




## C1.2 TSC3 Contract Data

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		A: Priced contract with price list
		C Target contract with price list Option C or A to be advised on if this is an as and when required.
	dispute resolution Option and secondary Options	W1: Dispute resolution procedure
		X1: Price adjustment for inflation
		X2 Changes in the law
		X17: Low service damages
		X19: Task Order
		X20: Key performance indicators
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Term Service Contract April 2013 <sup>1</sup> (TSC3)	
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
	Tel No.	+27 21 522 3621
	e-mail	<a href="mailto:Cairnsa@eskom.co.za">Cairnsa@eskom.co.za</a>
10.1	The <i>Service Manager</i> is (name):	Wayne Cairns
	Address	Eskom Megawatt Park 3 <sup>rd</sup> Floor
	Tel	+27 21 522 3621
	e-mail	<a href="mailto:Cairnsa@eskom.co.za">Cairnsa@eskom.co.za</a>

<sup>1</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902 [www.ecs.co.za](http://www.ecs.co.za)

11.2(2)	The Affected Property is	<b>Eskom Holding SOC Ltd</b>															
11.2(13)	The <i>service</i> is	<b>Provision of Specialised Security Services – Close Protection (on an as and when required basis) for a period of three (3) years.</b>															
11.2(14)	The following matters will be included in the Risk Register	<table border="1"> <thead> <tr> <th>Risk</th><th>Mitigating Factors</th><th>Level (H/M/L)</th></tr> </thead> <tbody> <tr> <td><b>Cost:</b> Contract Price adjustment on Contract</td><td>Contract will be for 36 months period, first 12 months no CPA</td><td>Low</td></tr> <tr> <td><b>Scope:</b> Clear understanding of scope of work.</td><td>Service provider to clearly understand the entire scope of work.</td><td>High</td></tr> <tr> <td><b>Safety:</b> Non-adherence to the client specification and working standards</td><td>Service provider to comply to all required safety standards before the award of contract and or according to the allocated time to comply.</td><td>Low</td></tr> <tr> <td><b>Quality:</b> Non-adherence to the client specification and working standards.</td><td>Service provider to comply to all required quality standards before the award of contract and or according to the allocated time to comply.</td><td>Low</td></tr> </tbody> </table>	Risk	Mitigating Factors	Level (H/M/L)	<b>Cost:</b> Contract Price adjustment on Contract	Contract will be for 36 months period, first 12 months no CPA	Low	<b>Scope:</b> Clear understanding of scope of work.	Service provider to clearly understand the entire scope of work.	High	<b>Safety:</b> Non-adherence to the client specification and working standards	Service provider to comply to all required safety standards before the award of contract and or according to the allocated time to comply.	Low	<b>Quality:</b> Non-adherence to the client specification and working standards.	Service provider to comply to all required quality standards before the award of contract and or according to the allocated time to comply.	Low
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<b>Quality:</b> Non-adherence to the client specification and working standards.	Service provider to comply to all required quality standards before the award of contract and or according to the allocated time to comply.	Low															
11.2(15)	The Service Information is in	<b>Part 3: Scope of Work and all documents and drawings to which it makes reference.</b>															
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>															
13.1	The <i>language of this contract</i> is	<b>English</b>															
13.3	The <i>period for reply</i> is	<b>one week</b>															
2	<b>The Contractor's main responsibilities</b>	<b>Data required by this section of the core clauses is also provided by the Contractor in Part 2 and terms in italics used in this section</b>															

are identified elsewhere in this Contract Data		
21.1	The <i>Contractor</i> submits a first plan for acceptance within	one week of the Contract Date
3	<b>Time</b>	
30.1	The <i>starting date</i> is.	01 March 2026
30.1	The <i>service period</i> is	Three (3) years
4	<b>Testing and defects</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
5	<b>Payment</b>	
50.1	The <i>assessment interval</i> is	between the 25 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	Not applicable.
6	<b>Compensation events</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
7	<b>Use of Equipment Plant and Materials</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
8	<b>Risks and insurance</b>	
80.1	These are additional <i>Employer's</i> risks	
83.1	The Employer provides these insurances from the Insurance Table	as stated for "Format TSC3" available on <a href="http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies">http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies</a> From 1 April 2014 To 31 March 2015.aspx (See Annexure A for basic guidance)
83.1	The Employer provides these additional insurances	as stated for "Format TSC3" available on <a href="http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies">http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies</a> From 1 April 2014 To 31 March 2015.aspx (See Annexure A for basic guidance)
83.1	The Contractor provides these additional instances: The minimum amount of cover for insurance against loss and damage caused by the contractor to the <i>Employer's</i> property is	The amount of the deductibles relevant to the event described in the "Format TSC3" available on <a href="http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies">http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies</a> From 1 April 2014 to 31 March 2015.aspx
83.1	The insurance against loss of or damage	

