NEC3 Term Service Contract (TSC3)

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

and **[Insert at award stage]**
(Reg No. _____)

for **SANAS Accredited Calibration Service Contract on an as and When Required Basis for a Period Of 5 Years at Duvha Power Station**

Contents:		**No of pages**
Part C1	**Agreements & Contract Data**	**[●]**
Part C2	**Pricing Data**	**[●]**
Part C3	**Scope of Work**	**[●]**

CONTRACT No. **[Insert at award stage]**

PART C1: AGREEMENTS & CONTRACT DATA

Contents:

		No of pages
C1.1	**Form of Offer and Acceptance**	**[●]**
	[to be inserted from Returnable Documents at award stage]	
C1.2a	**Contract Data provided by the *Employer***	**[●]**
C1.2b	**Contract Data provided by the *Contractor***	**[●]**
	[to be inserted from Returnable Documents at award stage]	
C1.3	**Proforma Guarantees**	**[●]**

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:

SANAS Accredited Calibration Service Contract on an as and When Required Basis for a Period Of 5 Years at Duvha Power Station

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 or C	The offered total of the Prices exclusive of VAT is	**R [●]**
Option E	The first forecast of the total Defined Cost plus the Fee exclusive of VAT is	**R [●]**
	Sub total	**R [●]**
	Value Added Tax @ 15% is	**R [●]**
	The offered total of the amount due inclusive of VAT is[1]	**R [●]**
	(in words) **[●]**	

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

Signature(s) .....

Name(s) .....

Capacity .....

For the tenderer: .....

(Insert name and address of organisation)

Name & signature of witness .....

Date .....

Tenderer's CIDB registration number: .....

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

Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s) .....

Name(s) .....

Capacity .....

for the Employer

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

Name & signature of witness .....

Date .....

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

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

Note:

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

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

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

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

	For the tenderer:	**For the Employer**
Signature	.....	.....
Name	.....	.....
Capacity	.....	.....
On behalf of	..... *(Insert name and address of organisation)*	..... *(Insert name and address of organisation)*
Name & signature of witness	.....	.....
Date	.....	.....

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

[Instructions to the contract compiler: (delete these two notes in the final draft of a contract)

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.

2. Some TSC3 options are always selected by Eskom Holdings SOC Ltd. The remaining TSC3 options are identified by shading in the left hand column. In the event that the option is not required select and delete the whole row. Where the following symbol is used "**[●]" -** data is required to be inserted relevant to the specific option selected.]

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

Clause	Statement	Data
1	**General**	
	The *conditions of contract* are the core clauses and the clauses for main Option:	
		A: Priced contract with price list
	dispute resolution Option	**W1: Dispute resolution procedure**
	and secondary Options	
		X1: Price adjustment for inflation
		X2 Changes in the law
		X17: Low service damages
		X18: Limitation of liability
		X19: Task Order
		Z: *Additional conditions of contract*
	of the NEC3 Term Service Contract April 2013[2] (TSC3)	
10.1	The *Employer* is (name):	**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**
	Address	**Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg**
	Tel No.	**[●]**
	Fax No.	**[●]**
10.1	The *Service Manager* is (name):	**[●]**

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

	Address	**Duvha Power Station** **Speekfontein, 3375 JS, Middelburg District, Old Bethal Road** **PO Box 2199, Witbank, 1035**
	Tel	**[●]**
	Fax	**[●]**
	e-mail	**[●]**
11.2(2)	The Affected Property is	**Duvha Power Station**
11.2(13)	The *service* is	**SANAS Accredited Calibration Service Contract on an as and When Required Basis for a Period Of 5 Years at Duvha Power Station**
11.2(14)	The following matters will be included in the Risk Register	• **Unavailability of access to site for collections** • **Unavailability of resources onsite to dispatch** • **Road closure due to civil unrest** • **Damage of goods during loading and Transportation** • **All matters notified on Early warnings,** • **All matters discussed during Risk reduction meetings** •
11.2(15)	The Service Information is in	**Part 3: Scope of Work and all documents and drawings to which it makes reference.**
12.2	The *law of the contract* is the law of	**the Republic of South Africa**
13.1	The *language of this contract* is	**English**
13.3	The *period for reply* is	• **24 hours during outages and emergencies,** • **3 working days for other requests during the normal operations in execution of the contract.**
2	**The *Contractor*'s main responsibilities**	**Data required by this section of the core clauses is also provided by the *Contractor* in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data**
21.1	The *Contractor* submits a first plan for acceptance within	**1 week after Task Order Notification**
3	**Time**	
30.1	The *starting date* is.	**[●]**
30.1	The *service period* is	**52 Months after Contract Date**
4	**Testing and defects**	**Testing on suppliers' site before delivered to Duvha Power Station. Final quality inspection will be done at main stores at Duvha Power Station for acceptance of goods and services. If a test or inspection shows that any work has a defect, the supplier corrects the defect, and the test or inspection is repeated**
42.1	Notifying and correction of defects	The Contractor corrects a Defect whether or not

