

NEC3 Term Service Contract (TSC3)

**Between** **ESKOM ROTEK INDUSTRIES SOC Ltd**  
**(Reg No. 1990/006897/30)**

**and**  
**(Reg No. )**

**for**  
**The Hire of Mobile Yellow Plant for Kusile Power Station**  
**over a period of 24 months on “an as and when required**  
**basis”**  
**.**

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

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

## PART C1: AGREEMENTS & CONTRACT DATA

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

## 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:

### **The Hire of Mobile Yellow Plant for Kusile Power Station over a period of 24 months on “an as and when required basis”**

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>RATE BASED</b>
	Sub total	<b>RATE BASED</b>
	Value Added Tax @ 15% is	<b>RATE BASED</b>
	The offered total of the amount due inclusive of VAT is <sup>1</sup>	<b>RATE BASED</b>
	(in words) [•] <b>RATE BASED</b>	

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  
Name & organisation  
signature of

Date

<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*.

witness

**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 and Acceptance)	Agreements and Contract Data, (which includes this Form of Offer
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 & (Insert name and address of  
signature of organisation)

witness

Date

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

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

Note:

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

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

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

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

**For the tenderer:**

**For the Employer**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Capacity \_\_\_\_\_

On behalf of \_\_\_\_\_  
*(Insert name and address of organisation)*

\_\_\_\_\_ *(Insert name and address of organisation)*

Name &  
signature  
of  
witness \_\_\_\_\_

Date \_\_\_\_\_

## C1.2 TSC3 Contract Data

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

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		A: Priced contract with price list
	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
		X20 : Key performance indicators
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Term Service Contract April 2013 <sup>2</sup> (TSC3)	
10.1	The <i>Employer</i> is (name):	Eskom Rotek Industries SOC Ltd (Reg no: 1990/006897/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Roshland Office Park Lower Germiston Road Rosherville
	Tel No.	011 629 4000/8000
	Fax No.	[•]

<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)



10.1	The <i>Service Manager</i> is (name):	<b>Ntwanano Makhubele</b>
	Address	<b>Roshland Office Park Lower Germiston Road Rosherville]</b>
	Tel	<b>[011 629 4756 ]</b>
	Fax	
	e-mail	<b>MakhubNP@eskom.co.za</b>
11.2(2)	The Affected Property is	<b>[•]</b>
11.2(13)	The <i>service</i> is	<b>The Hire of Mobile Yellow Plant for Kusile Power Station over a period of 24 months on “an as and when required basis”</b>
11.2(14)	The following matters will be included in the Risk Register	<b>Low services damages</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>7 days</b>
2	<b>The Contractor's responsibilities</b>	<b>main 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</b>
21.1	The <i>Contractor</i> submits a first plan for acceptance within	<b>one week of the Contract Date</b>
3	<b>Time</b>	
30.1	The <i>starting date</i> is.	<b>1 November 2022</b>
30.1	The <i>service period</i> is	<b>24 Months</b>
5	<b>Payment</b>	
50.1	The <i>assessment interval</i> is	<b>26<sup>th</sup> day of each month.</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>30 days.</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</b>

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

(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	Compensation events	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
7	Use of Equipment Plant and Materials	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	1. Continuous breakdown of mobile plant 2. Delay in establishing mobile plant
83.1	The <i>Employer</i> provides these additional insurances	The <b>Contractor</b> provides all relevant insurance for all vehicles provided in this contract. The <b>Contractor</b> provides Passenger Liability Insurance at a minimum value of R5 000 000.00 The <b>Contractor</b> provides Public Liability Insurance.
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>Low services damages table X1</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.</b>
<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i>	<b>the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).</b>
W1.2(3)	The <i>Adjudicator nominating body</i> is:  An Adjudicator will be appointed between the Contractor and the Employer should a dispute arises. The costs that the Adjudicator charge will be divided between both Parties at 50% for each parties account.	<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  The place where arbitration is to be held is	<b>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.  Johannesburg, South Africa</b>

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 *base date* for indices is

**1 June 2022**

The proportions used to calculate the Price Adjustment factor are

	Proportion	Linked to index for	Index
	0,75	Labour	SEIFSA C3(a)
	0,1	P&G	CPI
	0,15	Non adjustable	
Total	1		

