

**Safely removal of bees found on various structures, Infrastructures, buildings and any Eskom equipment within LIMLANGA CLUSTER (Mpumalanga OU) on an as when required basis over a period of 5 years.**



## NEC3 Term Service Contract (TSC3)

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

**and**

**for Safely removal of bees found on various structures, Infrastructures, buildings and any Eskom equipment within LIMLANGA CLUSTER (Mpumalanga OU) on an as when required basis over a period of 5 years.**

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**Enquiry No. :**

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

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## C1.1 Form of Offer & Acceptance

### Offer

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

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

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

Options A	The offered total of the Prices exclusive of VAT is	<b>Rate Based Contract</b>
	(in words) <b>Rate Based Contract</b>	

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 contractor before the end of the period of validity stated in the Contract Data, or other period as agreed, whereupon the contractor becomes the party named as the *Contractor* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s)

Capacity

**For the contractor:**

(Insert name and address of organisation)

Name &  
signature of  
witness

Date

Contractor's CIDB registration number:

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## Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the contractor'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 contractor's Offer shall form an agreement between the Employer and the contractor 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 Contract Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the contractor 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 contractor 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 contractor 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 contractor wishes to submit alternative contracts, use another copy of this Form of Offer and Acceptance.

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

Note:

1. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive contracting.
2. The extent of deviations from the contract documents issued by the Employer prior to the contract closing date is limited to those permitted in terms of the Conditions of Contract.
3. A contractor'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		N/A
2		
3		
4		
5		
6		
7		

By the duly authorised representatives signing this Schedule of Deviations below, the Employer and the contractor agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Contract Data and any addenda thereto listed in the Contract Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the contractor 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 contract documents and the receipt by the contractor 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 contractor:**

#### **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

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## C1.2 TSC3 Contract Data

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		<b>A: Priced contract with price list</b>
	dispute resolution Option	<b>W1: Dispute resolution procedure</b>
	and secondary Options	
		<b>X1: Price adjustment for inflation</b>
		<b>X2 Changes in the law</b>
		<b>Z: Additional conditions of contract</b>
	of the NEC3 Term Service Contract April 2013 <sup>1</sup> (TSC3)	
10.1	The <i>Employer</i> is (name):	<b>Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Tel No.	<b>+27 11 800 5085</b>
10.1	The Contact person is (name):	<b>Anastacia Raphasha</b>
	Address	<b>92 Hans van Rensburg Str, Polokwane, 0700</b>
	Tel	<b>011 800 5085</b>
	Fax	<b>N/A</b>
	e-mail	<b>raphasam@eskom.co.za</b>
11.2(2)	The Affected Property is	<b>Distribution Limlanga cluster</b>

<sup>1</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902 [www.ecs.co.za](http://www.ecs.co.za)

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11.2(13)	The <i>service</i> is	<b>Safely removal of bees found on various structures, Infrastructures, buildings and any Eskom equipment within LIMLANGA CLUSTER (Mpumalanga OU) on an as when required basis over a period of 5 years.</b>
11.2(14)	The following matters will be included in the Risk Register	<ol style="list-style-type: none"> <li>1. Late response to the task order</li> <li>2. Non- compliance of terms and conditions of the contract.</li> </ol>
11.2(15)	The Service Information is in	<b>Part 3: Scope of Work and all documents and drawings to which it makes reference.</b>
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>1 week</b>
<b>2</b>	<b>The Contractor's main responsibilities</b>	
21.1	The <i>Contractor</i> submits a first plan for acceptance within	<b>1 week of the Contract Date</b>
<b>3</b>	<b>Time</b>	
30.1	The <i>starting date</i> is.	<b>TBA</b>
30.1	The <i>service period</i> is	<b>60 months</b>
<b>4</b>	<b>Testing and defects</b>	<b>As per terms and conditions of the NEC3 Term Service Contract April 2013<sup>2</sup> (TSC3)</b>
<b>5</b>	<b>Payment</b>	
50.1	The <i>assessment interval</i> is	<b>Between the 25th day of each successive month.</b>
51.1	The <i>currency of this contract</i> is the	<b>South African Rand</b>
51.2	The period within which payments are made is	<b>3 weeks.</b>
51.4	The <i>interest rate</i> is	<p><b>the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</b></p> <p><b>(ii) the LIBOR rate applicable at the time for</b></p>

