

NEC3 Term Service Contract (TSC3)

Between

ESKOM ROTEK INDUSTRIES SOC LTD
(REG NO. 1990/006897/30)

And

.....
(REG NO.)

For

**THE SUPPLY OF POST WELD HEAT TREATMENT
SERVICES ON TURBINE COMPONENTS**

Contents:

Part C1 **Agreements & Contract Data**

Part C2 **Pricing Data**

Part C3 **Scope of Work**

CONTRACT No. **RRR000**

Documentation prepared by:

Eskom Rotek Industries SOC Limited Procurement
Heritage Office Park
Lower Germiston Road
Rossherville
Tel: 011 621 3143

PART C1: AGREEMENTS & CONTRACT DATA

Contents:

- C1.1** **Form of Offer and Acceptance**
- C1.2a** **Contract Data provided by the *Employer***
- C1.2b** **Contract Data provided by the *Contractor***

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:

THE SUPPLY OF POST WELD HEAT TREATMENT SERVICES ON TURBINE COMPONENTS

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	ENABLING CONTRACT
	Value Added Tax @ 15% is	
	The offered total of the amount due inclusive of VAT is ¹	
	Estimated Cost Including VAT This is an Enabling Contract and will be utilised as and when required. The actual value will be as per the individual Task Orders issued. Pricing Will Be as Per Section C2. Price List	

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

¹ The total is a budget value. The actual contractual values will be drawn by Task Orders.

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)		Gersh Bonga
Capacity		General Manager Turbo Gen Services
for the <i>Employer</i>		Eskom Rotek Industries SOC Ltd. Lower Germiston Road Cleveland Johannesburg 2022
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	Not Applicable	Not Applicable.
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

Gersh Bonga
Capacity

General Manager
**On behalf
of**

Turbo Gen Services
**Name &
signature
of witness**

Eskom Rotek Industries SOC Ltd.
Lower Germiston Road
Cleveland
Johannesburg
2022
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	1. Statement	2. Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option: dispute resolution Option and secondary Options	<p>A: Priced contract with price list</p> <p>W1: Dispute resolution procedure</p> <p>X1: Price Adjustment for inflation</p> <p>X2: Changes in the law</p> <p>X18: Limitation of Liability</p> <p>X19: Task Order</p> <p>X20: Key Performance Indicators.</p> <p>Z: Additional conditions of contract</p>
10.1	NEC3 Term Service Contract April 2013² (TSC3)	
	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 Rossherville
	Tel No.	011 629 4295
10.1	The <i>Service Manager</i> is (name):	Thembi Gaveni
	Address	ERI Rossherville
	Tel	011 629 4609
	e-mail	Thembi.Gaveni@eskom.co.za
11.2(13)	The <i>Affected Property</i> is	All Eskom and Rotek Sites.
11.2(14)	The <i>service</i> is	The Supply of Post Weld Heat Treatment Services on Turbine Components
11.2(15)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> • Outage movements • Breakdowns • Scope creep and emergent work

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

		<ul style="list-style-type: none"> Pandemics Identified outages may run beyond the end of the Service period so that it does not disrupt an outage.
12.2	The Service Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference
13.1	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.3	The <i>language of this contract</i> is	English
2	The Contractor's main responsibilities	As per the scope of work defined in Part 3 of this contract.
21.3	The <i>Contractor</i> submits a first plan for acceptance within	<p>The Contractor shall submit his first plan together with his offer for the Employer to review.</p> <p>The Employer will issue a Task Order and Official Purchase Order to the Contractor. Once Task Order is issued and signed by the Parties, the Contractor must issue the final Plan, within 5 days.</p>
22.1	The <i>period for reply</i> is	<p>12 hours for Outages / 2 days for Planning, Immediately for Health and Safety issues.</p> <p>Engineering Decisions must be acknowledged within 1 day and reports must be issued within 3 days.</p>
3	Time	
30.1	The <i>starting date</i> is.	<p>Date of Signature of this contract</p> <p>Each Task Order will indicate the Start Date and End Date in respect to the applicable SOW.</p>
	The service period is	<p>The Contract Period is 5 years from final signature on Contract.</p> <p>Each Task Order will define a Start and End date dictated by business requirements.</p>
4	Testing and defects	
42.2	The <i>defects date</i> is	52 weeks after the completion of each Task Order.
5	Payment	
51.1	The <i>assessment interval</i> is	<p>25th of each month.</p> <p>It must be noted that payment will be made on actual progress completed. The assessment certificate must be signed by the relevant Project Manager and the Contractor's representative, upon agreement. This certificate must accompany the tax invoice.</p>
	The <i>currency of this contract</i> is the	South African Rand
	The period within which payments are made is	60 days of receipt of the Contractor's tax compliant invoice.
	The <i>interest rate</i> is	Zero (0) percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa

