



NEC3 Engineering and Construction

Short Contract (ECSC3)

A contract between Eskom Holdings SOC Ltd (Reg No. 2002/015527/30)

and

for **Supply, Installation and Commissioning of Security systems at various substation (CCTV, Motion Sensor Beams, Access Control and Electric fence) to monitor and deter intruders at the substation perimeters**

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Documentation prepared by: Construction Management Services - NWOU

C1 Agreements & Contract Data

C1.1 Form of Offer and Acceptance

Offer

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

Title of the Contract

The tenderer, identified in the signature block below, having examined the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, 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.

The offered total of the Prices exclusive of VAT is	Rate based Contract/ as per task order
Value Added Tax @ 15% is	Rate based Contract/ as per task order
The offered total of the Prices inclusive of VAT is	Rate based Contract/ as per task order

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

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Tenderer's CIDB registration number:

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 1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)

Part 2 Pricing Data

Part 3 Scope of Work: Works Information

Part 4 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 Tender 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, which must be signed by the duly authorised representative(s) for both parties.

The tenderer shall within one week 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 and signed copy of this document, including the Schedule of Deviations (if any) together with all the terms of the contract as listed above.

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

Signature(s)

Name(s)

Capacity

**for the
Employer**

ESKOM HOLDINGS SOC LIMITED
P.O. Box 36099
Menlo Park
0102

Ofentse Matlhatlhana

Name &
signature of
witness

Date

Note: If a tenderer wishes to submit alternative tender offers, further copies of this document may be used for that purpose, duly endorsed, 'Alternative Tender No. _____'

Schedule of Deviations

No.	Subject	Details
1	None	None

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.

For the tenderer:

For the Employer

Signature _____

Name _____

Capacity _____

On behalf of _____
(Insert name and address of organisation)

ESKOM HOLDINGS SOC LIMITED
P.O. Box 36099
Menlo Park
0102

Name & signature of witness _____

Ofentse Matlhatlhana

Date _____

C1.2 Contract Data

Data provided by the *Employer*

Clause	Statement	Data
General		
10.1	The <i>Employer</i> is (Name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
10.1 & 14.4	The <i>Employer's</i> representative to whom the <i>Employer</i> in terms of clause 14.4 delegates his actions ¹ is (Name):	Frans Ratau
	Address	No 12 -16 Kgwebo street , Mabe Park Rustenburg
	Tel No.	014 565 1154 082 490 6949
	E-mail address	RatauF@eskom.co.za
11.2(11)	The <i>works</i> are	Supply, Installation and Commissioning of Security systems at various substation (CCTV, Motion Sensor Beams, Access Control and Electric fence) to monitor and deter intruders at the substation perimeters
11.2(13)	The Works Information is in	As indicated in the Project Specific Agreement.
11.2(12)	The Site Information is in	As indicated in the Project Specific Agreement.
11.2(12)	The <i>site</i> is	As indicated in the Project Specific Agreement.
30.1	The <i>starting date</i> is.	[•]
11.2(2)	The <i>completion date</i> is.	[•]
13.2	The <i>period for reply</i> is	1 week
42.2	The <i>defects date</i> is	52 weeks after Completion
42.3	The <i>defect correction period</i> is except that the <i>defect correction period</i> for and the <i>defect correction period</i> for	Within 2 week upon notification of a defect, Where outages are required, within the scheduled outage period, Critical circumstances², twelve hours.
50.1	The <i>assessment day</i> is the	The 25th day of each successive month.

¹ Except those actions which can only be done by the *Employer* as a Party to the contract.

² For example, health and safety or asset destruction risks.

