



## NEC3 Term Service Contract (TSC3)

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

**and**

**for Provision of Hydraulic Maintenance Services at  
Kusile Power Station for a period of 60 months**

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**CONTRACT No.**

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

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# C1.1 Form of Offer & Acceptance

## Section 1.01 Offer

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

### Provision of Hydraulic Maintenance Services at Kusile Power Station for a period of 60 months

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

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

Options A	The offered total of the Prices exclusive of VAT is	
	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			
<b>For the tenderer:</b>			
Name & signature of witness		Date	
Tenderer's CIDB registration number:	N/A		

<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*.

## Section 1.02 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)	Bongumusa A Mashazi		
Capacity	General Manager		
for the Employer	<b>Eskom Holdings SOC Limited</b> Kusile Power Station R545 Kendal/Balmoral Rd Haartebeesfontein Farm Witbank		
Name & signature of witness		Date	

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

**Section 1.03 Schedule of Deviations to be completed by the *Employer* prior to contract award**

No.	Subject	Details
1		
2.		
3.		
4.		

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.

	(i) For the tenderer:		(ii) For the Employer
Signature			
Name			Bongumusa A Mashazi
Capacity			General Manager
On behalf of			<b>Eskom Holdings SOC Limited</b> Kusile Power Station R545 Kendal/Balmoral Rd Haartebeesfontein Farm Witbank
Name & signature of witness			
Date			

## C1.2 TSC3 Contract Data

### Article II. 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	Section 2.01 Statement	Section 2.02 Data
1	<b>Section 2.03 General</b>	<b>Section 2.04</b>
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		<b>A: Priced contract with price list</b>
	dispute resolution Option	<b>W1: Dispute resolution procedure</b>
	and secondary Options	
		<b>X1: Price adjustment for inflation</b>
		<b>X2: Changes in the law</b>
		<b>X17: Low service damages</b>
		<b>X18: Limitation of liability</b>
		<b>X19: Task Order</b>
	of the NEC3 Term Service Contract April 20132 (TSC3)	
10.1	The <i>Employer</i> is (name):	<b>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</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Tel No.	<b>+27 11 800 8111</b>
	Fax No.	<b>N/A</b>
10.1	The <i>Service Manager</i> is (name):	<b>TBC</b>
	Address	<b>Kusile Power Station R545 Kendal/Balmoral Rd Haartebeesfontein Farm Witbank</b>
	Tel	<b>TBC</b>

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

	Fax	TBC
	e-mail	TBC
11.2(2)	The Affected Property is	<b>Kusile Power Station</b>
11.2(13)	The <i>service</i> is	Provision of Hydraulic Maintenance Services at Kusile Power Station for a period of 60 months
11.2(14)	The following matters will be included in the Risk Register	<b>1. Community unrest around Kusile site</b> <b>2. Technicians' competency</b> <b>3. Breakdown of contractor testing equipment</b>
11.2(15)	The Service Information is in	<b>Part 3: Scope of Work and all documents and drawings to which it makes reference.</b>
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>24 hours</b>
Section 2	<b>Section 2.06 The Contractor's main responsibilities</b>	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	<b>One week after signing of the contract by both parties.</b>
Section 2	<b>Section 2.08 Time</b>	<b>Section 2.09</b>
30.1	The <i>starting date</i> is.	<b>01 November 2022 or soon as possible thereafter</b>
30.1	The <i>service period</i> is	<b>60 months</b>
Section 2	<b>Section 2.11 Testing and defects</b>	<b>Section 2.12</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
Section 2	<b>Section 2.14 Payment</b>	<b>Section 2.15</b>
50.1	The <i>assessment interval</i> is	<b>between the 25<sup>th</sup> day of each successive month.</b>
51.1	The <i>currency of this contract</i> is the	<b>South African Rand</b>
51.2	The period within which payments are made is	<b>Four weeks after invoice submitted and processed.</b>
51.4	The <i>interest rate</i> is	<b>the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</b>  <b>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted</b>

		under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter (and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.
Section 2	<b>Section 2.17 Compensation events</b>	Any work or task undertaken outside the agreed scope of work Any work or task undertaken outside the agreed price list
Section 2	<b>Section 2.19 Use of Equipment Plant and Materials</b>	<b>Section 2.20</b> Contractor to provide their own equipment, tools and where applicable plant and provide service as per price list and Scope Of Work. Third party equipment, tools and plant used at own risk
Section 2	<b>Section 2.22 Risks and insurance</b>	<b>Section 2.23</b>
80.1	These are additional <i>Employer's</i> risks	1. Poor response time by Contractor.  2. Loss or damage of plant and materials caused by outside influences beyond control of parties  3. Environmental contraventions
Section 2	<b>Section 2.25 Termination</b>	Termination of the contract will be in line with sub clause 91 of the NEC3
Section 2	<b>Section 2.27 Data for main Option clause</b>	<b>Section 2.28</b>
A	Priced contract with price list	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than	Four weeks.
Section 2	<b>Section 2.30 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:	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	a location in South Africa agreed upon by both parties
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
	- if the arbitration procedure does not state who selects an arbitrator, is	

