



NEC3 Term Service Contract (TSC3)

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

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

for Project Management Services Air Quality Offset
Phase 2 Project on an as and when required basis
for a period of one year and seven months at
Sivukile in the Mpumalanga Province

Contents:	No of pages
Part C1 Agreements & Contract Data	17
Part C2 Pricing Data	4
Part C3 Scope of Work	8

CONTRACT No.

PART C1: AGREEMENTS & CONTRACT DATA

Contents:	No of pages
C1.1 Form of Offer and Acceptance	2
[to be inserted from Returnable Documents at award stage]	
C1.2a Contract Data provided by the <i>Employer</i>	12
C1.2b Contract Data provided by the <i>Contractor</i>	2
[to be inserted from Returnable Documents at award stage]	
C1.3 Proforma Guarantees	0

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:

A Project Management Services Air Quality Offset Phase 2 Project on an “as and when required basis” for a period of one (1) year and seven months at Sivukile in the Mpumalanga Province.

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

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

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Tenderer's CIDB registration number:

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

Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the
Employer**

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

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

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

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

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
	■ dispute resolution Option	A: Priced contract with price list
	■ and secondary Options	W1: Dispute resolution procedure
	■	X1: Price adjustment for inflation
		X2: Changes in the law
		X18: Limitation of liability
	■	X19: Task Order
		Z: Additional conditions of contract
	of the NEC3 Term Service Contract April 2013 ² (TSC3)	
10.1	The <i>Employer</i> is (name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	011 800 8000
	Fax No.	011 800 4754
10.1	The <i>Service Manager</i> is (name):	
	Address	Eskom Holdings SOC Ltd Maxwell Drive, Sunninghill; Sandton

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

**Johannesburg
2000**

Tel

Fax

e-mail

11.2(2)	The Affected Property is	Households using coal stoves in Sivukile area where the work will be executed in line with the projects scope and objective.
11.2(13)	The <i>service</i> is	Project Management company for Air Quality Offset project on an “as and when required basis” for a period of 19 Months in Sivukile area
11.2(14)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> • Political issues (political interest) • Community protest (employment criteria) • Disagreement on local employment (employment criteria, employment numbers)
11.2(15)	The Service Information is in	Part 3: Employers Scope of Work
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	One (1) week (5 working days)
2	The Contractor's main responsibilities	Project Management services for Air Quality offset project in Sivukile area
21.1	The <i>Contractor</i> submits a first plan for acceptance within	One (1) week after Contract Date
3	Time	
30.1	The <i>starting date</i> is.	TBC
30.1	The <i>service period</i> is	One year and seven months (19 Months) until 30 September 2024
4	Testing and defects	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
5	Payment	
50.1	The <i>assessment interval</i> is	between the 25th day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	30 days from receipt of a valid invoice and supporting documents.

51.4 The *interest rate* is

the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and

(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter (and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.

6	Compensation events	Will be dealt with as per core clause 60 of the conditions of contract.
7	Use of Equipment Plant and Materials	No data is required for this section of the <i>conditions of contract</i>
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	<ul style="list-style-type: none"> • Miscommunication • Unsafe work activities including employee safety • Fraudulent activities (claims for work not completed) • Labour related issues (payment issues, unclear employment contract terms)
9	Termination	Employer reserves the right to terminate the Contractor's obligation to Provide the Service or re allocate the services when deliverables as per the scope of work are not met. Core Clause 90, the procedures on termination and payment on termination of the NEC3 TSC shall apply.
10	Data for main Option clause	
A	Priced contract with price list	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than	4 weeks.
11	Data for Option W1	

W1.1	The <i>Adjudicator</i>	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).		
	Address			
	Tel No.			
	Fax No.			
	e-mail			
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see www.ice-sa.org.za) or its successor body.		
W1.4(2)	The <i>tribunal</i> is:	Arbitration		
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.		
	The place where arbitration is to be held is	Johannesburg, South Africa		
	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			
12	Data for secondary Option clauses			
X1	Price adjustment for inflation			
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
		Fixed 15%		
		Labour 85%	Table – C3 Actual Labour costs	Seifsa
			non-adjustable	
		100		

X2	Changes in the law	A change in the law of the project is a compensation event if it occurs after the contract date and only if such change has an effect on the project cost and time. Either Party may notify the other of a compensation event for a change in the law. If the effect of a compensation event which is a change in the law is to reduce the total Time charge, the prices are reduced.
X18	Limitation of liability	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	R0.0 (zero Rand)
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	the amount of the deductibles relevant to the event
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	The greater of <ul style="list-style-type: none"> the total of the Prices at the Contract Date and the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	the total of the Prices other than for the additional excluded matters. The <i>Contractor's</i> total liability for the additional excluded matters is not limited. The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for <ul style="list-style-type: none"> Defects due to his design, plan and specification, Defects due to manufacture and fabrication outside the Affected Property, loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials), death of or injury to a person and infringement of an intellectual property right.
X18.5	The <i>end of liability date</i> is	Three (3) months after the end of the <i>service period</i>.
X19	Task Order	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	One (1) week of receiving the Task Order
Z	The <i>additional conditions of contract</i>	

are

Z1 to Z14 always apply.

