



NEC3 Term Service Contract (TSC3)

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

and [Insert at award stage]
(Reg No. _____)

for **THE HIRING, INSTALLATION AND OPERATION OF
SUSPENDED PLATFORMS AND MOBILE LIFTS ON
AN "AS AND WHEN" REQUIRED BASIS FOR A
PERIOD OF FIVE YEARS AT KRIEL POWER
STATION.**

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CONTRACT No. [Insert at award stage]

PART C1: AGREEMENTS & CONTRACT DATA

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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:

OUTAGE HIRING, INSTALLATION AND OPERATION OF SUSPENDED PLATFORMS AND MOBILE LIFTS ON AN "AS AND WHEN" REQUIRED BASIS FOR A PERIOD OF FIVE YEARS AT KRIEL POWER STATION.

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 or C	The offered total of the Prices exclusive of VAT is	R [●]
Option E	The first forecast of the total Defined Cost plus the Fee exclusive of VAT is	R [●]
	Sub total	R [●]
	Value Added Tax @ 15% is	R [●]
	The offered total of the amount due inclusive of VAT is ¹	R [●]
	(in words) [●]	

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

Signature(s)

Name(s)

Capacity

For the tenderer:

.....
(Insert name and address of organisation)

Name & signature of witness

Date

Tenderer's CIDB registration number:

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*.

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: Service 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 and signed original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s) _____

Capacity _____

for the Employer **Eskom Holdings SOC Ltd, Kriel Power Station, Bethal-Ogies Road, Kriel, Mpumalanga**

(Insert name and address of organisation)

Name & signature of witness _____

Date _____

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

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

Note:

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

No.	Subject	Details
1	[•]	[•]
2	[•]	[•]
3	[•]	[•]
4	[•]	[•]
5	[•]	[•]
6	[•]	[•]
7	[•]	[•]

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

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

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 _____

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

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

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
	dispute resolution Option	A: Priced contract with price list
	and secondary Options	W1: Dispute resolution procedure
		X1: Price adjustment for inflation
		X2: Changes in the law
		X17: Low service damages
		X18: Limitation of liability
		X19: Task Order
		Z: Additional conditions of contract
	of the NEC3 Term Service Contract April 2013 ¹ (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.	011 871 3706
	Fax No.	Not applicable
10.1	The <i>Service Manager</i> is (name):	Landizwe Njapha
	Address	Kriel Power Station, Ogies/Bethal Road, Kriel, 2271
	Tel	017 615 2518
	Fax	Not applicable
	e-mail	NjaphaLT@eskom.co.za

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902 www.ecs.co.za

11.2(2)	The Affected Property is	Kriel Power Station
11.2(13)	The <i>service</i> is	The Hiring, installation and operation of suspended platforms and mobile lifts on an "as and when" required basis for a period of five years at Kriel Power Station.
11.2(14)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> - Any quality related issues. - Any force majeure issue such as protests, covid restrictions.
11.2(15)	The Service Information is in	Part 3: Scope of Work.
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	<ul style="list-style-type: none"> - Within 2 working days non outage periods. - During Outages within 12 hours including weekends and public holidays. - 24 Hours for Maintenance Work.
2	The Contractor's main responsibilities	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 are identified elsewhere in this Contract Data
21.1	The <i>Contractor</i> submits a first plan for acceptance within	Level 3 plan within a week of the Contract Date
3	Time	
30.1	The <i>starting date</i> is.	Contract signature date (date of the last party signing the contract)
30.1	The <i>service period</i> is	Five years
4	Testing and defects	Refer to Part C3 Scope Of Work
5	Payment	
50.1	The <i>assessment interval</i> is	<ul style="list-style-type: none"> - 25th day of each successive month. - Service manager may when deemed necessary request Bi-Weekly payment assessments or on the completion of work.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	14 or 30 days as per Eskom Finance Procedures.
51.4	The <i>interest rate</i> is	<p>the publicly quoted prime rate of interest (calculated on a 365 day year) charged by 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</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted</p>

under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *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	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	Use of Equipment Plant and Materials	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. Possible termination due to non-adherence to terms/clauses of the contract.
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 price list	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than	2 weeks
11	Data for Option W1	
W1.1	The <i>Adjudicator</i>	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).
	Address	To be known when dispute arises
	Tel No.	To be known when dispute arises
	Fax No.	To be known when dispute arises

e-mail		To be known when dispute arises
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 Institution of Civil Engineers (London) (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	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
	- if the arbitration procedure does not state who selects an arbitrator, is	

12 Data for secondary Option clauses

X1	Price adjustment for inflation																			
X1.1	The <i>base date</i> for indices is	Base date is one month before the closing date. (CPA claim will be applicable 12 months after contract start date)																		
	The proportions used to calculate the Price Adjustment Factor are:	<table border="1"> <thead> <tr> <th>proportion</th> <th>linked to index for</th> <th>Index prepared by</th> </tr> </thead> <tbody> <tr> <td>0.70</td> <td>Labour Hourly C3A</td> <td>SEIFSA</td> </tr> <tr> <td>0.10</td> <td>Transport L2(B)</td> <td>SEIFSA</td> </tr> <tr> <td>0.05</td> <td>Equipment-Table P2</td> <td>SEISA</td> </tr> <tr> <td>0.15</td> <td>non-adjustable</td> <td></td> </tr> <tr> <td>1.00</td> <td></td> <td></td> </tr> </tbody> </table>	proportion	linked to index for	Index prepared by	0.70	Labour Hourly C3A	SEIFSA	0.10	Transport L2(B)	SEIFSA	0.05	Equipment-Table P2	SEISA	0.15	non-adjustable		1.00		
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0.05	Equipment-Table P2	SEISA																		
0.15	non-adjustable																			
1.00																				
X2	Changes in the law	The laws in terms of this contract will be the law of South Africa.																		
X17	Low service damages																			
X17.1	The <i>service level table</i> is in	Annexure A (page 12 of part C1.2a)																		
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	R0.0 (zero Rand)																		
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	the amount of the deductibles relevant to the event																		