**Section 2** **Section 2.32 Data for secondary Option clauses** **Section 2.33**

<b>X1</b>	<b>Price adjustment for inflation</b>			
X1.1	The <i>base date</i> for indices is			
	The proportions used to calculate the Price Adjustment Factor are:	Proportion %	linked to index for	Index prepared by
	Labour Table C3			
	Transport Table L2			
	Fixed	15%	non-adjustable	
	Tenderers to propose CPA which will be negotiated and agreed on by both parties prior to contract award.			
<b>X2</b>	<b>Changes in the law</b>	The <i>Employer</i> shall notify the <i>Contractor</i> of a compensation event due to changes in the Law of South Africa		
<b>X17</b>	<b>Low service damages</b>			
X17.1	The <i>service level table</i> is in	Appendix A below		
<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	The <i>Contractor's</i> liability to the <i>Employer</i> for the <i>Employer's</i> indirect or consequential loss is limited to the amount stated in the Contract Data.		
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	For any one event, the liability of the <i>Contractor</i> to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to the amount stated in the Contract Data.		
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	The <i>Contractor's</i> liability to the <i>Employer</i> for Defects due to his design of an item of Equipment is limited to the amount stated in the		

		<b>Contract Data.</b>
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<p>the total of the Prices other than for the additional excluded matters.</p> <p>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</p> <ul style="list-style-type: none"> <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 infringement of an intellectual property right.</li> </ul>
X18.5	The <i>end of liability date</i> is	12 months after the end of the <i>service period</i> .
<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	24 hours of receiving the Task Order
<b>Z</b>	<b>The additional conditions of contract are</b>	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:

<b>Affected Party</b>	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,
<b>Coercive Action</b>	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,
<b>Collusive Action</b>	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,
<b>Committing Party</b>	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,
<b>Corrupt Action</b>	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,
<b>Fraudulent Action</b>	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,
<b>Obstructive Action</b>	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
<b>Prohibited Action</b>	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**

<b>Insurance against</b>	<b>Minimum amount of cover or minimum limit of indemnity</b>
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	<b><u>Loss of or damage to property</u></b> The replacement cost  <b><u>Bodily injury to or death of a person</u></b> 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

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

**INSURANCE TABLE B**

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

### 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 44 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- 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 44 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.

<b>Ambient Air</b>	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.
<b>Compliance Monitoring</b>	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.
<b>OEL</b>	means occupational exposure limit.
<b>Parallel Measurements</b>	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
<b>Safe Levels</b>	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.
<b>Standard</b>	means the <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
<b>SANAS</b>	means the South African National Accreditation System.
<b>TWA</b>	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.

### **Article III. Annexure A: Insurance provided by the Employer**

*These notes are provided as guidance to tendering contractors and the Contractor about the insurance provided by the Employer. Details of the insurance itself are available from the internet web link given below.*

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

[http://www.eskom.co.za/live/content.php?Item\\_ID=9248](http://www.eskom.co.za/live/content.php?Item_ID=9248)

## **Annexure B: The *Employer's* Panel of Adjudicators**

The following persons listed in alphabetical order of their surname have indicated their willingness to be included in the Eskom Panel of Adjudicators. Their CV's may be obtained by using the contact details provided.

Name	Location	Contact details (phone & e mail)
Nigel ANDREWS	Gauteng	+27 11 836-6760 nigela@quoin.net
Andrew BAIRD	Gauteng	+27 11 803 3008 <a href="mailto:andrewbaird@ecsconsult.co.za">andrewbaird@ecsconsult.co.za</a>
Christopher BINNINGTON	Gauteng	+27 11 888-6141 <a href="mailto:cdb@bca.co.za">cdb@bca.co.za</a>
Peter HIGGINS	UK	+44 1293 873 868 peterhiggins@pdconsult.co.uk
Bruce LEECH	Gauteng	+27 11 290 4000 leech@counsel.co.za
Nigel NILEN	Gauteng	+27 11 465 3601; nilences@global.co.za
Peter THURLOW	Gauteng	+27 11 787 6226 <a href="mailto:info@thurlowassoc.com">info@thurlowassoc.com</a>

**Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management, by contacting Marumo Lekoto on (+27 (0)11 800 5383 or (+27 86 667 4012); E-mail: [LekotoMH@eskom.co.za](mailto:LekotoMH@eskom.co.za)**

## C1.2 Contract Data

### Article IV. 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)<sup>3</sup> 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.

**Note: Mandatory tender returnable.**

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

Section 4 lause	Section 4.02 Statement	Section 4.03 Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
<b>Note: If the direct fee and subcontractor fee is not completed, payment will be at actual cost without any fee percentage considered</b>		
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:	

<sup>3</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 5391902 or [www.ecs.co.za](http://www.ecs.co.za)

Job

Responsibilities:

Qualifications:

Experience:

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

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

PART 2: PRICING DATA

TSC3 Option A

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

## C2.1 Pricing assumptions: Option A

### Article V. How work is priced and assessed for payment

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

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

### Article VI. 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.

### Article VII. 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).

### Article VIII. 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.

### **Section 8.01 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*

Resource	Unit	Quantities	Rate	Amount
<b>PRELIMINARIES AND GENERAL</b>				
Site Establishment	Once off	1		
Site De-establishment	Once off	1		
Safety PPE	Year	5		
Medical Clearance	Year	5		
Exit Medicals	Year	2		
Cellphone x 3 (Site Manager and 2 Technicians)	month	60		
Light driven vehicle	month	60		
Km charge for LDV	Km	135000		
Transport (Home Work Home)	Day	1825		
Accommodation (For Max 5 employees)	month	60		
Tools And Equipment	Year	5		
Hydraulic Test Bench	Year	5		
<b>NORMAL TIME</b>				
Site Manager	hr	10440		
Clerk	hr	10440		
Hydraulic Specialist	hr	5220		
Hydraulic Technician	hr	41760		
Assistant	hr	31320		
SHEQ Officer (Adhoc)	hr	3480		
<b>OVERTIME</b>				
Site Manager	hr	1044		
Hydraulic Specialist	hr	1044		
Hydraulic Technician	hr	522		
Assistant	hr	4176		
SHEQ Officer (Adhoc)	hr	783		
<b>PUBLIC HOLIDAYS / SUNDAYS</b>				
Site Manager	hr	280		
Hydraulic Specialist	hr	112		
Hydraulic Technician	hr	280		
Assistant	hr	280		
SHEQ Officer (Adhoc)	hr	280		
<b>STANDBY (9 periods per week)</b>				
Site Manager	period	270		
Hydraulic Technician	period	2340		
Assistant	period	2340		
<b>SPARES, MATERIAL AND CONSUMABLES</b>				
Allow for Spares, Materials and Consumables	Prov			
Overhead Percentage (only applicable to item 29)	%			
Profit Percentage (only applicable to item 29)	%			
<b>TOTAL</b>				



## PART 3: SCOPE OF WORK

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

## C3.1: EMPLOYER'S SERVICE INFORMATION

### 1 Description of service

#### 1.1 Executive Overview

Kusile Power Station Management has decided to outsource the total Hydraulic Maintenance Scope service function to a suitably qualified, experienced and well established Contractor. This document describes the detail of the applicable plant areas, scope of work, standards, quality, requirements, specifications, terms & conditions as well as the criteria to be met to qualify for the tender.

#### 1.2 Employer's requirements for service

##### 1.2.1. Purpose

The purpose of this document is to define the specified Hydraulic Maintenance Scope of Work activity requirements for Kusile Power Station. The station is expected to perform at 85% UCF, 10% PCLF and 5% UCLF, and the specified Hydraulic Maintenance Scope of Work and management strategy efforts must support this requirement. It is therefore imperative that the successful and suitably qualified Contractor aligns his/her organisation fully to these specified scope activities and processes laid down in **Kusile Power Station Hydraulic Maintenance scope of work information**

##### 1.2.2 Works Information

- a) The Contractor is required to perform Hydraulics Maintenance Services for all plant areas within Kusile Power Station. The Contractor will be issued with the work packages, describing the works that must be performed and on which equipment works must be performed. The Contractor shall record all as found condition and corrective actions performed in regard to this SOW. The components include but is not limited to the following equipment:
  - i. Hydraulic packs on all plant areas, i.e. Boiler, Turbine, Coal Plant, Ash Plant, Water Treatment Plant and all other Balance of plant
  - ii. Hydraulic Actuators
  - iii. Hydraulic motors
  - iv. Hydraulic solenoid valves
  - v. Hydraulic piping
  - vi. Hydraulic pumps
  - vii. Hydraulics tanks
  - viii. Filters
  - ix. Accumulators
  - x. Oil cooling components
  - xi. Flow control components
  - xii. Power cylinders
- b) The contractor will be required to fault find, assess the defects and determine the appropriate maintenance intervention.
- c) Hold points, shall be witnessed by the Maintenance Personnel and System Engineer.
- d) All materials and spares used shall be as per the specification of the Employer.

- e) The Contractor shall ensure that comprehensive service records and all related history documentation are recorded in SAP.
- f) The Contractor to execute the works within the times stipulated on the works order.
- g) All works will be governed by the Employer's works management process.
- h) The Contractor immediately reports any disabling injury as well as any threat to health or safety of which it becomes aware of on the site to the Employer.
- i) The works may only commence once the Contractor has received an official task order describing the works that must be performed and on which equipment this works must be performed.
- j) Qualified and experienced personnel should conduct supervision of Hydraulics Maintenance Services.
- k) The Contractor is to ensure that the work area is to be left in the same or a better state on completion of any work.
- l) The contractor shall be able to assist with all design requirements and drawings in regards to this SOW as and when required, the contractor shall then submit it to the Employer for approval. The drawings and designs will become the ownership of the Employer.

For every call out, the Contractor shall meet with the Employer's representative to discuss and agree on the repair method after full assessment of the defect.

### 1.3 Interpretation and terminology

For the purpose of interpreting this Service Information the following terminology shall apply:

The term '*service*', like all italicised terms used in the NEC3 Term Service Contract (June 2005), is identified in the Contract Data and is the title given to the overall scope of service in this contract. For this contract *service* is identified as the Kusile power station Hydraulic maintenance service.

Activities to be undertaken by the *Contractor* in performing the *service* are generally referred to as 'items of work'.

For this contract, secondary Option X19 of the NEC3 Term Service Contract (June 2005) has been selected which allows for work to be instructed by Task Order. A Task is defined as work within the *service* which the *Service Manager* may instruct the *Contractor* to carry out through Site Service Managers within a stated period of time. Tasks are identified at each power station for example, within outages, regular site maintenance, and other ad hoc work or project. Each Task Order will contain a priced list of items of work within the Task.

Where the word '*service*' is not italicised, it shall be given its common meaning. The terms '*site*' or '*power station site*' used in this Service Information means the area used by the *Employer* for the purpose of owning and operating the power stations. It must not be confused with the term *Site* used in other NEC contracts. The Affected Property identified in the Contract Data for this contract is an area or facility within these sites but it is not the whole of the site.

