



NEC3 Term Service Contract (TSC3)

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

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

for **Hiring of mobile diesel compressors contract for a
period of 24 months at Tutuka Power**

Contents:

Part C1 Agreements & Contract Data

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CONTRACT No. [Insert at award stage]

PART C1: AGREEMENTS & CONTRACT DATA

Contents:

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C1.2a Contract Data provided by the *Employer*

C1.2b Contract Data provided by the *Contractor*

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:

Hiring of mobile diesel compressors contract for a period of 24 months at Tutuka Power Station

The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto and by submitting this Offer has accepted the Conditions of Tender.

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the *Contractor* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data.

Options A	The offered total of the Prices exclusive of VAT is	R
	Value Added Tax @ 15% is	R
	The offered total of the amount due inclusive of VAT is ¹	R
	(in words)	

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

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Tenderer's CIDB registration number:

Acceptance

¹ This total is required by the *Employer* for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*.

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

The terms of the contract, are contained in:

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

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the *Employer* during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the *Employer's* agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed and signed original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)

Capacity

**for the
Employer**

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

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

Note:

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

No.	Subject	Details
1	N/A	
2		

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

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

For the tenderer:**For the *Employer***

Signature

Name

Capacity

On behalf
of*(Insert name and address of organisation)**(Insert name and address of organisation)*Name &
signature
of witness

Date

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

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

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		A: Priced contract with price list
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	
		X2 Changes in the law
		X17: Low service damages
		X18: Limitation of liability
		X19: Purchase Order
		X20: Key Performance Indicators
		Z: Additional conditions of contract
	of the NEC3 Term Service Contract April 2013 ² (TSC3)	
10.1	The <i>Employer</i> is (name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	
	Fax No.	
10.1	The <i>Service Manager</i> is (name):	
	Address	
	Tel	
	Fax	
	e-mail	

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

11.2(2)	The Affected Property is	Tutuka Power Station
11.2(13)	The <i>service</i> is	Hiring of mobile diesel compressors contract for a period of 24 months at Tutuka Power Station
11.2(14)	The following matters will be included in the Risk Register	None
11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	1 week
2	The Contractor's main responsibilities	Data required by this section of the core clauses is also provided by the <i>Contractor</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data
21.1	The <i>Contractor</i> submits a first plan for acceptance within	The 1st week of the Contract award
3	Time	
30.1	The <i>starting date</i> is.	
30.1	The <i>service period</i> is	6 Months
4	Testing and defects	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
5	Payment	
50.1	The <i>assessment interval</i> is	The 25th of each successive month or the next working day.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	4 weeks.
51.4	The <i>interest rate</i> is	<p>the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted 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</p>

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	As per NEC3 TSC Core Clause 8 Risks and Insurance Risks - 80.1 and insurance 83.1 and 83.2
83	Insurance	
83.1	When requested by a Party, the other or Party provides certificates from his insurer broker stating that the insurances required by this contract are in force.	
83.2	The <i>Contractor</i> provides the insurances stated in the Insurance Table A from the <i>starting date</i> until the earlier of Completion and the date of the termination certificate	

INSURANCE TABLE A

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

The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service	<u>Loss of or damage to property</u> The replacement cost <u>Bodily injury to or death of a person</u> The amount required by the applicable law.
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law.

86 **Insurance by the *Employer***86.1 The *Employer* provides the insurances stated in the Insurance Table B**INSURANCE TABLE B**

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

	Nuclear Material Damage and Business Interruption	Per the insurance policy document
	Nuclear Material Damage Terrorism	Per the insurance policy document
9	Termination	Termination will be dealt with as per NEC 3 TSC termination clauses
10	Data for main Option clause	
A	Priced contract with price list	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than	4 weeks.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i>	The person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
	Address	
	Tel No.	
	Fax No.	
	e-mail	
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see www.ice-sa.org.za) or its successor body.
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	
	- 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	
X2	Changes in the law	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.
X17	Low service damages	
X17.1	The <i>service level table</i> is	on the 2nd last page of this document
X18	Limitation of liability	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	R0.0 (zero Rand)
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	the amount of the deductibles relevant to the event described in the "Format A" (Contract all risk Insurance Policy available on request from Eskom Group Insurance .
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	The greater of the total of the Prices at the Contract Date and 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 request from Eskom Group insurance
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	<p>The total of the Prices other than for the additional excluded matters.</p> <p>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</p> <ul style="list-style-type: none"> 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
X18.5	The <i>end of liability date</i> is	30 days
X19	Task Order / Purchase Order	
X19.5	The <i>Contractor</i> submits a Purchase Order programme to the <i>Service Manager</i> within	Within the same day of receiving the Task Order / Purchase Order / Formal Letter
X20:	Key Performance Indicators (not used when Option X12 applies)	To be initiated on contract award as per sample on last page.

X20.1	The <i>incentive schedule</i> for Key Performance Indicators is in	Appendix B on the last page of this document. No incentives will be paid out for Key performance indicators
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	3 months
Z	The <i>additional conditions of contract</i> are	Z1 to Z14 always apply.

Z1 Cession delegation and assignment

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

Z2 Joint ventures

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

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

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

Z4 Confidentiality

- Z4.1 The *Contractor* does not disclose or make any information arising from or in connection with

this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.

Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.

Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z4.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.