	limited to	
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	The specific task order value
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 the excluded matters, is limited to	The specific task order value
X18.5	The <i>end of liability date</i> is	after the end of the service period.
X19	Task Order	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	- 5 days of receiving the Task Order
Z	The additional conditions of contract are	
		Z1 to Z14 always apply.

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

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.

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 means where two or more parties co-operate to achieve an unlawful or illegal

- Action** 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.

Z12 Insurance

Z 12 .1 Replace core clause 83 with the following:

Insurance cover 83

- 83.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
- 83.2 The *Contractor* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract

	Date, where covered by the <i>Employer's</i> insurance.
Loss of or damage to Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
Loss of or damage to Equipment	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service	<u>Loss of or damage to property</u> The replacement cost <u>Bodily injury to or death of a person</u> The amount required by the applicable law.
Liability for 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	The amount required by the applicable law

Z 12.2 Replace core clause 86 with the following:

Insurance by the Employer 86

86.1 The *Employer* provides the insurances stated in the Insurance Table B

INSURANCE TABLE B

Insurance against or name of policy	Minimum amount of cover or minimum limit of indemnity
Assets All Risk	Per the insurance policy document
Contract Works insurance	Per the insurance policy document
Environmental Liability	Per the insurance policy document
General and Public Liability	Per the insurance policy document
Transportation (Marine)	Per the insurance policy document

Motor Fleet and Mobile Plant	Per the insurance policy document
Terrorism	Per the insurance policy document
Cyber Liability	Per the insurance policy document
Nuclear Material Damage and Business Interruption	Per the insurance policy document
Nuclear Material Damage Terrorism	Per the insurance policy document

Z13 Nuclear Liability

- Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z13.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z14 Asbestos

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

- AAIA** means approved asbestos inspection authority.
- ACM** means asbestos containing materials.
- AL** means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
- Ambient Air** means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
- Compliance Monitoring** means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
- OEL** means occupational exposure limit.

Parallel Measurements	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
Safe Levels	means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
Standard	means the <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
SANAS	means the South African National Accreditation System.
TWA	means the average exposure, within a given workplace, to airborne asbestos fibres, normalized to the baseline of a 4-hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

- Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
- Z14.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z14.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z14.5 The *Contractor's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z14.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

Annexure A: Table of Low service damages (X17)

Low Service Damage Description	Value of Low Service Damages	- Limit of Low Service Damage
- Service delaying the Outage Critical Path. (Delaying other <i>Contractor(s)</i> from starting/completing their work)	- 1.5% of Task Order per day.	- Limited to 10% of the Task Order value.
- Service delays not finishing as per agreed upon Programme submitted to the <i>Service Manger</i> .	- 1% of Task Order per day.	- Limited to 10% of the Task Order value
- Submission of documents as per agreed upon CDSS in this <i>service agreement</i> .	- 0.5% of Task Order per day.	- Limited to 10% of the Task Order value.
- Rework due to poor workmanship.	- 2% of Task Order per day.	- Limited to 10% of the Task Order value.
- Daily Progress Updated Programme.	- 0.5% of Task Order per day.	- Limited to 10% of the Task Order value
- No response of NCR within 3 days.	- 1% of Task Order per day.	- Limited to 10% of the Task Order value.

C1.2 Contract Data

Part two - Data provided by the Contractor

Notes to a tendering contractor:

1. Please read both the both the NEC3 Term Service Contract April 2013 and the relevant parts of its Guidance Notes (TSC3-GN)¹ in order to understand the implications of this Data which the tenderer is required to complete.
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(14)	The following matters will be included in the Risk Register	
11.2(15)	The Service Information for the <i>Contractor's</i> plan is in:	
21.1	The plan identified in the Contract Data is contained in:	
24.1	The key people are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities: Qualifications:	

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 5391902 or www.ecs.co.za

Experience:

CV's (and further key person's data including CVs) are in .

A	Priced contract with price list
11.2(12)	The <i>price list</i> is in
11.2(19)	The tendered total of the Prices is R
C	Target contract with price list
11.2(12)	The <i>price list</i> is in
11.2(20)	The tendered total of the Prices is R
E	Cost reimbursable contract
11.2(12)	The <i>price list</i> is in

PART 2: PRICING DATA

TSC3 Option A

Document reference	Title	No of pages
	This cover page	1
C2.1	Pricing assumptions: Option A	2
C2.2	The <i>price list</i>	2

C2.1 Pricing assumptions: Option A

1. How work is priced and assessed for payment

Clause 11 in NEC3 Term Service Contract (TSC3) core clauses and Option A states:

Identified and defined terms	11 11.2	(12) The Price List is the <i>price list</i> unless later changed in accordance with this contract. (17) The Price for Services Provided to Date is the total of <ul style="list-style-type: none"> • the Price for each lump sum item in the Price List which the <i>Contractor</i> has completed and • where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the <i>Contractor</i> has completed by the rate. (19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.
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This confirms that Option A is a priced contract where the Prices are derived from a list of items of service which can be priced as lump sums or as expected quantities of service multiplied by a rate or a mix of both.

