



**NEC3 Term Service Contract (TSC3)**

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

**and  
(Reg No. \_\_\_\_\_)**

**for PROVISION OF 24/7 365 HEALTH LINE AND  
MEDICAL EMERGENCY SERVICES FOR ESKOM  
HOLDINGS SOC LIMITED AND ITS SUBSIDIARIES,  
EMPLOYEES, LEARNERS INCLUDING  
CONTRACTORS OPERATING AT ANY ESKOM SITE  
FOR PERIOD OF THREE (03) YEARS**

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<b>Contents:</b>	<b>No of pages</b>
<b>Part C1 Agreements &amp; Contract Data</b>	<b>[17]</b>
<b>Part C2 Pricing Data</b>	<b>[4]</b>
<b>Part C3 Scope of Work</b>	<b>[10]</b>

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**CONTRACT No.**

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

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<b>Contents:</b>	<b>No of pages</b>
<b>C1.1 Form of Offer and Acceptance</b>	<b>[3]</b>
<b>C1.2a Contract Data provided by the <i>Employer</i></b>	<b>[10]</b>
<b>C1.2b Contract Data provided by the <i>Contractor</i></b>	<b>[3]</b>

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# C1.1 Form of Offer & Acceptance

**Offer**

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

**Provision of 24/7 365 Health Line and Medical Emergency Services for Eskom Holdings SOC Limited and its subsidiaries, employees, learners including contractors operating at any Eskom site**

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	The offered total of the Prices exclusive of VAT is	<b>R</b>
	Value Added Tax @ 15% is	<b>R</b>
	The offered total of the amount due inclusive of VAT is <sup>1</sup>	<b>R</b>
	(in words)	

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

Signature(s)

Name(s) \_\_\_\_\_

Capacity \_\_\_\_\_

**For the tenderer:**

\_\_\_\_\_  
*(Insert name and address of organisation)*

Name & signature of witness

Date

Tenderer's CIDB registration number:

<sup>1</sup> 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 original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)

Capacity

**for the  
Employer**

**Eskom Holdings SOC Ltd  
Megawatt Park, Maxwell Drive, Sandton, Johannesburg**

.....  
*(Insert name and address of organisation)*

Name &  
signature of  
witness

Date

**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 \_\_\_\_\_

**Eskom Holdings SOC Ltd  
Megawatt Park, Maxwell Drive, Sandton,  
Johannesburg**

\_\_\_\_\_  
*(Insert name and address of organisation)*

\_\_\_\_\_  
*(Insert name and address of organisation)*

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	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
	dispute resolution Option and secondary Options	<b>A: Priced contract with price list</b> <b>W1: Dispute resolution procedure</b> <b>X1: Price Adjustment for Inflation</b> <b>X2: Changes in the law</b> <b>X17: Low service damages</b> <b>X18: Limitation of liability</b> <b>X19: Task Order</b> <b>Z: Additional conditions of contract</b>
	of the NEC3 Term Service Contract May 2024 (TSC3)	
10.1	The <i>Employer</i> is (name):	<b>Eskom Holdings SOC Limited (Reg No: 2002/015527/30), a juristic person incorporated in terms of the company laws of the Republic of South Africa</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Tel No.	
	Fax No.	
10.1	The <i>Service Manager</i> is (name):	
	Address	<b>Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Tel	
	Fax	
	e-mail	
11.2(2)	The Affected Property is	<b>All Eskom Sites</b>

11.2(13)	The <i>service</i> is	The provision of 24/7 Emergency Health Line and evacuation services for Eskom Holdings SOC Limited and its subsidiaries, employees, learners including contractors operating at any Eskom site.
11.2(14)	The following matters will be included in the Risk Register	Matters to be included as and when identified during the contract period
11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents 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	1 [one] working day
2	<b>The Contractor's main responsibilities</b>	
21.1	The <i>Contractor</i> submits a first plan for acceptance within	3 [three] weeks of the Contract Date
3	<b>Time</b>	
30.1	The <i>starting date</i> is	01-05-2024 or as soon as possible thereafter
30.1	The <i>service period</i> is	From 01-05-2024 to 30-04-2027
4	<b>Testing and defects</b>	No data is required for this section of the <i>conditions of contract</i> .
5	<b>Payment</b>	
50.1	The <i>assessment interval</i> is	between the [25th] day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	4 [four] weeks.
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
6	<b>Compensation events</b>	To be applied as the NEC3 TSC
7	<b>Use of Equipment Plant and Materials</b>	No data is required for this section of the <i>conditions of contract</i> .

