

**CONTRACT NUMBER:**

**DESCRIPTION OF THE WORKS:** THE SUPPLY, SERVICING, AND CERTIFICATION OF FAS EQUIPMENT IN THE ERI CONSTRUCTION SERVICES, BUSINESS UNIT AT THE VARIOUS POWER STATIONS OVER A PERIOD OF ONE YEAR (12 MONTHS).

## NEC3 Term Service Contract (TSC3)

**Between ESKOM ROTTEK INDUSTRIES SOC Ltd**  
**(Reg No. 1990/006897/30)**

**and**

**Reg No.**

**for The Supply, Servicing, and Certification of FAS  
Equipment in the ERI Construction Services  
Business Unit, at the various Power Stations over a  
period of One Year (12 months).**

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**Documentation prepared  
by:**

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Rosherville

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## PART C1: AGREEMENTS & CONTRACT DATA

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## C1.1 Form of Offer & Acceptance

### Offer

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

The Supply, Servicing, and Certification of FAS Equipment in the ERI Construction Services Business Unit, at the various Power Stations over a period of One Years (12 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

**For the  
tenderer:**

Name &  
signature of  
witness

Tenderer's CIDB registration number:

Date

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## Acceptance

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

The terms of the contract, are contained in:

Part C1	Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: Service Information and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts

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

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

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

Signature(s)

Name(s)

Capacity

for the  
Employer

**Eskom RoteK Industries SOC Ltd, Lower Germiston Road,  
Rosherville, Cleveland, Johannesburg, 2001**

Name &  
signature of  
witness

Date

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

Note:

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

No.	Subject	Details
1	[•]	[•]
2	[•]	[•]
3	[•]	[•]
4	[•]	[•]

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

**Eskom Rotek Industrial SOC Ltd**

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## C1.2 TSC3 Contract Data

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

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		A: Priced contract with price list
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	X1: Price Adjustment for inflation
		X2: Changes in the law
		X19: Task Order
		Z: Additional conditions of contract
	of the NEC3 Term Service Contract April 2013 (TSC3)	
10.1	The <i>Employer</i> is (name):	Eskom RoteK Industries SOC Ltd (Reg no: 1990/006897/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered Address: 3 Lower Germiston Road Rosherville Cleveland 2022
		Postal Address: PO Box 40870 Cleveland 2022
	Tel No.	011 621 3000
10.1	The <i>Service Manager</i> is (name): <b>Stephan Bester</b>	
	Address	Roshland Office Park Lower Germiston Road Rosherville

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Tel: 013 699 7700

E-mail: [BesterSt@eskom.co.za](mailto:BesterSt@eskom.co.za)

11.2(2)	The Affected Property is	
11.2(13)	The <i>service</i> is	The Supply, Servicing, and Certification of FAS Equipment in the ERI Construction Services Business Unit, at the various Power Stations over a period of one Year (12 months).
11.2(14)	The following matters will be included in the Risk Register	<ol style="list-style-type: none"> <li>1. Late Deliveries</li> <li>2. Supply or replacement of Safety Harnesses not to specifications</li> </ol>
11.2(15)	The Service Information is in	Scope of Services.
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	5 Working Days
2	<b>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	One week from receiving the draw down Purchase Order
3	<b>Time</b>	
30.1	The <i>starting date</i> is.	As an when required
30.1	The <i>service period</i> is	12 months
4	<b>Testing and defects</b>	
40.1	The <i>Contractor</i> submits the following tests and inspections	As per specification
40.2	The <i>Contractor</i> will provide;	Records, datasheets, materials, facilities and samples for all tests and inspections
40.3	The notification period for test and inspections	Contractor will notify the Service Manager five days after contract starting date
40.4	Correction of a defect	Defects will be corrected by the Contractor and Clauses 40.1 and 40.2 will apply
40.6	The costs for the correction of defects will be	For the Contractor's account – inclusive of delivery and off-loading costs
41.1	The Contractor does not bring the goods to the Delivery Place	Before inspections and testing.

