

## NEC3 Term Service Contract (TSC3)

**Between Eskom Rotek Industries Soc Ltd  
(Reg No. 1990/006897/30)**

**and  
(Reg No.)**

**for The Provision of Professional Generator Clean  
Condition and foreign material Exclusion Services  
on an “as and when required” basis for A Period of  
Three (3) Years**

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<b>Contents:</b>	<b>No of pages</b>
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**CONTRACT No.**

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## PART C1: AGREEMENTS & CONTRACT DATA

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Contents:	No of pages
C1.1 Form of Offer and Acceptance	[0]
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C1.2b Contract Data provided by the <i>Contractor</i>	[0]

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## C1.1 Form of Offer & Acceptance

### Offer

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

### The Provision of Professional Generator Clean Condition and Foreign Material Exclusion Services.

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 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	R
	Value Added Tax @ 15% is	R
	The offered total of the amount due inclusive of VAT is <sup>1</sup>	R

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

Signature(s)

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

Capacity \_\_\_\_\_

**For the  
tenderer:**

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 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

Eskom Rotek Industries SOC Ltd  
Lower Germiston Road, Rosherville, 2022

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	N/A	

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.

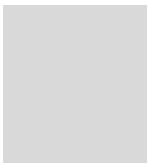


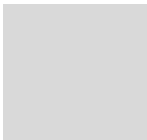
### For the tenderer:

### For the Employer

Signature	_____	_____
Name	_____	_____
Capacity	_____	_____
On behalf of	_____	Eskom RoteK Industries SOC Ltd
Name & signature of witness	_____	_____
Date	_____	_____

## C1.2 TSC3 Contract Data

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		A: Priced contract with price list
	dispute resolution Option and secondary Options	W1: Dispute resolution procedure
		
		X1: Price adjustment for inflation
		X2: Changes in the law
		X17: Low service damages
		X18: Limitation of liability
		X19: Task Order
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Term Service Contract April 2013 <sup>2</sup> (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
10.1	The <i>Service Manager</i> is (name):	
	Address	Roshland Office Park Lower Germiston Road

<sup>2</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902 [www.ecs.co.za](http://www.ecs.co.za)

## Rosherville

Tel

e-mail

11.2(2)	The Affected Property is	<b>Eskom Rotek Industries - Rosherville</b>
11.2(13)	The <i>service</i> is	<b>Generator Clean Condition and Foreign Material Exclusion services</b>
11.2(14)	The following matters will be included in the Risk Register	<b>People, Safety, Environment</b>
11.2(15)	The Service Information is in	<b>Part 3: Scope of Work and all documents and drawings to which it refers.</b>
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>1 week</b>
<b>2</b>	<b>The Contractor's main responsibilities</b>	Data required by this section of the core clauses is also provided by the <i>Contractor</i> 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	<b>N/A</b>
<b>3</b>	<b>Time</b>	
30.1	The <i>starting date</i> is.	
30.1	The <i>service period</i> is	
<b>4</b>	<b>Testing and defects</b>	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
<b>5</b>	<b>Payment</b>	
50.1	The <i>assessment interval</i> is	<b>between the 1st day of each successive month.</b>
51.1	The <i>currency of this contract</i> is the	<b>South African Rand</b>
51.2	The period within which payments are made is	<b>4 weeks.</b>
51.4	The <i>interest rate</i> is	<b>the publicly quoted prime rate of interest (calculated on a 365-day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</b>

(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	<b>Compensation events</b>	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
7	<b>Use of Equipment Plant and Materials</b>	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
8	<b>Risks and insurance</b>	
80.1	These are additional <i>Employer's</i> risks	<b>1. As per Eskom's requirements</b>
83.1	The <i>Employer</i> provides these insurances from the Insurance Table	<b>as stated for “Format TSC3” available on <a href="http://www.eskom.co.za/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 <i>Contractor</i> provides these additional insurances:	<b>Any that the Contractor deems necessary in addition to the insurances provided by the Employer plus the amount of the deductibles in respect of the Employers Format an insurance Policy</b>
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	<b>N/A</b>

