

PROJECT OR CONTRACT TITLE: PROVISION OF DETAILED DESIGN, TECHNICAL SUPPORT, SUPPLY AND DELIVERY FOR THE WIND MEASUREMENTS AT ARNOT AND CAMDEN POWER



NEC3 Term Service Contract (TSC3)

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

and
(Reg No. _____)

for **Provision of Detailed Design, Technical Support,
Supply and Delivery for the Wind Measurements at
Arnot and Camden Power**

Contents:	No	of
	pages	
Part C1 Agreements & Contract Data	[•]	
Part C2 Pricing Data	[•]	
Part C3 Scope of Work	[•]	

CONTRACT No. [Insert at award stage]

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PART C1: AGREEMENTS & CONTRACT DATA

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

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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:

Provision of Detailed Design, Technical Support, Supply and Delivery for the Wind Measurements at Eskom Arnot and Camden Power Stations.

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	
	Sub total	
	Value Added Tax @ 15% is	
	The offered total of the amount due inclusive of VAT is ¹	
	(in words) [●]	

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

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Tenderer's CIDB registration number:

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

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Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

for the **Eskom holdings SOC Ltd**
 Employer **(Reg no. 2002/015527/30)**
Sunninghill
Sandton
2157

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

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

Note:

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

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

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

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

For the tenderer:

For the Employer

Signature

Name

Capacity

On behalf of (Insert name and address of organisation)

(Insert name and address of organisation)

Name & signature of witness

Date

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C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

[Instructions to the contract compiler: (delete these two notes in the final draft of a contract)]

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
2. Some TSC3 options are always selected by Eskom Holdings SOC Ltd. The remaining TSC3 options are identified by shading in the left-hand column. In the event that the option is not required select and delete the whole row. Where the following symbol is used "[•]" - data is required to be inserted relevant to the specific option selected.]

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	
		X1: Price adjustment for inflation
		X2 Changes in the law
		X17: Low service damages
		X18: Limitation of liability
		X19: Task Order
		Z: Additional conditions of contract
	of the NEC3 Term Service Contract April 2013 ² (TSC3)	
10.1	The <i>Employer</i> is (name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	011 629 5111
	Fax No.	[•]
10.1	The <i>Service Manager</i> is (name):	Sibusiso Maphumulo
	Address	Eskom

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

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	Tel	
	Fax	[•]
	e-mail	[•]
11.2(2)	The Affected Property is	[•]
11.2(13)	The <i>service</i> is	[•]
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 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 Contractor 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.	Contract Award Date
30.1	The <i>service period</i> is	24 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	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	<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</p>

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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 risks</i>	1. [•]
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	2 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	Johannesburg
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

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W1.4(5)	<p>The <i>arbitration procedure</i> is</p> <p>The place where arbitration is to be held is</p> <p>The person or organisation who will choose an arbitrator</p> <ul style="list-style-type: none"> - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is 	<p>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</p> <p>Johannesburg, South Africa</p> <p>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</p>																		
12	Data for secondary Option clauses																			
X1	Price adjustment for inflation																			
X1.1	<p>The <i>base date</i> for indices is</p> <p>The proportions used to calculate the Price Adjustment Factor are:</p>	<p>One month before contract before tender closing date</p> <table border="1"> <thead> <tr> <th>proportion</th><th>linked to index for</th><th>Index prepared by</th></tr> </thead> <tbody> <tr> <td>0.05</td><td>Transport Table L2-A</td><td>SEIFSA</td></tr> <tr> <td>0.75</td><td>Labour Table C3(All Hourly-Paid Employees)]</td><td>SEIFSA</td></tr> <tr> <td>0.05</td><td>CPI Table D4</td><td>SEIFSA]</td></tr> <tr> <td>0.15]</td><td>non-adjustable</td><td></td></tr> <tr> <td>1.00</td><td></td><td></td></tr> </tbody> </table>	proportion	linked to index for	Index prepared by	0.05	Transport Table L2-A	SEIFSA	0.75	Labour Table C3(All Hourly-Paid Employees)]	SEIFSA	0.05	CPI Table D4	SEIFSA]	0.15]	non-adjustable		1.00		
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0.15]	non-adjustable																			
1.00																				
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	Part C1. Annexure A page 17.																		
X18	Limitation of liability																			
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	R0.0 (zero Rand)																		
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	the amount of the deductibles relevant to the event																		
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	<p>The greater of</p> <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 																		

