



## NEC3 Term Service Contract (TSC3)

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

**and** [Insert at award stage]  
(Reg No. \_\_\_\_\_ )

**for** Provision of dust Handling Plant inspections and  
repairs service during outage at Kusile Power  
Station for a period of Five (05) years.

---

<b>Contents:</b>	<b>No of pages</b>
<b>Part C1 Agreements &amp; Contract Data</b>	<b>[•]</b>
<b>Part C2 Pricing Data</b>	<b>[•]</b>
<b>Part C3 Scope of Work</b>	<b>[•]</b>

---

**CONTRACT No.** [Insert at award stage]

---

## **PART C1: AGREEMENTS & CONTRACT DATA**

---

<b>Contents:</b>	<b>No of pages</b>
<b>C1.1 Form of Offer and Acceptance</b>	<b>[•]</b>
[to be inserted from Returnable Documents at award stage]	
<b>C1.2a Contract Data provided by the <i>Employer</i></b>	<b>[•]</b>
<b>C1.2b Contract Data provided by the <i>Contractor</i></b>	<b>[•]</b>
[to be inserted from Returnable Documents at award stage]	
<b>C1.3 Proforma Guarantees</b>	<b>[•]</b>

---

# 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**

Provision of dust Handling Plant inspections and repairs service during outage at Kusile Power Station for a period of Five (05) 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	<b>R</b>
	Value Added Tax @ 15% is	<b>R</b>
	Sub total	<b>R</b>
	The offered total of the amount due inclusive of VAT is <sup>1</sup>	<b>R</b>
	(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:

<sup>1</sup> 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**

Name &  
signature of  
witness

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

.....  
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*

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
	<ul style="list-style-type: none"> <li> <div style="background-color: #cccccc; width: 100px; height: 60px; display: inline-block;"></div> </li> </ul>	<b>A: Priced contract with price list</b>
	dispute resolution Option	<b>W1: Dispute resolution procedure</b>
	and secondary Options	
	<div style="background-color: #cccccc; width: 100px; height: 20px; display: inline-block;"></div>	<b>X1: Price adjustment for inflation</b>
	<div style="background-color: #cccccc; width: 100px; height: 20px; display: inline-block;"></div>	<b>X2: Changes in the law</b>
	<div style="background-color: #cccccc; width: 100px; height: 20px; display: inline-block;"></div>	<b>X18: Limitation of liability</b>
	<div style="background-color: #cccccc; width: 100px; height: 20px; display: inline-block;"></div>	<b>X19: Task Order</b>
	<div style="background-color: #cccccc; width: 100px; height: 20px; display: inline-block;"></div>	<b>X20: Key performance indicators</b>
		<b>Z: <i>Additional conditions of contract</i></b>
	of the NEC3 Term Service Contract April 2013 <sup>2</sup> (TSC3)	
10.1	The <i>Employer</i> is (name):	<b>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</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Tel No.	<b>[•]</b>
	Fax No.	<b>[•]</b>
10.1	The <i>Service Manager</i> is (name):	
	Address	<b>Kusile Power Station Hartebeesfontein Farm R545 Kendal/Balmoral Road WITBANK</b>
	Tel	

<sup>2</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902 [www.ecs.co.za](http://www.ecs.co.za)

Fax

e-mail

11.2(2)	The Affected Property is	<b>The areas within the jurisdiction of the identified Power Station (Kusile), as dictated by the core scope defined in the service information and Station addendum</b>
11.2(13)	The <i>service</i> is	<b>Dust Handling Plant inspections and repairs service at Kusile Power Station for a period of 3 years during outage</b>
11.2(14)	The following matters will be included in the Risk Register	<b>1. Unprotected Strike/Industrial Action 2. Movement of outage Dates 3. Spares unavailability due to Scope creep</b>
11.2(15)	The Service Information is in	<b>Part 3: Scope of Work and all documents and drawings to which it makes reference.</b>
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>Within 36 hours unless otherwise stated in the Task Order</b>
<b>2</b>	<b>The Contractor's main responsibilities</b>	<b>Refer to the SOW page 5, 2.5.2 The Contractor responsibilities</b>
21.1	The <i>Contractor</i> submits a first plan for acceptance within	<b>Two weeks after issuing Task Order or any other period agreed by Parties</b>
<b>3</b>	<b>Time</b>	
30.1	The <i>starting date</i> is.	<b>15 January 2021</b>
30.1	The <i>service period</i> is	<b>3 Years</b>
<b>4</b>	<b>Testing and defects</b>	<b>Defect date is 52 weeks after completion of each Task Order. The defect correction is 24 hours or any other period agreed between the parties. As per Core clause 40</b>
<b>5</b>	<b>Payment</b>	
50.1	The <i>assessment interval</i> is	<b>Between the 20th and 27th day of each successive month unless otherwise agreed by Parties</b>
51.1	The <i>currency of this contract</i> is the	<b>South African Rand</b>
51.2	The period within which payments are made is	<b>14/30 Days as per Eskom Finance Procedure.</b>
51.4	The <i>interest rate</i> is	<b>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</b>