		the Service Manager notifies him of it.
42.2	Defects correction period is	Defect Correction Period is 52 weeks after the respective Task Order Completion Date
42.3	Access to site to correct defects	The Service Manager arranges for the Employer to allow the Contractor access if it is needed for correcting a Defect
5	**Payment**	
50.1	The *assessment interval* is	**between the2 5th day of each successive month**
51.1	The *currency of this contract* is the	**South African Rand**
51.2	The period within which payments are made is	**Thirty (30) Calendar days after the signed assessment by both Parties and a valid Tax Invoice.** **ATTENTION: Eskom's standard policy on payment term for all contracts valued above R50 000 0000 (Fifty Million Rand), including VAT, is 60 days. Bidders are requested to bear this payment term in mind when submitting bids and concluding contracts.**
51.4	The *interest rate* is	**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** **(**
6	**Compensation events**	**All Compensation Events are to be managed as per core clause 6 of the NEC3 TSC**
7	**Use of Equipment Plant and Materials**	**To be managed ss per core clause 7 of the NEC3 TSC**
8	**Risks and insurance**	
80.1	These are additional *Employer*'s risks	**1. Natural disaster** **2. Industrial action** **3. Community Unrest**
9	**Termination**	**To be managed as per core clause 9 of the NEC3 TSC**
10	**Data for main Option clause**	
A	**Priced contract with price list**	
20.5	The *Contractor* prepares forecasts of the final total of the Prices for the whole of the *service* at intervals no longer than	**4 weeks.**

11 Data for Option W1

W1.1	The *Adjudicator*	**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 will be appointed by the Arbitration Foundation of Southern Africa (AFSA).**
	Address	**[●]**
	Tel No.	**[●]**
	Fax No.	**[●]**
	e-mail	**[●]**
W1.2(3)	The *Adjudicator nominating body* is:	**the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see www.ice-sa.org.za) or its successor body.**
W1.4(2)	The *tribunal* is:	**arbitration**
W1.4(5)	The *arbitration procedure* is	**the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.**
	The place where arbitration is to be held is	**Johannesburg South Africa**
	The person or organisation who will choose an arbitrator - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is	**the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.**

12 Data for secondary Option clauses

X1 Price adjustment for inflation

X1.1 The *base date* for indices is **Base date (One month after ITT/RFQ closing or to be agreed upon).**

The proportions used to calculate the Price Adjustment Factor are:

proportion	linked to index for	Index prepared by
65%	**Table C3 - Labour**	**SEIFSA**
20%	**Table L2B – Road Freights Cost**	**SEIFSA**
15%	**non-adjustable**	
100%		

X2	**Changes in the law**	**Becomes a Compensation Event only if the changes in the Law of the Republic of South Africa took place after the Contract Date.**
X17	**Low service damages**	
X17.1	The *service level table* is in	**Annexure A**
X18	**Limitation of liability**	
X18.1	The *Contractor*'s liability to the *Employer* for indirect or consequential loss is limited to	**R0.0 (zero Rand)**
X18.2	For any one event, the *Contractor*'s liability to the *Employer* for loss of or damage to the *Employer*'s property is limited to	**the amount of the deductibles relevant to the event**
X18.3	The *Contractor*'s liability for Defects due to his design of an item of Equipment is limited to	**N/A**
X18.4	The *Contractor*'s total liability to the *Employer*, for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	**the total of the Prices other than for the additional excluded matters.** **The *Contractor's* total liability for the additional excluded matters is not limited.** **The additional excluded matters are amounts for which the *Contractor* is liable under this contract for** • **Defects due to his design, plan and specification,** • **Defects due to manufacture and fabrication outside the Affected Property,** • **loss of or damage to property (other than the *Employer*'s property, Plant and Materials),** • **death of or injury to a person and** • **infringement of an intellectual property right.**
X18.5	The *end of liability date* is	**12 months after the end of the *service period*.**
X19	**Task Order**	
X19.3	Delay Damages are	Five percent (2%) of the Task Order Value per day from the day of delayed completion until the actual completion of the services, to be capped at the maximum of Ten percent (10%) of the Total Task Order Values
X19.5	The *Contractor* submits a Task Order programme to the *Service Manager* within	**5 days of receiving the Task Order**
Z	**The *additional conditions of contract* are**	**Z1 to Z16 always apply.**

Z1 Cession delegation and assignment

Z1.1 The *Contractor* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer.*

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

Z2 Joint ventures

Z2.1 If the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract.

Z2.2 Unless already notified to the *Employer*, the persons or organisations notify the *Service Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf.

Z2.3 The *Contractor* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Contractor* in writing.

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

Z3.1 Where a change in the *Contractor's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor*'s B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change.

Z3.2 The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Service Manager* within thirty days of the notification or as otherwise instructed by the *Service Manager*.

Z3.3 Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor*'s obligation to Provide the Service.

