

**The Turbine Welding and Maintenance Service Contract 5 years Maintenance Department**



**NEC3 Term Service Contract (TSC3)**

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

**and**

**for The Turbine Welding and Maintenance Service  
Contract 5 years Maintenance Department**

Draft

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<b>Contract No.:</b>	<b>46000</b>
<b>Document Compiled by:</b>	<b>Nicholas Nelani</b>

**The Turbine Welding and Maintenance Service Contract 5 years Maintenance Department****PART C1: AGREEMENTS & CONTRACT DATA**

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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 Turbine Welding and Maintenance Service Contract**

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.

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

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

Signature .....

Name .....

Capacity .....

Date .....

Address: .....

**For the tenderer:**

**Witness**

Name .....

Signature .....

Date .....

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<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*.

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**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 .....

Name .....

Capacity        **Camden Power Station Manager**

Date .....

Address:        **ESKOM HOLDINGS SOC LTD., Camden Power Station, Private Bag X1002, NUCAM, 2355**

**For the purchaser:**

**Witness**

Name .....

Signature .....

Date .....

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

No.	Subject	Details
1		
2		
3		

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 Purchaser**

Signature

Name

Capacity

Date

On behalf of:

Witness

Name

Signature

Date

**Camden Power Station Manager**

**Eskom Holdings SOC LTD., Camden Power Station**

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**C1.2 TSC3 Contract Data**

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

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

Clause	Statement	Data
1	<b>General</b>	
	<p>The <i>conditions of contract</i> are the core clauses and the clauses for main Option:</p> <p>dispute resolution Option and secondary Options</p>	<p><b>A: Priced contract with price list</b></p> <p><b>W1: Dispute resolution procedure</b></p> <p><b>X2: Changes in the law</b></p> <p><b>X17: Low service damages</b></p> <p><b>X18: Limitation of liability</b></p> <p><b>X19: Task Order</b></p> <p><b>Z: Additional conditions of contract</b></p>
	<p>of the NEC3 Term Service Contract April 2013<sup>2</sup> (TSC3)</p>	
10.1	<p>The <i>Employer</i> is (name):</p> <p>Address</p> <p>Tel No.</p> <p>Email</p>	<p><b>Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa</b></p> <p><b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b></p> <p><b>017 827 8135</b></p> <p><b><a href="mailto:MophutSP@eskom.co.za">MophutSP@eskom.co.za</a></b></p>

<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)

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10.1	The <i>Service Manager</i> is (name):	<b>Mandla Mzinyane</b>
	Address	<b>Camden Power Station Nucam Ermelo 2351</b>
	Tel	<b>017 827 8510</b>
	Email	<b>mzinyam@eskom.co.za</b>
11.2(2)	The Affected Property is	<b>Camden Power Station</b>
11.2(13)	The <i>service</i> is	<b>The Turbine Welding and Maintenance Service Contract for the period of 5 years</b>
11.2(14)	The following matters will be included in the Risk Register	
11.2(15)	The Service Information is in	<b>Part 3: Scope of Work and all documents and drawings to which it makes reference.</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>2 weeks</b>
<b>2</b>	<b>The Contractor's main responsibilities</b>	<b>Data required by this section of the core clauses is also provided by the Contractor in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data</b>
21.1	The <i>Contractor</i> submits a first plan for acceptance within	<b>2 weeks of the Contract Date</b>
<b>3</b>	<b>Time</b>	
30.1	The <i>starting date</i> is.	_____
30.1	The <i>service period</i> is	<b>Once off</b>
<b>4</b>	<b>Testing and defects</b>	<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>
<b>5</b>	<b>Payment</b>	
50.1	The <i>assessment interval</i> is	<b>between the 25 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>60 days payment terms.</b>

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51.4	The <i>interest rate</i> is	<p>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</p> <p>(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 <i>mutatis mutandis</i> 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.</p>
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
70.1	<b>The Contractor has the right to use equipment, Plant and Materials provided by the Employer only to provide the service</b>	At the end of the service period the contractor Returns to the employer, equipment and surplus Plant and Materials provided by the employer
8	<b>Risks and insurance</b>	
80.1	These are additional <i>Employer’s</i> risks	<p>1. _____</p> <p>2. _____</p>
83.1	The <i>Employer</i> provides these insurances from the Insurance Table	<p><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></p>
83.1	The <i>Employer</i> provides these additional insurances	<p><b>as stated for “Format TSC3” available on <a href="http://www.eskom.co.za/Tenders/InsurancePolicies_Procedures/Pages/EIMS_Policies_">http://www.eskom.co.za/Tenders/InsurancePolicies_Procedures/Pages/EIMS_Policies_</a></b></p>