Z4.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Service Manager* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z6 Health, safety and the environment: Add to core clause 27.4

Z6.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:

- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Affected Property;
- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and

undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

Z6.2 The *Contractor*, in and about the execution of the *service*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

Z7 Provision of a Tax Invoice and interest. Add to core clause 51

- Z7.1 Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z7.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
- Z7.3 • The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z8 Notifying compensation events

- Z8.1 Delete the last paragraph of core clause 61.3 and replace with:
- If the *Contractor* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices.

Z9 Employer's limitation of liability

- Z9.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z9.2 The *Contractor's* entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer's* liability under the indemnity is limited to compensation as provided for in core clause 63 and X19.11 if Option X19 Task Order / Purchase Order applies to this contract.
- Z10 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":**
- Z10.1 or had a business rescue order granted against it.

Z11 Ethics

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

Affected Party	means, as the context requires, any party, irrespective of whether it is the <i>Contractor</i> 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 <i>Contractor</i> , or any member thereof

in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,

Corrupt Action	means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,
Fraudulent Action	means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,
Obstructive Action	means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action and
Prohibited Action	means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

Z11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z11.2 The *Employer* may terminate the *Contractor's* obligation to Provide the 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.

Z11.3 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.

Z11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation

Z12 Nuclear Liability

Z12.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.

Z12.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 44 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

Z12.3 Subject to clause Z12.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

Z12.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 44 of 1999, or any replacement section dealing with the same subject matter.

Z13 Asbestos

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

- AAIA** means approved asbestos inspection authority.
- ACM** means asbestos containing materials.
- AL** means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
- Ambient Air** means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
- Compliance Monitoring** means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
- OEL** means occupational exposure limit.
- Parallel Measurements** means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
- Safe Levels** means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
- Standard** means the *Employer's* Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
- SANAS** means the South African National Accreditation System.
- TWA** means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.
- Z13.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
- Z13.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z13.3 The *Employer* manages asbestos and ACM according to the Standard.

- Z13.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z13.5 The *Contractor's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z13.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z13.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.
- Z.14 Exit clause**
- Z.14.1** This contract will be terminated immediately by *Employer* and *Contractor* should compressor's replacement project is completed.

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. .

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 the *Contractor's* own resources on a 'self insured' basis or obtained from the *Contractor's* 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 A**' 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 available on request from Eskom Group Insurance.
6. Further information and full details of all Eskom provided policies and procedures may be obtained from Eskom Group Insurances

C1.2 Contract Data

Part two - Data provided by the *Contractor*

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

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is	%
	The <i>subcontracted fee percentage</i> is	%
11.2(14)	The following matters will be included in the Risk Register	
11.2(15)	The Service Information for the <i>Contractor's</i> plan is in:	
21.1	The plan identified in the Contract Data is contained in:	
24.1	The key people are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job: Responsibilities: Qualifications: Experience:	
		CV's (and further key person's data including CVs) are in .
A	Priced contract with price list	
11.2(12)	The <i>price list</i> is in	C2.2
11.2(19)	The tendered total of the Prices is	R

PART 2: PRICING DATA

TSC3 Option A

Document reference	Title
C2.1	Pricing assumptions: Option A
C2.2	The <i>price list</i>

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

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

Identified and defined terms	11	
	11.2	(12) The Price List is the <i>price list</i> unless later changed in accordance with this contract.
		(17) The Price for Services Provided to Date is the total of <ul style="list-style-type: none"> the Price for each lump sum item in the Price List which the <i>Contractor</i> has completed and where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the <i>Contractor</i> has completed by the rate.
		(19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.

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 the *Contractor's* 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*

Maintenance

Item nr	Description	Unit	Quantity Per month	Expected Total Quantity	Rate	Price
1	Hire of 4 x mobile diesel compressors 1600CFM @ 7 bar oil free air	EA	4	24		

Note:

- Maintenance, service and breakdown costs must be in-cooperated in the rates above and must be done frequently to ensure no/limited downtime on the machines. Downtimes of the machines will result in Eskom deducting the costs for the duration when the machines where not in-service excluding the 4hr response time. Breakdowns should be attended to within 4 hours of reporting the fault. It is the responsibility of the supplier to ensure that the machines are fully operational and correct maintenance is followed

PART 3: SCOPE OF WORK

Document reference	Title
	This cover page
C3.1	<i>Employer's Service Information</i>
C3.2	<i>Contractor's Service Information</i>

C3.1: *EMPLOYER'S* SERVICE INFORMATION

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1. Description of the service

Hire four 1600 CFM mobile diesel compressors for 24 months

Specifications

Hire of 4 x mobile diesel compressors 1600CFM @ 7 bar oil free air

Hire of 4 x air driers 1600CFM 150PSI

Hire of 4 x 30m hoses including manifold and connections on site (Contractor's technician to do all connections and disconnections)

Contractor to do weekly inspections on the compressors to assure availability.

Any defective compressor must be replaced within 24 hrs at contractors cost.