2. Function of the Price List

Clause 54.1 in Option A states: "Information in the Price List is not Service Information". This confirms that instructions to do work or how it is to be done are not included in the Price List but in the Service Information. This is further confirmed by Clause 20.1 which states, "The *Contractor* Provides the Service in accordance with the Service Information". Hence the *Contractor* does **not** Provide the Service in accordance with the Price List. The Price List is only a pricing document.

3. Link to the *Contractor's* plan

Clause 21.4 states "The *Contractor* provides information which shows how each item description on the Price List relates to the operations on each plan which he submits for acceptance". Hence when compiling the *price list*, the tendering contractor needs to develop his first clause 21.2 plan in such a way that operations shown on it can be priced in the *price list* and result in a satisfactory cash flow in terms of clause 11.2(17).

4. Preparing the *price list*

Before preparing the *price list*, both the *Employer* and tendering contractors should read the TSC3 Guidance Notes pages 14 and 15. In an Option A contract, either Party may have entered items into the *price list* either as a process of offer and acceptance (tendering) or by negotiation depending on the nature of the *service* to be provided. Alternatively, 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 the *price list* to be prepared and priced by him.

It is assumed that in preparing or finalising the *price list* the *Contractor*:

- Has taken account of the guidance given in the TSC3 Guidance Notes relevant to Option A.
- Understands the function of the Price List and how work is priced and paid for.
- Is aware of the need to link operations shown in his plan to items shown in the Price List.
- Has listed and priced items in the *price list* which are inclusive of everything necessary and incidental to Providing the Service in accordance with the Service 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 item within the Prices or rates of other listed items in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.
- Understands there is no adjustment to items priced as lump sums if the amount, or quantity, of work within that item later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the (lump sum) Prices is as a result of a compensation event.

4.1. Format of the *price list*

(From the example given in an Appendix within the TSC3 Guidance Notes)

Entries in the first four columns in the *price list* in section C2.2 are made either by the *Employer* or the tendering contractor.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tendering contractor enters the amount in the Price column only, the Unit, Expected Quantity and Rate columns being left blank.

If the *Contractor* is to be paid an amount for an item of work which is the rate for the work multiplied by the quantity completed, the tendering contractor enters the rate which is then multiplied by the Expected Quantity to produce the Price, which is also entered.

If the *Contractor* is to be paid a Price for an item proportional to the length of time for which a service is provided, a unit of time is stated in the Unit column and the expected length of time (as a quantity of the stated units of time) is stated in the Expected Quantity column.

C2.2 the price list

	Description	UOM	Quantity	Rate	Total
100	PRELIMINARY AND GENERAL				R -
101	Transport (Maximum of 120 km per day return trip x2 vehicles)	Km	218160		
102	Transport sky climbers to and from site (14 x 6 m platforms)	Each	21600		
102	Accommodation (Whole crew per day/per person) limited to average 2-3 star grading	Days	12726		
103	Site Manager x1	Hours	7272		
104	Safety Officer x1	Hours	7272		
105	PPE (Account for 21 people on site)	Per Outage	15		
106	Medicals and Induction (Account for 21 people on site)	Year	5		
200	HIRING, OPERATION AND INSTALLATION OF PLATFORMS				R -
201	Installation Costs 14 x 6 m platforms	Each	930		
202	Dismantle of 14 x 2m platforms	Each	930		
203	Hire 6 m platforms per day	Daily	13246		
204	Hiring of 2x Mobile Lifts 1T -12 persons	Daily	2360		
205	Installation of 2x Mobile Lifts	Each	30		
206	Dismantle of x2 Mobile Lifts	Each	30		
207	Commissioning including Certification by Regulation (Lift Inspection) per Lift	Each	30		
300	SITE SUPERVISOR/ SERVICE TECHICIAN X2				R -
301	Normal Time (Monday –Friday)	Each	10288		
302	Week Overtime (Monday-Friday & Saturday)	Each	9528		
303	Overtime (Sundays/Public holidays)	Each	2976		
400	OPERATORS (14)				R -
401	Normal Time (Monday-Friday)	Each	72016		
402	Overtime (Monday to Friday & Saturday)	Each	66696		
403	Overtime (Sunday & Public Holidays)	Each	20832		
	SUMMARY				
100	PRELIMINARY AND GENERAL				R -
200	HIRING OPERATION AND INSTALLATION OF PLATFORMS AND MOBILE LIFT				R -
300	SITE SUPERVISOR/ SERVICE TECHICIAN X2				R -
400	OPERATORS(14)				R -
TOTAL EXCL VAT & CPA					R -

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Service Information</i>	17
C3.2	<i>Contractor's Service Information</i>	
Total number of pages		17

C3.1: EMPLOYER'S SERVICE INFORMATION

1 Description of the service

1.1 Executive overview

Kriel Power Station is situated approximately 10 kilometres from the town of Kriel in Mpumalanga. Access to the station is by road.

The scope of the document defines the technical aspects for the supply of labour and equipment for the hiring; operation and Installation of suspended platforms and the hiring, operation and dismantling of mobile lifts at Kriel Power Station will be evaluated.

Works Information

The scope of work includes the supply of labour for the hiring; operation and Installation of suspended platforms and the hiring, operation and dismantling of mobile lifts at Kriel Power Station. Most of the scope (not all works) will be executed inside the Boilers, but the contractor may also be required to work in other areas (Mobile Lifts stations - Allimak) as in when required by Eskom.