	Limited.																			
6	Compensation Events	Refer to each individual Task Order including C2.2 of this contract.																		
	Additional Compensation Events	Any SOW not defined in this Contract																		
7	Use of Equipment Plant and Materials																			
8	Risks and insurance																			
80.1	These are additional <i>Employer's</i> risks	None																		
83.1	<p>The <i>Employer</i> provides the insurances stated in the Insurance Table below.</p> <p>INSURANCE TABLE</p> <table border="1"> <thead> <tr> <th>Insurance against</th><th>Minimum amount of cover or minimum limit of indemnity as stated for "Format TSC3"</th></tr> </thead> <tbody> <tr> <td>Assets All Risk</td><td>As per the insurance policy document.</td></tr> <tr> <td>Project insurance</td><td>As per the insurance policy document.</td></tr> <tr> <td>General and Public Liability</td><td>As per the insurance policy document.</td></tr> <tr> <td>Environmental Liability</td><td>As per the insurance policy document.</td></tr> <tr> <td>Transport (Marine)</td><td>As per the insurance policy document.</td></tr> <tr> <td>Motor Fleet and Mobile Plant</td><td>As per the insurance policy document.</td></tr> <tr> <td>Terrorism</td><td>As per the insurance policy document.</td></tr> <tr> <td>Cyber Liability</td><td>As per the insurance policy document.</td></tr> </tbody> </table>		Insurance against	Minimum amount of cover or minimum limit of indemnity as stated for "Format TSC3"	Assets All Risk	As per the insurance policy document.	Project insurance	As per the insurance policy document.	General and Public Liability	As per the insurance policy document.	Environmental Liability	As per the insurance policy document.	Transport (Marine)	As per the insurance policy document.	Motor Fleet and Mobile Plant	As per the insurance policy document.	Terrorism	As per the insurance policy document.	Cyber Liability	As per the insurance policy document.
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	<p>The <i>Contractor</i> provides the insurances stated in the Insurance Table</p> <p>The <i>Contractor</i> shall ensure that it has adequate insurance provision to cover itself for the full value of the damage per event.</p> <p>The insurances provide cover for events which are at the <i>Contractor's</i> risk from the <i>starting date</i> until the end of the <i>service period</i> or a termination certificate has been issued</p> <p>INSURANCE TABLE</p> <table border="1"> <thead> <tr> <th>Insurance against</th><th>Minimum amount of cover or minimum limit of indemnity</th></tr> </thead> <tbody> <tr> <td>Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property</td><td>The replacement cost of the equipment or component to the minimum value of R150 million per event, or to the <i>Contractor's</i> discretion.</td></tr> <tr> <td>Loss of or damage to Plant and Materials</td><td>The replacement cost of the equipment or component to the minimum value of R150 million per event, or to the <i>Contractor's</i> discretion.</td></tr> <tr> <td>Loss of or damage to Equipment</td><td>The replacement cost of the equipment or component to the minimum value of R150 million per event, or to the <i>Contractor's</i> discretion.</td></tr> <tr> <td>The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an</td><td> <p>Loss of or damage to property The replacement cost</p> <p>Bodily injury to or death of a person</p> </td></tr> </tbody> </table>		Insurance against	Minimum amount of cover or minimum limit of indemnity	Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property	The replacement cost of the equipment or component to the minimum value of R150 million per event, or to the <i>Contractor's</i> discretion.	Loss of or damage to Plant and Materials	The replacement cost of the equipment or component to the minimum value of R150 million per event, or to the <i>Contractor's</i> discretion.	Loss of or damage to Equipment	The replacement cost of the equipment or component to the minimum value of R150 million per event, or to the <i>Contractor's</i> discretion.	The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an	<p>Loss of or damage to property The replacement cost</p> <p>Bodily injury to or death of a person</p>								
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	employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service	The amount required by the applicable law.
	Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law
9	Termination	
90.2		In terms of clause 90.2 of the <i>conditions of contract</i>, the <i>Employer</i> may terminate for any reason as defined in the termination table R1-R21.
92	Procedure on Termination	
92.1		(P1) The <i>Employer</i> may use any plant and materials provided by the <i>Contractor</i> -
92.2		(P2) all plant and material paid for by <i>Employer</i> remains the property of the <i>Employer</i>.
		(P3) the <i>Employer</i> may use any equipment to which the <i>Contractor</i> has title to complete the services.
		(P4) all SOW and services that is due as per the Task Order issued are to be delivered to the <i>Employer</i>.
A	Data for main Option clause	Priced contract with price list
	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than	See C2 of this Contract
W1.1	Data for Option W1	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 www.ice-sa.org.za) If the Parties do not agree on an Adjudicator
	The Adjudicator	the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).the Chairman of the Joint Civils Division of the South African Institution of Civil Engineering. (See www.jointcivils.co.za)
	Address	Johannesburg, South Africa
W1.2(3)	e-mail	the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see www.ice-sa.org.za) or its successor body.
W1.4(2)	The <i>Adjudicator nominating body</i> is:	the Chairman of the Joint Civils Division of the South African Institution of Civil Engineering. (See www.jointcivils.co.za)
W1.4(5)	The <i>tribunal</i> is:	Arbitration

	<p>The arbitration procedure is</p> <p>The place where arbitration is to be held is</p>	<p>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body</p> <p>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</p>
12	<p>The person or organisation who will choose an arbitrator</p> <ul style="list-style-type: none"> - if the Parties cannot agree a choice or if the arbitration procedure does not state who selects an arbitrator, is 	the Chairman for the time being or his nominee of the Association of Arbitrators
	Data for secondary Option clauses	
X1		
X1.1	Price adjustment for inflation	<p>The base date for indices is</p> <p>The contract makes provision for the price adjustment of year on year with effect from 01st July 2022 to 30th June 2023 as per the Metal and Engineering Industries Bargaining Council (MEIBC) Circular No. : 2021/03</p>
X2	Changes in the law	Any change in legislation and regulations will be applicable
X18	<p>Limitation of Liability</p> <p>The Employer's liability to the Contractor for the Contractor's indirect or consequential loss is limited to R0.00 (zero Rand)</p> <p>82.1: For any one event, the liability of the Contractor to the Employer for loss of or damage to the Employer's property is limited to the amount stated in the Contract Data. The Contractor is liable to the Employer for loss or revenue or profit except as provided for in the conditions of Contract. Exclusions or limitation of liabilities applies in contract, delict and otherwise and to the maximum extent permitted in law.</p> <p>82.2: The Contractor will not be liable for indirect, special, incidental or consequential damages or loss of profits or revenues, loss of data, loss of use of equipment, cost of capital, cost of substitute equipment, services of facilities except where the Contractor has been wilfully negligent in providing the services and has failed to perform with expected care and diligence as expected by industry norms and professional services.</p> <p>82.3: The Contractor's total liability to the Employer for all matters arising under or in connection with the Contract, other than the excluded matters, is limited to the replacement value of equipment and or components</p>	Limitation of Liability

		<p>at the respective premises including for loss and damage to third party property</p> <p>For any damage to the Employers property, the Contractor is liable for the full replacement value of such property.</p>
X19	Task Order	<p>Task Order</p> <p>X19.2 The amount for delay damages for late completion of the service to be calculated at 0.5 % per day to a maximum of 10% of the relevant Task Order value.</p> <p>All safety files (SHE) including Portfolio of Evidence (POE) must be finalised two days prior to the execution of a Task Order and or mobilization to site.</p> <p>Any delays beyond the starting date of the Task Order due to non-compliant SHE files including POEs shall be treated in terms of a delay damages and the penalty imposed on the Contractor will be as follows:</p> <ul style="list-style-type: none"> • Incomplete SHE files – 0.5% per day, to a maximum of 2.5% of the respective Task Order value for any event. • Incomplete POE's - 0.5% per day, to a maximum of 2.5% of the respective Task Order value for any event for reasons attributed to the Contractor. <p>X19.5 The Contractor submits a Task Order programme to the Service Manager within 5 days of receiving the Task Order.</p> <p>X19.6 The performance criteria will be jointly agreed between the Parties per Task Order, based on the scope in the respective Task Orders. The performance criteria are subject to the outage readiness which considers the following factors:</p> <ul style="list-style-type: none"> • Outage execution strategy • Firm definition of the scope of work • Assessment of the performance of the unit to be overhauled • Division of responsibilities • Availability of skilled resources as per the scope of work • Availability of technical documentation • A detailed outage execution plan which is mutually agreed • All spares and special tools being available • Identified emergent works and mitigations to address such emergent works <p>The Parties agree that they will collaboratively review the scope of the respective Task Orders and agree upfront on the correct resources for the execution strategy. Any delays caused by non-performing Contractor's resource may result in the Employer</p>

