



NEC3 Term Service Contract (TSSC3)

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

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CONTRACT No.

PART C1: AGREEMENTS & CONTRACT DATA

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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:

Provision of Removal of contaminants from the coal

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

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

Options A or C	The offered total of the Prices exclusive of VAT is	R
	Value Added Tax @ 15% is	R
	The offered total of the amount due inclusive of VAT is ¹	R

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.

1.3 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	Compensation events	[Scheduled event prices may be used for other compensation events or works in order for successful completion of the contract]

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.

1.3.1.1 For the tenderer:

1.3.1.2 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*

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

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
2. Whenever a cell is shaded in the left hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row. Where the following symbol is used "[•]" - data is required to be inserted relevant to the specific option selected.]

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

	2.1 Statement	2.2 Data
1	<p>2.3 General</p> <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>of the NEC3 Term Service Contract (June 2005)²</p>	<p>2.4</p> <p>A: Priced contract with price list</p> <p>W1: Dispute resolution procedure</p> <p>X1: Price adjustment for inflation</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>
10.1	<p>The <i>Employer</i> is (name):</p> <p>Address</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>

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

	Tel No.	017 827 8436
	Fax No.	086 577 6302
10.1	The <i>Service Manager</i> is (name):	Jabulile Nkosi
	Address	[•]Camden Power Station
	Tel	[•]017 827 8049
	Fax	[•]
	e-mail	[•]nkosipjo@eskom.co.za
11.2(2)	The Affected Property is	Eskom Camden Power Station
11.2(13)	The <i>service</i> is	Provision of Ash Spillage Cleaning
11.2(14)	The following matters will be included in the Risk Register	[•]
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	3 days
2.5 2	2.6 The Contractor's main responsibilities	(If the optional statement for this section is not used, no data will be required for this section)
21.1	The <i>Contractor</i> submits a first plan for acceptance within	1 week of the Contract Date
2.7 3	2.8 Time	2.9
30.1	The <i>starting date</i> is.	
30.1	The <i>service period</i> is	
2.10 4	2.11 Testing and defects	2.12 No data is required for this section of the conditions of contract.
2.13 5	2.14 Payment	2.15
50.1	The <i>assessment interval</i> is	Between the 14 th and 25 th day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	1 month
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

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

2.16 6	2.17 Compensation events	(If the optional statement for this section is not used, no data will be required for this section)
	These are additional compensation events:	1 Any additional works which are not covered in this contract
2.18 7	2.19 Use of Equipment Plant and Materials	2.20 No data is required for this section of the conditions of contract.
2.21 8	2.22 Risks and insurance	2.23
80.1	These are additional <i>Employer's</i> risks	1. [●] 2. [●] 3. [●]
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)..
2.24 9	2.25 Termination	There is no Contract Data required for this section of the <i>conditions of contract</i>.
2.26 10	2.27 Data for main Option clause	2.28
A	Priced contract with price list	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than	4 weeks.
2.29 11	2.30 Data for Option W1	
W1.1	The <i>Adjudicator</i> is (Name)	Either State the name of the person selected & complete the contact details below Or, state 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.
	Address	To be appointed when disputes arises
	Tel No.	
	Fax No.	
	e-mail	
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)	<p>The <i>arbitration procedure</i> is</p> <p>The place where arbitration is to be held is</p> <p>The person or organisation who will choose an arbitrator</p> <ul style="list-style-type: none"> - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is 	<p>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</p> <p>Johannesburg South Africa</p> <p>The Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</p>
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2.31 12 2.32 Data for secondary Option clauses 2.33

X1	Price adjustment for inflation										
X1.1	<p>The <i>base date</i> for indices is</p> <p>The proportions used to calculate the Price Adjustment Factor are:</p>	<p>1 MONTH FIXED CONTRACT</p> <table border="1"> <thead> <tr> <th>proportion</th> <th>linked to index for</th> <th>Index prepared by</th> </tr> </thead> <tbody> <tr> <td>.....</td> <td></td> <td></td> </tr> <tr> <td>.....</td> <td></td> <td></td> </tr> </tbody> </table>	proportion	linked to index for	Index prepared by		
proportion	linked to index for	Index prepared by									
.....											
.....											
X2	Changes in the law	No data is required for this Option									
X17	Low service damages										
X17.1	The <i>service level table</i> is in	The penalty of R1 000.00 of the task order per day limited to 15 % of the task order will be deducted should the contractor fails to action the task as required by the employer. This penalty will include any delays due to plant problems, inclement weather or act of GOD or any items outside the contractor's direct control.									
X18	Limitation of liability										
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	R0.0 (zero Rand)									
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/live/content.php?Item_ID=9248									
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	The greater of the total of the Prices at the Contract Date and the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the									

