordance with the Site Acceptance Test Procedure in the presence of ATNS and/or the SACAA or any other relevant Regulator;

1.1.85 "**Site Acceptance Test Procedures**" or "**SATP**" means the tests required to be performed on the Hybrid Lithium Battery Powered Inverter System equipment as indicated in the Project Management Schedule;

1.1.86 "**Site Inspection**" means the Physical Inspection of Goods and/or Services to be provided under the Contract at the designated Delivery Site(s) or Installation Site(s);

1.1.87 "**South Africa**" means the Republic of South Africa;

1.1.88 "**Spare Parts**" means the component parts listed within the Integrated Logistic Support Plan;

1.1.89 "**Specifications**" or "**System Specification**" or "**Requirements Specification**" means the specifications set out in Volumes 2 to 4 inclusive of the Tender Documents;

1.1.90 "**Spot Rate**" means the telegraphic transfer selling rate at which commercial banks will provide foreign currency to a customer against payment of the Rand;

1.1.91 "**Statement of Compliance**" or "**Compliance Matrix**" means the document submitted by the Supplier in respect of its response to the Tender Documents, and included at Schedule "**B**";

1.1.92 "**Sub-Contractor**" means a person who supplies goods, products or services to the Supplier either directly or through another sub-contractor for use by the Supplier for the purposes of the Contract;

1.1.93 "**Substantial Completion**" means successful completion and Acceptance of the supply, Delivery, Installation and testing of all the major Hybrid Lithium Battery Powered Inverter System deliverables to the satisfaction of the Engineer. It includes Site Acceptance but does not encompass Final Acceptance of the Hybrid Lithium Battery Powered Inverter System or the completion of the Warranty Period;

1.1.94 "**Supplier**" means the person or company awarded the Contract in terms of the Tender;

1.1.95 "**Taking-Over Certificate**" means a certificate issued by the Engineer on behalf of ATNS to the Supplier confirming Final Acceptance of the Hybrid Lithium Battery Powered Inverters System;

1.1.96 "**Tender**" means a written offer on the official Tender Documents forming part of an invitation to Tender which invitation has been dealt with in accordance with the requirements of the conditions of tendering contained in the Contract unless otherwise determined by ATNS;

1.1.97 "**Tender Documents**" means the documents prepared by ATNS for the purpose of obtaining Tenders or quotes for the supply of the Goods and/or Services, and the response documents submitted by the Supplier;

1.1.98 "**Test and Evaluation Plan**" means the documentation that sets out the strategy, objectives, methodologies, and resource requirements for testing the Hybrid Lithium Battery Powered Inverters Systems;

1.1.99 "**Third Party**" means any person other than ATNS or the Supplier;

1.1.100 "**Training**" or "**Training Services**" means the technical and operational training services to be provided by the Supplier in accordance with the Contract and identified as part of the Integrated Logistic Support Plan;

1.1.101 "**VAT**" means, value-added tax levied in terms of the VAT Act;

1.1.102 "**VAT Act**" means the Value-Added Tax Act No. 89 of 1991, as amended or replaced from time to time;

1.1.103 "**Warranty Period**" means, in respect of each part of the Goods and/or Services, a period of a minimum of twelve (12) Months commencing on the date of Acceptance of such part, during which period the Supplier shall be responsible for the repair or replacement of any defects of whatsoever nature of the Goods and/or Services, at the Suppliers cost;

1.1.104 "**Wide Area Multilateration**" or "**WAM**" means a cooperative aircraft surveillance technology used to track aircrafts across large regional, terminal or en-route airspaces through several ground receiving stations listening to signals transmitted from aircrafts;

1.1.105 "**WAM Sites**" means the fifty-three (53) sites at which each Hybrid Lithium Battery Powered Inverter System will be delivered, installed, integrated and commissioned, namely: Bethlehem, Bloemfontein, Bokvlei, Brandfort, Bulsberg, Carnavon, Colston, Constantia, Davel, Douglas, Dwaalboom, FAUP NDB, Glenred, Hanskop, Jonaskop, Kanonkop, Kleinfontein, Kleinzee, Koeberg, Koffiefontein, Komsberg, Koster, Kroonstad, Kuruman, Ladybrand, Langberg, Leeukop, Leliefontein, Lockshoek, Loop 10, Loop 12, Matjiesfontein, Napier, Nelspoort, Nooitgedacht, Noupoort, Padkloof, Piketberg, Pofadder, Rietfontein, Schuitklipkop, Senekal, Springfontein, Steekdorings, Simonsberg, Theunissen, Tsiloane, Vaalpoort, Van Rhynsdorp, Warrendale, Weidhoek, Witbank, Witberg;

1.1.106 "**Working Day**" means any Day other than Saturday, Sunday or a Day that is a statutory or public holiday in South Africa;

1.1.107 "**Works**" means design, development manufacture, fabrication, supply, transport, Delivery to site, Installation, Commissioning, testing and completion, preparation and Delivery of all equipment, drawings and manuals, provision of Spare Parts, consumables, test equipment and tools and management of all such matters of the Project, in accordance with the Tender Documents for the Project;

1.1.108 "**written**" or "**in writing**" means hand-written in ink or any form of printed writing and duly signed; and

1.1.109 "**Year**" means any period of twelve (12) consecutive Months of a Gregorian calendar.

1.2 Interpretation

1.2.1 In the Contract:

1.2.1.1 headings are for convenience only and do not affect the interpretation of the Contract;

1.2.1.2 words importing the singular include the plural and *vice versa*;

1.2.1.3 words importing a gender include any gender;

1.2.1.4 expressions importing persons include any company, partnership, joint venture, association, corporation or other body corporate;

1.2.1.5 reference to parts, clauses, parties, annexes, exhibits and schedules are references to parts and clauses of, and parties, annexes, exhibits and schedules to, the Contract; and

1.2.1.6 where the Day on or by which any thing is to be done is not a Working Day, it shall be done on or by the preceding Working Day.

1.2.2 The headings used herein shall not be deemed to be part of the terms and conditions and procedures and shall not be taken into consideration in the explanation or interpretation of the terms and conditions and procedures.

1.2.3 In order to establish an order of precedence and to assist in resolving any potential conflict between the requirements of the Contract and any of its associated annexure, the Contract is to be regarded as having a superseding requirement.

1.2.4 Some words and phrases used throughout the specification have strict definitions that may convey a different understanding to that which is in everyday use. To assist in the correct interpretation of the requirements contained in this functional specification, the following definitions are provided:

1.2.4.1 ***Shall*** or ***Must*** means an item is mandatory. For example:

*1.2.4.1.1* *Aircraft track data shall be presented to the controller in correct geographical relationship to ground and airspace features.*

1.2.4.2 ***Should*** or ***Should Not*** means an item is strongly recommended. For example:

*1.2.4.2.1* *The number of console input devices should be minimised.*

*1.2.4.2.2* *A failure of the simulator display system should not prevent the conduct of other training activities.*

1.2.4.3 ***May*** means an item is optional. For example:

*1.2.4.3.1* *Controller input may be via a touch input device.*

1.2.4.4 ***Will*** means futurity, not necessarily a requirement. For example:

*1.2.4.4.1* *Airspace procedures will need to accommodate proposed changes to the ICAO airspace model.*

1.2.4.5 ***Can*** implies capability, not necessarily a requirement. For example:

*1.2.4.5.1* *System data can appear in graphical and textual format.*

1.2.5 Use of singular words shall also infer the plural of those words, and *vice versa.* **For example,** the following phrases shall be interpreted to mean either a single tower controller, or all tower controllers, shall provide ATC services:

*1.2.5.1.1* *The tower controller shall provide ATC services.*

*1.2.5.1.2* *Tower controllers shall provide ATC services.*

1.2.6 Within the Technical Requirements of Volume 2, mandatory requirements will also be clearly identified by the letter "**M**" against each paragraph**.** However, it will be the responsibility of the Supplier to determine the correct status of each requirement from the specification language used. If there is any doubt, the status shall be determined in accordance with the definitions listed above.

1.2.7 Where any conditions are referred to as special conditions, and they are in conflict with any other conditions, the special conditions shall apply.

1.2.8 Any provision in the Contract which is or may become illegal, invalid or unenforceable in any jurisdiction affected by the Contract shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e *pro non scripto*) and severed from the balance of the Contract, without invalidating the remaining provisions of the Contract or affecting the validity or enforceability of such provision in any other jurisdiction.

1.2.9 The expiration or termination of the Contract shall not affect such of the provisions of the Contract which are expressly provided to operate after any such expiration or early termination, or which of necessity must continue to have effect after such expiration or early termination, notwithstanding that the relevant provisions themselves do not provide for this.

1.2.10 Each of the provisions of the Contract has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the Contract shall be interpreted against or to the disadvantage of the party responsible for the drafting or preparation of the agreement (i.e the *contra proferentem rule*), shall not apply.

1.2.11 Unless ATNS decides to the contrary, the Contract shall be governed by and interpreted in accordance with the laws of South Africa.

# CHAPTER 2

# TERMS AND CONDITIONS

# CHAPTER 2: TERMS AND CONDITIONS

## 2 PREAMBLE

The Terms and Conditions as provided in this document constitute standard reference information as has been used previously by ATNS with a diversity of other contracts.

Some of the conditions referenced herein, may not be wholly applicable to this particular Contract. Nevertheless, Suppliers are required to satisfy themselves as to the relevance of all the terms and conditions and where necessary, seek clarification from ATNS concerning any proposed qualifying conditions or alternatives, prior to contract signature.

Several clauses within this document are referenced in other parts of the REQUEST FOR PROPOSAL (RFP) and as a contract reference.

## 2.1 PART A

2.1.1 Acceptance Testing and Inspection Requirements

2.1.1.1 Acceptance Testing and Inspection

2.1.1.1.1 Except for progress meetings and reports, all Goods and/or Services provided under the Contract shall be subject to Acceptance Testing and Inspection by the Engineer and the costs for such Acceptance Testing and Inspection are deemed to be included in the Contract Price.

2.1.1.1.2 The Goods and/or Services shall be subject to Physical Inspection, Site Acceptance Tests (SAT), Substantial Completion and Final Acceptance. All Acceptance Testing and Inspection shall be performed on the Hybrid Lithium Battery Powered Inverter System equipment as a system or parts of a system and Physical Inspection shall be performed on Training, Documentation, Spare Parts, and the Integrated Logistic Support Plan. The Acceptance Testing and Inspection shall be conducted in accordance with Site Acceptance Test Procedures (SATP) and Final Acceptance Procedures developed under an overall Test and Evaluation Master Plan.

2.1.1.1.3 The Final Acceptance will be undertaken towards the end of the Warranty Period.

2.1.1.1.4 The Supplier shall allow the Engineer at least fourteen (14) Days written notice of the date that the Goods and/or Services are offered for Acceptance Testing and Inspection. If the Engineer is unable to be present for the notified date, the Engineer and Supplier shall agree a mutually suitable date as close as practicable to the notified date.

2.1.1.1.5 Prior to notifying the Engineer that the Goods and/or Services are offered for Acceptance Testing or Physical Inspection, the Supplier shall perform a rehearsal Acceptance. The records from the rehearsal Acceptance shall be provided to the Engineer with the notification of the proposed conduct of the SAT.

2.1.1.1.6 The Supplier shall carry out the associated Physical Inspection of the Goods and/or Services at the Suppliers facility.

2.1.1.1.7 The Supplier shall carry out the associated Physical Inspection in the presence of the Engineer.

2.1.1.1.8 The Engineer may issue an Interim Acceptance Certificate which notes that there are minor omissions or minor defects in the Goods and/or Services which do not affect their normal use and operation. The Supplier shall rectify those omissions or defects within five (5) Days, or such other period as agreed with the Engineer.

2.1.1.1.9 The Supplier shall not deliver the Goods and/or Services to the Delivery Site(s) and/or Installation Site(s) until an Interim Acceptance Certificate is issued by the Engineer.

2.1.1.1.10 Prior to notifying the Engineer that the Goods and/or Services are offered for SAT and system Commissioning requirements, the Supplier shall perform a rehearsal SAT. The records from the rehearsal SAT shall be provided to the Engineer with the notification of the proposed conduct of the SAT.

2.1.1.1.11 The Supplier shall carry out the SAT and associated Physical Inspection of the Goods and/or Services at the Installation Site.

2.1.1.1.12 The Supplier shall carry out the SAT and associated Physical Inspection in the presence of the Engineer.

2.1.1.2 Site Acceptance Testing (SAT)

2.1.1.2.1 The Supplier shall carry out SAT of the Goods and/or Services in accordance with the Project Management Schedule. The Supplier shall also carry out such other tests as the Engineer may require in order to satisfy himself/herself that the Goods and/or Services comply with the Specifications.

2.1.1.2.2 The Supplier shall submit its SATP thirty (30) Days prior to the commencement of the SAT for approval by ATNS. No SAT will take place without the approval of the SATP by the Engineer.

2.1.1.2.3 The SAT and any other tests of the Goods and/or Services shall not in any way relieve the Supplier from its obligations under the Contract or its liability for any breach of the Contract or any other liability of the Supplier in relation to the Goods and/or Services.

2.1.1.2.4 When the Engineer considers that the Supplier has carried out the SAT in accordance with the SATP, and the Goods and/or Services successfully pass SAT, and any other such tests required by the Engineer to ensure the Supplies meet the requirements of the Specifications, and an Acceptance Certificate has previously been issued for Physical Inspection of the Goods and/or Services applicable to the site, the Engineer shall issue an Acceptance Certificate to the Supplier, on the provision that such certificate shall not be unreasonably withheld.

2.1.1.2.5 When the Engineer considers that the Supplier has not carried out the SAT in accordance with the SATP or the Goods and/or Services have not successfully passed SAT and any other such tests required by the Engineer to ensure the Goods and/or Services meet the requirements of the Specifications, then the Engineer shall issue a Notice of Rejection to the Supplier.

2.1.1.2.6 On receipt of a Notice of Rejection, the Supplier shall, at its own cost and within five (5) Days, or such other period as agreed with the Engineer, ensure that the Goods and/or Services are rectified. The Supplier shall then carry out any re-testing required by the Engineer until the

Engineer is satisfied that the Goods and/or Services successfully pass such tests and meet the requirements of the Specifications.

2.1.1.2.7 The Engineer may issue an Interim Acceptance Certificate which notes that there are minor omissions or minor defects in the Goods and/or Services which do not affect their normal use and operation. The Supplier shall rectify those omissions or defects within five (5) Days, or such other period as agreed with the Engineer.

2.1.1.2.8 The issue of an Interim Acceptance Certificate shall not in any way release the Supplier from its obligations under the Contract to supply the Goods and/or Services in accordance with the Contract. Neither ATNS nor the Engineer assumes any duty of care to the Supplier nor shall ATNS nor the Engineer be liable to the Supplier if an Acceptance Certificate is issued and the Goods and/or Services are subsequently found not to satisfy the requirements of the Specifications and contain Latent Defects. Clause 2.7.1 of the Contract shall remain and the acceptance of warranty does not invalidate the rights of ATNS under common law.