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		<i>Employer's property which is not excluded) plus the applicable deductibles</i>
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"> • 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>.
X19	Task Order	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	7 days of receiving the Task Order
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.

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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*:

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- 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.

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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 Services if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Services for this reason.
- Z11.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.
- Z11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

Z12 Insurance

Z 12 .1 Replace core clause 83 with the following:

Insurance cover	83	
	83.1	When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
	83.2	The <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.

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INSURANCE TABLE A

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
Loss of or damage to Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
Loss of or damage to Equipment	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <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

Z 12.2 Replace core clause 86 with the following:

Insurance 86
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 li of indemnity
Assets All Risk	Per the insurance policy document
Contract Works insurance	Per the insurance policy document

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Environmental Liability	Per the insurance policy document
General and Public Liability	Per the insurance policy document
Transportation (Marine)	Per the insurance policy document
Motor Fleet and Mobile Plant	Per the insurance policy document
Terrorism	Per the insurance policy document
Cyber Liability	Per the insurance policy document
Nuclear Material Damage and Business Interruption	Per the insurance policy document
Nuclear Material Damage Terrorism	Per the insurance policy document

Z13 Nuclear Liability

- Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z13.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z14 Asbestos

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

- AAIA** means approved asbestos inspection authority.
- ACM** means asbestos containing materials.
- AL** means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
- Ambient Air** means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
- Compliance Monitoring** means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
- OEL** means occupational exposure limit.

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Parallel Measurements	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
Safe Levels	means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
Standard	means the <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
SANAS	means the South African National Accreditation System.
TWA	means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.
Z14.1	The <i>Employer</i> ensures that the Ambient Air in the area where the <i>Contractor</i> 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.
Z14.2	Upon written request by the <i>Contractor</i> , the <i>Employer</i> 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 <i>Contractor</i> may perform Parallel Measurements and related control measures at the <i>Contractor's</i> expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
Z14.3	The <i>Employer</i> manages asbestos and ACM according to the Standard.
Z14.4	In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
Z14.5	The <i>Contractor's</i> personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
Z14.6	The <i>Contractor</i> continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
Z14.7	Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the <i>Employer</i> at the <i>Employer's</i> expense, and conducted in line with South African legislation.

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1 Annexure A: Table of low service damages (X17)

- Low Service Damage Description	- Value of Low Service Damages	- Limit of Low Service Damage
Quality / Rework (Per incident) resulting in a repeat malfunction	- 1.5% of Task Order value per incident	- Limited to 10% of the Task Order value

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C1.2 Contract Data

Part two - Data provided by the *Contractor*

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

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

Notes to a tendering contractor:

1. Please read both the both the NEC3 Term Service Contract April 2013 and the relevant parts of its Guidance Notes (TSC3-GN)³ in order to understand the implications of this Data which the tenderer is required to complete.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
3. Where a form field like this [] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise complete by hand and in ink.

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

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is	%
	The <i>subcontracted fee percentage</i> is	%
11.2(14)	The following matters will be included in the Risk Register	
11.2(15)	The Service Information for the <i>Contractor's</i> plan is in:	
21.1	The plan identified in the Contract Data is contained in:	
24.1	The key people are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities:	

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

PROJECT OR CONTRACT TITLE: PROVISION OF DETAILED DESIGN, TECHNICAL SUPPORT, SUPPLY AND DELIVERY FOR THE WIND MEASUREMENTS AT ARNOT AND CAMDEN POWER

Qualifications:

Experience:

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

A	Priced contract with price list		
11.2(12)	The <i>price list</i> is in _____		
11.2(19)	The tendered total of the Prices is _____	R	_____

PROJECT OR CONTRACT TITLE: PROVISION OF DETAILED DESIGN, TECHNICAL SUPPORT, SUPPLY AND DELIVERY FOR THE WIND MEASUREMENTS AT ARNOT AND CAMDEN POWER

PART 2: PRICING DATA
TSC3 Option A

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	2
C2.2	The <i>price list</i>	[•]

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

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

- | | | |
|--|-----------------------|--|
| <p>Identified and defined terms</p> | <p>11</p> <p>11.2</p> | <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.

