

Phase 1: Installing of available flow meters, commissioning new flowmeters and verification of old and new flowmeters as per the scope of work and **(Appendix A)** for Duvha Power Station.



NEC3 Engineering & Construction Contract

Between

**ESKOM HOLDINGS SOC Ltd
(Reg No. 2002/015527/30)**

and

for

**PHASE 1: INSTALLING OF AVAILABLE FLOW METERS,
COMMISSIONING NEW FLOWMETERS AND
VERIFICATION OF OLD AND NEW FLOWMETERS AS PER
THE SCOPE OF WORK AND (APPENDIX A) FOR DUVHA
POWER STATION.**

Contents:		No of pages
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Part C3	Scope of Work	[•]
Part C4	Site Information	[•]

CONTRACT No.

Phase 1: Installing of available flow meters, commissioning new flowmeters and verification of old and new flowmeters as per the scope of work and **(Appendix A)** for Duvha Power Station.

Part C1: Agreements & Contract Data

Contents:		No	of
		pages	
C1.1	Form of Offer and Acceptance	[3]	
C1.2a	Contract Data provided by the <i>Employer</i>	[•]	
C1.2b	Contract Data provided by the <i>Contractor</i>	[•]	
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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	
	Value Added Tax @ 15% is	
	The offered total of the amount due inclusive of VAT is ¹	
	(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 _____

For the tenderer:

Name & signature of witness _____
(Insert name and address of organisation)

Date

Tenderer's CIDB registration number (if applicable) _____

¹ 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 signed between them of this document, including the Schedule of Deviations (if any).

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**

Name & *(Insert name and address of
organisation)*

Signature of
witness

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	[•]	[•]

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)*

(Insert name and address of organisation)

Name & signature of witness

Date

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C1.2 ECC3 Contract Data

Part one - Data provided by the *Employer*

[Instructions to the contract compiler: (delete these two notes in the final draft of a contract)]

1. Please read the relevant clauses in the conditions of contract before you enter data. 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.
1. Some ECC3 options are always selected by Eskom Holdings SOC Ltd. The remaining ECC3 options are identified by shading in the left hand column. In the event that the option is not required select and delete the whole row. Where the following symbol is used "[●]" - data is required to be inserted relevant to the specific option selected.]

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

Clause	Statement	Data
1	General	
		A: Priced contract with activity schedule
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	X1: Price adjustment for inflation
		X2: Changes in the Law
		X7: Delay damages
		X16: Retention
		X17: Low Performance damages will be charged on instruments that are not operational after verification
		X18: Limitation of liability
		Z: Additional conditions of contract
	of the NEC3 Engineering and Construction Contract, April 2013 (ECC3)	
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,

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		Maxwell Drive, Sandton, Johannesburg
10.1	The <i>Project Manager</i> is: (Name)	Precious Mkize
	Address	Duvha Power Station
	Tel	013 690 0127
	Fax	086 537 4438
	e-mail	Mkizepr@eskom .co.za
10.1	The <i>Supervisor</i> is: (Name)	TBA
	Address	Duvha Power Station
	Tel No.	
	Fax No.	
	e-mail	
11.2(13)	The <i>works</i> are	Phase 1: Installing of available flow meters, commissioning new flowmeters and verification of old and new flowmeters as per the scope of work and (Appendix A) for Duvha Power Station.
11.2(14)	The following matters will be included in the Risk Register	1. Permit Requirements and access to the plant 2. Delay completion date 3. Program and recovery plan not submitted to Eskom 4. Contractor CSD Compliance 5. Slipping and falling 6. Dust (inhalation, skin and eye irritation) 7. Scorching sun(skin irritation) 8. Fracture 9. Electric shock
11.2(15)	The <i>boundaries of the site</i> are	Duvha Power Station – Site allocation for this project
11.2(16)	The Site Information is in	Part 4: Site Information
11.2(19)	The Works Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa

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13.1	The <i>language of this contract</i> is	English	
13.3	The <i>period for reply</i> is	Three (3) working days	
2	The Contractor's responsibilities	main	Data required by this section of the core clauses is provided by the <i>Contractor</i> in part 2 and terms in <i>Italics</i> used in this section are identified elsewhere in this Contract Data.
3	Time		
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	2022-11-04 (Subject to change due to PTW and other Water plant constraints)	
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	key date
		1 Submission and approval of a program	Weeks after contract awarded
		2 Kick off meeting	Weeks after contract awarded
		3 Site establishment	Weeks after contract awarded
		4 Execution as per the scope	As per the signed program
		5 Commissioning	As per the signed program
		6 De-establishment and hand over	As per the signed program
30.1	The <i>access dates</i> are:	Part of the Site	Date
		1 Duvha Power station	After contract award
		2 On site	After all employees have attended Induction