#### 1.3.1 Terms

- (1) Base/ Core crew: A complement of the Contractor's personnel based on site for the duration of at least one year and detailed in the Site Addendum.
- (2) Outage: A planned or unplanned shutdown project related to one or more of the Employer's Power Station units.
- (3) Regular site maintenance and repair work: Work that does not form part of an outage scope of service. This could include opportunity maintenance performed while a unit is on outage.
- (4) Addenda: This is referred to as the Power Station (Site) Addendum. Each Power Station produces its own Addendum to show in practical detail how the contract will be applied at that particular Site. It refers to topics in the main contract and provides the meaning of that term in its application at that Site.

The contents of a Power Station Addendum shall not contradict the terms of the main contract document.

(5) Contract services: The services specified in this contract including Hydraulic maintenance service that complies with all the requirements stated in the Service Information.

### 1.3.2 The following abbreviations are used in this Service Information:

Abbreviation	Explanation
<b>AP:</b>	Appointed Person
<b>BOM:</b>	Bills of Material
<b>BS:</b>	British Standard
<b>BU:</b>	Business Unit
<b>FFFR</b>	Fossil Fuel Firing Regulations
<b>ISO:</b>	International Standards Organisation
<b>ISO 55000</b>	International Standard for the Management of Physical Assets
<b>KKS:</b>	Kraftwerk Kennzeichen System
<b>KPA:</b>	Key Performance Areas
<b>KPI:</b>	Key Performance Indicator
<b>LV:</b>	Low Voltage (< 1000V)
<b>NEC:</b>	New Engineering Contract
<b>O&amp;M:</b>	Operating and Maintenance Manual
<b>OEM:</b>	Original Equipment Manufacturer
<b>PCLF:</b>	Planned Capability Loss Factor
<b>PM:</b>	Plant Maintenance
<b>PPE:</b>	Personal Protective Equipment
<b>PSR:</b>	Plant Safety Regulations
<b>QMP:</b>	Quality Management Programme
<b>RP:</b>	Responsible Person
<b>SABS:</b>	South African Bureau of Standards
<b>SANS:</b>	South African National Standards
<b>SAP:</b>	Systems, Applications, Products (Plant Maintenance, Procurement, Finance and Materials Management) integrated maintenance management system
<b>SAP PM:</b>	SAP Plant Maintenance
<b>SHE:</b>	Safety, Health, Environment
<b>SOW:</b>	Scope of Work
<b>UCF:</b>	Unit Capability Factor
<b>UCLF:</b>	Unplanned Capability Loss Factor
<b>PCLF:</b>	Planned Capability Loss Factor

## **2 Management strategy**

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

The *Contractor's* plan must be in line with the following Kusile Document.

Kusile Power Station Hydraulic Maintenance scope Maintenance Scope of Work

The *Contractor* must note that the maintenance strategy and operating philosophy documents and the plant maintenance schedules will be provided by the *Employer*.

### **2.2 Management meetings**

2.2.1. The *conditions of contract* (e.g. Clause 16.2) and other sections of the Service Information (e.g. safety risk management) may require that a meeting shall be held.

2.2.2. The intention is that the Parties and their agents use the techniques of partnering to manage the contract by holding meetings designed to pro-actively and jointly manage the administration of the contract with the objective of minimising the adverse effects of risks and surprises for both Parties.

2.2.3. Due to the size and complexity of the *service*, it is beneficial for the *Service Manager* to hold a monthly risk register meeting (Clause 16.2) and Monthly KPI Meeting. This could be used to discuss safety, compensation events, subcontracting, overall co-ordination and other matters of a general nature.

2.2.4. Separate meetings for specialist activities such as planning and activities of a technical nature may also be warranted. Meetings of a specialist nature may be convened as specified elsewhere in this Service Information or if not so specified by persons and at times and locations to suit the Parties, the nature and progress of the service. Records of these meetings will be submitted to the *Service Manager*, by the person convening the meeting within 5 days of the meeting.

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

2.2.6. Regular meetings of a general nature may be convened and chaired by the *Service Manager* on an as and when required basis.

### **2.3 Contractor's management, supervision, and key People**

The nature of the *service*, the range and location of Affected Property, and the manner in which the electricity power supply industry operates make it necessary to identify several role players for this contract.

#### **2.3.1. Employer's representatives**

The *Service Manager* may delegate the actions of him stated in this contract that are necessary for the setting up and administration of a Task Order.

The *Employer* shall in conjunction with the *Service Manager* appoint a Site Service Manager (SSM) for the work in this contract that is to be undertaken. The station SSM shall be responsible to the *Service Manager* for all Task Orders issued.

Duties of a general nature relating to the overall performance and administration of this contract will generally not be delegated by the *Service Manager*.

#### **2.3.2. Contractor's representatives**

The *Contractor* shall identify to the *Service Manager* one of his key persons as the overall contract administrator to be known as the *Contractor's* Contract Administrator (CCA).

The CCA shall submit to a power station SSM the name of a representative he proposes be appointed to carry out the actions of the *Contractor* stated in this contract necessary for the performance of a Task Order. Once the station SSM has accepted a person proposed by the CCA, that person shall be identified in the Task Order as the *Contractor's* Site Manager (CSM).