Z3.4 Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are P1, P2 and P4 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

Z4 Confidentiality

Z4.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.

Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.

Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not,

or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z4.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.

Z4.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

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

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

Z6.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:

- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Affected Property;
- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and
- undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

Z6.2 The *Contractor*, in and about the execution of the *service*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

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

Z7.1 Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer*'s procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.

Z7.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z7.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer*'s VAT number 4740101508 on each invoice he submits for payment.

Z8 Notifying compensation events

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

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

Z9 *Employer's* limitation of liability

Z9.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)

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

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

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

Z11 Ethics

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

Affected Party means, as the context requires, any party, irrespective of whether it is the *Contractor* or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,

Coercive Action means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,

Collusive Action means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,

Committing Party means, as the context requires, the *Contractor*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,

Corrupt Action means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,

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

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

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

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

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

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

Z11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

Z12 Insurance

Z_12_.1 Replace core clause 83 with the following:

Insurance cover 83

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

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

INSURANCE TABLE A

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage caused by the *Contractor* to the *Employer*'s property	The replacement cost where not covered by the *Employer*'s insurance. The *Employer*'s policy deductible as at Contract Date, where covered by the *Employer*'s insurance.
Loss of or damage to Plant and Materials	The replacement cost where not covered by the *Employer*'s insurance. The *Employer*'s policy deductible as at Contract Date, where covered by the *Employer*'s insurance.
Loss of or damage to Equipment	The replacement cost where not covered by the *Employer*'s insurance. The *Employer*'s policy deductible as at Contract Date, where covered by the *Employer*'s insurance.
The *Contractor*'s liability for loss of or damage to property (except the *Employer*'s property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the	Loss of or damage to property The replacement cost Bodily injury to or death of a person The amount required by the applicable law.

Contractor's Providing the Service	
Liability for death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law

Z 12.2 Replace core clause 86 with the following:

Insurance by the *Employer*

86

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

INSURANCE TABLE B

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

Z13 Nuclear Liability

Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.

Z13.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS

site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.

Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z14 Asbestos

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

AAIA means approved asbestos inspection authority.

ACM means asbestos containing materials.

AL means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.

Ambient Air means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.

Compliance Monitoring means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.

OEL means occupational exposure limit.

Parallel Measurements means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.

Safe Levels means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.

Standard means the *Employer*'s Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.

SANAS means the South African National Accreditation System.

TWA means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-

minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.

Z14.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor*'s expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

Z14.3 The *Employer* manages asbestos and ACM according to the Standard.

Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.

Z14.5 The *Contractor*'s personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.

Z14.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.

Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer*'s expense, and conducted in line with South African legislation.

Z15 Security Clearance/ Criminal Checks

These clauses are not only, but are especially, applicable for accessing critical infrastructure in terms of the Critical Infrastructure Protection Act, 2019 (previously referred to as National Key Points), but may include other sites, and/or where persons are rendering a service or have given notice of intention to render a service to an organ of state, which service may (1) give him or her access to classified information and intelligence in the possession of the organ of state; or (2) give him or her access to or information concerning areas designated as critical infrastructure.

Z15.1 The *Contractor* and its subcontractors implement risk and security management processes and measures to mitigate any threats against any premises, installations or sites, systems, or information of the *Employer* with only persons with criminal verification record security clearance certificates being given access after verification of these and identifying documents by the *Employer*'s security system.

Z15.2 The *Contractor* provides, at the *Contractor*'s cost, to the *Employer,* criminal verification record security clearance certificates for each person the *Contractor* or its subcontractors requires to access any premises, installations or sites, systems, or information of the *Employer*, with copies of their identifying documents, such as passports, before allowed such access by the *Employer*. The *Employer'*s refusal to allow access to premises, installations or site/s, systems or information is at the *Employer*'s sole discretion and is not a compensation event.

Z15.3 **The criminal verification record security clearance certificates provided are to have been issued by a service provider which is to be a reputable screening company accredited by the South African Police Services, are to be no older than four weeks since issue and valid for as long as each person is required to access premises, installations or sites, systems or information. The *Employer* may require updated certificates and identifying documents every 26 to 52 weeks, subject to safety and security concerns and the risk rating of the works or services undertaken and/or premises, installations or sites, systems or information.**

Z15.4 **If any such criminal verification record security clearance certificates is cancelled, withdrawn, invalidated, amended, or expires, or a criminal conviction is noted against any person requiring access, even if an appeal against the criminal conviction has been noted, the *Service Manager* may instruct the *Contractor* to ensure that such person leaves the premises, installations or site/s and is blocked from systems and information and the giving of this instruction is not a compensation event.**

Z16 Protection of Personal Information Act Compliance

Z16.1 For the purposes of this clause, the terms “Data Subject”, “Personal Information”, “Processing” and “Regulator” and “Responsible Party” have the meanings given to them in the Protection of Personal Information Act, 2013 (“POPIA”).