2.1.1.2.9 The issue of a Certificate of Substantial Completion in respect of SAT shall represent that the site is not only fully ready for operational service, but that all the essential Contract deliverables have been met and shall empower the Supplier to complete all action in respect of this phase of the Contract and, with the agreement of ATNS to simultaneously commence the Warranty Period. When the Supplier has received a Certificate of Substantial Completion, subsequent to successful SAT, it may then submit a properly completed invoice to the Engineer for the amount identified for the appropriate Milestone Payment in the Milestone Payment Schedule. Whereupon the Engineer shall effect the Milestone Payment for the SAT in accordance with the Contract.

2.1.1.3 Physical Inspection

2.1.1.3.1 For those Goods and/or Services which do not require SAT, viz., Training, Documentation, Spare parts, maintenance equipment, progress meetings and reports, Acceptance Testing and Inspection shall entail a Physical Inspection of the Goods and/or Services. Following successful completion of Physical Inspection of the Goods and/or Services to ensure they meet the requirements of the Specifications, the Engineer shall issue an Acceptance Certificate.

2.1.1.3.2 The Physical Inspection of the Goods and/or Services shall not in any way relieve the Supplier from its obligations under the Contract or its liability for any breach of the Contract or any other liability of the Supplier in relation to the Goods and/or Services.

2.1.1.3.3 When the Engineer considers that the Physical Inspection is unsatisfactory and the Goods and/or Services do not meet the requirements of the Specifications, then the Engineer shall issue a Notice of Rejection to the Supplier.

2.1.1.3.4 On receipt of a Notice of Rejection, the Supplier shall, at its own cost and within five (5) Days, or such other period as agreed with the Engineer, ensure that the Goods and/or Services are rectified. The Supplier shall then carry out any re-inspection required by the Engineer until the Engineer is satisfied that the Goods and/or Services successfully pass such re-inspection and meet the requirements of the Specifications.

2.1.1.3.5 The issue of an Acceptance Certificate in respect of Physical Inspections shall not in any way release the Supplier from its obligations under the Contract to supply the Goods and/or Services in accordance with the Contract. Neither ATNS nor the Engineer assumes any duty of care to the Supplier nor shall ATNS nor the Engineer be liable to the Supplier if an Acceptance Certificate is issued and the Goods and/or Services are subsequently found not to satisfy the requirements of the Specifications and contain Latent Defects.

2.1.1.3.6 The issue of an Acceptance Certificate in respect of Physical Inspection associated with Factory Inspections shall empower the Supplier to perform Delivery of the Goods and/or Services to the Delivery Site(s). When the Supplier has completed Delivery it may submit a properly completed invoice to the Engineer for the amount identified for the appropriate Milestone Payment in the Milestone Payment Schedule. When the Engineer is satisfied that the Goods and/or Services have been delivered in accordance with the Contract and the Goods and/or Services are complete and in proper physical condition, he/she shall effect the Milestone Payment in accordance with the Contract.

2.1.1.3.7 The issue of an Acceptance Certificate in respect of Physical Inspection associated with Site Inspections shall empower the Supplier to complete all action associated with the SAT and he/she shall effect the Milestone Payment for this component of the Physical Inspection in accordance with the Contract.

2.1.1.4 Final Acceptance

2.1.1.4.1 Final Acceptance shall occur when the Supplier has satisfied all of the obligations under the Contract and shall represent the conclusion of Warranty Period and simultaneously the expiration of the Warranty Period.

2.1.1.4.2 Final Acceptance shall be subject to:

2.1.1.4.2.1 Completion of SAT and satisfactory correction of outstanding issues relating to the Certificate of Substantial Completion.

2.1.1.4.2.2 Satisfactory implementation of the Support System in accordance with the Integrated Logistic Support Plan.

2.1.1.4.2.3 Validation of the Support System during the Warranty Period in accordance with the requirements of the Specification.

2.1.1.4.3 Upon satisfaction of the requirements for Final Acceptance, the Engineer shall issue a Final Acceptance Certificate, he/she shall effect the final payment in accordance with the Contract, and he/she shall notify the release of the Security, as applicable, provided by the Supplier in accordance with the Contract requirement.

2.1.2 Accident

2.1.2.1 ATNS shall not be liable for or in respect of any damages or compensation payable by law in respect or in consequence of any accident or injury to any workman or other person in the employ of the Supplier or any Sub-Contractor, save for an accident or injury resulting from any act or default of ATNS, its agents or servants (excluding the Supplier as an agent or servant of ATNS), and the Supplier shall indemnify ATNS and keep it indemnified against all such damages and compensation (save as aforesaid) and against all claims, demands, lawsuits, costs, including attorney and client costs, charges and expenses whatsoever in respect thereof or pertaining thereto.

2.1.3 Amendment of Contract

2.1.3.1 No agreement to amend or vary the Contract or Order or the conditions, stipulations or provisions thereof shall be valid and of any force and effect unless such agreement to amend or vary is entered into in writing and signed by the Parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.

2.1.4 Anti-bribery and anti-corruption

2.1.4.1 The Parties represent that neither Party or its subsidiary, nor any of their respective directors, officers, agents, or employees acting on behalf of either Party or any subsidiary, has taken any action that will or would be in breach of any applicable laws for the prevention of fraud, bribery, corruption, racketeering, money laundering or terrorism, including but not limited to the Constitution of South Africa (1996), the Competition Act No. 89 of 1998, the Prevention and Combatting of Corrupt Activities Act No. 12 of 2004, the Protected Disclosures Act No. 26 of 2000, the Public Finance Management Act No. 1 of 1999 and Regulations, the Companies Act No. 71 of 2008 and Regulations and, including international anti-corruption treaties and regional conventions that set out obligations to fight corruption, such as the United Nations Convention Against Corruption, the African Union Convention Against Corruption, the SADC Protocol against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("**Anti-Bribery Laws**").

2.1.4.2 Each Party represents that performance under the Contract will be made in compliance with the Anti-Bribery Laws.

2.1.4.3 Each Party warrants that it and its Affiliates have not made, offered, solicited or accepted an advantage or authorised and will not make, offer, or authorise with respect to the matters which are the subject of the Contract, any payment, gift, promise or other advantage, whether directly or through any other person or entity, to or for the use or benefit of any officer or employee of the other Party or any public official (i.e., any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a public enterprise or a public international organisation) or any political party or political party official or candidate for office, where such payment, gift, promise or advantage would violate the applicable Anti-Bribery Laws.

2.1.4.4 Neither Party shall make any unofficial payment to an employee of the other Party to speed up an administrative process where the outcome is already pre-determined (facilitation payment) in the performance of its obligations in terms of the Contract.

2.1.4.5 Each Party agrees to maintain adequate internal controls and to keep accurate and complete records that support the payments due and all transactions under the Contract.

2.1.4.6 Each Party represents that, to the best of its knowledge and belief, and save as disclosed to the other Party, neither it nor any of its affiliates/shareholders or personnel have been investigated (or is being investigated or is subject to a pending or threatened litigation or investigation) or is involved in an investigation or litigation (as a witness or suspect) in relation to any breach of the Anti-Bribery Laws by any law enforcement, regulatory or other governmental agency or any customer or supplier; or has admitted to; or been found by a court in any jurisdiction to have engaged in, any breach of the Anti-Bribery Laws, or been debarred from bidding for any contract or business; or are public officials or persons who might otherwise reasonably be considered likely to assert a corrupt or illegal influence on behalf of ATNS. Each Party agrees that if, at any time, it becomes aware that any of the representations set out in this Clause are no longer correct, it will notify the other Party of this immediately in writing.

2.1.4.7 Each Party ("Indemnifying Party") shall be liable for and shall indemnify, defend and hold the other ("Indemnified Party") harmless to the maximum extent provided in law from and against any claims, losses, costs, fees, payment of interest, fines or other liabilities incurred in connection with or arising from the investigation of, or defence against, any litigation or other judicial, administrative, or other legal proceedings brought against the Indemnified Party by a regulator or governmental enforcement agency as a result of acts or omissions by the Indemnifying Party or its affiliates, Sub-Contractor(s) or agents in violation of, or alleged to be in violation of, the Anti-Bribery Laws.

2.1.4.8 Should the Supplier or any of its affiliate be found guilty of the violation of any of the applicable Anti-Bribery Laws, such shall be deemed material breach.

2.1.4.9 Any breach of, or failure to comply with, any of the provisions of this Clause shall be deemed material and shall entitle the non-breaching Party to terminate the Contract forthwith.

2.1.4.10 The indemnity contained in this Clause shall survive the termination of the Contract.

2.1.4.11 Unless otherwise provided for in the Contract, no Party shall have the right to represent or make decisions on behalf of the other Party.

2.1.4.12 Unless otherwise provided for in the Contract, no Party shall have the right to interact with government officials with respect to the matters which are the subject of the Contract without the written consent of the other Party.

2.1.4.13 Each Party may request that the other Party provide a certification to the effect that neither it nor any of its Affiliates, directors, officers, agents or other representatives acting on its behalf in connection with the performance under the Contract have engaged in any transaction or activity in violation of these Anti-Bribery Laws. Upon request a Party shall deliver such certification within ten (10) working Days.

2.1.4.14 Each Party agrees to perform its obligations under the Contract in accordance with the applicable anti-bribery and anti-corruption laws of the territory in which such Party conducts business with the other Party as set forth herein. Each Party shall be entitled to exercise its termination right, under and in accordance with the terms of the Contract, to terminate the Contract immediately on written notice to the other Party, if the other Party fails to perform its material obligations.

2.1.4.15 Each Party agrees that, in connection with the Contract and the Works, they will each, (and will procure that their respective officers, employees, agents and any other persons who perform services for them or on their behalf in connection with the Contract will:

2.1.4.15.1 not commit any act or omission which causes or could cause the other Party to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;

2.1.4.15.2 keep accurate and up to date records showing all payments made and received and all other advantages given and received in connection with the Contract and the steps taken to comply with this Clause 2.1.4, and permit the other Party to inspect those records as reasonably required;

2.1.4.15.3 promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received in connection with the performance of the Contract;

2.1.4.16 Each Party shall be solely responsible for the observance and performance of the relevant requirements by each of its affiliates or Sub-Contractor(s) and shall be directly liable to the other Party for any breach by its Affiliates or Sub-Contractor(s). Notwithstanding the foregoing, each Affiliate and Sub-Contractor(s) shall be required to comply with the relevant requirements to the extent applicable to their respective performance of activities under the Contract, including the place of such performance, and/or if required by the relevant requirements.

2.1.5 Anti-Dumping Duties

2.1.5.1 When, after Effective Date, provisional payments are required or anti-dumping or countervailing duties are imposed or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped of subsidised import ATNS is not liable for any amount so required or imposed or for the amount of any such increase. When after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment in any such right is reduced, the provision of Clause 2.1.5.1.1 shall apply *mutatis mutandis*.

2.1.5.1.1 In cases where a price adjustment is in favour of ATNS such favourable difference shall on demand be paid forthwith by the Supplier to ATNS of ATNS may deduct such amounts from moneys (if any) which may otherwise be due to the Supplier in regard to Goods and/or Services which the Supplier delivered or rendered or is to deliver or render in terms of the Contract or any other contract or any other amount which is due to the Supplier.

2.1.5.1.2 All duties and taxes payable in the country of Manufacture of the Goods and/or Services, and due under the laws of that country of Manufacture shall have been paid and borne by the Supplier.

2.1.5.1.3 In addition to the requirements of Clause 2.20.1.1 the Supplier shall be liable for all South African taxes, duties, levies and charges arising out of the performance of the Contract except as expressly provided for in this Clause.

2.1.5.1.4 Goods which are purchased by the Supplier in connection with the Supplier's performance of the Contract may be eligible for tax exemption. The Supplier shall obtain and be wholly responsible for obtaining such exemptions. ATNS shall provide any documentation necessary to substantiate the Supplier's claim for exemption.

2.1.5.1.5 In the event that there is any reduction in any duties, taxes and charges (except income tax liability or taxes described in this Clause incurred by the Supplier solely by reason of changes in Legislation after the date of the Contract which result in a direct decrease in the cost to the Supplier of supplying the Goods and/or Services the Supplier shall pass on to ATNS in the form of a reduction in the Contract Price the amount of any such reduction. ATNS may deduct from any monies payable to the Supplier the amount of any such reduction.

2.1.5.1.6 The Supplier shall apply to the South African Customs Service or any other relevant authority responsible for the issue of permits, licences or approvals for permission to enter all imported goods in connection with the performance of the Contract under a tariff concession order or by law (or such other order, consent or authority as may from time to time be appropriate under the Legislation) and in doing so shall make every reasonable endeavour to obtain entry into South Africa at the most advantageous tariff rate. Any application to the South African Customs Service and/or any other relevant authority shall be lodged prior to entry into South Africa of the imported goods to which it relates. ATNS shall comply with any reasonable request by the Supplier to provide the Supplier with a letter from ATNS sponsoring the application to be lodged with the application. A copy of each such application and of all papers and letters written in support or in furtherance thereof shall be made available by the Supplier to ATNS.

2.1.5.1.7 In pursuing its objectives for the most advantageous tariff rate, the Supplier shall ensure that all declarations made to the South African Customs Service or any other relevant authority are correct and, in respect of any duty assessable, customs values and tariff classifications are made strictly in accordance with the Legislation. ATNS shall not be liable to reimburse the Supplier for any additional costs or duties incurred by the Supplier from its failure to observe this Clause.

2.1.5.1.8 Notwithstanding the provisions in this Clause, ATNS shall not be liable to reimburse the Supplier for any fines or penalties imposed by or under the Legislation from time to time in force, for falsely declaring the description of goods or their value or otherwise for any offence under the Legislation.

2.1.5.1.9 Any savings in duty identified following any review by ATNS of the duty rates shall be passed on to ATNS by way of a reduction in the Contract Price to the extent of the savings as identified.

## 2.2 PART B

2.2.1 Business Continuity and Disaster Recovery Plans

2.2.1.1 The Supplier shall maintain a business continuity, Disaster recovery, and backup capabilities and facilities designed to ensure the Supplier's continued performance of its obligations under the Contract, including but not limited to loss of equipment, loss of production, loss of systems, system failures, and the failure of Supplier's business systems, computer systems, or equipment, ("**Business Continuity Plan**"). Such Business Continuity Plan shall include, but not be limited to, testing, accountability and corrective actions designed to be promptly implemented, if necessary. In addition, in the event that the Supplier has knowledge of an incident affecting the availability or integrity of such Business Continuity Plan, then the Supplier shall, as promptly as practicable, but no later than twenty-four (24) hours (or sooner to the extent required by applicable law or regulation) after the Service Provider becomes aware of such incident, notify ATNS in writing of such incident and provide ATNS with updates, as deemed appropriate by the Service Provider in the circumstances, with respect to the status of all related remediation efforts in connection with such incident. The Service Provider represents that, as of the Effective Date, such Business Continuity Plan shall be active and functioning normally in all material respects.