	<p>rejecting and removing such a resource accordingly, at the <i>Contractor's</i> cost.</p> <p>List of outages are provided in Part 3 – Scope of Work. Task Orders will be issued for these outages but are subject to change dependent on the discretion of the <i>Employer</i>.</p> <p>Task Orders will be issued once the Scope of Work has been confirmed by Eskom.</p> <p>The <i>Employer</i> reserves the right to allocate and or re-allocate outages at the <i>Employer's</i> discretion dictated by business needs.</p>
X20	<p>Key Performance Indicators</p> <p>Included in the SOW.</p>
	<p>The additional conditions of contract Z1 to Z11 always apply.</p> <p>are</p>
Z1	<p>Cession delegation and assignment</p>
Z1.1	<p>The Parties do not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i>. The <i>Contractor</i> wishes to reserve its right to assign its trade receivables to an affiliate, bank or financial institution</p>
Z1.2	<p>Notwithstanding the above, the <i>Employer</i> may on written notice to the <i>Contractor</i> cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.</p>
Z2	<p>Joint ventures (JV)</p>
Z2.1	<p>Joint Venture parties shall ensure that that their relationship does not impact the Employer and the Employer reserves the right to terminate this contract with no financial implications, legal consequences or otherwise should the Joint Venture fail or impact the Employers operations or obligations to its Client (Eskom Generations).</p>
Z3	<p>Change of Broad Based Black Economic Empowerment (B-BBEE) status</p>
Z3.1	<p>Where a change in the <i>Contractor's</i> legal status, ownership or any other change to his business composition or business dealings results in a change to the <i>Contractor's</i> B-BBEE status, the <i>Contractor</i> notifies the <i>Employer</i> within seven days of the change.</p>
Z3.2	<p>The <i>Contractor</i> is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the <i>Service Manager</i> within thirty days of the notification or as otherwise instructed by the <i>Service Manager</i>.</p>
Z3.3	<p>Where, as a result, the <i>Contractor's</i> B-BBEE status has decreased since the Contract Date the <i>Employer</i> may either re-negotiate this contract or alternatively, terminate the <i>Contractor's</i> obligation to Provide the Service.</p>
Z3.4	<p>Failure by the <i>Contractor</i> to notify the <i>Employer</i> of a change in its B-BBEE status may constitute a reason for termination. If the <i>Employer</i> 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.</p> <p>The above must be in correlation with the SD&L documents.</p>
Z4	<p>Ethics</p>
Z4.1	<p>Any offer, payment, consideration, or benefit of any kind made by the <i>Contractor</i>, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the <i>Contractor's</i> obligation to Provide the Service or taking any other action as appropriate against the <i>Contractor</i> (including civil or criminal action).</p>

Z4.2	<p>The <i>Employer</i> may terminate the <i>Contractor</i>'s obligation to Provide the Service if the <i>Contractor</i>(or any member of the <i>Contractor</i> where the <i>Contractor</i> constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.</p> <p>Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the <i>Employer</i> or other people or organisations and including in circumstances where the <i>Contractor</i> or any such member is removed from the an approved vendor data base of the <i>Employer</i> as a consequence of such practice</p>
Z4.3	<p>Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P4 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.</p>
Z5	Confidentiality
Z5.1	<p>The Parties 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 <i>Contractor / Employer</i>, enters the public domain or to information which was already in the possession of the <i>Contractor / Employer</i> at the time of disclosure (evidenced by written records in existence at that time). Should the <i>Contractor / Employer</i> disclose information to Others in terms of clause 25.1, the <i>Contractor / Employer</i> ensures that the provisions of this clause are complied with by the recipient.</p>
Z5.2	<p>If the Parties are uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the <i>Employer's Service Manager or Contractor's Project Manager</i>.</p>
Z5.3	<p>In the event that Parties is, at any time, required by law to disclose any such information which is required to be kept confidential, the <i>Contractor / Employer</i>, to the extent permitted by law prior to disclosure, notifies the <i>Contractor / Employer</i> 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 <i>Contractor / Employer</i> 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.</p>
Z5.4	<p>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 <i>service period</i>, requires the prior written consent of the <i>Service Manager</i>. All rights in and to all such images, for the purpose of confidentiality, vests exclusively in the <i>Employer</i>. This will however not prevent the <i>Contractor</i> to use such images (whether photographs, video footage or otherwise) for the purpose of substantiation and reserve its rights under this contract accordingly.</p>
Z5.5	<p>The <i>Contractor</i> ensures that all his subcontractors abide by the undertakings in this clause.</p>
Z6	Waiver and estoppel: Add to core clause 12.3:
Z6.1	<p>Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the <i>Service Manager</i> or the <i>Adjudicator</i> 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.</p>
Z7	Health, safety and the environment: Add to core clause 27.4
Z7.1	<p>The <i>Contractor</i> 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 <i>Contractor</i>:</p> <ul style="list-style-type: none"> • accepts that the <i>Employer</i> may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational

	<p>Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Affected Property;</p> <ul style="list-style-type: none"> 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 <p>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 <i>Contractor</i>'s direction and control, likewise observe and comply with the foregoing.</p>
Z7.2	<p>The <i>Contractor</i>, 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 <i>Contractor</i>'s direction and control, likewise observe and comply with the foregoing.</p>
Z7.3	<p>The Contractor limits its obligations to its scope of work as indicated in each individual Task Order Issued.</p>
Z8	Provision of a Tax Invoice and interest. Add to core clause 51
Z8.1	<p>Within one week of receiving a signed assessment from the Project Manager the <i>Contractor</i> provides the <i>Employer</i> with a tax invoice in accordance with the <i>Employer</i>'s procedures stated in the Service Information, showing the amount due for payment equal to that stated in the assessment.</p>
Z8.2	<p>If the <i>Contractor</i> does not provide a tax invoice in the form and by the time required by this contract, the time by when the <i>Employer</i> is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. No interest shall be due by the <i>Employer</i> for delays attributed to the Contractor.</p>
Z8.3	<p>The <i>Contractor</i> (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 <i>Employer</i>'s VAT number 4330196330 on each invoice he submits for payment.</p>
Z9	Notifying compensation events
Z9.1	<p>Delete the last paragraph of core clause 61.3 and replace with: If the <i>Contractor</i> does not notify the <i>Employer</i> of a compensation event within 5 days of becoming aware of the event, the Contractor is not entitled to a change in the Prices.</p>
Z10	Suspension of Task Order
Z10.1	<p>In addition to X19, the following shall apply: Only the <i>Employer</i> is allowed to suspend or cancel a Task Order and the Contractor will have the opportunity to claim for work completed to date, on any specific Task Order, at the date of termination. The Employer shall not be liable for any costs if the Contractor fails to notify its sub-contractors and suppliers timeously. Payment will only be made on actual and proven costs.</p>
Z11	Termination:
Z11.1	<p>In addition to Core Clause 90, the following shall apply: The <i>Contractor</i> must take cognisance that the awarding of this contract is based on a month to month basis.</p>
Z11.2	<p>The <i>Employer</i> reserves the right to terminate this contract subject to 30 calendar day's written notice.</p>
Z11.3	<p>The <i>Contractor</i> must ensure that it has taken all the necessary steps to give effect to the</p>