appointment it shall not be necessary to prove) for amounts due in Rands and

(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted 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	<b>Compensation events</b>	As per Core clause Compensation Events 60
7	<b>Use of Equipment Plant and Materials</b>	As per Core clause 70
8	<b>Risks and insurance</b>	
80.1	These are additional <i>Employer's</i> risks	<ol style="list-style-type: none"> <li>1. <b>Community Strikes or Industrial Actions</b></li> <li>2. <b>Natural Disaster</b></li> </ol>
83.1	The <i>Employer</i> provides these insurances from the Insurance Table	<b>as stated for "Format TSC3" available on <a href="http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a> (See Annexure A for basic guidance).</b>
83.1	The <i>Employer</i> provides these additional insurances	<b>as stated for "Format TSC3" available on <a href="http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a> (See Annexure A for basic guidance)</b>
83.1	The <i>Contractor</i> provides these additional insurances:	<b>[•]</b>
83.1	The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is	<b>the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on <a href="http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a></b>
83.1	The insurance against loss of or damage to the <i>works</i> , Plant and Materials is to include cover for Plant and Materials	

	provided by the <i>Employer</i> for an amount of [●]	
83.1	The minimum amount of cover for insurance in respect of 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 for any one event is:	<b>whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i>.</b>
83.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:	<b>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands)..</b>
<b>9</b>	<b>Termination</b>	<b>As per Core clause 92</b>
<b>10</b>	<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with price list</b>	
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	<b>4 weeks or any other period agreed by Parties.</b>
<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i>	<b>the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).</b>
	Address	<b>[●]</b>
	Tel No.	<b>[●]</b>
	Fax No.	<b>[●]</b>
	e-mail	<b>[●]</b>
W1.2(3)	The <i>Adjudicator nominating body</i> is:	<b>the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ) or its successor body.</b>
W1.4(2)	The <i>tribunal</i> is:	<b>Arbitration</b>
W1.4(5)	The <i>arbitration procedure</i> is	<b>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</b>

	The place where arbitration is to be held is	<b>South Africa</b>
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	<b>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</b>
	- if the arbitration procedure does not state who selects an arbitrator, is	

**12 Data for secondary Option clauses**

<b>X1</b>	<b>Price adjustment for inflation</b>		
X1.1	The <i>base date</i> for indices is	[•].	
	The proportions used to calculate the Price Adjustment Factor are:	<b>proportion</b>	<b>linked to index for</b>
		0.	[•]
		0.	[•]
		0.	[•]
		0.	[•]
		0.	[•]
		[•]	<b>non-adjustable</b>
		1.00	
<b>X2</b>	<b>Changes in the law</b>	<b>The Republic of South Africa, including the Purchasers Policies, Procedures, requirements and/or Standards</b>	
<b>X3</b>	<b>Multiple currencies</b>		
X3.1	The <i>Employer</i> will pay for these items or activities in the currencies stated	<b>Items &amp; activities</b>	<b>Other currency</b>
		[•]	<b>Maximum payment in other currency</b>
		[•]	
		[•]	
		[•]	
X3.1	The <i>exchange rates</i> are those published in	[•] on [•] (date)	
		<b>The items &amp; activities will be paid in the other currency</b> - to a foreign Bank account nominated by the <b>Contractor</b> - to a valid SARB approved CFC account in South Africa - in accordance with an alternative payment method agreed with the <i>Employer</i> before the Contract Date.	
		(select one of the three methods as agreed with the	

		successful tenderer prior to contract award and delete the others and this note)
<b>X12</b>	<b>Partnering</b>	
X12.1(1)	The <i>Client</i> is (Name):	[•]
	Address	[•]
	Contact details	[•]
	Telephone:	[•]
	Fax	[•]
	e-mail	[•]
X12.1(4)	The Partnering Information is in	<b>Part 3 Scope of Work, section C3.[•]</b>
X12.2(1)	The <i>Client's objective</i> is:	[•]
<b>X13</b>	<b>Performance bond</b>	
X13.1	The amount of the performance bond is	<b>R [•]</b>
<b>X17</b>	<b>Low service damages</b>	
X17.1	The <i>service level table</i> is in	[•]
<b>X18</b>	<b>Limitation of liability</b>	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	<b>R0.0 (zero Rand)</b>
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	<b>the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on</b> <a href="http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a>
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	<b>The greater of</b> <b>the total of the Prices at the Contract Date and</b> <b>the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles in the <i>Employer's</i> assets and works / maintenance policies available on</b> <a href="http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a>
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	<b>the total of the Prices other than for the additional excluded matters.</b> <b>The <i>Contractor's</i> total liability for the additional</b>

		<p><b>excluded matters is not limited.</b></p> <p><b>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</b></p> <p><b>Defects due to his design, plan and specification, Defects due to manufacture and fabrication outside the Affected Property, 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.</b></p>
X18.5	The <i>end of liability date</i> is	<b>12 months after the end of the service period.</b>
<b>X19</b>	<b>Task Order</b>	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	<b>14 days of receiving the Task Order unless otherwise stated on the Task Order</b>
<b>X20</b>	<b>Key Performance Indicators</b>	<b>Key Performance Indicators will be agreed between Service Manager and the Contractor. There will be no incentives attached to these indicators however they will be used for performance Management</b>
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	<b>End of each Task Order unless agreed by Parties</b>
<b>Z</b>	<b>The <i>additional conditions of contract</i> are</b>	<b>Z1 to Z11 always apply.</b>

**Z1 Cession delegation and assignment**

- Z1.1 The *Contractor* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Contractor* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

**Z2 Joint ventures**

- Z2.1 If the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract.
- Z2.2 Unless already notified to the *Employer*, the persons or organisations notify the *Service Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf.
- Z2.3 The *Contractor* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having

been given to the *Contractor* in writing.