## 2.3 PART C

2.3.1 Cession of Contracts

2.3.1.1 The Supplier shall not abandon, transfer, assign or sublet the Contract or any part thereof without the prior written consent of ATNS.

2.3.1.2 The Supplier cannot subcontract more than twenty-five per cent (25%) of the Project to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless such portion of the Project is subcontracted to an EME that has the capability and ability to execute same.

2.3.2 Coming into force of the Contract

2.3.2.1 The Contract shall come into force on the Effective Date.

2.3.3 ATNS Property in Possession of a Supplier

2.3.3.1 ATNS property supplied to the Supplier for the execution of the Contract remains the property of ATNS and shall at any time be available for inspection by ATNS or its representatives. Any such property in the possession of the Supplier on completion of the Contract shall, at the Supplier's expense, be returned to ATNS forthwith.

2.3.3.2 The Supplier shall be responsible at all times for any loss of or damage to ATNS property in its possession and if required it shall furnish such security for the payment of any such loss or damage as ATNS may require.

2.3.4 Conduct of the Contract

2.3.4.1 The project management and system engineering shall be carried out under the Contract in accordance with the requirements of the Specification contained in Schedule "**B**" to the Contract.

2.3.4.2 The Supplier shall, in carrying out the Contract, comply with all reasonable directions of the Engineer.

2.3.4.3 The Supplier shall, when using ATNS' premises or facilities, comply with all reasonable directions and procedures of ATNS.

2.3.4.4 The language used in all business conducted under the Contract and any Documentation provided or instigated by the Contract shall be English.

2.3.4.5 Wherever the Engineer is required to make a consideration, determination or issue a document, he/she shall do so expeditiously.

2.3.5 Confidentiality

2.3.5.1 The Supplier shall not, without the written approval of ATNS make public or disclose to any person other than ATNS any information about the Contract. Disclosure to the Supplier's employees, agents or Sub-Contractor(s) is permitted only to the extent necessary for performing the Works under the Contract. In giving its written approval, ATNS may impose such conditions as it thinks fit.

2.3.5.2 The Supplier shall ensure that its employees, agents and Sub-Contractor(s) do not make public or disclose information referred to in this Clause.

2.3.5.3 ATNS may, at any time require the Supplier to give, and arrange for the Supplier's employees, agents or Sub-Contractor(s) engaged in the performance of the Contract to give, written undertakings and the Supplier shall arrange for all the undertaking to be given promptly.

2.3.5.4 Subject to the Contract expressly allowing ATNS to disclose certain information, ATNS shall;

2.3.5.4.1 treat as confidential all information obtained from the Supplier which is clearly marked confidential; and

2.3.5.4.2 except as required by law, not disclose to any person other than employees, consultants or advisers of ATNS without the consent of the Supplier (which consent shall not be unreasonably or unlawfully withheld) any information referred to in this Clause.

2.3.5.5 The obligation on the Supplier under this Clause and the obligation on ATNS under this Clause, shall not be taken to have been breached where the information referred to in those clauses:

2.3.5.5.1 is or becomes public knowledge other than by breach of this Clause;

2.3.5.5.2 is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party;

2.3.5.5.3 has been independently developed or acquired by the receiving Party; or

2.3.5.5.4 is required to be disclosed as required by law or under the Rules and Regulations on the South African Stock Exchange or any other relevant commercial authority.

2.3.5.6 The Supplier shall on demand, or on completion of the Contract, return to ATNS any documents supplied by ATNS to the Supplier.

2.3.5.7 This Clause shall survive the early termination or expiry of the Contract.

2.3.5.8 The Supplier agrees to liaise with ATNS and to provide any information required by ATNS for the assessment of South African industry involvement in the supply of the Goods and/or Services.

2.3.6 Consignment

2.3.6.1 Supplies shall be consigned in the name of the Supplier or its representative, otherwise consignments may be rejected. The representative shall have been nominated by the Supplier in writing and approved by ATNS also in writing, prior to the dispatch of the consignment.

2.3.7 Customs Clearance

2.3.7.1 The Supplier shall arrange for the clearance of all imported goods through customs.

2.3.7.2 A provision shall be made for the storage of equipment, Documentation and spares during the customs clearing procedure.

## 2.4 PART D

2.4.1 Damages (Liquidated and Ascertained)

2.4.1.1 The Supplier warrants that the amount of liquidated damages stated in Clause 2.4.3.4.2 has been considered by it and represents a genuine pre-estimate of the damage to be suffered by ATNS in the event of late Delivery or Installation of the Goods and/or Services.

2.4.1.2 The Engineer may deduct the amount of liquidated damages calculated pursuant to this Clause from any payments due to the Supplier.

2.4.2 Data Sovereignty Assurances and Safeguards

2.4.2.1 Both Parties will implement on or before the Effective Date, and thereafter maintain, appropriate safeguards against the unauthorised access to, and destruction, loss, or alteration of, any data in respect of the Contract in their possession which safeguards are:

2.4.2.1.1 acceptable to both Parties; or

2.4.2.1.2 no less rigorous than the most rigorous of the practices maintained or required by law as of the Effective Date.

2.4.2.2 Without limiting both Parties' obligations to establish, implement and maintain appropriate safeguards under Clause 2.4.2.1, the Supplier will have the right to establish back-up security for data and to keep back-up data and data files in its possession for the duration of the Period of Contract, if it chooses.

2.4.2.3 Without limiting the generality of Clause 2.4.2.2, the Parties will not, and shall not permit any of their respective employees, or persons or entities under their control, to access any data, files or programs unless such access is required to provide the Goods and/or Services. If access is attained other than as required to perform the Goods and/or Services, the relevant Party will:

2.4.2.3.1 report such access to the other Party as soon as possible;

2.4.2.3.2 describe in detail any accessed materials; and

2.4.2.3.3 return to the other Party any copied or removed materials.

2.4.2.4 Each Party will provide the other Party with assurances as to the safeguards that have been implemented to protect:

2.4.2.4.1 the national data interests of South Africa and data sovereignty of South Africa; and

2.4.2.4.2 the data interests of the other Party with regards the Contract.

2.4.3 Delayed Execution and Failure to Comply with Conditions

2.4.3.1 Should the Supplier fail to comply with any of the conditions of the Contract, ATNS shall be entitled, without prejudice to any of its other rights, to cancel the Contract and shall pay the Supplier for all Works satisfactorily completed by the Supplier up to the date of cancellation.

2.4.3.2 Upon any delay beyond the agreed period in the case of a supplies contract, ATNS shall, without prejudice to its other rights and without cancelling the Contract, be entitled forthwith to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the Contract and to return any supplies delivered later at the Supplier's expense and risk, or forthwith to cancel the Contract and buy such supplies as may be required to complete the Contract and without prejudice to its other rights, be entitled to claim damages from the Supplier.

2.4.3.3 Upon any delay beyond the agreed period in the case of a service contract, ATNS shall, without prejudice to any other right and without cancelling the Contract, be entitled forthwith to arrange for the execution of the service not rendered or not rendered in conformity with the Contract, or to cancel the Contract and without prejudice to its other rights, be entitled to claim damages from the Supplier.

2.4.3.4 In the event of ATNS availing itself of the remedies provided for in Clauses 2.4.3.1 to 2.4.3.3:

2.4.3.4.1 the Supplier shall bear any adverse difference in price of the said supplies or services and these amounts plus any other damages which may be suffered by ATNS shall be paid by the Supplier to ATNS immediately on demand or ATNS may deduct such amounts from moneys (if any) otherwise payable to the Supplier in respect of any supplies or services rendered or to be rendered under the Contract or under any other contract or any other amount due to it; or

2.4.3.4.2 if the Supplier fails to supply the goods or render the service within the period stipulated in the Contract, ATNS shall have the right, in its sole discretion either to deduct as a penalty from the value of the Contract sum an amount of one-fourteenth per cent (1/14%) thereof per Day for the period of delay or to claim any damages or loss suffered *in lieu* of such penalty. Provided that where Beneficial Use of the completed portion is enjoyed, the penalty shall be applied to the value of the outstanding portion only.

2.4.3.5 No penalty or damages shall be claimed in respect of any period of delay which the Supplier can prove to the satisfaction of ATNS to be directly due to Force Majeure Event.

2.4.3.6 If the Delivery of the supplies or the rendering of the service is likely to be delayed or is in fact being delayed on account of any of a Force Majeure Event, then the full particulars of the circumstances shall be reported forthwith in writing to ATNS, and at the same time the Supplier shall indicate the extension of the Delivery period which is desired.

2.4.4 Delivery

2.4.4.1 This section shall be read in conjunction with and is supplemental to Clauses 2.3.6, 2.5.1, 2.16.16, 2.18.3, and 2.20.3.

2.4.4.2 The Supplier shall deliver or install the Goods and/or Services in accordance with the Specifications as well as Schedules "**B**" and "**C**" to the Contract.

2.4.4.3 The Supplier shall provide the Engineer at least five (5) Days' written notice of the time at which the Supplier intends to deliver the Goods and/or Services.

2.4.4.4 On Delivery, the Engineer shall inspect the Goods and/or Services to ensure the Goods and/or Services are complete and/or no damage has occurred during transportation. In the event the Goods and/or Services are incomplete and/or damage has occurred, the Engineer shall immediately notify the Supplier detailing the Goods and/or Services omitted and/or damaged and describe omissions and/or the damage. The Engineer and Supplier shall investigate the incident and the Supplier shall correct any omissions and/or, if damage was sustained through poor packaging or mishandling, the Supplier shall rectify the damage within a period agreed between the Engineer and Supplier. Payment of any Milestone Payment shall not be effected until the Engineer is satisfied that the Goods and/or Services have been delivered in accordance with the Contract and the Goods and/or Services are complete and in proper physical condition.

2.4.4.5 Delivery of the Goods and/or Services, in accordance with this Clause shall be made according to Delivered Duty Paid ("**DDP**") Incoterms (2020) at the applicable Delivery Site set out therefor in the Delivery Schedule.

2.4.5 Disputes

2.4.5.1 All disputes between the Parties in connection with or arising out of the existence, validity, construction, performance and termination of the Contract (or any terms thereof), which the Parties are unable to resolve between themselves within sixty (60) Days from the notification of the dispute by one Party to the other, **may** be finally settled by arbitration in accordance with Clause 2.4.5.4 or through the institution of action or motion proceedings in any court of competent jurisdiction. Without limiting the jurisdiction of any court of competent jurisdiction, the Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Johannesburg for any claim or dispute arising out of or in connection with the Contract.

2.4.5.2 Negotiation

2.4.5.2.1 Should any dispute, disagreement or claim arise between the Parties ("**the dispute**") concerning the Contract, the Parties shall try to resolve the dispute by negotiation. This entails that one Party invites the other Party in writing to meet and attempt to resolve the dispute within five (5) Days from the date of the written invitation.

2.4.5.2.2 The Parties undertake to extensively consult with each other in the event of a dispute and to use their best endeavours to resolve such dispute amongst themselves in good faith and without recourse to litigation.

2.4.5.3 Independent Expert

2.4.5.3.1 In the event of any dispute arising between the Parties failing to be resolved through negotiation in terms of Clause 2.4.5.2, then either Party may declare a dispute by notice to the other Party.

2.4.5.3.2 Prior to submission of dispute to arbitration in accordance with Clause 2.4.5.4, the matter in dispute may first be referred for independent determination before an independent expert appointed by agreement between the Parties to the dispute and failing agreement within ten (10) Working Days of the referral for independent determination, then any Party to the dispute shall be entitled to forthwith call upon the President of the Legal Practice Council of South Africa to nominate the independent expert.

2.4.5.3.3 The independent expert shall have absolute discretion in the manner in which the proceedings regarding the matter in dispute shall be conducted.

2.4.5.3.4 The independent expert shall deliver a copy of his/her reasoned opinion to each Party within twenty-one (21) Days of his or her appointment.

2.4.5.3.5 The opinion so expressed by the independent expert shall be final and binding on the Parties, unless either Party, within twenty-one (21) Days of the delivery of the opinion, notifies the other Party of its unwillingness to accept the said opinion, in which event the dispute may be referred to arbitration or to any competent court with jurisdiction.

2.4.5.3.6 The costs associated with the dispute shall be determined by the independent expert and shall be borne equally by the Parties, unless otherwise agreed upon in writing by the Parties or determined/ordered by the independent expert, and shall be due and payable to the independent expert on presentation to them of his/her written account.

2.4.5.4 Arbitration

2.4.5.4.1 In the event of the Parties, failing to resolve the dispute through negotiation in terms of Clause 2.4.5.2, or any of them failing to accept the ruling of the independent expert in terms of Clause 2.4.5.3, then the dispute **may** be referred to arbitration.

2.4.5.4.2 The arbitrator shall at the written request of either Party be appointed by the secretary of the Arbitration Foundation of Southern Africa ("**AFSA**").

2.4.5.4.3 The arbitration shall be administered by AFSA and conducted in accordance with AFSA's Domestic Rules for Expedited Arbitration or any subsequent/superseding rules thereto ("**AFSA Rules**").

2.4.5.4.4 Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA Rules (as last applied by AFSA) before an arbitrator appointed by agreement between the Parties to the dispute or failing agreement within ten (10) Working Days of the demand for arbitration, then any Party to the dispute shall be entitled to forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than ten (10) Years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the arbitration proceedings. In the event of the Parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the Parties to the arbitration proceedings.

2.4.5.4.5 The arbitration shall be held in Johannesburg, South Africa and shall be conducted in the English language.

2.4.5.4.6 Any Party to the arbitration may appeal the decision of the arbitrator or arbitrators in terms of the AFSA Rules.

2.4.5.4.7 Nothing herein contained shall be deemed to prevent or prohibit a Party to the arbitration from applying to any court of competent jurisdiction for urgent relief.

2.4.5.4.8 Any arbitration in terms of this Clause (including any appeal proceedings) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.

2.4.5.4.9 The Parties agree that the written demand by a Party to the dispute in terms of Clause 2.4.5.4.1 that the dispute or difference be submitted to arbitration is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

2.4.5.4.10 The costs of arbitration shall be determined by the arbitrator or AFSA and shall be borne equally by the Parties, unless otherwise agreed upon in writing by the Parties or ordered by the arbitrator, and shall be due and payable to the arbitrator or AFSA on presentation to the Parties of a written account.

2.4.5.4.11 Should any Party fail to pay its share of any administration fee or cost when requested by the AFSA Secretariat, that Party may be excluded from participating in the arbitration process so long as that Party is in default of payment. Where one Party is excluded by reason of default, the AFSA secretariat will revise the fees payable by the remaining Party to cover all costs and expenses, subject to the right of the paying Party to recover such additional costs and expenses from the non-paying Party, unless otherwise ordered by the arbitrator.

2.4.5.5 This Clause will continue to be binding on the Parties notwithstanding any termination or cancellation of the Contract.