	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:	whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i> .
83.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands).
<b>9</b>	<b>Termination</b>	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.
<b>10</b>	<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with price list</b>	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than	N/A
<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i>	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).
	Address	To be appointed when dispute arise.
W1.2(3)	The <i>Adjudicator nominating body</i> is:  An Adjudicator will be appointed between the Contractor and the Employer should a dispute arises. The costs that the Adjudicator charge will be divided between both Parties at 50% for each parties account.	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.
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of

	<p>Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</p> <p>The place where arbitration is to be held is <b>South Africa</b></p> <p>The person or organisation who will choose an arbitrator</p> <ul style="list-style-type: none"> <li>- if the Parties cannot agree a choice or</li> <li>- if the arbitration procedure does not state who selects an arbitrator, is</li> </ul>	<p><b>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</b></p>
<b>12</b>	<b>Data for secondary Option clauses</b>	
<b>X1</b>	Price adjustment for inflation	<b>The applicable CPA will be effected on each anniversary of the contract commencement date</b>
<b>X1.1</b>	The base date for the indices	<b>12 Months after signing the contract</b>
<b>X2</b>	<b>Changes in the law</b>	<b>There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.</b>
<b>X17</b>	<b>Low service damages</b>	
<b>X17.1</b>	The <i>service level table</i> is in	<b>The service table matrix</b>
<b>X18</b>	<b>Limitation of liability</b>	
<b>X18.1</b>	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>
<b>X18.2</b>	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	<p><b>the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on</b></p> <p><a href="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</a></p>
<b>X18.3</b>	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	<p><b>The greater of</b></p> <ul style="list-style-type: none"> <li>• 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</li> </ul> <p><a href="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</a></p>
<b>X18.4</b>	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<p><b>the total of the Prices other than for the additional excluded matters.</b></p> <p><b>The <i>Contractor's</i> total liability for the additional</b></p>

		<p>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"> <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	36 months after the end of the <i>service period</i> .
<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	14 days of receiving the Task Order
<b>Z</b>	<b>The <i>additional conditions of contract</i> are</b>	<b>Z1 to Z11 always apply.</b>

## **Z1 Cession delegation and assignment**

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

- Z4.1 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 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 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, 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.

- Z4.2 A Committing Party may not take any Prohibited Action during the procurement of this contract or in execution thereof.
- Z4.3 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.
- Z4.4 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

- Z4.5 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.

## **Z5 Confidentiality**

- Z5.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z5.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.
- Z5.3 If 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. If such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z5.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, while Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z5.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

## **Z6 Waiver and estoppel: Add to core clause 12.3:**

- Z6.1 Any extension, concession, waiver, or relaxation of any action stated in this contract by the Parties, the *Service Manager* or the *Adjudicator* does not constitute a waiver of rights and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

## **Z7 Health, safety, and the environment: Add to core clause 27.4**

- Z7.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:
- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 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 enough for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and
  - undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control,

likewise observe and comply with the foregoing.

- Z7.2 The *Contractor*, in and about the execution of the *service*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

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

- Z8.1 Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z8.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
- Z8.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4330196330 on each invoice he submits for payment.

## **Z9 Notifying compensation events**

- Z9.1 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.

## **Z10 Employer's limitation of liability**

- Z10.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z10.2 The *Contractor's* entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer's* liability under the indemnity is limited to compensation as provided for in core clause 63 and X19.11 if Option X19 Task Order applies to this contract.

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

- Z11.1 or had a business rescue order granted against it.

## 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. 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*

**[Instructions to the contract compiler: (delete this note before issue to tenderers with an enquiry)**

Whenever a cell is shaded in the left-hand column it denotes this data is optional and would be required in relation to the option selected. If the option is not required select and delete the whole row.]