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

- Z3.1 Where a change in the *Contractor's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor's* B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change.
- Z3.2 The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Service Manager* within thirty days of the notification or as otherwise instructed by the *Service Manager*.
- Z3.3 Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor's* obligation to Provide the Service.
- Z3.4 Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are P1, P2 and P4 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

### **Z4 Ethics**

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Contractor*, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Contractor's* obligation to Provide the Service or taking any other action as appropriate against the *Contractor* (including civil or criminal action).
- Z4.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if the *Contractor* (or any member of the *Contractor* where the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.
- Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Contractor* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.
- Z4.3 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P4 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

### **Z5 Confidentiality**

- Z5.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z5.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.
- Z5.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information

which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z5.4 The taking of images (whether photographs, video footage or otherwise) of the 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*.

Z5.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

**Z6 Waiver and estoppel: Add to core clause 12.3:**

Z6.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *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.

**Z7 Health, safety and the environment: Add to core clause 27.4**

Z7.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *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.

Z7.2 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.

**Z8 Provision of a Tax Invoice and interest. Add to core clause 51**

Z8.1 Within one week of receiving a payment certificate from the *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.

Z8.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z8.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to

comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

**Z9        Notifying compensation events**

---

Z9.1 Delete 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.

---

**Z10        *Employer's* limitation of liability**

Z10.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z10.2 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.

**Z11        Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":**

Z11.1     or had a business rescue order granted against it.

## **Annexure A: Insurance provided by the Employer**

*These notes are provided as guidance to tendering contractors and the Contractor about the insurance provided by the Employer. The Contractor must obtain its own advice. Details of the insurance itself are available from the internet web link given below.*

1. Services provided in a TSC3 contract could include some element of construction or refurbishment as well as a continuous maintenance or operational service activity. If an event occurs which causes loss or damage, a claim could be made either against the *Employer's* "works" type policy which may be in place for the *Employer's* portion of the Affected Property concerned or against the *Employer's* assets policy which may be in place for the *Employer's* portion of the Affected Property concerned, or both.
2. The cover provided and the deductibles under the works policy are different to those under the assets policy. Each policy has a range of applicable deductibles depending on the location of the Affected Property and the nature of the insurable event.
3. The *Contractor* is required in terms of Contract Data for clause 83 to provide cover for the deductibles in the insurance provided by the *Employer*. This can be provided from his own resources on a 'self insured' basis or obtained by him from his own insurers. In order to assess the extent of this cover, tendering contractors and their brokers should consult the internet web link given below and scroll to '**Format TSC3**' to establish both the cover and the deductibles in relation to the *service* provided in terms of this contract.
4. Tendering contractors should note that cover provided by the *Employer* is only per the policies available on the internet web link listed below and may not be the cover required by the tendering contractor or as intended by each of the listed insurances in the left hand column of the Insurance Table in clause 83.2. In terms of clause 83.1 "the *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide". Hence the *Contractor* provides insurance which the *Employer* does not provide and in cases where the *Employer* does provide insurance the *Contractor* insures for the difference between what the Insurance Table requires and what the *Employer* provides.
5. If Marine Insurance is required the *Contractor* needs to obtain a copy of the latest edition of Eskom's Marine Policies Procedures found at internet website given below.
6. Further information and full details of all Eskom provided policies and procedures may be obtained from:

[http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS\\_Policies\\_From\\_1\\_April\\_2014\\_To\\_31\\_March\\_2015.aspx](http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx)

## Annexure B: The *Employer's* Panel of Adjudicators

The following persons listed in alphabetical order of their surname have indicated their willingness to be included in the Eskom Panel of Adjudicators. Their CV's may be obtained by using the contact details provided.

Name	Location	Contact details (phone & e mail)
Nigel ANDREWS	Gauteng	+27 11 836-6760 nigela@quoin.net
Andrew BAIRD	Gauteng	+27 11 803 3008 <a href="mailto:andrewbaird@ecsconsult.co.za">andrewbaird@ecsconsult.co.za</a>
Christopher BINNINGTON	Gauteng	+27 11 888-6141 <a href="mailto:cdb@bca.co.za">cdb@bca.co.za</a>
Peter HIGGINS	UK	+44 1293 873 868 peterhiggins@pdconsult.co.uk
Bruce LEECH	Gauteng	+27 11 290 4000 leech@counsel.co.za
Nigel NILEN	Gauteng	+27 11 465 3601; nilences@global.co.za
Peter THURLOW	Gauteng	+27 11 787 6226 <a href="mailto:info@thurlowassoc.com">info@thurlowassoc.com</a>

Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management, by contacting Leighton Itholeng (Tel.: +27 (0)11 800 4031) (Fax :+27 (0)86 668 0419) E-mail: [Leighton.Itholeng@eskom.co.za](mailto:Leighton.Itholeng@eskom.co.za)

# C1.2 Contract Data

## Part two - Data provided by the Contractor

**[Instructions to the contract compiler: (delete this 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. In the event that 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)<sup>3</sup> 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	

<sup>3</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 5391902 or [www.ecs.co.za](http://www.ecs.co.za)

Responsibilities:

Qualifications:

Experience:

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

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

<b>Identified and defined terms</b>	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"><li>• the Price for each lump sum item in the Price List which the <i>Contractor</i> has completed and</li><li>• 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.</li></ul>
		(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;
- 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*

