



NEC3 Term Service Contract (TSC3)

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

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

for **The provision of logistics and safety management services
for Eskom's coal and limestone transportation operations
for a period three years**

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CONTRACT No. [Insert at award stage]

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:

**THE PROVISION OF LOGISTICS AND SAFETY MANANAGEMENT SERVICES FOR ESKOM'S
 COAL AND LIMESTONE TRANSPORTATION OPERATIONS FOR A PERIOD OF THREE
 YEARS**

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

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

| | | |
|----------|--|-------------------|
| Option A | The offered total of the Prices exclusive of VAT is | Rate Based |
| | Sub total | Rate Based |
| | Value Added Tax @ 15% is | Rate Based |
| | The offered total of the amount due inclusive of VAT is ¹ | Rate Based |
| | (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*.

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.

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 | |
| | <i>(Insert name and address of organisation)</i> |
| Name & signature of witness | |
| Date | |

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

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

| Clause | Statement | Data |
|--------|---|---|
| 1 | General | |
| | The <i>conditions of contract</i> are the core clauses and the clauses for main Option: | |
| | dispute resolution Option and secondary Options | A: Priced contract with price list W1: Dispute resolution procedure X1: Price adjustment for inflation X2: Changes in the law X4: Parent company guarantee X12: The Partnering Option X17: Low service damages X18: Limitation of liability X19: Task Order X20: Key performance indicators Z: Additional conditions of contract |
| | of the NEC3 Term Service Contract April 2013 ² (TSC3) | |
| 10.1 | The <i>Employer</i> is (name): | Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa |
| | Address | Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg |
| | Tel No. | +27 11 800 8111 |
| 10.1 | The <i>Service Manager</i> is (name): | Mario Neves |
| | Address | Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg |

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

Tel +27 11 800 4214

e-mail NevesM@eskom.co.za

| | | |
|----------|--|---|
| 11.2(2) | The Affected Property is | <ul style="list-style-type: none"> ▪ Designated Offloading Point - The stockyard at the power station, Rail Siding or any other stockyard designated by the Employer, which the Employer may alter from time to time. ▪ Designated coal and limestone transport routes. |
| 11.2(13) | The <i>service</i> is | The provision of logistics and safety management services for Eskom's coal and limestone transportation. |
| 11.2(14) | The following matter/s will be included in the Risk Register | <ul style="list-style-type: none"> ▪ General Strikes (mass protest). ▪ Other risks will be identified prior and registered during the risk register meeting that will take place as agreed between the Parties. |
| 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 | Three working days |
| 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 | Two weeks of the Contract Date |
| 3 | Time | |
| 30.1 | The <i>starting date</i> is. | 01 April 2022 or soonest thereafter |
| 30.1 | The <i>service period</i> is | Three years |
| 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 20 th and 25 th 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 | Within four weeks of the date on which the Service Manager has certified the payment . |

| | | |
|---------|---|--|
| 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. |
| 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 | All risks will be identified prior and registered during the risk register meeting that will take place as agreed between the Parties. |
| 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 <i>service</i> at intervals no longer than | Four 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). |
| 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 | Johannesburg South Africa |

| | | |
|--|--|---|
| | <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 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> | January 2022 | |
| | | Cost Element | Weighting |
| | | Other | 85% |
| | | Fixed | 15% |
| | Total | | 100% |
| 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. | |
| X4 | Parent company guarantee | 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 | |
| X18.3 | The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to | <ul style="list-style-type: none"> ▪ The greater of ▪ the total of the Prices at the Contract Date ▪ and ▪ the amounts excluded and unrecoverable from the Employer's insurance (other than the resulting physical damage to the Employer's property which is not excluded) plus the applicable deductibles | |
| 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 | <ul style="list-style-type: none"> ▪ the total of the Prices other than for the additional excluded matters. | |

| | | |
|------------|--|---|
| | | <ul style="list-style-type: none"> ▪ 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 ▪ 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 | Three 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 | To be specified under a Task Order |
| X20 | Key Performance Indicators (not used when Option X12 applies) | |
| X20.1 | The Key Performance Indicators | A service level agreement incorporating Key Performance Indicators shall be negotiated in good faith and agreed to by the Parties and incorporated into the contract. |
| X20.2 | A report of performance against each Key Performance Indicator is provided at intervals of | One month |
| Z | The <i>additional conditions of contract</i> are | Z1 to Z14 always apply. |

Z1 Cession delegation and assignment

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

Z2 Joint ventures

- Z2.1 If the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract.

