



NEC3 Term Service Contract (TSC3)

Between

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

and

for

Provision of Service of Contracts for Foundations and Minor Works for various projects within Powerlines Portfolio on an "as and when" required basis.

Contents:

Page No

Part C1	Agreements & Contract Data	□
Part C2	Pricing Data	□
Part C3	Scope of Work	□

CONTRACT No.

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:

- **Provision of Service of Contracts for Foundations and Minor Works for various projects within Powerlines Portfolio on an “as and when” required basis.**

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

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

Signature(s)

Name(s) _____

Capacity _____

For the tenderer: _____

Name & signature of witness _____ Date _____

Tenderer’s CIDB registration number:

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

Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the
Employer**

Name &
signature of
witness

Date

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

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

Note:

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

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

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

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

	For the tenderer:		For the Employer
Signature	_____	_____	_____
Name	_____	_____	_____
Capacity	_____	_____	_____
On behalf of	_____	_____	_____
Name & signature of witness	_____	_____	_____
Date	_____	_____	_____

C1.2 TSC3 Contract Data

Part one - Data provided by the Employer.

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

Clause	Statement	Data
1	General	
	<p>The <i>conditions of contract</i> are the core clauses and the clauses for main Option:</p> <div style="background-color: #cccccc; width: 100px; height: 60px; margin-bottom: 10px;"></div> <p>dispute resolution Option</p> <p>and secondary Options</p> <div style="background-color: #cccccc; width: 100px; height: 140px; margin-top: 10px;"></div>	<p>B: Priced contract with Bill of Quantities</p> <p>W1: Dispute resolution procedure</p> <p>X1: Price adjustment for inflation</p> <p>X2: Changes in the law</p> <p>X13: Performance Bond</p> <p>X17: Low service damages</p> <p>X18: Limitation of liability</p> <p>X19: Task Order</p> <p>X20: Key performance indicators</p> <p>Z: <i>Additional conditions of contract</i></p>
	of the NEC3 Term Service Contract April 2013 ² (TSC3)	
10.1	The <i>Employer</i> is (name):	Eskom Rotek Industries SOC Ltd (Reg no: 1990/006897/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Roshland Office Park Lower Germiston Road Rosherville
	Tel No.	011 621 4000
	Fax No.	
10.1	The <i>Service Manager</i> is (name):	Ayanda Christian
	Address	Lower Germiston Road, Rosherville
	Tel	011 629 8000

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

	Fax	
	e-mail	christal@eskom.co.za
11.2(13)	The <i>service</i> is	Provision of Service of Contracts for Foundations and Minor Works for various projects within Powerlines Portfolio on an “as and when” required basis for a period of 3 years.
11.2(14)	The following matters will be included in the Risk Register	As indicated by the Service Manager and reflected on 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	2 weeks
2	The Contractor’s main responsibilities	The Provision of Stringing equipment for Powerlines department for a period of Thirty-six months. Data required by this section of the core clauses is also provided by the Contractor in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data
21.1	The <i>Contractor</i> submits a first plan for acceptance within	2 weeks of the Contract Award date.
3	Time	
30.1	The <i>starting date</i> is.	01 May 2024
30.1	The <i>service period</i> is	Thirty-Six (36) Months
4	Testing and defects	52 weeks for latent defects after Completion of the whole of the works.
5	Payment	
50.1	The <i>assessment interval</i> is	The 25th day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand (ZAR)
51.2	The period within which payments are made is	30 days from the receipt of Contractor’s Invoice.
51.4	The <i>interest rate</i> is	30 days from the receipt of the invoice. The publicly quoted prime rate of interest (calculated on a 365-day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and (ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6

