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CONTRACT No.

PART C1: AGREEMENTS & CONTRACT DATA

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	[to be inserted from Returnable Documents at award stage]		
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C1.1 Form of Offer & Acceptance

1.1 Offer

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

Unblocking of two penstock inlet decant towers on top of ash dam 5 at Hendrina Power Station

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.

	Sub total	
	Value Added Tax @ 15% is	
	The offered total of the amount due inclusive of VAT is ¹	

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*.

1.2 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 original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)

Capacity

**for the
Employer**

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

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

Note:

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

No.	Subject	Details
1	[•]	[•]
2	[•]	[•]
3	[•]	[•]
4	[•]	[•]
5	[•]	[•]
6	[•]	[•]
7	[•]	[•]

By the duly authorised representatives signing this Schedule of Deviations below, the Employer and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

For the tenderer:

For the Employer

Signature _____

Name _____

Capacity _____

On behalf of (Insert name and address of organisation) _____

(Insert name and address of organisation) _____




Name & signature of witness _____

Date _____

C1.2 TSC3 Contract Data

2. 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	2.1 Statement	2.2 Data
1	2.3 General	2.4
	<p>The <i>conditions of contract</i> are the core clauses and the clauses for main Option:</p> <p> dispute resolution Option and secondary Options</p> <p></p> <p></p> <p>of the NEC3 Term Service Contract (June 2005)²</p>	<p>C: Target contract with activity schedule</p> <p>W1: Dispute resolution procedure</p> <p>X2 Changes in the law</p> <p>X17: Low service damages</p> <p>X18: Limitation of liability</p> <p>X19: Task Order</p> <p>Z: Additional conditions of contract</p> <p>Appendices – A (Policies, procedures and standards) and B (Scope of work/service information)</p>
10.1	<p>The <i>Employer</i> is (name):</p> <p>Address</p> <p>Tel No.</p> <p>Fax No.</p>	<p>Eskom Holdings SOC Limited (Reg No: 2002/015527/06), a juristic person incorporated in terms of the company laws of the Republic of South Africa</p> <p>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</p> <p>013 296 3760</p> <p>013 296 3887</p>
10.1	<p>The <i>Service Manager</i> is (name):</p> <p>Address</p> <p>Tel</p> <p>e-mail</p>	<p>Fanyane Kubheka</p> <p>Hendrina Power Station Private Bag X 1003 Pullenshope 1096</p> <p>013 296 3195</p> <p>@eskom.co.za</p>
11.2(2)	The Affected Property is	Hendrina Ash dams

² Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009

11.2(13)	The <i>service</i> is	Unblocking of two penstock inlet decant towers on top of ash dam 5 at Hendrina Power Station.
11.2(14)	The following matters will be included in the Risk Register	<ol style="list-style-type: none"> 1. Evacuation due to safety concerns or condition. 2. High dam levels at ash dam 5. 3. Changes on the baseline risk assessment due to new station safety requirement adherence. 4. Delays due to unpleasant weather conditions such as rain and etc. 5. Delays due to labour relations instability. 6. Insufficient decant towers isolation due to otherwise penstock rings seepage.
11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	One day after notification
2.5 2	The Contractor's main responsibilities	
21.1	The <i>Contractor</i> submits a first plan for acceptance within	As per the terms and conditions on TSC3
2.6 3	Time	
30.1	The <i>starting date</i> is.	TBA
30.1	The <i>service period</i> is	1 Month
2.7 4	Testing and defects	The two blocked decant towers must at least discharge at 3 quarter full bore of the discharge pipe after chemical cleaning when penstock rings are removed.
2.8	The defect correction period is	The <i>contractor</i> attends to a defect within 24 hours of notification of such defect and corrects the defect in the period agreed between the parties i.e. 2 days. The maximum defects correction period is 1 week
2.9	Payment	
50.1	The <i>assessment interval</i> is	One assessment will be conducted after cleaning of penstock decant towers is complete.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	Maximum four weeks after receiving the tax invoice.
51.4	The <i>interest rate</i> is	(i) zero percent above 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 (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