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42	The defects date is	<b>52 weeks after delivery of goods and services</b>
42.1	The defect correction period is	<b>2 weeks after delivery of goods and services</b>
42.2	The defects access period is	<b>1 Week</b>
43.1	The costs for correcting defects not corrected by the Contractor	<b>Will be for the Contractor's account – inclusive of delivery and off-loading costs</b>
<b>5</b>	<b>Payment</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>30 days from issue of invoice</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 Rand.</b>
<b>6</b>	<b>Compensation Events</b>	
		<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>
<b>7</b>	<b>Use of Equipment Plant and Material</b>	
		<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>
<b>8</b>	<b>Risks and insurance</b>	
80.1	These are additional <i>Employer's</i> risks	<b>Not Applicable.</b>
83.1	The <i>Contractor</i> provides these insurances from the Insurance table:	<b>As stated for "Format TSC3" available on <a href="http://www.eskom.co.za/live/content.php?item D=9248">http://www.eskom.co.za/live/content.php?item D=9248</a> (see Annexure A for basic guidance)</b>
83.1	The <i>Contractor</i> provides these additional insurances:	<b>As stated for "Format TSC3" available on <a href="http://www.eskom.co.za/live/content.php?item D=9248">http://www.eskom.co.za/live/content.php?item D=9248</a> (see Annexure A for basic guidance)</b>
83.1	The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is	<b>The amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on <a href="http://www.eskom.co.za/live/content.php?item D=9248">http://www.eskom.co.za/live/content.php?item D=9248</a></b>



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(see Annexure A for basic guidance)		
83.1	The minimum amount of cover for insurance in respect of loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one event is:	<b>Whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i>.</b>
83.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:	<b>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R 500 000 (Five Hundred Thousand Rands).</b>
<b>9</b>	<b>Termination</b>	<b>Notice period – 30 days</b>
<b>10</b>	<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with price list</b>	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than	<b>4 weeks.</b>
<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i>	<b>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 <i>Adjudicator</i> the <i>Adjudicator</i> will be appointed by the <i>Arbitration</i> Foundation of Southern Africa (AFSA).</b>
W1.2(3)	The <i>Adjudicator nominating body</i> is:	<b>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.</b>
W1.4(2)	The <i>tribunal</i> is:	<b>arbitration</b>
W1.4(5)	The <i>arbitration procedure</i> is	<b>The latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</b>
	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	<b>The Chairman for the time being or his</b>

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	- if the arbitration procedure does not state who selects an arbitrator, is	nominee of the Association of Arbitrators (Southern Africa) or its successor body.		
12	Data for secondary Option clauses			
X1	Price Adjustment for inflation			
X1.1	The base date for indices is		Not applicable	
	The proportions used to calculate the Price Adjustment Factor are:	<u>proportion</u>	<u>linked to index for</u>	<u>Index prepared by</u>
X2	Changes in the Law			
X2.1	A Change in the law in		South Africa, this is a compensation event if the change happens after the Contract Date	
X19	Task Order			
X19.5	The Contractor submits a Task Order programme to the Service Manager within		5 days of receiving the Task Order	
Z	The additional conditions of contract are		Z1 to Z11 always apply.	
Z1	Cession delegation and assignment			
Z1.1	The Contractor does not cede, delegate, or assign any of its rights or obligations to any person without the written consent of the Employer.			
Z1.2	Notwithstanding the above, the Employer may on written notice to the Contractor cede and delegate its rights and obligations under this contract to any of its present divisions or operations which may be converted into separate legal entities or to Eskom SOC Limited or any of Eskom SOC Limited's subsidiaries.			
Z2	Joint ventures			
Z2.1	Not Applicable.			
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			

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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.