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31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	1 weeks of the Contract Date.
31.2	The <i>starting date</i> is	2022-06-01 Subject to change due to procurement process
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	3 weeks.
35.1	The <i>Employer</i> is not willing to take over the <i>works</i> before the Completion Date.	
4	Testing and Defects	
42.2	The <i>defects date</i> is	52 weeks after Completion of the whole of the <i>works</i>.
43.2	The <i>defect correction period</i> is	2 weeks except in those circumstances where correction in such period is not practical, in which case the defect shall be corrected by the contractor within such time as mutually agreed by both parties.
5	Payment	
50.1	The <i>assessment interval</i> is	on the 25th of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand.
51.2	The period within which payments are made is	4 weeks.
51.4	The <i>interest rate</i> is	(i) zero percent 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 Limited (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 (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

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date for the payment in question, adjusted *mutatis mutandis* 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.

6	Compensation events	
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:	Duvha Power Station the cumulative rainfall (mm) the number of days with rainfall more than 10 mm the number of days with minimum air temperature less than 5 degrees Celsius the number of days with maximum air temperature more than 35 degrees Celsius the number of days with snow lying at 09:00 hours South African Time and these measurements: The Contractor Witbank area the South African Weather Bureau and included in Annexure A to this Contract Data provided by the <i>Employer</i>
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.
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	1. Availability of an AP/RP safety risk 2. Warranty 3. Access to plant 4. Permit to work availability

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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.asp X (See Annexure B for basic guidance) (Format “A” is included in the contract)
84.2	The insurance against loss of or damage to the <i>works</i> , Plant and Materials is to include cover for Plant and Materials provided by the <i>Employer</i> for an amount of	R100 000.00
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>.
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).
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.
10	Data for main Option clause	
A	Priced contract with activity schedule	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.
11	Data for Option W1	
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

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		Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
	Address	[•]
	Tel No.	[•]
	Fax No.	[•]
	e-mail	[•]
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.
W1.4(2)	The <i>tribunal</i> is:	Arbitration.
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.
	The place where arbitration is to be held is	[•] South Africa
	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 Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
12	Data for secondary Option clauses	
X1	Price adjustment for inflation	
X1.1(a)	The <i>base date</i> for indices is	The Contract is 1 year the prices are fixed and firm
X1.1(c)	The proportions used to calculate the Price Adjustment Factor are:	N/A
X2	Changes in the law	
	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.	

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X5	Sectional Completion	As per approved task order	
		Section (task order)	Description
		1.	Site establishment
		2.	Safety (Medicals and Safety PPE)
		3.	Supply and deliver material.
		4.	Mechanical work
		5.	Installation of meters Electrical work
		6.	Testing
		7.	Verifications
		8.	Commissioning
	9.	Site de-establishment	
X7	Delay Damages for completion of the whole of the works are	0.10% of the total contract value per week limited to 5% contract value, based on the submitted program – key milestone dates.	
X17	Low performance damages	R2 500.00 per flow meter	
X16	Retention	Not used with option F	
X18	Limitation of liability		
X18.1	The Contractor's liability to the Employer for indirect or consequential loss is limited to:	R0.0 (zero Rand) The contractor shall not be liable to the Employer for the loss of use of any Works, loss of production, loss of profit of any Contract and for the damage caused by the interruption of operations, unavailability of the works, loss of data (including the retrieval of data), loss of interest, liability for financing expenses and, or for any indirect or consequential loss or damage which may be suffered by the Employer.	
X18.2	For any one event, the Contractor's liability to the Employer for loss of or damage to the Employer's 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/InsurancePoliciesProcedures/Pages/EIMS_Policies_	

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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 • 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 • 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) [●] years after the <i>defects date</i> for latent Defects and (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. 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

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the reasonable inspection, this does not place a greater responsibility on the *Employer* or the *Supervisor* to have discovered the Defect.

Z	The <i>Additional conditions of contract</i> are	Z1 to Z12 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.	
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.	
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.	

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Z4 Confidentiality

- Z4.1 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.
- Z4.2 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*.
- Z4.3 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.
- Z4.4 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*.
- Z4.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

- Z5.1 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.

Z6 Health, safety and the environment: Add to core clause 27.4

- Z6.1 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

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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.

Z6.2 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.

