



NEC3 Term Service Contract (TSC3)

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

and

for **Training of 50 Practitioners in Early Childhood Development (ECD) National Qualification Framework (NQF) Level 4 and Level 5 (Certificate) Qualifications in Limpopo for a period of 18 months**

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CONTRACT No. []

PART C1: AGREEMENTS & CONTRACT DATA

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C1.1 Form of Offer & Acceptance

Offer

The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract for the procurement of:

Title of the Contract

TRAINING OF 50 PARTICIPANTS IN EARLY CHILDHOOD DEVELOPMENT (ECD) NATIONAL QUALIFICATION FRAMEWORK (NQF) LEVEL 4 AND LEVEL 5 (CERTIFICATE) QUALIFICATION IN LIMPOPO FOR A PERIOD OF 18 MONTHS.

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

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

Options A or C	The offered total of the Prices exclusive of VAT is	R
	Value Added Tax @ 15% is	R
	The offered total of the amount due inclusive of VAT is ¹	R

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

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Tenderer's CIDB registration number:

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

Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the
Employer**

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

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
		Z: <i>Additional conditions of contract</i>
	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.	011 800 5013
	Fax No.	086 539 9954
10.1	The <i>Service Manager</i> is (name):	
	Address	Megawatt Park ,Maxwell Drive ,Suninghill Johannesburg
	Tel	
	Fax	
	e-mail	
11.2(2)	The Affected Property is	50 x ECD Centres in Elias Motsoaledi Municipality Agreed Training premises

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

11.2(13)	The <i>service</i> is	NQF level 4 & 5 early childhood development training for 50 ECD practitioners from 50 crèches in Elias Motsoaledi for a period of 18 months.
11.2(14)	The following matters will be included in the Risk Register	
11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents
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	2 weeks
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	2 weeks of the Contract Date
3	Time	
30.1	The <i>starting date</i> is.	
30.1	The <i>service period</i> is	18 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
42.2	The <i>defects correction period</i> is	4 weeks.
5	Payment	
50.1	The <i>assessment interval</i> is	between the 25 day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	4 weeks.
51.4	The <i>interest rate</i> is	the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and (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	N/A
83.1	The <i>Employer</i> provides these insurances from the Insurance Table	as stated for "Format TSC3" available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx (See Annexure A for basic guidance).
83.1	The <i>Employer</i> provides these additional insurances	as stated for "Format TSC3" available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx (See Annexure A for basic guidance)
83.1	The <i>Contractor</i> provides these additional insurances:	Insurance for Loss or Damage of Material during transit
83.1	The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is	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
83.1	The insurance against loss of or damage to the <i>works</i> , Plant and Materials is to include cover for Plant and Materials provided by the <i>Employer</i> for an amount of	N/A
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:	Whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i> .
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:	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)..
9	Termination	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.
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 service at intervals no longer than	18 Months.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i>	To be identified and Appointed as an when required
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 in	
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 TSC3" insurance policy available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx
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 <ul style="list-style-type: none"> • 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 http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	the total of the Prices other than for the additional excluded matters. The <i>Contractor's</i> total liability for the additional excluded matters is not limited. The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for <ul style="list-style-type: none"> • Defects due to his design, plan and specification, • Defects due to manufacture and fabrication outside the Affected Property, • loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials), • death of or injury to a person and • Infringement of an intellectual property right.
X18.5	The <i>end of liability date</i> is	12 months after the end of the <i>service period</i>.
Z	The <i>additional conditions of contract</i> are	Z1 to Z11 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 applies to this contract.

Z10 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z10.1 or had a business rescue order granted against it.

Z11 Ethics

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

Affected Party means, as the context requires, any party, irrespective of whether it is the *Contractor* or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,

Coercive Action means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,

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

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

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

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

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

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

Z 11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

- Z 11.2 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.
- Z 11.3 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.
- Z 11.4 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.

Supplier Development and Localisation

The SD&L target and the proposed percentage by the supplier are as follows:

Local Content to South Africa

Target

Proposed

100%	
------	--

Skills Development

Type of Skill	Proposed No of people to be skilled
Train the trainer (students studying as educators)	

Job Creation

Number of jobs to be created as a result of this contract –

Number of jobs to retained as a result of this contract –

Annexure A: Insurance provided by the Employer

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

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

[http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_
From_1_April_2014_To_31_March_2015.aspx](http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx)

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:	C3.2
21.1	The plan identified in the Contract Data is contained in:	The first plan to be submitted for acceptance 2 weeks after contract start date
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).
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	No of pages
C2.1	Pricing assumptions: Option A	2
C2.2	The <i>price list</i>	2

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 | <p>(12) The Price List is the <i>price list</i> unless later changed in accordance with this contract.</p> <p>(17) The Price for Services Provided to Date is the total of</p> <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. <p>(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.</p> |

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.