## 8 Risks and insurance

80.1	These are additional <i>Employer's</i> risks	<ol style="list-style-type: none"> <li>1. <b>Health and safety risks to staff, contractors, and visitors.</b></li> <li>2. <b>Environmental risks including fauna and flora.</b></li> <li>3. <b>Statutory compliance</b></li> </ol>
83.1	The <i>Employer</i> provides these insurances from the Insurance Table	<b>as stated for "Format TSC3" available on <a href="http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a> (See Annexure A for basic guidance).</b>
83.1	The <i>Employer</i> provides these additional insurances	<b>as stated for "Format TSC3" available on <a href="http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a> (See Annexure A for basic guidance).</b>
83.1	The Contractor provides these additional insurances:	[●]
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	<b>the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on <a href="http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a></b>
83.1	The insurance against loss of or damage to the <i>works</i> , Plant and Materials is to include cover for Plant and Materials provided by the <i>Employer</i> for an amount of	[●]
83.1	The minimum amount of cover for insurance in respect of loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one event is:	<b>whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i>.</b>
83.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:	<b>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands).</b>
9	<b>Termination</b>	<b>Either Party may terminate the <i>Consultant's</i> obligation to Provide the Services by notifying the other Party if the other Party has done one of the conditions specified in the NEC 3 TSC. The terminating Party provides not less than 90 (ninety) days' notice of termination to the other Party.</b>



<b>10</b>	<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with price list</b>	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than	<b>4 [four] weeks.</b>
<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i> is (Name)	<b>the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).</b>
W1.2(3)	The <i>Adjudicator nominating body</i> is:	<b>the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ) or its successor body.</b>
W1.4(2)	The <i>tribunal</i> is:	<b>arbitration</b>
W1.4(5)	The <i>arbitration procedure</i> is	<b>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</b>
	The place where arbitration is to be held is	<b>South Africa, Gauteng.</b>
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	<b>the Chairman for the time being or his nominee</b>
	- if the arbitration procedure does not state who selects an arbitrator, is	<b>of the Association of Arbitrators (Southern Africa) or its successor body.</b>
<b>12</b>	<b>Data for secondary Option clauses</b>	
<b>X1</b>	<b>Price Adjustment for Inflation</b>	<b>CPI will not be applicable</b>
<b>X2</b>	<b>Changes in the law</b>	<b>Any law within the Republic of South Africa which applies to the Consultant's providing the Services</b>
	The law of the project is:	
<b>X17</b>	<b>Low service damages</b>	<b>0,5% of the task order per day of delay</b>
X17.1	The <i>service level table</i> is in	<b>Part C3.1</b>

<b>X18</b>	<b>Limitation of liability</b>	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	<b>R0.0 (zero Rand)</b>
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	<b>the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on</b> <a href="http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a>
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	<b>The greater of</b> <ul style="list-style-type: none"> <li>• the total of the Prices at the Contract Date and</li> <li>• the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles in the <i>Employer's</i> assets and works / maintenance policies available on <a href="http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a></li> </ul>
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	<b>the total of the Prices other than for the additional excluded matters.</b>  <b>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</b>  <b>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</b> <ul style="list-style-type: none"> <li>• Defects due to his design, plan and specification,</li> <li>• Defects due to manufacture and fabrication outside the Affected Property,</li> <li>• loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials),</li> <li>• death of or injury to a person and</li> <li>• infringement of an intellectual property right.</li> </ul>
X18.5	The <i>end of liability date</i> is	<b>[•] months after the end of the service period.</b>
<b>X19</b>	<b>Task Order</b>	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	<b>2 [ two] days of receiving the Task Order</b>

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**Z**            **The *additional conditions of contract* are**

**Z1 to Z11 always apply.**

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**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.

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**Z8 Notifying compensation events**

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

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

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**Z9 *Employer's* limitation of liability**

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

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

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

**Z11 Ethics**

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

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

Z 11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z 11.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Service for this reason.