Z16.2 Each Party acknowledges that it is an independent Responsible Party in relation to the Personal Information processed in terms of this contract (“Shared Personal Information”) and that it determines the purposes for which and the manner in which the Shared Personal Information is, or is to be, processed.

Z16.3 Each Party shall always comply with POPIA when performing its obligations under this contract and shall not perform any of their respective obligations under this contract in such a way as to cause the other Party to breach any of that other Party's obligations under POPIA.

Z16.4 Each Party shall ensure that, in respect of all Shared Personal Information provided to the other Party and in respect of the use of that Shared Personal Information under this contract:-

Z16.4.1 all necessary fair Processing notices have been provided to and consents obtained from Data Subjects by that Party, where required, in terms of POPIA, including to specify that the other Party is also a Responsible Party in respect of the Data Subject’s Personal Information and to provide a link (for example, https://www.eskom.co.za/about-eskom/website-terms-and-conditions/) to the other Party’s Privacy Statement or to include a statement that the other Party’s Privacy Statement can be found on the other Party’s corporate website; and

Z16.4.2 all necessary steps have been taken to ensure that Shared Personal Information has been collected and processed in accordance with the principles set out in POPIA, including in particular those relating to:

- lawful, fair and transparent Processing;
- specified, legitimate and explicit purposes of Processing; and
- adequate, relevant and not excessive Processing.

Z16.5 If either Party receives any complaint, notice or communication from the Regulator which relates directly to:

Z16.5.1 the other Party's Processing of the Shared Personal Data; or

Z16.5.2 a potential failure by the other Party to comply with POPIA in respect of the activities of the Parties under or in connection with this contract,

it shall, to the extent permitted by law, promptly notify the other Party and provide such information as it shall reasonably request in that regard.

Z16.6 If a Data Subject makes a written request to either Party to exercise any of their rights under POPIA, the receiving Party shall respond to that request in accordance with POPIA. To the extent the request concerns Processing of Shared Personal Information undertaken by the other Party, the receiving Party shall:

Z16.6.1 promptly and without undue delay forward the request to the other Party; and

Z16.6.2 cooperate and provide reasonable assistance in relation to that request to enable the other Party to respond in accordance with POPIA.

Z16.7 Each Party acknowledges that the other Party may disclose Shared Personal Information to any Regulator or law enforcement authority with jurisdiction to request access to the Shared Personal Information.

Z16.8 Neither Party discloses or otherwise makes available the Personal Information to any third party (including sub-contractors, but excluding its authorised employees who require access to such Personal Information strictly in order for the Parties to carry out their obligations pursuant to this contract), unless a Party has provided, to a requesting Party, its prior written consent to do so, and the requesting Party has submitted to the other Party (consenting Party), to its satisfaction, a copy of a written contract or undertaking that the requesting Party has entered into with a third party for the protection of Personal Information of the Data Subjects or unless there is an applicable exemption in terms of the law to process or further process the personal information.

Z16.9 The requesting Party indemnifies and holds harmless the consenting Party and its staff, successors, cessionaries, delegates, and assigns, from any and all losses, costs, expenses and damage, as well as penalties and fines arising from the requesting Party's non-compliance with the provision of any relevant legislation applicable to Personal Information or data protection, as well as damage to the consenting Party's reputation and costs of compliance as directed by the Regulator, including but not limited to publication of the data breach.

C1.2 Contract Data

Part two - Data provided by the *Contractor*

[Instructions to the contract compiler: (delete this notes before issue to tenderers with an enquiry) Whenever a cell is shaded in the left hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row.]

Notes to a tendering contractor:

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

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

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

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

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	
11.2(19)	The tendered total of the Prices is	**R**
C	**Target contract with price list**	
11.2(12)	The *price list* is in	
11.2(20)	The tendered total of the Prices is	**R**
E	**Cost reimbursable contract**	
11.2(12)	The *price list* is in	

C1.3 Forms of Securities

Pro formas for Bonds & Guarantees

For use with the NEC3 Term Service Contract (TSC3)

[Note to contract compiler:
Once it has been decided which securities are required for this contract delete from this file the ones not required, revise the notes below accordingly and delete this note.]

The *conditions of contract* stated in the Contract Data Part 1 include the following Secondary Options:

Option X4: Parent company guarantee
Option X13: Performance Bond

Each of these secondary Options requires a bond or guarantee "in the form set out in the Service Information". Pro forma documents for these bonds and guarantees are provided here for convenience but are to be treated as part of the Service Information.

The *Contractor* shall guarantee his ASGI-SA Obligations by providing the *Employer* with an ASGI-SA Guarantee in the form provided here.

[Note to contract compiler: If there are no ASGI-SA Obligations in this contract, delete the above statement and the ASGI_SA bond]

The organisation providing the bond / guarantee does so by copying the pro forma document onto his letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Employer* within the time stated in the contract.