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*From\_1\_April\_2014\_To\_31\_March\_2015.aspx*  
**(See Annexure A for basic guidance)**

83.1	The <i>Contractor</i> provides these additional insurances:	
83.1	The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is	<b>the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on <a href="http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a></b>
83.1	The insurance against loss of or damage to the <i>works</i> , Plant and Materials is to include cover for Plant and Materials provided by the <i>Employer</i> for an amount of	
83.1	The minimum amount of cover for insurance in respect of loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one event is:	<b>whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i>.</b>
83.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:	<b>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands)..</b>

**9 Termination**

**10 Data for main Option clause**

**A Priced contract with price list**

20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than	<b>4 weeks.</b>
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**11 Data for Option W1**

W1.1	The <i>Adjudicator</i>	<b>the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).</b>
	Address	<b>Will be provided when the disputes arises</b>

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W1.2(3)	The <i>Adjudicator nominating body</i> is:	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 Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.									
	The place where arbitration is to be held is	South Africa									
	The person or organisation who will choose an arbitrator - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.									
<b>12</b>	<b>Data for secondary Option clauses</b>										
<b>X1</b>	<b>Price adjustment for inflation</b>										
X1.1	The <i>base date</i> for indices is  The proportions used to calculate the Price Adjustment Factor are:	<p>July 2023</p> <table border="1"> <thead> <tr> <th data-bbox="826 1267 986 1339">proportion</th> <th data-bbox="991 1267 1193 1339">linked to index for</th> <th data-bbox="1198 1267 1455 1339">Index prepared by</th> </tr> </thead> <tbody> <tr> <td data-bbox="826 1346 986 1402">N/A</td> <td data-bbox="991 1346 1193 1402">N/A</td> <td data-bbox="1198 1346 1455 1402">N/A</td> </tr> <tr> <td data-bbox="826 1408 986 1464">N/A</td> <td data-bbox="991 1408 1193 1464">N/A</td> <td data-bbox="1198 1408 1455 1464">N/A</td> </tr> </tbody> </table> <p>non-adjustable</p>	proportion	linked to index for	Index prepared by	N/A	N/A	N/A	N/A	N/A	N/A
proportion	linked to index for	Index prepared by									
N/A	N/A	N/A									
N/A	N/A	N/A									
<b>X2</b>	<b>Changes in the law</b>	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.									
<b>X17</b>	<b>Low service damages</b>										
X17.1	The <i>service level table</i> is in	The penalty of 10% of the task order will be deducted should the contractor fails to action the task as required by the employer									
<b>X18</b>	<b>Limitation of liability</b>										
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited	R0.0 (zero Rand)									

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	to	
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	<p><b>the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on</b>  <a href="http://www.eskom.co.za/Tenders/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>
X18.3	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>• <b>the total of the Prices at the Contract Date and</b></li> <li>• <b>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</b>  <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></li> </ul>
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<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 excluded matters is not limited.</b></p> <p><b>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</b></p> <ul style="list-style-type: none"> <li>• <b>Defects due to his design, plan and specification,</b></li> <li>• <b>Defects due to manufacture and fabrication outside the Affected Property,</b></li> <li>• <b>loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials),</b></li> <li>• <b>death of or injury to a person and</b></li> <li>• <b>infringement of an intellectual property right.</b></li> </ul>
X18.5	The <i>end of liability date</i> is	<b>2 months after the end of the <i>service period</i>.</b>
<b>X19</b>	<b>Task Order</b>	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	<b>2 days of receiving the Task Order</b>
<b>Z</b>	<b>The <i>additional conditions of contract</i> are</b>	<b>Z1 to Z11 always apply.</b>
<b>Z1</b>	<b>Cession delegation and assignment</b>	
Z1.1	The <i>Contractor</i> does not cede, delegate or assign any of its rights or obligations to any person	

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without the written consent of the *Employer*.

- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Contractor* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

### Z2 Joint ventures

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

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

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

### Z4 Ethics

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Contractor*, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Contractor's* obligation to Provide the Service or taking any other action as appropriate against the *Contractor* (including civil or criminal action).
- Z4.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if the *Contractor* (or any member of the *Contractor* where the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

Such practices include making of offers, payments, considerations, or benefits of any kind or

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otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Contractor* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.

- Z4.3 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P4 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

### Z5 Confidentiality

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

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

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

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

- Z7.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:
- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Affected Property;
  - warrants that the total of the Prices as at the Contract Date includes a sufficient amount for

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proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and

- undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

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

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

Z8.1 Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.

