



**NEC3 Engineering & Construction Contract**

<b>Between</b>	<b>ESKOM HOLDINGS LIMITED (Reg No. 2002/015527/06)</b>	
<b>and</b>	<b>[Insert at award stage] (Reg No. _____ )</b>	
<b>for</b>	<b>UPGRADE OF SECURITY SYSTEM FOR A PERIOD OF 36 MONTHS AT DUVHA POWER STATION</b>	
<b>Contents:</b>		
<b>Part C1</b>	<b>Agreements &amp; Contract Data</b>	
<b>Part C2</b>	<b>Pricing Data</b>	
<b>Part C3</b>	<b>Scope of Work</b>	
<b>Part C4</b>	<b>Site Information</b>	
<b>CONTRACT No.</b>	<b>MPGXC006479R1</b>	

## Part C1: Agreements & Contract Data

<b>Contents:</b>		<b>No of pages</b>
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## C1.1 Form of Offer & Acceptance

### Offer

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

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The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto and by submitting this Offer has accepted the Conditions of Tender.

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

Options A	The offered total of the Prices exclusive of VAT is	R
	Sub total	R
	Value Added Tax @ 15% is	R
	The offered total of the amount due inclusive of VAT is <sup>1</sup>	R
	(in words)	

This Offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Contractor* in the *conditions of contract* identified in the Contract Data.

Signature(s):			
Name(s):			
Capacity:			
<b>For the tenderer:</b>			
Name & signature of witness	(Insert name and address of organisation)	Date:	
Tenderer's CIDB registration number:			

<sup>1</sup> This total is required by the *Employer* for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*.

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**Acceptance**

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

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

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

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the Schedule of Deviations (if any).

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

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

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**Schedule of Deviations to be completed by the Employer prior to contract award**

Note:

1. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Employer prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
3. A tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

By the duly authorised representatives signing this Schedule of Deviations below, the Employer and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

	<b>For the tenderer:</b>	<b>For the Employer:</b>
Signature:		
Name:		
Capacity:		
On behalf of	<i>(Insert name and address of organisation)</i>	<i>(Insert name and address of organisation)</i>
Name & signature of witness		
Date		

## C1.2 ECC3 Contract Data

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		<b>A: Priced contract with activity schedule</b>
	dispute resolution Option	<b>W1: Dispute resolution procedure</b>
	and secondary Options	
		<b>X1: Price Adjustment</b>
		<b>X2: Changes in the law</b>
		<b>X5: Sectional Completion</b>
		<b>X7: Delay damages</b>
		<b>X16: Retention</b>
		<b>X17: Low performance damages</b>
	<b>[always used by Eskom]</b>	<b>X18: Limitation of liability</b>
		<b>Z: Additional conditions of contract</b>
	of the NEC3 Engineering and Construction Contract, June 2005 (ECC3) (with amendments June 2006)	
10.1	The <i>Employer</i> is (Name):	<b>Eskom Holdings Limited (reg no: 2002/015527/06), a juristic person incorporated in terms of the company laws of the Republic of South Africa</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Represented by:	<b>Shirly Dhladhla</b>
	Tel No.	<b>013 295 9465</b>
	Fax No.	
10.1	The <i>Project Manager</i> is: (Name)	<b>To be advised</b>