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It is assumed that in preparing or finalising the *price list* the *Contractor*:

- Has taken account of the guidance given in the TSC3 Guidance Notes relevant to Option A;
- Understands the function of the Price List and how work is priced and paid for;
- Is aware of the need to link operations shown in his plan to items shown in the Price List;
- Has listed and priced items in the *price list* which are inclusive of everything necessary and incidental to Providing the Service in accordance with the Service Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer's* risk;
- Has priced work he decides not to show as a separate item within the Prices or rates of other listed items in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.
- Understands there is no adjustment to items priced as lump sums if the amount, or quantity, of work within that item later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the (lump sum) Prices is as a result of a compensation event.

Format of the *price list*

(From the example given in an Appendix within the TSC3 Guidance Notes)

Entries in the first four columns in the *price list* in section C2.2 are made either by the *Employer* or the tendering contractor.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tendering contractor enters the amount in the Price column only, the Unit, Expected Quantity and Rate columns being left blank.

If the *Contractor* is to be paid an amount for an item of work which is the rate for the work multiplied by the quantity completed, the tendering contractor enters the rate which is then multiplied by the Expected Quantity to produce the Price, which is also entered.

If the *Contractor* is to be paid a Price for an item proportional to the length of time for which a service is provided, a unit of time is stated in the Unit column and the expected length of time (as a quantity of the stated units of time) is stated in the Expected Quantity column.

C2.2 the *price list*

Item nr	Description	Unit	Expected Quantity	Rate	Price
1	Services				
1.1	Contractual requirements including SHEQ	Sum	1		
1.2	Guyed Lattice Meteorological Towers and associated equipment complete Design		2.00		
1.3	Guyed Lattice Meteorological Towers and associated equipment complete Procurement		2.00		
1.4	Guyed Lattice Meteorological Towers and associated equipment Transport and Delivery to both Sites		2.00		
1.5	Supply and Meteorological Instruments, Datalogger- Complete		2.00		
1.6	Training Guyed Lattice Meteorological Towers and associated Instrumentation		2.00		
1.7	Lidar Unit (Training Data collection & Verification and Monitoring)		2.00		
1.8	Lidar Unit - Procurement Including Lidar Trailer / Power Supply and calibration		1.00		
1.9	Lidar Unit – Transport to Site		2.00		
1.10	Lidar Unit – Installation and Commissioning Complete		1.00		
1.11	Provide ALL Drawings, Datasheets, Manual, Procedures		1.00		

2	Professional Fees				
2.1	Civil and structural Engineer	Hours	90		
2.2	Specialist Engineer - Instrumentation	Hours	30		
2.3	Commissioning Engineer	Hours	45		
2.4	Engineer - Data monitoring analysis and management	Hours	192		
3	Transportation, T&S				
3.1	Civil and structural Engineer	R/Km	1500		
3.2	Specialist Engineer - Instrumentation	R/Km	1500		
3.3	Commissioning Engineer	R/Km	1500		
3.4	Accommodation	Per Person/Day	32		
3.5	Subsistence Allowance	Per Person/Day	72		
Total					
VAT@15%					
Grand Total price					

The total of the Prices

- **PART 3: SCOPE OF WORK**

Document reference	Provision of Detailed Design, Technical support, Supply and Delivery for the Wind Measurements at Arnot and Camden Power Stations	No of pages
	This cover page	1
C3.1	<i>Employer's</i> Service Information	
C3.2	<i>Contractor's</i> Service Information	
	Total number of pages	

C3.1: EMPLOYER'S SERVICE INFORMATION

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2 Description of the service

2.1 Executive overview

Eskom is undertaking the development of wind energy projects at Two (2) of its power station sites, namely Camden and Arnot. As part of the wind resource assessment campaign, Eskom will deploy Two (2) 160-meter guyed lattice meteorological masts and a single mobile Remote Sensing System (LiDAR unit) across these sites.