Z11.4	<p><i>Employers</i> notice period without any liability to the <i>Employer</i>.</p> <p>Over and above clause Z4, The <i>Employer</i> reserves the right to terminate this contract without any recourse should the Contract have any legal actions, investigations or involved in any illegal or corrupt practices that may bring Eskom's reputation into disrepute. Further the <i>Employer</i> 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 <i>Employer</i> 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 <i>Employer</i> can terminate the Contractor's obligation to Provide the Service for this reason.</p>
Z12	Contractor's Obligation
Z12.1	<ul style="list-style-type: none"> The <i>Contractor</i>'s obligation is to use skill and care normally used by professionals in providing the services as detailed in the Works Information to provide a quality service without any rework.
Z12.2	<ul style="list-style-type: none"> The <i>Contractor</i> shall ensure that its employees have no reason whatsoever to embark on a strike or tools-down and any of the <i>Contractor</i>'s employees participating in such an activity will be placed on an Exception List whereby they will not be able to enter or work at any Eskom Power Stations. The <i>Contractor</i> and its employees shall be fully compliant to the National Key Point Act. The principle of "no work no pay" shall apply, and this includes but is not limited to LOA, accommodation, transport cost and other allowances. The <i>Contractor</i> shall provide proof of consequence management for those embarking on a strike or tools down. The <i>Contractor</i> shall have Human Resources Policies and Procedures to manage its employee's performance and conduct and have proof that all its employees are fully aware of the company's policies and procedure. If the <i>Contractor</i> cannot resolve any issues that is impacting the <i>Employer</i>, the <i>Employer</i> reserves the right to terminate this contract and reallocate the work/scope to another <i>Contractor</i>.
Z12.3	<ul style="list-style-type: none"> The <i>Contractor</i> shall ensure that its employees are properly inducted, and the terms and conditions of their employment are properly explained and understood. The induction should outline all the relevant policies and procedures of the <i>Contractor</i>'s organisation.
Z12.4	<ul style="list-style-type: none"> The <i>Contractor</i> shall ensure that it fully complies with the Basic Conditions of Employment Act. The MEIBC rates are the required base rates and are non-negotiable.
Z12.5	<ul style="list-style-type: none"> It is the <i>Contractor</i> responsibility to ensure that its employees fully understand the employment contract including but not limited to the rates per skill, overtime, leave, UIF and provident fund, including any other benefits. The <i>Contractor</i> shall ensure that there is a signed employment contract in place before its employees are mobilised to an Eskom sites.
Z12.6	<ul style="list-style-type: none"> The <i>Contractor</i> shall ensure that it remains cash positive and sustainable for at least 90 days and or a minimum of R60 million using its own cash flow.
Z12.7	<ul style="list-style-type: none"> Flights to be economy class and must be in line with National Treasury rules. The <i>Employer</i> shall only pay on actual invoices capped to R20 000.00 for a return ticket.
Z12.8	<ul style="list-style-type: none"> The <i>Contractor</i> shall ensure that it complies with the TGS Minimum Resources List, however <i>Contractor</i> can discuss the resources with the respective Project Managers to optimise their resources, if optimising does not put the Task Order Completion Date at risk. There shall be adequate Engineers for day shift and night shift for a General Overall (GO). The same applies for Mini General Overall (MGO).

Z12.9	<ul style="list-style-type: none"> The <i>Contractor</i> shall ensure that it makes Facilitators available to be trained by ERI to conduct internal training on behalf of the <i>Contractor</i>.
Z12.10	<p>The Contractor shall ensure that outages meet the following durations:</p> <ul style="list-style-type: none"> Pricing for projects must be based on 60 Days (GO). (10 days mobilisation period and training period, and 50 days duration - permit to work to mechanical barring). Outages will be executed in line with the following durations, GO: 60 days (50 days PTW until mechanical barring, and 10 days of mobilisation), MGO: 45 days (35 days PTW until mechanical barring, and 10 days of mobilisation), IR: 31 days (21 days PTW until mechanical barring, and 10 days of mobilisation). Projects under the Maintenance Department has a reduced SOW for IR's and IN's, thus pricing is based on percentages after review of SOW.
Z12.11	<ul style="list-style-type: none"> The <i>Contractor</i> shall comply with ERI TGS minimum resource list, and any deviation must be negotiated and approved by the Project Manager and Capacity Planning Manager.
Z12.12	<ul style="list-style-type: none"> The <i>Contractor</i> shall ensure that care and due diligence is conducted during outages. <i>The Contractor</i> shall be liable for all costs related to rework if is caused or due to the <i>Contractor</i>. The <i>Contractor</i> shall take all relevant steps to mitigate any rework.
Z12.13	<ul style="list-style-type: none"> Return to Service - All completed outages must be free from defects and vibrations. For Vibrational defects identification, the vibration behaviour at no-load and different load conditions will be compared to the respective ISO7919 and/or ISO10816 Standard as applicable to the specific machine being monitored. The vibration performance will be deemed acceptable with the vibration performance limits not exceeding zone B, as defined in the aforementioned ISO Standards. Vibration performance limits above zone B, will be deemed a defect, i.e: operation in zone C or D is a defect. It is expected that there is improvement on vibration performance after each outage intervention, thus no deterioration on vibration performance after each intervention.
Z12.14	<ul style="list-style-type: none"> The Contractor shall ensure that all its employees are properly vetted for criminal activities/records including dismissals from previous employers.
Z12.15	<ul style="list-style-type: none"> Moonlighting – Contractors shall ensure that they do not have employees that are moonlighting.
Z13	<h3>Intellectual Property</h3> <p>All Designs, drawings, specifications, instructions, manuals and other documents created, produced by or on behalf of the <i>Contractor</i> for the purposes of carrying out the Service (collectively, the "Contractor's Copyright Documents") and copyright therein and all intellectual property rights relating thereto, are, will be, and will remain the property of the <i>Contractor</i>. The <i>Contractor</i> hereby grants to the <i>Employer</i> an irrevocable, royalty-free, non-exclusive and perpetual licence to use those of the <i>Contractor's</i> Copyright Documents supplied to the <i>Employer</i> under the Contract for the purpose of operating, maintaining, adjusting and repairing the Service.</p> <p>The <i>Contractor</i> shall not under any circumstances be obliged to divulge or supply any proprietary manufacturing documents, and design drawings.</p> <p>Patents and Trademarks</p> <p>In the event of any claims being made or actions brought against the <i>Employer</i> on the ground that the Service, Plant and Materials or the design information provided by the <i>Contractor</i> to him hereunder or the use of same as specified hereunder constitutes an infringement of any patent, trademark or copyright of the Republic of South Africa, the <i>Contractor</i> shall be promptly notified thereof and shall at its own expense conduct all negotiations for the settlement of the claim and litigation that may arise from such alleged infringement. The <i>Employer</i> shall not, before the <i>Contractor</i> shall have failed to take over the conduct of the negotiation or litigation,</p>

