



## NEC3 Term Service Contract (TSC3)

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

and \_\_\_\_\_  
(Reg No. \_\_\_\_\_)

for **Provision of Commissioning Management services  
at Kusile Power Station Project**

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**CONTRACT No. TBA**

## **PART C1:      AGREEMENTS & CONTRACT DATA**

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<b>Contents:</b>	<b>No of pages</b>
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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 Commissioning Management services at Kusile Power Station Project of the Contract

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 E	The first forecast of the total Defined Cost plus the Fee exclusive of VAT is	
	Sub total	
	Value Added Tax @ 15% is	
	The offered total of the amount due inclusive of VAT is <sup>1</sup>	
	(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:**

Name &  
signature of  
witness

Date

Tenderer's CIDB registration number:

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

## 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**

.....

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**

No.	Subject	Details
1		

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

Name &  
signature  
of witness

Date

## C1.2 TSC3 Contract Data

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		E: Cost reimbursable contract
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	
		X1: Price adjustment for inflation
		X2: Changes in the law
		X18: Limitation of liability
		X19: Task Order
		X20: Key performance indicators
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Term Service Contract April 2013 <sup>2</sup> (TSC3)	
10.1	The <i>Employer</i> is (name):	Eskom 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
10.1	The <i>Service Manager</i> is (name):	Sebongile Foku
	Address	Kusile Power Station Project R545 Balmoral/Kendal Road Haartebeesfontein Farm Witbank
11.2(2)	The Affected Property is	Kusile Power Station
11.2(13)	The <i>service</i> is	Provision of Commissioning Management services at Kusile Power Station Project
11.2(14)	The following matters will be included in the Risk Register	None
11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.

<sup>2</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902 [www.ecs.co.za](http://www.ecs.co.za)

12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	2 weeks
2	The <b>Contractor's main responsibilities</b>	
21.1	The <i>Contractor</i> submits a first plan for acceptance within	2 weeks of the Contract Date
3	Time	
30.1	The <i>starting date</i> is.	
30.1	The <i>service period</i> is	12 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 21st day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	4 weeks.
51.4	The <i>interest rate</i> is	the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands
6	Compensation events	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
7	Use of Equipment Plant and Materials	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	1. None
83.1	The <i>Employer</i> provides these insurances from the Insurance Table	
	INSURANCE TABLE	
	Insurance against	Minimum amount of cover or minimum limit of indemnity
	Assets All Risk	As per the insurance policy document.
	Project insurance	As per the insurance policy document.

	<table> <tr> <td>General and Public Liability</td><td>As per the insurance policy document.</td></tr> <tr> <td>Environmental Liability</td><td>As per the insurance policy document.</td></tr> <tr> <td>Transport (Marine)</td><td>As per the insurance policy document.</td></tr> <tr> <td>Motor Fleet and Mobile Plant</td><td>As per the insurance policy document.</td></tr> <tr> <td>Terrorism</td><td>As per the insurance policy document.</td></tr> <tr> <td>Cyber Liability</td><td>As per the insurance policy document.</td></tr> </table>	General and Public Liability	As per the insurance policy document.	Environmental Liability	As per the insurance policy document.	Transport (Marine)	As per the insurance policy document.	Motor Fleet and Mobile Plant	As per the insurance policy document.	Terrorism	As per the insurance policy document.	Cyber Liability	As per the insurance policy document.
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83.1	<p>The <i>Contractor</i> provides the insurances stated in the Insurance Table.</p> <p>The insurances provide cover for events which are at the <i>Contractor's</i> risk from the <i>starting date</i> until the end of the <i>service period</i> or a termination certificate has been issued</p> <p style="text-align: center;"><b>INSURANCE TABLE</b></p> <table> <tr> <th>Insurance against</th><th>Minimum amount of cover or minimum limit of indemnity</th></tr> <tr> <td>Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property</td><td> <p>The replacement cost where not covered by the <i>Employer's</i> insurance.</p> <p>The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance.</p> </td></tr> <tr> <td>Loss of or damage to Plant and Materials</td><td> <p>The replacement cost where not covered by the <i>Employer's</i> insurance.</p> <p>The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance.</p> </td></tr> <tr> <td>Loss of or damage to Equipment</td><td> <p>The replacement cost where not covered by the <i>Employer's</i> insurance.</p> <p>The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance.</p> </td></tr> <tr> <td>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</td><td> <p><b><u>Loss of or damage to property</u></b> The replacement cost</p> <p><b><u>Bodily injury to or death of a person</u></b> The amount required by the applicable law.</p> </td></tr> <tr> <td>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</td><td>The amount required by the applicable law</td></tr> </table>	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	<p>The replacement cost where not covered by the <i>Employer's</i> insurance.</p> <p>The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance.</p>	Loss of or damage to Plant and Materials	<p>The replacement cost where not covered by the <i>Employer's</i> insurance.</p> <p>The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance.</p>	Loss of or damage to Equipment	<p>The replacement cost where not covered by the <i>Employer's</i> insurance.</p> <p>The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance.</p>	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	<p><b><u>Loss of or damage to property</u></b> The replacement cost</p> <p><b><u>Bodily injury to or death of a person</u></b> The amount required by the applicable law.</p>	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
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<b>9</b>	<b>Termination</b>	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.
<b>10</b>	<b>Data for main Option clause</b>	
<b>E</b>	<b>Cost reimbursable contract</b>	
20.4	The <i>Contractor</i> prepares forecasts of the total Defined Cost for the whole of the service at intervals no longer than	<b>1 month</b>
	The <i>exchange rates</i> are those published in	<b>N/A</b>
<b>11</b>	<b>Data for Option W1</b>	
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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ) or its successor body.
W1.4(2)	The <i>tribunal</i> is:	<b>arbitration</b>
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	<b>South Africa</b>
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	
	- if the arbitration procedure does not state who selects an arbitrator, is	<b>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</b>
<b>12</b>	<b>Data for secondary Option clauses</b>	
<b>X1</b>	<b>Contract Price Adjustment</b>	
X1.1	The <i>base date</i> for indices is	
<b>X2</b>	<b>Changes in the law</b>	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.
<b>X18</b>	<b>Limitation of liability</b>	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited	