51.1	The <i>currency of this contract</i> is the	South African Rand.
51.2	The period within which payments are made is	Within 14 or 30 days (depending on the service provider's BBEE status) of submission to Finance Shared Services of a tax compliant invoice reflecting the amount certified for payment.
60.1(13)	The place where weather is to be recorded is: The <i>weather measurements</i> to be recorded for each calendar month are, The <i>weather measurements</i> are supplied by The <i>weather data</i> are the records of past <i>weather measurements</i> for each calendar month which were recorded at: and which are available from:	The boundaries of the site. the cumulative rainfall (mm), the number of days with rainfall more than 10 mm, the number of days with minimum air temperature less than 0 degrees Celsius, the number of days with snow lying at 09:00 hours South African Time, and these measurements: The contractor using actual weather readings from the boundaries of the site. The nearest weather station of the South African Weather Service to the boundaries of the site. The South African Weather Bureau and included in Annexure A to this Contract Data provided by the Employer.
7	Title	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.
80.1	These are additional <i>Employer's</i> risks	1. As indicated in the Project Specific Agreement. 2. As indicated in the Project Specific Agreement. 3. As indicated in the Project Specific Agreement.
84.1	The <i>Employer</i> provides these insurances from the Insurance Table	as stated for "Format A" / "Format B" / "Format Dx" {choose the applicable format then delete the others and delete this note} available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx (See Annexure B for basic guidance).

84.1	The <i>Employer</i> provides these additional insurances	as stated for “Format A” / “Format B” / “Format Dx” {choose the applicable format then delete the others and delete this note} available on http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx (See Annexure B for basic guidance).
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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	Whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i> .
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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	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).
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9	Termination	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.
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10	Data for main Option clause
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B	Priced contract with bill of quantities
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60.6	The <i>method of measurement</i> is	As stated in Part C2.1, Pricing Assumptions.
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11	Data for Option W1
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W1.1	The <i>Adjudicator</i> is	The person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
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W1.2(3)	The <i>Adjudicator nominating body</i> is:	The Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the London Institution of Civil Engineers. (See www.ice-sa.org.za) or its successor body.
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W1.4(2)	The <i>tribunal</i> is:	Arbitration.
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W1.4(5)	The <i>arbitration procedure</i> is	The latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
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	The place where arbitration is to be held is	Johannesburg South Africa
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	<p>The person or organisation who will choose an arbitrator</p> <ul style="list-style-type: none"> - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is 	<p>The Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</p>
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12 Data for secondary Option clauses

X1	Price adjustment for inflation										
X1.1(a)	The <i>base date</i> for indices is	(One month before the tender conclusion) (put date before signing).									
X1.1(c)	The proportions used to calculate the Price Adjustment Factor are:	<p>The rates provided in the Pricing Data will apply for the first 12 months after the <i>base date</i>.</p> <p>From the anniversary date of <i>base date</i>, the rates will be adjusted for inflation using the relevant tables published by SEIFSA and Statistics SA.</p> <p>Labour rates 60% in the Pricing Data will be adjusted as per Table C3 SEIFSA.</p> <p>Material rates 20% in the Pricing Data will be adjusted as per CPI Headline Statistics SA</p> <p>Transport rates 10% in the Pricing Data will be adjusted as per Table L2 SEIFSA</p> <p>10% non-adjustable</p> <p>Price fluctuations may result in an increase or decrease in the rates provided in the Pricing Data.</p>									
X2	Changes in the law	<p>There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.</p>									
X5.1	The <i>completion date</i> for each <i>section</i> of the <i>works</i> is:										
	<table> <tr> <th><i>Section</i></th><th><i>Description</i></th><th><i>Completion date</i></th></tr> <tr> <td>1</td><td>As indicated in the Project Specific Agreement.</td><td>As indicated in the Project Specific Agreement.</td></tr> <tr> <td>2</td><td>As indicated in the Project Specific Agreement.</td><td>As indicated in the Project Specific Agreement.</td></tr> </table>	<i>Section</i>	<i>Description</i>	<i>Completion date</i>	1	As indicated in the Project Specific Agreement.	As indicated in the Project Specific Agreement.	2	As indicated in the Project Specific Agreement.	As indicated in the Project Specific Agreement.	
<i>Section</i>	<i>Description</i>	<i>Completion date</i>									
1	As indicated in the Project Specific Agreement.	As indicated in the Project Specific Agreement.									
2	As indicated in the Project Specific Agreement.	As indicated in the Project Specific Agreement.									