The primary instruction to the service providers includes but not limited to:

Hiring, Installation and Operation of the Suspended platforms in the boiler furnace at the following areas with the said minimum specifications, in order to facilitate other work within the boiler such as inspections, repairs and post-repair NDT: Front of the boiler furnace – platforms carrying a minimum of 4 persons – 4 x off platforms.

- 1) Rear of the boiler furnace – platforms carrying a minimum of 4 persons – 4 x off platforms
- 2) Left Hand Side of the boiler furnace - platforms carrying a minimum of 4 persons – 2 x off platforms
- 3) Right Hand Side of the boiler furnace - platforms carrying a minimum of 4 persons – 2 x off platforms
- 4) Left Hand Side of the divisional wall - platforms carrying a minimum of 4 persons – 2 x off platforms
- 5) Right Hand Side of the divisional wall - platforms carrying a minimum of 4 persons – 2 x off platforms

Service Providers will mainly be required to perform the required tasks during outages but may be required to perform tasks specified by the contract manager in preparation of outages (before outages) or some tasks might be required to be performed after outages or short term Outages. The contract manager will give notice on when such tasks are needed.

Breakdown/Services of Machinery and Equipment requirements

- a) The *Contractor* shall be responsible the cost of repairing all tyre and tube punctures or other damage to tyres or tubes during the period of hire and shall be responsible for all cuts or abrasion of tyres and tubes and the replacement.
- b) Where equipment has broken down and is not readily repairable, *Contractor* shall substitute equipment of a similar type.
- c) *Contractor* shall check the state and condition of the equipment at reasonable intervals during the period of hire to ensure that it remains safe and serviceable.

Operators/Human Resources

- a) If the machinery and equipment is supplied with the *Contractor's* operator during the period of service, the operator shall be under the sole and absolute control and supervision of the *Employer/Service manager* who shall be responsible for all of the operator's acts or omissions.
- b) The *Employer* warrants and undertakes that it will give to the operator clear and specific instructions and directions for all work to be performed by the operator and the plant.
- c) The *Employer* shall be obliged to and warrants that it will, supervise or will provide responsible and competent supervision for, the operator during the period of service.
- d) In the event that the *Contractor's* operator is indisposed through illness or refuses, fails or neglects to perform his duties then in any one of the aforementioned events the *Service Manager* shall forthwith report to the *Contractor* any such illness, refusal, failure or neglect on the part of the operator in which event the *Contractor* shall provide a substitute operator.
- e) Refer to Part C2 for personnel required by the *Service manager*.

1.1.1 General Requirements

- a) Site establishment, planning, design, supervision, and execution of hiring suspended platforms at Kriel Power Station.
- b) Furnishing of all materials, equipment, tools, consumables, labour, chemicals and each expense necessary for the execution of Hiring of suspended platforms
- c) Provision of plant and services as may be necessary such as supply, erect, etc. of all mechanical structural, moving and other equipment to provide a complete service in terms of this scope of work.

2 Management strategy and start up.

2.1 The *Contractor's* plan for the service

The *Contractor* shall submit a plan to the *Service Manager* for acceptance within the period stated in the service agreement.

2.1.1 Hiring of suspended platforms *Contractor* shall utilise mechanical cleaning methods only.

- a) In those areas where mechanized cleaning is not possible or the installed plant and machinery does not allow for these, manual cleaning methods are to be applied. There is a station drive to reduce the consumption of water.
- b) In a case when the equipment of the *Contractor* is defective or out of service for whatever reasons, the *Contractor* shall fix the equipment if possible or alternatively provide another within 24 hours.

2.1.2 The *Contractor* shall submit a clear cleaning method statement.

The method statement should also include the following in detail:

- a) The number of the people allocated to various plants.
- b) Frequency of usage of the equipment.
- c) Hiring of suspended platforms equipment that will be utilised for the areas.
- d) Quality control plan.

2.2 Management meetings

Regular meetings of a general nature may be convened and chaired by the *Supply Manager* as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
Kick-off meeting	Within one week after the contract has been awarded	<i>Service Manager's</i> office	<i>Employer, Contractor</i>
Risk register and compensation events	Discussions to take place as soon as a risk is notified	<i>Service Manager's</i> office	<i>Employer, Contractor</i>
Overall contract progress and feedback	As and when required on "ad hoc" basis	<i>Service Manager's</i> office	<i>Employer, Contractor</i>

Meetings of a specialist nature may be convened as specified elsewhere in this Service Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the *service*. Records of these meetings shall be submitted to the *Service Manager* by the person convening the meeting within five days of the meeting.

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

2.3 Contractor's management, supervision and key people

- a) The *Contractor* shall provide a key list of personnel who will carry out the work on site.
- b) A company organogram is needed by the *Service Manager* to communicate accordingly to comply with the NEC3 Term Services Contract communication structures.
- c) If the *Employer's Service Manager* changes the *Contractor* shall be notified as soon as possible to ensure that the *Contractor* follow the correct communication channels.

2.4 Provision of bonds and guarantees

Not Applicable to this contract

2.5 Documentation control

- a) The information for hired machinery and equipment shall be shared electronically or hard copy.
- b) Other information (i.e. Drivers, Operators) to be shared electronically or hard copy.
- c) Information provided to be documented in such a manner that the information is easily identifiable.
- d) Any communication and documentation during this service agreement to be filed in the contract file.
- e) Contract file is always in the possession of the *Service Manager*.