C3.1: EMPLOYER'S SERVICE INFORMATION

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1. Description of the service

1.1. Executive overview

- 1.1.1. The 50 crèches which were identified for the ECD programme are around Groblersdal area. All the crèches are registered with the Department of Social Development.
- 1.1.2. The crèches which are identified for the training programme are located in very poor areas around Elias Motsoaledi Municipality. The scope of the project includes the following
 - 1.1.2.1. A Baseline assessment of each ECD by the contractor and a report to be produced and submitted to Eskom development foundation
 - 1.1.2.2. Training for 50 ECD practitioners and supervisors.
 - 1.1.2.3. Monitoring and evaluation a duration of 18 Months.
- 1.1.3. All training will meet the requirements of the Education Training Development Practices Sector Education and Training Authority (ETDPSETA)

1.2. Employer's requirements for the service

- 1.2.1. Once appointed, the supplier must compile and submit the following documents
 - 1.2.1.1. Detailed project implementation plan with timelines
 - 1.2.1.2. Cash flow projection linked to the implementation plan
 - 1.2.1.3. Monitoring and Evaluation plan
 - 1.2.1.4. Revised SHE plan. Safety, Health and Environmental plans to clearly indicate how the contractor will ensure compliance.
 - 1.2.1.5. Revised Baseline Risk Assessment and Task specific risk assessment
 - 1.2.1.6. Quality plan.
- 1.2.2. Before training commences, the contractor must conduct a baseline assessment for each of the 50 x ECD centres and produce a report. Below is the list of Crèches to be visited.

No:	Name of ECD	NPOReg.
	Mthethwa Theledi Pre-school	102-180
2.	Intokozo Creche	074-918
3.	Mponegele Day Care	073-778
4.	Motsephiri Community Creche	091-698
5.	Ipopeng Monsterlus Creche	028-130
6.	J Mkhabela Creche	130-984
7.	Lebonga Creche	090-116

8.	Legae La Bana Creche	134-360
9.	Kgotso Creche	089-831
10.	Thabang Day Care	102-292
11.	Legolaneng Creche	073-354
12.	Motheo Day Care	143-055
13.	Vhelaphi Creche	073-356
14.	Khulelekani Edu Care	102-227
15.	Mello Pre School	105-417
16.	Batho Bohle Crech & Pre School	085-412
17.	Klipspruit Thusanang Pre-School	150-768
18.	Sizanani Day Care	107-297
19.	Infants pre school	185-535
20.	iKageng Pre School	009-713
21.	Itireleng Pre School	036-187
22.	Ekuphumuleni Pre School	009-000
23.	Zithobeni Day Care	005-922
24.	Ubuhlebuyeza Pre School	009-008
25.	Ikhwezi Pre School	043-564
26.	Khuthala Pre school	015-050
27.	Khutsong Pre school	036-056
28.	Modime Magaga Pre-School	119-685
29.	Modupe Creche	076-978
30.	Matseno A Thuto Pre-School	079-394
31.	V.M. Mohlala Pre-School	175-876
32.	Banana Ba mme Creche	075-967
33.	Jabulani Day Care	012-034
34.	Thembaletu Child Care	095-434
35.	Lekgolane Creche	136-487
36.	Itireleng Creche	181-129
37.	Kgotlelelo Creche	081-130
38.	Hlakudi Pre-School	155-785
39.	Bonoko Tshweneng Creche	092-674
40.	Buhlebethu Creche	073-166
41.	Kodumela ECD	070-673
42.	Namene Pre School	095-845
43.	Thushanang Creche	065-472
44.	Vulingqondo Creche	102-201
45.	Batau Creche	083-443
46.	Katlehong Creche	078-209
47.	Rethabile Pre School	107-295
48.	Phafogang Creche and PreSchool	081-292
49.	Rumulla Sasemmela creche	165-120
50.	Vukani day Care	092-665

Note: In cases where a crèche is no longer operational, a replacement ECD may be selected in the area and the contractor notified to execute accordingly at no additional charge.

1.2.3. Provision of Further Education and Training Certificate in Early Childhood Development

1.2.3.1. The contractor to arrange and equip training venues and provide refreshments (Water, morning tea/coffee and Lunch) for ECD practitioners.

1.2.3.2. Assist the ECD practitioners to choose the Modules required to obtain the Qualification.

1.2.3.3. The 50 beneficiaries/ ECD practitioners will be selected by Nkungumathe Youth Development forum and final list of names will submitted to the contractor on or before the date of the project kick –off meeting.