Transport to and from site for collection and delivery of compressors & driers (Truck to have its own lifter)

NB: Maintenance, service and breakdown costs must be incorporated on the order and must be done frequently to ensure no/limited downtime on the machines. Downtimes of the machines will result in Eskom deducting the costs for the duration when the machines were not in-service excluding the 4hr response time. Breakdowns should be attended to within 4 hours of reporting the fault. It is the responsibility of the supplier to ensure that the machines are fully operational and correct maintenance is followed

1.1 Employer's requirements for the service

- All services to be done according to the Eskom procedures and plant safety regulations.
- All spares removed and returned to Tutuka premises must be declared at the main entrance where the removal permit for the spares must be shown to the protective services personnel.
- Transportation of equipment and rigging requirements will be arranged by the *Contractor*.
- The *Contractor* will be required to provide a standby personnel to be contacted on a 24hr basis for any defective compressor and must be on site within 4 hrs
- Plant Safety Regulations have to be followed and work will only be done with a permit where applicable. Any contraventions will be strictly dealt with.
- The *Contractor* must clean and remove all debris after completion of the work.
- The Contractor must supply a weekly inspection report on all compressors
- The Contractor must inform the contract manager 1 week in advance for any major services to be done on the compressors.
- The Contractor must ensure that the compressors are available 24hrs
- The Contractor must replace any defective compressor if defect cannot be repaired on Tutuka site within 24hrs.
- The *Contractor* must complete all required inspection cards and corrective work orders.
- The *Contractor* is to be at the specific working area location as defined in the Task Order or by the Contract Supervisor.
- If the need arises to move away from the working area for any reason other than safety it must be under the supervision of the Contract Supervisor.
- Site access shall be granted by Eskom Holdings Tutuka Power Station protective services as requested by the *Service Manager*.
- No employees will be transported on an open vehicle. The vehicles must comply with Eskom minimum requirements.
- Eskom Life Saving Rules to be adhered to.

1.1 Interpretation and terminology

The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the abbreviation
AP	Accounts Payable
B-BBEE	Broad Based Black Economic Empowerment
CC	Cost Centre
COC	Certificate of Compliance
ISO	International Organization for Standardization
LAR	Local Access Register
LV	Low Voltage
OHSACT	Occupational Health and Safety Act 85 of 1993
PPE	Personal Protection Equipment
PPPFA	Preferential Procurement Policy Framework Act
PSR	Plant Safety Regulations
QC	Quality Control
QCP	Quality Control Plan
QMS	Quality Management Systems
RP	Responsible Person
SACPCMP	South African Council for the Project and Construction Management Professions
SAMTRAC	Safety Management Training Course
SAP	System Application Products
SD&L	Supplier Development and Localisation
SOW	Scope of Work
TBA	To Be Announced
TBC	To Be Confirmed

2 Management strategy and start up.

2.1 The *Contractor's* plan for the service

- To be discussed before each task can be carried out between the *Contractor* and *Employer*
- Programme to be supplied on request on a signed hard copy as well as a soft copy, see Scope of Work

2.2 Management meetings

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

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	TBC	TBA	TBC
Overall contract progress and feedback	Monthly	TBA	<i>Employer and Contractor</i>

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

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

Attendance of meetings as required by *Service Manager* Such as

- Departmental Safety Meetings (monthly)
- Section daily meetings
- Any meeting requested by the *Employer* or *Contractor*
- Assessment Meeting
- Outage meeting

2.3 Contractor's management, supervision and key people

N/A

2.4 Provision of bonds and guarantees

N/A

2.5 Documentation control

- Each instruction, certificates, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded.
- Writing is in the Language of this contract.
- Monthly and weekly and daily reports to be discussed compiled and handed to the *Employer's* Supervisor and *Service Manager*.
- All communications must be printed and filed in the *Service Managers* file

2.6 Invoicing and payment

The *Contractor* shall 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
- Purchase Order number and the line number of purchase order;
- The *Employer's* Finance department and the *Contractor's* delegated person to determine the monthly / assessment
- *Employer's* Invoicing and payment procedure/ instruction to be followed.

2.7 Contract change management

- In a case where one *Contractor* takes over from another *Contractor*, the *Site Service Manager* must be notified in writing immediately.
- The *Contractor* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Changing the service information
- Access
- Provision by the *Employers*
- Stopping work
- Work of the *Employer* or others
- Reply to communication
- Changing a decision
- Withholding acceptance
- Delayed tests or inspections
- Change of affected property
- Materials, facilities etc. for tests
- *Employer's* risks
- Assumption about compensation events
- *Employer's* breach of contract

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

N/A

2.9 Insurance provided by the *Employer*

- Refer to contract data section 8

2.10 Training workshops and technology transfer

- All necessary Safety courses required for PSR Authorisation will be on *Contractor's* account
- PSR training required by the *Employer* will be on the *Employer's* account for the first attempt, should the *Contractor's* employee fail, then second attempt training will be at *Contractor's* account
- *Contractor* staff to be Authorised and found competent in writing to work at Heights

2.11 Design and supply of Equipment

- In the case for a Modification the Modification process must be followed
- *Contractor* to provide all tools and equipment necessary to perform the required *service*.
- All test Equipment must be calibrated regularly and the certificates must be handed to the *Service Manager*
- All equipment and tools needs to be marked and a list of all tools with the identification number to be provided to the *Service Manager* when entering site.

- All lost / damaged equipment and tools to be declared to the *Service Manager* and full details of the incident and will be replaced at *Contractor's* account.

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

2.12.1 Equipment

All equipment provided by the *Employer* will be return to the *Employer* at the end of the service.