2.6 Invoicing and payment

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 showing the amount due for payment equal to that stated in the *Service Manager's* payment certificate.

The *Contractor* shall address the tax invoice to

Invoiceseskomlocal@eskom.co.za

and include on each invoice the following information:

- Name and address of the *Contractor* and the *Service Manager*;
- The contract number and title;
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number 4740101508;
- Description of service provided for each item invoiced based on the Price List;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- (add other as required)

2.7 Contract change management

Any changes related to this official contract to be communicated to *Service Manager*.

2.8 Records of Defined Cost to be kept by the Contractor

In order to substantiate the Defined Cost of Compensation Events, the *Employer* may require the *Contractor* to keep records of amounts paid by him for people employed by the *Contractor*, Plant and Materials, work subcontracted by the *Contractor* and Equipment.

Any communication and documentation during this service agreement to be filed in the contract file. This file is always in the possession of the *Service Manager*.

2.9 Insurance provided by the Employer

As stated in Part C1.2a Data by *Employer*, Table B of Part C1 Agreements and Contract Data

2.10 Training workshops and technology transfer

Not applicable to this contract

2.11 Design and supply of Equipment

Not applicable to this contract

2.12 Things provided at the end of the service period for the Employer's use**2.12.1 Equipment**

Not applicable to this contract

2.12.2 Information and other things

Not applicable to this contract.

2.13 Management of work done by Task Order

- a) A Task is work within the service which the *Service Manager* may instruct the *Contractor* to carry out within a stated period.
- b) A signed Task Order is the *Service Manager's* instruction to carry out a Task.
- c) Task Completion is when the *Contractor* has done all the work in the Task and corrected Defects which would have prevented the *Employer* or Others from using the Affected Property and Others from doing their work.
- d) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with this contract.
- e) A Task Order includes:
 - A detailed description of the work in the Task
 - A priced list of items of work in the Task in which items taken from the Price List are identified.

- The starting and completion dates for the Task
- Conditions of the service agreement is in accordance with the Task Order issued
- f) The *Service Manager* consults the *Contractor* about the contents of a Task Order before he issues it.
- g) The Prices for items in the Task price list which are not taken from the Price List are assessed in the same way as compensation events.
- h) No Task Order is issued after the end of the service period.
- i) Work will not commence on site without the *Contractor* receiving a signed detailed task order that has been agreed upon by the *Service Manager* and the *Contractor*.
- j) It is the *Contractor's* responsibility to provide the *Service Manager* a detailed Task Order programme for acceptance within the period stated in the Contract Data.
- k) Only when the Task Order programme is accepted and agreed upon by the *Service Manager* and the *Contractor* will any work commence on site.
- l) When any emergencies do arise, it is required from the Contractor to adhere to the following terms:**
 - The *Contractor* will be informed of emergencies when the *Service Manager* first becomes aware of it.
 - Response time within 2 hours for any communication when the *Contractor* acknowledges the emergency.
 - Provide a programme within 8 hours after Task Order provided to the *Contractor*.
 - Mobilise within 5 hours after Task Order have been accepted by both parties.

3 Health and safety, the environment and quality assurance

3.1 Health and safety risk management

The Contractor shall comply with the Health and Safety requirements contained in the following rules and procedures:

- 1) 240-62196227 Life Saving Rules
- 2) 32-727 SHEQ Policy
- 3) 32-726 SHE Requirements for Eskom Commercial Process
- 4) 240-62946386 Driver and Vehicle Safety Management Procedure
- 5) 240-73418055 SHE Specification

The Contractor shall comply with the health and safety requirements contained in OHS Specification and the approved safety file. Employer reserves the right to review the OHS Specification to address the Operational risks and the Contractor shall comply with the latest SHE Specification as amended at no cost. The OHSACT 37(2) agreement must be signed by Employer and Contractor's representatives.

The Contractor OHS professional must conduct internal audits at planned intervals to monitor compliance to the contractual health and safety requirements. The Employer representatives will conduct inspections at planned intervals to monitor compliance to the contractual health and safety and legal requirements. The Contractor may be selected during internal and/or external Eskom Power Station audits to verify compliance to legal and contractual OHS requirements. The Contract Custodian will communicate this at relevant time periods and the contractor shall avail themselves for this audit.. The Contractor who is working alone and not eligible to register with the compensation fund, shall provide Eskom with the member benefit statement of the insurance cover which include life and disability cover to the minimum fund of R500 000.

Induction will only be done after the above documents have been submitted and accepted by Employer representative and the safety file has been approved. Contractor provider Management Key Performance Indicators (KPI's)

1. Maintain Health and Safety file and compliance to the health and safety plan, Eskom OHS specification and applicable legislation as amended.
2. Always maintain good housekeeping where the task is being executing and/or within the area of responsibility.
3. Contractor must develop, implement and monitor near miss reporting strategy/ programme (reporting of near misses).
4. Comply to Planned Job Observation, BSO, Visible Felt Leadership programmes.
5. Maintain Zero Fatalities for the duration of the contract.
6. At any given point, the OHS performance must be within the lost time injury (LTI) tolerance level as amended.
7. All incidents must be reported immediately or before the end of shift that the incident took place.
8. All incident investigations must be completed within 10 days of the occurrence of an incident.
9. Incident investigation recommendations shall be closed within the recommended time frame recorded in the Incident investigation report.
10. Close audit findings as per the recommended time frames as per audit report or action raised in SAP QIM.
11. Close Non-conformance as per the recommended time frames in SAP QIM.

Note: Monitoring of the above mentioned KPI's will take place through regular audits and inspection.