- Z2.2 Unless already notified to the *Employer*, the persons or organisations notify the *Service Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf.
- Z2.3 The *Contractor* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Contractor* in writing.

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

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

Z4 Confidentiality

- Z4.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.
- Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z4.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

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

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

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

- accepts that the *Employer* may appoint him as the “Principal Contractor” (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) (“the Construction Regulations”) for the Affected Property;
- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and
- undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor’s* direction and control, likewise observe and comply with the foregoing.

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

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

Z7.1 Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer’s* procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.

Z7.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z7.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer’s* VAT number 4740101508 on each invoice he submits for payment.

Z8 Notifying compensation events

Z8.1 Delete the last paragraph of core clause 61.3 and replace with:

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices.

Z9 Employer’s limitation of liability

Z9.1 The *Employer’s* liability to the *Contractor* for the *Contractor’s* indirect or consequential loss is limited to R0.00 (zero Rand)

Z9.2 The *Contractor's* entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer's* liability under the indemnity is limited to compensation as provided for in core clause 63 and X19.11 if Option X19 Task Order 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.

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 *Contractor* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

| Insurance against | Minimum amount of cover or minimum limit of indemnity |
|---|--|
| 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 by the Employer

86 Insurance by the Employer

86.1 The *Employer* provides the insurances stated in the Insurance Table B

INSURANCE TABLE B

| Insurance against or name of policy | Minimum amount of cover or minimum li of indemnity |
|---|---|
| Assets All Risk | Per the insurance policy document |
| Contract Works insurance | Per the insurance policy document |
| Environmental Liability | Per the insurance policy document |
| General and Public Liability | Per the insurance policy document |
| Transportation (Marine) | Per the insurance policy document |
| Motor Fleet and Mobile Plant | Per the insurance policy document |
| Terrorism | Per the insurance policy document |
| Cyber Liability | Per the insurance policy document |
| Nuclear Material Damage and Business Interruption | Per the insurance policy document |
| Nuclear Material Damage Terrorism | Per the insurance policy document |

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.
- Parallel Measurements** means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
- Safe Levels** means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
- Standard** means the *Employer's* Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
- SANAS** means the South African National Accreditation System.
- TWA** means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.
- Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
- Z14.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z14.3 The *Employer* 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 *Contractor's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z14.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.

Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

C1.2 Contract Data

Part two - Data provided by the *Contractor*

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: Qualifications: | |

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

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 |

PART 2: PRICING DATA

TSC3 Option A

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

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

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

Identified and defined terms 11
11.2

(12) The Price List is the *price list* unless later changed in accordance with this contract.

(17) The Price for Services Provided to Date is the total of

- the Price for each lump sum item in the Price List which the *Contractor* has completed and
- where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Contractor* has completed by the rate.

(19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.

This confirms that Option A is a priced contract where the Prices are derived from a list of items of service which can be priced as lump sums or as expected quantities of service multiplied by a rate or a mix of both.

Function of the Price List

Clause 54.1 in Option A states: "Information in the Price List is not Service Information". This confirms that instructions to do work or how it is to be done are not included in the Price List but in the Service Information. This is further confirmed by Clause 20.1 which states, "The *Contractor* Provides the Service in accordance with the Service Information". Hence the *Contractor* does **not** Provide the Service in accordance with the Price List. The Price List is only a pricing document.

Link to the *Contractor's* plan

Clause 21.4 states "The *Contractor* provides information which shows how each item description on the Price List relates to the operations on each plan which he submits for acceptance". Hence when compiling the *price list*, the tendering contractor needs to develop his first clause 21.2 plan in such a way that operations shown on it can be priced in the *price list* and result in a satisfactory cash flow in terms of clause 11.2(17).

Preparing the *price list*

Before preparing the *price list*, both the *Employer* and tendering contractors should read the TSC3 Guidance Notes pages 14 and 15. In an Option A contract, either Party may have entered items into the *price list* either as a process of offer and acceptance (tendering) or by negotiation depending on the nature of the *service* to be provided. Alternatively the *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Contractor* to include in the *price list* to be prepared and priced by him.