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?ItemID=9248>

X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<p>The total of the Prices other than for the additional excluded matters.</p> <p>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</p> <p>Defects due to his design, plan and specification,</p> <p>Defects due to manufacture and fabrication outside the Affected Property,</p> <p>loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials),</p> <p>death of or injury to a person and</p> <p>Infringement of an intellectual property right.</p>
X18.5	The <i>end of liability date</i> is	[●] months after the end of the <i>service period</i>.

X19	Task Order
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within 7 days of receiving the Task Order
Z	The <i>additional conditions of contract</i> are Z1 to Z11 always apply.

Z1	Cession delegation and assignment
Z1.1	The <i>Contractor</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i> .
Z1.2	Notwithstanding the above, the <i>Employer</i> may on written notice to the <i>Contractor</i> 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.
Z2	Joint ventures
Z2.1	If the <i>Contractor</i> 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 <i>Employer</i> for the performance of this contract.
Z2.2	Unless already notified to the <i>Employer</i> , the persons or organisations notify the <i>Service Manager</i> within two weeks of the Contract Date of the key person who has the authority to bind the <i>Contractor</i> on their behalf.
Z2.3	The <i>Contractor</i> does not substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the <i>Employer</i> having been given to the <i>Contractor</i> 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 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.

DRAFT

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@quin.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.

4.1 Clause	4.2 Statement	4.3 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	100% 0%
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:	TBA
21.1	The plan identified in the Contract Data is contained in:	TBA
24.1	The key persons are: 1 Name: Job: Responsibilities: Qualifications: Experience:	

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

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

DRAFT

C2.1 pricing assumptions: Option A

5 The *conditions of contract*

5.1 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 defined terms 11
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.

5.2 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.

5.3 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).

5.4 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.

5.5 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.

6 C2.2 Price List

C2.2 Price List

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

C3.1: EMPLOYER’S SERVICE INFORMATION

Contents

Part 3: SCOPE OF WORK
C3.1: Employer’s service Information
1. DESCRIPTION OF THE SERVICE
 1.1 *Employer’s requirements for the service*
2. GENERAL
3. MANAGEMENT STRATEGY AND START UP
4. HEALTH AND SAFETY, THE ENVIRONMENT AND QUALITY ASSURANCE
5. PROCUREMENT
6. WORKING ON THE AFFECTED PROPERTY
7. EQUIPMENT PROVIDED BY EMPLOYER
8. SITE SERVICES & FACILITIES.....

PART 3: SCOPE OF WORK

2.5 Roles and Responsibilities

2.5.1 Contractors

The contractor shall ensure that removing of contaminated done adequately as required and the coal is separated from the contaminants. The contractor shall ensure that only the coal is crushed. The house keeping must be maintained at all the time. All employees will be required to wear all PE at all the times. While crushing is taking places, all other employees should make sure that the removal of contaminants are removed and separated as required. When crushing is done, compiling of stockpile must be done.

All contractors shall work within the parameter of the job description and scope of work. To keep all instructions/ procedures on hand and supply Eskom power station with reference to be included in this document and supply record and history requirements.

Contractors must also ensure that the work is performed to the highest standard and safety standards and regulations.

2.5.2 Supervisor

The supervisor shall ensure that the plant is available before crushing at coal stock yard. Supervisor shall also ensure that there is no personnel around the crusher for safety measures.