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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	<b>Compensation events</b>	As per terms and conditions of the NEC3 Term Service Contract April 2013 <sup>3</sup> (TSC3)
7	<b>Use of Equipment Plant and Materials</b>	As per terms and conditions of the NEC3 Term Service Contract April 2013 <sup>4</sup> (TSC3)
8	<b>Risks and insurance</b>	
80.1	These are additional <i>Employer's</i> risks	<b>1. as stated for "Format TSSC3" available on <a href="http://www.eskom.co.za/Contracts/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Contracts/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a> (See Annexure A for basic guidance)</b>
83.1	The <i>Employer</i> provides these insurances from the Insurance Table	<b>as stated for "Format TSC3" available on <a href="http://www.eskom.co.za/Contracts/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Contracts/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a> (See Annexure A for basic guidance).</b>
83.1	The <i>Employer</i> provides these additional insurances	<b>as stated for "Format TSC3" available on <a href="http://www.eskom.co.za/Contracts/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Contracts/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a> (See Annexure A for basic guidance)</b>
83.1	The <i>Contractor</i> provides these additional insurances:	<b>None</b>
83.1	The minimum amount of cover for insurance against loss and damage	<b>the amount of the deductibles relevant to the event described in the "Format TSC3"</b>

<sup>3</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902 [www.ecs.co.za](http://www.ecs.co.za)

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	caused by the <i>Contractor</i> to the <i>Employer's</i> property is	<b>insurance policy available on</b> <a href="http://www.eskom.co.za/Contracts/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Contracts/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a>
83.1	The minimum amount of cover for insurance in respect of loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one event is:	<b>whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i>.</b>
83.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:	<b>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands)..</b>
<b>9</b>	<b>Termination</b>	<b>As per terms and conditions of the NEC3 Term Service Contract April 2013<sup>5</sup> (TSC3)</b>
<b>10</b>	<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with price list</b>	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than	<b>2 weeks.</b>
<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i>	<b>the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).</b>
W1.2(3)	The <i>Adjudicator nominating body</i> is:	<b>the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>) or its successor body.</b>
W1.4(2)	The <i>tribunal</i> is:	<b>arbitration</b>
W1.4(5)	The <i>arbitration procedure</i> is	<b>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</b>

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	<p>The place where arbitration is to be held is <b>South Africa</b></p> <p>The person or organisation who will choose an arbitrator</p> <ul style="list-style-type: none"> <li>- if the Parties cannot agree a choice or</li> <li>- if the arbitration procedure does not state who selects an arbitrator, is</li> </ul>	<p><b>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</b></p>
<b>12</b>	<b>Data for secondary Option clauses</b>	
<b>X1</b>	<b>Price adjustment for inflation</b>	
X1.1	The <i>base date</i> for indices is	<b>The rates will be fixed and firm for the first 12 months of the contract. At the anniversary date of the contract start the prices will be adjusted in accordance with the published CPI for goods purchased and service to be provided. SEIFSA indices on Table D will be applicable for services and Table L1-L2 will be used for Transport</b>
<b>X2</b>	<b>Changes in the law</b>	<b>As per terms and conditions of the NEC3 Term Service Contract April 2013<sup>6</sup> (TSC3)</b>
<b>X17</b>	<b>Low service damages</b>	
X17.1	The <i>service level table</i> is	<b>0.5% of the Task Order value per complete week of delay.</b>
<b>X18</b>	<b>Limitation of liability</b>	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	<b>R0.0 (zero Rand)</b>
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	<p><b>the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on</b></p> <p><i><a href="http://www.eskom.co.za/Contracts/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Contracts/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a></i></p>
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	<p><b>The greater of</b></p> <ul style="list-style-type: none"> <li>• <b>the total of the Prices at the Contract Date</b></li> </ul> <p><b>and</b></p> <ul style="list-style-type: none"> <li>• <b>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 in the</b></li> </ul>

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X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<p><b><i>Employer's</i> assets and works / maintenance policies available on</b>  <a href="http://www.eskom.co.za/Contracts/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Contracts/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a></p> <p><b>the total of the Prices other than for the additional excluded matters.</b></p> <p><b>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</b></p> <p><b>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</b></p> <ul style="list-style-type: none"> <li>• Defects due to his design, plan and specification,</li> <li>• Defects due to manufacture and fabrication outside the Affected Property,</li> <li>• loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials),</li> <li>• death of or injury to a person and</li> <li>• infringement of an intellectual property right.</li> </ul>
X18.5	The <i>end of liability date</i> is	<b>52 months after the end of the <i>service period</i>.</b>
<b>X19</b>	<b>Task Order</b>	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	<b>2 days of receiving the Task Order</b>
<b>X20</b>	<b>Key Performance Indicators (not used when Option X12 applies)</b>	
X20.1	A report of performance against each Key Performance Indicator is provided at intervals of	<b>3 months</b>
<b>Z</b>	<b>The <i>additional conditions of contract</i> are</b>	
	<b>Z1 to Z11 always apply.</b>	

## **Z1 Cession delegation and assignment**

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

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## **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.