	to	<b>R0.0 (zero Rand)</b>
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	<b>the amount of the deductibles relevant to the event</b>
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	<b>The greater of</b> <ul style="list-style-type: none"> <li>the total of the Prices at the Contract Date and</li> <li>the amounts excluded and unrecoverable from the <i>Employer's</i> insurance plus the applicable deductibles</li> <li></li> </ul>
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	<b>the total of the Prices other than for the additional excluded matters.</b>  <b>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</b>  <b>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</b> <ul style="list-style-type: none"> <li>Defects due to his design, plan and specification,</li> <li>Defects due to manufacture and fabrication outside the Affected Property,</li> <li>loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials),</li> <li>death of or injury to a person and</li> <li>infringement of an intellectual property right.</li> </ul>
X18.5	The <i>end of liability date</i> is	<b>0 months after the end of the <i>service period</i>.</b>
<b>X19</b>	<b>Task Order</b>	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	<b>5 days of receiving the Task Order</b>
<b>X20</b>	<b>Key Performance Indicators</b>	
X20.1	The <i>incentive schedule</i> for Key Performance Indicators is in	<b>To be agreed upon on contract start date</b>
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	<b>6 months</b>
<b>Z</b>	<b>The <i>additional conditions of contract</i> are</b>	<b>Z1 to Z11 always apply.</b>

## **Z1 Cession delegation and assignment**

- Z1.1 The *Contractor* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Contractor* cede and

delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

## **Z2 Joint ventures**

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

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

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

## **Z4 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.

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**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 <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.

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

- Z 11.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Service for this reason.
- Z 11.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Service for this reason, the procedures and amounts due on termination are respectively P1, P2, P3 and P4, and A1 and A3.
- Z 11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

## C1.2 Contract Data

### Part two - Data provided by the *Contractor*

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is	
11.2(14)	The following matters will be included in the Risk Register	
11.2(15)	The Service Information for the <i>Contractor's</i> plan is in:	
21.1	The plan identified in the Contract Data is contained in:	
24.1	The key people are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job: Responsibilities: Qualifications: Experience:	
<b>E</b>	<b>Cost reimbursable contract</b>	
11.2(12)	The <i>price list</i> is in	<b>Document called Price list</b>

## PART 2: PRICING DATA

### TSC3 Option E

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



## C2.1 Pricing assumptions: Option E

### How work is priced and assessed for payment

Clause 11 in the core and Option E clauses of the NEC3 Term Service Contract (TSC3) state:

Identified and defined terms	11	
	11.2	(12) The Price List is the <i>price list</i> unless later changed in accordance with this contract.
		(18) The Price for Services Provided to Date is the Defined Cost which the <i>Contractor</i> has paid plus the Fee.
		(24) The Prices are the amounts stated in the Price column of the Price List. If no Price List is included, the Prices are the Defined Cost plus the Fee.

Payments are made at Defined Cost plus Fee (See core clauses 11.2(5), 11.2(6) and 11.2(8)). As this Option is used when the definition of work is likely to be inadequate for pricing purposes, it may not be practical to establish a Price List.

