

C1.2 ECC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		B: Priced contract with bill of quantities
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	X1: Price adjustment for inflation
		X2 Changes in the law
		X7: Delay damages
		X13: Performance Bond
		X15: Limitation of <i>Contractor's</i> liability for design to reasonable skill and care
		X16: Retention
		X18: Limitation of liability
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Engineering and Construction Contract, June 2005 (ECC3) (with amendments June 2006)	
10.1	The <i>Employer</i> is (Name):	Eskom Holdings Limited (reg no: 2002/015527/30), a juristic person incorporated in terms of the company laws of the Republic of South Africa
	Address:	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Represented by:	Motsatsi Magwele
	Tel No:	015 230 1729
	Fax No:	
10.1	The <i>Project Manager</i> is:	As per Specific Project
	Address:	
	Tel:	

Fax:

e-mail:

10.1	The <i>Supervisor</i> is:	The supervisor will be the Clerk of Works appointed for a particular project and will be specified in the project specific agreement.	
11.2(13)	The <i>works</i> are	As per Specific Project	
11.2(14)	The following matters will be included in the Risk Register	• Cost overruns due to unpredictable surface conditions. • The possibility of existing services which might not be indicated on the wayleave. • Completion Date • Late material Date • Theft of un-energised cables • Vandalism of un-energised primary plant • Armed robberies on site	
11.2(15)	The <i>boundaries of the site</i> are	As per Specific 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	
13.1	The <i>language of this contract</i> is	English	
13.3	The <i>period for reply</i> is	1 week	
2	The Contractor's main responsibilities	Data required by this section of the core clauses is provided by the <i>Contractor</i> in Part 2 and terms in italics 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		
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met Start Date As per Specific Project	key date
30.1	The <i>access dates</i> are:	Part of the Site 1 As per Specific Project	Date
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	1 week of the Contract Date.	
31.2	The <i>starting date</i> is	As per Specific Project	

32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	The period between project progress meetings.
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> per project or section thereof if sectional completion is applicable.
43.2	The <i>defect correction period</i> is	Within 1 week upon notification of defect
5	Payment	
50.1	The <i>assessment interval</i> is	between the 15 th and 20th day 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	30 Days
51.4	The <i>interest rate</i> is	(i) zero percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and
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:	The established 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 established site The nearest weather station of the South African Weather Service to the site 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. Inclement weather 2. Resident Complaints 3. Theft and vandalism
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/InsurancePolicies/Procedures/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)
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	
B	Priced contract with bill of quantities	
60.6	The <i>method of measurement</i> is	as stated in Part C2.1, Pricing Assumptions.
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 Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
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	Johannesburg South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	the Chairman for the time being or his nominee
	- if the arbitration procedure does not state who selects an arbitrator, is	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	Date of issue of Specific Project
X1.1(c)	The proportions used to calculate the Price Adjustment Factor are:	CPA will only be applicable on the projects that have a duration > 12 months. For the projects where the duration is greater than 12 months , the request for quotation (mini RFQ) will be issued with CPA conditions as: A minimum of 10% of the price must be fixed, the price adjustment being applied to the balance of 90% will be escalated as follows: • Material rates 20% in the Pricing Data will be adjusted as per CPI. • Labour rates 60% in the Pricing Data will be adjusted as per SEIFSA TABLE C3. • Transport rates 10% in the Pricing Data will be adjusted as per SEIFSA TABLE L1. Price fluctuations may result in an increase or decrease in the rates provided in the Pricing Data
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.

X7	Delay damages	
X7.1	Delay damages for Completion of the whole of the <i>works</i> are	0.1% per day up to 15% of contract value.
X15	Limitation of the <i>Contractor's</i> liability for his design to reasonable skill & care	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.
X16	Retention (not used with Option F)	
X16.1	The <i>retention free amount</i> is	N/A
	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 employ 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 <i>http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</i>
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) seven 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 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.
Z	The Additional conditions of contract 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 *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>
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)
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.
Z11	Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":
Z11.1	or had a business rescue order granted against it.
Z12	Addition to secondary Option X7 Delay damages (if applicable in this contract)
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.

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.
5. **Further information and full details of all Eskom provided policies and procedures may be obtained from:**

http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies.aspx