2.4.6 Delivery Penalties

2.4.6.1 Penalties will be imposed from the end of the contractual Delivery period at the rate indicated in Clause 2.4.3.4.2

## 2.5 PART E

2.5.1 Export License

2.5.1.1 When Orders are placed for supplies in respect of which an export licence is required -

2.5.1.1.1 the Supplier shall not incur any direct or indirect costs in connection with the supply or dispatch of such supplies before it has obtained such licence; or

2.5.1.1.2 if the Government of the country from which the supplies are to be exported refuses, or fails to grant, such licence within three (3) Months from the placing of the Order, the Order shall be considered to be cancelled and no liability will be accepted for any loss or expenses irrespective of the nature thereof, including loss or expenditure suffered or incurred by the Supplier or any other person in respect of the production, supply, transport or Delivery of such supplies.

2.5.2 Extension of Time

2.5.2.1 This section shall be read in conjunction with and is supplemental to Clause 2.4.6.

2.5.2.2 Where the Supplier is unable to deliver the Goods and/or Services in accordance with the Delivery Schedule contained in the Project Management Schedule, which the Supplier considers justifies an extension of time under Clause 2.4.3.5, the Supplier shall;

2.5.2.2.1 give written notice to the Engineer of the cause of delay not later than fifteen (15) Days after the cause of the delay first arose; and

2.5.2.2.2 immediately after the circumstances causing the delay have ceased, give written notice to the Engineer of;

2.5.2.2.3 the period of delay and the likely effect on the Delivery Schedule; and

2.5.2.2.4 the extension of time which the Supplier requests.

2.5.2.3 The Engineer shall consider the Supplier's request for an extension of time and shall, as soon as practicable after receiving the Supplier's notice under this Clause, notify the Supplier of his decision and amend the Delivery Schedule accordingly.

2.5.2.4 If the Supplier fails to give notice in accordance with this Clause, then the Supplier shall not be entitled to an extension of time.

2.5.2.5 The Engineer may, by written notice to the Supplier, amend the Delivery Schedule by extending Delivery time for Goods and/or Services.

## 2.6 PART F

2.6.1 Force Majeure

2.6.1.1 No Party shall be liable for any delay or failure to perform its obligations under the Contract if such failure or delay is due to any Force Majeure Event. A Party unable to fulfil its obligations as a result of a Force Majeure Event shall immediately notify the other Party in writing within seven (7) Days of the Force Majeure Event of the reason for its failure to fulfil its obligations and the effect of such failure. In the meantime, such Party shall take all reasonable steps to remedy or abate the effects of the Force Majeure Event.

2.6.1.2 If by reason of a Force Majeure Event, a Party is unable to perform any obligation under the Contract for a period of ninety (90) Days, the other Party may, by giving written notice to that Party, terminate the Contract. Such termination shall not prejudice the rights of either Party against the other in respect of any matter occurring under the Contract before termination.

## 2.7 PART G

2.7.1 Guarantee and Warrantee (also see Security – clause 2.19.8)

2.7.1.1 B-BBEE

2.7.1.1.1 The Supplier guarantees and warrants that:

2.7.1.1.1.1 it has not engaged in corrupt practices or collusive practices or fraudulent practices in competing for or in executing the Contract and/or the Works and Goods and/or Services;

2.7.1.1.1.2 no litigation, arbitration or administrative or business rescue proceedings are pending or threatened against the Supplier which would have an adverse effect upon its financial condition or business, nor its ability to perform its obligations under the Contract;

2.7.1.1.1.3 it has the relevant power and authority to sign and perform in terms of the Contract;

2.7.1.1.1.4 its BEE status which has been furnished to ATNS is true and correct, and it has complied with the B-BBEE Requirements;

2.7.1.1.1.5 it has not committed (transformation) fronting and will not commit (transformation) fronting for purposes of the transformation laws of South Africa, which include but not limited to the B-BBEE Act;

2.7.1.1.1.6 it complies with all of its obligations in terms of all tax laws and regulations applicable to it, including but not limited to all of its obligations pertaining to the payment of income tax, capital gains tax, employees tax (PAYE and SITE), VAT, skills development levies, unemployment insurance levies, workmen's compensation levies, regional services council levies and all other taxes and levies payable both now or in the future and whether it is liable in South Africa or other jurisdictions; and undertakes to continue to take all reasonable and necessary steps to ensure that this remains so; and

2.7.1.1.1.7 the warranties provided herein in this Clause are *in lieu* of all other warranties, express or implied, and that it is *in lieu* of and supersedes any other liability arising out of the Suppliers and Services.

2.7.1.1.2 The Supplier warrants and undertakes that it shall, at all times during the duration of the Contract:

2.7.1.1.2.1 maintain the tender submission BEE status for the duration of the Contract;

2.7.1.1.2.2 possess and have knowledge and sufficient expertise, to enable it to provide and/or procure the provision of the Works in terms of the Contract;

2.7.1.1.2.3 use and adopt reasonable and professional techniques and standards generally accepted in the relevant field for the provision of the works with due care, skill and diligence;

2.7.1.1.2.4 comply with all applicable laws, regulations, rules and procedures; and

2.7.1.1.2.5 at all times when providing the Works within the premises of ATNS or Airports Company South Africa (ACSA), abide by safety regulations laid down by ATNS or ACSA, *inter alia*, for the prevention and combating of accidents, vandalism, damage to property, arson, fire damage and any other similar events.

2.7.1.2 The Warranty of the complete Installation shall be provided by the Supplier against faulty components, materials, equipment installation, workmanship and design, fair wear and tear excepted, for a period of one (1) Year, commencing either from the date of issue of the Substantial Completion certificate of the completed Installation or one (1) Month after the commencement of Beneficial Use, whichever is the later. The Warranty Period may be extended to the extent and on the conditions set forth in Clause 2.7.1.9.

2.7.1.3 Within the frame of the warranty, the Supplier will ensure that the serviceability of the Hybrid Lithium Battery Powered Inverter equipment/System will be as stipulated in the Specification for a period of twelve (12) Months.

2.7.1.4 Without prejudice to any other rights ATNS may have, the Supplier shall, accordingly, for the period of validity of this warranty, repair or replace equipment parts or components, which have failed for whatsoever reason, at no cost to ATNS. The supplies and the parts so replaced, or the services so rendered, shall be warrantied for an additional period corresponding to the initial Warranty Period.

2.7.1.5 Where persistent failures of a component or circuit occur, in addition to other rights ATNS may have, the Supplier shall redesign the circuit or component and supply such redesigned circuit or component with the necessary drawings and modification list free of charge to ATNS. The conditions of this warranty shall apply to the redesigned component or circuit, with effect from the date of Installation of the replacement.

2.7.1.6 Unless the Contract stipulates otherwise, the Supplier warrants for a period of twelve (12) Months that no faulty material or workmanship was used in the Manufacture of supplies or in the execution of services and that the finish is not defective. Should this warranty not be complied with, ATNS may, without prejudice to any other rights it may have, demand that the supplies be replaced and the services repaired without cost to ATNS.

2.7.1.7 The liability of the Supplier under the warranty shall *inter alia* also cover the free Delivery to ATNS of supplies required in replacement of defective Goods and/or Services, and where parts are to be replaced the liability shall include their free installation. The supplies and the parts so replaced, or the services so rendered shall be warrantied for a similar period.

2.7.1.8 The Supplier warrants that any software (whether application software, operating systems or any third-party software) and any hardware equipment delivered by it in terms of the Contract shall not be subject to any misinterpretations of date related calculations of any sorts. The software and hardware delivered shall continue functioning as per the Specifications regardless of the date. Any such related problem or related problems shall be repaired or corrected by the Supplier free of charge to ATNS for as long as the software and hardware is used by ATNS. This Clause shall be honoured by any future shareholders or owners of the Supplier and shall survive the Contract.

2.7.1.9 The requirements of Clause 2.7.1 shall apply with the following exceptions:

2.7.1.9.1 In case, at the end of the one-year term for the Warranty Period, the requirement of Clause 2.7.1.3 has not been fulfilled, the Warranty Period will be extended, but only with respect to such part(s) of the Hybrid Lithium Battery Powered Inverter System which has(ve) caused the non-reaching of the required rate of serviceability of the Hybrid Lithium Battery Powered Inverter System. The extension of the Warranty Period with respect to each of such parts shall be twelve (12) Months from the respective repair or replacement thereof, unless a new failure occurs within the latter 6-Month period – in which case the Warranty Period shall be again so extended. The extension of the Warranty Period in accordance with the foregoing shall be valid, with respect to a given part of the Hybrid Lithium Battery Powered Inverter System, until the end of a continuous period of six (6) Months during which the part(s) in question has(ve) shown no failure.

2.7.1.9.2 The Supplier warrants the Goods and/or Services provided under the Contract as follows;

2.7.1.9.2.1 that at the time ownership in the Goods and/or Services passes to ATNS, they shall be free from any property and/or proprietary claim(s);

2.7.1.9.2.2 that the Goods and/or Services shall, at the time of Delivery and Installation, comply with any Legislation that the Supplier is required to observe.

## 2.8 PART H

[No particulars]

## 2.9 PART I

2.9.1 Incapacity, Death, Sequestration, Liquidation or Business Rescue

2.9.1.1 In the event of the death of the Supplier or the provisional or final sequestration/liquidation of the Supplier's estate or of the Supplier's cession or transfer of a contract without the approval of ATNS or of the surrender of its estate or of its statutory or common law reaching a compromise with its creditors or the placing of its affairs under business rescue, ATNS may, without prejudice to any other rights it may have, exercise any of the following options:

2.9.1.1.1 Cancel the Contract and accept any of the Tenders that were submitted originally with that of the Supplier or any offer subsequently received to complete the Contract. In such a case, the estate of the Supplier or the liquidator as the case may be, shall not be relieved from liability for any claim which has arisen or may arise against the Supplier in respect of Supplies not Delivered or work not carried out by the Supplier under the Contract, and ATNS shall have the right to hold and retain all or any of the securities held by it at the date of the aforesaid occurrence until such claim has been satisfied; or

2.9.1.1.2 allow the executor, trustee, liquidator or business rescue practitioner, as the case may be, for and on behalf of and at the cost and expense of the estate of the Supplier to carry on with and complete the Contract; or

2.9.1.1.3 for and on behalf of and at the cost and expense of the estate of the Supplier, itself carry on with and complete the Contract and in that event ATNS may take over and utilise, without payment, the Supplier's tools, plant and materials in whole or in part until the completion of the Contract.

2.9.1.2 Should ATNS elect to act in terms of Clause 2.9.1.1.3, it shall give notice of its requirements to the executor, trustee, liquidator or business rescue practitioner of the Supplier's estate and should the said executor, trustee, liquidator or business rescue practitioner fail within fourteen (14) Days of the dispatch of such notice to make provision to the satisfaction of ATNS for the fulfilment of such requirements, or should no executor, trustee, liquidator or business rescue practitioner be appointed within fourteen (14) Days of the occurrence mentioned in Clause 2.9.1.1, ATNS may apply any remedy open to it in terms of the Contract as if a breach thereof had taken place.

2.9.1.3 Should ATNS act in terms of Clause 2.9.1.1.3, the Supplier shall leave the premises immediately and may not occupy such premises on account of retention or any other right.

2.9.2 Incorrect Information

2.9.2.1 Where the Contract has been awarded on the strength of information furnished by the Supplier which, after the conclusion of the Contract, is proved to have been incorrect, ATNS may, without prejudice to any other legal remedy it may have -

2.9.2.1.1 recover from the Supplier all costs, losses or damages incurred or sustained by ATNS as a result of the award of the Contract: and/or

2.9.2.1.2 cancel the Contract and claim any damages which ATNS may suffer as a result of having to make less favourable arrangements; and/or

2.9.2.1.3 impose on the Supplier, a penalty not exceeding five per cent of the value of the Contract.

2.9.3 Indemnity

2.9.3.1 The Supplier shall indemnify ATNS and keep it indemnified against all losses and claims for injuries or damage to any person or property whatsoever which may arise from or in consequence of the execution, completion and maintenance of the Contract including all acts or omissions of the Supplier, its employees or agents and against all claims, demands, lawsuits, damages, costs, including attorney and client costs, charges and expenses whatsoever in respect thereof or pertaining thereto. Provided always that nothing contained herein shall be deemed to render the Supplier liable for, or to indemnify ATNS against, any compensation or damages for or with respect to injuries or damage to persons or property resulting from any act or neglect done or committed during the duration of the Contract by ATNS, its agents, servants or other Suppliers (not being employed by the Supplier), or for or in respect of any claims, demands, lawsuits, damages, costs, charges and expenses in respect thereof or pertaining thereto.

2.9.4 Intellectual Property Rights

2.9.4.1 Both Parties shall retain all rights, titles, and interests in and to their respective pre-existing Intellectual Property.

2.9.4.2 Intellectual Property designed and developed by or on behalf of the Supplier exclusively for ATNS at the request of ATNS and paid for by ATNS in terms of the Contract as part of the Deliverables ("**Bespoke Intellectual Property**"), including copyright and other Intellectual Property Rights related thereto, shall become and remain the sole property of ATNS upon payment of the Contract Price in full by ATNS. No information or rights related to such Bespoke Intellectual Property shall be disclosed to any third party by the Supplier without ATNS' prior written consent.

2.9.4.3 If the Parties require the use of each other's pre-existing Intellectual Property for purposes of performing their obligations in terms of the Contract, they hereby irrevocably grant each other a non-exclusive, royalty-free, non-transferable license to use any pre-existing Intellectual Property to the extent necessary and solely for the purpose of performing their obligations under the Contract. The Parties will cease use of each other's pre-existing Intellectual Property post termination of the Contract.

2.9.4.4 Where copyright to documents prepared by the Supplier is not capable of being vested in ATNS by operation of applicable law, ATNS shall be entitled to use the documents or copy them only for the

purposes for which they are intended in regard to the Services and need not obtain the Supplier's permission for such use.

2.9.4.5 Where copyright is vested in ATNS, the Supplier shall not in any way use any of such information, other than as provided for in Clause 2.9.4.3 for any other purpose than as originally intended for the Supplies and the Services. The Supplier hereby indemnifies ATNS against any claim which may be made against it by any third party arising as a result of the use of such documentation where such use is not authorised in terms of the Contract.

2.9.4.6 The ownership of data and factual information collected by the Supplier pursuant to the Contract shall lie with ATNS.

2.9.4.7 The Supplier is responsible for all expenses and other liabilities in regard to royalties, patent rights, trademarks or other protected rights in respect of goods supplied by it to ATNS and it indemnifies ATNS against any claims of whatever nature which may arise in connection with such rights.

2.9.4.8 The Supplier shall at any time furnish, on request, adequate security to the satisfaction of ATNS for the payment of all costs including attorney and client costs in cases where proceedings are instituted against ATNS and/or its officers or employees in respect of alleged breach of patent rights, trademarks or any other protected rights.

2.9.4.9 All Deliverables, including Intellectual Property Rights related to the Services provided shall, to the extent permissible by law, become and remain the sole property of ATNS at Final Acceptance and against payment of the full Contract Price, subject always to ATNS complying and continuing to comply with any conditions related to any license

2.9.4.10 The Supplier shall indemnify and keep ATNS indemnified against any claim or liability for loss, damages, costs (including the costs of any settlement), compensation, or expenses arising out of any infringement of any Intellectual Property Rights pertaining to the Goods and/or Services.

