



NEC3 Term Service Contract (TSC3)

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

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

For The Long distance transport from Benoni to Kendal Power
Station for a period of 5 years.

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CONTRACT No. [Insert at award stage]

Long distance transport from Benoni to Kendal Power Station for a period of 5 years.

PART C1: AGREEMENTS & CONTRACT DATA

Contents:	No of pages
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Long distance transport from Benoni to Kendal Power Station for a period of 5 years.

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:

Long distance transport from Benoni to Kendal Power Station for a period of 5 years.

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*.

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Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1	Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: 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

Power Station General Manager:
Kendal Power Station

**for the
Employer**

Eskom Holdings SOC Ltd, Kendal Power Station, Ogies Witbank

(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.

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

Note:

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

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

Name & signature of witness

Date

Power Station General Manager: Kendal Power Station

(Insert name and address of organisation)

Eskom Holdings SOC Ltd, Kendal Power Station, Ogies Witbank

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		A: Priced contract with price list
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	
		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 ² (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.	
10.1	The <i>Service Manager</i> is (name):	Steven Jones
	Address	Kendal Power Station Ogies Witbank
	Tel	
	e-mail	JonesST@eskom.co.za
11.2(2)	The Affected Property is	Kendal Power Station
11.2(13)	The <i>service</i> is	LONG DISTANCE TRANSPORT FROM BENONI TO KENDAL POWER STATION FOR A PERIOD OF 5 YEARS.
11.2(14)	The following matters will be included in the Risk Register	Unavailability of access to site due to road closure or civil unrest

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

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		Driver Fatigue Driver not adhering to Eskom Safety Principles (Driving under the influence or speeding) Use of un-road worthy Vehicles [•]
11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	24 hours during emergencies, 3 working days for other requests during the normal operations in execution of the contract
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 Contractor submits a first plan for acceptance within	2 weeks of the Contract Date
3	Time	
30.1	The <i>starting date</i> is.	TBC
30.1	The <i>service period</i> is	5 years or 60 months from contract effective date
4	Testing and defects	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
5	Payment	
50.1	The <i>assessment interval</i> is	between the 25th day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	4 weeks after assessment and submission of undisputed Contractor invoice.
51.4	The <i>interest rate</i> is	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
6	Compensation events	All Compensation Events are to be managed as per core clause 6 of the NEC3 TSC
7	Use of Equipment Plant and Materials	To be managed ss per core clause 7 of the NEC3 TSC

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8 Risks and insurance

80.1	These are additional <i>Employer's</i> risks	1. Weather condition 2. [•] 3. [•]
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9 Termination

To be managed as per core clause 9 of the NEC3 TSC

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	4 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 ICE-SA Division.
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	Johannesburg, South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	
	- if the arbitration procedure does not state who selects an arbitrator, is	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.

12 Data for secondary Option clauses

X1	Price adjustment for inflation	
X1.1	The <i>base date</i> for indices is	The closure date on the Tender.
	The proportions used to calculate the Price Adjustment Factor are:	proportion linked to index for Index prepared by
		75. Consumables [•]

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	Prices are fixed and firm for the first year of the contract	10. 15% 1.00	Labour non-adjustable	[•]
X2	Changes in the law	Becomes a Compensation Event only if the changes in the Law of the Republic of South Africa took place after the Contract Date..		
X17	Low service damages			
X17.1	The <i>service level table</i> is in	Annexure B – Low service damages capped at 5% of each Task Order		
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 limited to	the amount of the deductibles relevant to the event		
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 total of the Prices other than for the additional excluded matters. The <i>Contractor's</i> total liability for the additional excluded matters is not limited. The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for • loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials), • death of or injury to a person and • infringement of an intellectual property right.		
X18.5	The <i>end of liability date</i> is	after the end of the <i>service period</i> or Task completion.		
X19	Task Order			
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	2 days of receiving the Task Order		
Z	The <i>additional conditions of contract</i> are	Z1 to Z14 always apply.		

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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

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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

Long distance transport from Benoni to Kendal Power Station for a period of 5 years.

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 Action means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,

Committing Party means, as the context requires, the *Contractor*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,

Corrupt Action means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,

Fraudulent Action means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,

Obstructive Action means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and

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

Z11.1 A Committing Party may not take any Prohibited Action during the course of the procurement

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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	<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.

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Contractor) arising from or in connection with the Contractor's Providing the Service	
Liability for death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this contract	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

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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-

Long distance transport from Benoni to Kendal Power Station for a period of 5 years.

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.

C1.2 Contract Data

Part two - Data provided by the Contractor

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

Whenever a cell is shaded in the left-hand column it denotes this data is optional and would be required in relation to the option selected. If the option is not required select and delete the whole row.]