#### 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>3</sup> 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.	
11.2(19)	The tendered total of the Prices is	R

<sup>3</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 5391902 or [www.ecs.co.za](http://www.ecs.co.za)

## PART 2: PRICING DATA

### TSC3 Option A

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	0
C2.2	The <i>price list</i>	[0]

## C2.1 Pricing assumptions: Option A

### How work is priced and assessed for payment

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

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

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

### Function of the Price List

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

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

Clause 21.4 states "The *Contractor* provides information which shows how each item description on the Price List relates to the operations on each plan which he submits for acceptance". Hence when compiling the *price list*, the 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 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 because 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*

	Service Description	Measure	Rate/Price (Including VAT)
1	Generator Clean Con Control Service Normal (Mon-Friday)	Hour	
2	Generator Clean Con Control Service Saturday	Hour	
3	Generator Clean Con Control Service Sunday	Hour	
4	Generator Clean Con Control Service Public Holiday	Hour	
5	Generator Clean Con Control Service Shift Allowance	Day	
7	Vehicle: 5-Seater Sedan	Day	
8	Vehicle: 10-Seater Diesel Bus	Day	
9	Accommodation	Day	

	Service Description (Project Equipment)	Measure	Quantity	Rate/Price (Including VAT)
1	50mm – 4 hole clip blue files	Each	750	
2	File dividers (1-31's monthly)	Each	750	
3	Big black pens (100 per box)	Box	150	
4	A4 paper (5 reams per box)	Box	150	
5	Laminating ID pockets	Each	3 000	
6	Laminating A4 size	Each	3 000	
7	Laminating machine to fit A4 size pockets	Each	150	
8	30mm Pad locks quantity	Each	1 500	
		<b>Total Price</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>	
C3.2	<i>Contractor's Service Information</i>	
	Total number of pages	

## Scope Of Work

### **PROVISION OF GENERATOR CLEAN CONDITION AND FOREIGN MATERIAL EXCLUSION SERVICES AS AND WHEN REQUIRED FOR ESKOM ROTEK INDUSTRIES**

The Scope of Services is to acquire Enabling Service Agreement over a period of 3 years for The Provision of Generator Clean Condition and Foreign Material Exclusion Service as and when required for Eskom RoteK Industries.

ERI requests Generator Clean Condition and Foreign Material Exclusion Service at power stations listed below. These services are required based on Eskom Generation Generator Outage Program. The outage program may change without notice and is based on Eskom operational requirements. The service provider should note that the services can be required either on a planned or emergency breakdown basis. These services may be required 24 hours a day 7 days a week depending on the Eskom Generator Scope of Work. The Contractor will be provided with an Eskom Generation Generator Outage Programme for planning and forecasting purposes during weekly planning meetings.

Clean Condition Service must be provided as per Eskom Generation Generator Clean Conditions Requirements Work Instruction 240-56178527, Clean Conditions Search and Incident Investigation Procedure 240-9402727445 and any other relevant site-specific work instruction from Eskom Generation. The contractor is expected to provide equipment as list in the appropriate section in the scope of work in the process of rendering the service.

All documents referred or mentioned in this document shall be preceded by any latest procedure or policies of ERI. Where data on this document refers to policy or procedure and the reference or information on this document is not the latest, then the procedure or policy or standard will take precedence.

#### **1. Task Orders and SAP Order Numbers**

A Task Order will be issued for each planned and emergency breakdown project. ERI will notify the contractor of a new project via a notification form. The notification form will include as a minimum the type of service required, power station name and estimated duration.

ERI will not specify how many people are required for each project. Instead, a scope challenge process for each Project/ Task Order will be implemented.

Task Orders for planned projects will be issued in advance before the project starts. For emergency breakdowns, Task Orders will be issued within 48hrs of the notification if during the week or by Tuesday if the emergency breakdown happens happen over the weekend.