2.10 6 Compensation events

	These are additional compensation events:	As per the terms and conditions and Z9 clauses of NEC3 Term Service Contract
2.11 7	Use of Equipment Plant and Materials	2.12 Equipment, Plant and Material as stated in the scope of work and provided by the <i>Employer</i> and the <i>Contractor</i> respectively
2.13 8	Risks and insurance	2.14
80.1	These are additional <i>Employer's</i> risks	<ul style="list-style-type: none"> • Unavailability of plant • Service information change • Wet beams or dam walls • Unstable platforms used as bridge between dam beams and penstock decant inlet towers platform at ash dam 5 • Slipping, tripping and falling hazards • Drowning in the pool. • No water supply at ash 5 • No sectional isolations between the decant towers except at the inlet through penstock rings
83.1	The <i>Employer</i> provides these insurances from the Insurance Table	as stated for "Format TSC3" available on http://www.eskom.co.za/live/content.php?Item_ID=9248 (See Annexure A for basic guidance).
83.1	The <i>Employer</i> provides these additional insurances	as stated for "Format TSC3" available on http://www.eskom.co.za/live/content.php?Item_ID=9248 (See Annexure A for basic guidance)
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	the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/live/content.php?Item_ID=9248
83.1	The minimum amount of cover for loss of or damage to Plant and Materials provided by the <i>Employer</i> is:	the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/live/content.php?Item_ID=9248
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:	whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i> .

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:	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 R500 000 (Five hundred thousand Rands)..
2.15 9	Termination	As per the Z11 clauses of NEC3 Term Service Contract
2.16 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 service at intervals no longer than	N/A
2.17 11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is (Name)	Will be appointed when a dispute arises, the person selected from the Eskom Panel of Adjudicators listed in Annexure B to this Contract Data by the Party intending to refer a dispute to him
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of the Joint Civils Division of the South African Institution of Civil Engineering. (See www.jointcivils.co.za)
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	South Africa
	The person or organisation who will choose an arbitrator	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
	- if the Parties cannot agree a choice or	
	- if the arbitration procedure does not state who selects an arbitrator, is	
2.18 12	2.19 Data for secondary Option clauses	2.20
X2	Changes in the law	As per the terms and conditions on the X2 of NEC3 TSC
X17	Low service damages	NCR to be issued for KPI's non compliance
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	Contract value
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 described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/live/content.php?Item_ID=9

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- X18.3 The *Contractor's* liability for Defects due to his design of an item of Equipment is limited to
- The greater of**
- the total of the Prices at the Contract Date and
 - the amounts excluded and unrecoverable from the *Employer's* insurance (other than the resulting physical damage to the *Employer's* property which is not excluded) plus the applicable deductibles in the *Employer's* assets and works / maintenance policies available on http://www.eskom.co.za/live/content.php?Item_ID=9248
- X18.4 The *Contractor's* total liability to the *Employer*, 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 *Contractor's* total liability for the additional excluded matters is not limited.**
- The additional excluded matters are amounts for which the *Contractor* is liable under this contract for**
- Defects due to his design, plan and specification,
 - Defects due to manufacture and fabrication outside the Affected Property,
 - loss of or damage to property (other than the *Employer's* property, Plant and Materials),
 - death of or injury to a person and
 - infringement of an intellectual property right.
- X18.5 The *end of liability date* is
- 12 (twelve) months after the end of the *service period*.**

X19	Task Order
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within 14 (Fourteen) days of receiving the Task Order

**Z The *additional conditions of contract* Z1 to Z11 always apply.
 are**

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 and the Electricity Distribution Industry.

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 Works.
- 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 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 subcontractors abide by the undertakings in this clause.
- 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.
- Z7 Health, safety and the environment: Add to core clause 27.4**
- Z7.1 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 2003 (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.
- Z7.2 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.