		3	Agreement. As indicated in the Project Specific Agreement.	Agreement. As indicated in the Project Specific Agreement.
X5 & X7	Sectional Completion and delay damages used together		0.5 % of the contract value per hr to a max of 10%	
X16	Retention (not used with Option F)			
X16.1	The <i>retention free amount</i> is		None (Zero Rand)	
	The <i>retention percentage</i> is		5%	
X18	Limitation of liability			
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:		The sum of the loss as a result of any action arising by any negligent act by any person under the contractor's employment or any person performing work under the direct supervision of the contractor.	
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:		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 http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx	
X18.3	The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to		The greater of <ul style="list-style-type: none"> • the total of the Prices at the Contract Date and • the amounts excluded and unrecoverable from the <i>Employer's</i> assets policy for correcting the Defect (other than the resulting physical damage which is not excluded) plus R15M first amount payable in terms of the <i>Employer's</i> assets policy. 	
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:		the total of the Prices other than for the additional excluded matters. The <i>Contractor's</i> total liability for the additional excluded matters is not limited. The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for <ul style="list-style-type: none"> • Defects due to his design which arise before the Defects Certificate is issued, • Defects due to manufacture and fabrication outside the Site, • loss of or damage to property (other than the <i>works</i>, Plant and Materials), • death of or injury to a person and • Infringement of an intellectual property right. 	
X18.5	The <i>end of liability date</i> is		(i) Seven years after the <i>defects date</i> for latent	

	<p>Defects .</p> <p>(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.</p> <p>A latent Defect is a Defect which would not 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. 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>
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The conditions of contract are the NEC3 Engineering and Construction Short Contract (April 2013)³⁴ and the following additional conditions Z1 to Z11 which always apply:

Z1	Cession delegation and assignment
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.
Z2	Joint ventures
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.
Z3	Change of Broad Based Black Economic Empowerment (B-BBEE) status
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.

³ If June 2005 Edition applies, delete April 2013 and insert June 2005

⁴ State whether attached as a 'PDF' file in terms of Eskom's licence, or to be obtained from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902 or www.ecs.co.za.

Z3.2 The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Project Manager* within thirty days of the notification or as otherwise instructed by the *Project Manager*.

Z3.3 Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor's* obligation to Provide the Works.

Z3.4 Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* 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.

Z4 Ethics

Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Contractor*, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Contractor's* obligation to Provide the Works or taking any other action as appropriate against the *Contractor* (including civil or criminal action).

Z4.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Works if the *Contractor* (or any member of the *Contractor* where the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Contractor* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.

Z4.3 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P3 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

Z5 Confidentiality

Z5.1 The *Contractor* 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 *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.

Z5.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Project Manager*.

Z5.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* 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 *Contractor* 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.

Z5.4 The taking of images (whether photographs, video footage or otherwise) of the *works* or any

portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the *Project Manager*. All rights in and to all such images vests exclusively in the *Employer*.

Z5.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z6 Waiver and estoppel: Add to core clause 12.3:

Z6.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Project Manager*, the *Supervisor*, or the *Adjudicator* 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.

Z7 Health, safety and the environment: Add to core clause 27.4

Z7.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *works*. Without limitation the *Contractor*:

- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Site;
- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & 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 & safety in and about the execution of *works*; and
- undertakes, in and about the execution of the *works*, to comply with the Construction Regulations and with all applicable health & 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 *Contractor's* direction and control, likewise observe and comply with the foregoing.

Z7.2 The *Contractor*, in and about the execution of the *works*, 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 *Contractor's* direction and control, likewise observe and comply with the foregoing.

Z8 Provision of a Tax Invoice and interest. Add to core clause 51

Z8.1 Within one week of receiving a payment certificate from the *Project Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.

Z8.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* 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 *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z8.3 The *Contractor* (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 *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z9 Notifying compensation events

Z9.1 Delete from the last sentence in core clause 61.3, "unless the *Project Manager* should have

notified the event to the *Contractor* but did not".

Z10	<i>Employer's limitation of liability</i>
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Z10.1	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)
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Z10.2	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.
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Z11	Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":
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Z11.1	or had a business rescue order granted against it.
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Z12	Addition to secondary Option X7 Delay damages (if applicable in this contract)
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Z12.1	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.
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Annexure A: One-in-ten-year-return weather data obtained from SA Weather Bureau for [weather station]

If any one of these *weather measurements* recorded within a calendar month, before the Completion Date for the whole of the *works* and at the place stated in this Contract Data is shown to be more adverse than the amount stated below then the *Contractor* may notify a compensation event.