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

6 Compensation events As per NEC guidelines.

7 Use of Equipment Plant and Materials

8 Risks and insurance

80.1	<p>The Employer is to provide insurances as stated in the Insurance Table The Contractor will be liable for the applicable deductible if any</p>	<p>INSURANCE TABLE</p> <table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Insurance against</th> <th style="text-align: left;">Minimum amount of cover or minimum limit of indemnity</th> </tr> </thead> <tbody> <tr> <td>Assets All Risk</td> <td>As per the insurance policy document.</td> </tr> <tr> <td>Project insurance</td> <td>As per the insurance policy document.</td> </tr> <tr> <td>Environmental Liability</td> <td>As per the insurance policy document.</td> </tr> <tr> <td>General and Public Liability</td> <td>As per the insurance policy document.</td> </tr> <tr> <td>Transportation (Marine)</td> <td>As per the insurance policy document.</td> </tr> <tr> <td>Motor Fleet and Mobile Plant</td> <td>As per the insurance policy document.</td> </tr> <tr> <td>Terrorism</td> <td>As per the insurance policy document.</td> </tr> <tr> <td>Cyber Liability</td> <td>As per the insurance policy document.</td> </tr> </tbody> </table> <table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Insurance against</th> <th style="text-align: left;">Minimum amount of cover or minimum limit of indemnity</th> </tr> </thead> <tbody> <tr> <td>Loss of or damage to the works, Plant and Materials</td> <td>The replacement cost where not covered by the Employer’s insurance.</td> </tr> </tbody> </table>	Insurance against	Minimum amount of cover or minimum limit of indemnity	Assets All Risk	As per the insurance policy document.	Project insurance	As per the insurance policy document.	Environmental Liability	As per the insurance policy document.	General and Public Liability	As per the insurance policy document.	Transportation (Marine)	As per the insurance policy document.	Motor Fleet and Mobile Plant	As per the insurance policy document.	Terrorism	As per the insurance policy document.	Cyber Liability	As per the insurance policy document.	Insurance against	Minimum amount of cover or minimum limit of indemnity	Loss of or damage to the works, Plant and Materials	The replacement cost where not covered by the Employer’s insurance.
Insurance against	Minimum amount of cover or minimum limit of indemnity																							
Assets All Risk	As per the insurance policy document.																							
Project insurance	As per the insurance policy document.																							
Environmental Liability	As per the insurance policy document.																							
General and Public Liability	As per the insurance policy document.																							
Transportation (Marine)	As per the insurance policy document.																							
Motor Fleet and Mobile Plant	As per the insurance policy document.																							
Terrorism	As per the insurance policy document.																							
Cyber Liability	As per the insurance policy document.																							
Insurance against	Minimum amount of cover or minimum limit of indemnity																							
Loss of or damage to the works, Plant and Materials	The replacement cost where not covered by the Employer’s insurance.																							
	<p>The insurances provide cover for events which are at the Contractor’s risk from the <i>starting date</i> until the Defects Certificate or a termination certificate has been issued.</p>																							

			The Employer's policy Deductible where covered by the <i>Employer's</i> insurance.
	Loss of or damage to Equipment		The replacement cost
	Liability for loss of or damage to property (except the <i>works</i> , Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) caused by activity in connection with this contract		<p><u>Loss of or damage to property</u> <i>Employer's</i> property The replacement cost where not covered by the <i>Employer's</i> insurance.</p> <p>The Employer's policy Deductible where covered by the <i>Employer's</i> insurance.</p> <p><u>Other property</u> The replacement cost.</p> <p><u>Bodily injury to or death of a person</u> The amount required by applicable law.</p>
	Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract		The amount required by the applicable law.

9 Termination **There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data. As per NEC guideline.**

10 Data for main Option clause

B Priced contract with Bill of Quantities

20.5 The *Contractor* prepares forecasts of the final total of the Prices for the whole of the *service* at intervals no longer than **Twenty-eight (28) days**

11 Data for Option W1

W1.1 The *Adjudicator* **The person selected from the ICE-SA Division (or its successor Civil Engineering Panel of Adjudicators by the Party intended to be appointed) by the Party intended to be appointed ([ice-sa.org.za](http://www.ice-sa.org.za)). If the Parties do not agree on an Adjudicator, the Arbitration Foundation of Southern Africa (AFSA). To be appointed by the Parties.**

Address

Tel No.

Fax No.

e-mail

the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see www.ice-sa.org.za) or its successor body.

W1.2(3) The *Adjudicator nominating body* is: the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the London Institution of Civil Engineers. (See www.ice-sa.org.za) or its successor body.

W1.4(2) The *tribunal* is: arbitration.

W1.4(5) The *arbitration procedure* is the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.

The place where arbitration is to be held is South Africa

The person or organisation who will choose an arbitrator

- if the Parties cannot agree a choice or
- if the arbitration procedure does not state who selects an arbitrator, is the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.

12 Data for secondary Option clauses

X1	Price adjustment for inflation																							
X1.1	The <i>base date</i> for indices is	CPA fixed and firm for first 12 months after contract award.																						
	The proportions used to calculate the Price Adjustment Factor are:	<table border="0"> <tr> <td style="text-align: center;">0.</td> <td>linked to index for</td> <td>Index prepared by</td> </tr> <tr> <td style="text-align: center;">0.05</td> <td>Index For Cement</td> <td>M16</td> </tr> <tr> <td style="text-align: center;">0.3</td> <td>Index for actual Labour Cost</td> <td>C3(A)</td> </tr> <tr> <td style="text-align: center;">0.1</td> <td>Index Of road freight costs</td> <td>L2(A)</td> </tr> <tr> <td style="text-align: center;">0.4</td> <td>Consumer Price Index</td> <td>D3</td> </tr> <tr> <td style="text-align: center;">0.15</td> <td>Non-adjustable</td> <td></td> </tr> <tr> <td style="text-align: center;">1.00</td> <td>non-adjustable</td> <td></td> </tr> </table>	0.	linked to index for	Index prepared by	0.05	Index For Cement	M16	0.3	Index for actual Labour Cost	C3(A)	0.1	Index Of road freight costs	L2(A)	0.4	Consumer Price Index	D3	0.15	Non-adjustable		1.00	non-adjustable		
0.	linked to index for	Index prepared by																						
0.05	Index For Cement	M16																						
0.3	Index for actual Labour Cost	C3(A)																						
0.1	Index Of road freight costs	L2(A)																						
0.4	Consumer Price Index	D3																						
0.15	Non-adjustable																							
1.00	non-adjustable																							