2.9.4.11 ATNS shall notify the Supplier in writing as soon as practicable of any claim made or threatened arising from any infringement referred to in this Clause and shall provide all reasonable information and assistance to the Supplier to enable it to defend or settle any such claim.

2.9.4.12 If a judgement or award is made against ATNS as a result of an infringement of any Intellectual Property Rights, or if a settlement, which has been approved by the Supplier, is agreed with the plaintiff (in a situation where the Supplier is providing an indemnity under this Clause), the Supplier shall;

2.9.4.12.1 not less than five (5) Working Days before the date on which ATNS is to pay the amount referred to in the judgement, award or settlement; or

2.9.4.12.2 if no date for payment is fixed by that judgement, award or settlement, within seven (7) Days of receipt of a notice in writing from ATNS that it intends to pay the amount referred to in that judgement, award or settlement;

2.9.4.12.3 pay to ATNS by electronic funds transfer ("**EFT**") a sum equivalent to the sum that ATNS is required to pay.

2.9.4.13 The Supplier's consent to the settlement referred to in this Clause shall not be unreasonably withheld.

2.9.4.14 The Supplier shall pay to ATNS all other sums required to be paid under the indemnity provided under this Clause within seven (7) Days of receipt of a written notice from ATNS requiring payment of those sums.

2.9.4.15 In the event of the failure of the Supplier to comply with this Clause, ATNS, without prejudice to any other right or remedy which ATNS may have, shall have the right to suspend any payment due under the Contract until such claim, demand, suit, action or proceeding has been resolved.

2.9.4.16 In the event of any claim, demand, suit, action or proceeding being made, brought or threatened in respect of an infringement of any Intellectual Property Rights, the Supplier shall at its own expense and with the written consent of ATNS, use its best endeavours to;

2.9.4.16.1 procure for ATNS, on reasonable commercial terms, the right to continue to use, the whole or the relevant part, of the Goods and/or Services; or

2.9.4.16.2 replace or modify the Goods and/or Services in a manner acceptable to ATNS such that the quality, performance or usefulness of the Goods and/or Services are not degraded and so that the infringement ceases.

2.9.4.17 ATNS may obtain the consent of the owner of the Intellectual Property Right to continue using the infringing item of the Goods and/or Services and the indemnity in this Clause shall cover any costs incurred by ATNS, including any payment made to the owner.

2.9.5 Inspection, Tests and Analyses

2.9.5.1 If it is a contract condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion at the suppliers Works be subject to inspection, then ATNS and the Supplier shall each be responsible for their own costs in terms of such an inspection. The premises of the Supplier shall be open, at all reasonable hours, for inspection by a representative of ATNS or of an organisation acting on behalf of ATNS.

2.9.5.2 Inspections, tests and analyses may be carried out prior to dispatch in regard to such contract supplies as may be deemed necessary by ATNS and the Supplier shall provide, if required, all the required facilities for the inspections, tests and analyses of the supplies free of charge and shall, if required, provide all the materials, samples, labour and available apparatus which may be required for the purpose of such inspections, tests and analyses free of charge unless otherwise specified.

2.9.5.3 If there are no inspection requirements in the Tender Documents and no mention thereof is made in the letters of acceptance, but during the Period of Contract it is decided that inspections shall be carried out, ATNS shall itself make the necessary arrangements, including payment arrangements, with the testing authority concerned.

2.9.5.4 If the inspections, tests and analyses referred to in Clause 2.9.5.3 show the supplies to be in accordance with the Contract requirements, the cost of the inspections, tests and analyses shall be defrayed by ATNS; otherwise the cost shall be defrayed by the Supplier and ATNS shall have the right, without prejudice to any other legal remedy it may have, to deduct such costs from payments due to the Supplier under the Contract or under any other contract.

2.9.5.5 Where the Goods and/or Services referred to in Clause 2.9.5.3 do not comply with the Contract requirements, but such supplies or services are nevertheless accepted at whatever price, the cost in connection with the inspections, tests or analyses thereof shall be defrayed by the Supplier.

2.9.5.6 Goods and/or Services that are referred to in Clauses 2.9.5.1 to 2.9.5.3 that do not comply with the Contract requirements, may be rejected at the absolute discretion of ATNS.

2.9.5.7 Any contract supplies may on or after Delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the Contract and such rejected supplies shall be held at the cost and risk of the Supplier who shall, when called upon, remove them immediately at its own cost and forthwith substitute them with supplies which do comply with the requirements of the Contract. Failing such removal, the rejected supplies shall be returned at the Supplier's cost and risk. Should the Supplier fail to provide the substitute supplies forthwith, ATNS may, without giving the Supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the Supplier.

2.9.5.8 Transport costs and any other expenses with regard to the rejected supplies referred to in Clauses 2.9.5.1 and 2.9.5.3 shall be refunded by the Supplier.

2.9.5.9 Where imported supplies are to be inspected before shipment, the Supplier shall notify its suppliers abroad of the conditions applicable to inspections.

2.9.5.10 The provisions of Clauses 2.9.5.1 to 2.9.5.9 shall not prejudice the right of ATNS to cancel the Contract on account of a breach of the conditions thereof, or to act in terms of Clauses 2.4.3.1 to 2.4.3.4.

2.9.6 Integrated Logistic Support Plan (ILSP)

2.9.6.1 Integrated Logistic Support Plan Requirements

2.9.6.1.1 The Supplier shall establish and conduct a formal logistic support programme in accordance with the requirements of the Specification and as outlined in the Integrated Logistic Support Plan. The objective is to define the required logistic support system and resources, establish this support system, and validate this.

2.9.6.1.2 Final Acceptance will only take place when ATNS is satisfied that the support system has been validated in accordance with the Contract.

2.9.6.1.3 The support system shall be defined in accordance with the Contract, prior to Site Acceptance.

2.9.7 Insurance

2.9.7.1 Supplier to Effect Insurances

2.9.7.1.1 Without limiting the Supplier's obligations under Clause 2.9.7.1.3 to 2.9.7.1.5, the Supplier shall arrange and maintain the following insurances with a reputable insurance and duly registered company in accordance with the applicable laws of South Africa, for the purposes of the Contract:

2.9.7.1.1.1 public liability insurance that covers the cost of claims (such as compensation for: personal injuries. loss of or damage to property) made by members of the public for any incidents that may occur in connection with the implementation of the Contract;

2.9.7.1.1.2 insurance, for the full value of the Goods and/or Services from time to time, against loss or damage, including loss or damage in transit;

2.9.7.1.1.3 workers' compensation insurance against liability for death of or injury to persons employed by the Supplier including liability pursuant to the Legislation and for an unlimited amount at common law. This insurance shall be extended to indemnify ATNS for ATNS' liability under the Legislation to persons employed by the Supplier. The Supplier shall ensure that every Sub-Contractor is similarly insured.

2.9.7.1.2 The insurance's referred to in this Clause shall be effected before the execution of the Contract and maintained during the Period of Contract as follows:

2.9.7.1.2.1 insurance for the full value of the Goods and/or Services maintained until Delivery of the last Goods and/or Services to ATNS at the conclusion of the Warranty Period;

2.9.7.1.2.2 the public liability policy of insurance maintained until the Supplier has completed all of its obligations under the Contract; and

2.9.7.1.2.3 workers' compensation insurance until all of the obligations of the Supplier under the Contract have been completed.

2.9.7.1.3 The Supplier shall take out insurance policies, which are adequate to cover all its obligations under the Contract and shall keep them in force for the duration of the Contract.

2.9.7.1.4 Should the Supplier fail to effect and keep in force any of the insurances that it must effect under the Contract, then (and in any such case) ATNS may effect and keep in force such insurance and

pay such premium as may be necessary for that purpose and from time to time deduct the amount thus paid by ATNS (as aforesaid) from any moneys due to or that may become due to the Supplier, or recover it from the Supplier as a debt payable to it.

2.9.7.1.5 The Supplier shall furnish evidence to ATNS and make any necessary financial arrangements to underwrite or provide suitable insurance for the equipment and system against fire, theft, damage, accident, Disaster etc. This is required in order to indemnify ATNS against loss and to protect ATNS' investment and ownership of the equipment until such time as the Hybrid Lithium Battery Powered Inverter System is finally accepted. Pursuant to Clause 2.9.7.1 a suitable draft proposal, which would form the basis of a formal policy to be incorporated within a future contract, is required to be included for evaluation within the Tender Documents. The proposal and policy shall also include the Warranty Period.

2.9.7.2 Insurance Effected by ATNS

2.9.7.2.1 Notwithstanding anything elsewhere contained in the Contract and without limiting the obligations, liabilities or responsibilities of the Supplier in any way whatsoever (including but not limited to any requirement for the provision by the Supplier of any other insurances) ATNS **may** effect and maintain as appropriate in the joint names of ATNS, the Supplier and where relevant Sub-Contractor(s) the following insurances which are subject to the terms, limits, exceptions and conditions of the Policy.

2.9.7.2.2 **CONTRACT WORKS Insurance -** which will provide cover against accidental physical loss of or damage to the Works, Temporary Works and material intended for incorporation in the Works.

2.9.7.2.3 **PUBLIC LIABILITY Insurance -** which will provide indemnity against legal liability in the event of accidental death of or injury to third party persons and/or loss of or damage to third party property arising directly from the execution of the contract and occurring during the period of insurance with a limit of indemnity (to be determined at the time of contract signature) in respect of all claims arising from any one occurrence or series of occurrences consequent on or attributable to one source or original cause.

2.9.7.2.4 ATNS shall pay the premium and stamp duty in connection with the insurance effected by ATNS.

2.9.7.2.5 The Supplier shall not include any premium charges for this insurance except to the extent which it may deem necessary in its own interest to effect supplementary insurance to the insurance effected by ATNS. ATNS reserves the right to call for full information regarding insurance costs included by the Supplier.

2.9.7.2.6 Any further clarification of the scope of cover provided by the policies arranged by ATNS should be obtained from ATNS or its insurance brokers.

2.9.7.2.7 In the event of any occurrence which is likely to or could give rise to a claim under the insurances arranged by ATNS, then the Supplier shall:

2.9.7.2.7.1 in addition to any statutory requirements or other requirements contained in the Contract immediately notify ATNS' insurance brokers or the insurers via the Engineer, by telephone and email giving the circumstances, nature and an estimate of the loss or damage or liability;

2.9.7.2.7.2 complete a claims advice form available from ATNS' insurance brokers to whom the form must be returned without delay; and

2.9.7.2.7.3 negotiate the settlement of claims with the insurers through ATNS' insurance brokers and shall when required to do so obtain ATNS' approval of such settlement.

2.9.7.2.8 ATNS and its insurers shall have the right to make all and any enquiries on the site of the Works or elsewhere as to the cause and results of any occurrence and the Supplier shall co-operate in the carrying out of such enquiries.

2.9.7.2.9 The Supplier will be liable for the amount of the deductible (first amount payable) in respect of any claim made by or against the Supplier or Sub-Contractor(s) under the insurances effected by ATNS.

2.9.7.2.10 The Supplier will be liable for the amount of the deductible (first amount payable) in respect of any claim settled under the policies maintained by ATNS.

2.9.7.2.11 The deductibles (first amount payable) for which the Supplier is responsible and which is applicable in respect of each and every occurrence or series of occurrences attributable to one source or original cause giving rise to loss or damage or liability indemnifiable are as per the latest insurance program of ATNS.

2.9.7.2.12 Any amount which becomes payable to the Supplier or any Sub-Contractor as a result of a claim under the Contract Works insurance shall, if required by ATNS, be paid net of the deductible to ATNS, who shall pay the Supplier from the proceeds of such payment upon rectification, repair or reinstatement of the loss or damage, but this provision shall not in any way affect the Supplier's obligations, liabilities or responsibilities in terms of the Contract.

## 2.10 PART J

[No particulars]

## 2.11 PART K

[No particulars]

## 2.12 PART L

2.12.1 Legal Compliance

2.12.1.1 The Supplier shall give all notices and pay all fees required to be given or paid by any act of parliament or any regulation or by-law of any provincial, local or other statutory authority in relation to the execution of the Works or of any Temporary Works and by the rules and regulations of all public bodies and companies whose property or rights are or may be affected in any way by the Works or any Temporary Works. The Supplier shall conform in all respects with the provisions of any general or local act of parliament, provincial ordinances and the regulations or by-laws of any local or other statutory authority which may be applicable to the works or to any Temporary Works with such rules and regulations of public bodies and companies as aforesaid and shall keep ATNS indemnified against all penalties and liabilities of every kind for breach or any such act, ordinance, regulation or by-law.

2.12.1.2 The Supplier shall in carrying out its obligations under the Contract comply with all relevant Legislation.

2.12.2 Liability

2.12.2.1 In the event of the Contract being cancelled by ATNS in the exercise of its rights in terms of these conditions, the Supplier shall be liable to pay to ATNS any losses sustained and/or additional costs or expenditure incurred as a result of such cancellation and ATNS shall have the right to recover such losses, damages or additional costs by means of set-off from moneys due or which may become due in terms of the Contract or any other contract, or from the Performance Guarantee provided for the due fulfilment of the Contract and, until such time as the amount of such losses, damages or additional costs has been determined, to retain such moneys or Performance Guarantee or any deposit as security for any loss which ATNS may suffer or have suffered.

2.12.2.2 The Supplier may be held responsible for any consequential damages and loss sustained which may be caused by any defect, latent or otherwise, in the Goods and/or Services or if the Supplies and Service as a result of such defect, latent or otherwise, does not conform to any condition or requirement of the Contract.

2.12.2.3 The Parties' total liability howsoever arising under or in connection with the Contract shall be limited to the Contract Price.

## 2.13 PART M

2.13.1 Maintenance and Support

2.13.1.1 The maintenance and support to be provided by the Supplier to ATNS under the Contract shall be governed by the terms of the Contract as well as the Maintenance and Support Schedule. If the terms of the Contract conflict with the terms of the Maintenance and Support Schedule, the terms of the Contract shall prevail.

2.13.1.2 The Supplier shall ensure that original equipment manufacturer ("**OEM**") undertakes and is committed to providing the Supplier with all technical, engineering, product, software, firmware, diagnostic, escalation and other support reasonably required to enable the Supplier to provide the Goods and/or Services in accordance with the requirements contained in the Specification, Tender Documents and Contract, for the entire duration of the Period of Contract. The Maintenance and Support Schedule shall confirm the OEM's undertaking and commitment

2.13.2 Miscellaneous Matters

2.13.2.1 Whole Agreement

2.13.2.1.1 The Contract constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of the Contract not incorporated in the Contract shall be binding on either of the Parties.

2.13.2.1.2 The Contract supersedes and replaces any and all prior representations, warranties, undertakings, promises, statements, negotiations and letters given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

2.13.2.2 Variations to be in Writing

2.13.2.2.1 No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of the Contract will be of any force or effect unless in writing and signed by the duly authorised representatives of the Parties. The amendment of the Contract shall be recorded as an addendum to the Contract.