### 2.3.3. Contractor's Core Crew

The *Contractor* shall provide persons who will be continuously based at power stations where the SSM considers continuous representation of the *Contractor* is necessary. These persons shall be known and identified as the core crew.

The *Employer* may at no cost to the *Contractor* provide facilities for use by the core crew. During such time as the *Contractor's* employees are in possession or control of them, the *Contractor* shall be responsible and liable for them and for the use of them as though the facilities were the *Contractor's*. The *Contractor* shall use such facilities for work only in this contract, and shall not charge the *Employer* either directly or indirectly for their use.

## 2.4 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.

No invoices to be handed to an individual. There is no need for the *Purchaser Representative* to sign invoices as they perform Goods Receipt (GR) in the system. The Goods Receipt serves as the approval of payment. **Invoices must be delivered to the Eskom Documentation Centre (email to: [Invoiceseskomlocal@eskom.co.za](mailto:Invoiceseskomlocal@eskom.co.za)) as this will speed up the payment process and ensure that invoices are not lost and payments delayed.** Eskom Documentation Centre will review invoices according to a checklist and on completion scan the documentation into Accounts Payable processing system (Documentation can only be scanned where the Purchase order no. and Goods Receipt Note no. is reflected on the invoice, and the invoice complies with the VAT Act). Invoices are processed and released for payment by Accounts Payable Section only where the source documentation is 100% correct.

Invoices to be addressed to:

Eskom Holdings SOC Ltd  
Reg. No. 2002/015527/30  
Kusile Power Station  
Accounts Payable  
Private Bag X5009, Kriel 2271  
Email to: [Invoiceseskomlocal@eskom.co.za](mailto:Invoiceseskomlocal@eskom.co.za)

The *Supplier* keeps records of all invoices submitted and paid up to the end of the project, as well as details of Actual Costs.

The *Supplier* is required to follow the correct process to ensure the payment is effected in accordance with contractual payment terms. The following information to be reflected on each invoice:

- Name and address of the *Contractor* and the *Service Manager*;
- The contract number and title;
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number 4740101508;
- Description of service provided for each item invoiced based on the Price List;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;

*Supplier* is required to follow the correct process to ensure the payment is processed in accordance with contractual payment terms.

### Service related invoices

- a) Once the *service* have been delivered/completed both parties have to agree that the *service* has been delivered/completed successfully prior to invoicing

- b) An assessment payment certificate must be completed between the *Contractor* and *Service Manager* according to the *service* performed. Both parties have to sign the assessment/certificate
- c) A copy of assessment/payment certificate must be obtained by the *Contractor* to enable the creation of an invoice and to prevent any discrepancies. A copy of the assessment/payment certificate must be attached to the original invoice
- d) *Service Manager* performs a service entry and Goods Receipt on the SAP system. (Assessment/Payment Certificate issued as a source document for Service Entry Goods Receipt)
- e) *Service Manager* will forward the Service entry and Goods Receipt Note number to the *Contractor* within 3 working days after the *service* has been rendered and the Assessment/Payment certificate signed
- f) *Contractor* must forward the original invoices together with a copy of the Assessment/Payment certificate to the Eskom Documentation Centre.

#### **Goods Delivered Invoices**

- a) Once the Goods are delivered, the *Service Manager* performs a Goods Receipt on the SAP system. (The delivery note is used as source document for Goods Receipt. The invoice should not be used as a delivery note)
- b) *Service Manager* will then forward the Goods Receipt note to the Vendor immediately or within 3 working days after the Goods are delivered.
- c) Vendors must then forward the Invoices together with a copy of the Assessment/Payment certificate to the Eskom Documentation Centre

#### **General Information related to Eskom Invoices**

- a) *Contractor* must ensure that the Service Entry and Goods Receipt Note number appears on the invoice. (It can be printed or hand written on the invoice).
- b) Eskom Purchase Order number must appear on invoice.
- c) Invoices must be VAT compliant in line with the VAT Act requirements.
- d) Invoices submitted must reflect the bank account details. A once off copy of the banking details may be forwarded to the Documentation Centre and it will be attached to each scanned invoice.
- e) Invoices must be original or certified as an original in line with the VAT Act. No electronic invoices will be accepted.
- f) Eskom's correct name "**Eskom Holdings SOC Limited**" must appear on the invoice.
- g) The Eskom VAT registration number: **4740 101 508** must appear on the invoice.
- h) No pro-forma invoices will be accepted.
- i) *Contractor* cannot be utilized by Eskom for more than 3 times without a contract being established.

#### **2.5 Management of work done by Task Order**

A Task Order starting with a 45\* series number, will be issued to the Contractor at the beginning of each month. Response to the issued Task Order must be dealt with as per secondary option X19 of this agreement.

### **3 Health and safety, the environment and quality assurance**

#### **3.1 Health and Safety risk management**

Each location where the *service* is carried out (see paragraph 1.4) has a health and safety specification or procedure and safety risk management requirements relevant to that location (the *Employer's* site Health and Safety Plan). The CSM shall ensure that he is a registered recipient of such documentation at each location where work is carried out, and is always in possession of the current version of such documentation before any work in this contract is undertaken at that location.

The *Contractor* shall comply with the requirements imposed on a contractor / Contractor stated in the current version of such documentation at each location where work in this contract is carried out and shall identify to the relevant SSM the name of the *Contractor's* person responsible for monitoring such compliance.