On completion of the project/contract, Eskom team (led by the Contract custodian) involved in the project together with the Contractor shall conduct the final meeting to identify the gaps prior to the contract close out. Before the final invoice is paid/processed, the Contract custodian shall ensure that the below requirements are met:

1. Close all incidents and audit findings.
2. Clean the respective yard and ensure good housekeeping where the contractor was working.
3. Contractor shall submit safety statistics and a safety file to Eskom BU Safety department for closeout and filling.

4. Completion of a closeout report (Annexure D form as per 32-726) to close the contractual work.

The function of the 37(2) Agreement is primarily to indemnify Employer from any acts or omissions by its Contractors and its employees in contravention of the OHS Act.

This means that contractors/suppliers are deemed to be employers, their employees are not deemed to be employees of Eskom and acknowledges that is solely responsible for its employees, its appointed contractors, agents and the like, while performing work for or on behalf of Eskom.

Every site where the Contractor is performing work, a 37(2) agreement shall be signed by the Employers representative and the Contractor representative 16(1)/2 appointee

3.2 Environmental constraints and management

All service providers appointed to render any services within Eskom Kriel Power Station are required to comply with the station's Environmental Management System requirements.

NB: Before commencing with any work, the service providers are required to visit the station's environmental section for evaluation. The station's environmental practitioner will evaluate the services to be rendered by the service provider and therefore allocate relevant legal and other requirements documents which the Contractor shall comply with during the works.

The service provider shall then commence with the works but paying inordinate attention towards implementing the relevant legal and other requirements measures as a minimum. Failure to comply with this agreement may ultimately lead to the termination of this contract. This requirement shall also be clearly stipulated in the NEC contracts between Eskom Kriel Power Station and any service providers.

It should always be noted that Kriel Power Station is ISO14001 certified and therefore promotes Integrated Environmental Management (IEM) philosophy which aims to achieve a desirable balance between conservation and development. All activities taking place within Kriel Power Station must consider section 28 of the National Environmental Management Act (107 of 1998) which makes provision for the duty of care approach. The contractor's team must commit to review and to continually improve environmental management, with the objective of improving overall environmental performance. The Contractor must consult with Kriel Environmental section on a regular basis for on-going assistance and advice.

The EMS shall clearly cover the following areas as per ISO 14001;

- Environmental policy
- Compliance obligations (Environmental legal and other requirements)
- Risk Assessments/Aspects & Impacts Register
- Improved management of monitoring and measurement documentation (e.g. devices calibration certificates).
- Provision of necessary resources (e.g. computers, adequate human resource) and allocation of roles and responsibility (through clear appointments) to achieve effective implementation of the EMS.
- Continuous commitment towards complying with operational controls such as work instructions, operational procedures, etc. (either provided by the Contractor or by Service Manager) as well as emergency preparedness and response procedures/plans.
- The contractor shall continually evaluate the compliance to legal requirements (e.g. sewage treatment plant permits and other applicable legislation); this should also be documented within the monthly environmental site inspections reports.
- Kriel Power Station's procedure for non-conformity, corrective action and preventive actions shall be followed in case of the environmental incidents.
- Contingency plans.
- Environmental Management Programmes shall be established and maintained to ensure that objectives and targets are achieved.

Audits

- Audits covering various Environmental aspects, Safety, Operational, IBI and Maintenance Management at the plant shall be carried out within an acceptable interval to ensure compliance with statutory requirements and Eskom's policies, Directives, procedures etc.

3.3 Quality assurance requirements

This is applicable to the Contractor and his Subcontractors:

The Contractor shall ensure that a Quality Management System (QMS) is setup and fully maintained during the entire duration of the contract. The Contractor shall comply with the latest ISO 9001 standard, Supplier Quality Management Specification [4] and any other applicable or related quality management standard/s and/or specification/s – this shall mean the latest applicable revision of the standard/s or specification/s. The Contractor shall ensure that Quality Assurance is performed at all stages/phases of work carried out for the Employer.

The Contractor shall ensure that Quality Control is performed at all stages/phases of the Works i.e. manufacturing, fabrication, testing, certification etc. The Contractor shall develop and implement processes and procedures that efficiently and effectively monitor, verify, and document the quality of the scope of work that is carried out.

The Supplier shall comply with the quality criteria and constraints contained in Annexure A to this Goods Information.

To demonstrate the ability to consistently provide products and services that will meet Eskom requirements on quality and any applicable statutory and regulatory requirements, a contractor shall meet the issued supplier quality management requirements as specified in the List of issued Tender Returnables - 240-12248652.

1.3.1 The Contractor shall have and submit objective evidence of a developed, implemented and maintained Quality Management System (QMS) that complies with ISO 9001 or any applicable standard of the Quality Management System (the latest applicable revision).

1.3.2 The Quality Management System should drive all the contractor's business management processes to ensure that all of Eskom's requirements are fully met on a consistent basis.

1.3.3 The Contractor shall submit a draft Contract Quality Plan (CQP) that is specific to the scope of work as described in the tender documents.

1.3.4 The Contract Quality Plan (CQP) should demonstrate that the organisation is so structured that all the quality assurance requirements in relation to the scope of work will be properly monitored and controlled.