The Price list below can be used as a guideline

Item nr	Description	Unit	Expected Quantity	Rate	Price
<b>1.</b>	<b>PRELIMINARIES AND GENERALS</b>				
<b>1.1</b>	<b>Fixed Preliminaries and Generals</b>				
1.1.1	Site Establishment(2 of 12M and 6M as listed in 1.2.4and 1.2.5)	Per Outage	20		
1.1.2	Site De Establishment(2 of 12M and 6M as listed in 1.2.1 and 1.2.2)	Per Outage	20		
1.1.4	Fitness Certificates (Entry & Exit)	Per Person	800		
1.1.5	PPE	Per Person	400		
<b>1.2</b>	<b>Daily Preliminaries and General</b>				
1.2.1	Home-Work-Home (22 Seater Bus)	Per KM	79360		
1.2.2	Light Driven Vehicle (1)	Per KM	79360		
1.2.3	Accommodation (Accommodation will only be available for key skills personnel)(20)	Per Day	9920		
1.2.4	40FT Office Converted Containers L – 12M W – 3M H – 2.69MW (X2)	Per Outage	20		
1.2.5	20FT Storage Containers L – 6M W – 3M H – 2.69MW (X2)	Per Outage	20		
1.2.6	Training (Confine Space)	Per Person	400		
1.2.7	Training (Working at Height)	Per Person	400		
<b>1.</b>	<b>WORK FORCE</b>				
<b>1.3</b>	<b>Normal Worktime</b>				
1.3.1	Site Manager(x1)	Per Hour	2856		
1.3.2	Site Supervisor(x1)	Per Hour	2856		
1.3.3	Planner (x1)	Per Hour	2856		
1.3.4	Site Clerk (x1)	Per Hour	2856		
1.3.5	Safety Officer(x1)	Per Hour	2856		

1.3.6	Semi Skills (x4)	Per Hour	11424		
1.3.7	Rigger(x2)	Per Hour	5712		
1.3.8	Fitter (x4)	Per Hour	11424		
1.3.9	Quality Personnel(x1)	Per Hour	2856		
1.3.10	Storeman (x1)	Per Hour	2856		
1.3.11	22 Seater Bus Driver (1)	Per Hour	2856		
<b>2</b>	<b>Saturday Overtime</b>				
2.1.1	Site Manager(x1)	Per Hour	536		
2.1.2	Site Supervisor(x1)	Per Hour	536		
2.1.3	Planner (x1)	Per Hour	536		
2.1.4	Site Clerk (x1)	Per Hour	536		
2.1.5	Safety Officer(x1)	Per Hour	536		
2.1.6	Semi Skills (x4)	Per Hour	2144		
2.1.7	Rigger(x2)	Per Hour	1072		
2.1.8	Fitter (x4)	Per Hour	2144		
2.1.9	Quality Personnel(x1)	Per Hour	536		
2.1.10	Storeman (x1)	Per Hour	536		
2.1.11	22 Seater Bus Driver (1)	Per Hour	536		
<b>3</b>	<b>Sunday/Public holiday Overtime</b>				
3.1.1	Site Manager(x1)	Per Hour	680		
3.1.2	Site Supervisor(x1)	Per Hour	680		
3.1.3	Planner (x1)	Per Hour	680		
3.1.4	Site Clerk (x1)	Per Hour	680		
3.1.5	Safety Officer(x1)	Per Hour	680		
3.1.6	Semi Skills (x4)	Per Hour	2720		
3.1.7	Rigger(x2)	Per Hour	1360		
3.1.8	Fitter (x4)	Per Hour	2720		
3.1.9	Quality Personnel(x1)	Per Hour	680		
3.1.10	Storeman (x1)	Per Hour	680		
3.1.11	22 Seater Bus Driver (1)	Per Hour	680		

4	<b>EQUIPMENT/TOOLS</b>				
4.1.1	500W Quartz On Short Stand portable lights (2)	Each	40		
4.1.2	3000LM 3x T6 Super Bright 3modes Easy Operation (2)	Each	40		
4.1.3	DB board 380/220V	Each	40		
4.1.4	Rigging equipment	Per Outage	20		
4.1.5	240V extension (100m long minimum) (3)	Each	40		
4.1.6	380V extension (100m long minimum) (3)	Each	40		
5	<b>CONSUMABLES</b>				
5.1.1	Consumables (Direct fee percentage/cost plus fee )	Percentage	1		
		<b>Total</b>			