The *Contractor* shall ensure that he is in possession of documentation relevant to protection of the environment at each location where work in this contract is carried out and shall comply with the requirements imposed on a contractor / Contractor stated therein.

Section 1.01 The Contractor shall keep records which demonstrate compliance with all health, safety and environmental requirements whether statutory or otherwise and shall allow the SM or relevant SSM to inspect them at any time within working hours. Employer's Health and Safety Requirements

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

(1) The provisions of the Occupational Health and Safety Act 85 of 1993 (as amended) and all regulations in force from time to time in terms of that Act ("the Occupational Health and Safety Act, ACT 85, OF 1993"); and

(2) The Eskom "Safety, Health and Environmental Requirements for Contractors" document (as amended from time to time) and such other Eskom Safety Regulations as are applicable to the Services and are provided in writing to the *Contractor* (collectively "the Eskom Regulations"). The Eskom Regulations may be amended from time to time by the *Employer* and all amendments will be provided in writing to the *Contractor*. The *Contractor* complies with the provisions of the latest written version of the Eskom Regulations with which it has been provided; and the health and safety plan prepared by the *Contractor* in accordance with the SHEQ Requirements. (The Occupational Health and Safety Act, Act 85, OF 1993 and the Eskom Regulations are collectively referred to as the "SHEQ Requirements".)

The *Contractor*, at all times, considers itself to be the "Employer" for the purposes of the Health and Safety Act, Act 85, OF 1993 and shall not consider itself under the supervision or management of the *Employer* with regard to compliance with the SHEQ Requirements, the *Contractor* shall furthermore not consider itself to be a subordinate or under the supervision of the *Employer* in respect of these matters. The *Contractor* is at all times responsible for the supervision of its employees, agents, Subcontractors and mandatories and takes full responsibility and accountability for ensuring they are competent, aware of the SHEQ Requirements and execute the Services in accordance with the SHEQ Requirements.

The *Contractor* ensures that all statutory appointments and appointments required by any Eskom Regulations are made and that all appointees fully understand their responsibilities and are trained and competent to execute their duties. The *Contractor* supervises the execution of their duties by all such appointees.

The SSM, or any person appointed by the *Employer*, may, at any stage during the currency of this contract:

- (1) Conduct health and safety audits regarding all aspects of compliance with the SHEQ Requirements, at any off-site place of work, or the site establishment of the *Contractor*;

### **3.2 Environmental constraints and Management**

- 1 The Contractor is required to ensure that all goods, services, or Works supplied in terms of the Contract conform to all applicable environmental legislation ISO 14001.
- 2 Where Work is done on Eskom sites the goods, services, or Works supplied will also conform to Eskom Environmental Specifications.
- 3 Disposal of Waste
  - (a) Waste shall be removed promptly to the designated deposit areas. No stockpiling will be permitted.
  - (b) All removal and disposal of waste shall be handled in accordance with the local environmental procedure.



- (c) Refuse any employee, Subcontractor or agent of the Contractor access to the premises if such person has been found to commit an unsafe act or any unsafe working practice or is found not to be qualified or authorised in terms of the SHEQ Requirements;
- (d) Issue the Contractor with a stop order should the Site Services Manager become aware of any unsafe working procedure or condition or any non-compliance with any provision of the SHEQ Requirements.

The *Contractor* immediately reports any disabling injury as well as any threat to health or safety of which it becomes aware at the *Service* or on the Site to the SSM.

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

The *Contractor* confirms that it has been provided with sufficient written information regarding the health and safety arrangements and procedures applicable to the Services to ensure compliance by it and all employees, agents, Subcontractors or mandatories with the SHEQ Requirements while providing the Services in terms of this contract. As such, the *Contractor* confirms that this contract and the relevant Eskom Regulations referred to in this contract constitute written arrangements and procedures between the *Contractor* and the *Employer* regarding health and safety for the purposes of section 37(2) of the Occupational Health and Safety Act 85, OF 1993, as well as the Construction Regulations.

The *Contractor* agrees that the *Employer* is relieved of any and all of its responsibilities and liabilities in terms of Section 37(1) of Occupational Health and Safety Act 85, OF 1993 in respect of any acts or omissions of the *Contractor*, and the Contractor's employees, agents or Subcontractors, to the extent permitted by the Occupational Health and Safety Act 85, OF 1993, as well as the Construction Regulations.

The Contractor hereby indemnifies the Employer and holds the Employer harmless in respect of any and all loss, costs, claims, demands, liabilities, damage, penalties or expense that may be made against the Employer and/or suffered or incurred by the Employer (as the case may be) as a result of, any failure of the Contractor, its employees, agents, Subcontractors and/or mandatories to comply with their obligations in terms of this clause 18, and/or the failure of the Employer to procure the compliance by the Contractor, its employees, agents, Subcontractors and/or mandatories with their responsibilities and/or obligations in terms of or arising from the Occupational Health and Safety Act, ACT 85, OF 1993, as well as the Construction Regulations.

### **3.3 Quality Assurance**

- 1 *The Contractor complies with the applicable quality standards and requirements relative to the required scope of service.*
- 2 *The Contractor will comply with the Employer's Quality Requirements as specified in QM- 58 (Supplier Contract Quality Requirements Specification) in to the Service Information. Annexure B to this Standard indicates the specific application thereof.*
- 3 *A Quality Management Plan must be submitted if required in terms of the Task Order.*
- 4 *All quality Control documentation must be submitted to the Site Services Manager within 7 (Seven) days after contract award, but 15 days prior to the possession date.*

## **4 Procurement**

### **4.1 People**

#### **4.1.1. Minimum requirements of people employed**

Please note: Kusile Maintenance Contracts User Requirement Specification, Unique identifier 237-0012 Rev 5 must be adhered too.