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	Address	<b>Duvha Power Station PO Box 2199 Witbank 1035</b>
	Tel	
	Fax	
	e-mail	<b>Dhladhs@eskom.co.za</b>
10.1	The <i>Supervisor</i> is: (Name)	<b>To be advised</b>
	Address	<b>Duvha Power Station PO Box 2199 Witbank 1035</b>
	Tel	
	Fax	
	e-mail	
11.2(13)	The <i>works</i> are	<b>Design, Supply, Delivery, Installation, Testing, Commissioning and handover of a complete Access control and CCTV Surveillance system at Duvha Power Station (as per attached Works information)</b>
11.2(14)	The following matters will be included in the Risk Register	<ol style="list-style-type: none"> <li>1. <b>Dust Inhalation</b></li> <li>2. <b>Slip, Trip &amp; Fall</b></li> <li>3. <b>Falling Objects</b></li> <li>4. <b>Electric Shock</b></li> <li>5. <b>Permit to Work</b></li> <li>6. <b>Working at heights</b></li> <li>7. <b>Quality</b></li> <li>8. <b>Time</b></li> <li>9. <b>Covid-19</b></li> </ol>
11.2(15)	The <i>boundaries of the site</i> are	<b>Where activities will be carried out</b>
11.2(16)	The Site Information is in	<b>Part 4: Site Information</b>
11.2(19)	The Works Information is in	<b>Part 3: Scope of Work and all documents and drawings to which it makes reference.</b>
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>Two working days.</b>
<b>2</b>	<b>The Contractor's main responsibilities</b>	<b>Data required by this section of the core clauses is provided by the Contractor in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.</b>

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<b>3</b>	<b>Time</b>		
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	<b>31 May 2024.</b>	
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<b>Condition to be met</b>	<b>key date</b>
		1. <b>Submit the method statement and QCP's for approval</b>	<b>Five days after contract award</b>
		2. <b>Submit the programme for approval</b>	<b>Five days after contract award</b>
		3. <b>Submit safety file for approval</b>	<b>Five days after contract award</b>
30.1	The <i>access dates</i> are:	<b>Part of the Site</b>	<b>Date</b>
		1 <b>First area for installation</b>	<b>After contract award date.</b>
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	<b>5 working days of the Contract Date.</b>	
31.2	The <i>starting date</i> is	<b>01 June 2021</b>	
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	<b>5 days</b>	
35.1	The <i>Employer</i> is not willing to take over the <i>works</i> before the Completion Date.	<b>On receipt of final inspection report.</b>	
<b>4</b>	<b>Testing and Defects</b>		
42.2	The <i>defects date</i> is	<b>52 weeks after Completion of the whole of the works.</b>	
43.2	The <i>defect correction period</i> is	2 working days after the Contractor is being notified about the defect.	
<b>5</b>	<b>Payment</b>		
50.1	The <i>assessment interval</i> is	<b>25<sup>th</sup> of every month.</b>	
51.1	The <i>currency of this contract</i> is the	<b>South African Rand.</b>	
51.2	The period within which payments are made is	<b>Four weeks.</b>	



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51.4	The <i>interest rate</i> is	<p>(i) zero percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.</p>
<b>6</b>	<b>Compensation events</b>	
60.1(13)	The place where weather is to be recorded is:	<b>Duvha Power Station</b>
	The <i>weather measurements</i> to be recorded for each calendar month are,	<b>the cumulative rainfall 10 (mm)</b>
		<b>the number of days with rainfall more than 10 mm</b>
		<b>the number of days with minimum air temperature less than 0 degrees Celsius</b>
		<b>the number of days with snow lying at 09:00 hours South African Time</b>
		<b>and these measurements:</b>
	The <i>weather measurements</i> are supplied by	<b>The Project Manager or the System Engineer on request.</b>
	The <i>weather data</i> are the records of past <i>weather measurements</i> for each	<b>Duvha Power Station</b>

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	calendar month which were recorded at:	
	and which are available from:	<b>the South African Weather Bureau and included in Annexure A to this Contract Data provided by the <i>Employer</i></b>
60.1(13)	Assumed values for the ten year return <i>weather data</i> for each <i>weather measurement</i> for each calendar month are:	<b>As stated in Annexure A to this Contract Data provided by the <i>Employer</i>.</b>  <b>Note: If this arrangement is used, delete the rows above for 60.1(13) and delete this note.</b>
7	<b>Title</b>	<b>There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.</b>
8	<b>Risks and insurance</b>	
80.1	These are additional <i>Employer's</i> risks	1. The Employer will not make payment if the invoice from the Contractor does not correspond with the price assessed by the Project Manager on the payment certificate.
84.1	The <i>Employer</i> provides these insurances from the Insurance Table	<b>as stated for "Format A" available on <a href="http://www.eskom.co.za/live/content.php?Item_ID=9248">http://www.eskom.co.za/live/content.php?Item_ID=9248</a> (See Annexure B for basic guidance)</b>
84.1	The <i>Employer</i> provides these additional insurances	<b>as stated for "Format A" available on <a href="http://www.eskom.co.za/live/content.php?Item_ID=9248">http://www.eskom.co.za/live/content.php?Item_ID=9248</a> (See Annexure B for basic guidance)</b>
84.2	The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the <i>works</i> , Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) caused by activity in connection with this contract for any one event is	<b>Whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i>.</b>
84.2	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is	<b>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands).</b>