#### **2. Team Members Skills Requirements**

Generator Clean Condition Control Service requires that the team members must be authorised to carry out certain functions as per Eskom Generator Work Instruction. Only skilled and accredited team members shall be allowed to be sent or posted to site. Training and upskilling of these resources will be at the contractor's cost.

The team members must be qualified as either a Mechanical Artisan or Electrical/Armature Winder (Trade Test) and minimum 2 years' experience working in a power station environment. These artisans must also be trained and accredited in Access Control and authorised by the Eskom RoteK Industries Training Department. This training is exclusively provided by ERI training department and will be made available to the successful service provider.

These Generator Clean Condition Control Services requires that the appointed service provider have a database of qualified and accredited team members. The Contractor is to provide POE that includes as a minimum latest CV, qualifications, trade test certificate and minimum 2 years' experience working in a power station environment.

### 3. Access Controllers Services

Team members will be appointed as responsible person as per Eskom Generation Clean Condition Work Instruction by ERI Clean Condition Champion in writing to strictly control the access of personnel, materials, and tools to the Clean Conditions Area. The Access Controller will be on duty in the Access Control Cabin whenever work is carried out in the Clean Condition Area. Access Controllers report directly to the ERI Senior Access Controller or Clean Condition Champion depending on site allocation and setup.

An Access Controller also fulfils the function of a Tool Controller when tools pass through the Access Control cabin.

Further duties include, but are not limited to:

- a) Control of entrance and exit of valid permit holders as per the procedure.
- b) Control entrance and exit of components, tools, materials, equipment, consumables, PPE, keys and associated parts and equipment into/out of the Clean Conditions Areas, using registers as per the procedure.
- c) Ensure compliance to the clean conditions dress code as per procedure.
- d) Ensure that all persons entering the area will pass through the metal detector or use a handheld detector when necessary.
- e) Ensure proper housekeeping of the main access point cabin.
- f) Monitor of CCTV cameras. Any non-conformances witnessed must be recorded in the logbook and reported to SAC.
- g) Ensure that only Tool Containers accompanied by a detailed and audited tool list are allowed inside the Clean Conditions LRA.
- h) All other tools, or special tools that enter the area, must have a unique identification number.
- i) Ensure that all tools that enter or exit the Clean Condition Area are fit for purpose and without any defects
- j) Quantify and clearly describe components, materials, equipment and tools to the exact quantity and be aware of hidden components and attachments or connections.
- k) Record consumables accurately with quantity in, quantity out and container components such as lids and caps.
- l) Control and record all components and parts that leave or enter the area for overhaul or replacement.
- m) Enquire and check that all personnel entering this HRA remove all metallic parts, belt buckles, pens, jewellery, watches, coins, etc. All items removed from personnel or visitors are to be recorded on the applicable form and stored in a lockable cabinet.
- n) Keep the Clean Conditions control files up to date.
- o) Record any findings in the Findings Register and report to the SAC.
- p) Ensure visitors' permits are kept in the Access Control Cabin and not handed out.

- q) When the platform below the generator is part of the Clean Condition Area, and has an access gate, the Access Control gate must be locked during non-working shifts or when work has stopped. The keys must be kept in the Access Control Cabin and controlled in a key register.
- r) Reconcile all registers before the end of every shift. Material, equipment and tools that cannot be booked back must be transferred onto a long term register. The long term register must be reviewed on a daily basis.
- s) Must not allow more than two persons into the cabin for access at a time.
- t) Ensure that all portable/ small generator components i.e., bolts, nuts, washers, etc. have the small component inspector's signature before entering the Clean Conditions Area.
- u) Complete a daily logbook and report to the SAC.
- v) Compare and ensure all component quantities are correct as per pre stripping column of the component and part list (Component inventory list) before passing through access point.
- w) The component and part list file to be kept in the access control cabin. The list to be handed to the supervisor or roaming access controller on request. The original lists are not to be copied and must be used as a working copy. On completion it must be handed back to the access controller to verify the components as indicated in the previous paragraph.
- x) Scratching or Tippex® out figures is not allowed. Should a figure for some reason be required to be changed the CCC, and or SAC as well as the CCO are the only persons authorised to do so. This must be recorded in the findings register. Such a change must be signed off.
- y) Ensure that material, equipment or tools that will remain in the HRA for a time period longer than the shift must be booked into the Long-Term Register. The Long-Term Register will be reviewed daily. This arrangement must be agreed with the CCC or SAC.