2.13.2.3 No Indulgences

2.13.2.3.1 No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of either Party arising from the Contract and no single or partial exercise of any right by either Party under the Contract, shall in any circumstances be construed to be an implied consent or election by that Party or operate as a waiver or a novation of or otherwise affect any of its rights in terms of or arising from the Contract or estop or preclude it from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of either Party in exercising any right, power or privilege under the Contract will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

2.13.2.4 No Waiver or Suspension of Rights

2.13.2.4.1 No waiver, suspension or postponement by either Party of any right arising out of or in connection with the Contract shall be of any force or effect unless in writing and signed by that Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

2.13.2.5 Provisions Severable

2.13.2.5.1 All provisions and the various clauses of the Contract are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of the Contract which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of the Contract shall remain of full force and effect. The Parties declare that it is their intention that the Contract would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

2.13.2.6 Continuing Effectiveness of Certain Provisions

2.13.2.6.1 The expiration or early termination of the Contract shall not affect such of the provisions of the Contract as expressly provide that they will operate after any such expiration or early termination or which of necessity must continue to have effect after such expiration or early termination, notwithstanding that the clauses themselves do not expressly provide for this.

2.13.2.7 Assignment

2.13.2.7.1 Neither Party shall cede, assign or delegate any of its rights and/or obligations in terms of the Contract to any third party without prior written consent of the other Party, which consent shall not be unfeasible withheld.

## 2.14 PART N

2.14.1 Notices

2.14.1.1 After Contract award, any notice required or authorised to be given or served upon a Party pursuant to the Contract shall be written and may be given by electronic mail, registered post or hand delivered to that Party at its address appearing in the Contract or otherwise advised by each Party in writing from time to time.

2.14.1.2 After Contract award, any notice given to ATNS shall be addressed to the Engineer.

## 2.15 PART O

2.15.1 Options

2.15.1.1 ATNS may decide, at its discretion, to purchase additional quantities of any of the Supplies or related Goods and/or Services covered by the Contract. The Supplier shall offer the Supplies or related Goods and/or Services to ATNS under identical conditions of the Contract and at prices reflecting the scale of Order. This option shall extend for a period of up to sixty (60) Months from the Effective Date of the Contract, subject to Exchange Rate Fluctuation. This Clause does not commit ATNS to acquire any further quantities of the Supplies or related Goods and/or Services from the Supplier.

2.15.2 Orders

2.15.2.1 Supplies shall be delivered and services rendered only upon receipt of a written letter of acceptance or an Order from ATNS and accounts shall be rendered as indicated on the official Order or in the letter of acceptance or Contract, as the case may be.

## 2.16 PART P

2.16.1 Price

2.16.1.1 Price means the amount in the currency stated in the Tender Documents and which may be fixed or not fixed.

2.16.1.2 Fixed Price means the price that cannot be changed and is not subject to adjustment.

2.16.1.3 Price not fixed means the price that is subject to adjustment, or, if clearly indicated in the contract, a budgetary price.

2.16.2 Price for Customs Duties and Surcharges

2.16.2.1 Where applicable the estimated cost of all customs duties and import surcharges shall be quoted in the Price Schedule. The Supplier has indicated the tariff heading under which the equipment will be cleared through customs in the Price Schedule.

2.16.3 Price for Equipment

2.16.3.1 The Price contracted for equipment includes full compensation for the design of the Hybrid Lithium Battery Powered Inverter System in accordance with the technical specification and for the Manufacture of the various components of the Hybrid Lithium Battery Powered Inverter System.

2.16.4 Price for Services

2.16.4.1 The Price contracted for services includes full compensation for maintenance to the Hybrid Lithium Battery Powered Inverter System, buildings, electrical work, etc. on a regular basis, for a predetermined period, for transport of all equipment from the place of Manufacture , the port or Airport to which it was imported, to the site, for comprehensive insurance cover, during the whole contract period, as specified in Clause 2.9.7.1.1, for all customs duties, import surcharges and finance charges associated with the import of the various components, for unpacking equipment at the site and installing it and for all civil and electrical Works for which the specified Provisional Sum is included in the Price Schedule.

2.16.4.2 The building(s) or building alterations (as applicable) and structures shall be constructed, and all electrical Installation work undertaken, by the Supplier or a selected Sub-Contractor(s).

2.16.5 Provision of Spares

2.16.5.1 The Price contracted for the provision of spares shall include full compensation for the Delivery of the spares considered by the Supplier advisable to be held in store. The spares shall be according to the list submitted with the Tender Documents.

2.16.6 Price for Documentation

2.16.6.1 The Price contracted for Documentation, includes full compensation for the supply of all Documentation, excluding the material needed for Training of operating and maintenance staff.

2.16.7 Price for Training of Operating and Maintenance Staff

2.16.7.1 The Prices contracted for the Training of operating and maintenance staff shall include full compensation for all costs incurred to train the number of operating and maintenance staff for the duration as submitted with the Tender Documents and for providing the necessary operating and maintenance manuals.

2.16.8 Price for Test Equipment

2.16.8.1 The Price contracted for test equipment includes full compensation for all test equipment, special tools, etc., that will be necessary, for the technical staff of ATNS, to fully maintain the complete system for its full operational lifetime.

2.16.9 Price for Acceptance Test

2.16.9.1 The Price contracted for acceptance tests includes full compensation for all acceptance tests required in terms of the Contract.

2.16.10 Price Lists

2.16.10.1 Price lists, which are part of the Contract, shall not be amended without the approval of ATNS.

2.16.11 Total Contract Price

2.16.11.1 Subject to any Contract variations as defined and processed in accordance with the Contract, the total Contract Price for the provision of the Goods and/or Services under the Contract shall be as stated in the Form of Contract. Schedule "**A**" and "**A1**" of the Contract defines the Price Schedule and Milestone Payment Schedule for the provision of the Goods and/or Services for the Project as defined in the Contract.

2.16.12 Payment Method

2.16.12.1 ATNS reserves the right to enter into an agreement with any third-party financial institution regarding the payment of amounts that may be due from time to time in terms of the Contract. In any event the Milestone Payment Schedule shall be based upon the milestone breakdown below:

| Milestones | Payment Structure |
|---|---|

| | |
|---|---|
| **ATNS does not effect advanced payments** | |
| Design Review and Approval | **10%** |
| Supply and Delivery | **35%** |
| Installation and SAT | **45%** |
| Warranty | **10%** |
| **TOTAL** | **100%** |

2.16.12.2 The Supplier is required to **propose** a justifiable detailed Delivery Milestone Payment Schedule on Supply and Delivery and Installation and SAT.

2.16.12.3 The Supplier shall provide the Performance Guarantee upon conclusion of the Contact or so soon thereafter as ATNS may permit.

2.16.12.4 Variation Orders

2.16.12.4.1 Variation orders shall be paid as agreed per the Contract Variation Offer relating to such Contract Variation Order on completion at a rate of cost plus not more than five per cent (5%). The base costs shall be disclosed to ATNS prior to the Variation Order being approved in writing.

2.16.13 Rates of Exchange and Rate of Exchange Variation

2.16.13.1 Acquisition Phase

2.16.13.1.1 General

2.16.13.1.1.1 ATNS shall not be liable for the rate of exchange variation under the Contract for the Acquisition Phase. The Contract Price shall be a fixed in Rands for the Acquisition Phase. Should there be any variation/change to the Contract Price due to a change in the rate of exchange, such price variation/change shall be for the account or cost of the Supplier. At the award of the Contract, the Supplier shall hedge the foreign content for that Year and any variation between the spot rate and the hedged rate shall be for the account or credit of the Supplier.

2.16.13.1.1.2 The Contract Price of the Acquisition Phase shall be fixed at the time that the Supplier submits its Tender response to ATNS. The Supplier's Tender response shall form part of the Tender Documents.

2.16.13.1.1.3 The Supplier must submit the Tender Documents in Rand value based on a fixed exchange rate. This exchange rate shall be the one referred to when entering into the Contract and when the requisite Goods and/or Services are delivered during the Period of Contract. The exchange rate shall remain fixed even if the validity period of the tender is extended, as long all procedures and processes has been followed to extend the validity period.

2.16.13.1.1.4 Evaluation will be based on the Rand value submitted by the Supplier. The Supplier must submit the Tender Documents in Rand value based on a fixed exchange rate. This exchange rate shall be the one referred to when entering into the contract and when the requisite goods and services are delivered during the course of the contract. The exchange rate shall remain fixed even if the validity period of the tender is extended, as long all procedures and processes has been followed to extend the validity period.

2.16.13.1.2 Option and Contract Variation Orders (CVO)

2.16.13.1.2.1 Any options: ATNS shall not be liable for the Rate of Exchange Variation under the Contract for Acquisition Phase. The Contract Price shall be a fixed in Rands for the Acquisition Phase. Should there be any variation/change to the Contract Price due to a change in the rate of exchange, such price variation/change shall be for the account or credit of the Supplier.

2.16.13.1.2.2 The Contract shall be varied only by variations approved by the Engineer. Either the Supplier or ATNS may submit variations to the Contract. Any additional work or expenses incurred by the Supplier in performing activities outside the scope of the Contract and not approved through a contract variation shall be at the Suppliers cost and no liability shall rest with ATNS.

2.16.13.1.2.3 Contract variation requests by the Supplier shall be submitted to the Engineer for consideration. The Engineer shall, provided the submission is properly documented; approve or reject the contract variation request within thirty (30) Days of receipt at his/her office and notify the Supplier accordingly.

2.16.13.1.2.4 On approval of a contract variation request, the Engineer shall issue a contract change notice amending the Contract as appropriate.

2.16.13.2 Maintenance and Support Phase

2.16.13.2.1 General

2.16.13.2.1.1 At the commencement of each Year of support, the Supplier shall hedge the foreign content for that Year, for foreign risk management. ATNS will pay the lesser of the amount

of the Spot Rate or Hedged Rate and any variation between the Spot Rate on submission of the invoice and the Hedged Rate shall be for the account or credit of ATNS.

2.16.13.2.1.2 The Supplier shall provide the total estimated foreign component cost of the maintenance and support cost over the duration of the Maintenance and Support Phase.

2.16.13.2.1.3 The Supplier shall provide the foreign component cost in the first (1st) Year and provide the percentages on how the Maintenance and Support Phase costs escalates with the South Africa consumer price index ("**CPI**") or index every Year over the duration of the three (3) Year Maintenance and Support Phase. The projected three (3) Year Maintenance and Support Phase] cost shall be fixed in foreign currency**.** The Table "**A**" below must be completed.

2.16.13.2.1.4 The Supplier shall provide the local costs and percentage escalations for each Year for the Period of Contract for the Maintenance and Support Phase as indicated on the table below. The total local cost for each Year shall include the estimated CPI or index escalations over the three (3) Year Maintenance and Support Phase. The projected three (3) Year Maintenance and Support Phase cost shall be fixed in local currency. The Table "**B**" below must be completed

2.16.13.2.1.5 The total Contract Price shall include the foreign component of the Price translated into Rands as well as the Local Component added together.

**Table A**

| Support maintenance contract | Foreign Currency Amount | Percentage Escalations |
|---|---|---|
| Year 1 | 300,000.00 | |
| Year2 | 330,000.00 | 10% |
| Year 3 | 379,500.00 | 15% |

2.16.13.2.1.6 The Supplier shall provide the total cost for the maintenance and support in local currency. Please see the template below:

**Table B**

| Support maintenance contract | Foreign Currency Amount | Percentage Escalations |
|---|---|---|
| Year 1 | 300,000.00 | |
| Year2 | 330,000.00 | 10% |
| Year 3 | 379,500.00 | 15% |

2.16.13.2.2 Option and Contract Variation Orders (CVO)

2.16.13.2.2.1 Any options or Contract Variation Orders shall be hedged upon receipt of an Order by the Supplier, and any variation between the quoted rate and hedged rate shall be for the account or credit of the Supplier.

2.16.14 Payment

2.16.14.1 ATNS shall make payment to the Supplier in accordance with the Contract terms and the Milestone Payment Schedule, provided the relevant Goods and/or Services have been Accepted and Delivered to, or Installed at the Delivery Site(s) or Installation Site(s), and a properly completed invoice has been presented to the Engineer.

2.16.14.2 Payment shall be effected thirty (30) Days following receipt by the Engineer of a properly completed invoice indicating the Contract number, purchase Order number, milestone title and Milestone Payment amount. The Engineer reserves the right to reject any improperly submitted invoice for resubmission by the Supplier and not effect payment. Payment shall be effected on receipt of a subsequent properly completed invoice.

2.16.14.3 No claims for payment from the Supplier in respect of loose equipment or materials or equipment stored on site and/or off site will be entertained by the Engineer.

2.16.14.4 ATNS shall not make any payment to the Supplier in the event that the Supplier fails to maintain and/or return to ATNS the Delivery Site(s) and/or Installation Site(s) in a neat and ordinary condition.

2.16.15 Programme

2.16.15.1 A detailed Installation programme shall be submitted by the Supplier, at least ninety (90) Days before the proposed Installation commencement date, to ATNS for approval and such approval shall be obtained before Installation commences.

2.16.16 Packing, Packing Materials, Containers

2.16.16.1 Unless otherwise specifically provided for in the Contract, the Supplier is responsible for packing supplies at its own cost and in such a manner as to ensure that there is no loss or damage in transit.

2.16.16.2 Unless otherwise agreed no charge shall be allowed for packing material or containers and such material or containers shall not be returned to the Supplier.

2.16.16.3 Where provision is expressly made in the Contract for the return of packing material or containers, such packing material or containers shall be returned at the Supplier's expense**.** Returnable packing material or containers shall be invoiced at the prices given in the Contract and full credit shall be allowed therefor on receipt of ATNS' claim supported by a copy of the freight transit Order irrespective of whether they are returnable to the Supplier or to a third party.

2.16.16.4 The Supplier is responsible for ensuring that supplies to be shipped or railed are properly packed having regard to the requirements of the Order and of the South African Conference Lines or other shipping lines serving South African ports or an inland transport service as the case may be, relating to the use of certain types of containers and wrappers. Unless otherwise expressly agreed, such containers and wrappers will be accepted only on the understanding that the Supplier indemnifies ATNS and its employees against any loss, breakage or damage occasioned by their use. Should bills of lading be classed to the effect that the ship is not responsible for such loss, breakage or damage, the Supplier shall accept responsibility therefore.

2.16.16.5 Any special packing requirements such as palletising, containerisation, etc., shall be provided if necessary or if so required in the Tender Documents.

2.16.17 Participation in Installation

2.16.17.1 ATNS reserves the right, to attach officers of ATNS to the Supplier's Installation team during the Installation and Commissioning of the equipment, for the purpose of obtaining practical experience on the equipment.

2.16.18 Procurement Outside of the Contract

2.16.18.1 ATNS reserves the right to procure, outside of the Contract, small quantities or to have minor essential services executed if an emergency arises, the Supplier's point of supply is not situated at or near the place where the supplies are required, or if the Supplier's services are not readily available**.**

2.16.18.2 No provision in the Contract shall be deemed to prohibit the obtaining by ATNS of supplies or services from another entity.