Pro forma Parent Company Guarantee (for use with Option X4)

(to be reproduced exactly as shown below on the letterhead of the Contractor's Parent Company)

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg Date:

Dear Sirs,

Parent Company Guarantee for Contract No

With reference to the above numbered contract made or to be made between

Eskom Holdings SOC Ltd (the *Employer*) and

{Insert registered name and address of the *Contractor*} (the *Contractor*), for

{Insert details of the *works* from the Contract Data} (the *works*).

I/We the undersigned .....

on behalf of the *Contractor*'s parent company .....

of physical address .....

and duly authorised thereto do hereby unconditionally guarantee to the *Employer* that the *Contractor* shall Provide the Service in accordance with the above numbered Contract.

1. If for any reason the *Contractor* fails to Provide the Service, we hereby agree to cause to Provide the Service at no additional cost to the *Employer*.

2. If we fail to comply with the terms of this Deed of Guarantee, the *Employer* may itself procure such performance (whether or not the Agreement be formally determined). The *Employer* is to notify us and we shall indemnify the *Employer* for any additional cost or expense it incurs.

3. Our liability shall be as primary obligor and not merely as surety and shall not be impaired or discharged by reason of any arrangement or change in relationship made between the *Contractor* and the *Employer* and/or between us and *Contractor*; nor any alteration in the obligations undertaken by the *Contractor* or in the terms of the Agreement; nor any indulgence, failure, delay by you as to any matter; nor any dissolution or liquidation or such other analogous event of the *Contractor*.

4. The *Employer* shall not be obliged before taking steps to enforce the terms of this Deed of Guarantee to obtain judgement against the *Contractor* in any court or other tribunal, to make or file any claim in liquidation (or analogous proceedings) or to seek any remedy or proceed first against the *Contractor*.

5. This Deed of Guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa and we hereby submit to the non-exclusive jurisdiction of the High Court of South Africa.

Signed at _____ on this _____ day of _____ 200_

Signature(s)		
Name(s) (printed)		
Position in parent company		
Signature of Witness(s)		
Name(s) (printed)		

Pro forma Performance Bond – Demand Guarantee (for use with Option X13)

(to be reproduced exactly as shown below on the letterhead of the Bank providing the Guarantee)

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Reference No. **[●]** *[Drafting Note: Bank reference number to be inserted]*

Date:

Dear Sirs

Performance **Bond – Demand Guarantee**: *[Drafting Note: Name of Contractor to be inserted]*

Project [ ] Contract Reference: …… *[Drafting Note: Contractor contract reference number to be inserted]*

1. In this Guarantee the following words and expressions shall have the following meanings:-

1.1 "Bank" - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]

1.2 "Bank's Address" - means [●]; [Drafting Note: Bank's physical address to be inserted]

1.3 "Contract" – means the written agreement relating to the Services, entered into between Eskom and the Contractor, on or about the [●] day of [●] 200[●] (Contract Reference No. [.] as amended, varied, restated, novated or substituted from time to time; [Drafting Note: Signature Date and Contract reference number to be inserted]

1.4 "Contractor" – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of Contractor to be inserted]

1.5 "Eskom" - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30].

1.6 "Expiry Date" - means the earlier of

- the date that the Bank receives a notice from Eskom stating that all amounts due from the Contractor as certified in terms of the contract have been received by Eskom and that the Contractor has fulfilled all his obligations under the Contract, or
- the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by Eskom

1.7 "Guaranteed Sum" - means the sum of R [●] ([●] Rand);

1.8 "Services" - means [insert as applicable.].

2. At the instance of the Contractor, we the undersigned _____ and _____, in our respective capacities as _____ and _____ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of Eskom, as security for the proper performance by the Contractor of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to Eskom, on written demand from Eskom received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.

3. A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:

3.1 be signed on behalf of Eskom by a Group Executive, Divisional Executive, Senior General Manager or its delegate;

3.2 state the amount claimed (“the Demand Amount’);

3.3 state that the Demand Amount is payable to Eskom in the circumstances contemplated in the Contract.

4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank’s obligation/s to make payment:

4.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and

4.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.

5. The Bank’s obligations in terms of this Guarantee:

5.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and

5.2 shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between Eskom and the Contractor.

6. Eskom shall be entitled to arrange its affairs with the Contractor in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the Contractor or any variation under or to the Contract.

7. Should Eskom cede its rights against the Contractor to a third party where such cession is permitted under the Contract, then Eskom shall be entitled to cede to such third party the rights of Eskom under this Guarantee on written notification to the Bank of such cession.

8. This Guarantee:

8.1 shall expire on the Expiry Date until which time it is irrevocable;

8.2 is, save as provided for in 7 above, personal to Eskom and is neither negotiable nor transferable;

8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;

8.4 shall be regarded as a liquid document for the purpose of obtaining a court order; and

8.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.

8.6 Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.

9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank’s Address.