#### **4. Roaming Access Controller Services**

Further duties include, but are not limited to:

- a) Record and inspect all items leaving/entering the Clean Conditions Area by overhead crane. Once recorded, the lifting activity needs to be witnessed until the component reaches its end destination. (The RAC must be aware of the end destination before any lifting may commence)
- b) Assist the Generator Supervisor with inspection and quantifying the generator components and parts in various stages as per site specific requirements and compare them to the design quantities.
- c) Inspect and declare all blanking plates, generator special tools, rotor removal tools and Clean Conditions Tent components that enter or exit the Clean Conditions Area.
- d) Report any findings or deviations (Personnel not adhering to processes, missing tools, missing spares, breakages of tools/components) to the SAC
- e) Also verify that all personnel are working according to the procedure.
- f) Ensure that after each shift the area is cleared of all tools and consumables, except recorded "carry-overs"
- g) Check the housekeeping. Any defect must be reported to the SAC or CCO and logged.
- h) Declare unattended tools unless the reason is communicated to him/her.
- i) Monitor the functionality of the coil retaining rings heater blankets and dryers used for storage when placed in-service.
- j) Inspect generator bottom and terminal box access platform, periodically for Clean Conditions adherence. When work is performed in this area an Access Controller will man the entrance point and record all activities in the relevant registers.

## 5. Location requirements

Due to the nature of ERI's projects, the service will be required at various sites around the country (Republic of South Africa). It is imperative that team members are sourced close to these Eskom Power Stations to enable rapid response in case of unplanned outages. Accommodation and Living Out Allowance (LOA) will only be paid to experienced (C1 and C2) category access controllers after the contractor have demonstrated that they have done everything possible to source team members close to Eskom Power Stations.

### **CC&FME services will be required at the following Eskom sites:**

- a) Ankerlig Power Station situated in Cape Town, Western Cape
- b) Arnot Power Station situated in Arnot, Mpumalanga,
- c) Acasia Power Station situated in Cape Town, Western Cape
- d) Camden Power Station situated in Ermelo, Mpumalanga
- e) Drakensberg Power Station situated in Drakensburg, KwaZulu Natal
- f) Duvha Power Station situated in Witbank, Mpumalanga
- g) Eskom Park Workshop situated in Witbank, Mpumalanga
- h) ERI Rosherville Workshops situated in Rosherville, Gauteng
- i) Gariep Power Station situated in Gariep, Free state
- j) Gouriekwa Power Station situated in Mosselbay, Western Cape
- k) Grootvlei Power Station situated outside Balfour, Gauteng
- l) Hendrina Power Station situated in Hendrina, Mpumalanga
- m) Ingula Power Station situated in Ladysmith, KwaZulu Natal
- n) Kendal Power Station situated outside Witbank, Mpumalanga
- o) Koeberg Power Station situated in Cape Town, Western Cape
- p) Komati Power Station situated outside Witbank, Mpumalanga
- q) Kriel Power Station situated outside Witbank, Mpumalanga
- r) Kusile Power Station situated outside Witbank, Mpumalanga
- s) Lethabo Power Station situated outside Vereeniging, Free State
- t) Majuba Power Station situated outside Volksrust, Mpumalanga
- u) Matla Power Station situated outside Witbank, Mpumalanga
- v) Matimba Power Station situated in Lephalale, Limpopo
- w) Mbashu Power Station situated outside Mthatha area, Eastern Cape
- x) Medupi Power Station situated in Lephalale, Limpopo
- y) Palmiet Power Station situated outside Cape Town, Western Cape
- z) Port Rex Power Station situated in East London, Eastern Cape
- aa) Tutuka Power Station situated in Standerton, Mpumalanga
- bb) Vanderkloof Power Station situated in Vanderkloof, Northern Cape.
- cc) Any other sites as determined by ERI

## 6. Additional Services Provided by the Contractor

The contractor is expected to provide equipment list below in the process of rendering the service.