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

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

Format of the *price list*

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

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

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

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

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

C2.2 the price list

| Activity | Basic Requirement (for pricing purposes only, all quantities are subject to changing operational requirements) | Unit | Rate (Rands Excl. VAT) |
|---|--|---------------------------------------|------------------------|
| Provision of safety, tamper evident seal and queue management services at various Designated Offloading Points | | | |
| <p>Management of tamper evident seals process at Designated Offloading Points, as per Tamper Evident Seal Management Procedure - Annexure N</p> <p>Hourly Reporting of coal and limestone tonnages received per supplier at each offloading point, as per Tamper Evident Seal Management Procedure - Annexure N</p> | <p>11 Offloading points operating 3 shifts/day continuously</p> <p>Fixed Cost per offloading point, per shift (including associated support services cost, i.e. cell phones, PPE etc.)</p> <p>1 Tamper Evident Seal Official 1 Queue Management Official 1 Relief Official 1 Vehicle</p> | Rate per month/ offloading point | |
| <p>Management of truck queues at Designated Offloading Points, as per Queue Management Procedure - Annexure O</p> | Variable Cost per km travelled | Rate/ travelled km | |
| <p>Provision and management of rubbish bins and portable toilet facilities along truck queues at Designated offloading Point, as per Road Coal Haulage Queue Management Procedure - Annexure O</p> | 12 portable toilets | Rate per month / portable toilet | |
| | 12 waste disposal bins (at least 2m3 capacity) | Rate per month/ waste disposal bin | |
| Provision of monitoring and reporting services to monitor and report on (including Truck GPS tracking data) all safety-related issues on Designated Routes | | | |
| <p>Route monitoring of driver behaviour, route adherence, illegal parking and potentially fraudulent activity on routes, as per Road Coal Haulage Route Monitoring Procedure Annexure P</p> | Fixed Cost (Resources and vehicles) | Rate per month/ Route Monitor | |
| | | Rate per month/ monitoring vehicle | |
| | Variable cost Approximately 79 routes, across a network of 44 roads, with an average route distance of 92km (Max 212km, Min 8.4km) | Rate/ travelled km | |

| Activity | Basic Requirement (for pricing purposes only, all quantities are subject to changing operational requirements) | Unit | Rate (Rands Excl. VAT) |
|---|---|---|-------------------------------|
| Review and analysis of transporter submitted tracking reports. Submission of weekly summary report. | | Rate per month | |
| Provision of Transport safety management services | | | |
| Biannual Driver Safety induction training and issue of induction cards. | Ability to conduct up to two induction sessions every weekday for approximately 20 drivers per session. | Rate per month / induction facility and training provider | |
| | Supply and issuing of induction cards | Rate per 1000 cards | |
| Biannual truck inspections and issue of windshield sticker permits | Facility and resources to cater for approximately 45 truck inspections a day. | Rate per month | |
| | Supply and issuing of windshield permits | Rate per 1000 | |
| Provision of operational data management and logistics advisory services | | | |
| Capturing of daily coal and limestone production and delivery information Compiling and issuing of daily coal and limestone production reports | Continuous capture and processing of production information, minimum 2 resources per shift. | Rate per month | |
| Provision of Logistics advisory and value added services to PE Logistics. | Optimisation of coal haulage operations, implementation of best practice and ad-hoc studies/research. | Rate per hour | |
| Logistics Services Management | | | |
| Contract Manager | Experience: Minimum 10 years as Contract Manager Qualification: NDip Transportation Management or Logistic management or equivalent qualification based on equal or higher NQF levels. | Rate per month | |