	<p>make any admission which might be prejudicial thereto. The <i>Employer</i> shall at the request of the <i>Contractor</i> afford him all technical assistance that the <i>Employer</i> is able to provide for the purpose of contesting any such claim or action</p> <p>Should it be held in any such action that any such protected rights has been infringed, the <i>Contractor</i>, has the choice to replace or continue with the affected design at its own expense and in consultation with the <i>Employer</i>, shall either: procure for <i>Employer</i> the right to continue to use the affected item or design, or replace the said affected item or design with a non-infringing item or design of equivalent quality, or modify such affected item or design so as to make it non-infringing without affecting the quality.</p> <p>Notwithstanding anything contained in this Contract, the foregoing sets forth the entire responsibility of <i>Contractor</i> with respect to claims relating to infringement and shall not apply in the case where the infringement is attributable to <i>Contractor</i> for which <i>Employer</i> shall protect <i>Contractor</i> to the same extent <i>Contractor</i> has agreed to protect the <i>Employer</i> herein.</p>
Z14	<p>Asbestos</p> <p>Prior to the commencement of the services on site, a free measurement routine in conformity with TRGS 519 (German Technical Rules for Hazardous Substances) must be carried out, with the maximum permissible limit value being 500 fibres per m³, with an upper confidence level of the poison distribution lower than 1000 F/m³. The measurement and evaluation must be conducted according to VDI 3492 or Acceptable SABS approved standards. Results of the measurement have to be presented to the <i>Contractor</i>. The costs of the action incurred for this purpose, including any requisite follow-up measurements required by the <i>Contractor</i>, shall be borne by the <i>Employer</i>.</p> <p>It is agreed between Parties that in case the measurements performed by the <i>Employer</i> show unsafe levels with regard to the above, asbestos shall be removed and disposed of by the <i>Employer</i> involving a specialist company before the <i>Contractor</i> or its contracting party start the Services.</p> <p>The services on site shall then only start when the asbestos measurements showing safe levels have been presented to the <i>Contractor</i>.</p> <p>Should asbestos be detected during the execution of the services, the <i>Contractor</i>'s personnel will stop the work and leave the contaminated area forthwith and the <i>Employer</i> arranges for the area to be cleaned and decontaminated as per the above standards. The <i>Contractor</i> will be compensated for the waiting period according to the valid hourly rates and for all further cost incurred as a result of service interruption due to asbestos.</p> <p>The services on site shall be resumed, when the asbestos measurements showing safe levels as defined above have been presented to the <i>Contractor</i>.</p> <p>The contractually agreed dates for services at the site including completion date shall be adjusted accordingly.</p>
Z15	<p>Accommodation</p> <p>Z15.1</p> <ul style="list-style-type: none"> • The <i>Contractor</i> shall not utilize Guest house with a below 3-star grade recognised by the Tourism Grading Council of South Africa (TGCSA). • It is the <i>Contractor</i>'s responsibility and obligation to inspect all Guest Houses before placing their employees in the respective accommodation. Regular visits (minimum once a week) must be made to Guest Houses to ascertain the living conditions, including health and safety of their employees. Proof of such visit must be retained by the <i>Contractor</i> should the <i>Employer</i> wish to conduct an audit. • As part of the <i>Contractor</i>'s Human Relations policies and induction, employees should be made fully aware of the company's communication protocols including having a single point of entry for emergencies and to either raise or report any health and safety contraventions

	etc.
Z16	Export control
	<p>Z16.1 The <i>Employer</i> acknowledges that the Contractor's obligations are conditioned upon compliance with all US, EU and other applicable trade control laws and regulations. The <i>Employer</i> shall not trans-ship, re-export, divert or direct or otherwise make or allow any disposition of products and services other than in and to the ultimate country of destination declared by the <i>Contractor</i> and specified as the country of ultimate destination on <i>Contractor's</i> invoice, except as may be permitted by applicable laws and regulations.</p> <p>Z16.2 <i>Employer</i> hereby certifies that the equipment, materials, services, technical data, software or other information or assistance furnished by the <i>Contractor</i> under this Contract shall not be used in the design, development, production, stockpiling or use of chemical, biological or nuclear weapons either by <i>Employer</i> or any entity acting on <i>Employer's</i> behalf</p>
Z17	Nuclear Liability
	<p><i>Employer</i> shall obtain and maintain, without cost to <i>Contractor</i>, nuclear liability insurance in the amount and scope of coverage required by the South African National Nuclear Regulator Act (Act No. 47 of 1999), and the rules and regulations promulgated thereunder, or in the amount of US\$450 million (or South African rand equivalent amount), whichever amount is more. Such insurance shall be in effect prior to the performance of the services and shall remain in effect for the duration of the Contract and until the Plant has been removed from supervision under laws on atomic energy by the competent South African regulatory authority. Neither the insured nor the insurers shall have any right of subrogation, recourse or otherwise against <i>Contractor</i> or its suppliers. In addition, <i>Employer</i> shall obtain and maintain, without cost to <i>Contractor</i>, insurance covering all damages due to acts of terrorism in an amount not less than US\$47.3 million. Upon issuance of a task order to <i>Contractor</i>, <i>Employer</i> shall provide proof of such insurance as required in this Paragraph A, and <i>Contractor</i> has the right to reject <i>Employer's</i> task order without liability of any kind, if the insurance does not meet the conditions set forth herein.</p>