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)³ 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	

³ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 5391902 or www.ecs.co.za

Long distance transport from Benoni to Kendal Power Station for a period of 5 years.

Responsibilities:

Qualifications:

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
C2.1	Pricing assumptions: Option A	2
C2.2	The <i>price list</i>	[•]

C2.1 Pricing assumptions: Option A

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 - 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.

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.

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.

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).

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;

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- 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.

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*

Items	Description per items	Pick and drop off points	Unit	Quantity	Kilometres/Hour	Rate	Monthly	Duration	Total
Scheduled activities									
Destination									
1	Normal shifts		/Kilometres						
	Benoni	Lakeside mall	Km	5	180.2	R	R	60	R
2	Day and Night shifts (Including public holidays and weekends)		/Kilometres						
	Benoni	Lakeside mall	Km	1	180.2	R	R	60	R
3	Driver		/Hour						
	Benoni		Hr	6	180	R	R	60	R
4	Driver-Saturday/PH Overtime@1.5		/Hour						
	Benoni		Hr	1	36	R	R	60	R
5	Driver-Sunday/PH Overtime@2		/Hour						
	Benoni		Hr	1	36	R	R	60	R

Long distance transport from Benoni to Kendal power station for a period of 5 years.

6	Preliminary and General								
	Safety File		Once off	1	N/A	R	N/A	N/A	R
	Medicals		Yearly	6	5	R	N/A	N/A	R
	Fingerprints		Yearly	6	5	R	R	N/A	R
	PPE		Yearly	1	5	R	N/A	N/A	R
	Uniform		Yearly	1	5	R	R	N/A	R
	TOTAL ESTIMATE VALUE								R

Health and Safety breakdown

	Health and Safety Price List – First Year	Unit	Quantity	Rate	Amount
1	• Safety Training	Each	6	R	R
2	• Overalls	Each	6	R	R
3	• Safety Boots	Each	6	R	R
4	• Winter Jackets	Each	6	R	R
				Total	R
	Uniforms				
1	T shirts (Monday to Thursday)	Each	24	R	R
2	Golf T shirts (Friday)	Each	6	R	R
				Total	R

PART 3: SCOPE OF WORK

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C3.2	<i>Contractor's Service Information</i>	
	Total number of pages	

C3.1: EMPLOYER'S SERVICE INFORMATION

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1 Description of the service

2 Executive overview

Eskom Kendal power station intends to enter a 60-month contract with a suitably qualified, experienced and established transporter with the capacity to provide efficient home-work-home transport for Eskom Kendal Power Station employees from Benoni.

3 Employer's requirements for the service

The contractor will provide the following services

The service provider will provide transportation services for Eskom employees between their homes in Benoni and Kendal Power Station.

PROVISION OF TRANSPORTATION SERVICES FOR ESKOM EMPLOYEES FROM BENONI TO/FROM KENDAL POWER STATION FOR THE PERIOD OF 5-YEARS					
No.	Destinations	Pick & Drop off Points	No. of Combis	Vehicle Type	Weekdays & Time
1.	Benoni	Lakeside Mall	5	14-Seater GL Quantum's	Monday to Friday excluding P/Holidays

DAY AND NIGHT SHIFT					
No.	Destinations	Pick & Drop off Points	No. of Combis	Vehicle Type	Weekdays & Time
1.	Benoni	Lakeside Mall	1	14-Seater GL Quantum's	Monday to Friday including P/Holidays

The contractor will do the following

- Arrange regular cleaning and maintenance service for their vehicle utilised to transport Eskom employees and learners (Combis to be cleaned and serviced accordingly)
- Ensure adherence to approved speed as per the requirements of the employer and the National Road Traffic Act 93 of 1996 and its amendments
- Schedule regular vehicle routine service appointments and provide alternative transport vehicle for Eskom employees and learners
- Ensure that vehicles are clean, in good condition and comfortable for employees and learners travelling in the vehicle
- Ensure that employees arrive at work timeously
- Inform the employer of changes that might occur i.e. coming late due to circumstances out of direct control, new driver or any emergency events arising
- Report any misunderstanding pertaining to employee complaints
- Appoint a full-time supervisor to oversee the daily running of the operator for Eskom employees transport and to report any mishaps to the fleet department
- Provide an inspection checklist and logbook weekly
- Have each vehicle utilised on the contract installed with a tracker and providing tracker reports as and when required

- The vehicles dedicated to the relevant contract must be dedicated to Kendal Power station employee transport ONLY. The vehicle and the driver should be in Kendal Power station while waiting to transport employees' home, this is to ensure that the vehicles is available immediately in case of an emergency or any unforeseen event.