2.12.2 Information and other things

- All Reports / Documents to be compiled, filed, discussed and handed over to the *Employer* on a weekly basis (the day in the week to be announced by *Employer*) and at the end of the *service*.
- On completion of contract the *Contractors* safety file will be hand over to the *Service Manager* and will be saved for 40 Years after completion / termination of the contract
- *Contractor* is Responsible to ensure that his Letter of Good standing is valid at all times as stipulated in the construction regulations point 7 (C) (iv) and she specifications 2.5.2 (iv) and 3.10. *Contractor* will not be allowed on site if the *Contractors* letter of good standing is not valid

2.13 Management of work done by Task Order / Purchase Order

- A Task Orders / Purchase Orders are the instruction to commence work.
- No work shall commence until Task Order / Purchase Order is issued and has been finalised, accepted and signed by both the *Employer* and *Contractor*.
- All work will be issued on a Task Order system.
- The Work Order, Purchase Requisition, Task Order and Purchase Order will be created via the SAP PM system.
- Completion certificate to be issued after tasks is completed on the Task Order / Purchase Order. Completion certificate must be submitted together with the Assessment.

3 Health and safety, the environment and quality assurance

3.1 Health and safety risk management

The *Contractor* shall comply with the health and safety requirements contained in Annexure SHEQ Specifications 14RISK SRM-084 to this service Information.

Eskom SHEQ Policy

Eskom has made a commitment to conduct business with respect and care for people, the environment and assets and that no operating condition or urgency of *service* justifies exposing anyone to negative risks arising from Eskom's business.

Compliance with the Eskom SHEQ Policy and applicable regulations is the responsibility of every employee and *Contractor*.

Contractor SHEQ Policy

All *Contractors* shall have an OHS policy signed by the CEO of the *Contractor* and prominently displayed where employees normally report for duty.

Signed copy of the OHS policy shall form part of the SHE file.

SHE Plan Requirements

- Principal *Contractors* shall develop a suitable and sufficiently documented site specific SHE plans, based on the scope of work and client SHEQ specification.
- The SHE plan must be pre-approved by the client for implementation. The principal *Contractor/Contractor* has a responsibility to send the SHE plan to the client for approval prior to commencement of work.
- The SHE plan must be applied from the commencement of and for the duration the construction work, which must be updated / reviewed as the work progresses/changes.

When a principal *Contractor* intends appointing *Contractor*, the principal *Contractor* shall ensure that the *Contractor* provides and demonstrate a suitable, sufficiently documented and coherent site specific health and safety plan, based on the client's SHEQ specifications and scope of work

- The *Contractor* must ensure that all personnel attend the *Employers* health and safety Induction Course prior to starting with the works.
- All Eskom health and safety requirements to be adhered to
- *Contractors* Health and Safety file to be handed in for approval, and kept up to date by the *Contractor*

Health and Safety Arrangements

The *Contractor* ensures that all his personnel attend a Health and Safety Induction Course prior to contract starting date and annual re- induction. The Induction Course is presented by the *Employer's* Safety Risk Department at Tutuka Power Station. Arrangements are made with Safety Risk Management, by the *Contractor*.

The *Employer's* Safety Risk Manager visits and inspects the *Contractor's* workplace or site yard and the working areas to ensure that tools; machinery and Equipment comply with the minimum safety requirements.

The *Service Manager* may instruct the *Contractor* to stop work, where the *Contractor's* personnel fail to conform to safety standards or contravene health and safety regulations. Such stop-work order is not a compensation event. The *Service Manager* may instruct the *Contractor* to discipline his employees and to submit a disciplinary action report to the *Service Manager*. The *Contractor* implements additional health and safety precautions where necessary.

The *Contractor* complies with the Occupational Health and Safety Act 85 of 1993, as well as Eskom procedure as stipulated below:

- SHEQ Policy 32-727
- Eskom Procurement and Supply Chain Management Procedure 32-1034
- SHE Requirements for the Eskom Commercial Process 32-726
- *Contractor* Health and Safety Requirements 32-136
- Integrated SHE Organization; Roles and Responsibilities and Statutory Appointments 32- 296
- Live-saving Rules 240-62196227
- Working at Heights 32-418
- Eskom Vehicle Safety Specifications 32-345
- Tutuka *Contractor* SHEQ Specifications 14RISK SRM - 084

The *Contractor* acknowledges that it is fully aware of the requirements of all the above and undertakes to employ only people who have been duly authorised in terms thereof and who have received sufficient safety training to ensure that they can comply therewith.

The *Contractor* undertakes not to do, or not to allow anything to be done which will contravene any of the provisions of the Act, Regulations or Safety and Operating Procedures.

The *Contractor* shall appoint a person who will liaise with the Eskom Safety Officer responsible for the premises relevant to this contract.

Do safety audits at the *Contractor's* premises, its work-places and on its employees;

Refuse any employee, sub-*Contractor* or agent of the *Contractor* access to its premises if such person has been found to commit any unlawful act or any unsafe working practice or is found to be not authorised or qualifies in terms of the OHSACT;

Issue the *Contractor* with a work stop order or a compliance order should Eskom become aware of any unsafe working procedures or conditions or any non-compliance with the Act, Regulations and Procedures by the *Contractor* or any of its employees, sub-*Contractors* or agents.

The *Contractors* Health and safety file is to be submitted for approval to Tutuka's Safety Officer before contract commencement.

All work stoppages called by the *Employer* to be adhered to

First aid and fire fighting

Adequate first aid and firefighting equipment to be provided by the *Employer*
All *Contractor* personnel must have First aid and firefighting training

- ***Contractor* to provide own Fire Extinguishers**

Fire Precautions

Any tampering with the *Employer's* fire equipment is strictly forbidden.