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<b>9</b>	<b>Termination</b>	There is no reference to <b>Contract Data</b> in this section of the core clauses and terms in <i>italics</i> used in this section are identified elsewhere in this <b>Contract Data</b> .		
<b>10</b>	<b>Data for main Option clause</b>			
<b>A</b>	<b>Priced contract with activity schedule</b>	There is no reference to <b>Contract Data</b> in this Option and terms in <i>italics</i> are identified elsewhere in this <b>Contract Data</b> .		
<b>11</b>	<b>Data for Option W1</b>			
W1.1	The <i>Adjudicator</i> is (Name)	The <b>Adjudicator</b> will be appointed by the <b>NEC user’s Group Association</b> should the dispute arise.		
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the <b>Chairman of the Joint Civils Division of the South African Institution of Civil Engineering</b> . (See <a href="http://www.jointcivils.co.za">www.jointcivils.co.za</a> )		
W1.4(2)	The <i>tribunal</i> is:	<b>arbitration</b> .		
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of <b>Rules for the Conduct of Arbitrations</b> published by <b>The Association of Arbitrators (Southern Africa)</b> or its successor body.		
	The place where arbitration is to be held is	<b>South Africa</b>		
	The person or organisation who will choose an arbitrator - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is	the <b>Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa)</b> or its successor body.		
<b>12</b>	<b>Data for secondary Option clauses</b>			
<b>X1</b>	<b>Price adjustment for inflation</b>			
X1.1(a)	The <i>base date</i> for indices is			
X1.1(c)	The proportions used to calculate the Price Adjustment Factor are:	<b>Proportion</b>	<b>linked to index for</b>	<b>Index prepared by</b>
		<b>10%</b>	Fixed	
		<b>90%</b>	to be split according to the following: <ul style="list-style-type: none"> <li>• Labour</li> <li>• Transport</li> <li>• Consumables</li> </ul>	

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<b>X2</b>	<b>Changes in the law</b>	<b>0. [•]</b>		
<b>X5</b>	<b>Sectional Completion</b>	<b>0. [•]</b>		
X5.1	The <i>completion date</i> for each <i>section</i> of the <i>works</i> is:	<b>0. [•]</b>	<b>Description</b>	<b>Completion date</b>
		<b>0. [•]</b>	Submit the method statement and QCP's for approval	Five days after contract award
			Submit the programme for approval	Five days after contract award
			Submit safety file for approval	Five days before outage start date
<b>X5 &amp; X7</b>	<b>Sectional Completion and delay damages used together</b>	<b>0. [•]</b>		
X7.1 X5.1	Delay damages for late Completion of the <i>sections</i> of the <i>works</i> are:	<b>[•]</b>	<b>Description</b>	<b>Amount per day</b>
		<b>1.00</b>	Submit the method statement and QCP's for approval.	<b>R5 000-00</b>
			Submit the programme for approval	<b>R5 000-00</b>
			Submit safety file for approval	<b>R5 000-00</b>
	The total delay damages payable by the <i>Contractor</i> does not exceed:	<b>10% of the contract value.</b>		
<b>X16</b>	<b>Retention (not used with Option F)</b>			
X16.1	The <i>retention free amount</i> is	<b>0%</b>		
	The <i>retention percentage</i> is	<b>10% of the contract value.</b>		
<b>X17</b>	<b>Low performance damages</b>			
X17.1	The amounts for low performance damages are:	<b>Amount</b>	<b>Performance level</b>	
		<b>R5 000-00 per day until the</b>	<b>1. Rework that will impact on quality and time shall carry a</b>	