### X17 Low service damages

**10% of the contract**

X17.1 The *service level table* is in

### X18 Limitation of liability

X18.1 The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to

**R0.0 (zero Rand)**

X18.2 For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is limited to

**the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on [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)**

X18.4 The *Contractor's* total liability to the *Employer*, for all matters arising under or in connection with this contract, other than the excluded matters, is limited to

**the total of the Prices other than for the additional excluded matters.**

**The *Contractor's* total liability for the additional excluded matters is not limited.**

**The additional excluded matters are amounts for which the *Contractor* is liable under this contract for**

- Defects due to his design, plan and specification,
- Defects due to manufacture and

		<p>fabrication outside the Affected Property,</p> <ul style="list-style-type: none"> <li>• loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials),</li> <li>• death of or injury to a person and</li> <li>• infringement of an intellectual property right.</li> </ul>
X18.5	The <i>end of liability date</i> is	<b>one months after the end of the <i>service period</i>.</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>7 days of receiving the Task Order</b>
<b>X20</b>	<b>Key Performance Indicators (not used when Option X12 applies)</b>	
X20.1	The <i>incentive schedule</i> for Key Performance Indicators is in	<b>Annexure [●] to this Contract Data</b>
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	<b>one month</b>
<b>Z</b>	<b>The <i>additional conditions</i> of <i>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 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.

- Z4.2 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z4.3 The Employer may terminate the Contractor's obligation to Provide the Service 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 Service for this reason.
- Z4.4 If the Employer terminates the Contractor's obligation to Provide the Service for this reason, the procedures and amounts due on termination are respectively P1, P2, P3 and P4, and A1 and A3
- Z4.5 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.

## **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 4330196330 on each invoice he submits for payment.



**Z9      Notifying compensation events**

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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.

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**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. 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)

## 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 shall be inserted relevant to the option selected. After award of the contract.

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	
<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>

<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)

**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 *price list* 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 *Contractor* has completed and
  - where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Contractor* 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;
- 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 total of the Prices

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## PART 3: SCOPE OF WORK

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



### **C3.1: EMPLOYER'S SERVICE INFORMATION**

#### **1 Description of the service**

##### **1.1 Executive overview**

The Operation is on a twenty four hour per day, seven days per week basis.

The volumes of material to be handled vary from month to month depending on the Power Stations coal burning and ashing demands.

Operation activities required entails:

- Loading, stockpiling, and compacting of coal to the emergency and strategic piles
- Reclaiming of coal from the emergency, and strategic stockpiles to mobile feeders
- Hauling of coal from the emergency offloading area to the emergency or strategic stockpiles
- Building of the ash dam and dump
- Maintaining and operating of ash dam and coal stockpile
- Maintain high, "Good Housekeeping" standards in and around the machinery and work area
- Avoid any spillages from yellow plant due to maintenance or operating that contaminates the environment
- Comply to sites specific requirements as clearly displayed by the site management including but not limited to SHEQ requirements

The successful yellow plant service provider shall supply, deliver and operate mobile yellow plant as agreed upon in the contract.

The successful yellow plant service provider shall provide all labour, supervision, administration and management to perform the mobile yellow plant service as required at all times.

Labour recruitment shall follow established recruitment protocols at Kusile Power Station.

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

The Employer's objectives are to:

- Obtain yellow plant service providers to supply Mobile Yellow Plant to for the operations.
- Manage and control the risks associated with the yellow plant maintenance and operation at different operating sites for Limestone, Ash and Coal Handling Operations.

##### **1.2.1 Yellow Plant Specifications**

1.2.1.1. The successful yellow plant service provider is responsible to provide the following yellow plant as per bill of quantities supplied on an as and when required basis.

1.2.1.2 The successful service provider shall be provided with diesel for the operations and thus needs to bear that in mind when pricing.

1.2.1.3 The operator rate shall include medicals, transport, accommodation and any other costs related to the operator.

1.2.1.4 The rate for the machinery shall include both establishment and de-establishment.

1.2.1.5 The supplier is expected to respond to the breakdown within 48 hours and failure shall result in the supplier replacing the machine with like machinery within 2 days after the first 48 hours.