X2	Changes in the law	
X13	Performance Bond	10% of the Contract price.
X17	Low service damages	
X17.1	The low <i>service damages</i> .	0.1% per day of the total of the Price for each item or group of items of the relevant part of the service that does not meet the required service level to a maximum of 10% of the Contract Prices. If the Contractor fails to provide the service and/or provide any mitigations to correct the non-conformance within five (5) working days, the penalty of 0.1% per day will kick in from the first day of the non-conformance.
X18	Limitation of liability	Limited to the amount stated in the Contract.
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 applicable deductibles at contract date.
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	<p>The greater of</p> <ul style="list-style-type: none"> • the total of the Prices at the Contract Date and the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles. •
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<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> <ul style="list-style-type: none"> • Defects due to his design, plan and specification, • Defects due to manufacture and fabrication outside the Affected Property,

		<ul style="list-style-type: none"> • loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials), • death of or injury to a person and infringement of an intellectual property right.
X18.5	The <i>end of liability date</i> is	Two [2] months after the end of the service period.
Z	The <i>additional conditions of contract</i> Z1 to Z14 always apply. are	

Z1 Cession delegation and assignment

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

Z2 Joint ventures

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

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

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

Z4 Confidentiality

- Z4.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.
- Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z4.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

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

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

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

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

- Z7.1 Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z7.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
- Z7.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z8 Notifying compensation events

- Z8.1 Delete the last paragraph of core clause 61.3 and replace with:
- If the *Contractor* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices.
-

Z9 *Employer's* limitation of liability

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

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

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

Z11 Ethics

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

- Affected Party** means, as the context requires, any party, irrespective of whether it is the *Contractor* or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,
- Coercive Action** means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,
- Collusive Action** means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,
- Committing Party** means, as the context requires, the *Contractor*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,
- Corrupt Action** means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,

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

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

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

Z11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z11.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Services for this reason.

Z11.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.

Z11.4

Z12 Insurance

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

Insurance cover

83

83.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.

83.2 The *Contractor* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
Loss of or damage to Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
Loss of or damage to Equipment	The replacement cost where not covered by the <i>Employer's</i> insurance.

	The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service	<p><u>Loss of or damage to property</u> The replacement cost</p> <p><u>Bodily injury to or death of a person</u> The amount required by the applicable law.</p>
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law

Z 12.2 Replace core clause 86 with the following:

**Insurance 86
by the
Employer**

86.1 The *Employer* provides the insurances stated in the Insurance Table B

INSURANCE TABLE B

Insurance against or name of policy	Minimum amount of cover or minimum li of indemnity
Assets All Risk	Per the insurance policy document
Contract Works insurance	Per the insurance policy document
Environmental Liability	Per the insurance policy document
General and Public Liability	Per the insurance policy document
Transportation (Marine)	Per the insurance policy document
Motor Fleet and Mobile Plant	Per the insurance policy document
Terrorism	Per the insurance policy document
Cyber Liability	Per the insurance policy document
Nuclear Material Damage and Business Interruption	Per the insurance policy document
Nuclear Material Damage Terrorism	Per the insurance policy document

Z13 Nuclear Liability

- Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z13.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z14 Asbestos

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

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

- TWA** means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.
- Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) (“Asbestos Regulations”). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short-term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
- Z14.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor’s* expense. For the purposes of compliance, the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z14.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented, and relevant air monitoring conducted in order to declare the area safe.
- Z14.5 The *Contractor’s* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z14.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer’s* expense, and conducted in line with South African legislation.

Part two - Data provided by the Contractor.

Notes to a tendering contractor:

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

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

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

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

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

B	Priced contract with Bill of Quantities
11.2(12)	The <i>price list</i> is in As per C2.2
11.2(19)	The tendered total of the Prices is

PART 2: PRICING DATA
TSC3 Option B

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option B	2
C2.2	Priced contract with Bill of Quantities	2

C2.1 Pricing assumptions: Option B

How work is priced and assessed for payment

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

Identified and defined terms	11	
	11.2	(12) The Price List is the <i>price list</i> unless later changed in accordance with this contract.
		(17) The Price for Services Provided to Date is the total of
		<ul style="list-style-type: none"> • the Price for each lump sum item in the Price List which the <i>Contractor</i> has completed and • 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.
		(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 B 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.

C2.2 the price list

PART 3: SCOPE OF WORK

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

Description of the *service*

Please refer attached works information.