Z8 Provision of a Tax Invoice and interest. Add to core clause 51

- Z8.1 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.
- Z8.2 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.
- Z8.3 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.

Z9 Notifying compensation events

- Z9.1 Delete from the last sentence in core clause 61.3, "unless the *Service Manager* should have notified the event to the *Contractor* but did not".

Z10 *Employer's* limitation of liability

- Z10.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z10.2 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 under the compensation events stated in this contract.

Z11 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

- Z11.1 or had a judicial management order granted against it.

3. Annexure A: Insurance provided by the Employer

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

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

http://www.eskom.co.za/live/content.php?Item_ID=9248

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

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

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

Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management, by contacting Leighton Itholeng (Tel.: +27 (0)11 800 4031) (Fax :+27 (0)86 668 0419) E-mail: Leighton.Itholeng@eskom.co.za

C1.2 Contract Data

4. Part two - Data provided by the *Contractor*

Notes to a tendering contractor:

1. Please read both the both the NEC3 Term Service Contract (June 2005) 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 persons are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities:	

³ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009

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	Part: Pricing data of the maintenance
11.2(19)	The tendered total of the Prices is	

PART 2: PRICING DATA

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

C2.1 Pricing assumptions: Option A

5. The *conditions of contract*

How work is priced and assessed for payment

Clause 11 in NEC3 Term Service Contract, June 2005 (TSC3) core clauses and Option A states:

Identified and 11
defined terms 11.2

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

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

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

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

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

Function of the Price List

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

Link to the *Contractor's* plan

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

Preparing the *price list*

It will be assumed that the tendering contractor has read Pages 14, 15 and 73 of the TSC3 Guidance Notes before preparing the *price list*. Items in the *price list* may have been inserted by the *Employer* and the tendering contractor should insert any additional items which he considers necessary. Whichever party provides the items in the *price list* the total of the Prices is assumed to be fully inclusive of everything necessary to Provide the Service as described at the time of entering into this contract.

1 As the *Contractor* has an obligation to correct Defects (core clause 42.1) and there is no compensation event for this unless the Defect was due to an *Employer's* risk, the lump sum Prices and rates must also include for the correction of Defects.

2 If the *Contractor* has decided not to identify a particular item in the *price list* at the time of tender the cost to the *Contractor* of doing the work must be included in, or spread across, the other Prices and rates in the *price list* in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.

3 There is no adjustment to lump sum prices in the *price list* if the amount, or quantity, of work within that lump sum item of service later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event. See Clause 60.1.

4 Hence the Prices and rates tendered by the *Contractor* in the *price list* 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.

5 The Contractor does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event. It should be noted that the list of compensation events includes those arising as a result of an *Employer's* risk event listed in core clause 80.1.

Format of the *price list*

(From page 73 of 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*

Item nr	Description	Unit	Expected Quantity	Rate	Price
1	Site establishment	each	1		
2	Chemical sampling to verify effectiveness of the product to be used	each	1		
3	Chemical used in unblocking penstock decant tower 1	each	1		
4	Chemical used in unblocking penstock decant tower 2	each	1		
5	Site de-establishment	each	1		

The total of the Prices

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

C3.1: EMPLOYER'S SERVICE INFORMATION

1 Description of the service

1.1 Executive overview

The penstock inlet tower on top of ash dam 5 at Hendrina Power station has three decant inlet towers. All three penstock decant towers have steel penstock rings with a wall thickness of 20mm and an internal diameter of 671 mm. The steel decant rings are stacked on top of one another and together they form a decant tower. All three decant towers are approximately 45m above the top of concrete of the decant tower support foundation. Penstock decant towers 1 and 2 are currently blocked and penstock decant tower no 3 is still freely draining. The vehicle access can be attained at the last step-in on the east side of ash dam no 5. From there, it takes walking distance of approximately 150m to access the platform where blocked decants are.

To open and remove blockages in the penstock decant towers 1 and 2, the Contractor must use chemical such as hydrochloric acid or equivalent chemical.