Z1 Cession delegation and assignment

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

Z2 Joint ventures

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

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

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

Z4 Confidentiality

- Z4.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.

- Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z4.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

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

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

- Z6.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:
- accepts that the *Employer* may appoint him as the “Principal Contractor” (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) (“the Construction Regulations”) for the Affected Property;
 - warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and
 - undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.
- Z6.2 The *Contractor*, in and about the execution of the *service*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

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

- Z7.1 Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z7.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

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

Z8 Notifying compensation events

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

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

Z9 *Employer's* limitation of liability

- Z9.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z9.2 The *Contractor's* entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer's* liability under the indemnity is limited to compensation as provided for in core clause 63 and X19.11 if Option X19 Task Order applies to this contract.

Z10 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

- Z10.1 or had a business rescue order granted against it.

Z11 Ethics

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

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

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

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

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

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

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

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

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

- Z11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z11.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Services for this reason.
- Z11.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.
- Z11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

Z12 Insurance

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

Insurance cover 83

- 83.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
- 83.2 The *Contractor* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

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

person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service	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 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.

Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z14 Asbestos

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

AAIA	means approved asbestos inspection authority.
ACM	means asbestos containing materials.
AL	means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
Ambient Air	means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
Compliance Monitoring	means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
OEL	means occupational exposure limit.
Parallel Measurements	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
Safe Levels	means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
Standard	means the <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
SANAS	means the South African National Accreditation System.
TWA	means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety

Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.

- Z14.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z14.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z14.5 The *Contractor's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z14.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

C1.2 Contract Data

Part two - Data provided by the *Contractor*

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

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

Notes to a tendering contractor:

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

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

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

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

Responsibilities:

Qualifications:

Experience:

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

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

Part 2: Pricing Data
TSC3 Option A

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

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

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

Identified and defined terms	11	
	11.2	(12) The Price List is the <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">the Price for each lump sum item in the Price List which the <i>Contractor</i> has completed andwhere 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.
		(19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.

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

Function of the Price List

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

Link to the *Contractor's* plan

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

Preparing the *price list*

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

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

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

Format of the *price list*

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

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

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

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

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

C2.2 the *price list*

[illegible]

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

C3.1: EMPLOYER'S SERVICE INFORMATION

1 Description of the service

Project Management Services for the Air Quality Offset Project on an "as and when required" basis or task order basis for a period of One year and seven months (19 Months) at Sivukile settlement (next to Morgenzon) with an estimated number of up to 1160 houses.

2 Executive overview

Eskom is pursuing a multi-pronged approach to improve ambient air quality, this includes reducing emissions at the existing coal-fired fleet, investing in power generation from renewables and nuclear, and implementing air quality offsets programme in and around communities close to existing coal fired power station. Retrofitting abatement technology and diversifying the energy fleet come at higher cost and requires a longer period to implement. Air Quality Offsets Programmes on the other hand address emission sources directly within vulnerable communities, thus providing greater improvement in air quality that is experienced by community. In addition, Air Quality Offsets Programmes are more cost effective and result in meaningful improvement of air quality within a shorter time frame.

The *Contractor* will be responsible for Project Management Services consisting of the following:

The development of the project management plan, logistics management, activity coordination of contractors and acquisition of sub-contractors, time management, quality management, stakeholder & communications management, resources management and risk management to accomplish stated project objectives effectively and efficiently.

3 Employer's requirements for the service

The Contractor is required to:

- Set up a project office local to site with adequate security (central to area of implementation i.e same township)
- Supervise the main Contractor on the execution of the works (The works entails Supply and deliver of three (3) LPG plates and one (1) Electric plate hybrid cooking stoves and LPG Heaters with 9KG LPG Cylinders x 2 and Supply, deliver and install ceiling insulation (SPF and Ceiling boards), electrical re-wiring and Asbestos removal for Air Quality Offset Project on an "as and when required basis" in the Sivukile settlement in Mpumalanga)
- Ensure that the two 9kg LPG gas cylinders on a once-off basis are filled by the main Contractor before delivery to the households.
- Ensure that all installations of the Hybrid stoves, LPG heaters, Insulations and CFL's are carried out within allowed working hours as stipulated by the labour legislation of the Republic of South Africa.