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**Z4 Ethics**

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Contractor*, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Contractor's* obligation to Provide the Service or taking any other action as appropriate against the *Contractor* (including civil or criminal action).
- Z4.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if the *Contractor* (or any member of the *Contractor* where the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.
- Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Contractor* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.
- Z4.3 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P4 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.
- 

**Z5 Confidentiality**

- Z5.1 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.
- Z5.2 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*.
- Z5.3 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.
- Z5.4 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*.
- Z5.5 The *Contractor* ensures that all his Contractors abide by the undertakings in this clause.
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**Z6 Waiver and estoppel: Add to core clause 12.3:**

- Z6.1 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.
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<b>Z7</b>	<b>Health, safety, and the environment: Add to core clause 27.4</b>
Z7.1	<p>The <i>Contractor</i> undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the <i>service</i>. Without limitation the <i>Contractor</i>:</p> <ul style="list-style-type: none"> <li>• Accepts that the <i>Employer</i> may appoint him as the “Principal Contractor” (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health &amp; Safety Act 85 of 1993) (“the Construction Regulations”) for the Affected Property;</li> <li>• 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 &amp; 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 &amp; safety in and about the execution of the <i>service</i>; and</li> <li>• Undertakes, in and about the execution of the <i>service</i>, to comply with the Construction Regulations and with all applicable health &amp; safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his <i>Contractors</i>, employees and others under the <i>Contractor’s</i> direction and control, likewise observe and comply with the foregoing.</li> </ul>
Z7.2	<p>The <i>Contractor</i>, in and about the execution of the <i>service</i>, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his <i>Contractors</i>, <i>employees</i> and others under the <i>Contractor’s</i> direction and control, likewise observe and comply with the foregoing.</p>
<b>Z8</b>	<b>Provision of a Tax Invoice and interest. Add to core clause 51</b>
Z8.1	<p>Within one week of receiving a payment certificate from the <i>Service Manager</i> in terms of core clause 51.1, the <i>Contractor</i> provides the <i>Employer</i> with a tax invoice in accordance with the <i>Employer’s</i> procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.</p>
Z8.2	<p>If the <i>Contractor</i> does not provide a tax invoice in the form and by the time required by this contract, the time by when the <i>Employer</i> 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 <i>Employer</i> in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.</p>
Z8.3	<p>The <i>Contractor</i> (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 <i>Employer’s</i> VAT number 4330196330 on each invoice he submits for payment.</p>
<b>Z9</b>	<b>Notifying compensation events</b>
Z9.1	<p>Delete the last paragraph of core clause 61.3 and replace with:</p> <p>If the <i>Contractor</i> 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.</p>
<b>Z10</b>	<b>Employer’s limitation of liability</b>
Z10.1	<p>The <i>Employer’s</i> liability to the <i>Contractor</i> for the <i>Contractor’s</i> indirect or consequential loss is limited to R0.00 (zero Rand)</p>
Z10.2	<p>The <i>Contractor’s</i> entitlement under the indemnity in 82.1 is provided for in 60.1(14) and the <i>Employer’s</i> liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract</p>
<b>Z11</b>	<b>Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words “against it”:</b>
Z11.1	<p>Or had a business rescue order granted against it.</p>
<b>Z12</b>	<b>Ethics</b>

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

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

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

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

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

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

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

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

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

- Z 12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z 12.2 The Purchaser may terminate the Contractor's obligation to Provide the Goods and 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 Purchaser 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 Purchaser can terminate the Contractor's obligation to Provide the Goods and Services for this reason.
- Z 12.3 If the Purchaser terminates the Contractor's obligation to Provide the Goods and Services for this reason, the procedures and amounts due on termination are respectively P1, P2 and P3, and A1 and A3.
- Z 12.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the Purchaser does not have a contractual bond with the Committing Party, the Contractor ensures that the Committing Party co-operates fully with an investigation.