| Activity | Basic Requirement (for pricing purposes only, all quantities are subject to changing operational requirements) | Unit | Rate (Rands Excl. VAT) |
|--|---|----------------|-------------------------------|
| Operations Manager | Experience: Minimum 10 years as Operations Manager Qualification: NDip Transportation Management or Logistic management or Transportation Economics or equivalent qualification based on equal or higher NQF levels. | Rate per month | |
| Safety Officer (Safety incident/ accident investigation, safety stats and reporting at SHERQ meeting) | Experience: Minimum 5 years as a Safety Officer Qualification: NDip Health and Safety or equivalent qualification based on equal or higher NQF levels., registered with SACPCM | Rate per month | |
| Environmental Officer (Environmental incidents investigations and monitoring of transporter adherence to clean spillages) | Experience: Minimum 5 years as Environmental Officer Qualification: NDip in Environmental Management or equivalent qualification based on equal or higher NQF levels, registered with the Council | Rate per month | |
| Quality Officer (Promote a quality culture, support the quality management system through monitoring and process audits. | Experience: Minimum 5 years as Environmental Officer Qualification: NDip in Environmental Management or equivalent qualification based on equal or higher NQF levels, registered with the Council | Rate per month | |
| Administrative Costs | Including administration, accounting, stationary, electricity, water and other sundry and operational expenses not priced separately. | Rate per month | |

Eskom reserves the right to request the full breakdown of the price submitted.

PART 3: SCOPE OF WORK

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

C3.1: EMPLOYER'S SERVICE INFORMATION

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5.3 Health and safety facilities on the Affected Property **Error! Bookmark not defined.**

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Description of the *service*

Executive overview

The Service is the Provision of Logistics and Safety Management Services for Eskom's coal and limestone transportation operations, consisting of approximately 45 million tonnes transported per annum from 46 Designated Loading Points to 16 Designated Offloading Points, on approximately 3100 trucks, primarily in the Mpumalanga Province for a period of 3 (three) years.

Employer's requirements for the *service*

Employers' Requirements for the Service

1. Provision of safety, tamper evident seal and queue management services at various Designated Offloading Points including:

- Monitoring Verification, recording, removal and storage of tamper evident seals
- Immediate reporting on the absence, incorrect installation or incorrect details of tamper evident seals prior to removal
- The provision of associated personnel shelter, site infrastructure and facilities required to provide the Service
- The provision and management of toilet facilities for truck drivers along truck queues
- The provision and management of rubbish bins along truck queues
- Hourly reporting on volumes of coal and limestone received
- The management of congestion along truck queues:
 - The management and optimisation of truck turnaround times at offloading points.

2. Provision of monitoring and reporting services to monitor and report on (including Truck GPS tracking data) all safety-related issues on Designated Routes, including:

- Monitoring and reporting of Trucks on designated routes
- Monitoring and reporting Truck adherence to designated routes
- Ensuring the security of coal and limestone on route to prevent theft or fraud
- Monitoring and reporting Driver behaviour not complying to Eskom's requirements
- Reporting of incidents, gathering of preliminary incident information and assisting in compiling of incident reports
- Identification and reporting of Designated Route risks
- Monitoring and reporting on DPU transporter GPS tracking information

Noting that the abovementioned requirements are subject to changes in business processes as a result of Eskom's project to move the payment point for all coal received to the power station (Movement of Payment Point Project). Should this project be implemented during the tenure of the contract, Eskom may require certain changes to the activities set out above, which may reduce pricing at that point.

3. Provision of Transport safety management services, including:

- Performing periodic or incidental Driver safety induction training, verification of medical certificates and issuing of induction permits
- Performing periodic or incidental Truck roadworthy inspections and issuing of windshield permits
- Development and maintenance of a Truck and Driver database as a central information repository for contracted Trucks and Drivers.
- The operation and maintenance of a dedicated telephone number for public reporting of coal transport related incidents.

4. Provision of operational data management and logistics advisory services including:

- Capturing of coal and limestone production and delivery information
- Production and issue of daily coal and limestone reports
- Provision of Logistics advisory services to PE Logistics (to optimise the coal and limestone haulage operation to achieve efficiency improvements.)

In providing the Service, the Contractor shall comply with the provision of all relevant health, safety and environmental legislation applicable to them. In addition, the Contractor shall comply with Eskom’s health and safety rules, codes of practice and all other relevant safety policies and procedures.