Z7 Provision of a Tax Invoice and interest. Add to core clause 51

Z7.1 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.

Z7.2 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.

Z7.3 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.

Z8 Notifying compensation events

Z8.1 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".

Z9 Employer's limitation of liability

Z9.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z9.2 The *Contractor's* entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the *Employer's* liability under the indemnity is limited.

Z10 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z10.1 or had a business rescue order granted against it.

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Z11 Addition to secondary Option X7 Delay damages (if applicable in this contract)

Z11.1 If the amount due for the *Contractor's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Contractor's* 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.

Z12 Ethics

For the purposes of this Z-clause, the following definitions apply:

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,
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,
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,
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,
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,
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,
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
Prohibited Action	means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

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.

Z 12.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Works if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely

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and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* 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 *Employer* can terminate the *Contractor's* obligation to Provide the Works for this reason.

Z 12.3 If the *Employer* terminates the *Contractor's* 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.

Z 12.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

Z 12.5 Eskom will assist with an RP and the Supplier to ensure to have own RP within three months authorised at Duvha Power Station.

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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	Average Rainfall (mm)	Average Number of days with rainfall	Absolute High [Low] temperature (C)	Average midday High [Low] temperature (C)
January	138	11	34 [5]	25 [13]
February	89	7	34 [8]	25 [13]
March	75	7	33 [5]	24 [12]
April	52	5	29 [1]	23 [10]
May	9	2	26 [-6]	20 [6]
June	23	2	24 [-3]	18 [4]
July	6	1	25 [-5]	18 [3]
August	11	2	28 [-6]	21 [5]
September	25	3	31 [-2]	24 [8]
October	96	8	33 [0]	25 [10]
November	120	10	33 [-2]	25 [11]
December	159	10	31 [0]	25 [13]

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

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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

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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

Annexure C: The *Employer's* Panel of Adjudicators

The following persons listed in alphabetical order of their surname have indicated their willingness to be included in the Eskom Panel of Adjudicators. Their CV's may be obtained by using the contact details provided.

Name	Location	Contact details (phone & e mail)
Nigel ANDREWS	Gauteng	+27 11 836-6760 nigela@quoin.net
Andrew BAIRD	Gauteng	+27 11 803 3008 andrewbaird@ecsconsult.co.za
Christopher BINNINGTON	Gauteng	+27 11 888-6141 cdb@bca.co.za
Peter HIGGINS	UK	+44 1293 873 868 peterhiggins@pdconsult.co.uk
Bruce LEECH	Gauteng	+27 11 290 4000 leech@counsel.co.za
Nigel NILEN	Gauteng	+27 11 465 3601; nilences@global.co.za
Peter THURLOW	Gauteng	+27 11 787 6226 info@thurlowassoc.com

Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management, by contacting Leighton Itholeng (Tel.: +27 (0)11 800 4031) (Fax :+27 (0)86 668 0419) E-mail: Leighton.Itholeng@eskom.co.za

Phase 1: Installing of available flow meters, commissioning new flowmeters and verification of old and new flowmeters as per the scope of work and **(Appendix A)** for Duvha Power Station.

C1.2 Contract Data

Part two - Data provided by the *Contractor*

[Instructions to the contract compiler: (delete this notes before issue to tenderers with an enquiry)

Whenever a cell is shaded in the left hand column it denotes this data is optional. If not required select and delete the whole row, otherwise insert the required Data.]

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)² 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:	

² Available from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009 or see www.ecs.co.za

Phase 1: Installing of available flow meters, commissioning new flowmeters and verification of old and new flowmeters as per the scope of work and **(Appendix A)** for Duvha Power Station.

	Job Responsibilities: Qualifications: Experience:	CV's (and further key persons data including CVs) are appended to Tender Schedule entitled .
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	2024-05-31
11.2(14)	The following matters will be included in the Risk Register	N/A
11.2(19)	The Works Information for the <i>Contractor's</i> design is in:	The scope of work
31.1	The programme identified in the Contract Data is	Submitted within 1 week of contract date
A	Priced contract with activity schedule	
11.2(20)	The <i>activity schedule</i> is in	The Price List
11.2(30)	The tendered total of the Prices is	R
	Data for Schedules of Cost Components	<i>Note "SCC" means Schedule of Cost Components starting on page 60, and "SSCC" means Shorter Schedule of Cost Components starting on page 63 of ECC3 (April 2013).</i>
A	Priced contract with activity schedule	Data for the Shorter Schedule of Cost Components
41 in SSCC	The percentage for people overheads is:	%
21 in SSCC	The published list of Equipment is the last edition of the list published by The percentage for adjustment for Equipment in the published list is	Minus %

Phase 1: Installing of available flow meters, commissioning new flowmeters and verification of old and new flowmeters as per the scope of work and **(Appendix A)** for Duvha Power Station.