Z8.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z8.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

### Z9 Notifying compensation events

Z9.1 Delete 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 Termination:  
The employer have a right to terminate the contract without penalties by giving at least 30 days written notice to the Contractor where the following situations prevail:

## The Turbine Welding and Maintenance Service Contract 5 years Maintenance Department

- In instances where the approved contract price funds have been depleted;
- In instances where Eskom's business strategy changed and the continuation of the contract is no longer economically viable for Eskom business.

### 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.
  - 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.
2. The *Contractor* is required in terms of Contract Data for clause 83 to provide cover for the deductibles in the insurance provided by the *Employer*. This can be provided from his own resources on a 'self insured' basis or obtained by him from his own insurers. In order to assess the extent of this cover, tendering contractors and their brokers should consult the internet web link given below and scroll to '**Format TSC3**' to establish both the cover and the deductibles in relation to the *service* provided in terms of this contract.
3. 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.
4. 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.
5. 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)

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**C1.2 Contract Data**

**Part two - Data provided by the Contractor**

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

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

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	2	Name:	
		Job	
		Responsibilities:	
		Qualifications:	
		Experience:	

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

**A Priced contract with price list**

11.2(12) The *price list* is in **C2.2, Page 20 of this document**

11.2(19) The tendered total of the Prices is

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**PART 2: PRICING DATA**

TSC3 Option A

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

## The Turbine Welding and Maintenance Service Contract 5 years Maintenance Department

# 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.

## The Turbine Welding and Maintenance Service Contract 5 years Maintenance Department

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*

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**PART 3: SCOPE OF WORK**

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Service Information</i>	7
C3.2	<i>Contractor's Service Information</i>	
	Total number of pages	

**The Turbine Welding and Maintenance Service Contract 5 years Maintenance Department****1. EMPLOYER'S SERVICE INFORMATION**

See attached **Appendix A - SOW The Turbine Welding and Maintenance Service Contract Power Station for the period of 5 years**

**2. MANAGEMENT STRATEGY AND START UP****2.1 Invoicing and payment**

On a monthly basis assessment to be conducted and signed off by both (The *Consultant* & the *Employer*) and once assessment has been done payment against invoice will be made.

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 Holdings SOC  
Finance Department  
Camden Power Station

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)

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

The contractor keeps accurate and complete books of accounts, records and other evidence relating to the Actual Costs. These are opened to audit. All documentation is kept by *Contractor* for a period of three years following completion of this contract. This information is kept up to date at all times and the *Service Manager* shall have access to them at any time.

**2.3 Management of work done by Task Order**

SAP PMs will be used to manage work done

**3. HEALTH AND SAFETY, ENVIRONMENT AND QUALITY ASSURANCE****3.1 Health and safety risk management**

The contractor will comply with the following:

- Camden Power Station Health and Safety Standards as per Camden Power Station Contractors Safety manual. This manual will be handed over on contract award.
- Adhere to the Occupational Health and Safety Act 85 of 1993 with special reference to Section 44 of this act
- National Environmental Management Act 107 of 1998
- Mine Health and Safety Act 29 of 1996 (Where applicable)
- Eskom / Camden Policies and Procedures
- Compensation for Occupational Injuries and Diseases Act of 1993 (COID)
- All staff will undergo a one day Safety Induction training course one week before site occupation

## The Turbine Welding and Maintenance Service Contract 5 years Maintenance Department

- Adhere to Eskom and Camden Power Station's zero tolerance for non-compliance
- to any of Eskom's and/or Camden Power Station's safety rules and regulations
- Eskom Cardinal Rules:
  - Open, Isolate, Test, Earth, Bond and/or Insulate Before Touch
  - Hook up at Heights
  - Buckle Up
  - Be Sober
  - Ensure you have a permit to work

The Contractor must appoint Safety Representatives to assist but not limited to the following:

- Identify possible hazards, dangers and risks
- Eliminate potentially dangerous conditions and actions
- Ensure a safe working environment

Inspect and record findings of his workplace and submit a copy on a monthly basis to The Project Manager

The Project Manager shall be entitled to request the *Contractor* to stop work, without penalty to the *Employer*, when the Contractor's personnel fail to conform to acceptable health & safety standards or contravene the health and safety sections and regulations.

The Project Manager must be informed as soon as possible but not later than the end of the shift about any injury or damage of property or any equipment by means of a flash report.

The *Contractor* must perform job observations on critical tasks as identified and provide proof to the project manager.

### 3.2 Minimum SHE Documentation Required from the Contractor

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

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

**The Turbine Welding and Maintenance Service Contract 5 years Maintenance Department**

**4. PROCUREMENT**

**4.1 People**

**4.1.1 Minimum requirements of people employed on this site**

The *Contractor's* Site Manager shall ensure that only qualified people will be allowed to work on plant. The *Service Manager* shall be entitled to verify the qualifications of the key people.