The total of the Prices

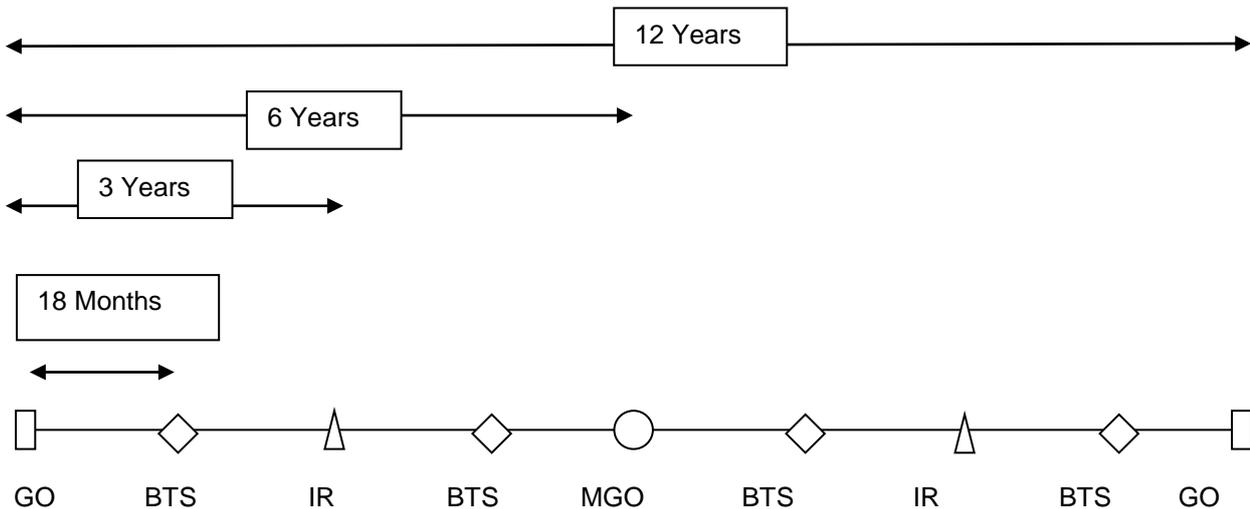
## PART 3: SCOPE OF WORK

### Detailed SOW of Dust Handling Plant System

a. Refer to specifications document no. 240-147719809 - Kusile Power Station Dust Handling Plant Inspections and Repairs During Outages REV 1

#### Outage Philosophy

The scope of work is applicable to the Dust Handling Plant as and when required as per scope of work. The system is also aligned to Kusile Power Station Outage Philosophy depicted as follows and gets reviewed yearly.



Symbol	Outage Type	Interval Years	Interval Hours	Duration (days)	Main activities
◇	BTS	1,5	12 500	14	Boiler and Draught Group inspection Mill bin inspection Absorber, Inlet & Outlet Duct, Emergency Quenching Nozzles, Mist eliminators, Oxy-Blower and Reaction Tanks-Cleaning, Inspection and Refurbishment
△	IR	3	25 000	35	Boiler and turbine auxiliaries inspection and repairs Absorber, Inlet & Outlet Duct, Emergency Quenching Nozzles, Mist eliminators, Oxy-Blower and Reaction Tanks-Cleaning, Inspection and Refurbishment

○	MGO	6	50 000	42	LP cylinder overhaul Boiler statutory inspections Generator stator and rotor inspections Absorber, Inlet & Outlet Duct, Emergency Quenching Nozzles, Mist eliminators ,Oxy-Blower and Reaction Tanks-Cleaning, Inspection and Refurbishment
□	GO	12	100 000	56	HP, IP and LP cylinder overhaul Absorber, Inlet & Outlet Duct, Emergency Quenching Nozzles, Mist eliminators, Oxy-Blower and Reaction Tanks-Cleaning, Inspection and Refurbishment

Figure 1: Kusile Outage Philosophy

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

# C3.1: EMPLOYER'S SERVICE INFORMATION

## Contents

When the document is complete, insert a 'Table of Contents'. To do this go to: Insert, → Reference, → Index and tables → Table of Contents. Three levels and the title (but not the subtitle) may be shown if the formats used in this template are retained.

Otherwise insert list of contents manually.

<b>Part 3: Scope of Work</b> .....	<b>4</b>
<b>C3.1: Employer's service Information</b> .....	<b>vi</b>
<b>1 Description of the service</b> .....	<b>viii</b>
1.1 Executive overview .....	viii
1.2 <i>Employer's</i> requirements for the <i>service</i> .....	viii
1.3 Interpretation and terminology .....	viii
<b>2 Management strategy and start up</b> .....	<b>ix</b>
2.1 The <i>Contractor's</i> plan for the <i>service</i> .....	ix
2.2 Management meetings .....	ix
2.3 <i>Contractor's</i> management, supervision and key people .....	x
2.4 Provision of bonds and guarantees .....	x
2.5 Documentation control .....	x
2.6 Invoicing and payment .....	x
2.7 Contract change management .....	x
2.8 Records of Defined Cost to be kept by the <i>Contractor</i> .....	xi
2.9 Insurance provided by the <i>Employer</i> .....	xi
2.10 Training workshops and technology transfer .....	xi
2.11 Design and supply of Equipment .....	xi
2.12 Things provided at the end of the <i>service period</i> for the <i>Employer's</i> use .....	xi
2.12.1 Equipment .....	xi
2.12.2 Information and other things .....	xi
2.13 Management of work done by Task Order .....	xii
<b>3 Health and safety, the environment and quality assurance</b> .....	<b>xiii</b>
3.1 Health and safety risk management .....	xiii
3.2 Environmental constraints and management .....	xiii
3.3 Quality assurance requirements .....	xiii
<b>4 Procurement</b> .....	<b>xiv</b>
4.1 People .....	xiv
4.1.1 Minimum requirements of people employed .....	xiv
4.1.2 BBBEE and preferencing scheme .....	xiv

4.1.3	Accelerated Shared Growth Initiative – South Africa (ASGI-SA).....	xiv
4.2	Subcontracting.....	xiv
4.2.1	Preferred subcontractors .....	xiv
4.2.2	Subcontract documentation, and assessment of subcontract tenders .....	xiv
4.2.3	Limitations on subcontracting .....	xv
4.2.4	Attendance on subcontractors .....	xv
4.3	Plant and Materials .....	xv
4.3.1	Specifications .....	xv
4.3.2	Correction of defects .....	xv
4.3.3	<i>Contractor's</i> procurement of Plant and Materials .....	xv
4.3.4	Tests and inspections before delivery .....	xv
4.3.5	Plant & Materials provided “free issue” by the <i>Employer</i> .....	xvi
<b>5</b>	<b>Working on the Affected Property.....</b>	<b>xvii</b>
5.1	<i>Employer's</i> site entry and security control, permits, and site regulations.....	xvii
5.2	People restrictions, hours of work, conduct and records.....	xvii
5.3	Health and safety facilities on the Affected Property .....	xvii
5.4	Environmental controls, fauna & flora.....	xvii
5.5	Cooperating with and obtaining acceptance of Others.....	xvii
5.6	Records of <i>Contractor's</i> Equipment.....	xvii
5.7	Equipment provided by the <i>Employer</i> .....	xviii
5.8	Site services and facilities.....	xviii
5.8.1	Provided by the <i>Employer</i> .....	xviii
5.8.2	Provided by the <i>Contractor</i> .....	xviii
5.9	Control of noise, dust, water and waste .....	xviii
5.10	Hook ups to existing works .....	xviii
5.11	Tests and inspections .....	xviii
5.11.1	Description of tests and inspections .....	xviii
5.11.2	Materials facilities and samples for tests and inspections .....	xviii
<b>6</b>	<b>List of drawings.....</b>	<b>xix</b>
6.1	Drawings issued by the <i>Employer</i> .....	xix