The supplier will ensure that the following equipment is available

- Fire extinguishers to be available on all the vehicles, minibuses and buses utilised on the applicable contract to be mounted securely in the vehicle
- Fully stocked first aid box to be available in all vehicles minibuses and buses utilised on the applicable contract, to be inspected and signed off yearly by an authorised supplier
- All minimum equipment to change a flat tyre that is spare wheel, jack, wheel spanner
- A minimum of 2 emergency triangle in each vehicle

4 Interpretation and terminology

Contractor:	The Supplier who is awarded the contract and will deliver the services outlined in the document. May be used interchangeably with the Supplier.
Employer:	Refers to Eskom, Kendal Power Station
Supplier:	Refer to the definition of Contractor and may be used interchangeably.
Services Manager:	The employee nominated by Eskom, Kendal Power Station who will be overseeing the transport services.

The following abbreviations are used in this Service Information:

Abbreviation	Explanation
NEC TSC	New Engineering Contract Term Services Contract
SDS	Safety Data Sheet
SHEQ	Safety, Health, Environment and Quality
SOW	Scope of Work

5 Management strategy and start up.

6 The Contractor's plan for the service

In the TSC3 the *Contractor's* plan is his "design" for performing the *service* throughout the *service period*. Section 2 of the *conditions of contract* describes what the *Contractor* is to show in his plan both in the core clauses and some additional requirements in each of the main Options.

The extent of the *Contractor's* plan will depend on whether the *Contractor* is required to develop a plan in accordance with the *Employer's* broad outline of the *service* or whether the *Employer* has provided a plan for the *Contractor* to follow. Read the TSC3 Guidance Notes pages 21 and 22 for more information on the *Contractor's* plan.

Use this section to describe any particulars which must be considered by the *Contractor* in developing his plan as required by clause 21.2. For example, information about the order and timing or method of carrying out specific items of work.

List technical reporting and scheduling requirements which are to be incorporated into the *Contractor's* plan.

7 Management meetings

Title and purpose	Approximate time & interval	Location	Attendance by:
Contract SHEQ Meeting	Monthly	Support Services Kendal Power station	Employer Site Manager Contractor Safety representative
Contract Meetings	Monthly / as scheduled	Support Services Kendal Power station	Employer Safety representative Contractor

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.

8 Contractor's management, supervision, and key people

- Site Manager/Supervisor
- SHEQ Officer
- Drivers-should always be available to deliver the service, each driver to have Driver permit ((PDP)

9 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

_____ 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)

Add procedures for invoice submission and payment (e. g. electronic payment instructions)

10 Things provided at the end of the *service period* for the *Employer's* use

11 Equipment

None

12 Information and other things

Instruction from the Employer or Services Manager becomes the property of Eskom Holdings SOC LTD. All information gathered pertaining to the Eskom Holdings SOC Ltd, Kendal Power Station must be provided to the Services Manager.

13 Management of work done by Task Order

All work to be executed will be instructed on a task order.

14 Health and safety, the environment and quality assurance

15 Health and safety risk management

The *Contractor* shall comply with the health and safety requirements as per National and Eskom standards and guidelines prescribed for the SHEQ file. This may from time to time be updated and will be always adhered to for the duration of the contract.

16 Environmental constraints and management

The *Contractor* shall comply with the environmental criteria and constraints as per National and Eskom standards and guidelines prescribed for the SHEQ file. This may from time to time be updated and will be always adhered to for the duration of the contract.

17 Quality assurance requirements

The *Contractor* shall comply with the quality assurance criteria and constraints as per National and Eskom standards and guidelines prescribed for the SHEQ file. This may from time to time be updated and will be always adhered to for the duration of the contract.

18 Procurement

All Procurement for supplies on this contract must be sourced locally, within the borders of South Africa.

19 People

A minimum of 25 drivers inclusive of the supervisor. The drivers intended to be appointed on the contract should have at least a 2 years' experience in transporting people.

20 BBBEE and preferencing scheme

The Supplier will maintain the level of BBBEE status that they were at the stage of contract award to move to a higher level.

21 Subcontracting

22 Subcontract documentation, and assessment of subcontract tenders

Should there be a subcontractor appointed, the NEC Terms Services Contract must be utilised to conclude.

23 Plant and Materials

24 Correction of defects

All defects identified by the Employer will be corrected by the Contractor within 2 weeks, or quicker if identified as urgent work or posing a risk to the power station or employees.

25 Contractor's procurement of Plant and Materials

All sourcing of materials and services will be 100% local, within the borders of South Africa.