B. LIABILITY PROTECTION

1. This sale of products and/or services and any delivery or performance obligations pursuant to this sale are conditional upon there being in full force and effect in the Republic of South Africa a system of protection for nuclear liability to third parties under the South African National Nuclear Regulatory Act (Act No. 47 of 1999), and that such system of protection for nuclear liability will continue in effect at all times until decommissioning of the Plant and until the Plant has been removed from supervision under laws on atomic energy by the competent South African regulatory authority.
2. In the event that the system of protection for nuclear liability referred to in Paragraph B.1 above is repealed, expires or changed in a manner that reduces the level of protection afforded *Contractor* or its suppliers, *Employer* will establish, without cost to *Contractor*, until the decommissioning of the Plant and until the Plant has been removed from supervision under laws on atomic energy by the competent South African regulatory authority, a substitute system of protection against such liability which will, in its overall effect, provide protection equivalent to the protection afforded *Contractor* and its suppliers under the original system and this Appendix A. *Employer* shall promptly advise *Contractor* in writing of any changes to or amendment of the system of protection referred to in Paragraph B.1 prior to their entry into effect.
3. *Employer* shall, without cost to *Contractor*, fully comply with the domestic law referred to in Paragraph B.1 above to the effect that *Employer* shall at all times be the responsible Operator of the Plant and to the effect that *Employer* shall be solely and directly liable in accordance therewith for any and all nuclear liability.
4. *Employer* hereby waives all rights of recourse against *Contractor* and its suppliers with

respect to Liability for Nuclear Damage arising out of or resulting from the equipment or services and nothing contained herein shall be construed as creating any rights of recourse, action or otherwise against *Contractor* or its suppliers with respect to Liability for Nuclear Damage unless proven to be a direct case of gross negligence by the *Contractor* or its suppliers.

5. *Employer* hereby indemnifies and holds *Contractor* and its suppliers harmless against any Liability for Nuclear Damage arising out of or resulting from the equipment or services not covered under the arrangements provided under other provisions of this Contract.
6. Neither *Contractor* nor its suppliers shall have any Liability for Nuclear Damage to *Employer* or its insurers. *Employer* shall cause its insurers to effect a waiver of all recourse or subrogation rights against *Contractor* in any insurance policies maintained by *Employer* covering nuclear damage to property.
7. In the event the protection to be provided by *Employer* in this Appendix A is not in place at the time of the scheduled performance of services or scheduled delivery of equipment, *Contractor* shall not be required to perform services or deliver equipment but may withhold services and place the equipment in storage. Title to the equipment shall not pass to *Employer* and/or Operator, and the equipment shall not be removed from storage until such protection is afforded. However, for purposes of payment, delivery will be deemed to have been made upon placement of equipment into storage, and *Employer* will continue to make payments to *Contractor* in accordance with the payment provisions of the contract.
8. *Employer* shall not remove the equipment or the product which incorporates the equipment or upon which the services were performed or to which the services relate from the Plant site or sell or otherwise transfer any interest therein without first providing written assurances of limitations of and protection against Liability for Nuclear Damage following that proposed removal or transfer at least equivalent to that afforded *Contractor* and its suppliers as provided in this Appendix A, including the domestic law referenced in Paragraph B.1 above, and the provision General Limitations of Liability and other provisions of the contract. *Employer* shall provide to *Contractor* written confirmation that, in the event of a transfer, such assurances shall be obtained by *Employer* from the transferee. Removal or transfer contrary to this Paragraph B.8 shall, in addition to any other legal or equitable rights of *Contractor*, make *Employer* the indemnitor of *Contractor* and its suppliers to the same extent that *Contractor* and its suppliers would have been protected had no such removal or transfer taken place.
9. The entity executing this contract warrants that it has authority to execute this agreement on behalf of itself as the Operator and any and all other entities having an ownership interest in the Plant or property used or intended for use at the Plant, that *Employer* has legal capacity and financial power to fulfil the obligations of this Appendix A, and that nothing in this agreement is inconsistent with any provision of South African law.

C. SURVIVAL

The provisions of this Appendix A, the provision General Limitations of Liability, and other provisions of the contract providing for limitation of and protection against Liability for Nuclear Damage of Seller and its suppliers shall survive any termination, expiration or cancellation of the contract, as well as the completion of work, and shall apply notwithstanding any other provision of this or any other contract between the parties.

D. DEFINITIONS AND OTHER PROVISIONS

As used in this Appendix A, the following terms (whether or not capitalized) shall have the meanings set forth below:

1. "Liability for Nuclear Damage" means any liability for damage of any kind, whether based on contract, warranty, indemnity, tort (including negligence of whatever degree), strict liability

or otherwise, which in whole or in part is caused by, arises out of, results from or is in any way related, directly or indirectly, to either the radioactive, toxic, explosive or other hazardous properties of any nuclear or radioactive material, including amounts paid in settlements of claims or litigation, amounts paid to satisfy judgments or awards, interest, legal costs (including costs in initiating, prosecuting, investigating, settling or defending claims or suits), and fees of counsel. The foregoing includes, but is not limited to liability for, loss of, or damage to, or loss of use of, any real, personal or mixed property, fixtures or equipment located at the *Employer's* Plant and whether owned by the *Employer* or any third party) or elsewhere or in the course of transportation to or from the Plant including handling or storage incidental thereto (including any equipment supplied by the Seller, any nuclear material, and any means of transport), injury, sickness, disease, disability or death, loss of actual or anticipated profits, loss by reason of Plant shutdown, nonoperation or increased expense of manufacturing or operation, service interruptions, claims of the *Employer's* customers, subcontractors or suppliers, governmental fines or penalties against the *Employer*, loss of use of capital or revenue, cost of money, radioactive contamination, measures of reinstatement of impaired environment, worker claims, preventive measures, replacement power costs, acts of terrorism, rumour damage, interest, legal costs (including costs in initiating, prosecuting, investigating, settling or defending claims or suits), and fees of counsel.