The objective is to establish high-quality, long-term wind measurement infrastructure to support feasibility studies, bankable resource assessments, and eventual project development.

2.2 Employer's requirements for the service

This Scope of Work (SoW) for this contract includes detailed engineering design, supply and delivery, construction supervision, commissioning supervision, operation, maintenance, and data management for a period of two years.

The wind measurement infrastructure will be deployed at Camden Power Station One (1) met mast and at Arnot Power Station One (1) met mast

Additionally, one (1) mobile LiDAR unit will be utilised rotationally across all two (2) sites to supplement the met mast data, enable vertical wind profiling beyond 160 meters where required, and support data correlation during mast installation sequencing.

The contractor provides all the services which are specified in the **Provision of Detailed Design, Technical support, Supply and Delivery for the Wind Measurements at Arnot and Camden Power Stations 240-RT&D-240**

2.3 Interpretation and terminology

Abbreviations	Description
OHSA	Occupational Health and Safety Act
PS	Power Station
ECSA	Engineering Council of South Africa
NEMA	National Environmental Management Act
SANS	South African National Standards
SoW	Scope of Work
OHSA	Occupational Health and Safety Act

The following abbreviations are used in this Service Information:

3 Management strategy and start up.

3.1 The Contractor's plan for the service

The Contractor submits a plan to the Service Manager for acceptance within the period stated in the task order.

3.2 Management meetings

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.

3.3 Contractor's management, supervision and key people

The Contractor provides a key list of personnel who will carry out the work on site with their qualifications attached. A company organogram will be needed by the Service Manager to communicate accordingly to comply with the NEC3 Term Services Contract communication structures. Contractor to refer to Eskom SHE Requirements

The contractor provides a site manager/contract manager to manage all contract related matters. Such persons are preferred to have prior experience in contract management and change of this person is communicated in writing, within 1 (one) week of such change, to the employer.

The contractor's supervisor/ technician shall be knowledgeable, competent and fully capable to perform supervisory duties without direct or continuous supervision by the employer, to liaise and co-ordinate activities with various departments, including the employer's personnel and others in order to fulfil all obligations. In the absence of the relevant site manager or supervisor or technician, a replacement must be identified to take over the duties.

3.4 Provision of bonds and guarantees

Not Applicable

3.5 Documentation control

- a) The information for spares to be provided will either be in electronic format or hard copy.
- b) Other information provided with each spare to be either in electronic format or hard copy.
- c) Information provided to be documented in such a manner that the information for each spare will be easily identifiable.
- d) All documentation supplied shall bear the OEM's official name and logo.

Documentation requirements cover the life cycle of the project from the initial engineering stages through to installation and commissioning including operating, maintenance and the training stages of the contract. Not only must these documents be comprehensive and complete but comply with strict document control and revision procedures.

The *Contractor* is responsible to plan the supply of the documentation during the various project stages and to provide the documentation in accordance with the *Contractor Document Submission Schedule (CDSS)*. A document is thus any written or pictorial information describing, defining, specifying or certifying activities, requirements, procedures or results.

All the drawings issued by the *Employer* for this contract is copyright protected and are not to be copied by the *Contractor*.

It is the responsibility of the *Contractor* to update any drawings that may have changed due to modifications on the plant.

The *Contractor* submits all documentation on a formal transmittal form to the *Service Manager*.

All manuals, documents, drawings and engineering documentation shall be presented in British English in both software and hardware.