1.3.5 At a minimum, the plan shall address the following requirements as per ISO 10005.

- i. Indicate the interfaces with the contractor's quality system and applicable documents such as procedures and work instructions,
- ii. Establishes communication channels between the Contractor and the Service Manager in respect of quality and the integration of such with the prescribed contract communication channels,
- iii. Indicates how specific subcontractors will be monitored where applicable,
- iv. Identifies items or activities for which quality control plans will be prepared,
- v. Identifies the specifications, drawings and acceptance criteria for material of which quality control plans are not required,
- vi. Identifies the areas or processes requiring special controls,
- vii. Identifies the Contractor's Management Representative and personnel responsible for the control of quality activities and their relationship to the Contractor's management structure,
- viii. Identifies the documents which are to be submitted to the Service Manager
- ix. Indicates the Contractor's quality monitoring programme.

1.3.6 The Contractor is to periodically update the contract quality plan to reflect changes in any of the above details. The frequency of such updates will be determined by the Service Manager but should not be greater than one year.

1.3.7 Where applicable; the supplier shall submit an example or a draft of an Inspection and Test Plan (ITP) or Quality Control Plan (QCP) which should address the quality control elements related to the scope of work and/ or technical specification.

It is important to note that for this project the ITP/QCP will be required as and when there are simulator modifications.

1.3.8 At a minimum the Quality Control Plan (QCP) should indicate the following as appropriate:

- i. The identification of the item,
- ii. A list of the sequence of operations including inspections and tests,
- iii. The identification of the specification, drawings or procedures for each operation,
- iv. The acceptance criteria with reference to the appropriate technical specification, in-house, national or international standard and relevant clause number

4 Procurement

4.1 People

4.1.1 Minimum requirements of people employed

Not applicable

4.1.2 BBBEE and preferencing scheme

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.

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

Where, as a result, the Contractor’s B-BBEE status has decreased since the starting date the Employer may either re-negotiate this contract or alternatively, terminate the Contractor’s obligation to provide the service.

Failure by the Contractor to notify the Employer of a change in its B-BBEE status may constitute a reason for termination will be dealt with according to the NEC3 TSC penalty/termination clauses

4.2 Subcontracting

4.2.1 Preferred subcontractors

4.2.2 Preferred subcontractors

Subcontractors can be used following the Project Manager’s acceptance to any of the below:

- EME or QSE entities at least 51% owned by Black Youth Owned;
- EME or QSE entities at least 51% owned by Black People with Disability.
- EME or QSE entities at least 51% owned by Black People;
- EME or QSE entities at least 51% owned by Black Women
- EME or QSE entities at least 51% owned by Black People with Disabilities

The following sub-contractor will be utilised in terms of this contract. The subcontracting percentage will not be a standard price therefore it will depend on the unit to be delivered

Subcontracting

Procurement Designated Group	from	Eskom Target	Tenderer Proposal
Black Owned		30%	

Skills Development

Tenderer are encouraged to make proposals before they are eligible for award in accordance with develop the skills in line with the SOW as illustrated on a below table. Skills development candidates should be from the vicinity of the station.

Skills Type	Eskom Target	Entry Level	Output	Tenderers Proposal
TSP Technicians	02	N3 / Matric or Equivalent	NQF Level 6 Certificate	

CSI	3% Of invoice value
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4.2.3 Subcontract documentation, and assessment of subcontract tenders

Appointment and managing the sub-Contractor is the full responsibility of the Principal Contractor with the acceptance of the Project Manager

4.2.4 Limitations on subcontracting

Not applicable

4.2.5 Attendance on subcontractors

None

4.3 Plant and Materials

4.3.1 Specifications

Refer to 1.2.6 of page 5

4.3.2 Correction of defects

Any breakdown of the Machinery and Equipment shall be reported immediately by the quickest practical means by the *Service Manager* to the *Contractor* and such report shall be confirmed in writing forthwith. Refer to 1.2.7 of page 5

4.3.3 *Contractor's* procurement of Plant and Materials

The *Contractor* shall do all procurement of materials required to execute the service according to own procurement processes.

4.3.4 Tests and inspections before delivery

- a) Inspection approval/proof that Equipment and Machinery hired are in good condition and can execute the service by the *Contractor*.

4.3.5 Plant & Materials provided "free issue" by the *Employer*

Not applicable to this contract

4.3.6 Cataloguing requirements by the *Contractor*

Not applicable to this contract.

5 Working on the Affected Property

5.1 *Employer's* site entry and security control, permits, and site regulations

- i) The *Contractor* applies for temporary access permits (*Contractor's* Permit) at the Security gate, prior to the Possession Date.
- ii) The *Contractor* personnel are required to be in possession of a *Contractor's* Permit.
- iii) All *Contractor* personnel are issued with a temporary access permit (*Contractor's* Permit) which contains the following information:

- Name
 - ID Number
 - Company
 - Validity date
- iv) All *Contractors'* permits are submitted to Protective Services when the workers leave the site after completion of the works.
- v) In order to assist Protective Services with the issuing of permits and the identification of personnel on site, the *Contractor* supplies a list of all personnel that he intends using on site, at least 24 hours prior to entry of the Security Area.
- vi) This list is delivered to Protective Services, or is faxed to (017) 615 2602
- vii) The list, identified with the Contractor's name, contains the following information:
- Employee Name
 - Employee ID Number
 - Eskom Safety Co-ordinator signature
 - Contract Manager signature
 - Copy of the first page of the ID book of every employee of the *Contractor*, photocopied to reduce the size to 65%.
- viii) To speed up the process of gaining access to the site, the *Contractor* compiles detailed lists of all tools and equipment to be taken on site before arriving at the Power Station Security gate.
- ix) A special Tool List form is available at Protective Services.
- x) An authorised copy of this list is retained to be used again when the tools and equipment is removed from site after the completion of the works.
- xi) The Contractor's visitors and all personnel conform at all times to the security arrangements in force at the site.
- xii) Application forms for visitors are filled in by the *Contractor's Site Manager* and approved by the Employers Representative, one day before the visit and submitted to the *Employer's* Protective Services office.
- xiii) Visitors are not allowed on site if the necessary forms are not in the possession of security staff.
- xiv) The Chief of Protective Services may, with valid cause, remove any of the Contractor's personnel from the site, either temporarily or permanently, without any prejudice. He may deny access to the site to any person whom, in the opinion of the said Chief of Protective Services, constitutes a security risk.
- xv) No unauthorised vehicles are allowed on site.
- xvi) Only *Contractor's* vehicles with displayed Contract Vehicle Permits disks are allowed on site.
- xvii) Contract Vehicle Applications are directed to the Employers Representative.
- xviii) The *Contractor* is restricted to the working areas associated with his place of work.
- xix) The *Contractor* is forbidden to enter any other areas, and must ensure that his employees abide by these regulations.
- xx) Parking inside the power station is strictly forbidden, except for loading purposes.
- xxi) No recruiting of casual labour is done on Eskom premises, including the area outside the Power Station Security Gate.
- xxii) Contractor shall provide Police clearances for all the personell working at Kriel Power Station.

5.2 People restrictions, hours of work, conduct and records

It is very important that the *Contractor* keeps records of his people working on the Affected Property, including those of his Subcontractors. The *Service Manager* shall have access to all records of the *Contractor* and *Subcontractor* at any time when deemed necessary.

- a) The *Contractor* provides the necessary resources to carry out the service as stated in the Service Information.
- b) The *Contractor* provides everything to carry out the Service Information of this contract unless where otherwise stated in this Service Agreement. Everything that should be provided by the *Employer* is stated in this Service Agreement, anything not stated in the Service Agreement should be provided by the *Contractor* to execute the work as stated in the Service Information

5.3 Health and safety facilities on the Affected Property

Any emergency equipment or fire suppression systems to be utilized by the *Contractor* when an emergency arise.

5.4 Environmental controls, fauna & flora

General environmental requirements referred to in section 3 above, Kriel Power Station ISO14001.

5.5 Cooperating with and obtaining acceptance of Others

The *Contractor* cooperates with the *Employer's* team during the execution of the service and in ensuring that the services is delivered in accordance to all requirements.

5.6 Records of *Contractor's* Equipment

- a) The *Contractor* shall keep record of his equipment on site with relevant inspections carried out.
- b) Inspection reports shall be accessible to the *Service Manager* at any given time when he deems necessary.
- c) All equipment or tools signed in by the *Contractor* shall strictly adhere to the gate access rules and procedures.
- d) All Equipment including hired shall be inspected and approved before accepted on site by the *Service Manager*.
- e) The *Contractor* shall keep records of all hired Equipment to execute the Service Information.

5.7 Equipment provided by the *Employer*

Not applicable to this contract

5.8 Site services and facilities

5.8.1 Provided by the *Employer*

The *Employer* will provide in the way of water, waste disposal, ablutions, fire protection and lighting (etc) on the Affected Property. Power will be provided by the *Employer* the *Contractor* needs to ensure his own cabling, connections, DB Boards and CoC certificates of installations and connections.

a) Refuse Disposal

- i) The *Employer* provides special colour coded bins for refuse disposal. These bins are emptied by the *Employer* free of charge.
- ii) The *Contractor* ensures that all workers under his control strictly adhere to the correct use of refuse bins as stated in the Plant.

b) Supply of Electricity

- i) *Employer* will make available to the *Contractor* 220/230-volt electrical supply free of charge from the closest existing point of supply.
- ii) The *Contractor* is to make provision for the necessary extensions and plug points.
- iii) All Electrical boards must be inspected and tested before connecting to a power supply and then a CoC must be issued by the *Contractor*.
- iv) The *Contractor* will adhere to the Electrical Installation Regulations of 1992

c) Medical Facilities

- i) The *Contractor* provides a First Aid service to his employees and subcontractor. In the case where these prove to be inadequate, like in the event of a serious injury, the *Employer's* Medical Centre and facilities are available.
- ii) Outside the *Employer's* office hours, the *Employer's* First Aid Services are only available for serious injuries and life-threatening situations.

- iii) The *Employer* is entitled, however, to recover the costs incurred, in the use of the above *Employer's* facilities, from the *Contractor*.

d) Toilet Facilities

- i) The *Employer* provides the *Contractor* access to toilet facilities.
- ii) Temporary chemical toilets are provided by the *Contractor* when deemed necessary.

5.8.2 Provided by the *Contractor*

- a) The *Contractor* shall provide accommodation, transportation of their personnel.
- b) The *Contractor* shall provide transportation of the machinery and equipment to Kriel Power Station.

5.9 Control of noise, dust, water and waste

Not applicable to this contract

5.10 Hook ups to existing works

Any work performed at heights, *Contractor* must adhere to the correct safety standards, procedures and specifications stated in the health and safety risk management of Kriel Power Station.

5.11 Tests and inspections

5.11.1 Description of tests and inspections

- a) *Contractor* shall inspect and test machinery prior operational.
- b) *Contractor* shall provide evidence of test/load certificate for audit purposes with *Service Manager*

5.11.2 Materials facilities and samples for tests and inspections

Not applicable to this contract

6 List of drawings

6.1 Drawings issued by the *Employer*.

Not applicable to this contract