1.1 Unblocking of two penstock inlet decant towers on top of ash dam 5 at Hendrina Power Station

- a) *The Contractor* provides all safety equipment such as safety showers, blanks, pump, chemicals, tankers, personal protective equipment and etc.
- b) *The Contractor* safely handles chemicals to the area where it should be applied.
- c) *The Contractor* unblocks both penstock decant towers.

Equipment

The following equipment must be made available onsite prior to commence of the works.

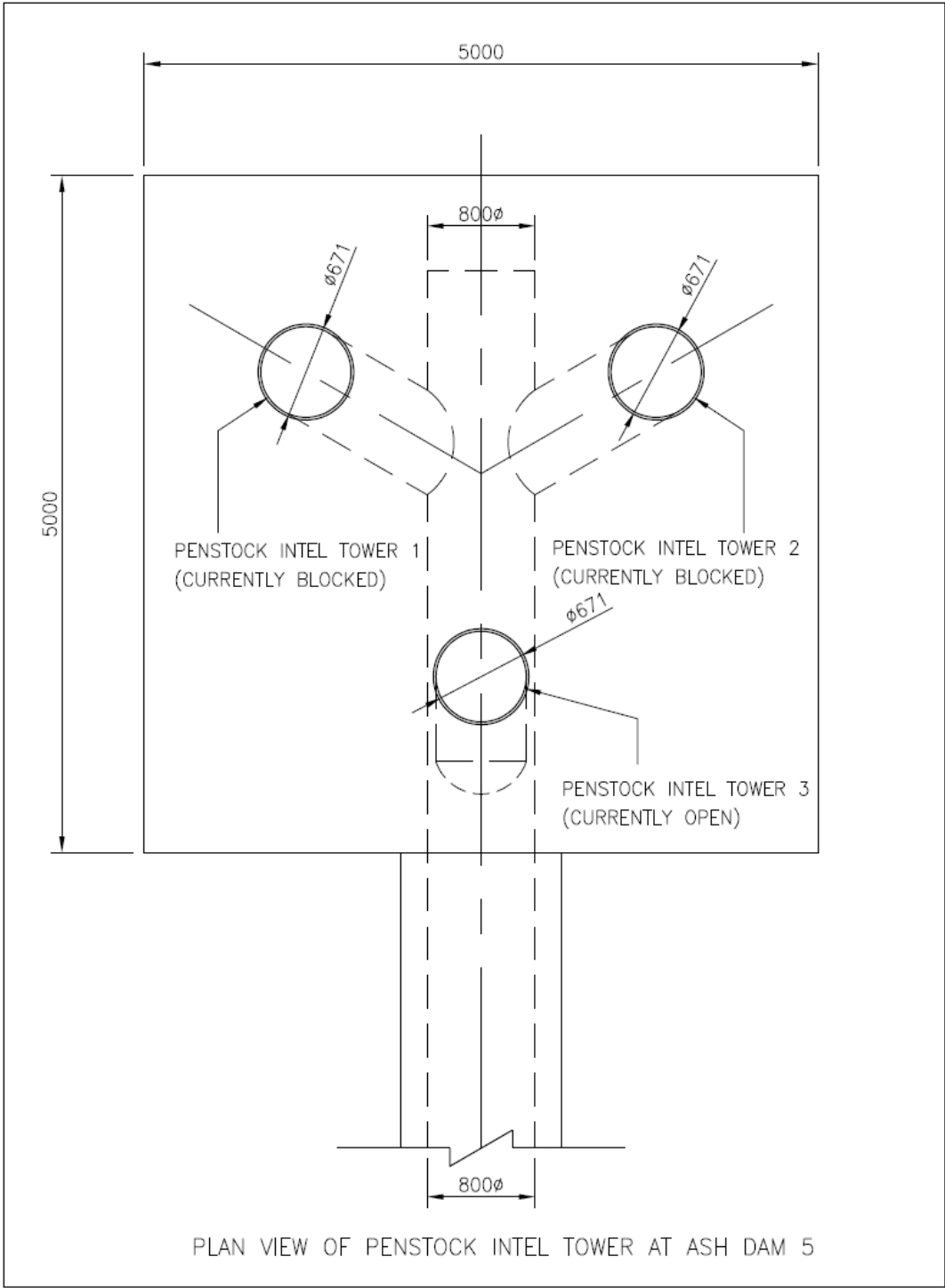
- Safety showers
- Blank if need be
- Hydraulic pump/s
- Acid container and sundries