Signed at _____ Date _____

For and behalf of the Bank

Bank Signatory: _____ Bank Signatory: _____

Witness: _____ Witness: _____

Bank's seal or stamp

Pro forma ASGI-SA Guarantee

(to be reproduced exactly as shown below on the letterhead of the Bank providing the Guarantee)

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Reference No **[●]** *[Drafting Note: Bank reference number to be inserted]*

Date:

Dear Sirs

Pro-Forma ASGI-SA Guarantee: *[Drafting Note: Name of Contractor to be inserted]*

Project [ ] Contract Reference: **[●]** *[Drafting Note: Contractor contract reference number to be inserted]*

1. In this Guarantee the following words and expressions shall have the following meanings:-

1.1 "Bank" - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]

1.2 "Bank's Address" - means [●]; [Drafting Note: Bank's physical address to be inserted]

1.3 "Contract" – means the written agreement relating to the Project, entered into between the *Employer* and the *Contractor*, on or about the [●] day of [●] 200[●] (Contract Reference No. **[●]** as amended, varied, restated, novated or substituted from time to time; [Drafting Note: Signature Date and Contract reference number to be inserted]

1.4 "*Contractor*" – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of Contractor to be inserted]

1.5 "*Contractor's* ASGI-SA Obligations" – means the *Contractor's* ASGI-SA Obligations under and as defined in the Contract.

1.6 "*Employer*" - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30.

1.7 "Expiry Date" - means the [●] day of [●] 200[●]; [Drafting Note: anticipated date of issue of ASGI-SA Performance Certificate to be inserted.]

1.8 "Guaranteed Sum" - means the sum of R [●] ([●] Rand);

1.9 "Project" – means the ……

2. At the instance of the *Contractor*, we the undersigned _____ and _____, in our respective capacities as _____ and _____ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of the *Employer*, as security for the proper performance by the *Contractor* of the *Contractor's* ASGI-SA Obligations and hereby undertake to pay to the *Employer*, on written demand from the *Employer* received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.

3. A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:

3.1 state the amount claimed ("the Demand Amount');

3.2 state that the Demand Amount is payable to the *Employer* in the circumstances contemplated in the Contract.

4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:

4.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and

4.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.

5. The Bank's obligations in terms of this Guarantee:

5.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and

5.2 shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between the *Employer* and the *Contractor*.

6. The *Employer* shall be entitled to arrange its affairs with the *Contractor* in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the *Contractor* or any variation under or to the Contract.

7. Should the *Employer* cede its rights against the *Contractor* to a third party where such cession is permitted under the Contract, then the *Employer* shall be entitled to cede to such third party the rights of the *Employer* under this Guarantee on written notification to the Bank of such cession.

8. This Guarantee:

8.1 shall expire on the Expiry Date until which time it is irrevocable;

8.2 is, save as provided for in **7** above, personal to the *Employer* and is neither negotiable nor transferable;

8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;

8.4 shall be regarded as a liquid document for the purpose of obtaining a court order; and

8.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the courts of the Republic of South Africa.

8.6 Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.

9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at _____ Date _____

For and behalf of the Bank

Bank Signatory: _____ Bank Signatory: _____

Witness: _____ Witness: _____
Bank's seal or stamp

PART 2: PRICING DATA

TSC3 Option A

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	2
C2.2	The *price list*	**[●]**

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 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*

Item nr	Description	Unit	Expected Quantity	Rate	Price
1.	Digital Multimeter Fluke 179	EA	225		
2.	Digital Multimeter Fluke 233	EA	5		
3.	Digital Multimeter Fluke 87	EA	90		
4.	Digital Multimeter Fluke 177	EA	245		
5.	TEST GAUGE AMETEK Crystal XP2i Digital Pressure Gauge	EA	15		
6.	0 - 25MPa Pressure gauge	EA	10		
7.	0 - 10MPa Pressure gauge	EA	10		
8.	0 - 2000KPa Pressure gauge	EA	10		
9.	0 - 6000KPa Pressure gauge	EA	10		
10.	0 - 30MPa pressure gauge	EA	5		
11.	0 - 1000KPa Pressure gauge	EA	5		
12.	0 - 1600KPa Pressure gauge	EA	5		
13.	0 - 2500KPa Pressure gauge	EA	5		
14.	0 - 60MPa Pressure gauge	EA	10		
15.	Process Calibrator Fluke 754	EA	5		
16.	hand-held multifunction process calibrator Beamex MC2-MF	EA	5		
17.	hand-held multifunction process calibrator Beamex MC5	EA	5		
18.	handheld digital pressure calibrator AMETEK JOFRA HPC500	EA	5		
19.	Multifunction Process Calibrator Fluke 725	EA	10		
20.	Beamex multifunction calibrator MC5P with the following modules: PMB, PM20C, PM250 and PM600	EA	5		
21.	Beamex multifunction calibrator MC5P with the following modules: PM10mD, PMB, PM400mC and PM6C	EA	5		
22.	Beamex multifunction calibrator MC5P with the following modules: PMB, PM6C, PM20C and PO8C	EA	5		
23.	Beamex multifunction calibrator MC5P with the following modules: PM600 and PM6C	EA	5		