#### **1.2.2.0. Sourcing conditions**

##### **1.2.2.1 Yellow plant working shifts.**

- Mobile yellow plant pricing must be per hour at a dry rate and exclude the Operator.
- The maximum hours paid per day for the machine will be 22 hours
- 4 x Operators per machine (4 shift cycle), where applicable to the operations
- Transportation and accommodation of operators shall be included in the operator rates.
- The Operator rate will be fixed for 22 hours for each day of the month.
- In the event of a mobile plant breakdown, all payments will be forfeited for the breakdown hours
- Establishment and de-establishment will form part of the plant rate and paid after the assessment is concluded, no pre-payment to be entered into.
- The costs for the establishment and de-establishment of yellow plant at the beginning and at the end of the contract will be paid as per the quoted the rate.
- Any service provider that is involved in unsafe act or environmental contravention will have the total fleet on site stopped until an improvement plan is approved by the ERI BMS site management

##### **1.3. Yellow plant working day shifts only.**

- Mobile yellow plant pricing must be per hour at a dry rate and the operator rate is provided separately; the service provider must include transportation and accommodation of operators in the operator's rate.
- The minimum hours paid per day for the machine will be 9 hours; above 9 hours will be as per the hour meter reading
- 1 x Operator per machine
- Overtime during the week and weekends will be required if conditions necessitate it.
- In the event of a breakdown, all payment will be forfeited for the breakdown hours.
- Establishment and de-establishment at the beginning and ending of the contract will be paid after the fact as they are included in the rate and no pre-payment to be entered into.
- Any service provider that is involved in an unsafe act or environmental contravention will have the total fleet on site stopped until an improvement plan is approved by the ERI BMS site management.

#### **1.4. Deliverables**

1.4.2. The successful mobile plant service provider provides yellow plant to BMS within the specified time of notice given in writing

1.4.3. The successful mobile plant service provider provides plant with the following:

- All wheeled plant to have stop blocks
- All mobile plant to have oil drip tray per unit of plant,
- Competent yellow plant operators with all documents.
- Fitted air-condition
- Canopy fully sealed from dust or water ingress
- Fitted with OEM approved comfortable chair with safety belt
- That is within five years or maximum six thousand hours in use. Note any yellow plant above five years or six thousand hours in use must provide reliability test certificate issued by competent approved tester or OEM
- Fitted with a strobe light

### 1.5 Required mobile plant specification

The specification included is a minimum guideline for the required plant and can only be used as an indicator of the class of the equipment that is required. The quantities are an estimate of requirements is based on and as and when required basis.

5 x Dozers (D8 equivalent, 240Kw with coal Blade)

14 x ADT`S (30 tons)

2 x Excavator (30 tons)

7 x FEL's (966 equivalent - 210Kw with 6m<sup>3</sup> coal bucket)

### 1.6 Mobile plant availability

1.6.1. Diesel driven equipment is maintained at availability in excess of average 95%, measured at weekly intervals

1.6.2. The successful yellow plant service provider replaces yellow plant when the successful yellow plant service provider cannot attain average 95% availability per week per Equipment

1.6.3. The successful yellow plant service provider notifies the site management when the yellow plant is taken out of operation for maintenance purposes and the duration of the maintenance activity.

1.6.4. The successful yellow plant service provider obtains the acceptance of the Project Manager in writing prior to reallocation of yellow plant to other work.

## 2 Management strategy and start up.

### 2.1 The *Contractor's* plan for the service

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.

### 2.2 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 _____		<i>Employer, Contractor and _____</i>

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

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

## 2.3 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 4330196330;
- 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)

### 3 Health and safety, the environment and quality assurance

#### 3.1 Health and safety risk management

The mobile plant service provider complies with the requirements of the OHS Act 85 of 1993 as well as the Employer's Standards and Procedures regarding 'Health and Safety at Eskom Power Stations'

Note: Requirements to be met by YP service provider "Contractor SHE Specifications.

The mobile plant service provider co-operates fully with the Employer's accident prevention procedure Document 32-95 as provided to mobile plant service provider on site by site management.

Note: The construction yellow plant service provider adheres to any additional safety requirements of the Employer on site as specified by site management.

#### 3.2 Quality assurance requirements

The construction yellow plant service provider conforms to the Quality Management requirements as stipulated in the User Requirement specification.

The quality requirements are as per ISO 9001 and Eskom Standard QM-58 Quality Requirements for Engineering and Construction works (Annexure A and B for the applicable section

Diesel driven construction yellow plant is maintained at availability average of 95%, measured at weekly intervals.

Note: If the construction yellow plant cannot attain 95% availability on average per week per plant then the construction yellow plant will be replaced from site by mobile plant service provider.