All exit doors, fire escape routes, walkways, stairways, stair landings and access to electrical distribution boards is kept free of obstruction, and are not used for work or storage at any time. Firefighting equipment must remain accessible at all times.

The *Contractor* takes the necessary action to safe guard the area to prevent injury and the spreading of the fire.

Security, fire protection and safety

The *Contractor* shall be responsible for ensuring the security of the works, and of his plant, equipment and materials. To that end he shall make adequate provision for access control, lighting and watchman to the works where required.

Fire protection

The provision of Eskom's standard NWS 1494 "Fire Prevention and Protection of *Contractor's* premises at New Works Sites" shall be applicable.

Safety and incident prevention

The *Contractor* shall implement and maintain an active Site Safety and Accident Prevention Programme in accordance with the Tutuka SHEQ Specifications. The overriding regulations will however be the Occupational Health and Safety Act.

Reporting of accidents

The *Employer* follows an accident prevention policy that includes the investigation of all accidents involving personnel and property. This is done with the intention of introducing control measures to prevent a recurrence of the same incidents. The *Contractor* is expected to fully co-operate to achieve this objective.

The *Service Manager* must be informed immediately of any incidents. A written report to be submitted to the *Employer within 24 Hours* of incidents and any damage to property or equipment

NOTE! This report does not relieve the *Contractor* of his legal obligations to report certain incidents to the Department of Labour, or to keep records in terms of the Occupational Health and Safety Act, and Compensation for Occupational Injuries and Diseases Act.

Occupational Health and Safety Act 85 Of 1993 – SECTION 37

In accordance with Section 37 (2) of the Act, the *Contractor* is appointed by the *Employer* as mandatory to assume Health and Safety duties and responsibilities. The *Contractor* ensures compliance with all requirements of the Act and any instruction or notification that enhances those requirements.

The *Contractor* acknowledges that he is fully aware of all the requirements of the Occupational Health and Safety Act and undertakes to employ only staff who have been duly authorised in terms thereof and who receive sufficient safety training to ensure that they can comply therewith.

The *Contractor* undertakes not to do, and not to allow anything to be done which will contravene any of the provisions of the Act, Regulations or Safety and Operating Procedures.

The *Contractor* appoints a person who liaises with the *Employer's* Safety Officer, responsible for the premises relevant to the Contract. The person appointed shall on request:

- Supply the *Employer's* Safety Officer with copies of minutes of all Health and Safety Committee meetings, whenever required.
- Supply the *Employer's* Safety Officer with copies of all appointments in respect of employees employed on this contract, in terms of the Act and Regulations and shall notify The *Employer's* Safety Officer of any changes thereto.

The *Employer* may, at any stage during the duration of this contract:

- perform safety audits at the *Contractor's* premises, its work place and its employees;
- refuse any employee, *Sub-Contractor* or agent of the *Contractor* access to its premises if such person is found to commit any unsafe act or any unsafe working practice or is found not to be duly authorised nor qualified in terms of the Act;
- Issue the *Contractor* with an instruction to stop work should the *Employer* aware of any unsafe working procedure or condition or any non - compliance with The Act, Regulations and Procedures referred to in the Occupational Health and Safety Act - 85 of 1993 and all Regulations made hereunder as well as all the *Employer's* Safety and Operating Procedures. Any such instruction is not a compensation event. Furthermore, no Amendments to the act or the Regulations or reasonable amendment to the *Employer's* and Operating Procedures will entitle the *Contractor* to claim any additional costs or Time incurred in complying therewith, from the *Employer*

Safety Regulations of the *Employer*

The *Contractor* conforms to the Eskom Plant Safety Regulations

The *Employer* makes available to the *Contractor*, on request, a copy of the latest revision of the Plant Safety Regulations.

3.2 Environmental constraints and management

The *Contractor* shall comply with the environmental criteria and constraints stated in the following:-

All waste from the project must be disposed in a sound environmental manner in accordance with Tutuka Power Station Waste Management Procedure 14 Risk ENV-013. Oil spillages must be contained and

cleaned as per Oil Spill Management procedure 15 ENPRENV-001. The project must conform to Eskom Environmental Legal and other Requirements procedure 14 Risk ENV-012 and the project must conform to Tutuka Power Station ISO14001 Standard with reference to Tutuka Power Station's Environmental Management System Manual 14 Risk ENV-010. All environmental incidents must be dealt with as per the Station's Incident Management, Corrective and Preventative Procedure 14 Risk PC-001 and all environmental incidents must be reported to the Environmental Department on site with Telephone Number 017-7495536/9200.

3.3 Quality assurance requirements

The *Contractor* shall be required to demonstrate by means of a Quality Plan that this organisation is so structured that all the requirements of the specification will be properly monitored and controlled. The Quality Plan and Control procedures are to be carried out in accordance with QM 58. The Quality Control document is to be submitted for approval to Tutuka within three (3) days after order placement by the *Contractor*.