1.2.3.4. The contractor to schedule and facilitate face to face training.

1.2.3.5. The contractor supply all the required training material to ECD practitioners. Each practitioner to receive hard copies of all textbooks and study guides /notes.

1.2.4. Monitoring and Support

1.2.4.1. Contractor to provide on-site support to the 50 crèches as per the monitoring plan to be provided.

1.2.4.2. Contractor to submit reports and attendance registers for all training activities undertaken with every payment certificate.

1.2.4.3. Contractor to provide after training support during the last monitoring and evaluation phase.

1.2.4.4. On completion of the programme, all the ECD Practitioners who attended the training should be competent to write and pass all the assessments and to be issued with NQF Level 4 & 5 certificates

1.3. Interpretation and terminology

1.3.1. The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the abbreviation
ECD	Early Childhood Development
NQF	National Qualifications Framework
SHEQ	Safety , Health , Environment and Quality
QCP	Quality Control Plan

2. Management strategy and start up.

2.1. The Contractor's plan for the service

- 2.1.1. The Contractor will submit a plan to the Service Manager for acceptance within the period stated in the contract data.
- 2.1.2. Further revisions to the plan will be submitted by the Contractor as and when needed.

2.2. Management meetings

- 2.2.1. Regular meetings of a general nature may be convened and chaired by the Service Manager as follows:

Minimum			
Title and purpose	Approximate time & interval	Location	Attendance by:
Project Kick off meeting	Once off	TBC	<i>Service Manager, Contractor and Beneficiary representative</i>
Deliverables Assessment Meetings	Monthly	TBC	<i>Service Manager, and Contractor</i>
Overall contract progress and feedback Meetings	Monthly	TBC	<i>Service Manager, Contractor and Beneficiary representative</i>
Project Close –Out meeting	Project Completion _Once off	TBC	<i>Service Manager, Contractor and Beneficiary representative</i>

- 2.2.2. 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.
- 2.2.3. 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. Contractor's management, supervision and key people

- 2.3.1. Contractor to provide a list of all people employed on the project
- 2.3.2. The Contractor to provide a key list of personnel who will carry out the training and proof of their qualifications and accreditation.
- 2.3.3. A company organogram will be needed by the Service Manager to communicate accordingly to comply with the NEC 3 Term Services Contract communication structures

2.4. Documentation and Records control

- 2.4.1. All documents to clearly show the document name and revision number. All records generated by the Contractor, the Employer and the Service Manager shall follow the following naming convention **EDSF-"C" or "E" or "SM"- "Number"**. E.g. **[ESDF-C-001] or [ESDF-E-001] or [ESDF-SM-001]**
- 2.4.2. Confidential documents (ID documents, proof of qualifications, FICA documents etc.) to handle in line with POPI act.
- 2.4.3. Copies of all records to be completed by the service provider and electronic copies to be scanned to the service manager together with supporting documents.

2.5. Invoicing and payment

- 2.5.1. 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 showing the amount due for payment equal to that stated in the Service Manager's payment certificate.
- 2.5.2. The Contractor shall address the tax invoice to Eskom Development Foundation and include on each invoice the following information:
 - Name and address of the Contractor and the Service Manager;
 - The contract number and title;
 - Contractor's VAT registration number;
 - The Employer's VAT registration number 4740101508;
 - Description of service provided for each item invoiced based on the Price List;
 - Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
 - (add other as required)
- 2.5.3. Once the service has been delivered/completed both parties have to agree that the service has been delivered/completed successfully prior to invoicing

- 2.5.4. An assessment payment certificate must be completed between the Contractor and Service Manager according to the service performed. Both parties have to sign the assessment/certificate
- 2.5.5. A copy of assessment/payment certificate must be obtained by the Contractor to enable the creation of an invoice and to prevent any discrepancies. A copy of the assessment/payment certificate must be attached to the original invoice
- 2.5.6. Service Manager performs a service entry and Goods Receipt on the SAP system. (Assessment/Payment Certificate issued as a source document for Service Entry Goods Receipt)
- 2.5.7. Service Manager will forward the Service entry and Goods Receipt Note number to the Contractor within 3 working days after the service has been rendered and the Assessment/Payment certificate signed
- 2.5.8. Contractor must forward the original invoices together with a copy of the Assessment/Payment certificate to the Eskom Documentation Centre.
- 2.5.9. Invoices must be delivered to the Eskom Documentation Centre, as this will speed up the payment process and ensure that invoices are not lost and payments delayed. There is no need for Service Manager to sign invoices as they perform Goods Receipt in the system. The assessment certificate and Goods Receipt serves as the approval of payment.
- 2.5.10. Eskom Documentation Centre will review invoices according to a checklist and on completion scan the documentation into Accounts Payable processing system (Documentation can only be scanned where the Purchase order no. and Goods Receipt Note no. is reflected on the invoice, and the invoice complies with the VAT Act).
- 2.5.11. Invoices are processed and released for payment by Accounts Payable Section only where the source documentation is 100% correct
- 2.5.12. General Information related to Eskom Invoices
 - a) Contractor must ensure that the Service Entry and Goods Receipt Note number appears on the invoice. (It can be printed or hand-written on the invoice).
 - b) Eskom Purchase Order number must appear on invoice.
 - c) Invoices must be VAT compliant in line with the VAT Act requirements.
 - d) Invoices submitted must reflect the bank account details. A once off copy of the banking details may be forwarded to the Documentation Centre and it will be attached to each scanned invoice.