Z 11.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Service for this reason, the procedures and amounts due on termination are respectively P1, P2, P3 and P4, and A1 and A3.

Z 11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

## **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. The Contractor must obtain its own advice. Details of the insurance itself are available from the internet web link given below.*

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

## C1.2 Contract Data

### 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)<sup>2</sup> in order to understand the implications of this Data which the tenderer is required to complete.
2. The number of the clause which requires the data is shown in the left-hand column for each statement however other clauses may also use the same data.
3. Where a form field like this [       ] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise, complete by hand and in ink.

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

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

<sup>2</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 5391902 or [www.ecs.co.za](http://www.ecs.co.za)



Qualifications:

Experience:

3 Name:

Job

Responsibilities:

Qualifications:

Experience:

4 Name:

Job

Responsibilities:

Qualifications:

Experience:

5 Name:

Job

Responsibilities:

Qualifications:

Experience:

6 Name:

Job

Responsibilities:

Qualifications:

Experience:

7 Name:

Job

Responsibilities:

Qualifications:

Experience:

8 Name:

Job

Responsibilities:

Qualifications:

Experience:

9 Name:

Job

Responsibilities:

Qualifications:

Experience:

10 Name:

Job

Responsibilities:

Qualifications:

Experience:

**CV's (and further key person's data including**

**CVs) are in \_\_\_\_\_.**

<b>A</b>	<b>Priced contract with price list</b>	
11.2(12)	The <i>price list</i> is in	<b>Part C2.2 "The Price List"</b>
11.2(19)	The tendered total of the Prices is	<b>R</b>

## PART 2: PRICING DATA

### TSC3 Option A

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

## C2.1 Pricing assumptions: Option A

### How work is priced and assessed for payment

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

<b>Identified and defined terms</b>	11	
	11.2	(12) The Price List is the <i>price list</i> unless later changed in accordance with this contract.
		(17) The Price for Services Provided to Date is the total of  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 A is a priced contract where the Prices are derived from a list of items of service which can be priced as lump sums or as expected quantities of service multiplied by a rate or a mix of both.

### Function of the Price List

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

### Link to the *Contractor's* plan

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

### Preparing the *price list*

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

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

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

### **Format of the *price list***

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

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

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

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

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

## C2.2 the *price list*

DESCRIPTION	NUMBER OF EMPLOYEES/ FLIGHTS	RATE PER EMPLOYEE PER MONTH	MONTHLY / FLIGHT RATE	NUMBER OF MONTHS / FLIGHTS	TOTAL EXCLUDING VAT
Monthly Payment	40000			36	
Payment per Flight	12			12	
<b>Grand Total</b>					<b>R</b>

## PART 3: SCOPE OF WORK

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
	This cover page	1
C3.1	<i>Employer's Service Information</i>	9
	Total number of pages	10

## C3.1: EMPLOYER'S SERVICE INFORMATION

### Contents

<b>Part 3: Scope of Work</b> .....	
<b>C3.1: Employer's service Information</b> .....	<b>24</b>
<b>1 Description of the service</b> .....	<b>26</b>
1.1 Executive overview .....	26
1.2 <i>Employer's</i> requirements for the <i>service</i> .....	26
1.3 Interpretation and terminology .....	26
<b>2 Management strategy and start up.</b> .....	<b>26</b>
2.1 The <i>Contractor's</i> plan for the <i>service</i> .....	26
2.2 Management meetings .....	26
2.3 <i>Contractor's</i> management, supervision and key people .....	26
2.4 Documentation control.....	27
2.5 Invoicing and payment.....	27
2.6 Contract change management .....	27
2.7 Records of Defined Cost to be kept by the <i>Contractor</i> .....	27
2.8 Insurance provided by the <i>Employer</i> .....	27
2.9 Training workshops and technology transfer.....	27
2.10 Design and supply of Equipment.....	27
2.11 Things provided at the end of the <i>service period</i> for the <i>Employer's</i> use .....	27
2.11.1 Equipment.....	27
2.11.2 Information and other things .....	27
2.12 Management of work done by Task Order .....	28
<b>3 Health and safety, the environment and quality assurance</b> .....	<b>28</b>
3.1 Health and safety risk management .....	28
3.2 Environmental constraints and management .....	28
<b>4 Procurement</b> .....	<b>29</b>
4.1 People.....	29
4.1.1 Minimum requirements of people employed.....	29
4.1.2 BBBEE and preferencing scheme .....	29
4.1.3 Accelerated Shared Growth Initiative – South Africa (ASGI-SA).....	29
4.2 Subcontracting .....	30
4.2.1 Preferred subcontractors .....	30
4.2.2 Subcontract documentation, and assessment of subcontract tenders .....	30
4.2.3 Limitations on subcontracting .....	30
4.2.4 Attendance on subcontractors .....	30