Note: Availability measure (Am) =  $\frac{\text{Daily YP planned operating hours} - \text{Daily YP actual running hours}}{\text{Daily YP planned operating hours}} \times 100$

The construction yellow plant service provider submits the following items when changes occur:

- Organograms (no changes are allowed prior to the Project Manager's acceptance)
- Copy of risk management associated with maintenance and operation of construction yellow plant including all work instructions or procedures
- Any ERI BMS service provider not meeting site service requirements as stipulated on Works information will be dealt with using control of Non-Conforming output procedure document number 240-44175038

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3.

## 4 Working on the Affected Property

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

The construction yellow plant service provider applies for access permits at the security gate when access to Eskom Power Stations/Construction sites is required.

The construction yellow plant service provider's personnel are in the possession of their access permits at all times when on the Site.

The construction yellow plant service provider provides security for protection of construction yellow Plant and Materials required providing the Works

### 4.2 Records of Contractor's Equipment

The construction yellow plant service provider keeps records of maintenance tasks executed by the construction yellow plant service provider as specified by the original equipment manufacturers

#### 4.1.1 Provided by the Contractor

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

## 5 List of drawings

### 5.1 Drawings issued by the Employer

This is the list of drawings issued by the Employer at or before the Contract Date and which apply to

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ('Agreement') is entered into between the Employer and the Contractor.

WHEREAS, the Employer and the Contractor (the Parties) desire to exchange certain confidential information; and consider further business dealings with each other.

WHEREAS, the parties desire to evidence their agreements governing the exchange of certain confidential information as set forth below.

Now therefore, for good and valuable consideration, including the mutual agreements hereinafter recited, the parties hereby agree as follows:

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the 'Subject



Information') may include but not be limited to the parties' inventions, trade secrets, know-how, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.

2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other.
3. The parties each agree that they shall maintain in secrecy in accordance with the terms of this Agreement all of the Subject Information each party receives (the 'Receiving Party') from the other party (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.
4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.
5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.
6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes and other writings prepared by the parties, or their advisors, based on the Subject Information of each other, shall be destroyed, and such destruction shall be certified in writing by an authorised officer supervising such destruction.
7. If a party, with the written consent of the Proprietor of Subject Information, discloses any Subject Information received from its Proprietor to any third party, it shall do so only under a secrecy agreement having a scope similar to and which is consistent with this Agreement, and the disclosing party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party
8. Each party agrees that it shall not, while and for so long as it is obligated to maintain Subject Information in secrecy, use for its own benefit, or for the benefit of others or exploit, commercialise, develop, test promote, sell, lease, market or otherwise dispose of any products or services using, incorporating or relying on Subject Information received from its Proprietor without the written consent of the Proprietor.
9. The obligations of the party receiving Subject Information pursuant to this Agreement shall be effective with respect of each item of Subject Information for a term of five (5)

years from the date of submission of the Subject Information to the Receiving Party by its Proprietor, unless the Proprietor agrees otherwise in writing.

10. For purposes of this Agreement, each party shall include (to the extent applicable) the officers, directors, employees, agents, representatives, attorneys, joint ventures, partnerships, affiliates, subsidiaries, and divisions of the party, and any other entity or entities which such party controls or which controls it, and, further, shall include any transferee, successor and assign of the assets of the party.
11. This Agreement shall be construed (both as to validity and performance) and enforced in accordance with, and governed by, the laws of Republic of South Africa.
12. Neither this Agreement nor the exchange of Subject Information between the parties shall create or be relied on by either party as a basis for creating any license between the parties under any patent, or other industrial or intellectual property rights of the Proprietor of the Subject Information, or any other license between the parties in the absence of any express written license agreement between them
13. The parties agree that no contract or agreement providing for a transaction shall be deemed to exist between them unless and until a definitive agreement has been executed and delivered, the parties hereby waive, in advance, any claim (including, without limitation, breach of contract) in connection with a possible transaction with each other unless and until they shall have entered into a definitive agreement. The parties also agree that unless and until a definitive agreement between them has been executed and delivered, neither party has any legal obligation of any kind whatsoever with respect to any such transaction by virtue of this Agreement or any other written or oral expression with respect to such transaction, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this paragraph, the term 'definitive agreement'; does not include an executed letter of intent, memorandum of understanding.

IN WITNESS WHEREOF, and intending to be legally bound, this Agreement has been executed by the parties as of and effective from the date first written above.