	<i>Weather measurement</i>				
Month	Cumulative rainfall (mm)	Number of days with rain more than 10mm	Number of days with min air temp < 0 deg.C	Number of days with snow lying at 08:00 CAT	[Other measurements if applicable]
January	[•]	[•]	[•]	[•]	
February	[•]	[•]	[•]	[•]	
March	[•]	[•]	[•]	[•]	
April	[•]	[•]	[•]	[•]	
May	[•]	[•]	[•]	[•]	
June	[•]	[•]	[•]	[•]	
July	[•]	[•]	[•]	[•]	
August	[•]	[•]	[•]	[•]	
September	[•]	[•]	[•]	[•]	
October	[•]	[•]	[•]	[•]	
November	[•]	[•]	[•]	[•]	
December	[•]	[•]	[•]	[•]	

Only the difference between the more adverse recorded weather and the equivalent measurement given above is taken into account in assessing a compensation event.

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. The Contractor must obtain its own advice. 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.

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.

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 (April 2013) and the relevant parts of its Guidance Notes (ECC3-GN)⁵ 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 156 to 158 of the ECC3 (April 2013) 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: Experience:	CV's (and further key persons data including CVs) are appended to Tender Schedule entitled

⁵ Available from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009 or see www.ecs.co.za

C1.2B ECSC3 CONTRACT DATA PART 2

C2 Pricing Data

C2.1 Pricing assumptions: Option B

The *conditions of contract*

1. How work is priced and assessed for payment

Clause 11 in NEC3 Engineering and Construction Contract, June 2005 (ECC3) Option B states:

Identified and defined terms	11	
	11.2	(21) The Bill of Quantities is the <i>bill of quantities</i> as changed in accordance with this contract to accommodate implemented compensation events and for accepted quotations for acceleration.
		(28) The Price for Work Done to Date is the total of the quantity of the work which the <i>Contractor</i> has completed for each item in the Bill of Quantities multiplied by the rate and a proportion of each lump sum which is the proportion of the work covered by the item which the <i>Contractor</i> has completed. Completed work is work without Defects which would either delay or be covered by immediately following work. (31) The Prices are the lump sums and the amounts obtained by multiplying the rates by the quantities for the items in the Bill of Quantities.

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

2. Function of the Bill of Quantities

Clause 55.1 in Option B states, "Information in the Bill of Quantities is not Works Information or Site Information". This confirms that instructions to do work or how it is to be done are not included in the Bill, 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 Bill of Quantities. The Bill of Quantities is only a pricing document.

3. Guidance before pricing and measuring

Employers preparing tenders or contract documents, and tendering contractors are advised to consult the sections dealing with the bill of quantities in the NEC3 Engineering and Construction Contract (June 2005) Guidance Notes before preparing the *bill of quantities* or before entering rates and lump sums into the *bill*.

The NEC approach to the P & G bill assumes use will be made of method related charges for Equipment applied to Providing the Works based on durations shown in the Accepted Programme, fixed charges for the use of Equipment that is required throughout the construction phase, time related charges for people working in a supervisory capacity for the period required, and lump sum charges for other facilities or services not directly related to performing work items typically included in other parts of the bill.

The P & G section of the bill is not used for the assessment of compensation events.

4. Measurement and payment

4.1 Symbols

The units of measurement described in the Bill of Quantities are metric units abbreviated as follows:

Abbreviation	Unit
%	percent
h	hour
ha	hectare
kg	kilogram
kl	kilolitre
km	kilometre
km-pass	kilometre-pass
kPa	kilopascal
kW	kilowatt
l	litre
m	metre
mm	millimetre
m ²	square metre
m ² -pass	square metre pass
m ³	cubic metre
m ³ -km	cubic metre-kilometre
MN	meganewton
MN.m	meganewton-metre
MPa	megapascal
No.	number
Prov sum ⁶	provisional sum
PC-sum	prime cost sum
R/only	Rate only
sum	Lump sum
t	ton (1000kg)
W/day	Work day

4.2. General assumptions

- 4.2.1. Unless otherwise stated, items are measured net in accordance with the drawings, and no allowance has been made in the quantities for waste.
- 4.2.2. The Prices and rates stated for each item in the Bill of Quantities shall be treated as being fully inclusive of all work, risks, liabilities, obligations, overheads, profit and everything necessary as incurred or required by the *Contractor* in carrying out or providing that item.
- 4.2.3. An item against which no Price is entered will be treated as covered by other Prices or rates in the *bill of quantities*.