No work may commence unless the Quality Control document has been approved in writing and a copy submitted to *the Service Manager*. *The Contractor*, in conjunction with Tutuka Engineering must sign off all Quality Control documents after completing all work on site. *The Contractor* to submit a copy of the final signed off document to *the Service Manager* within 1 week after Completion of each activity or task

- QCP and contract quality plan standards as per QM 58 to be adhered to
- GGG 1099 - The guideline provides Fossil and Peaking Power Stations with information necessary to establish the classification of all plant systems, equipment, components and activities.
- The *Contractor* must provide Quality Control Plan documents for approval by Eskom *Service Manager* performing any activity.

4 Procurement

4.1 People

4.1.1 Minimum requirements of people employed

- All relevant personnel names and titles must be specified to the *Service Manager*
- Contract Staff are not allowed to work on any other contract.
- All new staff to do induction training
- All new staff to be approved by *Service Manager* before entering the site or commencing work
- When changing personnel a new access to work form to be completed by the *Contractor*
- Only required specified approved amount of personnel to be allowed on site, pre-arrange with *Service Manager*

4.1.2 BBBEE and preferencing scheme

- As per clause Z3 within Contract Data.

4.1.3 Procurement requirements

PPPFA STRATEGY

Indicate the percentage (%) that is allocated to:

Price
 BBBEE Status
 Designated commodity (Yes/No)

80%
20%
Yes

4.2 Subcontracting

4.2.1 Preferred SubContractors

- N/A

4.2.2 Subcontract documentation, and assessment of subcontract tenders

- N/A

4.2.3 Limitations on subcontracting

- N/A

4.2.4 Attendance on SubContractors

- N/A

4.3 Plant and Materials

4.3.1 Specifications

- Hold and witness points must be attended and witness all intervention points as per approved QCP as per activity.
- The *Contractor* is responsible for the transportation of equipment and other material.
- The *Contractor* is not allowed to use any equipment, materials or spares for private usage or on other Eskom sites.
- Work and QC to be carried out according to all regulations and procedures of the *Employer*
- Check sheets to be updated, signed and handed in to the *Employer's* Supervisor

4.3.2 Correction of defects

- All work to be done must be done under a permit to work. Some plants are trip risks and can only be worked on during outages or units shut downs.
- All defected spares to be replaced with the permission of the *Service Manager / Employer's* Supervisor.
- All rework to be attended to within 24 hours and will be against the *Contractors* costs
- As per inspection check list provided by the *Employer* (GGP 1045 page 33-35; GGP 1046 page 33-35)

4.3.3 Contractor's procurement of Plant and Materials

- Purchasing of spares, equipment or materials will go through the *Employer's* procurement process.
- The *Contractor* will supply his own consumables.

4.3.4 Tests and inspections before delivery

- All spares removed and returned to the *Employer's* premises must be declared at the main entrance where the removal permit for the spares must be shown to the Protective Services personnel.

5 Working on the Affected Property

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

- Lifesaving rules must be adhered at all times.
- Access is limited and controlled by Plant Safety Regulations requirements.
- No employee will be allowed to access the plant or to work without access permit issued.
- All personnel to work on the plant must be registered on the Worker's Register by the Responsible Person.
- All personnel must attend induction before working on site and they must obtain gate permits via the *Service Manager*.
- Unauthorised access to site is prohibited. The personnel are expected to be at their working site area at all times.
- No recruitment on site or at the main access gates.
- All activities to comply with the OHSACT regulations.

5.2 People restrictions, hours of work, conduct and records

- Normal working hours is Eskom working hours
Monday to Thursday 07:00 - 16:15
Fridays 07:00 - 12:00
- Other hours will be determine as per critical path activities during outages / breakdowns
- Overtime / Shift work on a as and when required basis, but must be approved by the *Service Manager*
- Daily time sheet must be kept up to date of normal time and overtime worked at all times. *Employer's Contractors* time sheets to be used
- Standby / Call-out might be required or on an as and when required basis depending on the plant status (Outages / Breakdowns)
- The *Contractor* must be available for any plant break downs during after hours, week-ends and Public holidays. The *Contractor* must be on site after 1 hour after a phone call is made.
- All overtime worked must comply with Eskom rest period requirements
- All work to be performed will be on an as and when required basis as per *Service Manager* request and as per plant performance

5.3 Health and safety facilities on the Affected Property

- Proto-team on each shift
- Medical Station and relevant staff on Site.
- Each workshop has a first aid box available.
- Yearly induction for all personnel.
- In an emergency the contract supervisor and *Service Manager* must notified immediately

First aid centre

The *Contractor* provides a first aid service to his employees and *Sub-Contractors*. In the case where these prove to be inadequate, like in the event of a serious injury, the *Employer's* medical centre and facilities are available.

Outside the *Employer's* office hours, the *Employer's* first aid services are only available for serious injuries and life threatening situations.

The *Employer* is entitled, however, to recover the costs from the *Contractor* for the use of the above *Employer's* facilities

5.4 Environmental controls, fauna & flora

Environmental management

- Proper care of the natural environment is important to prevent nuisance and environmental degradation.
- All *Contractors* shall comply with Eskom environmental management procedures and Environmental legislation
- Environmental incidents shall be reported to the Eskom Environmental Department as per incident management requirements.

Waste Management

- Waste segregation is important to facilitate recycling of waste. Ensure that waste material is disposed in the correct bin.
- Eskom periodically collects waste from the bins for disposal in the correct manner.
- No waste should be burned or buried on site.
- Where Eskom and the *Contractor* have agreed that the *Contractor* is responsible for the Disposal of its waste, the *Contractor* shall safely dispose of such waste and keep disposal certificates filed.