SCOPE OF WORK

ACTIVITY	SPECIFICATIONS
A.1 GENERAL CONSIDERATIONS	
A.1.1 ACCESS CONTROL	
A.1.1.1 Provide all authorised people with entry permits. Obtain permit to work as per site procedure.	The contractor to ensure that his/her safety file is approved prior site establishment.
A.1.1.2 Induction records	The contractor shall ensure that all his/her employees attend induction and their medical records are in their approved safety file.
A.1.1.3 Relevant PPE to be used on specified systems, e.g. where there are chemicals etc.	PPE's to handle chemical must be used.
A.1.2 QUALITY	
The contractor should provide a detailed QCP containing all relevant information. The QCP to be reviewed edited and approved by the relevant/appropriate Eskom personnel.	The penstock tower must discharge at least 3 quarter full of the discharge pipe

A.1.3 MATERIAL	
A.1.3.1 All the material required will be ordered in time if they are not readily available.	
A.1.4 SAFETY	
A.1.4.1 AWR water is made of chemical waste water from ash plant and water treatment plants. As a result, precautionary measures must be taken if one is unduly exposed to chemical substance or fumes. Potable safety shower/s and appropriate chemical resistant PPE must be used or made available.	
A.1.4.2 Contractor to arrange water to supply their safety shower/s. Potable water is available at ash dam offices.	
A.1.5 ISOLATION OF PENSTOCK DECANT TOWER	
A.1.5.1 Isolation of penstock decant towers	Penstock rings are used as a mode of isolation. However small amount of water is somehow seeping between penstock rings.
A.1.6 PENSTOCK DECANT TOWER GEOMETRY	
Steel penstock rings with a	Wall thickness is 20mm and an internal diameter of 671 mm.
All three decant towers height	Approximately 45m above the top of concrete of the decant tower support foundation
Penstock discharge pipe	Mild steel
Discharge pipe outside diameter	800 mm
A.2 GENERAL REQUIREMENTS	

CONFIGURATION OF DECANT TOWERS



Plan view of the penstock inlet tower on top of ash dam 5



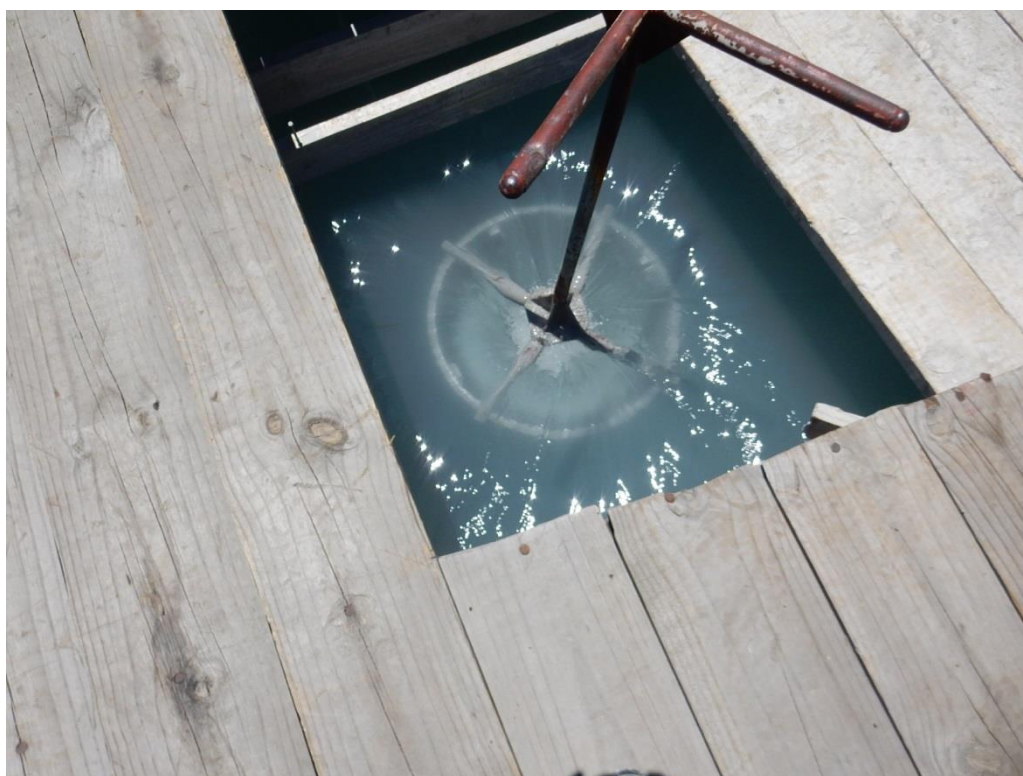
Decant inlet tower no 3 (below) is still free draining and decant tower no 2 (top) is currently blocked.