⁶ Provisional Sums should not be used unless absolutely unavoidable. Rather include specifications and associated bill items for the most likely scope of work, and then change later using the compensation event procedure if necessary.

- 4.2.4. The quantities contained in the Bill of Quantities may not be final and do not necessarily represent the actual amount of work to be done. The quantities of work assessed and certified for payment by the *Project Manager* at each assessment date will be used for determining payments due.
- 4.2.5. The short descriptions of the items of payment given in the *bill of quantities* are only for the purposes of identifying the items. Detail regarding the extent of the work entailed under each item is provided in the Works Information.

4.3. Departures from the *method of measurement*

4.3.1. Standard Systems of Measuring

4.4. Amplification of or assumptions about measurement items

For the avoidance of doubt the following is provided to assist in the interpretation of descriptions given in the *method of measurement*. In the event of any ambiguity or inconsistency between the statements in the *method of measurement* and this section, the interpretation given in this section shall be used.

C2.2 The *Provisional Bill of Quantities*

Sub-Transmission Lines

[Insert finally agreed table of rates, as tendered, negotiated and finalised]

CONTRACTOR:

.....
PRINT NAME

.....
SIGNATURE

.....
DATE

C3: Scope of Work

C3.1 Works Information

1.1. Description of the works

The purpose of this contract is to facilitate the Supply, Installation and Commissioning of Security systems at various substation (CCTV, Motion Sensor Beams, Access Control and Electric fence) to monitor and deter intruders at the substation perimeters. To be remotely monitored from Mmabatho Control Centre. Including Training of Eskom Technicians

This contract will facilitate ease of appointment of contractors who prequalify according to the Conditions of Tender as advertised. Work will be allocated on a fair basis to each contractor depending on their CIDB Grading and financial evaluation as carried out by Eskom.

All work shall be carried out to the specified requirements, standards and quality as set out by Eskom while observing and complying with all safety and environmental requirements at the agreed negotiated rates.

The Contractor is appointed on this contract on a Rate Only basis, as and when required. Eskom will provide confirmation of the total value of work completed in terms of this contract once the period of the contract has reached its agreed end date, or upon request of the contractor for the total value of each project completed to date at the time of request.

Eskom reserves the right not to appoint any work to a Contractor based on poor performance of the Contractor.

1.2. Employer's objectives and purpose of the works

The Eskom Project Manager will contact the allocated Contractor and issue the Contractor with the design package for the project to be executed. A Project Specific Agreement will be issued as well, which will detail all the project specific requirements for execution of the project for the task order to be issued. The Project Specific Agreement issued will form the basis of the agreement between Eskom and the Contractor for each project to be executed in terms of this contract.

The terms and conditions contained in the Project Specific Agreement will be in accordance with the terms and conditions of this contract but specific to the requirements of the project to be executed.

The allocated Contractor will do a site visit with the Eskom project representatives and verify the scope of work to be executed contained in the design package, assess the Site conditions, the Project Specific SHEQ requirements and SD&L requirements before the quotation for the works is finalised. The Project Manager will then request a quotation from the Contractor for the execution of the works as verified. The quotation must be submitted to the Project Manager by the Contractor within 7 days. The Project Manager will request the Quantity Surveyor to verify the quotation for correctness and confirm the cost according to the agreed negotiated rates.

Should the quotation require adjustment, the Project Manager will request the allocated Contractor to amend the quotation. Once the quotation has been accepted by Eskom, the Project Manager will issue the allocated Contractor with a Task Order for the project which will contain a Task Order Number and will be attached to the Project Specific Agreement. The Project Specific Agreement will then be signed off by the Project Manager and the Contractor and work may then commence on the project.