## Description of the *service*

### Executive overview

Put yourself in the position of the *Contractor's* senior management who need a high level overview of what is involved – the scope of work - so that they can decide when tendering whether they have the resources and capability to undertake the work. Include a description of the different services and disciplines of work involved within the *service* and the location where most of the work will be carried out.

### Employer's requirements for the *service*

Either

Describe in detail what the *Employer* requires the *Contractor* to do and how he is to do it if the *Contractor* is mainly providing labour and tools to carry out the *Employer's* requirements

Or

Provide the *Employer's* operating philosophy / user requirement specification (URS) / performance specification giving deliverables and constraints for the *service* from which the *Contractor* is to plan in detail how he is to achieve the required deliverables.

Reference could be made to an Annexure for a detailed classification of services or to the Price List in the case of Option A or C and if the Price List descriptions are complete.

### Interpretation and terminology

If required include here definitions additional to those used in the *conditions of contract* which are required only for the purpose of making the Service Information easier to draft and read. Also list abbreviations used and provide a full interpretation of each one, for example:

The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the abbreviation
OBL	Outside battery limits

## Management strategy and start up.

### 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 taken into account 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 particular items of work.

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

## Management meetings

The conditions of contract (e.g. Clause 16.2) and other sections of the Service Information (e.g. safety risk management) may require that a meeting shall be held. However the intention of all NEC contracts is that the Parties and their agents use the techniques of partnering to manage the contract by holding meetings designed to pro actively and jointly manage the administration of the contract with the objective of minimising the adverse effects of risks and surprises for both Parties.

Depending on the size and complexity of the service, it is probably beneficial for the Service Manager to hold a weekly risk register meeting (Clause 16.2). This could be used to discuss safety, compensation events, subcontracting, overall co-ordination and other matters of a general nature. Separate meetings for specialist activities such as planning and activities of a technical nature may also be warranted.

Describe here the general meetings and their purpose. Provide particulars of approximate times, days, location, and attendance requirements, stipulating that attendees shall have the necessary delegated authority to make decisions in respect of matters discussed at such meetings.

The following text could be used as a model for this section:

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:
Risk register and compensation events	Weekly on _____ at _____		
Overall contract progress and feedback	Monthly on _____ at _____		Employer, Contractor and _____

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.

## **Contractor's management, supervision and key people**

State any additional constraining requirements on *Contractor's* supervision and key people that are not already stated in other sections such as for Health and Safety. This section could be used to solicit an organogramme from the *Contractor* showing his people and their lines of authority / communication. This would be essential if the *Contractor* is a Joint Venture.

## **Provision of bonds and guarantees**

The form in which a bond or guarantee required by the *conditions of contract* (if any) is to be provided by the *Contractor* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

The *Employer* may withhold payment of amounts due to the *Contractor* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Contractor* by the *Service Manager* to receive and accept such bond or guarantee. Such withholding of payment due to the *Contractor* does not affect the *Employer's* right to termination stated in this contract.

## **Documentation control**

Specify how documentation will be identified with an alpha numeric which indicates source, recipient, communication number etc. Provide details of any particular format or other constraints; for example that all contractual communications will be in the form of properly compiled letters or forms attached to e mails and not as a message in the e mail itself. State any particular routing requirements but note from TSC3 who issues what to whom.

## **Invoicing and payment**

The Z clauses make reference to invoicing procedures stated here in this Service Information. Also include a list of information which is to be shown on an invoice.

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)

## **Contract change management**

This section is intended to deal with any additional requirements to the compensation event clauses in section 6 of the core clauses; such as the use of standard forms. Not the same thing as documentation control.

### **Records of Defined Cost to be kept by the *Contractor***

If Option C or E applies first read clause 52.2 and then state whether the *Contractor* is required to keep any other records. Include any other constraint which may be required in regard to format and filing of the records, and whether access for the *Service Manager* shall be provided in hard copy or electronically.

Could delete if Option A applies unless the *Employer* requires some form of control over the *Contractor's* record keeping for the purpose of compensation event management.

### **Insurance provided by the *Employer***

First read TSC3 Core Clause 86.1 and then add anything necessary for the management of insurance related issues such as a cross reference to where procedures for making claims can be found. Also provide contact details for persons capable of being able to answer any insurance related queries the *Contractor* may have, as well as to whom the information required by Marine Insurance (if any) may be addressed.

### **Training workshops and technology transfer**

Describe type and frequency of any on job training workshops, as well as any obligation for technology transfer being included as part of the *service* or at the end of the *service period*.