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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.

**Safely removal of bees found on various structures, Infrastructures, buildings and any Eskom equipment within LIMLANGA CLUSTER (Mpumalanga OU) on an as when required basis over a period of 5 years.**

## **Z8            Notifying compensation events**

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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 <i>Contractor</i> or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,
Coercive Action	means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,
Collusive Action	means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,
Committing Party	means, as the context requires, the <i>Contractor</i> , or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,
Corrupt Action	means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,
Fraudulent Action	means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,

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

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

- Z 11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z 11.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Service for this reason.
- Z 11.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Service for this reason, the procedures and amounts due on termination are respectively P1, P2, P3 and P4, and A1 and A3.
- Z 11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

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## **Annexure A: Insurance provided by the Employer**

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

1. Services provided in a TSC3 contract could include some element of construction or refurbishment as well as a continuous maintenance or operational service activity. If an event occurs which causes loss or damage, a claim could be made either against the *Employer's* "works" type policy which may be in place for the *Employer's* portion of the Affected Property concerned or against the *Employer's* assets policy which may be in place for the *Employer's* portion of the Affected Property concerned, or both.
2. The cover provided and the deductibles under the works policy are different to those under the assets policy. Each policy has a range of applicable deductibles depending on the location of the Affected Property and the nature of the insurable event.
3. The *Contractor* is required in terms of Contract Data for clause 83 to provide cover for the deductibles in the insurance provided by the *Employer*. This can be provided from his own resources on a 'self insured' basis or obtained by him from his own insurers. In order to assess the extent of this cover, contracting 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. Contracting 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 contracting 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/Contracts/InsurancePoliciesProcedures/Pages/EIMS\\_Policies\\_From\\_1\\_April\\_2014\\_To\\_31\\_March\\_2015.aspx](http://www.eskom.co.za/Contracts/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx)



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## C1.2 Contract Data

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

#### Notes to a contracting contractor:

1. Please read both the both the NEC3 Term Service Contract April 2013 and the relevant parts of its Guidance Notes (TSC3-GN)<sup>7</sup> in order to understand the implications of this Data which the contractor is required to complete.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.

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

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is	<b>0%</b>
	The <i>subcontracted fee percentage</i> is	<b>0%</b>
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:	

<sup>7</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 5391902 or [www.ecs.co.za](http://www.ecs.co.za)

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Experience:

2 Name:

Job

Responsibilities:

Qualifications:

Experience:

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

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

**Safely removal of bees found on various structures, Infrastructures, buildings and any Eskom equipment within LIMLANGA CLUSTER (Mpumalanga OU) on an as when required basis over a period of 5 years.**

## C1.3 Forms of Securities

### **Pro formas for Bonds & Guarantees- NOT APLICABLE FOR THIS CONTRACT**

For use with the NEC3 Term Service Contract (TSC3)

The *conditions of contract* stated in the Contract Data Part 1 include the following Secondary Options:

Option X4: Parent company guarantee  
Option X13: Performance Bond

Each of these secondary Options requires a bond or guarantee "in the form set out in the Service Information". Pro forma documents for these bonds and guarantees are provided here for convenience but are to be treated as part of the Service Information.

The *Contractor* shall guarantee his ASGI-SA Obligations by providing the *Employer* with an ASGI-SA Guarantee in the form provided here.

The organisation providing the bond / guarantee does so by copying the pro forma document onto his letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Employer* within the time stated in the contract.

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## PART 2: PRICING DATA

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

**Safely removal of bees found on various structures, Infrastructures, buildings and any Eskom equipment within LIMLANGA CLUSTER (Mpumalanga OU) on an as when required basis over a period of 5 years.**

## 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:

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

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

### 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 contracting 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 contracting 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 (contracting) or by negotiation depending on the nature of the *service* to be provided. Alternatively the *Employer*, in his Instructions to Contractors or in a Contract Schedule, may have listed some items that he requires the *Contractor* to include in the *price list* to be prepared and priced by him.

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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 contract, 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 contracted 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 contract. 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 contracting 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 contracting 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 contracting 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.