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		corrections of defects are corrected.	penalty
		Last payment will be withheld until data packs are handed in and accepted by quality department.	2.Final data packs not handed in 14 days after final activity.
<b>X18</b>	<b>Limitation of liability</b>		
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	<b>Zero</b>	
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to:	<b>the amount of the deductibles relevant to the event described in the insurance policy format selected in the data for clause 84.1 above, which policy is available on <a href="http://www.eskom.co.za/live/content.php?Item_ID=9248">http://www.eskom.co.za/live/content.php?Item_ID=9248</a></b>	
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than excluded matters, is limited to:	<p><b>the total of the Prices other than for the additional excluded matters.</b></p> <p><b>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</b></p> <p><b>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</b></p> <ul style="list-style-type: none"> <li>• Defects due to his design which arise before the Defects Certificate is issued,</li> <li>• loss of or damage to property (other than the <i>works</i>, Plant and Materials),</li> <li>• death of or injury to a person and</li> <li>• infringement of an intellectual property right.</li> </ul>	
X18.5	The <i>end of liability date</i> is	<p><b>(i) seven years after the <i>defects date</i> for latent Defects and</b></p> <p><b>(ii) the date on which the liability in question prescribes in accordance with the Prescription Act No. 68 of 1969 (as amended or in terms of any replacement legislation) for any other matter.</b></p> <p><b>A latent Defect is a Defect which would not</b></p>	

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		<p>have been discovered on reasonable inspection by the <i>Employer</i> or the <i>Supervisor</i> before the <i>defects date</i>, without requiring any inspection not ordinarily carried out by the <i>Employer</i> or the <i>Supervisor</i> during that period.</p> <p>If the <i>Employer</i> or the <i>Supervisor</i> do undertake any inspection over and above the reasonable inspection, this does not place a greater responsibility on the <i>Employer</i> or the <i>Supervisor</i> to have discovered the Defect.</p>
<b>Z</b>	<b>The Additional conditions of contract are</b>	<b>Z1 to Z12 always apply.</b>
<b>Z1</b>	<b>Cession delegation and assignment</b>	
Z1.1	The <i>Contractor</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i> .	
Z1.2	Notwithstanding the above, the <i>Employer</i> may on written notice to the <i>Contractor</i> cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.	
<b>Z2</b>	<b>Joint ventures</b>	
Z2.1	If the <i>Contractor</i> constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the <i>Employer</i> for the performance of this contract.	
Z2.2	Unless already notified to the <i>Employer</i> , the persons or organisations notify the <i>Project Manager</i> within two weeks of the Contract Date of the key person who has the authority to bind the <i>Contractor</i> on their behalf.	
Z2.3	The <i>Contractor</i> does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the <i>Employer</i> having been given to the <i>Contractor</i> in writing.	
<b>Z3</b>	<b>Change of Broad Based Black Economic Empowerment (B-BBEE) status</b>	
Z3.1	Where a change in the <i>Contractor's</i> legal status, ownership or any other change to his business composition or business dealings results in a change to the <i>Contractor's</i> B-BBEE status, the <i>Contractor</i> notifies the <i>Employer</i> within seven days of the change.	
Z3.2	The <i>Contractor</i> is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the <i>Project Manager</i> within thirty days of the notification or as otherwise instructed by the <i>Project Manager</i> .	
Z3.3	Where, as a result, the <i>Contractor's</i> B-BBEE status has decreased since the Contract Date the <i>Employer</i> may either re-negotiate this contract or alternatively, terminate the <i>Contractor's</i> obligation to Provide the Works.	