## 4.2 Plant and Materials

### 4.2.1. Specifications

**The Contractor complies with the Occupational Health and Safety procedures issued by the Employer. The contractor must furthermore comply with the Employer's Safety, Health and Environment Procedure for Contractors, which are site specific as per the list below:**

Employer's Health And Safety Requirements	
Occupational Health And Safety Act, Number 85 Of 1993	OHS Act 85 Of 1993
Quality Requirements For Engineering And Construction Works	ESKASAAA3: Rev 0
Programming And Progress Monitoring Services-Equipment Supply Contractor	NWS 1065
Plant Safety Regulations	OPR 3305
SABS Quality Standards	SABS ISO 9000
Occupational Hygiene	NWS 1489
Commissioning	NWS 1007/P
Accident Prevention Activity Report	NWP 5051
Eskom Environmental Practices and Standards	
Quality Programme ISO9000/1/2	
Construction Regulations of 18 July 2003 or latest version	
Construction Safety, Health and Environment management in Eskom	EPC32-136 rev 0
Eskom vehicle and driver safety management	EPC32-93 rev 0

### 4.2.2. Tests and inspections before delivery

- It is the *Contractor's* responsibility to ensure machinery and equipment intended for use on this contract are inspected tested and certified prior to delivery on site.
- Regular inspections can be carried out by the employer on an as and when required basis
- The contractor and the employer must maintain communication regarding the tests and inspections that must be done and give feedback on the results obtained. The contractor must notify the employer in time for a test or inspection to be arranged and done before doing work which will obstruct the test or inspection

### 4.2.3. Plant and material free issue by the employer

- Special tools
- Workshop tools (excluding consumable and the Artisans' toolbox kits)
- Radio communication

## 5 Working on affected property

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

#### 5.1.1. Site Access

- The Kusile Project Access Control Process will be strictly followed. Only once the Kusile Project allows hand over of this facility to Kusile Generation, the Employer's security access system will be used.
- Upon Commercial Operation of the first Unit, the Affected Property will be declared a National Key Point (NKP), and all regulations, Laws and procedures relating to NKP, strict adherence will be implemented.

- Each of the Contractor's employees, including sub-Contractors, will be required to undergo compulsory safety induction, medical screening and all other necessary assessments before access will be granted.
- The Contractor must comply with the speed limit on site.
- The Contractor must be mindful that Kusile Power Station is still under construction and that caution must be exercised at all times when working or driving on the Affected Property. Hence there will be movement of Plant, Materials, Equipment and People, that can impact on the Contractor's daily outputs. Site instruction will be issued from time to time, to which the Contractor must adhere too.
- The Contractor must note that areas that are PPE free zones are demarcated and indicated, but PPE must always be worn when required to do so.

#### **5.1.2. Transportation of passengers: open LDV's:**

- No Contractor employee shall be allowed to transport passengers on the back of open light delivery vehicles (LDV's).
- It is a legal requirement to provide safe transportation of Eskom and Contractor employees – therefore the following will be enforced:
- All passengers must be transported in a closed vehicle with proper and adequate seating, fitted with safety belt for the number of passengers to be transported. NO passengers may be transported on the back of a light delivery vehicle (LDV) whether open or closed.
- Tools and equipment must be properly secured.
- Only authorised drivers may transport passengers.
- Proof must be submitted on request in terms of valid roadworthiness of the vehicle/s.
- The above must apply to on site and off site transportation of passengers.

#### **5.1.3. Eskom Cardinal Rules:**

Five Cardinal Rules have been developed that will apply to all Eskom employees, agents, consultants and contractors.

- Rule 1: Open, Isolate, Test, Earth, Bond, and/or Insulate before touch - that is any plant operating above 1 000 V.
- Rule 2: Hook up at heights - no person may work at height where there is a risk of falling.
- Rule 3: Buckle up – no person may drive any vehicle on Eskom business and/or on Eskom premises: unless the driver and all passengers are wearing seat belts.
- Rule 4: Be sober (no person is allowed to work under the influence of drugs and alcohol).
- Rule 5: Use a permit to work – where an authorization limitation exists, no person shall work without the required permit to work.

#### **5.1.4. Barricading and Screens**

*The Contractor shall, where he is working, provide and install barricades and warning devices to ensure that Equipment and persons are not exposed to danger and to prevent access to dangerous areas.*

#### **5.1.5. Fire precautions**

In case of a fire the Contractor contacts the control room immediately.