2.16.19 Precedence

2.16.19.1 The order of precedence shall be the Instrument of Agreement, the Conditions of Contract and the Schedules in alphabetical order as included within the Form of Contract as provided in this document.

2.16.20 Performance

2.16.20.1 The Supplier shall supply, install, test, set to work, commission and maintain the Goods and/or Services in accordance with the requirements of the Management Plan and Integrated Logistic Support Plan contained in the Project Management Schedule to the Contract.

2.16.21 Protection of Personal Information

2.16.21.1 Each of the Parties shall ensure that its employees, representatives and officers, comply with the provisions of the Protection of Personal Information Act, 2013 ("**POPIA**") and all other applicable data protection laws and, without limitation to the aforegoing, shall ensure the security and confidentiality of all Personal Information processed by that Party is in accordance with POPIA and all other applicable data protection laws.

2.16.21.2 The Supplier must only process personal information of ATNS and third parties on behalf of ATNS, with ATNS' knowledge or authorisation, treat such information which comes to their knowledge as confidential and must not disclose it unless required by law or in the course of the proper performance of the Supplier's duties**.** The Supplier must comply with the responsible party's obligations in clause section 19 of POPIA.

2.16.21.3 Where the Supplier, its agents, Sub-Contractor(s), officers, directors, shareholders, representatives, or employees has/have access to any Personal Information held by ATNS for any reason in connection with the Supplier or is/are supplied with or otherwise provided with Personal Information by ATNS or on behalf of ATNS for any purpose, or are supplied with or otherwise provided with Personal Information relating to the Services, the Supplier shall:

2.16.21.3.1 process such Personal Information only for purposes of performing its/their obligations under the Contract and shall not otherwise modify, amend or alter the contents of such Personal Information or disclose or permit the disclosure of such Personal Information to any third party, unless specifically authorised to do so by ATNS or as required by law or any regulatory authority, and shall take all such steps as may be necessary to protect and safeguard such Personal Information;

2.16.21.3.2 without prejudice to the generality of the foregoing, ensure that appropriate, reasonable technical and organisational measures shall be taken by it/them to prevent -

2.16.21.3.2.1 the unauthorised or unlawful processing of such Personal Information;

2.16.21.3.2.2 the accidental loss or destruction of, or damage to, such Personal Information; and

2.16.21.3.2.3 promptly notify ATNS when it becomes aware of any unauthorised, unlawful or dishonest conduct or activities, or any breach of the terms of the Contract relating to Personal Information.

2.16.21.4 The Supplier shall be liable for all claims, demands, actions, costs, expenses (including but not limited to reasonable legal costs and disbursements), fines, losses and damages arising from or incurred by reason of any wrongful processing of any Personal Information by the Supplier (including its agents, Sub-Contractor(s), officers, representatives or employees) for any breach of its obligations or warranties in terms of this Clause.

2.16.21.5 Both Parties will comply with their obligations under POPIA in relation to personal information for which they are the responsible party.

2.16.21.6 The Supplier must notify ATNS immediately where there are reasonable grounds to believe that personal information has been accessed or acquired by any unauthorised person (Data Breach) and must assist ATNS, at its own cost: a) with any investigation or notice to the Regulator or data subjects that ATNS may make in relation to a Data Breach; and b) in responding to any directions by the Regulator to publicise the Data Breach, including assisting ATNS to make public announcements if required.

2.16.21.7 The Supplier indemnifies ATNS against any civil or criminal action or administrative fine or other penalty or loss as a result of the Supplier's breach of this Clause.

## 2.17 PART Q

2.17.1 Quality

2.17.1.1 Goods supplied and Services rendered shall be in accordance with, and the Supplier guarantees that they are equal in all respects to, the samples, patterns, drawings and Specifications stipulated in the Contract or Order and unless otherwise specified, supplies shall be new and unused. Where specific grades and special brands are specified, only such grades and brands shall be supplied unless ATNS agrees otherwise.

2.17.1.2 Where the Contract calls for a supply or service according to a standard specification of the South African Bureau of Standards, the Supplier is required to take cognisance of the provisions of sections 15(6), (7) and (8) of the Standards Act, 1982 (Act No. 30 of 1982), as amended or replaced from time to time.

2.17.2 Quantities other than those Specified

2.17.2.1 If a Tender response is based on quantities and the Tender response is accepted for a quantity other than that called for or offered, the Supplier will be given the option of refusing acceptance if the quantity required is less than that for which it has tendered. However, if the Tender response is accepted for a larger quantity, only the excess may be refused. Written notification of rejection of the changed quantities must be received from the Supplier within fourteen (14) Days of the date on which it was advised of the change, failing which the Supplier will be deemed to have accepted the change.

## 2.18 PART R

2.18.1 Relaxation

2.18.1.1 Waiver of any right arising from a breach of the Contract or any right arising from a default under the Contract shall be in writing and signed by the Party granting the waiver.

2.18.1.2 A failure or delay in exercise, or partial exercise, of a right arising from a breach of the Contract does not result in a waiver of that right.

2.18.1.3 A Party is not entitled to rely on a delay in the exercise or non-exercise of a right arising from a breach of the Contract or on a default under the Contract as constituting a waiver of that right.

2.18.1.4 A Party may not rely on any conduct of another party as a defence to the exercise of a right by that other party.

2.18.1.5 This Clause may not itself be waived except in writing.

2.18.2 Responsibility and Care of the Works

2.18.2.1 From the commencement to the completion of the Contract, the Supplier shall take full responsibility for the care thereof and of all temporary works, materials and equipment and in the event of any damage, loss or injury to any part thereof or to any temporary works or materials, from any cause whatsoever (save the excepted risks as defined hereafter in Clause 2.18.2.2), it shall at his own expense repair and make good the same so that upon completion, the Project shall be in good order and condition and in conformity in every respect with the provisions of the Contract. In the event of any such damage, loss or injury resulting from any of the excepted risks, the Supplier shall, if and to the extent required by the Engineer, repair and make good the same as aforesaid, at the cost of ATNS.

2.18.2.2 The excepted risks are -

2.18.2.2.1 war, invasion, act of foreign enemies, hostilities (whether war be declared or not) or civil war;

2.18.2.2.2 insurrection, terrorism, rebellion or revolution;

2.18.2.2.3 mutiny, military rising, military or usurped power, martial law or state of siege, or any other event or cause which determines the proclamation or maintenance of martial law or state of siege;

2.18.2.2.4 riot (in so far as it is uninsurable);

2.18.2.2.5 risks arising from political riot and malicious damage, unless these risks are insurable with the South African Special Risk Insurance Association at the time of Tendering and it is stipulated in the contract that the Supplier is to effect insurance against these risks;

2.18.2.2.6 any occurrence for which a fund has been established in terms of the War Damage Insurance and Compensation Act;

2.18.2.2.7 ionising, radiation or contamination by radio-activity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuels;

2.18.2.2.8 pressure waves caused by aircraft or other aerial devices travelling at sonic and supersonic speeds;

2.18.2.2.9 a cause due to the negligence or omission on the part of ATNS; or

(all of which are collectively referred to as "**the excepted risks**").

2.18.2.3 The Supplier shall take all reasonable steps and make all reasonable efforts to mitigate the impact caused by the expected risks.

2.18.3 Risk

2.18.3.1 The risk of loss or damage to all the Goods and/or Services shall remain with the Supplier until the issue of the Substantial Completion Certificate. Subsequently, liability for Spares, Test Equipment and Services shall remain with the Supplier until Final Acceptance. Ownership in the Goods and/or Services shall pass to ATNS on payment of the relevant Milestone Payment.

2.18.3.2 Risk in Delivery of the Goods and/or Services, in accordance with Clause 2.4.4 shall be according to DDP principle.

## 2.19 PART S

2.19.1 Services Available

2.19.1.1 The necessary electricity and ablution facilities will not be provided by ATNS for use by the Supplier during construction Installation and Commissioning activities.

2.19.1.2 It shall be the responsibility of the Supplier, to connect to the available electricity and water supplies. The Supplier will also be responsible for providing ablution facilities on site.

2.19.2 Site

2.19.2.1 The site, for erection of the structure, will normally also serve as the Supplier's site where it must erect offices, stores, etc. to enable it to fulfil its duties, regarding all civil and other Works required to complete the Project. Any site and storage accommodation required by the Supplier and its Sub-Contractor(s), for their own use, shall be included in the Contract.

2.19.2.2 The Supplier shall keep the site(s) clean and tidy at all times and shall restore it to its original condition, at its own expense, to the Engineer's satisfaction. No pollution or littering of any kind will be tolerated.

2.19.2.3 The Supplier shall be responsible for the dewatering of the excavations, when necessary, and shall protect the Works against damage due to storm, rain, snow, river water floods, storm water, subsoil water and seepage. The Supplier shall reinstate, at its own cost, or pay compensation for all damage occurring to the Works by water or otherwise, during the validity of the Contract.

2.19.2.4 The Supplier shall supply and erect a notice board and maintain same in a prominent position. The notice board shall state, in one official language, the description of the work as well as the full name and address of ATNS, Supplier and any major Sub-Contractor(s) or design consultant engaged by the Supplier for the purposes of execution of the Contract. The Supplier shall remove the board, on completion of the work and make good, all ground disturbed, to the entire satisfaction of ATNS or its representative.

2.19.3 Clearance of Site on Completion

2.19.3.1 On completion of the installation, the Supplier shall clear away and remove from the site all surplus materials, rubbish and temporary works of every kind and leave the area around the site clean and in a workmanlike and safe condition to the satisfaction of the Engineer. Suppliers are required to take special notice of permissions and conditions contained in Environmental Impact Assessment Permissions granted.

2.19.4 Substitution for Local Products

2.19.4.1 In the event of the Contract being concluded for the supply of products produced in the Republic, the Supplier desiring to substitute imported products therefore may do so only if it obtains the prior approval of ATNS.

2.19.5 Superintendence by the Supplier

2.19.5.1 The Supplier shall give or provide all necessary superintendence during the execution of the Contract. The Supplier or a competent and authorised agent or representative approved of in writing by the Engineer (which approval may at any time be withdrawn) shall be on the site during the execution of the contract and shall give his whole time to the supervision thereof and be constantly available for the duration of the contract. Such authorised agent or representative shall receive on behalf of the Supplier directions and instructions from the Engineer.

2.19.6 Sub-Contractors

2.19.6.1 ATNS and the Supplier shall compile a list of firms of Sub-Contractors acceptable to both and who will be invited to submit tenders. Before the closing date of such tenders the Supplier shall furnish ATNS with a sealed list in which is indicated the price increase required by the Supplier regarding the handling and appointment of every tenderer as selected Sub-Contractor. The list is then opened with the tenders and on the basis thereof ATNS shall indicate which tender it wishes to accept. Unless such tender contains provisions or qualifications to which the Supplier takes reasonable objection, the Supplier shall accept that tenderer and appoint it as selected Sub-Contractor.

2.19.6.2 The Supplier shall not be compelled to take into its employ a selected Sub-Contractor to whom it takes reasonable objection or who declines to enter into a subcontract with the Supplier containing provisions that:

2.19.6.2.1 in respect of the work that is the subject of the subcontract the selected Sub-Contractor undertakes to the Supplier the like obligations and liabilities as are imposed upon the Supplier towards ATNS in terms of the Contract, and holds the Supplier harmless from and indemnifies it against the same and in respect of all claims, demand, lawsuits, damages, costs, charges and expenses whatsoever arising out of or in connection therewith, or arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities, and

2.19.6.2.2 the selected Sub-Contractor holds the Supplier harmless from and indemnifies it against:

2.19.6.2.2.1 shortcomings in the subcontracted Works if and where the Works were designed by the selected Sub-Contractor;

2.19.6.2.2.2 defects in the goods if and where the goods were Manufactured and/or supplied by the selected Sub-Contractor;

2.19.6.2.2.3 any negligence by the selected Sub-Contractor, its agents, employees, workmen and servants;

2.19.6.2.2.4 any misuse by the selected Sub-Contractor of any constructional plant, temporary Works or materials provided by the Supplier for the purposes of the Contract; and

2.19.6.2.2.5 any claims as aforesaid.

2.19.6.3 Before the Engineer issues any certificate that includes any payment in respect of work done by any selected Sub-Contractor, he/she shall be entitled to call upon the Supplier to furnish reasonable proof that all payments included in previous certificates in respect of the work done by such selected Sub-Contractor have been made or discharged by the Supplier, in default of which, unless the Supplier -

2.19.6.3.1 informs the Engineer in writing that it has reasonable cause for withholding or refusing such payment; and

2.19.6.3.2 submit to the Engineer reasonable proof that it has so informed such selected Sub-Contractor in writing.

2.19.6.4 ATNS shall be entitled to pay direct to such selected Sub-Contractor on the Engineer's certificate all payments the Supplier has failed to make to such Sub-Contractor and to deduct, by way of settlement, the amount so paid by ATNS from any moneys owing to or that may become owing to the Supplier.

2.19.6.5 Where ATNS appoints the Supplier with a Sub-Contractor, the Supplier shall accept overall responsibility for Delivery of all of the Goods and/or Services and for integrating the subcontracted Goods and/or Services into the Suppliers deliverables against the Contract. The Supplier shall be responsible for establishing a written contractual relationship with the Sub-Contractor for this purpose.

2.19.7 Statements of Goods and/or Services

2.19.7.1 The Supplier shall, when requested to do so, furnish particulars of supplies delivered or services executed. If it fails to do so, ATNS may, without prejudice to any other rights which it may have, institute inquiries at the expense of the Supplier to obtain the required particulars.

2.19.8 Security (also see Guarantee and Warrantee – Clause 2.7.1)

2.19.8.1 Unless otherwise stated, security covering the following amounts is required from the Supplier:

2.19.8.1.1 Where ATNS property is to be handed to Suppliers, the value of ATNS property which may be in the possession of the Supplier at any time; and

2.19.8.1.2 Performance Guarantee of twenty per cent (20%) of the Design Review and Approval, Supply, Deliver, Installation and SAT.

2.19.8.2 Where approval has been granted for advance or progress payments to the Supplier, the security to be provided by the Supplier will be determined by ATNS.

2.19.8.3 The Performance Guarantee required consists of an unconditional bank guarantee issued by a banking institution registered in terms of the Banks Act, 1990, Act No. 94 of 1990; or such other form of security as ATNS approves.

2.19.8.4 In accordance with the requirements of Clause 2.19.8.1, the Supplier shall at the execution of the Contract, and at the discretion of ATNS, provide to the Engineer in consideration of ATNS an unconditional bank guarantee to the value of twenty per cent (20%) of the Design Review and Approval, Supply, Deliver, Installation and SAT.

2.19.8.5 The Engineer is entitled, without any further reference to the Supplier, to use the security under the circumstances permitted by the Contract.

2.19.8.6 The Supplier warrants to ATNS that it shall not institute any proceedings or take any steps to injunct ATNS or in any way seek to restrain ATNS from exercising its rights to the security.