ACTIVITY COORDINATION OF CONTRACTORS & ACQUISITION OF SUB-CONTRACTORS

The Contractor is required to:

- Facilitate, coordinate activities between the households and the Employers appointed third party *Contractor*.
- Ensure that the Main contractor removal of old stoves, incandescent lamps, corrugated steel roofing sheets and associated stove accessories (i.e chimney etc) from the households to where they will be temporarily stored before being recycled conforms to the environmental standards. The storage of the old coal stoves may be kept up to a month.
- Supervise the registration process of the eligible households in the area.
- Ensure that the households understand the terms and conditions of the contract to be entered with them from the main Contractor.
- Develop and submit project implementation plan aligned to the Main *Contractor* (Installation schedule, resource plan, stakeholder engagements plan and training plan)
- Develop a coordination process and scheduling of project activities in each household.

4 Interpretation and terminology

The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the abbreviation
OBL	Outside battery limits
CFL	Compact Fluorescent Lamp

5 Stakeholder and Communication Management.

The Contractor will be responsible for:

- Communicating to Employer, Suppliers, Contractors Installers and individual households on issues, including disputes, risks and proposed mitigations relating to the implementation.
- Setting up a procedure to handle issues raised by stakeholders, provide responses and close them.
- Continuously liaising with Employer representative on issues raised by stakeholders in order to prevent unnecessary escalations.
- Coordinating the quarterly local Stakeholder reference Group (LSRG) Community Meetings, including booking of venues, sending of appointments, organising refreshments, translation services, taking and distribution of minutes.
- Ensuring that the information material (i.e printed pamphlets per house) in support of the project is distributed within the implantation area. The *Employer* to provide designs and content at the beginning of the project
- Arranging and attending bi-weekly progress meetings with the Employer and relevant stakeholders.

6 Reporting and Documentation

The *Contractor* will be reporting to the assigned *Employers* Project and Programme Managers by:

- Ensuring that progress reports are submitted weekly (installation, employment statistics, households contracted)
- Ensuring that a close-out report is submitted within a month of the completion of the project.
- Reporting on any deviation from project schedule (where applicable)
- Developing and providing of a data book that will enable installers to capture full data for the database containing installations completed (this includes house numbers, street name, GPS coordinates, homeowner name, ID number and contact details, etc)
- Ensuring daily reports from the data book is captured on a secured web-based platform that the *Employer* can easily access.
- Ensuring that projects documentation such as minutes, data books, training registers & certificate, employment & households' contracts are provided to the employer once a month.
- Provide finalised database and close-out report to be handed over to Eskom Service Manager within a month after completion.
- Ensure adherence to Eskom policy, procedures and standards, including all Safety Health & Environment (SHE) and Quality requirements during implementation.

7 Management meetings

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

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	Weekly on Thursday at 13:00	Sivukile (on site)	<i>Employer, Contractor, Supervisor, and PMO</i>
Overall contract progress and feedback	Bi-weekly on Tuesday at 10:00	Sivukile (on site)	<i>Employer, Contractor, Supervisor, and PMO</i>
Local stakeholders and communication	Quarterly	Sivukile (on site)	<i>Employer, Contractor, Supervisor, and PMO</i>

Meetings will be biweekly, monthly and progress reports to be submitted to the employer by the contractor every second week and for every payment application made by the contractor. Urgent meetings can be held as deemed by both parties and relevant stakeholders.

Meetings of a specialist nature may be convened as specified elsewhere in this Service Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the service. Records of these meetings shall be submitted to the *Service Manager* by the person convening the meeting within five days of the meeting.

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

8 Contractor's management, supervision and key people

Organogram from the Contractor showing his people and their lines of authority.

9 Invoicing and payment

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

The *Contractor* shall address the tax invoice to

_____ and include on each invoice the following information:

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

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

10 Contract change management

Use of Standard forms.

- Early warning template
- Compensation event template
- Project completion certificate (CoC) template
- Database Summary Payment Template
- Payment declaration Form
- Notification of defects
- Deduction of delay damages
- Termination certificate
- Notification of dispute
- Employers instruction

11 Records of Defined Cost to be kept by the Contractor

All records of defined cost to be kept by the *contractor*. The signed declaration form by the *contractors* employee confirming that he/she has been paid shall be kept as record and provided as and when required by the *Employer*, and any other records that are applicable to the services

12 Training workshops and technology transfer

The *Contractor* shall:

- Ensure that there is general induction training in the project plan and objectives to all staff. Role specific training must be conducted as and when required.
- Ensure that over and above all resources are properly contracted and proof of documentation is kept safely.

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

The *Contractor* is required to:

- Provide finalised database and the close-out report and be handed over to *Employer* Representative within a month after project completion.

14 Management of work done by Task Order

- The *Contractor* to submit a weekly report to the Employer
- The *Contractor* to submit a consolidated report to the *Employer* Representative after each Task Order completion within two (2) days.