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Z3.4	Failure by the <i>Contractor</i> to notify the <i>Employer</i> of a change in its B-BBEE status may constitute a reason for termination. If the <i>Employer</i> terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.
<b>Z4</b>	<b>Confidentiality</b>
Z4.1	The <i>Contractor</i> does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the <i>Contractor</i> , enters the public domain or to information which was already in the possession of the <i>Contractor</i> at the time of disclosure (evidenced by written records in existence at that time). Should the <i>Contractor</i> disclose information to Others in terms of clause 25.1, the <i>Contractor</i> ensures that the provisions of this clause are complied with by the recipient.
Z4.2	If the <i>Contractor</i> is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the <i>Project Manager</i> .
Z4.3	In the event that the <i>Contractor</i> is, at any time, required by law to disclose any such information which is required to be kept confidential, the <i>Contractor</i> , to the extent permitted by law prior to disclosure, notifies the <i>Employer</i> so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the <i>Contractor</i> may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
Z4.4	The taking of images (whether photographs, video footage or otherwise) of the <i>works</i> or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the <i>Project Manager</i> . All rights in and to all such images vests exclusively in the <i>Employer</i> .
Z4.5	The <i>Contractor</i> ensures that all his subcontractors abide by the undertakings in this clause.
<b>Z5</b>	<b>Waiver and estoppel: Add to core clause 12.3:</b>
Z5.1	Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the <i>Project Manager</i> , the <i>Supervisor</i> , or the <i>Adjudicator</i> does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.
<b>Z6</b>	<b>Health, safety and the environment: Add to core clause 27.4</b>
Z6.1	The <i>Contractor</i> undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the <i>works</i> . Without limitation the <i>Contractor</i> : <ul style="list-style-type: none"> <li>• accepts that the <i>Employer</i> may appoint him as the “Principal Contractor” (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health &amp; Safety Act 85 of 1993) (“the Construction Regulations”) for the Site;</li> <li>• warrants that the total of the Prices as at the Contract Date includes a sufficient</li> </ul>

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	<p>amount for proper compliance with the Construction Regulations, all applicable health &amp; safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health &amp; safety in and about the execution of <i>works</i>; and</p> <ul style="list-style-type: none"> <li>• undertakes, in and about the execution of the <i>works</i>, to comply with the Construction Regulations and with all applicable health &amp; safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the <i>Contractor's</i> direction and control, likewise observe and comply with the foregoing.</li> </ul>
Z6.2	The <i>Contractor</i> , in and about the execution of the <i>works</i> , complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the <i>Contractor's</i> direction and control, likewise observe and comply with the foregoing.
<b>Z7</b>	<b>Provision of a Tax Invoice and interest. Add to core clause 51</b>
Z7.1	Within one week of receiving a payment certificate from the <i>Project Manager</i> in terms of core clause 51.1, the <i>Contractor</i> provides the <i>Employer</i> with a tax invoice in accordance with the <i>Employer's</i> procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.
Z7.2	If the <i>Contractor</i> does not provide a tax invoice in the form and by the time required by this contract, the time by when the <i>Employer</i> is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the <i>Employer</i> in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
Z7.3	The <i>Contractor</i> (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the <i>Employer's</i> VAT number 4740101508 on each invoice he submits for payment.
<b>Z8</b>	<b>Notifying compensation events</b>
Z8.1	Delete from the last sentence in core clause 61.3, "unless the <i>Project Manager</i> should have notified the event to the <i>Contractor</i> but did not".
<b>Z9</b>	<b><i>Employer's</i> limitation of liability</b>
Z9.1	The <i>Employer's</i> liability to the <i>Contractor</i> for the <i>Contractor's</i> indirect or consequential loss is limited to R0.00 (zero Rand)
Z9.2	The <i>Contractor's</i> entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the <i>Employer's</i> liability under the indemnity is limited.
<b>Z10</b>	<b>Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":</b>
Z10.1	or had a business rescue order granted against it.