2.19.8.7 Subject to the guarantor's maximum liability referred to above, the guarantor must undertake to pay ATNS the guaranteed sum, or the full outstanding balance, upon receipt of a first written demand notice from ATNS to the guarantor at the guarantor's physical address calling up this guarantee stating that:

2.19.8.7.1 the Contract has been terminated due to the Supplier's default and that the security is called up in terms of Clause 2.19.8. The demand notice shall enclose a copy of the notice of termination; or

2.19.8.7.2 a provisional liquidation court order has been granted against the Supplier and that the guarantee is called up in terms of Clause 2.19.8. The demand notice shall enclose a copy of the court order.

2.19.8.8 Payment by the guarantor as referred above shall be made within seven (7) calendar Days upon receipt of the first written demand notice to the guarantor.

2.19.8.9 This guarantee for performance shall neither be negotiable nor transferable and shall expire in terms of the Contract or on payment in full of the guaranteed sum or on the security expiry date, whichever is the earlier, whereafter no claims will be considered by the guarantor. The original guarantee form shall be returned to the guarantor after it has expired.

2.19.8.10 This guarantee for performance, with the required demand notices referred above, shall be regarded as a liquid document for the purpose of obtaining a court order.

2.19.8.11 Where this guarantee for performance is issued in the Republic of South Africa, the guarantor must consent to the jurisdiction of a court in the area where the Project is located.

2.19.8.12 The Performance-Based Security shall be released on the issuance of the Certificate of Final Acceptance for the Goods and/or Services. The Engineer shall provide the Supplier with a written notice addressed to the designated financial institution stating that the Performance-Based Security may be fully released.

2.19.9 Safety

2.19.9.1 In terms of the provisions of Section 37(2) of the Occupational Health and Safety Act 1993 (Act 85 of 1993, hereinafter referred to as the "**OHS Act**") that the following arrangements and procedures shall apply between ATNS and the Supplier to ensure compliance by the Supplier with the provisions of the OHS Act, namely:-

2.19.9.1.1 the appropriate officials and employees of the Supplier and their nominated Sub-Contractor(s) shall fully acquaint themselves with all relevant provisions of the OHS Act and the regulations promulgated in terms of the OHS Act;

2.19.9.1.2 the Supplier shall fully comply with all relevant duties, obligations and prohibitions imposed in terms of the OHS Act and Regulations;

2.19.9.1.3 the Supplier shall accept sole liability for such due compliance with the relevant duties, obligations and prohibitions imposed by the OHS Act and Regulations and shall expressly absolve ATNS from itself being obliged to comply with any of the aforesaid duties, obligations and prohibitions;

2.19.9.1.4 any duly authorised officials of ATNS shall be entitled, although not obliged, to take such steps as may be necessary to ensure that the Supplier has complied with its undertakings as set out in this Clause, which steps may include, but will not be limited to, the right to inspect any appropriate site or premises occupied by the Supplier, or to inspect any appropriate records held by the Supplier; and

2.19.9.1.5 the Supplier shall report forthwith to ATNS any investigation, complaint or criminal charge which may arise as a consequence of the provisions of the OHS Act and Regulations, pursuant to work performed in terms of the Contract, and shall, on written demand, provide full details in writing of such investigation, complaint or criminal charge.

## 2.20 PART T

2.20.1 Taxes, Levies and Duties

2.20.1.1 A Supplier for projects in the Republic who is not based in South Africa, or who is based in the Republic but makes purchases for the Contract outside the Republic, is responsible for paying all relevant duties, levies and taxes which may be due on the importation of the purchases into the Republic and it indemnifies ATNS against any liability for the payment of such duties, levies and taxes. If so required by ATNS, the Supplier must indicate the gross value of the relevant purchases and also furnish the necessary proof that all such duties, levies and taxes have been paid.

2.20.2 Termination

2.20.2.1 Supplier's Default

2.20.2.1.1 Without prejudice to any of its rights under Clause 2.4.3, ATNS may give to the Supplier a written notice stating that it intends to terminate the Contract if any one of the following events has occurred, namely;

2.20.2.1.1.1 the Supplier or its Sub-Contractor(s) suspends work without written approval of the Engineer;

2.20.2.1.1.2 the Supplier or its Sub-Contractor(s) fail to proceed with due diligence and expedition;

2.20.2.1.1.3 the Supplier or its Sub-Contractor(s) fail to proceed in a competent manner;

2.20.2.1.1.4 the Supplier or its Sub-Contractor(s) fail to use the materials or standards of workmanship required by the Contract;

2.20.2.1.1.5 the Supplier or its Sub-Contractor(s) breach or ignore the requirements of Legislation;

2.20.2.1.1.6 the Supplier becomes bankrupt or insolvent, or makes an assignment of its property or estate for the benefit of creditors, or makes any arrangement or composition with its creditors, or proposes going into liquidation, or knows of or undertakes any other action which may lead to cessation of ATNS operations;

2.20.2.1.1.7 the Supplier assigns its rights otherwise than in accordance with the Contract; or

2.20.2.1.1.8 the Supplier or its Sub-Contractor(s) commit any other breach of the provisions of the Contract which is a substantial breach.

2.20.2.1.2 The notice shall specify the default.

2.20.2.2 Termination by ATNS for Supplier's Breach

2.20.2.2.1 If the Supplier fails to remedy a substantial breach of which it has been given notice under this Clause within thirty (30) Days of receipt of such notice ATNS may without prejudice to its other rights under the Contract, terminate the Contract without liability to the Supplier for compensation.

2.20.2.2.2 Notwithstanding any contrary provision in the Contract, upon termination of the Contract, ATNS shall pay the Supplier for all Goods and/or Services satisfactorily rendered up to the date of termination where the Contract has been terminated due to the Supplier's breach.

2.20.2.3 Termination by ATNS for Convenience

2.20.2.3.1 Notwithstanding any provision of the Contract to the contrary, ATNS may terminate the Contract, in whole or in part, for convenience and without any cause, at any time and without liability to the Supplier, by giving the Supplier not less than twelve (12) Months' prior written notice, provided that:

2.20.2.3.1.1 ATNS will be obliged to remunerate the Supplier for the Goods and/or Services satisfactorily rendered and costs reasonably incurred, and which cannot be reasonably be mitigate by the Supplier, up to the date of termination of the Contract in terms of this Clause;

2.20.2.3.1.2 ATNS' right to terminate envisaged in this Clause shall not be applied during the first twelve (12) Months from the Effective Date.

2.20.2.3.2 In the event that there is a change in technology resulting in technology upgrades in the Hybrid Lithium Battery Powered Inverter System or any part or element of the Goods and/or Services being requested by ATNS, which do not materially alter the overall design and architecture of the Hybrid Lithium Battery Powered Inverter System and/or Goods and/or Services, then ATNS may request such technology upgrade(s) from the Supplier and obtain a quote from the Supplier for such technology upgrade(s) (in respect of which new contractual terms will be negotiated between the Parties). Should the Supplier be unable to provide ATNS with the requested technology upgrade(s) in circumstances where the requested technology upgrade(s) exist and are otherwise available in the market for acquisition by ATNS, ATNS may terminate the Contract in terms of Clause 2.20.2.3.1.

2.20.3 Transport

2.20.3.1 Where use is made of a national transport service for the consignment of supplies and the Supplier consigns them by mobile containers, the surcharge for transportation in such containers as well as the extra cost for Delivery to the consignee from the destination station and any other incidental charges raised by the transport service are for the Supplier's account. Where, however, in exceptional cases, the Contract provides for the raising of separate charges for containers, packing or materials for packing and the supplies are, with the prior approval of ATNS, consigned unpacked in mobile containers, the

surcharge for transportation in such mobile containers, plus the extra cost for Delivery to the consignee at the destination station and any other incidental charges raised by the transport service, are for the account of ATNS.

2.20.3.2 Where the Contract provides for dispatch by rail from two or more railway stations or sidings ATNS reserves the right to choose the station or siding from which the supplies are to be despatched, unless otherwise stated in the Contract.

2.20.3.3 The Supplier shall make all arrangements with regard to the Delivery and transport of the equipment to the site. Delivery shall be on a DDP Incoterms (2020) basis and the cost thereof shall be quoted in the space provided in the Price Schedule.

## 2.21 PART U

[No particulars]

## 2.22 PART V

2.22.1 Variations

2.22.1.1 The terms, conditions and prices of the Contract shall be varied only by variations approved by the CEO of ATNS or his/her delegated official. Either the Supplier or ATNS may submit variations to the Contract. Any additional work or expenses incurred by the Supplier in performing activities outside the scope of the Contract and not approved through a contract variation shall be at the Supplier's cost and no liability shall rest with ATNS.

2.22.1.2 Request for contract variations by the Supplier shall be submitted to the Engineer for consideration prior to the work being undertaken. The CEO of ATNS shall, provided the submission is properly documented and falls within the prescribed variation threshold; approve or reject the variation and notify the Supplier accordingly.

2.22.1.3 Any variation above the prescribed threshold shall be submitted to ATNS and ATNS shall submit it to the relevant treasury for approval. Unless the variation is an emergency work and duly approved by the CEO of ATNS, no variation work shall be undertaken prior to written approval.

2.22.1.4 In the event of an emergency variation, the CEO of ATNS shall process (approve or reject) the variation order request within a reasonable time, from the time of receipt of the variation order request.

2.22.1.5 On approval of a contract variation, the Engineer shall issue a contract change notice amending the Contract as appropriate.

2.22.1.6 All variation for scope or price must be approved in writing.

## 2.23 PART W

[No particulars]

## 2.24 PART X

[No particulars]

## 2.25 PART Y

[No particulars]

## 2.26 PART Z

[No particulars]

# CHAPTER 3

# FORM OF CONTRACT

## CHAPTER 3 : FORM OF CONTRACT

## FOR THE SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF 53 HYBRID LITHIUM BATTERY POWERED INVERTERS FOR THE WIDE AREA MULTILATERATION ("WAM") PROGRAM SITES AND PROVISION OF THREE (3) YEARS OF ASSOCIATED MAINTENANCE AND SUPPORT

**THE CONTRACT** is made on the _____ day of _____ 2026 between the following parties:

1. The AIR TRAFFIC AND NAVIGATION SERVICES COMPANY LIMITED (hereinafter known as the "**ATNS**") of Private Bag X15, Kempton Park, 1620, South Africa

and

2. _____ (hereinafter known as the "**Supplier**") of _____,

**RECITALS**

A. ATNS hereby engages the Supplier to supply ATNS with the Goods and/or Services identified in the Contract.

B. The Supplier is experienced in _____ and agrees to provide the necessary resources, personnel, skills and expertise required to comply with all of its obligations under the Contract.

C. ATNS has selected the Suppliers proposal following ATNS' RFP Reference _____ and following subsequent clarifications and negotiations the Supplier has agreed to provide the Goods and/or Services to ATNS on the terms set out in this Contract.

**THE PARTIES AGREE**, in consideration of the mutual promises contained in the Contract, to perform all their obligations as set out in the Contract. In accordance with the Conditions of Contract, the Contract comprises:

1.1.1 This signed Form of Contract
1.1.2 The Contract Particulars
1.1.3 The Conditions of Contract
1.1.4 The Schedules from A to and including G

In the case of any conflict or inconsistency between any of the documents forming part of the Contract they shall be interpreted in the Order of precedence listed above.

EXECUTED by the Parties as a Contract

**IN WITNESS WHEREOF**, the Parties have duly executed this Contract on the date last written below.

**SIGNED** at _____ on this the _____ day of _____ 2026

**AS WITNESS:**

_____

_____

For and on behalf of ATNS, _____, in their capacity as _____, duly authorised hereto.

**SIGNED** at _____ on this the _____ day of _____ 2026

**AS WITNESS:**

_____

_____

For and on behalf of the Supplier**,** _____, in their capacity as_____, duly authorised hereto.

# CONTRACT PARTICULARS

| | |
|---|---|
| Total Contract Price | **ZAR XXXXX** |
| Maintenance and Support Contract Price | **ZAR XXXXX** |
| ATNS' Representative | **Chief Executive Officer**<br>**ATNS Company SOC Limited,**<br>**Private Bag X15,**<br>**Kempton Park, 1620**<br>**South Africa** |
| Supplier's Representative | **Managing Director/Chief Executive Officer**<br>**xxxxxxxxxxx,**<br>**xxxxxxxxxxx**<br>**xxxxxxxxxxx**<br>**xxxxxxxxxxx** |
| Maintenance Period: | **ten (10) Years from the Date of Final Acceptance as certified in the Taking-Over Certificate for the Whole of the Works** |
| Name of company providing Supplier's guarantee(s) | **[insert name of Guarantor]** |
| Percentage of Performance Guarantee | **20%** |
| Time for issuance of notice to commence after issuance of Letter of Acceptance | **30 Days** |
| Date for Substantial Completion: | **[insert Date]** |
| Liquidated Damages for delay to the Works | **ZAR 10,000.00 per Day, or in accordance with Clause 2.4.3.4.2 of the Conditions of Contract - whichever is greater.** |
| Warranty Period | **1 Year**<br>**To commence on the Date of Substantial Completion as certified in the Acceptance Certificate and to expire at a time of not less than 1 Year from the Date of Substantial Completion.** |
| Address for service of notices on ATNS' Representative<br>Physical Address: | **Chief Executive Officer**<br>**ATNS Company SOC Limited**<br>**Eastgate Office Park**<br>**Block C**<br>**South Boulevard Road**<br>**Burma**<br>**Gauteng** |

| | |
|---|---|
| | **South Africa** |
| | **2198** |
| Email Address: | MatomeMO@atns.co.za |
| Postal Address; | **ATNS Company Limited,** |
| | **Private Bag X15,** |
| | **Kempton Park, 1620** |
| | **South Africa** |
| Address for service of notices | |
| on Supplier's Representative | **Managing Director/Chief Executive Officer** |
| Physical Address: | **xxxxxxxxxxxxxxx** |
| | **xxxxxxxxxxxxxxx** |
| | **xxxxxxxxxxxxxxx** |
| | **xxxxxxxxxxxxxxx** |
| Email Address: | **xxxxxxxxxxxxxxx** |
| Postal Address: | **xxxxxxxxxxxxxxx** |

## SCHEDULES

The list of Schedules attached to this "Form of Contract" provides reference to the actual schedules that will become an integral part of the Contract. The schedules will be assembled for the Contract from information provided by the Supplier with his Tender or as amended by agreement with the Engineer in accordance with the Conditions of Contract. In some cases, the schedules listed may provide overlapping information in which case the list will be rationalised prior to Contract execution.

## SCHEDULES

| | |
|---|---|
| Schedule A | Price Schedule |
| Schedule A1 | Milestone Payment Schedule |
| Schedule B | Tender Documents (Statement of Compliance including List of Supplies) |
| Schedule C | Project Management Schedule |
| Schedule D | Maintenance and Support Schedule |
| Schedule E | Performance Guarantee |
| Schedule F | Sample of Acceptance Certificate |
| Schedule G | Statement of Compliance |