All Communications will be filed and kept on site at all times as it is crucial to have the correct communication structures. These communication documents should at all times adhere to the NEC 3 Term Service Contract communication requirements.

Contractor Submission Schedule (CDSS) Document Name/Description	Date/Time documents to be submitted
Baseline risk assessment	A month before start of the work
QCP's	Before commencement of any work
Contractor's Safety file	Two weeks before start of work
Inspection report	24 hours after stripping activity
Technical report and data pack	Within 14 days of completion of the services

3.6 Invoicing and payment

Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice showing the amount due for payment equal to that stated in the *Service Manager's* payment certificate.

The *Contractor* shall address the tax invoice to

_____ and include on each invoice the following information:

Name and address of the *Contractor* and the *Service Manager*.

The contract number and title.

Contractor's VAT registration number.

The *Employer's* VAT registration number 4740101508.

Description of service provided for each item invoiced based on the Price List.

Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT.

(add other as required)

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

3.7 Contract change management

Any changes related to this official contract to be communicated to *Service Manager*. The correct processes and procedures will be communicated through to the *Contractor* by the *Contract Manager*.

If the *Contract Manager* changes, the *Contractor* will be notified by the *Employer* as soon as possible to ensure that the *Contractor* follow the correct communication channels

3.8 Records of Defined Cost to be kept by the Contractor

Option A is used

In order to substantiate the Defined Cost of Compensation Events, the Employer may require the Contractor to keep records of amounts paid by him for people employed by the Contractor.

The Contractor's Site Manager will complete the site weekly log and this will be submitted to the Service Manager. The log will include but not be limited to the following:

- Date
- Weather.
- Site Conditions.
- Work Done.
- People who are employed by the Contractor
- Any incidents during that period.

Any communication and documentation during this contract agreement to be filed in the contract file. This file is always in the possession of the Service Manager.

3.9 Insurance provided by the Employer

As stated in Contract Data and as per Table A within this contract.

3.10 Training workshops and technology transfer

The Contractor provides a programme for training on the plant for the Employer's nominated employees if required from by Service Manager.

This training should be relevant for the Employer's employees to perform front line fault finding or maintenance.

3.11 Design and supply of Equipment

To be supplied by the Contractor prior the execution and approved by Eskom.

All As-built drawings, operational manuals and maintenance schedules shall be provided to the Employer in adherence with the applicable requirements.

(1) 'As Built' documentation is supplied by the Contractor to the Service Manager upon completions of service.

(2) Hard copies and soft copies of As Built documentation is provided by the Contractor as part of the service.

(3) Acceptance of the 'As Built' documentation is a pre-requisite for the completion of the service.

(4) The documents are reviewed by the Service Manager for correctness and conformance to the accepted design.

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

3.12.1 Equipment

Not applicable to this contract.

3.12.2 Information and other things

Not applicable to this contract

3.13 Management of work done by Task Order

All work is performed in accordance with the Task Order provided.

The Contractor will be informed of emergencies when the Service Manager first becomes aware of it.

Response time within 4 hours for any communication when the Contractor acknowledges the emergency.

4 Health and safety, the environment and quality assurance

4.1 Health and safety risk management

The Contractor undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the service

4.2 Employer's Health and Safety Requirements

The Contractor acts in accordance with the health and safety requirements stated in the Works Information.

In carrying out its obligations to the Employer in terms of this contract; in providing the Works; in using Plant, Materials and Equipment; and while at the Site for any reason, the Contractor complies and procures and ensures the compliance by its employees, agents, Sub-Contractors, and mandatories with:

- a. The provisions of the Occupational Health and Safety Act 85 of 1993 (as amended) and all regulations in force from time to time in terms of that Act ("the OHSA"); and
- b. The Eskom "Safety, Health and Environmental Requirements for Contractors" document attached to the Works Information (as amended from time to time) and such other Eskom Safety Regulations as are applicable to the Works and are provided in writing to the *Contractor* (collectively "the Eskom Regulations"). The Eskom Regulations may be amended from time to time by the *Service Manager* and all amendments will be provided in writing to the *Contractor*. The *Contractor* complies with the provisions of the latest written version of the Eskom Regulations with which it has been provided; and
- c. The health and safety plan prepared by the Contractor in accordance with the SHEQ Requirements. (The OHSA and the Eskom Regulations are collectively referred to as the "SHEQ Requirements".)
- d. The Contractor, always, considers itself to be the "Employer" for the purposes of the OHSA and is required to not consider itself under the supervision or management of the Employer regarding compliance with the SHEQ Requirements, the Contractor is required to furthermore not consider itself to be a subordinate or under the supervision of the Employer in respect of these matters. The Contractor is always responsible for the supervision of its employees, agents, Sub-Contractors, and mandatories and takes full responsibility and accountability for ensuring they are competent, aware of the SHEQ Requirements and execute the Works in accordance with the SHEQ Requirements.
- e. The Contractor ensures that all statutory appointments and appointments required by any Eskom Regulations are made and that all appointees fully understand their responsibilities and is trained and competent to execute their duties. The Contractor supervises the execution of their duties by all such appointees.
- f. The Employer, or any person appointed by the Employer, may, at any stage during the currency of this contract:
- I. Conduct health and safety audits regarding all aspects of compliance with the SHEQ Requirements, at any off-site place of work, or the site establishment of the Contractor.
- II. Refuse any employee, Sub-Contractor, or agent of the Contractor access to the premises if such person

has been found to commit an unsafe act or any unsafe working practice or is found not to be qualified or authorised in terms of the SHEQ Requirements.

- III. Issue the Contractor with a stop order should the Project Manager become aware of any unsafe working procedure or condition or any non-compliance with any provision of the SHEQ Requirements.

The Contractor immediately reports any disabling injury as well as any threat to health or safety of which it becomes aware at the Works or on the Site to the Project Manager and to the Safety Risk Management office.

The Contractor appoints a person, qualified in accordance with the SHEQ Requirements, as the liaison with the Eskom Safety Officer for all matters related to health and safety, this person is required to be contactable 24 hours a day.

The Contractor confirms that it has been provided with sufficient written information regarding the health and safety arrangements and procedures applicable to the Works to ensure compliance by it and all employees, agents, Sub-Contractors, or mandatories with the SHEQ Requirements while providing the Works in terms of this contract. As such, the Contractor confirms that this contract and the relevant Eskom Regulations referred to in this contract constitute written arrangements and procedures between the Contractor and the Employer regarding health and safety for the purposes of section 37(2) of the OHSA.

The Contractor agrees that the Employer is relieved of all of its responsibilities and liabilities in terms of Section 37(1) of OHSA in respect of any acts or omissions of the Contractor, and the Contractor's employees, agents or Sub-Contractors, to the extent permitted by the OHSA.

The Contractor hereby indemnifies the Employer and holds the Employer harmless in respect of any and all loss, costs, claims, demands, liabilities, damage, penalties or expense that may be made against the Employer and/or suffered or incurred by the Employer (as the case may be) as a result of, any failure of the Contractor, its employees, agents, Sub-Contractors and/or mandatories to comply with their obligations in terms of this clause 18, and/or the failure of the Employer to procure the compliance by the Contractor, its employees, agents, Sub-Contractors and/or mandatories with their responsibilities and/or obligations in terms of or arising from the OHSA.

4.3 Environmental constraints and management

The Contractor shall construct and/ or implement all the necessary environmental protection measures in each area before any production work will be allowed to proceed. The Employer may suspend the Works at any time in terms the Conditions of Contract should the Contractor, in the Employer's opinion, fail to implement, operate or maintain any of the environmental protection measures adequately.

Environmental management is concerned not only with the results of the Contractor's operations to carry out the Works but also, and most importantly, with the way his operations are carried out. It is thus a requirement that the Contractor shall comply with the environmental requirements. The Contractor shall comply with all relevant laws, environmental legislation and regulations, conditions of environmental approvals, environmental management plans, and Employers Policies and Procedures.