**Note:** The *Service Manager* and the *Contract* Supervisor must verify qualifications of all people that will be used for this contract

**4.1.2 Change of Broad Based Black Economic Empowerment (B-BBEE) Status**

Where a change in the *Contractor's* legal status, ownership or any other change to his/her business composition or business dealings results in as change to the *Contractor's* B-BBEE status, the *Contractor* notifies the *Employer* within Seven Days of the change.

The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his/her B-BBEE status to the *Project Manager* within thirty days of the notification or as otherwise instructed by the *Project Manager*.

Where as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate or alternatively terminate the *Contractor's* obligation to provide the works.

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 procedure on termination will apply.

**4.1.3 Supplier Development Localisation and Industrialization (SDL&I)**

N/A

<b>Company Name:</b>	
<b>Company B-BBEE Contribution Level:</b>	
<b>Company Representative:</b>	
<b>Position within the Company:</b>	
<b>Signature:</b>	
<b>Date:</b>	
<b>Subcontracting Percentage:</b>	<b>Not Applicable</b>

**5. WORKING ON THE AFFECTED PROPERTY**

**5.1 Security arrangements**

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

In order to assist Protection Services with the issuing of permits and the identification of personnel on site the successful *contractor* is to supply a list of all personnel that he intends using on site, at least 72 hours prior to entry of the Security Area.

## The Turbine Welding and Maintenance Service Contract 5 years Maintenance Department

This list must be delivered to Protection Services. The list, identified with the *Contractor's* name, is to contain the following information:

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

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

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

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

The *Contractor's* visitors and all personnel shall conform at all times to the security arrangements in force at the site. Application forms for visitors must be filled in by the *Contractor's* Site Manager and approved by the *Service Manager*, one day before the visit and submitted to the *Employer's* Protection Services office. Visitors will not be allowed on site if the necessary forms are not in the possession of the security staff.

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

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

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

### 5.2 Fire Precautions

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

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

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

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

### 5.3 Reporting of accidents

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

## The Turbine Welding and Maintenance Service Contract 5 years Maintenance Department

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

### 5.4 Speed Limit

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

### 5.5 Health and Safety Arrangements

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

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

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

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

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

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

### 5.6 Health and safety facilities on the Affected Property

#### 5.6.1 Medical Facilities

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

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

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

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

Lunch time is between 12:00 until 12:30, the *Contractor's* personnel working at the plant is expected to be on site until 12:00 then break for Lunch and back at 12:30 from lunch. Knock off time is 16:30.

### 5.8 Environmental controls, fauna & flora

All work complies with relevant environmental regulations as required.

If the work includes some toxic and hazardous substances during normal and routine maintenance activities. In this case the *Contractor* uses such hazardous substances in accordance with the applicable regulations and procedures and is disposed off by the contractor in accordance with the applicable law.

### 5.9 Refuse Disposal

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The *Employer* will provide and empty special colour coded bins for refuse disposal.

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

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

**5.10 Records of Contractor's Equipment**

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

**6 EQUIPMENT PROVIDED BY THE EMPLOYER**

None

**7 SITE SERVICES AND FACILITIES**

**Provided by the *Employer***

**7.1 Portable Water**

The contractor may utilize water points on Site.

**7.2 Electrical Power**

Contractor may utilise power on site.

**7.3 Sanitary Facilities**

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

**7.4 Waste Removal**

Household waste removal to the bins, as provided on site by the employer, is the responsibility of the Contractor.

**7.5 Telecommunication**

Connections are available. The contractor applies via the Project Manager for a connection. Connection fees and calls are for the Contractor's account.

**7.6 Accommodation and catering**

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

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

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

# The Turbine Welding and Maintenance Service Contract 5 years Maintenance Department

## Task Order

**Task Order form for use when work within the service is instructed to be carried out within a stated period of time on a Task by Task basis**

Task Order No. \_\_\_\_\_ *service*  
To:.....  
..... (Contractor)

I propose to instruct you to carry out the following task:

Description

Starting date

Completion Date

Delay damages per week

Please submit your price and programme proposals below.

Signed: \_\_\_\_\_ Date \_\_\_\_\_  
(for Employer)

Total of Prices for items of work on the Price List (details attached) R. \_\_\_\_\_  
Total of Prices for items of work not on the Price List (details attached). R. \_\_\_\_\_  
Total of the Prices for this Task Order R. \_\_\_\_\_

The programme for the Task is ..... [ref] (attached)  
Signed: \_\_\_\_\_ Date \_\_\_\_\_  
(for Contractor)

I accept the above price and programme and instruct you to carry out the Task  
Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
(for Employer)