24.	Ametek Jofra Block Temperature Calibrator, model 250SE.	EA	5		
25.	Multifunction process calibrator Memocal 81B	EA	10		
26.	Handheld process calibrator Memocal 2000	EA	10		
27.	handheld, multi-purpose digital process calibrator, Top Tronic T123 Process Source	EA	5		
28.	BUDENBERG DEAD WEIGHT TESTER	EA	10		
29.	GaugeCalXP Pressure comparator 10000 PSI-700 bar	EA	5		
30.	GaugeCal HP Pressure comparator 15000 PSI-1000 bar	EA	5		
31.	YOKOGAWA SC72 CONDUCTIVITY METER	EA	5		
32.	7MC3030-1AE20: Spectral pyrometer MPA20AF4 Ardometer	EA	120		
33.	DEHN PHE III 6,6 kV single-pole voltage detector (serial number 7253)	EA	5		
34.	DEHN PHE III 6,6 kV single-pole voltage detector (serial number 7197)	EA	5		
35.	Major Tech insulation resistance tester (megger)	EA	5		
36.	Fluke 1550B MegOhmMeter	EA	5		
37.	Megger MIT1025, DC insulation resistance tester and megohmmeter	EA	5		
38.	Universal VLF & DC HV Tester HVA 30	EA	5		
39.	Fluke 381 True-RMS AC/DC clamp meter	EA	5		
40.	Fluke 365 True-RMS AC/DC clamp meter	EA	10		
41.	Digital Multimeter clamp meter EXTECH 65EA	EA	5		
42.	Laser alignment machine Fixturlaser 1-0911 NXA Pro	EA	10		
43.	Laser alignment machine Fixturlaser 1-0912 NXA D	EA	10		
44.	Laser alignment machine Pruftechnik, SHAFALIGN Type ALI 21.210	EA	5		
45.	Laser alignment machine Pruftechnik, Optalign smart	EA	10		
46.	Laser alignment machine Easy-Laser XT12	EA	10		
47.	Traveling (Trips)	EA	250		

The total of the Prices

PART 3: SCOPE OF WORK

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

C3.1: EMPLOYER'S SERVICE INFORMATION

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Otherwise insert list of contents manually.

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Description of the *service*

Executive overview

SANAS accredited calibration service contract an on as and when required basis for a period of 5 years.

Employer's requirements for the *service*

- Only authorised persons who has been accredited by SANAS as per ISO 17025 requirements to calibrate process calibration equipment in an Eskom or national metrology laboratory may perform the maintenance and adjustment of process calibration equipment.
- Only personnel who have been approved by SANAS as competent to perform specific calibration activities and sign calibration certificates may do so. The contractor to provide proof of competency of the personnel and the scope of their authorisation.
- The laboratory may only use the SANAS accreditation symbol for the work that is covered by its scope of accreditation.
- Calibration certificate to be generated for every equipment calibrated. The results for before and after calibration should be recorded.
- All calibrations must be traceable.
- The accreditation of the *Contractor* should be valid for the duration of the contract.
- A SANAS-accredited laboratory must maintain its accreditation status for the duration of the contract.
- The Contractor should be authorized to cover all or majority of the scope of work. Where the *Contractor* is not authorised, the *Contractor* can subcontract an authorized Subcontractor. The Subcontractor should meet all the requirements as stipulated in this contract.
- Laser alignment machines fall under dimensional metrology and an accredited calibration certificate is required but OEM calibration certificate is also acceptable on condition that the OEM calibration equipment is traceable.
- The Contractor shall be responsible to repair or replace (at their own cost) equipment they damaged.
- The Contractor shall provide a documented procedure for the safe handling, storage, and preparation of the equipment to prevent damage or deterioration.
- The contractor's lab must operate a documented quality management system that defines all procedures for their technical and administrative operations.
- Instruments MUST be collected from Duvha Power Station within 3 working days (Between Monday and Friday) from the date of request for Calibration and returned within 3 working days after the calibration as per the agreed reasonable calibration period for a specific instrument.
- The Contractor shall inspect the equipment and advice if in good condition to be calibrated before collecting.
- All calibrated equipment must be returned to Duvha Power Station after calibration.
- When Suppler does not meet the obligations of this contract, the following percentage will be deducted as per the issued task order/purchase order value:

Event	Percentage of per day per task order	Maximum percentage per task order
Late delivery after calibration including documentation or certification	1%	10%
Rework on calibration per line item	1% (line-item value)	10%

Interpretation and terminology

The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the abbreviation
OBL	Outside battery limits

Management strategy and start up.

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

N/A

Management meetings

N/A

Contractor's management, supervision and key people

State any additional constraining requirements on *Contractor*'s supervision and key people that are not already stated in other sections such as for Health and Safety. This section could be used to solicit an organogramme from the *Contractor* showing his people and their lines of authority / communication. This would be essential if the *Contractor* is a Joint Venture.