### **Design and supply of Equipment**

On some complex services (e. g. nuclear) it could be in the Parties best interests that some details of the design of Equipment are shared with the *Service Manager*, not necessarily for his acceptance but as an assurance that the Equipment will be able to allow the *Contractor* to Provide the Service efficiently and without delay. For example specialised handling Equipment for a particular maintenance operation. Clause 23.1 is always available to the *Service Manager* if this paragraph is not used.

Also the *Employer* may wish to exercise constraints or include witness and hold points during manufacture, assembly or delivery of such Equipment. Include these constraints here.

Draft in such a way that there is no doubt that the liability for such design supply and use of the Equipment remains with the *Contractor*.

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

#### **Equipment**

The *Employer* may wish to use some of the Equipment used by the *Contractor* after the end of the *service period*. Clause 70.2 requires that details of such requirement be stated in the Service Information. Complete here or if not applicable retain the heading and state 'None'.

#### **Information and other things**

Clause 70.2 requires that information and other things which the *Contractor* is to provide at the end of the *service period* be stated in the Service Information.

## Management of work done by Task Order

Only use this heading if Option X19 applies to this contract.

In some cases all work may be done in terms of Task Orders in which case it may be logical to move this section closer to the start of this part 2 of the Service Information. In some cases only parts of the *service* may require to be handled by Task Order, for example a major repair which has become necessary during a continuous maintenance service contract.

Please read Option X19 before drafting requirements here as much of the procedure for the administration of Task Orders is already provided in X19, for example X19.2 specifies what a task Order should include

A Task Order format could be provided in an Annexure to this Service Information.

Many considerations can apply to Task Orders, such as availability of resources, arrangements for emergency work, Task Order reporting (work carried out and service results), assessment of additional Prices for *service* not included in the Price List etc.

Clause X19.6 requires information which should be included on a Task Order programme.

Further requirements for Task Orders include things to be provided by the *Employer* under a Task Order and the conditions under which the *Employer* or Others are to work.

## Health and safety, the environment and quality assurance

### Health and safety risk management

In addition to the requirements of the laws governing health and safety, Eskom may have some additional requirements particular to the *service* and the Affected Property for this contract. The text below provides for these being attached as an Annexure to this Service Information. PLEASE ALSO READ CORE CLAUSE 27.4 TOGETHER WITH Z7 IN THE ADDITIONAL CONDITIONS OF CONTRACT TO MAKE SURE THAT WHATSOEVER IS INCLUDED IN THE ANNEXURE FOLLOWS ON FROM THOSE CLAUSES.

The Divisional/Regional Safety Risk Manager or his representative having jurisdiction over the *service* must provide the relevant safety, health and environmental (SHE) criteria for incorporation into this Service Information. The SHE specification / scope must be signed off by the Divisional/Regional Safety Risk Manager or his representative confirming that the applicable safety criteria have been taken into account.

The Commodity Manager / Buyer must refer the tender to the Divisional/Regional Safety Risk Manager or his representative in order to evaluate against enquiry-specific safety criteria.

The Divisional Safety Risk Managers who will be responsible for the allocation of resources to assist P&SCM with the above processes are as follows:

- Generation: Roley McIntyre
- Transmission: Tony Patterson
- Distribution: Alex Stramrood
- Enterprises: Jace Naidoo
- Corporate: Kerseri Pather

The *Contractor* shall comply with the health and safety requirements contained in Annexure \_\_\_\_\_ to this Service Information.

### Environmental constraints and management

Describe or cross refer to environmental constraints applicable to the *Contractor's* plan and his activities on the Affected Property and how they should be managed. Include here or cross refer to an Annexure to the Service Information.

The *Contractor* shall comply with the environmental criteria and constraints stated in Annexure \_\_\_\_\_

### Quality assurance requirements

Specify minimum requirements for the *Contractor's* Quality Plan and Work Procedures or provide the *Employer's* Quality Plan if that is to be used. Make sure witness and hold points are identified generally and describe any particular requirements for QA outside the Affected Property. Indicate how the *Contractor's* QA documentation is to be submitted for acceptance and any conditions that need to be imposed relating to acceptance. State whether ISO compliance is a condition and if so which ISO standard shall apply.

## Procurement

There is a cross reference from the core clause 11.2(6) definition of Disallowed Cost to the Service Information regarding procurement procedures. This part of the Service Information MUST include any such procedures to be able to administer Disallowed Cost.

## People

### Minimum requirements of people employed

Specify any constraints relating to people employed to Provide the Service; for example permits for foreigners, training (other than H & S), use of labour from designated areas and industrial relations.

### BBBEE and preferencing scheme

Specify constraints which *Contractor* must comply with after contract award in regard to any Broad Based Black Economic Empowerment (B-BBEE) or preferencing scheme measures.

### Accelerated Shared Growth Initiative – South Africa (ASGI-SA)

If the ASGI-SA requirements are to be included in this contract specify constraints which *Contractor* must comply with after contract award in regard to any ASGI-SA requirements. The ASGI-SA Compliance Schedule completed in the returnable tender schedules is reproduced here. If ASGI-SA does not apply, delete this paragraph.

The *Contractor* complies with and fulfils the *Contractor's* obligations in respect of the Accelerated and Shared Growth Initiative - South Africa in accordance with and as provided for in the *Contractor's* ASGI-SA Compliance Schedule stated below

[Insert the agreed ASGI-SA Compliance Schedule here]

The *Contractor* shall keep accurate records and provide the *Service Manager* with reports on the *Contractor's* actual delivery against the above stated ASGI-SA criteria. [Elaborate on access to and format of records and frequency of submission etc.]