### Function of the Price List

In this Option the Price List (if any) is used only as a means of forecasting the final outcome.

### Preparing the *price list* (if any)

It will be assumed that the tendering contractor has read Pages 14 and 15 of the TSC3 Guidance Notes before preparing the *price list*. Items in the *price list* may have been inserted by the *Employer* and the tendering contractor should insert any additional items which he considers necessary.

### Format of the *price list*

Entries in the first four columns in the *price list* in section C2.2 are made either by the *Employer* or the tendering contractor. For Option E the Price List is used only for forecasting Defined Cost.

If the *price list* includes 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 *price list* includes 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 *price list* includes 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*

See attached Price List as Annexure K

## PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Service Information</i>	7
C3.2	<i>Contractor's Service Information</i>	
	Total number of pages	8

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

### **Description of the service**

#### **Executive overview**

Eskom Kusile Project requires Commissioning services. The service provider to be appointed will assist Eskom in Commissioning of the outstanding works to get the remainder of the Kusile Project commercialised. The resources provided by the service provider will work under the direction and guidance of Eskom Commissioning staff. They will form part of an integrated team that will use Eskom's systems and procedures.

The overhaul responsibilities of the service provider will be as follows:

- a) Provide advisory and support services for the execution of the commissioning activities
- b) Ensure compliance with Plant Safety Regulations (PSR), Fossil Fuel Fire Regulation (FFFR) and Operating Regulations for High Voltage System (OHRVS).
- c) Provide construction management services for outstanding construction activities.

#### **Detailed Scope of work**

##### **Commissioning services will include the following:**

- Preparing and issuing permits to work on a 24/7 basis (AP/RP)
- RP's are responsible for accepting permits to work after the safety clearance for phasing the electrical test.
- Being the person in charge of the plant as per the Fossil Fuel Fire Regulation (FFFR)
- Providing 24 hour coverage for the running non-commercial plant on site (AP/RP)
- Responsible for energizing all new plant (AP/RP)
- Issuing sanctions for test of all new motors (AP/RP)
- Controlling and issue permits for radiation work (RPO)
- Controlling of radiation isotopes (RPO)
- RP's at Kusile also support the contract package teams that have plants that are not handed over including brush gear inspections and the maintenance of lights in the units.
- Walk down and lock out system after safety clearance.
- Flush various systems in preparation for commissioning ( Auxiliary Cooling , HRD ( SSC Supply) , Waste Water treatment and Compressor plant )

- Install temporary piping and strainers for system flushing
- Install “jumpers” for system flushing
- Clean strainers
- Backwash heat exchangers on Auxiliary cooling
- Field operator support for all BOP plant under commissioning
- Operating of valves and equipment during commissioning, under the supervision of Eskom Commissioning personnel.
- Check for pump / motor vibrations and bearing temperature for plant under commissioning
- Prepare plant standby for commissioning activities
- Housekeeping duties on all BOP commissioned plant
- Routine checks on plant in-service under commissioning
- General support as labourers for Commissioning BOP.
- Unblocking of Water sample lines for Analysers ( Steam blow , ACC Clean to synch)
- Completes daily, weekly and monthly checklists on the commissioning plant equipment maintenance procedures and maintains records of scheduled maintenance procedures.

## Reports

The following report shall be submitted:

- Daily, Weekly and monthly reports

## Abbreviations

[1] Abbreviation	[2] Description
AP	Appointed Person
HV	High voltage
MIE	Master Installation Electrician
KET	Kusile Executive Team
HV	Low Voltage
LV	High Voltage
RP	Responsible Person
PSR	Plant Safety Regulations
ORHVS	Operating Regulations for High Voltage System
URS	User Requirement Specifications
TET	Technical Evaluation Team
SES	Site Environmental Specification
CEMP	Construction Environmental Management Plan
SSA	Site Specific Agreement
WTW	Water Treatment Works

## **2. Specification and description of the services**

The *Service provider* will provide skilled personnel of the required discipline levels for a 12 months period.

The detailed activities to be executed and deliverables to be produced will be agreed between the *Employer* and *Service provider* during the course of the contract.

## **3. Constraints on how the Service provider provides the Services.**

The *Service provider* ensures that the people provided to undertake the *Services* have the necessary competence and availability to effectively and efficiently perform the roles and tasks to which they are assigned. Should at any time the *Employer* consider this not to be the case then the *Employer* may inform the *Service provider* and request the *Service provider* to take action to address the situation. If, in the sole discretion of the *Employer*, the matter is not resolved satisfactorily by the end of the fifth working day thereafter, then the *Employer* may request that the individual be removed or replaced and the *Service provider* shall at no cost to the *Employer* comply forthwith.