### **Project Related Equipment:**

- a) 50mm - 4-hole clip blue files quantity 5 per project
- b) File dividers (1-31's monthly) quantity 5 per project
- c) Big black pens (100 per box) quantity 1 box per project
- d) A4 paper (5 reams per box) quantity 1 box per project
- e) Laminating ID pockets 20 per project
- f) Laminating A4 size 20 per project

- g) Laminating machine to fit A4 size pockets quantity 1 per project
- h) 30mm Pad locks quantity 10 per projects

<b>Covid-19 related equipment:</b> Santzr genl purp:hand;liquid;drum:5l	Sanitizer, general purpose: type: hand; physical form: non gel liquid; container type: drum; container capacity: 51; specification: alcohol 70 pct; standard: sabs; vendors are responsible for ensuring that they are performing against the correct drawing revision number (if applicable).
Santzr genl purp:hand;liquid;drum;5 l	Sanitizer, general purpose: type: hand: physical form: gel liquid; container type: drum; container capacity: 51; specification: alcohol 70 pct; standard: sabs; vendors are responsible for ensuring that they are performing against the correct drawing revision number (if applicable).
Visor	Disposable Constructed from high-quality optically clear, distortion-free 7mil polyester film Anti-fog coating Must fit well over spectacles. Foam brow-band fits comfortably against the forehead. Headband/arms to holds visor in place disposable/reusable
Mask Surgical	Latex Free, One Size fits all
Face mask	See Appendix B attached
Wipes	Sanitizer Wipes Bucket 1000's - 70% Alcohol container, 25 litres

## 7. Transport requirements

The Contractor is responsible for providing transport to team members to enable them to reach designated work sites and back, and to and from the place of accommodation

## 8. Accommodation requirements

Team members' accommodation requirements are to be fulfilled by the Contractor.

## 9. PPE requirements

The Contractor is to provide Personal Protective Equipment (PPE) to the team members before they reach site. All PPE must conform to Eskom/ERI requirements as per procedure 240-44175132, as well as relevant OHSA and SABS procedures. The Contractor is to ensure they are conversant with the terms of these procedures regarding old and damaged PPE. Any team member not on site due to PPE not provided for by the Contractor will not be paid for by ERI.

### CC&FME PPE requirements:

- a) Hard hat
- b) Overall (pants and jacket)

- c) Safety Shoes
- d) Dedicated Clean Conditions PPE as per ERI PPE Work Instruction & Eskom Generation Generator Clean Conditions Requirements Work Instruction 240-56178527. Two-piece Clean Conditions overalls made of 100% cotton and be white in colour. These overalls may not have any pockets, belt loops or metallic fasteners
- e) T-Shirts: No clothing other than a pocket-less cotton (Preferably White) T-shirt or underwear may be worn underneath the overall,
- f) Clean Condition Safety Shoes,
- g) Pocketless Thermal Jacket,
- h) Thermal Underwear,
- i) Pocketless Rain Jackets
- j) Special Covid-19 or any other required PPE

## 10. Specific requirements to Contractor

All team members are required to the following minimum requirements:

- a) Fitness for duty reports for all team members
- b) Police clearance reports for all team members. If ERI suspects a change in this status, ERI may request further clearance at its own discretion, at the cost of ERI. If a team member fails the police clearance, the cost will be reimbursed by the supplier plus all salaries and costs paid to the team member incurred since the change in status.
- c) Qualification verification report for all team members
- d) Comprehensive portfolio of evidence file for all team members
- e) Proof of residence

## 11. Services rates:

The services rates offered by the service contractors may include the following –

- a) Accommodation
- b) The Contractor must ensure that his /her employees are provided with Personal Protective Equipment (PPE) that is in line with Eskom standards.
- c) The Contractor will be responsible for transporting their employees to site. Medicals - periodic and exit medicals
- d) The Contractor is to ensure that at least 10% of their resources are trained and accredited as First Aiders and Fire Fighters during the first two months after contract award.