Process for Monitoring

The daily check sheet will be utilized on the machine to identify hazards

3.6 Compliance to Safety Requirements

- 1) While carrying out work for Employer or on the Employer's premises, The Contractor shall comply with all safety regulations in accordance with the Occupational Health and Safety Act (OHSA Act), and all the regulations as stipulated by the Employer, such as the PSR regulations.
- 2) ***Before any work commences on the equipment, a Permit to Work (PTW) or a Limited Access Register (LAR), as the Employer may find appropriate for the type of activity to be carried out, shall be obtained and granted by the Employer's Appointed Person (AP) in accordance with the Employers Plant Safety Regulations. The Employer's Responsible Person (RP) appointed by the Employer at Camden Power Station in terms of PSR regulations shall take out a PTW or LAR for the Contractor and shall supervise the whole activity to ensure that the activities are carried out safely in accordance with OHSA Act and Eskom's Plant Safety Regulations.*** The RP for each activity shall be nominated and assigned to the Contractor by the Project Supervisor for the duration of each activity. The Contractor shall obey any lawful instruction that shall be given to him by the RP during the course of the work, and shall consent to their names being written in the RP's workers register as employees working under this supervision.
- 3) ***Compliance to these regulations and to Eskom's Life Saving Rules (formerly known as Cardinal Rules) is non-negotiable and any deviations shall not be tolerated.***

The RP shall be responsible to operate the lift and complete the check-list before operating the lift.

Provision of Removal of contaminants from the coal at Camden Power Station

Safety File(s) shall be compiled by the Contractor and submitted to the Contract Supervisor at the start of this contract. The Safety Department at Camden Power Station shall specify the format in which the file(s) shall be compiled.

4. SAFETY, HEALTH, ENVIRONMENT AND QUALITY ASSURANCE

4.1 Health and safety risk management

The contractor will comply with the following:

- Camden Power Station Health and Safety Standards as per Camden Power Station policy requirements.
- Adhere to the Occupational Health and Safety Act 85 of 1993 with special reference to Section 44 of this Act.
- National Environmental Management Act 107 of 1998
- Eskom / Camden Policies and Procedures
- Compensation for Occupational Injuries and Diseases Act of 1993 (COID)
- All staff will undergo one day Safety Induction training before starting any work on site.
- Adhere to Eskom and Camden Power Station's zero tolerance to violation of any of Eskom's and/or Camden Power Station's safety rules and regulations.

- **ESKOM LIFE-SAVING RULES:**
 - **Open, Isolate, Test, Earth, Bond and/or Insulate Before Touch**
 - **Hook up at Heights**
 - **Buckle Up**
 - **Be Sober**
 - **Ensure you have a permit to work**

The Contractor shall appoint a Safety Representative to carry out but not limited to the following duties;

- Identification of possible hazards, dangers and risks
- Eliminate potentially dangerous conditions and actions
- Ensure a safe working environment.
- Inspect and record findings of his workplace and submit a copy on a monthly basis to The Contract Supervisor

The Contract Supervisor shall be entitled to request the *Contractor* to stop work, without penalty to the *Employer*, when the Contractor's personnel fail to conform to acceptable health & safety standards or contravene any of the Health and Safety rules and regulations of Eskom.

4.1.2 Minimum SHE Documentation Required from the Contractor

The following minimum documents must be provided by the contractor in terms of Health, Safety and Environmental performance contract commencement.

Provision of Removal of contaminants from the coal at Camden Power Station

- Letter of good standing with COID or a registered insurance body
- An Organogram indicating the names of all persons that will hold legal appointments on the project in terms of the Act.
- The expected roles, responsibilities and authority of those who are proposed to receive legal appointments as well as their proof of competency.
- The resume'(s) of the proposed Safety Officer(s) and Environmental Officer(s) his/their roles, responsibilities and authority is required in terms of the scope of work.
- Proof of environmental, health and safety awareness training (provided by a recognized training body) for all employees required to perform work at Camden. The contractor shall be responsible to ensure that his employees are trained before commencing work at Camden. Proof of training provided, i.e. attendance registers and the training content, shall be submitted to the Eskom Agents and/or Environmental and Safety Officers for approval before commencing work on-site. Failure to do so shall result in an immediate termination of the contract.
- The contractor's company Safety, Health and Environment policy.
- Provide an overview of the system/program that is utilized to manage Safety, Health and Environment.

4.3 QUALITY ASSURANCE REQUIREMENTS

The *Contractor* will comply with the *Employer's* Quality Requirements – Camden Business excellence Quality Standard – 004 5604.