No work may commence on a project unless the Task Order has been issued, the Project Specific Agreement has been signed, the Contractor Safety File has been approved by Eskom, the 37(2) agreement

has been signed and Site Access has been granted to the allocated Contractor. Eskom will not be liable to pay for any work unless a valid Task Order Number has been issued.

The Contractor is to submit the Project Specific Safety File within seven days upon being requested to do so by the Project Manager for approval by Eskom. The Safety File is to conform to all Eskom and OHS requirements. Should there be a need to rectify the safety file an additional opportunity will be granted to conform to the recommendations made by the Eskom SHE representative, and must be resubmitted within seven days for approval. Should the Project Specific Safety File fail upon resubmission the works will be allocated to another Contractor.

The Contractor will compile a Risk Register as per the terms and conditions of the ECC for discussion at regular Risk Reduction Meetings or as per agreement with the Project Manager.

It is expected from the Contractor to do the whole of the work as per timeframe set in the Task Order, Project Specific Agreement, and agreed Program of the Works.

Minimum recommended working hours to be observed site are from 07h30 to 16h00.

The contractor is to ensure that all required documentation prescribed by Law is kept on file at the site office. All OHS and Construction Regulation requirements are to be adhered to by the contractor.

The Contractor will also ensure that all plant and equipment dedicated to the project will not be removed from site until there is no use for the intended plant and equipment. No moving of plant and equipment between projects will be allowed as it will have impact on completion of the project and lead to delays in completion.

The Contractor is to ensure that all Site Managers are competent, and trained in the use of the ECC and are fully conversant and familiar with the usage and procedures thereof. Adherence to the terms and conditions of the ECC are essential and a requirement of all Contractor Site Managers dedicated to each project as per the Construction Regulations.

Payment Assessments will only be done for work done to date. No material on site will be paid for. Records of defined costs are to be kept on file on site whereby the *Project Manager* has access to this file at all times.

2. Drawings

List the drawings that apply to this contract.

Drawing number	Revision	Title

3. Specifications

List the specifications that apply to this contract. Some typical headings have been provided as a minimum; delete if not required or expand and include correct titles as applicable.

Title	Date or revision	Tick if publicly available
General Specifications:		
Health and Safety requirements		
Environmental requirements		
Site regulations and access control		
Technical specifications:		

4. Constraints on how the *Contractor* Provides the Works

State any constraints on the sequence and timing of work and on the methods and conduct of work including the requirements for any work by the *Employer*.
Also include any management related constraints, invoicing and payment procedures some of which have been inserted below as a minimum guide.

4.1 Meetings

Provide information about regular meetings to be held such as early warning and compensation event meetings (suggest weekly), safety and planning meetings.

4.2 Use of standard forms

Provide details of standard forms to be used by the *Contractor* in the administration of the contract, for example early warning and compensation event notifications.

4.3 Invoicing and payment

The Z clauses make reference to invoicing procedures stated here in this Works Information. Also include a list of information which is to be shown on an invoice. The following text is provided as a guide; revise to suit actual requirements.

In terms of core clause 50 the *Contractor* assesses the amount due and applies to the *Employer* for payment. The *Contractor* applies for payment with a tax invoice addressed to the *Employer* as follows:

The *Contractor* includes the following information on each tax invoice:

- Name and address of the *Contractor*
- The contract number and title;
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number 4740101508;
- The total Price for Work Done to Date which the *Contractor* has completed;
- Other amounts to be paid to the *Contractor*;
- Less amounts to be paid by or retained from the *Contractor*;
- The change in the amount due since the previous payment being the invoiced amount - excluding VAT, the VAT and including VAT;
- (add other as required)

The *Contractor* attaches the detail assessment of the amount due to each tax invoice showing the Price for Work Done to Date for each item in the Price List for work which he has completed.