- (1) *Before commencing with any work, the Contractor must communicate with the fire co-ordinator (Fire Dept.) to discuss any fire precautions that may be required.*
- (2) *The Contractor is not allowed to tamper with the Employer's fire equipment.*
- (3) *All exit doors, fire escape routes, walkways, stairways and stair landings must be kept free of obstructions.*
- (4) *Firefighting equipment must remain accessible at all times.*
- (5) *"Hot work" procedure and PTW system to be adhered to at all times.*

#### **5.1.6. Permit to Work System**

- (1) *NO service shall be carried out without a "PERMIT TO WORK" as applicable to each Site.*
- (2) *The Contractor will be expected to have their own Responsible Persons authorised as agreed with SSM.*
- (3) *The Contractor's Responsible Person must satisfy himself that all sources of possible danger are isolated. Details of the Permit to Work system can be found in the Plant Safety Regulations, Eskom OPR 3305.*
- (4) *A Permit to Work (where applicable) is used on declared major outages, details can be found in the plant safety regulations. Permit changes are made during the dead time, if it is required by the Contractor that a certain supply be made available or plant tested then this can be applied for at the Project Management Meeting at least 1 day in advance.*
- (5) *Plant with a prohibitive sign attached may only be operated by appointed Employer personnel. Any Contractor employee found tampering with such plant will be permanently removed from site.*
- (6) *"Hot work" procedure and Permit requirements to be adhered to when any hot work is conducted.*

#### **5.1.7. Safety Induction Course**

- (1) *All the employees of the Contractor shall attend a safety induction course before they will be allowed to work on the Site. It is the responsibility of the Contractor to ensure that all employees have attended the safety induction.*
- (2) *A list of employees requiring safety induction must be submitted at least 2 days in advance of arrival on site with the date and time of arrival so that the safety induction can be arranged*

#### **5.2 Cooperating with and obtaining acceptance of others**

- Kusile Power Station is a construction site and therefore the Affected Property is shared and accessible by others i.e. OEM's, Kusile Project employees etc.
- Should the Contractor request any interfaces with others it will be co-ordinated by the Employer, should the need arise.

#### **5.3 Records of Contractor's Equipment**

The Contractor complies with the access and controls procedures issued by each power station site where work in this contract is carried out. The Contractor shall obtain copies of such requirements from the SSM at each power station site. The contents of such documents applicable at the Contract Date are deemed to be part of this Service Information.

The Service Manager, SSM's and any other employee or agent of the Employer shall comply with the Contractor's access and control procedures at places under the Contractor's ownership or control.

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

##### **People Restrictions**

People are restricted to the Affected Property only.

##### **Hours of Work**

- Normal working hours will be determined by the Parties
- A standby roster will be determined by the Parties
- The Contractor will align his Operating Shifts to that of the Employer's Five Shift Cycle

##### **Conduct**

- The *Contractor* and his employees are required to maintain professional and ethical conduct at all times, that up holds the Eskom Values to the highest standard.
- Should the *Contractor's* employees be found to contravene the Eskom Values, Life Saving Rules and / or any of the aforementioned regulations, the *Contractor* must institute disciplinary action, which may include removal from site, until the disciplinary process is concluded.

## **5.5 Site Services and Facilities**

### **5.5.1. Provided by the employer**

- (1) The site and lay down area for offices and storage of equipment.
- (2) Detailed activity schedule including date and time and updates as required from time to time.
- (3) 380V 63A and 220V 15 Amp facilities.
- (4) Tie-in point for toilet facilities
- (5) Toilet facilities are available within the Power Station boundaries.
- (6) Potable water supply.
- (7) Compressed air supply (oil free & dry) to a pressure between 620 and 640 kPa.
- (8) Plant permits where required prior to work commencing.
- (9) *Outage* programs and updates.
- (10) Medical services are available at the medical centre in case of emergency and expenses incurred are for the *Contractor's* account.
- (11) Telecommunication installations and telephone accounts are for the *Contractor's* account.
- (12) The *Employer* may provide "free issue" material or items where deemed applicable.

Section 1.01 The Employer may provide crane and hoists, but this service will only be provided if available and also by prior arrangement with the SSM.

### **5.5.2. Provided by the contractor**

- (1) Workshop and Testing facilities
- (2) Offices
- (3) Stationery
- (4) Artisan tools

## **6 Integrated Business Improvement (IBI) Awareness Techniques**

- To prevent incidents and ensure continuous improvement of Power Stations business performance in all areas affecting safety, reliability and production, it is expected of all CONTRACTORS service personnel, to attend a three(3) hour training session on Integrated Business Improvement Awareness, which has to be done as soon as work has commenced; This is to ensure familiarisation and use of error-prevention tools/techniques inclusive of, Pre and Post-job briefs, Risk Assessments, Self-checks(STAR principle), Job observations, Effective communications e.g.3-way, Questioning attitude, Procedural adherence, Hand over and other related topics.
- A monthly IBI scorecard to be completed indicating the use of error prevention tools/ techniques; the assigned employee fulfilling the role of IBI representative has to attend the IBI representative's forum fortnightly, on Tuesdays, duration one hour.

## **7 List of drawings**

### **7.1 Drawings issued by the Employer**

All necessary drawings will be supplied with applicable task order

**Appendix A – X17 Service Level Table**

Criteria	Weight	Unit	Target	Penalty 3%	Penalty 5%	Penalty 10%
Repair Program Slip	20%	Hrs	1hrs	1hrs to 4hrs	4hrs to 12hrs	12hrs & max
Rework (per plant area/activity vs targets)	20%	Number	0	1	5	10
Spares and Equipment Availability	15%	Number	0	3 times	5 times	7 times
Call-out response time	15%	Hrs	2 Hrs	2hr to 3hrs	3hrs to 5hrs	5hrs & max
Non-conformance reports (NCR) issued to Contractor/ NCR Response overdue	20%	Number	0	1	2	5
SHEQ audit findings	10%	Number	0	1	2	5