Decant inlet tower no 1 is also currently blocked.



Decant tower no 1 (tower height is approximately 45m and is currently blocked towards the bottom of the decant tower)



Inlet decant tower no 3 is still freely draining.



Access walkway at penstock inlet tower on ash dam 5

Lifesaving rules

Lives saving rules are non-negotiable health and safety rules which must not be broken under any circumstances. It must be highlighted that Eskom takes a ZERO TOLERANCE stance to violation of these rules. These five rules are applicable to any person entering Eskom, Hendrina site.

Rule 1: Open, isolate, test, earth, bond and/or insulate before touch;

Rule 2: Hook up at height;

Rule 3: Buckle up;

Rule 4: Be sober;

Rule 5: Be sure you have a permit to work.

1.2 *Employer's requirements for the service*

Detailed on 1.1 Executive overview

Interpretation and terminology

The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the abbreviation
EMD	Electrical Maintenance Department
PSR	Plant Safety Regulation

TBA	To Be Announced
UCLF	Unplanned Capability Load Factor
COC	Certificate Of Compliance
VAT	Value Added Tax
SOW	Scope Of Work
MMD	Mechanical Maintenance Department
ETC	Etcetera
BLR	Boiler
NDT	Non Destructive Test
QIP	Quality Inspection Plan
QCP	Quality Control Plan
C & I	Control and Instrumentation
PCM	Process Control Manual

2 Management strategy and start up.

2.1 The *Contractor's* plan for the service

2.2 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:
Monthly contract meeting	Monthly	TBA	Site Manager and Contractor
Repair scope of work challenge meeting	As and when required	TBA	Site Manager and Contractor

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.

2.3 *Contractor's* management, supervision and key people

Detailed on part 3: Scope of Work

2.4 Provision of bonds and guarantees

The form in which a bond or guarantee required by the *conditions of contract* (if any) is to be provided by the *Contractor* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

The *Employer* may withhold payment of amounts due to the *Contractor* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Contractor* by the *Service Manager* to receive and accept such bond or guarantee. Such withholding of payment due to the *Contractor* does not affect the *Employer's* right to termination stated in this contract.

2.5 Documentation control

All contractual communications are in the form of properly compiled letters with the contract's logo or forms attached to e-mails and not as a message in the e-mail itself.

All documents are kept in the contract file as per the index of the file by the *Service Manager*.