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## C2.2 the *price list*

Note: The contractor will be required to submit an Early warning for Miscellaneous works to be done, upon which the Project manager will approve/disapprove the Miscellaneous works specified in the Early Warning and quotation/s thereof (3 Quotations to be submitted in case of material purchase at cost plus 10%). Miscellaneous work will then be included in the invoice to be verified and reimbursed along with the original task order scope

Item	Description	Unit	Qty	Rate
1	Safely remove the bees, hives and safe re-allocation from various structures (Proof of safe delivery- Certificate or letter)	Each	1	
2	Safely transport bees	KM	1	
3	Miscellaneous	Each	1	R

The rates will be fixed and firm for the first 12 months of the contract. At the anniversary date of the contract start the prices will be adjusted in accordance with the published CPI for goods purchased and service to be provided. SEIFSA indices on Table D will be applicable for services and Table L1-L2 will be used for Transport.

### ACCEPTANCE BY THE CONTRACTOR

Tenderer's signature

Date:

.....

.....

## C3: Scope of Work

**This service includes the following:**

### **Safely Removal Bees hives and or nests from, and near Eskom buildings**

1. Eskom poles/ top and inside poles
2. Building under the roof or inside, buildings/ under ceilings.
3. Cable drums
4. Under or inside Eskom Storage Containers
5. Under Stacked poles at the stores
6. On top of trees and or tree trunks
7. Under the ground /holes
8. Under big rocks
9. Under or inside Eskom cars
10. Electric boxes
11. Hollow brick walls
12. Vehicle Tyres and Close to or inside Eskom equipment/infrastructure.
13. Safely transport and deliver bees to a safe place (e.g. legalised farm)
14. Safely remove bees found on various structures and buildings within LIMLANGA CLUSTER.

### **Equipment Tools**

1. Bakkie - Applicable vehicle to do the task at hand.
2. Hive tool.
3. Smokers.
4. See brush.
5. spade, step ladder & chain saw.
6. pick, axe and shovel.

### **Protective clothing/ equipment**

1. Overalls /white zip up
2. Bee veils
3. Full bee suits /one piece
4. Gloves /PVC /leather
5. Gaiters
6. Footwear /leather boots /gumboots
7. White -thick socks
8. Cap
9. Night light /red
10. Applicable ladder to reach heights.
11. Fall arrest system (relevant training applicable)
12. Applicable emergency medicine in case of bee sting to allergic person

## **Job description/specifications**













### **1. Specifications**

The attached documents form part of this legal binding contract, the *Contractor* confirms that he has familiarized himself with all the embedded documents from 1 to 17 as indicated.








**Safely removal of bees found on various structures, Infrastructures, buildings and any Eskom equipment within LIMLANGA CLUSTER on an as when required basis over a period of 5 years**

**Do not print and send them when returning this contract**

<u>No</u>	<u>UNIQUE IDENTIFIER</u>	<u>REVISION</u>	<u>DOCUMENT TITLE</u>
1	32 - 727	0	<b>SAFETY, HEALTH, ENVIRONMENT AND QUALITY (SHEQ) POLICY 32-727</b>  1_Eskom SHEQ Policy 32-727.pdf
2	32 - 136	0	<b>CONSTRUCTION SAFETY HEALTH AND ENVIRONMENTAL MANAGEMENT</b>  2_Construction Safety Health and En
3	32-524	0	<b>DEVELOPING A SAFETY, HEALTH AND ENVIRONMENTAL SPECIFICATION</b>  3_Developing a Safety, Health and Ei
4	34 - 333	1	<b>HEALTH AND SAFETY REQUIREMENTS TO BE MET BY PRINCIPAL CONTRACTORS EMPLOYED BY ESKOM DISTRIBUTION 34-333</b>  4_Health and Safety Requirements to be n
5	32 - 421	1	<b>ESKOM CARDINAL RULES 32-421</b>  5_Eskom Cardinal Rules (32-421).pdf
6	CONSTRUCTION REG 3		<b>NOTIFICATION OF CONSTRUCTION WORK TO DEPARTMENT OF LABOUR</b>  6_Notification of Construction Work to
7	CONSTRUCTION REG 4 & 5		<b>APPOINTMENT LETTERS FOR CLIENT REPRESENTATIVE, PRINCIPAL CONTRACTOR &amp; CONTRACTOR</b>  7_Appointment letters for Client repr
8 & 9	OHS ACT		<b>WRITTEN AGREEMENT ON OHS ACT SECTION 37(2) &amp; STANDARD CLAUSE</b>   8_Written agreement on OHS A           9_Standard clause Eskom Contracts Sect
10, 11 & 12	34 - 1063	0	<b>EXPANDED PUBLIC WORKS REPORT 34-1063.</b>    10_34-1063 EPWP Works Instruction.pdf           11_EPWP Guidelines Second edition 2005.           Eskom EPWP report template rev 7.xlsx
13	<u>DST 34-961</u>	0	<b>LEGAL APPOINTMENTS AND AUTHORIZATIONS</b>