4.3	Plant and Materials .....	30
4.3.1	Specifications .....	30
4.3.2	Correction of defects .....	30
4.3.3	<i>Contractor's</i> procurement of Plant and Materials .....	30
4.3.4	Tests and inspections before delivery .....	30
4.3.5	Plant & Materials provided "free issue" by the <i>Employer</i> .....	30
<b>5</b>	<b>Working on the Affected Property.....</b>	<b>31</b>
5.1	<i>Employer's</i> site entry and security control, permits, and site regulations.....	31
5.2	People restrictions, hours of work, conduct and records.....	31
5.3	Health and safety facilities on the Affected Property .....	31
5.4	Environmental controls, fauna & flora.....	31
5.5	Cooperating with and obtaining acceptance of Others.....	31
5.6	Records of <i>Contractor's</i> Equipment.....	31
5.7	Equipment provided by the <i>Employer</i> .....	31
5.8	Site services and facilities.....	31
5.8.1	Provided by the <i>Employer</i> .....	31
5.8.2	Provided by the <i>Contractor</i> .....	31
5.9	Control of noise, dust, water and waste .....	31
5.10	Hook ups to existing works .....	31
5.11	Tests and inspections .....	32
5.11.1	Description of tests and inspections .....	32
5.11.2	Materials facilities and samples for tests and inspections .....	32
<b>6</b>	<b>List of drawings.....</b>	<b>32</b>
6.1	Drawings issued by the <i>Employer</i> .....	32

## Description of the *service*

### Executive overview

The provision of 24/7 Emergency Health Line and evacuation services for Eskom Holdings SOC Limited and its subsidiaries, employees, learners including contractors operating at any Eskom site for a period of three (03) years. The services are required 7 days a week, including public holidays.

### *Employer's requirements for the service*

- One dedicated number (also referred to as the trigger number) to call in an emergency, inclusive of 24 hours medical assistance
- The shortest response time is crucial for the survival of the injured or ill employees
- Emergency telephonic advice provided to stabilise patient while waiting for transport to arrive
- Appropriate mode of transport dispatched, well equipped to evacuate all types of cases as per triage, that includes helicopter, emergency response vehicle and ambulance
- Evacuation of the injured by helicopter as result of electrical contact, serious motor vehicle accidents (MVA's) and life-threatening injuries on request by the client
- Guaranteed hospital admission of the evacuated employees that are injured or ill
- Inter hospital transfer to appropriate medical facilities after admission if need be
- Provision of an Emergency Notification System (ENS)
- Designated Service Providers (DSP's) in areas where the organisation has no footprint
- Repatriation of mortal remains and
- Monthly reports and meetings to discuss challenges, trends, and suggestions

### Interpretation and terminology

NEC 3 – New Engineering Contract

### Management strategy and start up.

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

The service provider is required to inform the contract and Senior Manager- OHS of any call attended to either via SMS, email or telephone call.

#### Management meetings

At least monthly meetings to be held to receive reports and discuss challenges and constraints with actual events which occurred the previous month. The frequency after the first quarter if agreed may then change. All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the contract as these shall be done separately by the person identified in the conditions of contract to carry out such actions or instructions.

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

An organisational structure will be required from the service provider of individuals actively involved on this contract.

## **Documentation control**

All communications relating to this service is to be routed to the *service manager*, whose name will be communicated only after contract award.

## **Invoicing and payment**

The Z clauses make reference to invoicing procedures stated here in this Service Information. Also include a list of information which is to be shown on an invoice.