2. "Contractor" means any person, firm, corporation, vendor, subcontractor or, and/or supplier, regardless of tier, and the parent company or companies, affiliates, subsidiaries and/or related companies/entities, and the directors, officers, employees and agents of each such entity, which has furnished or is furnishing to the Agreement Company or Owner, as per the signatories, directly, any material, equipment, services, information, or any other thing in connection with the products and services.
3. "Plant" means the Koeberg Nuclear Power Station near Cape Town, Republic of South Africa, and includes all of the nuclear reactors and ancillary installations, as well as all real, personal and mixed property, fixtures, equipment, activities and operations at such location, including all Eskom Power Stations.
4. "Operator" means the organization designated by the competent South African Government regulatory authority as the operator of the Plant, which cannot be the Seller.
5. "*Employer*" means Eskom Rotek Industries (ERI), acting on behalf of the designated Operator and owner of the Plant.
6. Each Party hereby acknowledges and agrees that the provisions of this *sui generis* Appendix A are fair and reasonable having regard to the circumstances as the date hereof.
7. This Appendix A is intended to provide the Company and its Suppliers with protection in addition to liability protection provided by the South African National Nuclear Regulatory Act (Act No. 47 of 1999).
8. The provisions of this Appendix A shall be severable. Should any part of this Appendix A be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or portion of this Appendix A should not invalidate the remaining portions thereof, and they shall remain in full force and effect. The provisions of this Appendix A shall be liberally construed to effectuate its purposes.
9. Exception List, means a running list which is managed and controlled by the Contractor's for employees who have engaged in undesirable activities that impacts the Employer's obligation in providing a service to Eskom Holdings. This includes but not limited to strikes, tools-down, etc

Z18.	Estimated Price
Z18.1	The estimated price must be based on the scope of work as defined in Part 3 of this contract.

C1.2 Contract Data
Part two - Data provided by the Contractor

	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	Not applicable. Not applicable.
11.2(14)	The following matters will be included in the Risk Register	Refer to each individual Task Order.
11.2(15)	The Service Information for the <i>Contractor's</i> plan is in:	Refer to each individual Task Order.
21.1	The plan identified in the Contract Data is contained in:	Refer to each individual Task Order.
24.1	The key people are: 1 Name: Job: Responsibilities:	
	2 Name: Job Responsibilities:	
A	Priced contract with price list	
11.2(12)	The <i>price list</i> is in	C2 of this Contract
11.2(19)	The tendered total of the Prices is	Not applicable. The prices will be as per individual Task Orders issued

TSC3 Option A

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

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:

Identified and defined terms 11.2 (12) The Price List is the *price list* unless later changed in accordance with this contract.

(17) The Price for Services Provided to Date is the total of

- the Price for each lump sum item in the Price List which the *Contractor* has completed and
- where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Contractor* has completed by the rate.

(19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.

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

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

Rules for Pricing

Pricing Table to be included

C2.3 Description of the service

C3.1: EMPLOYER'S SERVICE INFORMATION

Scope of services

The scope of responsibility includes the supply of liquid nitrogen and dry ice to the following sites:

Arnot, Duvha, Grootvlei, Matla, Hendrina, Camden, Kusile, Medupi, Koeberg, Kendal, Tutuka, Kriel, Lethabo, Matimba and ERI (TGS, Matla and Rosherville Works). This will assist in the disassembly and reassembly of shrunk on components.

Scope of Work (SOW)

1. Supply of liquid nitrogen and dry ice

Background

In certain process applications, it is useful to be able to quickly cool, chill or freeze material in a process. Liquid nitrogen and Dry ice can be added directly onto the material or components submerged into liquids to reduce the temperature of the product in further processing in the assembly or disassembly phases

The challenge faced with the continuous supply of any of the following essential consumables like the liquid nitrogen and dry ice during the refurbishment projects of various components of Eskom sites (Arnot, Duvha, Grootvlei, Matla, Hendrina, Camden, Kusile, Medupi, Koeberg, Kendal, Tutuka, Kriel, Lethabo, Matimba and ERI (TGS, Matla and Rosherville Works) and external clients on planned shutdown and breakdown/emergency basis.

This scope of work is based on the minimum required quantity at the time of execution of a activity and provision should be made for a request of large quantities based on the multiple projects carried out across all Eskom sites and TGS works.

2. Supply of 2 off 20 kg liquid nitrogen

a) PHYSICAL AND CHEMICAL PROPERTIES PHYSICAL DATA

Chemical Symbol :N₂

Molecular Weight 28,01

Boiling point @ 101,325 kPa -195,8°C

Density, liquid @ boiling point 803,6 kg/m³

Relative density (Air = 1) @ 101,325 kPa 0,967

Latent heat of vaporisation @ boiling point 199,1 kJ/kg

Colour None

Taste None ix. Odour None

b) Nitrogen (liquid) N2, In Liquid form. Inert type Gas.

3. Supply of boxes of dry ice 20 kg (415mm x 288mm x277mm inner dimensions)(517mm x 387mm x 319mm outer dimensions) or equivalent boxes

a) Physical Data

Dry ice is the solid form of carbon dioxide (CO2) at a temperature of -78.5 °C. Quality Dry Ice per container is 20kg.20Kg dry ice

4. Safety

Supply of Liquid nitrogen:

Container to be use must be designed for cryogenic liquids; no other stopper or any other device is to be used with container that will prevent venting as the liquid nitrogen evaporates.

Supply of dry ice:

Container with inner dimensions of 415x288x227 and external dimension 517x387x319 filled with 16mm circular pellets.

5. KEY DELIVERABLES

The following deliverables are to be met by the service provider:

- No customer complaints
- Compliance to all ERI Work Instructions, processes, procedures, and standards
- No SHEQ incidents
- Deliveries provided on time, or earlier

6. PROCEDURE ADHERENCE REQUIREMENTS

The ERI TGS Quality Management System consists of various procedures and processes that are utilized to manage and control the level of quality of maintenance activities during an outage to an acceptable standard. These procedures and processes are employed during the planning and execution of maintenance activities with a focus of meeting the customer's requirements and enhancing their satisfaction. These procedures shall be adhered to by the service provider and will be made available on request by the service provider.