<b>Z11</b>	<b>Addition to secondary Option X7 Delay damages (if applicable in this contract)</b>
<p>Z11.1</p>	<p>If the amount due for the <i>Contractor's</i> payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the <i>Employer</i> may terminate the <i>Contractor's</i> obligation to Provide the Works using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.</p> <p><b>Z12 Ethics</b></p> <p>For the purposes of this Z-clause, the following definitions apply:</p> <p>Affected Party means, as the context requires, any party, irrespective of whether it is the <i>Contractor</i> or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,</p> <p>Coercive Action means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,</p> <p>Collusive Action means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,</p> <p>Committing Party means, as the context requires, the <i>Contractor</i>, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,</p> <p>Corrupt Action means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,</p> <p>Fraudulent Action means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,</p> <p>Obstructive Action means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action and</p> <p>Prohibited Action means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.</p> <p>Z 12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.</p> <p>Z 12.2 The <i>Employer</i> may terminate the <i>Contractor's</i> obligation to Provide the Works if a Committing Party has taken such Prohibited Action and the <i>Contractor</i> did not take timely and appropriate action to prevent or remedy the situation, without</p>

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	<p>limiting any other rights or remedies the <i>Employer</i> has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the <i>Employer</i> can terminate the <i>Contractor's</i> obligation to Provide the Works for this reason.</p> <p>Z 12.3 If the <i>Employer</i> terminates the <i>Contractor's</i> obligation to Provide the Works for this reason, the procedures and amounts due on termination are respectively P1, P2 and P3, and A1 and A3.</p> <p>Z 12.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the <i>Employer</i> does not have a contractual bond with the Committing Party, the <i>Contractor</i> ensures that the Committing Party co-operates fully with an investigation.</p>
	<p>"In an event where an outage starts date changes, thus changing the start date of the works, a minimum 14 calendar days notice will be given. If this notice is given, the compensation for time change will be nil."</p>

**Annexure B: Insurance provided by the Employer**

*These notes are provided as guidance to tendering contractors and the Contractor about the insurance provided by the Employer. Details of the insurance itself are available from the internet web link given below.*

1. For the purpose of works contracts, insurance provided by Eskom (the *Employer*) has been arranged on the basis of "project" or "contract" value, where the value is the total of the Prices at Completion of the whole of the works including VAT.

A "project" is a collection of contracts or work packages to be undertaken as part of a single identified capital expansion or refurbishment of a particular asset or facility.

A "contract" is a single contract not linked to or being part of a "project".

2. For ECC3 there are three main "formats" of cover and deductible structure; Format A, Format B and Format Dx.

**Format A** is for a project or contract value less than or equal to R350M (three hundred and fifty million Rand) inclusive of VAT.

**Format B** is for a project or contract value greater than R350M (three hundred and fifty million Rand) inclusive of VAT.

In the case of contracts / packages within a project:

- For a contract / package of R50M which is part of a R400M project, Format B will apply
- For a contract / package of R250M which is part of a R6 billion project, Format B will apply;
- For a contract / package of R120M which is part of a R350M project Format A will apply;

For a contract which is not part of a project the same limits apply:

- For a contract of R50M, Format A will apply
- For a contract of R355M, Format B will apply.

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**Format Dx** applies only to Distribution Division projects and contracts. If a Distribution Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover. Cover and deductibles for Distribution Division are per the relevant policy available on the internet web link given below.

**Format A generally applies to Transmission Division** projects and contracts. If a Transmission Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover.

3. Tendering contractors should note that cover provided by the *Employer* is only per the policies available on the internet web link listed below and may not be the cover required by the tendering contractor or as intended by each of the listed insurances in the left hand column of the Insurance Table in clause 84.2. In terms of clause 84.1 “the *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide”. Hence the *Contractor* provides insurance which the *Employer* does not provide and in cases where the *Employer* does provide insurance the *Contractor* insures for the difference between what the Insurance Table requires and what the *Employer* provides.
4. When the Marine Insurance is required the *Contractor* needs to obtain a copy of the latest edition of Eskom’s Marine Policies Procedures found at internet website given below.
5. **Further information and full details of all Eskom provided policies and procedures may be obtained from:**

[http://www.eskom.co.za/live/content.php?Item\\_ID=9248](http://www.eskom.co.za/live/content.php?Item_ID=9248)

## C1.2 Contract Data

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

#### Notes to a tendering contractor:

1. Please read both the NEC3 Engineering and Construction Contract (June 2005) and the relevant parts of its Guidance Notes (ECC3-GN)<sup>2</sup> in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 152 to 154 of the ECC3 Guidance Notes.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data
3. Where a form field like this [        ] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise complete by hand and in ink.