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## Annexure A: Insurance provided by the Employer

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

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

[http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS\\_Policies\\_From\\_1\\_April\\_2014\\_To\\_31\\_March\\_2015.aspx](http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx)



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## C1.2 Contract Data

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

**Notes to a tendering *contractor*:**

1. Please read both the both the NEC3 Term Service Contract April 2013 and the relevant parts of its Guidance Notes (TSC3-GN)<sup>2</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.

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

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is  The <i>subcontracted fee percentage</i> is	
11.2(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:	
<b>A</b>	<b>Priced contract with price list</b>	
11.2(12)	The <i>price list</i> is in	
11.2(19)	The tendered total of the Prices is	

<sup>2</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 5391902 or [www.ecs.co.za](http://www.ecs.co.za)

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## PART 2: PRICING DATA

### TSC3 Option A

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



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## C2.1 Pricing assumptions: Option A

### 1.1 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	<p>(12) The Price List is the <i>price list</i> unless later changed in accordance with this contract.</p> <p>(17) The Price for Services Provided to Date is the total of</p> <ul style="list-style-type: none"> <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> <p>(19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.</p>

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

### 1.2 Measurement and Payment

- 1.2.1 The Price List provides the basis for all valuations of the Price for Services provided to Date, payments in multiple currencies and general monitoring.
- 1.2.2 The amount due at each assessment date is based on activities and/or milestones completed as indicated on the Price List.
- 1.2.3 The Price List work breakdown structure provided by the *Contractor* is based on the activity/milestone provided by the *Employer*. The activities listed by the *Employer* are the minimum activities acceptable and identify the specific activities which are required to achieve Completion. The Price List work breakdown structure is compiled to the satisfaction of the *Employer* with any additions and/or amendments deemed necessary.
- 1.2.4 The *Contractor's* detailed Price List summates back to the activity/milestone provided by the *Employer* and is sufficient detail to monitor completion of activities related to operations on the Accepted Plan in order for payment of completed activities may be assessed.
- 12.5 The prices are obtained from the Price List. The Prices includes for all direct and indirect cost, overheads, profits, risks, liabilities, obligations, etc. relative to the contract.

## C2.2 the *price list*

Description	Qty	Unit	Rate	Amount
Supply or replace Safety Harnesses as per PERSONAL PROTECTIVE EQUIPMENT FOR WORK AT HEIGHTS SPECIFICATION 240-100979499	200	EA		
Recertification of Safety Harnesses	500	EA		
Replacement of Safety Harness Lanyards	500	EA		
Supply Tool Lanyards for Working at Heights	1000	EA		
<b>Total</b>				



## C3.1: EMPLOYER'S SERVICE INFORMATION

### 1 Overview and purpose of the *goods* and *services*

#### 1.1 Logistics and Delivery to Site

The *Contractor* must prior to the commencement of deliveries, must provide a safety file for the transport service provider, safety file must include inter alia; medical certificates, drivers licence of driver, competency certificates for the truck crane operator, crane driver, forklift driver and rigger.

- Vehicle roadworthy certificate
- Load test certificates for mobile and/or truck crane to be provided
- Competence certificate to be provided (for all drivers/operators)
- Crane truck and/or mobile crane for delivery to be supplied by the *Contractor* – the crane lifting capacity must be aligned with the goods being delivered.
- Spreader beams and certificate for offloading
- Load test certificates of all cable supplied

#### 1.2 Specification and description of the goods

The supply of Tool Lanyards for Working at Heights and the Supply or replacement of Safety Harnesses must comply with Eskom's specification - 240-100979499 Personal Protective Equipment for Working at Heights.

Recertification of Safety Harnesses.