The *Contractor's* failure to comply with his ASGI-SA obligations constitutes substantial failure on the part of the *Contractor* to comply with his obligations under this contract.

## Subcontracting

### Preferred subcontractors

TSC3 does not make use of nominated subcontracting, but the *Employer* may list which subcontractors or suppliers the *Contractor* is required to enter into subcontracts with. This is usually only required where specialist services need to be obtained from a particular supplier or group of suppliers in order to comply with operational standards.

### Subcontract documentation, and assessment of subcontract tenders

Specify any constraints on how the *Contractor* is to prepare subcontract documentation, whether use of the NEC system is compulsory or not (compulsory is recommended) and how subcontract tenders are to be issued, received, assessed (using a joint report?) and awarded.

### **Limitations on subcontracting**

The *Employer* may require that the *Contractor* must subcontract certain specialised work, or that the *Contractor* shall not subcontract more than a specified proportion of the whole of the contract.

### **Attendance on subcontractors**

State requirements for attendance on Subcontractors, if any

## **Plant and Materials**

### **Specifications**

Plant and Materials are defined as items intended to be included in the Affected Property. This will refer to replacement of worn or defective parts, routine replacement as part of regular preventative maintenance and supply of spare parts. Quality is usually designed in or specified in the technical specifications. However to cover circumstances where quality may not be prescribed, this sub-paragraph could also be used to state an overarching default requirement – fitness for purpose etc.

Either specify here or provide a list of the applicable specifications and attach them as Annexure or state where they can be obtained from.

### **Correction of defects**

State any constraints when dealing with defective Plant and Materials such as how repairs are carried out - can the item be fixed up or must it be replaced by a new one.

### ***Contractor's* procurement of Plant and Materials**

Specify any constraints on how the *Contractor* is to order, codify, expedite, freight, import, transport to the Affected Property and any other requirements for delivery and storage before installation. The *Employer* may require warranties from suppliers to be in favour of the *Employer* and not just to the *Contractor*. The *Employer* may also need schedules of vendor data for his own use after the end of the *service period*.

### **Tests and inspections before delivery**

Core Clause 41.1 makes reference to the Service Information stating which Plant and Materials are to be inspected and tested before delivery. Specify any requirements particularly if such tests and inspections are to be carried out by agents of the *Employer* overseas.

**Plant & Materials provided “free issue” by the *Employer***

List any Plant and Materials which are to be provided by the *Employer*.

State arrangements for collection by *Contractor* or delivery by others on behalf of the *Employer*, off loading, inspection, storage, care custody and control, return of unused Plant and Materials, etc. Always include a statement to the effect that 'all other Plant and Materials are to be provided by the *Contractor*'.

## Working on the Affected Property

This part of the Service Information addresses constraints, facilities, services and rules applicable to the *Contractor* whilst he is doing work on the Affected Property.

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

Sites such as Koeberg Nuclear Power Station have very strict entrance requirements which tendering contractors need to allow for in their prices, and the *Contractor* has to comply with. State these or similar requirements here.

In addition to the above there may be other restrictions once on the site, plus rules relating to roads, walkways and the provision of barricades

### **People restrictions, hours of work, conduct and records**

Restrictions and hours of work may apply on some sites. 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.

### **Health and safety facilities on the Affected Property**

Section 3 deals with contractual H & S requirements in addition to those of the OHSA Act. This section allows the *Employer* to state what measures are to be taken on the Affected Property by describing where First Aid facilities provided by the *Employer* are located and any other emergency arrangements. Do not use if already addressed in 2.3.

### **Environmental controls, fauna & flora**

This sub-paragraph may not be required in a service contract or if these matters are dealt with in the general environmental requirements referred to in section 3 above.

### **Cooperating with and obtaining acceptance of Others**

This sub-paragraph could be used to deal with two issues.

- 1) The cross reference from core clause 25.1 about cooperation generally as well as details about Others with whom the *Contractor* may be required to share the Affected Property. See clause 11.2(9) for the definition of Others.
- 2) Requirements for liaison with and acceptance from statutory authorities or inspection agencies.

### **Records of Contractor's Equipment**

This sub-paragraph is intended to address how records are to be kept of Equipment on Site including whether it is owned or hired. Include any constraints about scaffolding, rigs, heavy lifts and cranes, including removal from the Affected Property.

### **Equipment provided by the *Employer***

Provide details of equipment (e.g. overhead cranes) made available for use by the employer and set out conditions relating thereto.

### **Site services and facilities**

#### **Provided by the *Employer***

This is a mandatory cross reference from clause 25.2 in TSC3. State what the *Employer* will provide in the way of power, water, waste disposal, telecomms, ablutions, fire protection and lighting (etc) on the Affected Property. Give hook up locations and any constraints on how the hook up is to be done. Always conclude by stating that the *Contractor* shall provide everything else necessary for Providing the Service.

#### **Provided by the *Contractor***

Describe what the *Contractor* is to provide in the way of accommodation, laboratories, storage, vehicles and office equipment for the *Service Manager* and any restrictions or minimum requirements concerning the *Contractor's* own facilities. Also state what happens to these facilities upon completion of the contract.

### **Control of noise, dust, water and waste**

State requirements, if any.

### **Hook ups to existing works**

State any constraints

### **Tests and inspections**

#### **Description of tests and inspections**

Describe the tests and inspections to be carried out by the *Contractor* and the *Service Manager* and others [40.1].

#### **Materials facilities and samples for tests and inspections**

State what materials facilities and samples for tests and inspections the *Contractor* and the *Employer* are to provide, per core clause 40.2.