	to the works, Plant and materials is to include cover for Plant and Materials provided by the Employer for the amount of	
83.1	The minimum amount of cover for insurance against loss of or damage to property (except the Employer's property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the contractor) arising from or in connection with the Contractor's providing the Service for any one event is:	<b>Whatever the Contractor deems necessary in addition to that provided by the Employer.</b>
83.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract for any one event is:	<b>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the Contractor's common law liability for people falling outside the scope of the Act with a limit of indemnity of not less than R500 000.00 (Five hundred thousand Rand).</b>
<b>9</b>	<b>Termination</b>	<b>There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.</b>
<b>10</b>	<b>Data for main Option clause</b>	
<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i>	<b>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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).</b>
W1.2(3)	The <i>Adjudicator nominating body</i> is:	<b>the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>) or its successor body.</b>
W1.4(2)	The <i>tribunal</i> is:	<b>arbitration</b>
W1.4(5)	The <i>arbitration procedure</i> is	<b>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</b>
	The place where arbitration is to be held is	<b>South Africa</b>
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	<b>the Chairman for the time being or his nominee</b>
	- if the arbitration procedure does not state who selects an arbitrator, is	<b>of the Association of Arbitrators (Southern Africa) or its successor body.</b>

<b>12</b>	<b>Data for secondary Option clauses</b>	
<b>X1</b>	<b>Price adjustment for inflation</b>	
X1.1	The <i>base date</i> for indices is  The proportions used to calculate the Price Adjustment Factor are:	<b>[•].</b>  proportion linked to index for CPI  Index prepared by
<b>X2</b>	<b>Changes in the law</b>	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.
<b>X4</b>	<b>Parent company guarantee</b>	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.
<b>X13</b>	<b>Performance Bond</b>	N/A
<b>X17</b>	<b>Low service damages</b>	N/A
X17.1	The <i>service level table</i> is in	R0.00
<b>X18</b>	<b>Limitation of liability</b>	
X18.1	The Contractor's liability to the Employer for indirect or consequential loss is limited to	As per KPI's
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 "Format TSC3" available on <a href="http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies">http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies</a> From 1 April 2014 to 31 March 2015.aspx
X18.3	The Contractor's liability for defects due to his design of an item of Equipment is limited to	The greater of the total of the Prices at the contract date and the amounts excluded and unrecoverable from the Employer's insurance (other than the resulting physical damage to the Employer's property which is not excluded) plus the applicable deductibles in the Employer's assets and works/ maintenance policies available on <a href="http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies">http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies</a> From 1 April 2014 to 31 March 2015.aspx
X18.4	The Contractor's total liability to the Employer, for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	The total of the prices other than for the additional excluded matters.  The Contractor's total liability for the additional excluded matters is not limited.  The additional excluded matters are amounts for which the Contractor is liable under this contract for:  Defects due to his design, plan and

		<b>specification , Defects due to manufacture and fabrication outside the Affected Property, loss of or damage to property (other than the Employer's property, plant and materials, death of or injury to a person and infringement of an intellectual property right.</b>
X18.5	The end of liability date is	<b>6 months after the end of the service period.</b>
<b>X19</b>	<b>Task Order</b>	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	<b>3 days of receiving the Task Order</b>
<b>Z</b>	<b>The <i>additional conditions of contract</i> are</b>	<b>Z1 to Z11 always apply.</b>

## **Z1 Cession delegation and assignment**

- Z1.1 The *Contractor* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Contractor* 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 *Contractor* 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 *Employer* for the performance of this contract.
- Z2.2 Unless already notified to the *Employer*, the persons or organisations notify the *Service Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf.
- Z2.3 The *Contractor* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Contractor* in writing.

## **Z3 Change of Broad Based Black Economic Empowerment (B-BBEE) status**

- Z3.1 Where a change in the *Contractor's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor's* B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change.
- 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 *Service Manager* within thirty days of the notification or as otherwise instructed by the *Service 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 Service.
- 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 P4 as stated in clause 92, and the amount due is A1

and A3 as stated in clause 93.

#### **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 *Service 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 Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service 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 *Service Manager* 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 *service*. 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 Affected Property;
  - 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 the *service*; and
  - undertakes, in and about the execution of the *service*, 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 *service*, 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 *Service 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 Service 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**

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- Z8.1 Delete the last paragraph of core clause 61.3 and replace with:

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices.

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**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 82.1 is provided for in 60.1(12) and the *Employer's* liability under the indemnity is limited to compensation as provided for in core clause 63 and X19.11 if Option X19 Task Order applies to this contract.

**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.

**Z11 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 *Contractor* 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 *Contractor*, 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.

- Z11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z11.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely 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 Services for this reason.
- Z11.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.
- Z11.4 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.