



NEC3 Term Service Contract (TSC3)

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

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

for [•]

Contents:

**No of
pages**

Part C1 Agreements & Contract Data

[•]

CONTRACT No. [Insert at award stage]

PART C1: AGREEMENTS & CONTRACT DATA

Contents:	No of pages
C1.1 Form of Offer and Acceptance	[•]
[to be inserted from Returnable Documents at award stage]	
C1.2a Contract Data provided by the <i>Employer</i>	[•]

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:

Title of the Contract

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.

	The offered total of the Prices exclusive of VAT is	Rate based Contract
	Value Added Tax @ 15% is	Rate based Contract
	The offered total of the amount due inclusive of VAT is ¹	Rate based Contract
	(Excluding VAT).	

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**

(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*

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

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
2. Some TSC3 options are always selected by Eskom Holdings SOC Ltd. The remaining TSC3 options are identified by shading in the left hand column. In the event that the option is not required select and delete the whole row. Where the following symbol is used "[●]" - data is required to be inserted relevant to the specific option selected.]

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

Clause	Statement	Data
1	General	
	and secondary Options	
		X19: Task Order
	of the NEC3 Term Service Contract April 2013 ² (TSC3)	

1. Option X19: Task Order

Identified and defined terms	X19	
	X19.1	<p>(1) A Task is work within the <i>service</i> which the <i>Service Manager</i> may instruct the <i>Contractor</i> to carry out within a stated period of time.</p> <p>(2) A Task Order is the <i>Service Manager's</i> instruction to carry out a Task.</p> <p>(3) Task Completion is when the <i>Contractor</i> has done all the work in the Task and corrected Defects which would have prevented the <i>Employer</i> or Others from using the Affected Property and Others from doing their work.</p> <p>(4) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with this contract.</p>
Providing the Service	X19.2	<p>A Task Order includes</p> <p>a detailed description of the work in the Task,</p> <p>a priced list of items of work in the Task in which items taken from the Price List are identified,</p> <p>the starting and completion dates for the Task,</p> <p>the amount of delay damages for the late completion of the Task and</p>

² Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902 www.ecs.co.za

the total of the Prices for the Task when Option A or C is used or the forecast total of the Prices for the Task if Option E is used.

The *Service Manager* consults the *Contractor* about the contents of a Task Order before he issues it.

When a Task Order is issued

the priced list of items for the Task is inserted in the Price List, and

the work involved is added to the Service Information.

An instruction to carry out a Task is not a compensation event.

X19.3 The delay damages in a Task Order, if any, are not more than the estimated cost to the *Employer* of late completion of the Task. If Task Completion is later than the Task Completion Date, the *Contractor* pays delay damages at the rate stated in the Task Order from the Task Completion Date until Task Completion.

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.

Time

X19.4 The *Contractor* does not start any work included in the Task until the *Service Manager* has instructed him to carry out the Task and does the work so that Task Completion is on or before the Task Completion Date. No Task Order is issued after the end of the *service period*.

If Task Completion is after the end of the *service period*, the *service period* is extended until Task Completion. The *Service Manager* does not issue a Task Order during this extended period.

The *Service Manager* may issue an instruction changing a Task Order.

Task Order programme

X19.5 The *Contractor* submits a Task Order programme to the *Service Manager* for acceptance within the period stated in the Contract Data.

X19.6 The *Contractor* shows on each Task Order programme which he submits for acceptance

the Task starting date and the Task Completion Date,

planned Task Completion,

the order and timing of the operations which the *Contractor* plans to do in order to complete the Task,

provisions for

float,

time risk allowances,

health and safety requirements and

the procedures set out in this contract,

the dates when, in order to Provide the Service in accordance with his Task

Order programme, the *Contractor* will need

access to the Affected Property,

acceptances,

Plant and Materials, equipment and other things to be provided by the *Employer* and

information from Others,

for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which he plans to use and

other information which the Service Information requires the *Contractor* to show on a Task Order programme submitted for acceptance.

X19.7 Within one week of the *Contractor* submitting a Task Order programme to him for acceptance, the *Service Manager* either accepts the programme or notifies the *Contractor* of his reasons for not accepting it. A reason for not accepting the Task Order programme is that

the *Contractor's* plans which it shows are not practicable,

it does not show the information which this contract requires or

it does not comply with the Service Information.

Revising the Task Order programme

X19.8 The *Contractor* shows on each revised Task Order programme

the actual progress achieved on each operation and its effect upon the timing of the remaining work,

the effects of implemented compensation events,

how the *Contractor* plans to deal with any delays and to correct notified Defects and

any other changes which the *Contractor* proposes to make to the Task Order programme.

X19.9 The *Contractor* submits a revised Task Order programme to the *Service Manager* for acceptance

within the *period for reply* after the *Service Manager* has instructed him to and

when the *Contractor* chooses to.

The latest programme accepted by the *Service Manager* supersedes previous accepted programmes.

Compensation events

X19.10 The following are compensation events.

(1) The *Service Manager* gives an instruction changing a Task Order.

(2) The *Contractor* receives the Task Order after the starting date stated in the

Task Order.

(3) The *Employer* does not provide the right of access to the Affected Property in accordance with the latest accepted Task Order programme.

(4) The *Employer* does not provide something which he is to provide as stated in the Service Information in accordance with the latest accepted Task Order programme.

(5) The *Employer* or Others do not work in accordance with the latest accepted Task Order programme or within the conditions stated in the Service Information.

(6) An event which

stops the *Contractor* completing a Task or

stops the *Contractor* completing a Task by the Task Completion Date,

and which

neither Party could prevent,

an experienced contractor would have judged at the date of issue of the Task Order to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it and

is not one of the other compensation events stated in this contract.

(7) A Task Completion Date is later than the end of the *service period*.

X19.11 If, due to the compensation event, planned Task Completion is delayed, the delay to the Task Completion Date is stated in the *Contractor's* quotation for the event and a programme is submitted with details of the assessment of the delay.

Assessments of delay include time risk allowances and are based on the assumption that the Task Order programme can be changed and that delays were or will be reasonably incurred.

A delay to the Task Completion Date is assessed as the length of time that, due the compensation event, planned Task Completion is delayed.

The *Service Manager* may assess the delay if, when the *Contractor* submits quotations for a compensation event, the *Contractor* has not submitted a Task Order programme required by this contract.

Implementing compensation events

X19.12 The changes to the calculated total of the Prices for the Task Order and any delay to the Task Completion Date are included in the *Service Manager's* notification implementing a compensation event.