2.6 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:

Eskom Holdings SOC Limited
Hendrina Power Station
Private Bag x 1003
Pullenshope
1096

Eskom Vat Number: 4740101508

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)

2.7 Contract change management

The Following forms are to be used in the administration of this contract:

- Delegation of Service Managers actions
- Instruction by the Employer
- PF14 Termination certificate
- PF3 Service manager's instruction
- PF5 Early warning by the contractor
- PF10 Payment certificate
- PF11 Notification of compensation event 61.1.
- PF11 Notification of compensation event 61.2.
- PF11 Notification of compensation event 61.3.

2.8 Records of Defined Cost to be kept by the *Contractor*

The *Contractor* provides the *Employer* with the written agreement of the records of people employed by the contractor during the agreed compensation event, the plant worked, material, work subcontracted by the Contractor(if any) and equipment used and /or hired. Hard copies of all the cost (Payment certificates) is kept in the contract file as a record.

2.9 Insurance provided by the *Employer*

Provide contact detail for persons capable of being able to answer any insurance related queries:

Name

Phone number (Office)

To whom the information required by Marine Insurance (if any) may be addressed:

Name:

Phone number(Office)

2.10 Training workshops and technology transfer

The *Contract* shall provide necessary training to the *Employer* if need arise from his maintenance activity.

2.11 Design and supply of Equipment

The *Employer* is responsible for the design, approval, supply, installation, supply, any documentation, monitoring and other processes of new technology and any plant modification implemented in the plant with installation assistance from the *Contractor*.

All the new designs, modifications, drawings, documentation, test results, relevant information remains an Eskom property.

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

2.12.1 Equipment

Maintenance spares, any equipment, accessories and special tools designed by the contractor in conjunction with the Employer for the maintenance of this plant is provided at the end of the service for the Employer's use.

2.12.2 Information and other things

Maintenance spares, any equipment, accessories and special tools designed by the contractor in conjunction with the Employer for the maintenance of this plant is provided at the end of the service for the Employer's use.

2.13 Management of work done by Task Order

In some cases only parts of the service may require to be handled by Task Order, for example a major repair which has become necessary during a continuous maintenance service contract.

A Task Order format will be provided as documents for the administration of this contract.

Many considerations can apply to Task Order, such as availability of resources, arrangements for emergency work, Task Order reporting (work carried out and service results), assessment of additional

Prices for service not included in the Price List etc.

3 Health and safety, the environment and quality assurance

3.1 Health and safety risk management

In addition to the requirements of the laws governing health and safety, Eskom may have some additional requirements particular to the *service* and the Affected Property for this contract. The text below provides for these being attached as an Annexure to this Service Information. PLEASE ALSO READ CORE CLAUSE 27.4 TOGETHER WITH Z7 IN THE ADDITIONAL CONDITIONS OF CONTRACT TO MAKE SURE THAT WHATEVER IS INCLUDED IN THE ANNEXURE FOLLOWS ON FROM THOSE CLAUSES.

The Divisional/Regional Safety Risk Manager or his representative having jurisdiction over the *service* must provide the relevant safety, health and environmental (SHE) criteria for incorporation into this Service Information. The SHE specification / scope must be signed off by the Divisional/Regional Safety Risk Manager or his representative confirming that the applicable safety criteria have been taken into account.

The Commodity Manager / Buyer must refer the tender to the Divisional/Regional Safety Risk Manager or his representative in order to evaluate against enquiry-specific safety criteria.

The Divisional Safety Risk Managers who will be responsible for the allocation of resources to assist P&SCM with the above processes are as follows:

- Generation: Roley McIntyre
- Transmission: Tony Patterson
- Distribution: Alex Stramrood
- Enterprises: Jace Naidoo
- Corporate: Kerseri Pather

The *Contractor* shall comply with the health and safety requirements contained in procedures, policies and standards on Annexure A to this Service Information.

3.2 Environmental constraints and management

The *Contractor* shall comply with the environmental criteria and constraints stated in this contract. Detailed on and not limited to listed procedure, policies and standards on appendix A

3.3 Quality assurance requirements

The *Contractor* complies with the Quality Plan, work procedure, witness and hold points identified as per ISO 14001 and as detailed on and not limited to listed procedures, policies and standards on appendix A.