#### 1.3 Interpretation and Terminology

The following terminology is used in this Works Information:

Terminology	Description/Interpretation
N/A	N/A

The following abbreviations are used in this Works Information:

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Abbreviation	Meaning given to the abbreviation
B-BBEE	Broad Based Black Economic Empowerment
EMP	Environment Management Plan
PMRRM	Pre-Mobilization Readiness Review Meeting
QM	Quality Management
RoD	Record of Decision
SAPS	South African Police Services
SD&L	Contractor Development and Localisation
SSA	Site Specific Agreement
TSC	Term Services Contract

## 2 Management Strategy and Start Up

### 2.1 Management Meetings

The following requirements for conducting Project Site meetings apply to the Works. The Contractor and all Sub-Contractors shall actively participate in and adhere to the Employer's requirements and other procedures initiated for the purpose of maintaining the Project administrative control. The Contractor and all Sub-Contractors shall attend Project meetings when deemed required by the Employer to coordinate the execution of the scope.

Title and Purpose	Approximate Time & Interval	Location	Attendance by:
Progress feedback meeting	Weekly – to be confirmed	Contractor Office	Employer and Contractor Project Manager
Safety management meeting	Weekly	CM building	Employer and Contractor's Risk Officer

### 2.2 Contractor's Management, Supervision and Key People

The Contractor shall provide the Employer with a detailed organogram of all staff and management on the contract. This must be revised quarterly and must reflect any changes to the staff and management structure. The Employer reserves the right to audit and verify the structure.

### 2.3 Documentation Control

The Contractor will submit the following documents to the Employer for review, the Employer will review the documents for acceptance and inform the Contractor if the documents have been accepted or if it is not accepted and stating the reasons of not the accepting the documentation. The Employer will give the Contractor reasonable time which will be agreed to between the Contractor and the Employer to respond or re-submit the documents.

The documents are as follows:

Title and purpose	Frequency
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Weekly plan	Every Monday of the week
Weekly progress report, reporting on actual work completed.	Every Monday of the week, reporting on the previous week's progress
Three weeks look ahead plan – detailing planned activity during the period	Monthly
Risk Register	Monthly
SD&L Reports	Quarterly, before the 5 <sup>th</sup> day of the month

All correspondence of either commercial or technical nature, whether hard copy or email, either to Contractor or from Contractor shall clearly include the following information: file number, contract number and subject matter.

Documents shall be delivered in electronic format (Microsoft Office 2003 compatible or Adobe Acrobat (pdf) files). In addition, a document list shall be delivered in Microsoft Excel format that contains the following fields: "document name", "document type", "version number", "date created" and "created by".

## 2.4 Contractor's management, supervision and key people

*Employer's Policies and Procedures.*

- Resource usage histogram.
- Organogram indicating the *Contractor* proposed structure for the execution of the Works.
- VDSS provision and must be consistent with tender programme.
- Completed Ground Area Requirement (Section 4 - Part 5) From [IA-2/2A]
- Completed Water Requirement (Section 4 - Part 5) From [IA-2/1B]
- Completed Electric Power Requirement (Section 4 - Part 5) From [IA-2/1C]
- Completed Accommodation Requirement (Section 4 - Part 6.2) From [IA-2/1A]

## 2.5 Invoicing and payment

Reference is made to the Annexures:

*Employer's Policies and Procedures; Section 4:*

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

It is the responsibility of the *Contractor* to ensure that the invoices are sent electronically to Accounts Payable at [invoiceserilocal85@eskom.co.za](mailto:invoiceserilocal85@eskom.co.za) , and a copy must also be sent to the *Employer's* Commercial Department at the Kusile Power Station

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- Name and address of the Contractor and the Contractor's Project Manager.
- The contract number and title.
- Contractor's VAT registration number; - 4840229670
- The Contractor's VAT registration number -
- Description of service provided for each item invoiced based on the BOQ.
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT.

## **2.6 Forecast Rate of Invoice (FRI)**

The Contractor should provide an FRI monthly

## **2.7 Contract Change Management**

Each change/compensation event (whether positive or negative) is submitted, using the same format as is used for assessments. The change indicates resources used, the quantity, the actual cost of the resources, the time impact and the percentage fee for the said resource.

Each change/compensation event has a unique number and has the date of submission on it and is submitted to the Project Manager for assessment.