Quality requirements include visual inspection by the Employer, who will be entitled to witness the activities at any time. The *Employer* shall also have the right to stop work and re-instruct the Contractor to redo the work at no cost to the employer, such instruction will be given by *the* appointed *Contract Supervisor* and the Contractor shall comply with the requests.

The Employer may, by arrangement, inspect completed work. If in the opinion of the Employer, the work does not comply with the quality requirements expected from the Contractor, the Employer shall instruct the Contractor to rectify the faults. The Contractor will comply with these instructions.

5. PEOPLE

5.1 Minimum requirements of people employed

The *Contractor's* Site Manager shall ensure that only qualified people will be allowed to work on plant. The *Contract Supervisor* shall be entitled to verify the qualifications of the key people. The Contractor shall make these documents available to the Employer's Contract Supervisor when requested to do so.

Information To be Furnished by Tenderer

Number of jobs to be created as a result of this contract	
Number of jobs to be retained as a result of this contract	

Provision of Removal of contaminants from the coal at Camden Power Station

To be completed by Tenderer

Company: _____

Designation: _____

Signature: _____

Date: _____

6 WORKING ON THE AFFECTED PROPERTY**6.1 Security arrangements**

The *Contractor* applies for access permits (Contractor's permit) at the Security gate on the start date of the contract. The *Contractor* personnel shall be required to be in possession of an access permit at all times.

The Contractor shall comply with all security requirements when entering, working on or leaving Camden Power Station's premises.

In order to assist Protection Services with the issuing of permits and the identification of personnel on site the successful *contractor* is to supply a list of all personnel that he intends using on site, at least 72 hours prior to entry of the Security Area. This list must be delivered to Protection Services. The list, identified with the *Contractor's* name, is to contain the following information:

- Employee name
- Employee ID Number
- The *Employer's* Safety Coordinator's signature
- Copy of the ID book of every employee of the *Contractor*,

Access permits must be returned to security when the worker/s leave the site, either after completion of the *services*, or upon earlier termination of service of a worker during the contract period.

To speed up the process of gaining access to the site, the *Contractor* must compile detailed lists of all tools and equipment (including serial numbers where applicable) to be taken on site before arriving at the Power Station Security gate. An authorised copy of this list must be retained by the *contractor* - to be used again when the tools and equipment are removed from site after the completion of the *services*.

Any additional tools or equipment brought to site, or any tools or equipment removed during the contract period must be reported to protection services and all lists amended likewise. Gate release permits will not issue for the removal of any tools or equipment not specified on the tool list.

The *Contractor's* visitors and all personnel shall conform at all times to the security arrangements in force at the site. Application forms for visitors must be filled in by the *Contractor's* Site Manager and approved by the *Service Manager*, one day before the visit and submitted to the *Employer's*

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Protection Services office. Visitors will not be allowed on site if the necessary forms are not in the possession of the security staff.

The Chief of Protection Services may, with valid cause, remove any, of the *Contractor's* personnel from the site, either temporarily, or permanently. He may deny access to the site to any person whom, in the opinion of the said Chief of Protection Services, constitutes a security risk.

No unauthorised vehicles will be allowed on site. Only *Contractor's* Vehicles with displayed Contract Vehicle Permits disks will be allowed on site. Contract Vehicle Applications should be directed to the *Service Manager*.

No recruiting of casual labour may be done on the *Employer's* premises, including the area outside the Power Station Security Gate.

6.2 Fire Precautions

Any tampering with the *Employer's* fire equipment is strictly forbidden.

All exit doors, fire escape routes, walkways, stairways, stair landings and access to electrical distribution boards must be kept free of obstruction, and not be used for work or storage at any time. Fire fighting equipment must remain accessible at all times.

In case of a fire, report the location and extent of the fire to the Electrical Operating Desk at extension 3471.

Take the necessary action to safe guard the area to prevent injury and spreading of the fire.

6.3 Reporting of accidents

The *Employer* follows an accident prevention policy that includes the investigation of all accidents involving personnel and property. This is done with the intention of introducing control measures to prevent a REOCCURRENCE of the same incidents. The *Contractor* is expected to fully co-operate to achieve this objective. The *Service Manager* must be informed immediately of any incidents and any damage to property or equipment must be reported within 12 hours.