## 12. Administration

Furthermore, the Contractor will be required to arrange and administrate their employees, specifically regarding:

- a) Security permits at Power Stations
- b) Compile updated portfolio of evidence (POE files) both electronic & hard copy files
- c) Attend weekly planning & progress meetings where required at Witbank Homebase and Rosherville offices
- d) Booking of flights, accommodation, and transport for their workers as and when required.

Regular meetings of a general nature may be convened and chaired by ERI - CC&FME as follows:

- a) Meetings of a specialist nature may be convened as specified elsewhere in this Service Information or if not so specified by persons and at times and locations to suit the Parties regarding the nature and the progress of the service. Records of these meetings shall be submitted to ERI by the person convening the meeting within five days of the meeting.

b) 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. The Contractor shall provide time sheets to team members. The time sheets will capture the actual hours worked and shall be approved by the relevant Employer business supervisor and/ manager. Restrictions and hours of work will apply on effected sites. It is very important that the Contractor keeps records of his people working on the affected site.

The Contractor shall address the tax invoice to Eskom Rotek Industries SOC Ltd and include on each invoice the following information:

- a) Name and address of the Contractor and ERI.
- b) The contract number (46xxx) and title.
- c) Purchase Order (PO) number (45xx:xx)\_ invoice without PO number will not be paid.
- d) Contractor's VAT registration number.
- e) The Employer's VAT registration number 4330196330.
- f) Description of service provided for each item invoiced based on the Price List.
- g) Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT.
- h) (add other as required)

### 13. Legal

All Contractors are required to conform to the following legal Acts as minimum, but not limited to:

- a) Basic Condition of Employment Act (BCEA)
- b) Compensation for Occupational Injuries and Diseases (COID)
- c) Employment Equity (EE)
- d) Labour Relations Amendment Act (LRAA)
- e) Occupational Health and Safety (OHSA)
- f) Skills Development
- g) Unemployment Insurance Fund (UIF)

Contractors must also agree to the following binding clauses:

ERI indemnifies itself against any labour claim regarding any of the aforementioned Acts - this risk will be assumed by the Contractor as employer of the workers - where workers are not considered to be employed by ERI. This includes the cessation of temporary employees at a project at the discretion of ERI, whether due to conclusion of the contract, or any other reason.

ERI will not assume any risk due to labour unrest and strikes due to improper application of or disputes regarding the aforementioned Acts by employees. Labour unrest, strikes and low performance caused by the above will be counted as workers not at work.

ERI will not be liable for the accommodation, transport, salaries, and other associated costs for team members not at work when required to be.

Unrest or strike action which is caused by a Contractor withholding payment will constitute immediate breach of contract and may result in termination of that contract. This includes where ERI has not paid the Contractor for employees not at work as stipulated above.

### 14. Disciplinary

Contractors may use their own disciplinary processes as the need arises, and in line with those stipulated in the contract (e.g., SHEQ requirements). In the case where ERI is unsatisfied with the disciplinary outcome, or the process is seen as inequitable to the workforce (e.g. employees

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working in the same area), ERI reserves the right to conduct its own investigation. In the case where employees are regarded as part of ERI, ERI will conduct its own disciplinary procedures. Otherwise ERI may request the supplier to remove, or reinstate, the resource in question with a replacement immediately.