## **2.8 Records of Defined Cost, payments and assessments of compensation events to be kept by the Contractor**

Monthly assessments, compensation events are kept until the Final certificate is issued.

# **3 Procurement**

## **3.1 People**

### **3.1.1 Minimum requirements of people employed on the Site**

The *Contractor* to provide CVs indicating experience and qualification which will be approved by the *Employer*, if any employee of the *Contractor* is found to be unsuitable for the position, he will be released from site

### **3.1.2 Site Specific Agreement (SSA)**

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The *Contractor* must adhere to the Site-Specific Agreement (SSA) (attached). SSA calendar for 2022 which will be provided

## **3.2 CONTRACTOR DEVELOPMENT AND LOCALISATION**

Not applicable

### **3.2.1 Contractor SD&L Plan**



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## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ('Agreement') is entered into between the Purchaser and the Contractor.

WHEREAS, the Purchaser and the Contractor (the Parties) desire to exchange certain confidential information; and consider further business dealings with each other.

WHEREAS, the parties desire to evidence their agreements governing the exchange of certain confidential information as set forth below.

Now therefore, for good and valuable consideration, including the mutual agreements hereinafter recited, the parties hereby agree as follows:

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the 'Subject Information') may include but not be limited to the parties' inventions, trade secrets, know-how, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.
2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other.
3. The parties each agree that they shall maintain in secrecy in accordance with the terms of this Agreement all of the Subject Information each party receives (the 'Receiving Party') from the other party (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.
4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.
5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else

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who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.

6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes and other writings prepared by the parties, or their advisors, based on the Subject Information of each other, shall be destroyed, and such destruction shall be certified in writing by an authorised officer supervising such destruction.
7. If a party, with the written consent of the Proprietor of Subject Information, discloses any Subject Information received from its Proprietor to any third party, it shall do so only under a secrecy agreement having a scope similar to and which is consistent with this Agreement, and the disclosing party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party
8. Each party agrees that it shall not, while and for so long as it is obligated to maintain Subject Information in secrecy, use for its own benefit, or for the benefit of others or exploit, commercialise, develop, test promote, sell, lease, market or otherwise dispose of any products or services using, incorporating or relying on Subject Information received from its Proprietor without the written consent of the Proprietor.
9. The obligations of the party receiving Subject Information pursuant to this Agreement shall be effective with respect of each item of Subject Information for a term of five (5) years from the date of submission of the Subject Information to the Receiving Party by its Proprietor, unless the Proprietor agrees otherwise in writing.
10. For purposes of this Agreement, each party shall include (to the extent applicable) the officers, directors, employees, agents, representatives, attorneys, joint ventures, partnerships, affiliates, subsidiaries, and divisions of the party, and any other entity or entities which such party controls or which controls it, and, further, shall include any transferee, successor and assign of the assets of the party.
11. This Agreement shall be construed (both as to validity and performance) and enforced in accordance with, and governed by, the laws of Republic of South Africa.
12. Neither this Agreement nor the exchange of Subject Information between the parties shall create or be relied on by either party as a basis for creating any license between the parties under any patent, or other industrial or intellectual property rights of the Proprietor of the Subject Information, or any other license between the parties in the absence of any express written license agreement between them
13. The parties agree that no contract or agreement providing for a transaction shall be deemed to exist between them unless and until a definitive agreement has been executed and delivered, the parties hereby waive, in advance, any claim (including, without limitation, breach of contract) in connection with a possible transaction with each other unless and until they shall have entered into a definitive agreement. The parties also agree that unless and until a definitive agreement between them has been executed and delivered, neither party has any legal obligation of any kind whatsoever with respect to any such transaction by virtue of this Agreement or any other

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written or oral expression with respect to such transaction, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this paragraph, the term 'definitive agreement'; does not include an executed letter of intent, memorandum of understanding.

IN WITNESS WHEREOF, and intending to be legally bound, this Agreement has been executed by the parties as of and effective from the date first written above.