NOTE! This report does not relieve the *Contractor* of his legal obligation to report certain incidents to the Department of Labour, or to keep records in terms of the Occupational Health and Safety Act, and Compensation for Occupational Injuries and Diseases Act.

6.4 Speed Limit

All vehicles must be driven with due consideration for personnel and property. A maximum speed limit of 40 kilometres per hour will be adhered to on the premises at all times.

6.5 Health and Safety Arrangements

The *Contractor* must ensure that all his personnel attend a Health and Safety Induction Course prior to starting with their work. The Induction Course can, on request, be provided by the *Employer* and will be valid for the duration of the *services*.

Safety Risk Management has the right and authority to visit and inspect the *Contractor's* workplace or site establishment to ensure that tools, machinery and equipment comply with the minimum safety requirements.

Provision of Removal of contaminants from the coal at Camden Power Station

The *Contract Supervisor* shall be entitled to instruct the *Contractor* to stop **work**, without penalty to the *Employer*, where the *Contractor's* personnel fail to conform to safety standards or contravene health and safety regulations. The *Contract Supervisor* shall be entitled to call the *Contractor* to discipline his employees and to submit disciplinary action, and submit a report to *the Contract Supervisor*. The *Contractor* shall implement additional health and safety precautions where necessary.

The Contractor will provide all his personnel with all the required personal protective equipment.

Risk Assessments, Pre-Job Briefs, Post – Job Briefs & Job Observations will be conducted for all jobs.

All Construction Regulation - safety requirements should also be adhered to.

- Safety Plan

- Fall Protection Plan (repairing / replacing of conveying lines using scaffolding)

- 161 and 162 appointments

6.6 Health and safety facilities on the Affected Property

6.6.1 Medical Facilities

The *Contractor* provides a First Aid service to his employees. In the case where these prove to be inadequate, as in the event of a serious injury, the *Employer's* Medical Centre and facilities will be available.

Outside the *Employer's* office hours, the *Employer's* First Aid Services will only be available for serious injuries and life threatening situations.

The *Employer* shall be entitled, however, to recover the costs incurred, in the use of the above *Employer's* facilities, from the *Contractor*.

6.7 People restrictions, hours of work, conduct and records

Lunch time is between 12:00 until 12:30, Knock off time is 16:30 Monday to Thursday and 12h15 on Fridays.

6.8 Environmental controls, fauna & flora

All work complies with relevant environmental regulations as required.

If the work includes some toxic and hazardous substances during normal and routine maintenance activities, the *Contractor shall* use such hazardous substances in accordance with the applicable regulations and procedures and shall be disposed of by the contractor in accordance with the applicable law.

6.9 Refuse Disposal

The *Employer* shall provide special colour coded bins for refuse disposal.

The *Contractor shall* ensure that all workers under his control strictly adhere to the correct use of refuse bins:

Provision of Removal of contaminants from the coal at Camden Power Station

For the full duration of the *services*, the *Contractor* shall be responsible to keep the work *area* clean of any rubble, and to place all refuse into the correct bins provided.

6.10 Records of *Contractor's* Equipment

Contractors must keep records of Equipment on Site including whether it is owned or hired. The records will include calibration certificates etc.:

7.0 EQUIPMENT PROVIDED BY THE EMPLOYER

None

8.0 SITE SERVICES AND FACILITIES

Provided by the *Employer*

8.1 Portable Water

The contractor may utilize water points on Site.

8.2 Electrical Power

Contractor may utilise power on site from approved/allocated outlets in a manner approved by the Employer.

8.3 Sanitary Facilities

Sanitary facilities to serve the Power Station terrace are provided by the employer.

8.4 Waste Removal

Waste removal to the correct colour-coded bins, as provided on site by the employer, shall be the responsibility of the Contractor.

8.5 Accommodation and catering

The *Contractor* will be responsibility for the provision of accommodation *to* his personnel – the *Employer* does not provide accommodation.

The *Contractor* or any of his employees or subcontractors will be allowed to use the *Employer's* dining facilities.

The *Contractor* or any of his employees or subcontractors may also buy take away meals from the fast foods outlet on Site. Lunch time is from 12:00 to 12:30. The Contractor shall provide everything else necessary for providing the Works.