Add procedures for invoice submission and payment (e. g. electronic payment instructions)

4.4 Records of Defined Cost

In order to substantiate the Defined Cost of compensation events, the *Employer* may require the *Contractor* to keep records of amounts paid by him for people employed by the *Contractor*, Plant and Materials, work subcontracted by the *Contractor* and Equipment. [See clause 11.2(5) and 63.2]. State in what form these records are to be kept and how accessed by the *Employer*.

4.5 Accelerated Shared Growth Initiative – South Africa (ASGI-SA)

If the ASGI-SA requirements are to be included in this contract specify constraints which *Contractor* must comply with after contract award in regard to any ASGI-SA requirements. The ASGI-SA Compliance Schedule completed in the returnable tender schedules is reproduced here. If ASGI-SA does not apply, delete this paragraph.

The *Contractor* complies with and fulfils the *Contractor's* obligations in respect of the Accelerated and Shared Growth Initiative - South Africa in accordance with and as provided for in the *Contractor's* ASGI-SA Compliance Schedule stated below

[Insert the agreed ASGI-SA Compliance Schedule here]

The *Contractor* shall keep accurate records and provide the *Employer* with reports on the *Contractor's* actual delivery against the above stated ASGI-SA criteria. [Elaborate on access to and format of records and frequency of submission etc.]

The *Contractor's* failure to comply with his ASGI-SA obligations constitutes substantial failure on the part of the *Contractor* to comply with his obligations under this contract.

4.6 BBEE and preferencing scheme

Specify constraints which *Contractor* must comply with after contract award in regard to any Broad Based Black Economic Empowerment (B-BBEE) or preferencing scheme measures.

4.7 Facilities to be provided by the *Contractor*

State any requirements such as offices on site for the *Employer*.

4.8 Title to material from excavation and demolition

Read clause 70.2 then provide details as required. Particularly relevant in demolition where substantial amounts of copper are involved.

4.9 Design by the *Contractor*

Paragraph 1 above will have outlined what work is to be designed by the *Contractor* (if any). State here what procedures are required for the submission and acceptance of that design.

4.10 Cataloguing requirements by the *Contractor*

State whether cataloguing is applicable, if it is, reference the requirements for cataloguing that need to be satisfied by the *Contractor* (consult Procurement Instruction Number 1 of 2018 – Incorporating Cataloguing into the Procurement Environment, Unique Identifier 240-1289988974).

5. Requirements for the programme

State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

State what the use of the *works* is intended to be at their Completion as defined in Clause 11.2(1).

Describe what the *Employer* will provide such as services (including water and electricity) and “free issue” Plant and Materials and equipment.

[illegible]

C4: Site Information

Site Information is information about the *site* at the time of tender which the tendering contractor needs to allow for in his rates and Prices. The information does not change after contract award, nor does it describe or specify anything which the Parties do during the contract. It is only referred to during administration of the contract if the *Contractor* encounters conditions which are different to those described here. The *Contractor* will then make a comparison between actual conditions encountered and those described here in his assessment of any additional cost or time he may need to be compensated for in order to complete the works. Disputes about the difference between the effects of conditions encountered and those which the *Contractor* allowed for in his Prices will be minimised if the information given here is complete and relevant. If no information is given the tendering contractor will need to guess what he may encounter thus tendering higher Prices to allow for conditions that may not even exist.

C4.1: Information about the *site* at time of tender which may affect the work in this contract

1. Access limitations

State if there is any physical, time or other “third party” constraint associated with gaining access to and doing work on the *site* that may not be immediately apparent from an inspection of the *site*.

2. Ground conditions in areas affected by work in this contract

If earthworks are included in the Scope of Work, provide details of the ground conditions the *Contractor* is likely to encounter when doing the work. This could vary from indicating where a test pit has been opened up for the *Contractor* to make his own observations to providing full borehole logs and associated geotechnical report.

3. Hidden and other services within the *site*

Provide details of underground or other hidden services which the *Contractor* may encounter whilst doing the work. Instructions about how to deal with them if encountered should be included in the Works Information.

4. Details of existing buildings / facilities which *Contractor* is required to work on

If work is to be carried out on existing buildings or facilities Site Information would be the ‘as-built drawings’ of those buildings or facilities. If these are not a correct statement or not available other means of describing the existing buildings or facilities would have to be used, such as providing photographs