The Contractor shall comply with the environmental criteria and constraints stated in the Employer's SHE specification.

The Contractor ensures that all goods, services or Works supplied in terms of the Contract comply with all applicable environmental legislation.

The Contractor is responsible to keep the work area clean of any rubble. All waste introduced and/or produced on the Employer's premises by the Contractor for this contract, is 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 and Eskom environmental requirements including Eskom Environmental waste management procedure 32-245.

Where required, the Employer provides special colour coded bins for refuse disposal. The Employer will empty these bins.

The Contractor ensures that all workers under his control strictly adhere to the correct use of refuse bins

4.4 Quality assurance requirements

The Contractor complies with the Eskom Quality Requirements Standards.

- The Contractor and all sub-Contractors to comply with the Employer's quality requirements including those listed in the Employers specification document called "Supplier Quality Management Specification" number 240-105658000
- Certification to ISO 9001 is a mandatory requirement for this contract. The Contractor uses the QMS for all phases of the Project. The Contractor provides evidence of a fully implemented QMS within its own organisation. The Employer may at his sole discretion carry out an audit on any supplier; sub-supplier's or Subcontractor's QMS for acceptance.

5 Procurement

The Contractor is responsible for all procurement of materials required for the scope of this contract.

5.1.1 Minimum requirements of people employed

People providing the works will have been declared competent in writing to carry out the works. They will abide by all the rules and regulations as set out by Employer. They are prohibited from being or going to any other site other than the one where the work is being executed.

5.1.2 BBBEE and preferencing scheme

- a. 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.
- b. 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.
- c. 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.
- d. 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.
- e. Tenderers will be required to maintain their B-BBEE Recognition Level for the duration of the contract.

5.1.3 Supplier Development Localisation and Industrialisation

The Contractor shall on a quarterly basis submit a report to Eskom in accordance with Data Collection Template on their compliance with the SDL&I obligations described above.

Eskom shall review the SDL&I reports submitted by the suppliers within 30 (thirty) days of receipt of the reports and notify the Contractor in writing if their SDL&I obligations have not been met

Upon notification by Eskom that the Contractor have not met their SDL&I obligations, the Contractor shall be required to implement corrective measures to meet those SDL&I obligations before the commencement of the following report, failing which Retention clauses shall be invoked.

Corporate Social Investment - The supplier to contribute 3% of the contract expenditure to CSI.

Every contract shall be accompanied by the SDL&I Implementation Schedule, which must be completed by the suppliers and returned to SDL&I representative for acceptance 28 days after contract award. This will be used as a reference document for monitoring, measuring and reporting on the supplier's progress in delivering on their stated SDL&I commitments

5.2 Subcontracting

5.2.1 Preferred subcontractors

Subcontractors can be used following the acceptance to any of the below:

- EME or QSE entities at least 51% owned by Black Youth Owned.
- EME or QSE entities at least 51% owned by Black People with Disability.

- EME or QSE entities at least 51% owned by Black People.
- EME or QSE entities at least 51% owned by Black Women
- EME or QSE entities at least 51% owned by Black People with Disabilities

5.2.2 Subcontract documentation, and assessment of subcontract tenders

The main contractor is accountable for the sub-contractor. Signed sub-contracting agreement must be submitted. The sub-contractor must perform the work as the main contractor. The Sub-contractor to comply with all Eskom rules and regulation.

5.2.3 Limitations on subcontracting

The *Contractor* submits the name of each proposed Subcontractor to the *Service Manager* for acceptance. A reason for not accepting the Subcontractor is that the appointment will not allow the *Contractor* to Provide the Service. And the *Contractor* does not appoint a Subcontractor until the *Service Manager* accepted them.

5.2.4 Attendance on subcontractors

Not applicable

5.3 Plant and Materials

5.3.1 Specifications

Refer Scope of Work

5.3.2 Correction of defects

The *Service Manager* arranges the *Contractor* access if it is needed for correcting a Defect.