Interpretation and terminology

The following abbreviations are used in this Service Information:

| | |
|-----------------------------|--|
| Accident | An incident that results in serious injury, harm or damage. (See Incident) |
| Colliery | Any of the mines or coal and limestone suppliers that Eskom contracts with for the supply of coal or limestone to any of its Power Stations. See also “Designated Loading Point”. |
| Contract Fleet | The fleet of Trucks registered with the employer to transport coal and limestone. |
| Designated Loading Point | Any of the Collieries, to be communicated by the <i>Employer</i> to the Contractor and as may be altered by the <i>Employer</i> from time to time, as determined by, amongst other factors, the availability of coal or limestone, coal quality, weather conditions, road conditions and operational requirements. |
| Designated Offloading Point | The stockyard at the power station, Rail Siding or any other stockyard designated by the <i>Employer</i> , which the <i>Employer</i> may alter from time to time. |
| Driver | Eskom registered and approved Truck operators in the employ of the coal or limestone Transporters. Drivers carries the same meaning. |
| Incident | Any unplanned event that could, or does result in harm, damage, and/or degradation or gives rise to an accident or has the potential to lead to an accident, including safety and environmental incidents. |
| FCA | The Incoterm; “Free Carrier At the Designated Loading Point” which refers to the Colliery transferring the coal or limestone into the custody of the <i>Employer</i> at the Designated Loading Point. (FCA Transporters are contracted to the <i>Employer</i> .) |
| DPU | The Incoterm “Delivered at Place Unloaded” (DPU) (formerly referred to as DAT for “Delivered at Terminal”) requires the seller to deliver the goods at the disposal of the buyer after they’ve been unloaded from the arriving means of transport. |
| Hazard | Means a source of or exposure to danger; |
| Incoterm | The standard trade definitions used in sales contracts published by the International Chamber of Commerce as the year 2000, as amended or replaced from time to time. |
| Power Station | One of the premises at which the Designated Offloading Point may be located where Eskom may direct the others to transport coal or limestone to from time to time in writing. |
| Rail Siding | Designated Offloading Point where coal or limestone is loaded onto trains by others for further transport to Eskom Power Stations. |
| Safe | Means free from any hazard |
| Tarping | The action of opening or closing Truck tarpaulins at the Designated Loading Points and Designated Offloading Points. |

| | |
|----------------------------|---|
| Accident | An incident that results in serious injury, harm or damage. (See Incident) |
| Third Party Logistics | Third-party logistics (abbreviated as 3PL, or TPL) in logistics and supply chain management is an organization's use of third-party businesses to outsource elements of its distribution, warehousing, and fulfilment services. |
| Logistics Service Provider | A firm that provides outsourced logistics services to client companies for part, or all of their supply chain management functions. |
| Tracking Device | Tracking, identification and monitoring devices fitted to Contracted Fleet for the purposes of safety monitoring, tracking, identification, communication, or for any purpose related to the service. |
| Transporter | The party contracted by either the <i>Employer</i> or the Colliery, to transport coal or limestone. |
| Truck | Those trucks owned by Transporters and registered on Eskom's database as part of the Contract Fleet. |
| Waybill | Official shipping document that travels with a shipment; identifies its consignor, consignee, origin and destination, describes the goods, and shows their weight and freight. |

Management strategy and start up.

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

The *Contractor* must submit a first plan to the Service Manager for acceptance, showing the timing of work and operations to provide the service.

Management meetings

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

| Title and purpose | Approximate interval | Location | Attendance by: |
|--|----------------------|------------------|---------------------------------------|
| Operational Progress / feedback Meeting | Monthly | To be determined | <i>Employer</i> and <i>Contractor</i> |
| Contractors Meeting | Monthly | To be determined | <i>Employer</i> and <i>Contractor</i> |
| Safety, health, environmental and quality Meeting | Monthly | To be determined | <i>Employer</i> and <i>Contractor</i> |
| Overall Key Performance Indicators monitoring and feedback | Monthly | To be determined | <i>Employer</i> and <i>Contractor</i> |

Meetings of a specialist nature may be convened as specified elsewhere in this Service Information. Records of these meetings shall be submitted to the *Service Manager* by the person convening the meeting.

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

Contractor's management, supervision and key people

The *Contractor* provides all adequately qualified and suitably experienced staff and other resources required for the management and operational activities needed for the efficient execution

The *Contractor* provides all other resources such as service vehicles, fuel, and consumables or incidentals required to sustain a continuous provision of the services described in this Service Information.

Documentation control

Eskom Holding SOC Limited Document management system procedure 36-644 will apply.