26 Working on the Affected Property

All cleaning materials, tools and equipment utilised for services rendered on the contract can also be stored in this space, neatly and conforming to SHEQ guidelines

27 Employer's site entry and security control, permits, and site regulations

Each person working for the Contractor or on this contract will be required to be medically evaluated and found fit, undergo Safety Induction and must always be able to present a valid access permit to Kendal Power Station when attempting to enter or when on site.

These access permits, as well as permits for vehicles will be reevaluated from time to time as seen fit by the Eskom Security Department.

28 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. State that the *Service Manager* shall have access to them at any time. These records may be needed when assessing compensation events.

The Employer reserves the right to have any member of the Contractor personnel removed from Kendal Power Station and access denied.

Monday – Thursday: 07:00 – 16:00

Friday: 07:00 – 12:00

Week-end work will not generally be required. If required, prior arrangements will be made.

29 Health and safety facilities on the Affected Property

The Contractor shall ensure that there is a First Aid box available at the site office, and that a trained First Aider are present whenever there are site meetings taking place.

The Contractor shall make every effort to ensure that their employees are safe and operate in healthy conditions.

30 Environmental controls, fauna & flora

All environmental regulations must be always adhered to.

31 Cooperating with and obtaining acceptance of Others

The Contractor shall work with the Service Manager, the respective Health, Safety, Environmental and Quality Departments to ensure that all laws and guidelines are always adhered to. The Contractor will also work with the Service Manager to ensure customer satisfaction and make every effort to ensure that high quality of service and car wash service is maintained.

32 Records of Contractor's Equipment

Any equipment brought onto site by the Contractor, must be declared with Security. This declaration must be available to remove the equipment from site again.

33 Site services and facilities

34 Provided by the *Employer*

An office space, as and when required in Kendal Power station for site manager, safety manager and a toolbox/ meeting space with electricity and running water

35 Provided by the *Contractor*

- Fire extinguishers to be available on all the vehicles, minibuses and buses utilised on the applicable contract to be mounted securely in the vehicle
- Fully stocked first aid box to be available in all vehicles minibuses and buses utilised on the applicable contract, to be inspected and signed off yearly by an authorised supplier
- All minimum equipment to change a flat tyre that is spare wheel, jack, wheel spanner

A minimum of 2 emergency triangle in each vehicle

36 Key Performance Indicators

The key performance indicators will be agreed to between the Employer and Contractor upon contract inception. These can be revised quarterly.

37 Low Services Damages

No.	Performance Area	Measurement Method	Value of Low Service Damage	Limit of Low Service Damage
1	Driver Attendance and Punctuality (Start and end of Shift): 100 % attendance per shift (Drivers must report for duty as scheduled)	Attendance register / supervisor sign-off	Daily driver rate plus 2% of the monthly order value per missed shift. (Incident to be investigated and penalty will apply if Contractor is at fault)	Capped at 10% of the monthly task order value.
2	Unauthorized Use of Vehicle: No use of Kombi outside approved routes/tasks (zero tolerance) driving working hours	GPS logs / reports	10% flat rate of the Task Order	10% flat rate of the Task Order
3	Incident / Accident Accountability: No accidents caused by driver negligence (zero preventable accidents)	Incident investigation reports	4% per incident of the monthly order value (or actual cost recovery if higher)	Capped at 10% of the monthly task order value.
4	Driver Behaviour & Conduct: Professional conduct toward passengers and stakeholders (≤ 2 valid complaints/month)	Complaint register / supervisor reports	3% of the driver's monthly rate value per excess complaint	Capped at 10% of the monthly task order value.
5	Licensing & Legal Compliance: drivers must always have Valid driver's license and PDP (100% compliance)	Document verification	10% flat rate of the Task Order	10% flat rate of the Task Order
6	Substance Abuse Compliance: Zero tolerance for alcohol/drug use on duty	Testing records	10% flat rate of the Task Order plus removal of the driver	10% flat rate of the Task Order plus removal of the driver
7	Always Buckle up: Zero tolerance	Station cameras/driver to ensure all passengers are buckled up before trip commencement	4% per incident of the monthly order value (or actual cost recovery if higher)	10% flat rate of the Task Order plus removal of the driver
8	When the combi is out for service or breakdown provision to be made for employees to be collected on time.	Drivers register	3% of the owner monthly rate value per excess complaint	Capped at 3% of the monthly task order value.
9	The combis specification should comply with Eskom requirement governed by Department of transport.	Any time inspection	3% of the owner monthly rate value per excess complaint	Capped at 3% of the monthly task order value.
10	All night shift combis should be fitted with anti-puncture liquid/tyre sealant.	Inspection of the tyre/Fitment report	2% of the owner monthly rate value per excess complaint	Capped at 2% of the monthly task order value.