4 Procurement

4.1.1 Minimum requirements of people employed

Two people

4.1.2 BBBEE and referencing scheme

As per the terms and conditions of NEC3 TSC – Z3: Change of Broad Based Black Economic Empowerment (B-BBEE) status.

4.2 Subcontracting

4.2.1 Preferred subcontractors

Not applicable

4.2.2 Subcontract documentation, and assessment of subcontract tenders

Not applicable

4.2.3 Limitations on subcontracting

Not applicable

4.2.4 Attendance on subcontractors

Not applicable

4.3 Plant and Materials

4.3.1 Specifications

Obtainable From the Drawing Office

4.3.2 Correction of defects

Detailed on the maintenance instructions, procedures and written safe working procedures.

4.3.3 *Contractor's* procurement of Plant and Materials

As per the scope of work

4.3.4 Tests and inspections before delivery

Refer to the scope of work

4.3.5 Plant & Materials provided “free issue” by the *Employer*

Maintenance spares as per the Scope of work of this contract

5 Working on the Affected Property

Ash dam at 5 Hendrina Power Station

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

Refer to the relevant policies, procedures and standards on appendix A of this contract including HSPHO/020 Protective Services – Access Control System Procedure

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

The contractor keeps records of his people working on the affected property. The Service Manager shall have access to records at any time. These records may be needed when assessing compensation events.

5.3 *Health and safety facilities on the Affected Property*

Refer to relevant policies, procedures and standards of this contract

5.4 *Environmental controls, fauna & flora*

Refer to the general environmental requirements

5.5 *Cooperating with and obtaining acceptance of Others*

This sub-paragraph could be used to deal with two issues.

- 1) The cross reference from core clause 25.1 about cooperation generally as well as details about Others with whom the *Contractor* may be required to share the Affected Property. See clause 11.2(9) for the definition of Others.
- 2) Requirements for liaison with and acceptance from statutory authorities or inspection agencies.

5.6 *Records of Contractor's Equipment*

This sub-paragraph is intended to address how records are to be kept of Equipment on Site including whether it is owned or hired. Include any constraints about scaffolding, rigs, heavy lifts and cranes, including removal from the Affected Property.

5.7 *Equipment provided by the Employer*

Provide details of equipment (e.g. overhead cranes) made available for use by the employer and set out conditions relating thereto.

5.8 *Site services and facilities*

5.8.1 *Provided by the Employer*

Site access

5.8.2 Provided by the *Contractor*

Note: the Contractor shall provide everything else necessary for providing the service.

5.9 Control of noise, dust, water and waste

Noise control: Contractor to provide hearing protection if the required cleaning activity generates unbearable noise to his/her workers.

Dust control: Contractor to provide appropriate personal protective equipment such as dust mask and goggles to his/her workers for windy weather.

Water and water control: Contractor to provide personal protective equipment for handling ash water return (AWR) water.

5.10 Hook ups to existing works

Refer to maintenance fall protection plan

5.11 Tests and inspections

5.11.1 Description of tests and inspections

It is a mandatory requirement that the Contractor clearly indicates amount of cleaning completed to allow Eskom's inspectors the opportunity to perform inspections. Eskom Inspectors will only inspect sections completed by the Contractor.

Failure to unblock penstock towers will result in the payment of only site establishment amount. Full payment of the contract will be effected upon meeting acceptance criteria i.e. clearing of blockages on respective penstock towers such that each discharge at 3 quarter full bore of the discharge pipe.

5.11.2 Materials facilities and samples for tests and inspections

The *Service Manager* shall indicate as advised or requested by the departmental system engineer which material the *Contractor* need to remove or cut samples for tests and inspection

6 List of drawings

6.1 Drawings issued by the *Employer*

Relevant drawings are issued by the Employer to the contractor after has been issued. These drawing will remain an Eskom property and contractor needs to have the correct revision.

Drawing number	Revision	Title

Appendix A attached