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 Primary Energy Finance 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;
- Please note *Employer* Name has to be reflected as Eskom Holdings SOC Limited on all Tax Invoices
- 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;

Contract change management

The *Employer* reserves the right to re-negotiate the Contract price at any time during the Contract period when the Terms of the required services changes substantially.

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

The *Contractor* provides all files, records, documents and electronic media used to provide or monitor the service or that formed part of the services provision process to the *Employer* at the end of the service period.

The *Contractor* provides a close out report to the *Service Manager* after the service period.

Management of work done by Task Order

The *Service Manager* will draft and approve a Task order.

A Task order starting with a 45 series number will be issued to the *Contractor* quarterly.

Response to the issued task order must be dealt with as per the secondary option X19 of this agreement.

The *Contractor* will only act on Task Orders approved by the *Service Manager*.

The KPI's provided shall form the minimum baseline for performance review by the *Employer*, together with any other performance indicators and in relation to core clause 9.

Health and safety, the environment and quality assurance

Health and safety risk management

The *Contractor* shall comply with the health and safety requirements pertaining to this Service Information. The *Contractor* shall ensure that before the contract commences the following are in place and have been verified by an Eskom representative:

Safety and Health

- Safety and Health Policy
- Valid Letter of good standing with COID
- LTIR and statistics for the past 3 years
- Health and Safety legal appointments
- Appointment of a Safety officer with a National Diploma in Health and Safety
- OHSAS certificate or other safety system in place
- Baseline Risk Assessments or HIRA
- Safe work procedures
- Health and safety plan based on the scope
- Medical fitness certificates of the appointed employees
- A fully functional control room
- Defensive driver training certificates for all drivers

The *Contractor* shall comply with the Employers health and safety requirements (and as amended from time to time) as outlined below:

1. vehicle and driver safety management procedure 240 – 629 46386
2. Contractor Health and Safety Requirements 32- 136
3. Eskom vehicle safety specifications 32 – 345
4. Eskom standards for Life saving rules 240 -621962271
5. Eskom Safety, Health, Environment and Quality Policy 32 – 737 revision 5
6. Environmental, occupational health and safety incident management procedure 32 – 95
7. Health, safety and environmental requirements contained in the *Employer's* 004 4830 Safety Health and Environmental specification revision 2

The *Contractor*, in and about the execution of the service, shall make available to the *Employer* a Safety, Health, Environmental Management and Quality (SHEQ) plan before the commencement of the service and shall update the file on a six monthly basis for inspection by the *Service Manager*.

Environmental constraints and management

The *Contractor* shall comply with the following *Employers* Requirements (and as amended from time to time):

The Contractor undertakes to inform the Employer in writing of any spillage within 24 hours of its occurrence. The Contractor shall at its own cost clean such spillage.

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

Employer shall be entitled to conduct inspections and or audits in respect of the provisions of the above clause to ensure the *Contractor's* compliance herewith and the *Contractor* agrees to co-operate with Employer in this regard. To that end, Employer and or its designated representatives, including without limitation, its attorneys, auditors, environmental representatives shall at all reasonable times, with reasonable prior notice to the *Contractor*, have access to the sites under this Agreement and to all records, wherever located, pertaining to the service in terms of this Agreement, which access will be at Employer's expense and risk

Quality assurance requirements

The *Contractor must* submit all road worthy certificates to the *Employer*.

A Quality assurance plan shall be submitted by the *Contractor* as part of the SHEQ plan and shall be accepted by the Service Manager and reviewed every six months.

Procurement

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

People

Minimum requirements of people employed

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

BBBEE and preferencing scheme

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

Subcontracting

Preferred subcontractors

Contractor shall be required to sub-contract a minimum of 30% (thirty) percent of the potential scope i.e. 30% of the contractual value will need to be subcontracted to small and medium companies with experience and capable and competent in this industry.

The main contractor will select from the following designated groups that are not part of their subsidiaries or having shares in that company, CSD registration shall be as follows:

The Contractor subcontracting a minimum of 30% to:

- i. an EME or QSE which is at least 51% owned by black people who are youth;
- ii. an EME or QSE which is at least 51% owned by black people who are women;
- iii. an EME or QSE which is at least 51% owned by black people with disabilities;

Subcontract documentation, and assessment of subcontract tenders

Employer will require certificate of the subcontractors.