**Safely removal of bees found on various structures, Infrastructures, buildings and any Eskom equipment within LIMLANGA CLUSTER on an as when required basis over a period of 5 years**

			 13_Legal Appointments and Au
14	TPC 41-55		<b>TRANSPORTING PERSONS ON BACK OF VEHICLES</b>  14_Transporting of Passengers on the ba
15	LTIR	MASTER	<b>LOST TIME INJURY REPORT</b>  LTIR Master.xls
16	• Contractor Performance Evaluation	MASTER	 PA - Contractors.xlsx
17	• Supplier Contract Quality Requirements	MASTER	 QM-58 Supplier Contract Quality Req

### Acknowledgement by Contractor

I/WE, ..... DO HEREBY ACKNOWLEDGE HAVING READ AND UNDERSTOOD THE ABOVE ANNEXED DOCUMENTS FROM 1 TO 11 IN PART **C3** OF THIS CONTRACT.

I/WE UNDERTAKE TO STUDY AND ABIDE BY THESE REQUIREMENTS AT ALL TIME.

SIGNED AT: ..... ON THE ..... DAY OF .....20.....

### Employer's requirements for the service

**All suppliers shall comply with, but not limited to the following legislation during the period of this contract.**

- The National Road Traffic Act (Act 93 of 1996)
- The Hazardous Substance Act (Act 15 of 1973)
- The Occupational, Health and Safety Act (Act 85 of 1993)
- The Environment Conservation Act (Act 73 of 1989)
- The National Environmental Management Act (Act 107 of 1998)
- The National Water Act (Act 36 of 1998)
- The National Waste Management Act (Act 59 of 2008)

All suppliers shall comply with all relevant Eskom procedures but not limited to the following:

- Waste Management Procedure: EPC 32-245
- The Limlanga cluster (LOU) Waste Management Plan

**Safely removal of bees found on various structures, Infrastructures, buildings and any Eskom equipment within LIMLANGA CLUSTER on an as when required basis over a period of 5 years**

- Safety, Health, Environmental and Quality Policy: 32-727
- Procedure for the Effective Management of Safety, Health and Environmental Related Incidents: 32-95

## Interpretation and terminology

The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the abbreviation
	None

## Management strategy and start up.

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

## Management strategy and start up.

### 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	As required	Service Manager's office	Both parties
Overall contract progress and feedback	As required	Service Manager's office	Both parties

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.

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

N/A

### Provision of bonds and guarantees

N/A

### Documentation control

All contractual Documentation must have relevant contract number and Purchase Order Number as reference as per Eskom Holdings SOC Ltd Standards . Contractual communications will be in the form of properly compiled letters, letters attached to emails, emails, NEC3 template and urgent contractor meetings

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can be in the form of sms. The use of sms's, emails does not override the use of applicable and relevant NEC3 standard templates, forms and Eskom Holdings SOC Limited procedures.

## **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)

Within one week of receiving a payment certificate from the *Service Manager* 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.

## **Contract change management**

For any change in scope, such changes must be treated as Compensation Events.

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

In order to substantiate the Defined Cost of compensation events, the *Employer* may require the *Contractor* to keep records of amounts paid by him for people employed by the *Contractor*, Plant and Materials, work subcontracted by the *Contractor* and Equipment. A site diary will be required.

## **Insurance provided by the *Employer***

The insurance provided by the Employer, is addressed under the contract data.

## **Training workshops and technology transfer**

To be advised by the Service Manager, as required

## **Design and supply of Equipment**

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**Safely removal of bees found on various structures, Infrastructures, buildings and any Eskom equipment within LIMLANGA CLUSTER on an as when required basis over a period of 5 years**

N/A

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

### **Equipment**

As per Task Order

### **Information and other things**

As per Task Order

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

**NB: No work that falls outside the approved scope of works will be undertaken without a Task Order.**

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

### **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 contract 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:

- Distribution: Alex Stramrood

The *Contractor* shall comply with the health and safety requirements contained in Below Form to this Service Information.