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

The *Contractor* shall address the tax invoice to the following:  
and include on each invoice the following information:

Eskom Risk and Sustainability OHS  
Name and address of the *Contractor* and the *Employer*;  
*Contractor's* VAT registration number;  
The *Employer's* VAT registration number 4740101508;  
Name of the *Service Manager*;  
The contract number and title;  
The purchase order number;  
Description of service provided; employee numbers assisted; their geographic area and operating unit for each item invoiced based on the Price List;  
Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;

## **Contract change management**

The *Contractor* must notify the *Employer* of any changes to key personnel involved in this contract and any other changes relating to the contract. The *Employer* must approve the changes before they are effected.

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

No Information required.

## **Insurance provided by the Employer**

Please refer to Annexure A of this contract.

## **Training workshops and technology transfer**

No information required.

## **Design and supply of Equipment**

No Information required.

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

### Equipment

No information required.

### Information and other things

No information required.

## Management of work done by Task Order

Information to be included on a Task Order.

The instruction to perform the job;  
The place of the incident/emergency; and  
The number of ill/injured people  
Contact details of ill/injured people.

## Health and safety, the environment and quality assurance

### Health and safety risk management

In addition to the requirements of the laws governing health and safety, Eskom may have some additional  
As follows:

Eskom Health and Safety Requirements  
Eskom's Life Saving Rules

### Environmental constraints and management

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.

The *Contractor* shall comply with the environmental criteria and constraints stated above.

## Procurement

### People

#### Minimum requirements of people employed

No constraints relating to people to be employed

#### BBBEE and preferencing scheme

Eskom Holdings SOC Limited has a Directive on B-BBEE implementation (32- 416). The Directive gives preference to companies complying with the B-BBEE Codes of Good Practice, Level 1 to Level 4.”

#### Supplier Development and Localisation (SD&L)

**Local Content Local to South Africa:** Please indicate the percentage of the value that will be spending locally.

**Target                      Propose**

100%	
------	--

#### Skills Development (Tenderers to complete)

Type of Skill	Target	Tenderer to propose no of people to be skilled
Intermediate Life support	2	

#### Job Creation

Suppliers may propose the number of jobs to be created or retained for this contract in the table below.

To be completed by Tenderer

Number of jobs to be <b>created</b> as a result of this contract	
Number of jobs to be <b>retained</b> as a result of this contract	

The *Contractor* complies with and fulfils the *Contractor's* obligations in respect of the Supplier Development and Localisation Initiative - South Africa in accordance with and as provided for in the *Contractor's* Supplier Development and Localisation Schedule will be agreed upon during the contract award stage.

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

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

## **Subcontracting**

### **Preferred subcontractors**

No information required.

### **Subcontract documentation, and assessment of subcontract tenders**

In instances where the Service Provider sub-contracts (Eskom must be notified in advance and only pre-approved Service Provider), the sub-contractor will have to meet all Eskom's contractual obligations.

### **Limitations on subcontracting**

A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

### **Attendance on subcontractors**

No information required.

## **Plant and Materials**

### **Specifications**

No information required.

### **Correction of defects**

No information required.

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

No information required.

### **Tests and inspections before delivery**

No tests and inspections are to be carried out.

### **Plant & Materials provided "free issue" by the *Employer***

No Plant and Materials to be provided by the *Employer*.

## Working on the Affected Property

The *Contractor* shall comply with all the 32-136 Contractor Health & Safety Requirements, Eskom Life Saving Rules and Eskom SHEQ Policy and when rendering a service at the Employer's site.

**The *Contractor* shall comply with all onsite site traffic rules**

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

Eskom SHEQ induction for the team prior to the commencement of the contract will be conducted.

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

The *Service Manager* shall have access to the contractor's people at any time.

## Health and safety facilities on the Affected Property

Access to Health care facilities for retrieval of injured employees

## Environmental controls, fauna & flora

No information required

## Cooperating with and obtaining acceptance of Others

No information required.

## Records of *Contractor's* Equipment

No information required.

## Equipment provided by the *Employer*

No information required.

## Site services and facilities

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

The *Employer* shall provide access to the Eskom sites for providing the Service.

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

The *Contractor* is to provide own accommodation, vehicles and equipment to render the service.

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

No information required.

## Hook ups to existing works

No information required.

## Tests and inspections

### Description of tests and inspections

No information required.

### Materials facilities and samples for tests and inspections

No information required.

## List of drawings

### Drawings issued by the *Employer*

No information required.