Types and colours of bins used on site:

- Yellow bin for domestic waste
- Orange bin for hazardous waste
- Maroon bin for scrap
- Green box for cartridges
- Blue box for recyclable paper

Radiation protection

The *Contractor* conforms to the *Employer's* procedure OMOP 2049 and OMOP 2051 when performing any industrial radiography.

Hazardous Substances

It is required in terms of the General Administrative Regulation (Regulation 7) of the Act that any manufacturer, importer, seller or supplier of hazardous chemical substances shall supply the receiver, free of charge with sufficient information for the user, to enable the user to introduce the necessary measures as regards the protection of the health and safety of persons. It is therefore the responsibility of the supplier (dealing directly with the *Employer*) to supply the information. If information is not available for whatever reason, the supplier must indicate and give reasons to the *Employer*.

Handling of waste produced by the *Contractor*

All waste introduced to and/or produced on the *Employer's* premises, by the *Contractor*, for this contract, must be handled in accordance with the minimum requirements for the Handling and Disposal of Hazardous Waste in terms of Government Legislation as proclaimed by the Department of Water Affairs and Forestry Act 1994 Ref.: BN0621-16296-5.

The *Contractor* is responsible to appoint a waste coordinator to ensure that all waste produced is handled according to the applicable legislation.

The *Contractor* is required to ensure that all goods, services or work supplied in terms of the contract conform to all applicable environmental legislation. Where work is done on the *Employer's* site, the goods, services or work supplied also conforms to the *Employer's* environmental specifications.

Waste from the cleaning and maintenance of equipment

The *Contractor* is responsible to contain all waste due to cleaning and maintenance of equipment and disposes of as described below.

Stockpiling of waste

Waste is removed promptly to the designated deposit areas. No stockpiling is permitted.

Hazardous waste

Waste declared as hazardous substances in terms of the Hazardous Substances Act no 15 of 1973 is the responsibility of the *Contractor* to ensure safe removal from the property to a registered Class 1 site

Pest Control

Only approved herbicides with a low environmental risk shall be used for pest control.

Only registered pest controllers may apply herbicides on a commercial basis.

Application of herbicides shall be in accordance with the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 194.

Water Conservation

Incidents related to water pollution must be reported to the Eskom environmental department within 24 hours.

Report / fix leaking taps and pipes to save water.

Use water sparingly.

Chemical substances shall not be disposed of in waste water or storm water drains.

Air Pollution

Dust suppression measures must be in place to reduce airborne dust.

Noxious and offensive odours arising from work activities shall be adequately controlled.

Ground Pollution

Measures to prevent or control ground contamination shall be put in place e.g. drip trays, bund walls.

Spill containment, clean-up and ground rehabilitation shall be done as per Tutuka procedures

5.5 Cooperating with and obtaining acceptance of others

Interface with Others

It is likely that other *Contractors* will be working in the same area. Others might however from time to time require limited access to the same area in order to execute maintenance activities and the *Contractor* is to be accommodating in such instances.

Planning

Programmes are submitted in hard and electronic copy. The software package is MS Projects, Open Plan or equivalent, accepted by the *Service Manager*.

Progress report

A Report will be submitted to the *Service Manager* as and when requested.

Completion

Contractor to submit a completion certificate after each task is complete.

Final completion certificate of contract must be submitted at the end of Contract period.

Requirements for Completion.

Completion is when the *Contractor* has done all the work, which the Works Information states he is to do by the Completion Date and has corrected notified Defects, which would have prevented the *Employer* from using the works.

The Site is handed back to the *Employer* in a condition acceptable to the *Service Manager*.

5.6 Records of Contractor's Equipment

- All equipment and tools needs to be marked and a list off all tools with the identification number to be provided to the *Service Manager* when entering site.
- All lost equipment and tools to be declared to the *Service Manager* and full details of incident.
- *Contractor's* equipment (Cellphones with Camera's, Computers, Camera's etc) to be declared and signed in at security.
- All test equipment must be calibrated and tested regularly and certificates must be handed in to the *Service Manager* for record keeping

All equipment and appliances

All equipment or appliances used by the *Contractor* conforms to the applicable South African Safety Standards and is maintained in safe and proper working condition. The *Service Manager* has the right to stop the *Contractor's* use of any equipment or appliance that in the *Service Manager's* opinion does not conform to the foregoing. The *Contractor* only employs skilled persons, certified in terms of the relevant acts.

5.7 Equipment provided by the Employer

- Mobile, Overhead cranes, fork lifts, air winches and other winches to be provided and operated by the *Employer*
- All rigging equipment over five tons to be provided by the *Employer* and to be used under Eskom supervision.
- Hoists
- Boiler Lifts
- Cleaning Consumables (Rags, Anti-corrosion sprays)
- All approved rigging services will be provided by the *Employer*

5.8 Site services and facilities

5.8.1 Provided by the Employer

- The *Employer* supplies 220 & 380 V AC power supply at existing points for the purpose of the works only

- The *Employer* supplies portable water for the purpose of the works, at existing points and in reasonable quantities. Uninterrupted supply is not guaranteed and is not grounds for compensation events.
- *Employer* will provide facilities (such as toilets).
- Scaffolding where needed and must be planned 2 days upfront for non-emergent work
- Working space / area
- Gas test and environmental certificate
- All *Employers* required training will be provided by the *Employer*.