<b>Occupational Health and Safety Act: Section 37(2) Agreement - Form</b>	<b>Document Identifier</b>	<b>240-77037682</b>	<b>Rev</b>	<b>1</b>
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Only in the specific instance and for the specific purpose and to the extent for which it was made or given. This agreement is signed on behalf of the parties, each signatory to this warranting that he/she has the requisite authority to do so.

Signed this ..... Day of ..... 20 ..... at

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**Safely removal of bees found on various structures, Infrastructures, buildings and any Eskom equipment within LIMLANGA CLUSTER on an as when required basis over a period of 5 years**

..... (Place)

(Full name)..... (Signature) .....on

behalf of ..... (Supplier/Contractor)

**Contractor Responsible Manager** (responsible for signing the Eskom contract on behalf of the contractor)

Witnesses

1. ....

2. ....

Signed this ..... day of .....20.....

at ..... (Place)

(Full name)..... (Signature).....on

Behalf of **Eskom Holdings SOC Limited.**

**(Contracts and/or Project Manager or Eskom's representative)**

Witnesses

1. ....

2. ....

## **Environmental constraints and management**

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

### **Guidelines of Compiling an Environmental Policy**

#### **Environmental policy**

The environmental policy is the driver for implementing and improving the organization's environmental management system so that it can maintain and potentially improve its environmental performance. The policy should therefore reflect the commitment of top management to comply with applicable laws and to demonstrate continual improvement. The policy forms the basis upon which the organization sets its objectives and targets. The policy should be sufficiently clear to be capable of being understood by internal and external interested parties and should be periodically reviewed and revised to reflect changing conditions and information.

#### **Top management shall define the organization's environmental policy and ensure that it:**

Top management includes people on site, at head office, or any member of a controlling group designated to be management of the organization.

A site or an operating unit does not need to document its formal adoption of a corporate environmental policy if the corporate policy, as defined by its scope, applies to the site or operating unit. In addition, the corporate policy will need to be adequately specific to the site or operating unit.

*If the site or corporate policy is modified to suit the site or operating unit, then these changes must be documented.*

#### **a) is appropriate to the nature, scale and environmental impacts of its activities, products or services;**

for example, an organization involved in activities with a high environmental risk (for example, scheduled processes) would be expected to provide more specific undertakings in its environmental policy than an organization involved in low risk activities. The environmental policy should also address the different types of environmental impacts of the organization's activities, products or services.

This does not imply that all environmental impacts be addressed in the policy but that the framework of the policy covers all significant impacts (see 4.2 d).

#### **b) includes a commitment to continual improvement and prevention of pollution;**

The words "continual improvement" and "pollution prevention" do not need to be explicitly mentioned as long as similar words are used or there are clear statements in the policy that directly address pollution reduction

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(for example, waste minimization, source reduction and cleaner technologies) and continual improvement. Pollution prevention is more than just pollution control and requires preventive measures, instead of only control.

**c) includes a commitment to comply with relevant environmental legislation and regulations,**

Compliance with all relevant legislated and other requirements (National, provincial and local) is a minimum requirement for certification.

*Exceptions to this are where:*

- a) *The authorities have been informed of the non-compliance in writing;*
- b) *A corrective action programme is in place;*
- c) *Evidence is available that the authorities have accepted the corrective action programme;*
- d) *Evidence is available that the corrective action programme is being implemented.*

Where a permit for a process of the organization has expired and the organization can provide evidence of due diligence, for example, records of telephone calls, faxes to the regulator or minutes of meetings with the regulator showing that they are in the process of applying for new permits.

The word comply does not need to be explicitly mentioned in the environmental policy, as long as there are similar words (for example, adhere to, in accordance with) clearly communicating commitment to compliance with legislation and regulations.

**d and with other requirements to which the organization subscribes;**

The "other requirements" may include:

- a) Industry initiatives, non-regulatory guidelines or codes of practice such as Responsible Care or more general environmental initiatives such as the business Charter for Sustainable Development to the extent that the organization has formally adopted them;
- b) Agreements with public authorities;
- c) Formal management systems such as SABS ISO 9001/2, NOSA and ISRS; and
- d) Corporate or Head office requirements.

If an organization subscribes to other requirements (as in 4.2(c) a) and b) above in their environmental policy then:

- 1) The certification body will verify compliance with these requirements;
- 2) Compliance with those requirements will not be included in the scope of the certificate; and
- 3) Non-compliance with these requirements could provide grounds for not granting certification.