- B-BBEE certificate / Affidavit
- CSD number
- Signed Sub-contracting intent agreement
- Proof (certificate/affidavit) of sub-contractor belonging to designated group

Eskom reserves the right to satisfy itself by checking and verifying such service providers as it deems fit.

The Supplier shall provide copies of invoices, proof of payment, B-BBEE certificate of the service provider and proof of address if different from one in the certificate as well as evidence that the service provider is either women; youth or disabled.

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

Eskom shall review the SD&L reports submitted by the suppliers within 60 (sixty) days of receipt of the reports and notify the suppliers in writing if their SD&L obligations have not been met.

Without prejudice to any other rights or claims that Eskom may have under this Contract or otherwise, if the Supplier at any time fails to meet any of the targets set out in this Contract under SD&L or fails to provide Progress Report(s), Eskom shall be entitled to withhold an amount equal to 2.5 (two point five) percent from each payment becoming due to the Supplier under this Contract from the date at which the target(s) should have been met, until the Supplier has met all of its targets as set out in SD&L.

The Supplier shall notify Eskom of its achievement of the target(s) set out under SD&L of the Contract providing evidence thereof in accordance with the requirements above. Once Eskom is satisfied with the evidence provided, Eskom shall without undue delay and within 30 (thirty) days release and pay to the Supplier the amounts withheld in respect of the Supplier's failure to meet the target(s) set out under SD&L of the Contract, free of any interest or surcharge. No money withheld shall be paid back to the Supplier if at the end of the Contract Period the Supplier has not met all of its SD&L Commitments.

Plant and Materials

Correction of defects

The KPIs provided shall form the minimum baseline for performance review by the *Employer*, together with any other performance indicators and in relation to core clause 9.

Tests and inspections before delivery

The Employer will provide vehicle inspection test and compliance disc should the vehicle pass the requirements.

Working on the Affected Property

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

- The *Contractor* provides full time supervision and control of his employees related to this service agreement.
- The *Contractor* shall perform all work in accordance with the applicable Safety Regulatory Act and will issue the most recent copy of the act to the *Service Manager* before commencement of the work.
- Employer's site entry and security control, permits, and site regulations.
- The *Contractor* will provide a complete list of names of all employees working in the Affected Property to the *Service Manager*.
- All employees of the *Contractor* requiring access to the Power Station will undergo the power station mandatory safety induction course prior to entry.
- Employees of the *Contractor* requiring frequent access will be issued permanent security passes after completion of the mandatory safety induction and submission of the relevant application forms.
- All truck drivers of the *Contractor* will undergo the mandatory safety induction facilitated by the Employer's Primary Energy Division.

- The *Contractor's* proves to the *Service Manager* that the employees used by the *Contractor* to Provide the Service are competent in their areas of responsibility.

- The *Contractor* provides the *Service Manager* with proof of legal appointments in terms of the Occupational Health and Safety Act, Act 85 of 1993 (as amended), for all the *Contractor's* employees who carry such legal responsibilities when working on the Affected Property.
- The *Contractor* does not commence to provide the Service unless the required letters of legal appointments have been accepted by the *Service Manager*.
- All personnel working on site will wear the appropriate Personal Protective Clothing as accepted by the *Service Manager*.

People restrictions, hours of work, conduct and records

Contractor keeps records of his people working on the Affected Property, including those of his Subcontractors. The records shall contain the hours worked including start and end times and dates as well as any misconduct by such workers stating date and details of misconduct. The *Service Manager* shall have access to these records at any time.

Health and safety facilities on the Affected Property

As per SHEQ plan to be provided by *Contractor* and accepted by *Service Manager*.

Cooperating with and obtaining acceptance of Others

Contractor shall establish and maintain at all times a good working relationship with personnel *Employer* representation and various applicable stakeholders.

Contractor shall establish and maintain at all times good working relationship with statutory authorities or inspection agencies.

Records of *Contractor's* Equipment

Records are to be kept of all vehicles related to this service agreement, whether it is owned or hired. All vehicles will be maintained in the appropriate area. In an event of a break down under this service agreement, an appropriate removal of the vehicle from the Affected Property must be planned by *Contractor* and accepted by the *Service Manager*.

Site services and facilities

N/A