- Execution and Control of All Site Work (240-137025973)
- Quality Control
- PQP Workflow Assessment and Tracking for Outages (F-198)
- Technical Notification Work Instruction (240-94067868)
- Control of Blanks and Foreign Material Exclusion Covers (T-03)
- Rotor Lockable Components Inspections (E-67)

- Hydraulic Equipment Specifications, Operation and Maintenance Requirements (F-465)
- Compilation of Service Reports and Data Books (F-737)
- Lifting Machines and Lifting Tackle Safe Working Practices (E-19)
- Management and Control of Tools in a Tool Store or a Container (240-125904456)
- Correcting of Check sheets Engineering Instruction (X-1384391-033)
- Project Management Product/Process Quality Plan (240-130329202)
- Control of Non-Conforming Product/Service, Corrective and Preventive Action (240-103649507)
- Business Management System Audit (240-94027195)
- Coding of Business Management System Documentation (240-94027233)
- Development and Management of the Product/Process Quality Plan for Outages (240142892057)
- Generator Clean Conditions Requirements Work Instruction (240-56178527)
- Turbo Gen Services - Outage Quality Control Cabin240-142894278)
- Turbo Gen Services Rework Work Instruction (240-147200671)
- Flogging procedure(E-60)
- Safe operation of electrical equipment (TT-A-01)
- Plant Safety Regulations

7. Key Performance Indicators

The performance of the contractor will be evaluated on the KPIs in the table below:

Objective	Key Performance Indicator	Measure	Unit of Measure	Source of Evidence
Safety Sustainability	LTI Free days	LTI Free days	Days	To be provided by supplier
Due Date Performance	Due Date Performance	Average contracted days	Days	To be provided by supplier
No of Legal & Environmental Contraventions	No of Legal & Environmental Contraventions	Number of contraventions	Nr	To be provided by supplier
Zero Fatalities Excl 3rd party at fault	Zero Fatalities Excl 3rd party at fault	Number of fatalities	Nr	To be provided by supplier

Management meetings

The *conditions of contract* (e.g. Clause 16.2) and other sections of the Service Information (e.g. safety risk management) may require that a meeting shall be held. However the intention of all NEC contracts is that the Parties and their agents use the techniques of partnering to manage the contract by holding meetings designed to proactively and jointly manage the administration of the contract with the objective of minimising the adverse effects of risks and surprises for both Parties.

Depending on the size and complexity of the service, it is probably beneficial for the *Service Manager* to hold a weekly risk register meeting (Clause 16.2). This could be used to discuss safety, compensation events, subcontracting, overall co-ordination and other matters of a general nature. Separate meetings for specialist activities such as planning and activities of a technical nature may also be warranted.

Describe here the general meetings and their purpose. Provide particulars of approximate times, days, location, and attendance requirements, stipulating that attendees shall have the necessary delegated authority to make decisions in respect of matters discussed at such meetings.

The following text could be used as a model for this section:

Regular meetings of a general nature may be convened and chaired by the *Supply Manager* as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	Weekly on _____ at _____		
Overall contract progress and feedback	Monthly on _____ at _____		<i>Employer, Contractor and _____</i>

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

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

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
 Eskom ROTEK Industries
 Accounts Payable Department
 Lower Germiston Road
 Rosherville

and include on each invoice the following information:

Name and address of the *Contractor* and the *Service Manager*;
 The contract number and title;
Contractor's VAT registration number;
 The *Employer's* VAT registration number 4740101508;
 Description of service provided for each item invoiced based on the Price List;
 Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
 (add other as required)

Add procedures for invoice submission and payment (e. g. electronic payment instructions)

Insurance provided by the *Employer*

First read TSC3 Core Clause 86.1 and then add anything necessary for the management of insurance related issues such as a cross reference to where procedures for making claims can be found. Also provide contact details for persons capable of being able to answer any insurance related queries the *Contractor* may have, as well as to whom the information required by Marine Insurance (if any) may be addressed.

Health and safety, the environment and quality assurance

Health and safety risk management

In addition to the requirements of the laws governing health and safety, Eskom may have some additional requirements particular to the *service* and the Affected Property for this contract. The text below provides for these being attached as an Annexure to this Service Information. PLEASE ALSO READ CORE CLAUSE 27.4 TOGETHER WITH Z7 IN THE ADDITIONAL CONDITIONS OF CONTRACT TO MAKE SURE THAT WHATEVER IS INCLUDED IN THE ANNEXURE FOLLOWS ON FROM THOSE CLAUSES.

The Divisional/Regional Safety Risk Manager or his representative having jurisdiction over the *service* must provide the relevant safety, health and environmental (SHE) criteria for incorporation into this Service Information. The SHE specification / scope must be signed off by the Divisional/Regional Safety Risk Manager or his representative confirming that the applicable safety criteria have been taken into account.

The Divisional Safety Risk Managers who will be responsible for the allocation of resources to assist P&SCM with the above processes are as follows:

- Generation: Roley McIntyre
- Transmission: Tony Patterson
- Distribution: Alex Stramrood
- Enterprises: Jace Naidoo
- Corporate: Kerseri Pather

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

Procurement

There is a cross reference from the core clause 11.2(6) definition of Disallowed Cost to the Service Information regarding procurement procedures. This part of the Service Information MUST include any such procedures to be able to administer Disallowed Cost.

Equipment provided by the *Employer*

Some Employer's obligations are stated in the Scope of Work above and these will be detailed in the Plan.

Hook ups to existing works

Not Applicable

Tests and inspections

Description of tests and inspections

Not Applicable

Materials facilities and samples for tests and inspections

Refer to Scope of Work

		Task Order for use with NEC3 Term Service Contract	
		Department:	
Contract No: 46 _____		Task Order No: 45 _____	
Part One: Data provided by the Employer			
	Employer's postal address:	Employer's representative :	
	Eskom Rotek Industries SOC Ltd.	Name	
	Turbo Gen Services	Tel	
	P. O. Box 40099	Fax	
	Cleveland	Cell	
	2022	E-mail	
Detailed description of the work in the Task			
Services and other things provided by the Employer			
Starting date: Delay damages: The period of reply to a communication for this Task Order is:	2 working days	Task Completion Date: The Contractor submits a revised programme for this Task Order every	
Contractor's representative: Signature: _____		Employer's representative: Signature: _____	

Part Two: Data provided by the Contractor			
	<i>Contractor's postal address:</i>	<i>Contractor's representative:</i>	
		Name	
		Tel	
		Fax	
		Cell	
		E-mail	
Additional compensation events			
Any other activities not covered by this Task Order Any extension to the planned completion Date. Any delays to the program caused by other contractors.			
Additional data			
Assessment schedule (Part 1. 50.1)			
The full value of this task order will be invoiced upon completion.			
Contractor's representative:		Employer's representative:	
Signature: _____		Signature: _____	

Price List						
Item nr.	Description	Unit	Qty	Unit price	Subtotal	Total Price
Total of the Prices for this Task Order						
Total of the Prices for this Task Order (in words):						
All Prices in this Task Order exclude VAT						
The above prices are valid for 30 days from the date of the Contractors signature below						
Contractor's Delegated Authority: Signature: _____ Name: (Print) _____ Date: _____				Employer's Delegated Authority: Signature: _____ Name: (Print) _____ Date: _____		