If an organization subscribes to other requirements (as in 4.2(c)) c) above then the certification body will only verify compliance with the SABS ISO 14001 requirements and not to those other formal management systems. (An exception to this is where the organization requests a combined SABS ISO 14001 and SABS ISO 9000 certification assessment/audit).

**e) Provides the framework for setting and reviewing environmental objectives and targets;**

The policy should be sufficiently detailed to provide a yardstick against which the organization's environmental performance can be evaluated.

*The policy wording must be specific enough so that specific objectives and targets can be formulated from it by the organization in order to implement the policy.*

**f) Is documented, implemented and maintained ...**

The policy can be documented in any form (i.e. paper or electronic).

All the requirements of SABS ISO 14001 shall be addressed and an organization cannot elect to omit any of these requirements from its environmental management system.

Policies tend to set long-term goals.

The policy should be periodically reviewed and revised in response to new information and changing circumstances.

*The policy must be reviewed periodically – at least annually.*

It is not expected that the policy be reissued annually. A well-developed policy can effectively drive the organization's environmental management system for several years.

**a) ... and communicated to all employees;**

Communication involves both the transmission and the understanding of the policy.

Communication mechanisms can include posting the policy in common areas, distributing it by memo, and reviewing it at staff or "toolbox talks" meetings.

A person's level of knowledge of the policy should be proportional to his/her level of responsibility in the environmental management system i.e. senior staff responsible for ensuring implementation need a greater

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knowledge of the policy than personnel at shop-floor level. In the South African context, unskilled, illiterate workers cannot be expected to have in-depth knowledge of the contents of the environmental policy, however all employees are expected to have an idea of the concepts of the environment, why it is important to protect the environment, and of their role in achieving this (see also 4.4.2).

**b) is available to the public**

*The policy must be available to any interested party on request.*

The words "is available" do not necessarily mean that the organization has to pro-actively distribute the policy to the public. The organization should however make the public aware of the fact that the policy is available.

A mechanism should be in place to have the policy available to the public.

**i) Key component of the policy**

The policy provides an environmental purpose and set of values for the organization to follow.

The policy should:

- a) Be relevant and straightforward;
- b) Relay that protection of the environment is a top priority of the organization;
- c) Show commitment to continued improvement of environmental performance and compliance with the laws and regulations;
- d) Clearly specify which organizational activities are covered by the statement;
- e) Be a natural jumping-off point for setting environmental objectives and targets;
- f) Provide a framework for assessing progress made with the targets and objectives that are oriented towards minimizing environmental impacts.

**j) Communication, promotion and support of policy**

The policy statement will be totally ineffective if the commitment it contains is not communicated, made available, promoted and supported by all. It is important to note that the policy:

- a) Should be available to all employees in the organization;
  - b) Should be communicated repeatedly after a period of time as a reminder;
  - c) Should be made available to the public;
  - d) Should be promptly provided whenever a copy is required;
  - e) Should be signed by top management to show commitment and support.
- Repeated exposure is the key to communicating the policy effectively thus it can be posted, communicated through news letters or sent to desktop personal computers.

**Quality assurance requirements**

As per Contract Supplier Quality requirements

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## Procurement

### People

#### Minimum requirements of people employed

N/A

#### BBBEE and preferencing scheme

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.

#### Accelerated Shared Growth Initiative – South Africa (ASGI-SA)

The *Contractor* complies with and fulfils the *Contractor's* obligations in respect of the Accelerated and Shared Growth Initiative - South Africa in accordance with and as provided for in the *Contractor's* ASGI-SA Compliance Schedule stated below

*[Insert the agreed ASGI-SA Compliance Schedule here]*

The *Contractor* shall keep accurate records and provide the *Service Manager* with reports on the *Contractor's* actual delivery against the above stated ASGI-SA criteria.

The *Contractor's* failure to comply with his ASGI-SA obligations constitutes substantial failure on the part of the *Contractor* to comply with his obligations under this contract.

## Subcontracting

#### Preferred subcontractors

Contractors are requested to submit names of proposed "Subcontractors" to be utilized on this project. Contractors are advised that only Eskom Approved Consultants and Contractors who have completed the necessary Eskom Contractor Training & Accreditation may be used.

Subcontractor	Section of Work to be Subcontracted	Vendor No.

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**Subcontract documentation, and assessment of subcontract contracts**

As per Terms and Conditions of NEC Term Services Contract

**Limitations on subcontracting**

Contractors are not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher BBBEE status level, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

**Attendance on subcontractors**

None

**Plant and Materials**

**Specifications**

As per Task Order

**Correction of defects**

Defects to be corrected within 1 Week

***Contractor's* procurement of Plant and Materials**

Material to be procured locally, from Eskom approved Supplier.