15 Health and safety risk management

The *Contractor* shall comply with the health and safety requirements to this service information as well as those addressed in Z 27 clause.

The Consultant shall take all reasonable precautions to maintain the health and safety of persons in and about the execution of the services.

The Consultant shall at all times comply with the health and safety requirements prescribed by law as they may apply to the services.

16 Environmental constraints and management

The *Contractor* shall comply with the environmental criteria and constraints stated in Annexure _____

17 Quality assurance requirements

The *Contractor* is required to:

- Ensure that there is a quality control and assurance, data verification per installation (including distributed hybrid stove, LPG Heater, cylinders and CFLs) and provide proof of the verification.
- Ensure that the insulation activities are properly done in the households.
- Furthermore, a quarterly review determining the level of compliance to the Eskom supplier contract quality requirement specification QM-58 (latest revision); will have to be performed on the supplier.
- The *Contractor* must comply with the requirements of QM 58 specification throughout the duration of the contract

18 Procurement

- Tax invoice should show the service rendered
- The amount should exclude VAT

19 Minimum requirements of people employed

The *Contractor* to monitor and verify that the following resources are recruited by the main *Contractor*, and as many as possible should be local to site:

- Fieldworkers for household preparations (explaining and signing of the contract with the households)
- Provide re-usable identification (ID) cards and bibs for field workers and monitoring the movement of such. The monitoring process should ensure that the ID cards are issued every morning and collected every evening
- To ensure that the field workers are screened for criminal record before recruitment, this can be done at a local police station. Proof of this activity to be filed.
- To ensure that the Fieldworkers are paid according to the employment agreement and applicable labour laws. Proof of payment in a form of a signed confirmation by the field worker to be kept as a record by the *Contractor* and provided as and when required by the *Employer*.
- A minimum qualification for the field workers is Grade 10 and they must be able to communicate in a preferred language of the installation area.
- *Contractors'* drivers must conform to the requirement as set out by the SA driving requirements and also Eskom Driver Safety requirements

Other resources which may be recruited by the main *Contractor* based on the project requirements are:

- Project administrator
- Community stakeholder Liaison
- Assistance Community Stakeholder Liaison
- Stock Controller
- Security Personnel
- Safety Officer (to be trained on LPG Safety)
- Site Supervisor
- Qualified Project Manager

The *Contractor* is required to:

- Ensure that there is a general induction training on the project plan and objective to all staff. Role specific training must be conducted as and when required.
- Ensure that over and above all resources are properly contracted and proof of documentation is kept safely

20 BBBEE and preferencing scheme

The Contractor's BBBEE Level is Level 1 the supplier to maintain this level for the duration of the contract.

Supplier Development and Localisation (SD&L)

The *Contractor* shall comply with the SD&L requirements stated below. The Contractor undertakes to achieve and fulfil these SD&L commitments during the Contract Period, or at an earlier date. The Contractor shall, during the course of the execution of this Contract, take all steps, and to do all things required so as to reasonably demonstrate, at any given time, that it is acting with due diligence and seeking in good faith to achieve and comply with the SD&L commitments.

The *Contractor* shall keep accurate records and provide the Contract Manager with reports on the Contractor's actual delivery against the stated SD&L obligations. The Parties shall meet monthly for the duration of the Contract Period, to discuss the *Contractor's* skills development and subcontracting obligations in terms of this Contract, and where appropriate, agree in writing on a set of milestones which the

Contractor shall satisfy regarding the SD&L obligations. At such meetings, the Parties shall review the *Contractor's* performance regarding fulfilling the SD&L obligations of this Contract.

The *Contractor's* failure to comply with SD&L obligations constitutes substantial failure on the part of the Contractor to comply with his obligations under this contract.

21 Subcontracting

In the event that subcontractors are appointed, it is the responsibility of the *Contractor* to ensure that subcontracting comply with the *Employers* requirements and stipulations. Subcontract documentation shall not form part of the contractual relationship between the *Employer* and the *Contractor*, unless the documentation is for a statutory nature and have direct impact on the legal compliance of the Employer

22 Specifications

The following Eskom specifications shall be adhered to during the project duration:

- Eskom contractors Health and Safety requirements standards (32-136)
- SHE Requirements for the Eskom Commercial Process: 32-726 – Environmental Requirements
- Procedure for the effective Management of Safety, Health and Environmental related Incidents (32-95)
- Environmental Incidents Management procedure (240-133087117)
- Life Saving Rules (240-62196227)
- Eskom Vehicle and Driver Safety (32-93)
- Preferential Procurement Policy Framework Act

23 Site services and facilities

24 Provided by the *Employer*

The *Contractor* shall provide everything else necessary for providing the service as and when required by the *Employer*

25 Provided by the *Contractor*

The *Contractor* shall provide everything else necessary for providing the service as and when required by the *Employer*