5.8.2 Provided by the *Contractor*

- *Contractor* to provide and insure safe transportation services for all his *Contractors* and it must comply to 32-93 and 33-345 procedures.
- *Contractor* to provide own (Coffee, sugar, milk, tea etc.)
- All computers and printers accessories needed to be provided by the *Contractor*
- The *Contractor* will be responsible for the cost of all private phone calls, faxes and internet usage.
- The *Contractor* to provide accommodation and meals for the employees and costs for this to be included in the contract price.
- Provide SANS approved Safety harnesses as per Eskom Safety Requirements.
- *Contractor* to provide own Cabin for office and work place, but the *Employer* will provide space if required.
- COC's to be provided of all LV equipment and Cabins provided by the *Contractor*.
- *Contractor* to provide own tools and equipment and test instruments such as Insulated tools to enable to the *Contractor* perform work according to the scope of work.
- Access permits [Refer to procedure: Access Control at Eskom premises (32-1134)]
- *Contractor* to provide own (coffee, sugar, milk, tea, etc.)
- All computers and printers accessories needed to be provided by the *Contractor*.
- All PPE to be provided by *Contractor* at own costs for all weather types and must be SABS approved and meet Eskom standards.
- Gloves and dusk masks will supplied by the *Contractor*.
- Provide SABS approved Safety harnesses as per Eskom Safety requirements and must be inspected daily and logged.
- *Contractor* will provide a Method Statement to explain how the SOW will be executed and this must form part of the Tender returnable.
- The *Contractor* makes his own arrangements for accommodation and meals.
- The *Contractor* provides his own cell phone and the cost thereof.
- The *Contractor* will be responsible for all none Eskom telephone calls, faxes and internet usages.
- *Contractor* to provide 2 x (380VAC 63 Amp) 50m extensions. Extensions must be COC certified.
- *Contractor* to provide barricading for no-entry in works areas.

5.9 Control of noise, dust, water and waste

- All necessary and relevant PPE must be used at all time when entering or working on plant.
- Work Permit Risk Assessment forms must be completed before commencing with any task.
- All relevant procedures to be used at all times.

5.10 Hook ups to existing works

5.10.1 Constraints on how the *Contractor* provides the service

- The *Employer* reserves the right to have any of the *Contractor's* personnel removed off site without cancelling the contract if, in the *Employer's* opinion, it is warranted.
- The *Employer* reserves the right to terminate the contract, once 3 non-conformances / Performance Improvement Report (PIR / NCR) are raised against the *Contractor*.
- The *Employer* reserves the right to request disciplinary / corrective action if, and when, required.
- The *Contractor* must submit Curriculum Vitae's of its entire staff prior to work commencing on site.
- The *Contractor* must submit valid, certified copies of qualifications and or certificates of its entire staff prior to work commencing on site.
- Eskom carries no responsibility for unforeseen delays unless such a delay is negotiated within 24 hours of the occurrence and written agreement is submitted by Eskom.
- All known *services* will be brought to the attention of the *Contractor* by the *Service Manager*. Should the *Contractor* encounter any other *services* in the work area, he will immediately bring it to the attention of the *Service Manager* who will issue instructions as to what actions are to be taken.
- The contract will strictly be in accordance with the NEC TSC3. Early warnings, compensation events etc. are to be notified to the delegated personnel such as Service Manager.

5.10.2 Qualifications (Note – the below mentioned will change from time to time based on the skills required per contract)

Minimum qualifications requirements of people employed by the *Contractor* are as follows:

- N/A

5.10.3 Training

- The *Employer* will provide Plant Safety Regulations (PSR) training necessary for the *Contractor* in order to carry out the works.
- The *Employer* will provide any training deemed necessary by the *Service Manager* for the *Contractor* to perform the service. The *Contractor* shall be obliged to carry out the service for which the training was provided

5.11 Tests and inspections

5.11.1 Description of tests and inspections

- Do inspections as per Scheduled Work Order and Outage plans and report all defects to the *Employer's* Supervisor
- Quality Control check sheets to be done between *Contractor* and *Employer*

5.11.2 Materials facilities and samples for tests and inspections

- QC check sheets

5.11.3 Warranty on Load tests

- N/A

6 List of drawings

6.1 Drawings issued by the *Employer*

- All relevant drawings can be obtained from the *Service Manager* or Eskom Supervisor.

7 Appendix A

7.1 Low Service Table

X17 Low Service Table				
ITEM	DESRICPTION OF TASK	QUALITY OF PERFORMANCE	REASON FOR DAMAGES	DAMAGES TO BE IMPLEMENTED
Downtime	Compressors not available	Insufficient pressure	Trip risk	Employer to deduct 2% of total assessment
Breakdown	Failure to adhere to response time	Unavailability of machines	Trip risk	Employer to deduct 2 % of total assessment

8 X20 - Key Performance Indicators (only a sample below)

Contract _____																			Contract				
Number _____																							
YEAR:-																							
Monthly Report for: Contractual Period																							
	KPA	Objective	Weight		Base	Target	Ceiling	Mth 1	Mth 2	Mth 3	Mth 4	Mth 5	Mth 6	Mth 7	Mth 8	Mth 9	Mth 10	Mth 11	Mth 12	YTD		YE	
																						A	S
1																							
2																							
3																							
4																							

A= ACTUAL YTD = YEAR TO DATE S = SCORE YE = YEAR END