**Tests and inspections before delivery**

**The inspection to be done by the Service Manager**

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

As per Task Order

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## **Working on the Affected Property**

The Contractor must adhere the OHSA Act

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

As per Task Order

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

As per Task Order

### **Health and safety facilities on the Affected Property**

As per Task Order

### **Environmental controls, fauna & flora**

This sub-paragraph may not be required in a service contract or if these matters are dealt with in the general environmental requirements referred to in section 3 above.

### **Equipment provided by the *Employer***

None

### **Site services and facilities**

#### **Provided by the *Employer***

Security and Site

#### **Provided by the *Contractor***

As per Task Order

### **Control of noise, dust, water and waste**

The Contractor to adhere to Environment Management Act

### **Hook ups to existing works**

The Contractor to adhere to Eskom life saving rules

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## **Tests and inspections**

### **Description of tests and inspections**

Site Inspection to be done at the end of each Task Order

### **Materials facilities and samples for tests and inspections**

Materials facilities and samples for tests and inspections the *Contractor* and the *Employer* are to provide, per core clause 40.2.

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## List of drawings

### Drawings issued by the *Employer*

Drawing number	Revision	Title
		drawings will be available from the Service Manager

### Access to the Eskom Web Page

All contractors must make sure that they can access Eskom Web page at any given time to get the latest drawings and specifications before commencement of any task. Web Access applications can be done through the assistance of Brenda Morrison @ 011 629 5266 or [MorrisEF@eskom.co.za](mailto:MorrisEF@eskom.co.za)

### Acknowledgement of Web Access/and or application for Web Access

I .....do hereby acknowledge having/applied for access to the Eskom Distribution Website with all Distribution Procedures, Standards and Drawings as they will be listed in the index of the Task Order documents.

I undertake to study and abide by these requirements at all times. If for any reason I cannot access or open any of the files on the web, I will contact the *Employer* immediately.

Contractors Signature: .....

Signed at: ..... on the ..... day of .....

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**SECTION 37(2) AGREEMENT  
CONCLUDED BETWEEN  
ESKOM HOLDINGS SOC LIMITED**  
(Hereinafter referred to as Eskom)  
**AND**

.....  
**(Name of contractor/supplier)**

I, .....[(name)representing  
..... [insert name of contractor/supplier], do hereby  
acknowledge that ..... [insert name of contractor/supplier] is an  
employer in his/her own right, with duties as prescribed in the Occupational Health and Safety Act No. 85 of  
1993 ("the Act"), as amended, and agree to ensure that all work will be performed and/or machinery or plant  
used in accordance with the provisions of the Act.

I undertake that ..... [insert name of contractor/supplier] shall strictly  
adhere to, and ensure that his/her employees adhere to, the provisions of the Occupational Health and  
Safety Act, 1993 (Act 85 of 1993).

I have been provided with SHE specifications for project/service .....[insert brief  
details of project/service, for example, name, contract/project number] .....  
and will comply with the requirements set out in these.

I accept and agree that the SHE specifications constitute arrangements and procedures between  
..... [insert name of contractor/supplier] and Eskom, which  
will ensure compliance by ..... [insert name of contractor/supplier]  
with the provisions of the Act, as contemplated in section 37(2) of the Act.

This agreement constitutes the sole agreement between the parties, and no variation, modification, or waiver  
of any of the provisions of this agreement or consent to any departure from these shall, in any manner, be of  
any force or effect, unless confirmed in writing and signed by both parties, and such variation, modification,  
waiver, or consent shall be effective

<b>Occupational Health and Safety Act: Section 37(2) Agreement - Form</b>	<b>Document Identifier</b>	<b>240-77037682</b>	<b>Rev</b>	<b>1</b>
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only in the specific instance and for the specific purpose and to the extent for which it was made or given.  
This agreement is signed on behalf of the parties, each signatory to this warranting that he/she has the  
requisite authority to do so.

Signed this ..... day of ..... 20 ..... at

..... (Place)

(Full name)..... (Signature) .....on

behalf of ..... (supplier/contractor)

**Contractor Responsible Manager** (responsible for signing the Eskom contract on

behalf of the contractor)

Witnesses

3. ....

4. ....

Signed this ..... day of .....20.....

at ..... (Place)

(Full name)..... (Signature).....on

Behalf of **Eskom Holdings SOC Limited.**

**(Contracts and/or Project Manager or Eskom's representative)**

Witnesses

3. ....

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4. ....