2.6. Contract change management

- 2.6.1. Any change of the Contractor's company ownership or other statutory should be communicated through to the Service Manager. Failing to do this may lead to contract termination with legal consequences.

2.7. Records of Defined Cost to be kept by the Contractor

- 2.7.1. The Contractor should at all-time keep copies of invoices, all invoices should be available to the Employer during the duration of the contract.
- 2.7.2. The Employer may at any time deemed necessary inspect and audit the Contractor.
- 2.7.3. The updated cash flow forecast linked to the accepted program
- 2.7.4. Service manager to keep records of all communication and documentation during this service agreement.

2.8. Insurance provided by the Employer

- 2.8.1. As stated in Contract Data and as per Annexure A within this Service Agreement.

3. Health and safety, the environment and quality assurance**3.1. Health and safety risk management**

- 3.1.1. The Contractor shall comply with the health and safety requirements contained in Annexure C_SHE Specification ECD Limpopo to this Service Information. This will include compliance to the COVID19 Regulations and Protocols.
- 3.1.2. Eskom's responsibility and commitment is to ensure a safe working environment is in line with its Safety, Health, Environmental and Quality Policy, along with legislative obligations.
- 3.1.3. The SHE specification is Eskom's minimum requirements which are required to be met for this specific project and for the duration of the project period by the contractor.
- 3.1.4. The contractor is expected to develop a SHE plan which meets these requirements as well as all the relevant applicable legislation they conform to.
- 3.1.5. Eskom in no way assumes the contractors legal responsibilities. The contractor is and remains accountable for the quality and the execution of his/her health and safety programme, for his employees and appointed contractor employee

3.2. Environmental constraints and management

- 3.2.1. The contractor shall comply with environmental duty of care principles in terms of section 28 of National Environmental Management Act, No. 107 of 1998.
- 3.2.2. It is the responsibility of the contractor to ensure that he obtains copies of the Eskom's Environmental Policy, to which the contractor and his employees must adhere to.
- 3.2.3. It is the responsibility of the contractor also to ensure that he obtains copies of the Environmental management Policy of all the affected properties (50 ECD site and all training venues, to which the contractor and his employees must adhere to.
- 3.2.4. The contractor shall submit proof to the Eskom representative that he and his employees have done all the necessary Environmental Management training.

3.3. Quality assurance requirements

- 3.3.1. Contractor to submit a detailed Quality control plan (QCP) for acceptance by the Employers Representative within two weeks of the Contract Date.
- 3.3.2. The quality control plans are reviewed by the Employers Representative to allow for insertion of his specific requirements, including hold and witness points, prior to commencement of work. The Contractor does not commence work until the Employers Representative accepts.

3.4. Procurement

3.4.1. People

3.4.1.1. Minimum requirements of people employed

- 3.4.1.2. The contractor to submit the list of all people appointed
- 3.4.1.3. The team must meet the minimum qualification as per the CV's submitted during tender stage or higher
- 3.4.1.4. The contractor must submit Curriculum Vitae of its entire staff prior to work commencing on site.
- 3.4.1.5. The contractor must submit certified copies of qualifications and or certificates of its core team

3.4.2. BBBEE and preferencing scheme

- 3.4.2.1. 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.
- 3.4.2.2. The Contractor is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the Employer within thirty days of the notification or as otherwise instructed by the Employer.
- 3.4.2.3. Where, as a result, the Contractor's B-BBEE status has decreased since the starting date the Employer may either re-negotiate this contract or alternatively, terminate the Contractor's obligation to provide the service.
- 3.4.2.4. Failure by the Contractor to notify the Employer of a change in its B-BBEE status may constitute a reason for termination will be dealt with according to the NEC3 TSC penalty/termination clauses