## **4. Management meetings**

Meetings of a general nature may be convened and chaired by the *Employer's Agent*.

## **5. Records and forecasting of expenses**

Records and Forecasting of expenses will be required on monthly bases.

Hourly claimed rate should be supported by timesheets and the invoices/receipts for all claimed expenses to be reimbursed at cost. In addition the following must be done:

- The timesheets must be signed by the relevant assigned manager in the relevant project.

## **6. Invoicing and payment**

The *Service provider* shall address the tax invoice to:

Eskom Holdings SOC Ltd  
Group Capital Division

Kusile Power Station  
Suite 46  
Postnet  
Emalahleni  
1035

Attention: Mafanetza Madamalala

**ONLY ORIGINAL INVOICES WILL BE ACCEPTED**

Vat 4740101508

**The following must be stated on the Tax Invoice:**

- Name and address of the *Contractor* and the Employer;
  - 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

**7. Quality Management**

**System requirements**

The *Service provider* and all Sub-consultants shall comply with the requirements listed in Employer's standard document, 'Quality Management System (QMS) 58, for all the Employer Quality requirements.

The Service provider shall develop and submit a Project Quality Management System and Plan (PQMP) for this contract. This PQMP shall describe the project quality requirement and shall also describe the requirement for continued compliance to the requirement of ISO 9001

**Information in the quality plan**

The *Service provider* shall provide all information, material and records required to comply with the Eskom Quality Management System and such further information, material and records as may be requested by the *Employer* from time to time.

**8. The Parties use of material provided by the Service provider**

***Employer's purpose for the material***

Clause 70.1 states that the *Employer* has the right to use the material provided by the *Service provider* for the purpose stated in the Scope. Such material will amongst other things be used by the *Employer* for strategic planning.

## **9. Safety and Health Management**

The *Employer* expects the *Service provider* to engage in safety culture initiatives in line with the Eskom Life Saving Rules, Safety and Quality Requirements Standard.

The *Service provider* and all sub-consultants shall comply with the requirements listed in Employer's standard document, 'Eskom Safety, Health, Environment and Quality Policy 32-727', for all the Employer Health and Safety requirements.

The *Employer* places emphasis on the provision of a comprehensive Health and Safety file per the attached checklist for this contract. The Project Health and Safety file shall comply with the requirements of the OSH Act.

The *Service provider* shall develop and submit a Health and Safety file for this contract. This shall describe the project health and safety requirement and shall also describe the requirement for continued compliance to the requirement of the OSH Act.

## **10. Working on the Employer's property**

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

- The Service provider shall comply to the Employer's entry and security control, permits, and site regulations
- All employees working on the Eskom Power Station Site must complete induction before work can start.
- Personal Protective Equipment (PPE) must be worn at all-times except in the PPE free zones.
- All employees must comply to Eskom Life Saving Rules:
  - Open, isolate, test, earth, bond and/or insulate before touch.
  - Hook up on heights
  - Buckle Up
  - Permit to work
  - Be sober.

### **People restrictions, hours of work, conduct and records**



The *Service provider* shall keep records of his people working on the *Employer's* property, including those of his Sub-consultants. The *Employer's Agent* shall have access to these records at any time. These records may be needed when assessing the monthly payment.

#### **11. Things provided by the Employer**

The *Employer* shall provide work space for the *Service provider* use during performance of the services at any of the Eskom offices.

#### **12. Skills development for project**

The *Service provider* shall provide annually a 'Skills Transfer Plan', providing skills development, mentorship and coaching to the *Employer's* personnel. Such plan should detail;-

- 'On-the-job-training', by working closely with and/or amongst these resources to enhance the career development of the *Employer's* personnel.
- The service provider shall train one (1) candidate for every R7 500 000.00 (seven million five hundred thousand) allocated through task orders awarded to them.

#### **13. Conflict of Interest**

During the course of executing its mandate, the Service provider (SP) and people appointed by the SP will be exposed to Eskom's highly sensitive proprietary information, including but not limited to strategies proposed, considered and adopted for the Works under each Package, these include defence strategies proposed, considered and adopted against each of the Contractors, counter-claims considered and pursued against each of the Contractors, Eskom internal communication, communication between Eskom and its stakeholders, position papers and memoranda prepared in respect of any matter. The Service provider agrees that it will not, for the duration of its engagement and thereafter, assist any Contractor in acting against Eskom in any of the projects that fall within the Consultant's scope.

Further to the above all resources must comply to Eskom's Conditions of Service and sign non-disclosure agreements