PART 2: PRICING DATA
ECC3 Option A

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

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*:

- 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

Use this page as a cover page to the *Contractor's activity schedule*.

An activity schedule could have the following format:

Item No.	Activity description	QTY	PRICE
10	Site Establishment	Sum	
20	Safety (Attached Safety Cost Breakdown)	Sum	
30	Site De-Establishment	Sum	
40	Preliminary and General (Attached Cost Breakdown)	Sum	
50	Existing Flowmeters that requires verification		
50.1	20VB10F002 - Raw water to Cooling System (North)	1	
50.2	20VB10F006 - CW to clarifier 46	1	
50.3	20VB30F002 - CW to clarifier 47 & 48	1	
50.4	20VB20F006 - Clarifier 47 outlet	1	
50.5	20VB30F006 - CW Clarifier 48 outlet	1	
50.6	20VB30F008 [20UH11F001] - Sludge blowdown water to clar 47 & 48	1	
50.7	10VB10F002 - Raw water to Cooling System (South)	1	
50.8	10VB30F002 - CW to clarifier 159 and 158	1	
50.9	10VB10F006 - CW to clarifier 157	1	
50.10	10VB30F008 - CW hot duct/sludge blowdown water Instrument not working Supplier to submit recommendations	1	
50.11	10VB50F003 - Raw to clarifier 186 & 157	1	
50.12	10VB40F001 - Clarifier 156 and 157	1	
50.13	10VB30F009 - Effl to CCW Clar 159	1	

	Instrument not working Supplier to submit recommendations		
50.14	00UK20F001 - Potable to workshop	1	
50.15	00UK20F002 - Potable water to ringmain	1	
50.16	00UK11F002 - Potable water to Ikageng	1	
50.17	00UK30F002 - Potable water to Mine	1	
50.18	00UK40F001 - Potable to fire	1	
50.19	01WW100F001- Unit 1 CW to Ashing (See Attached Drawing)	1	
50.20	01WW100F001 - Unit 2 CW to Ashing See attached drawing	1	
50.21	01WW100F001 – Unit 3 CW to Ashing (See attached Drawing)	1	
50.22	01WW100F001 - Unit 4 CW to Ashing (See attached drawing)	1	
50.23	01WW100F001 – Unit 5 CW to Ashing (See attached drawing)	1	
50.24	01WW100F001 – Unit 6 CW to Ashing (See attached drawing)	1	
50.25	20UE13F001 – Ash Water to Lime Silos (See attached drawing)	1	
50.26	20UE13F002 – Ash Water to lime silos (See attaches Drawing)	1	
50.27	10UE13F002 - Ash water to clarifier 1 (South plant)	1	
50.28	10UE13F001 - Ash water to clarifier 2 (South plant)	1	
	TOTAL PRICE FOR VERIFICATION		
60	NEW INSTRUMENTS TO BE INSTALLED AND VERIFIED (ESKOM TO SUPPLIER THE METERS)		
60.1	Clarifier 46 outlet [Cleaning of clarifier needs to be arrange]	1	
60.2	Potable to Compressors [New meter required, taps from fire]	1	
60.3	Potable to H2 plant [new installation, inside unit]	1	

60.4	Potable to Head Tank [Install meter]	1	
60.5	Unit 1&2 Potable WTR Head Tank	1	
60.6	Unit 3&4 Potable WTR Head Tank	1	
60.7	Unit 5&6 Potable WTR Head Tank	1	
	TOTAL PRICE FOR INSTALLATION		

NOTE: The successful supplier must subcontract 1X Authorised Responsible Persons(RP) authorised at Duvha Power Station for Water Treatment Plant even when they are working for other suppliers to assist for the duration of the contract.

The supplier will not be obliged to employ the candidate after the contract has expired.

_____	_____	_____
Name and surname	Signature	Date

PART 3: SCOPE OF WORK

Document reference	Phase 1: Installing of available flow meters, commissioning new flowmeters and verification of old and new flowmeters as per the scope of work and (Appendix A) for Duvha Power Station.	No of pages
C3.1	This cover page	1
C3.2	<i>Employer's Works Information</i>	
	<i>Contractor's Works Information</i>	
	Total number of pages	

C3.1: EMPLOYER'S WORKS INFORMATION