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

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name):	
	Address	
	Tel No.	
	Fax No.	
11.2(8)	The <i>direct fee percentage</i> is	%
	The <i>subcontracted fee percentage</i> is	%
11.2(18)	The <i>working areas</i> are the Site and	
24.1	The <i>Contractor's</i> key persons are:	
	1 Name:	
	Job:	
	Responsibilities:	
	Qualifications:	
	Experience:	
	2 Name:	
	Job	
	Responsibilities:	
	Qualifications:	

<sup>2</sup> Available from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009

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	Experience:	
		<b>CV's (and further key persons data including CVs) are appended to Tender Schedule entitled .</b>
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	
11.2(14)	The following matters will be included in the Risk Register	
31.1	The programme identified in the Contract Data is	
<b>A</b>	<b>Priced contract with activity schedule</b>	
11.2(20)	The <i>activity schedule</i> is in	
11.2(30)	The tendered total of the Prices is	<b>(in figures)</b>  <b>(in words), excluding VAT</b>

## PART 2: PRICING DATA

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
C2.1	Pricing assumptions: Option A	2
C2.2	The <i>activity schedule</i>	2

## C2.1 Pricing assumptions: Option A

### How work is priced and assessed for payment

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

**Identified and defined terms** 11  
11.2 (20) The Activity Schedule is the *activity schedule* unless later changed in accordance with this contract.

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

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

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

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

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

### Function of the Activity Schedule

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

### Link to the programme

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

### Preparing the *activity schedule*

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

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

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

## UPGRADE OF SECURITY SYSTEM AT DUVHA POWER STATION

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



## C2.2 The Activity Schedule

Item	Description	Unit	Quantity	Rate	Amount
1	Site establishment	Sum			
2	Designs CCTV cameras	Sum			
3	Designs Access control	Sum			
4	Installation of CCTV cameras	Sum			
5	Testing and commissioning CCTV cameras	Sum			
6	Installation of Access Control	Sum			
7	Testing and commissioning Access Control	Sum			
8	Scaffolding/Platform	Sum			
9	Installation of Access control	Sum			
10	Health and safety (Provide the cost breakdown on the sheet below)	Sum			
11	Training of personnel	Sum			
12	De-establishment	Sum			
<b>9</b>	<b>Others</b>				
	<b>N.B:</b> Please provide the cost breakdown				
<b>TOTAL AMOUNT EXCL. VAT</b>					

**The prices will be fixed and firm excluding VAT.**

**Example of Safety and Health Cost breakdown**

**NB:**

**Training and Competency**

Description	Quantity	Price
Training of engineers	10	
Training of security personnel	26	
Training manuals	10	
Fall Protection planner & All employees to work at heights must be trained by an Accredited facility.	1	

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<b>PERSONAL PROTECTIVE CLOTHING (For each employee per annum); SABS &amp; CI APPROVED</b>		
Safety Boots	1	
Two or one piece Overalls	1	
Reflective vest	1	
Hard hat with a chin strip with a company logo	1	
Safety gloves (applicable for the type of duty)	1	
Safety Goggles/ glasses (applicable for the type of duty)	1	
Disposable Dust musk (each to be replaced after contamination)		
Hearing protection	1	
<b><u>OTHER CONTENTS</u></b>		
First Aid Box (Including all relevant required items)	1	

**Contractor**

.....  
PRINT NAME

.....  
SIGNATURE

.....  
DATE

# PART 3: SCOPE OF WORK

See Addendum A



WI C3 1 Access  
Control and CCTV can