**15. Specific materials/ equipment to be provided by the Employer**

ERI will be responsible for setting up the Clean Conditions Low and High-Risk areas as per the Eskom Generation Clean Condition Work Instruction. ERI will provide the following when setting up the clean condition area.

- a) Clean Condition Access Cabin
- b) Clean Condition Barricading
- c) CCTV Installation
- d) Walkthrough body scanner I metal detector
- e) Handheld body scanner/ metal detector
- f) Clean Condition rags
- g) Various Clean Condition Registers

## 1.1 Invoicing and payment

The Z clauses refer 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

\_\_\_\_\_ and include on each invoice the following information:

- Name and address of the *Contractor* and the *Service Manager*.
- The contract number and title.
- *Contractor's* VAT registration number.
- The *Employer's* VAT registration number 4330196330.
- Description of service provided for each item invoiced based on the Price List.
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT.
- (Add other as required)

# CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ('Agreement') is entered into between the Employer and the Contractor.

WHEREAS the Employer and the Contractor (the Parties) desire to exchange certain confidential information; and consider further business dealings with each other.

WHEREAS the parties desire to evidence their agreements governing the exchange of certain confidential information as set forth below.

Now therefore, for good and valuable consideration, including the mutual agreements hereinafter recited, the parties hereby agree as follows:

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the 'Subject Information') may include but not be limited to the parties' inventions, trade secrets, knowledge, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.
2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other.
3. The parties each agree that they shall maintain in secrecy in accordance with the terms of this Agreement all the Subject Information each party receives (the 'Receiving Party') from the other party (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.
4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.
5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.
6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes, and other writings prepared by the parties, or their advisors, based on the Subject Information of each other, shall be destroyed, and such destruction shall be certified in writing by an authorised officer supervising such destruction.
7. If a party, with the written consent of the Proprietor of Subject Information, discloses any Subject Information received from its Proprietor to any third party, it shall do so only under a secrecy agreement having a scope similar to and which is consistent with this Agreement, and the disclosing party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party

8. Each party agrees that it shall not, while and for so long as it is obligated to maintain Subject Information in secrecy, use for its own benefit, or for the benefit of others or exploit, commercialise, develop, test promote, sell, lease, market or otherwise dispose of any products or services using, incorporating or relying on Subject Information received from its Proprietor without the written consent of the Proprietor.
9. The obligations of the party receiving Subject Information pursuant to this Agreement shall be effective with respect of each item of Subject Information for a term of five (5) years from the date of submission of the Subject Information to the Receiving Party by its Proprietor unless the Proprietor agrees otherwise in writing.
10. For purposes of this Agreement, each party shall include (to the extent applicable) the officers, directors, employees, agents, representatives, attorneys, joint ventures, partnerships, affiliates, subsidiaries, and divisions of the party, and any other entity or entities which such party controls or which controls it, and, further, shall include any transferee, successor and assign of the assets of the party.
11. This Agreement shall be construed (both as to validity and performance) and enforced in accordance with, and governed by, the laws of Republic of South Africa.
12. Neither this Agreement nor the exchange of Subject Information between the parties shall create or be relied on by either party as a basis for creating any license between the parties under any patent, or other industrial or intellectual property rights of the Proprietor of the Subject Information, or any other license between the parties in the absence of any express written license agreement between them
13. The parties agree that no contract or agreement providing for a transaction shall be deemed to exist between them unless and until a definitive agreement has been executed and delivered, the parties hereby waive, in advance, any claim (including, without limitation, breach of contract) in connection with a possible transaction with each other unless and until they shall have entered into a definitive agreement. The parties also agree that unless and until a definitive agreement between them has been executed and delivered, neither party has any legal obligation of any kind whatsoever with respect to any such transaction by virtue of this Agreement or any other written or oral expression with respect to such transaction, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this paragraph, the term 'definitive agreement;' does not include an executed letter of intent, memorandum of understanding.

IN WITNESS WHEREOF, and intending to be legally bound, the parties have executed this Agreement as of and effective from the date first written above.