5.3.3 Contractor's procurement of Plant and Materials

The Contractor will do all procurement of materials according to own procurement processes.

5.3.4 Tests and inspections before delivery

Refer to Part C3 Employer's service information (1.2.14 Maintenance Inspections)

5.3.5 Plant & Materials provided "free issue" by the *Employer*

Not applicable to this contract

5.3.6 Cataloguing requirements by the *Contractor*

Not applicable to this contract.

6 Working on the Affected Property

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

The Contractor shall be responsible for the planning and arrangement, of the Site to ensure safe, secure and efficient progress of the Works throughout the entire Project duration.

All the Contractor's employees are to attend a mandatory site safety induction course before they are allowed to work on site. It is the responsibility of the Contractor to ensure that all of their staff has attended the induction. The Contractor must compile their own safety file which has to be approved by Eskom's safety officer. This file must be approved before the Contractor may attend the safety induction course.

The Contractor must provide a list of all employees, along with the dates and times of arrival, at least 2 days prior to arrival on site.

All individuals entering Eskom Power Station will be subject to alcohol testing daily. No person found to be intoxicated will be admitted on the premises. All Covid-19 protocols must be followed by all individuals prior to entering and throughout their entire duration on Site. It is the responsibility of the Contractor to ensure that their staff is compliant.

6.2 People restrictions, hours of work, conduct and records

The *Contractor* provides the necessary resources to carry out the service as stated in the Service Information.

The *Contractor* provides everything to carry out the Service Information of this contract unless where otherwise stated in this Service Agreement. Everything that should be provided by the *Employer* is stated in this Service Agreement, anything not stated in the Service Agreement should be provided by the *Contractor*

to execute the work as stated in the Service Information.

The *Contractor* keeps records of his people working on the Affected Property, including those of his Subcontractors. The *Service Manager* shall have access to all records of the *Contractor* and Subcontractor at any time when deemed necessary.

6.3 Health and safety facilities on the Affected Property

Any emergency equipment or fire suppression systems to be utilized by the *Contractor* when an emergency arise. Please refer to SHE Requirements for *Contractors*.

6.4 Environmental controls, fauna & flora

The contractor complies with environmental site requirements for Eskom RT&D.

6.5 Cooperating with and obtaining acceptance of Others

The *Contractor* cooperates with the Employer's team during site visits and in ensuring that the goods are delivered in accordance with all requirements.

6.6 Records of *Contractor's* Equipment

The *Contractor* will always keep record of his equipment on site with relevant inspections carried out. Inspection reports should be accessible by the *Service Manager* at any given time when he deems necessary.

6.7 Equipment provided by the *Employer*

Not applicable

6.8 Site services and facilities

6.8.1 Provided by the *Employer*

The *Employer* will provide water, waste disposal, ablutions, fire protection and lighting (etc) on the Affected Property. Power will be provided by the *Employer* the *Contractor* needs to ensure his own cabling, connections, DB Boards and CoC certificates of installations and connections.

6.8.2 Provided by the *Contractor*

The contractor provides facilities they deem necessary in executing the work. This must be discussed with the Service Manager prior to commencement of work.

The Contractor shall supply all the necessary equipment and material required to execute the works, including portable ablution facilities and proper eating facilities for their employees.

6.9 Control of noise, dust, water and waste

Earplugs should be worn if excessive noise will be generated by machinery. Dust masks will be worn to prevent dust inhalation

6.10 Hook ups to existing works

Any work performed at heights, must adhere to the correct safety standards, procedures and specifications stated in the health and safety risk management of Eskom RT&D.

6.11 Tests and inspections

6.11.1 Description of tests and inspections

Performance/Functionality tests after Completion

Eskom Quality department together with the Service Manager, Engineer and Contractor will sign off the works as having met all the requirements as set out in the works information after completion.

6.11.2 Materials facilities and samples for tests and inspections

Where applicable; test certificates, material certificate, manuals, data sheet and signature shall be provided as required.

7 Drawings issued by the *Employer*

7.1.1 List Of Drawings

None