Provision of bonds and guarantees

The form in which a bond or guarantee required by the *conditions of contract* (if any) is to be provided by the *Contractor* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

The *Employer* may withhold payment of amounts due to the *Contractor* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Contractor* by the *Service Manager* to receive and accept such bond or guarantee. Such withholding of payment due to the *Contractor* does not affect the *Employer*'s right to termination stated in this contract.

Documentation control

Test reports and calibration certificates should be submitted for each equipment calibrated and should conform to the latest requirements of SANS 17025

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

_____

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)

Contract change management

This section is intended to deal with any additional requirements to the compensation event clauses in section 6 of the core clauses; such as the use of standard forms. Not the same thing as documentation control.

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

N/A

Insurance provided by the *Employer*

N/A

Training workshops and technology transfer

N/A

Design and supply of Equipment

N/A

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

Equipment

N/A

Information and other things

N/A

Management of work done by Task Order

- The Service Manager(s) issues a Task Order to the Contractor which specifies clearly the work to be provided, additional specifications and procedures and any other constraints the Contractor complies with in providing the Service. The Task Order is issued before the Contractor Provides the Service.

- The Service Manager(s) issues Task Orders to the Contractor in a timely manner that allows the Contractor to properly plan the work within the time periods stated on the Task Order.

- The Service Manager(s) issues to the Contractor any information relative to the Employer's need and circumstance surrounding forecast future work required from the Contractor. This information allows the Contractor to provide staff in a cost effective and efficient manner.

Health and safety, the environment and quality assurance

Health and safety risk management

The Contractor shall comply with the health and safety requirements contained in SAS0012: Duvha Power Station Contractors safety manual (latest revision obtainable from the Service Manager).

Environmental constraints and management

Describe or cross refer to environmental constraints applicable to the *Contractor*'s plan and his activities on the Affected Property and how they should be managed. Include here or cross refer to an Annexure to the Service Information.

The *Contractor* shall comply with the environmental criteria and constraints stated in Annexure _____

Quality assurance requirements

Specify minimum requirements for the *Contractor*'s Quality Plan and Work Procedures or provide the *Employer*'s Quality Plan if that is to be used. Make sure witness and hold points are identified generally and describe any particular requirements for QA outside the Affected Property. Indicate how the *Contractor*'s QA documentation is to be submitted for acceptance and any conditions that need to be imposed relating to acceptance. State whether ISO compliance is a condition and if so which ISO standard shall apply.

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.

People

Minimum requirements of people employed

Specify any constraints relating to people employed to Provide the Service; for example permits for foreigners, training (other than H & S), use of labour from designated areas and industrial relations.

BBBEE and preferencing scheme

Specify constraints which *Contractor* must comply with after contract award in regard to any Broad Based Black Economic Empowerment (B-BBEE) or preferencing scheme measures.

Accelerated Shared Growth Initiative – South Africa (ASGI-SA)

If the ASGI-SA requirements are to be included in this contract specify constraints which *Contractor* must comply with after contract award in regard to any ASGI-SA requirements. The ASGI-SA Compliance Schedule completed in the returnable tender schedules is reproduced here. If ASGI-SA does not apply, delete this paragraph.

The *Contractor* complies with and fulfils the *Contractor's* obligations in respect of the Accelerated and Shared Growth Initiative - South Africa in accordance with and as provided for in the *Contractor*'s ASGI-SA Compliance Schedule stated below

.

[Insert the agreed ASGI-SA Compliance Schedule here]

The *Contractor* shall keep accurate records and provide the *Service Manager* with reports on the *Contractor*'s actual delivery against the above stated ASGI-SA criteria. [Elaborate on access to and format of records and frequency of submission etc.]

The *Contractor*'s failure to comply with his ASGI-SA obligations constitutes substantial failure on the part of the *Contractor* to comply with his obligations under this contract.

Subcontracting

Preferred subcontractors

N/A

Subcontract documentation, and assessment of subcontract tenders

The Contractor to use the NEC TSC (Terms Services Contract) to subcontract when necessary.

Limitations on subcontracting

The Contractor shall not subcontract more than 60% of the contract scope. The Contractor's Subcontractors shall comply with the requirements of this contract as stipulated under Employer's requirements for the service.

Attendance on subcontractors

N/A

Plant and Materials

Specifications

N/A

Correction of defects

N/A

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

N/A

Tests and inspections before delivery

Testing on suppliers' site before delivered to Duvha Power Station. Final quality inspection will be done at main stores at Duvha Power Station for acceptance of goods and services. If a test or inspection shows that any work has a defect, the supplier corrects the defect, and the test or inspection is repeated

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

N/A

Cataloguing requirements by the *Contractor*

N/A

Working on the Affected Property

This part of the Service Information addresses constraints, facilities, services and rules applicable to the *Contractor* whilst he is doing work on the Affected Property.

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

Sites such as Koeberg Nuclear Power Station have very strict entrance requirements which tendering contractors need to allow for in their prices, and the *Contractor* has to comply with. State these or similar requirements here.

In addition to the above there may be other restrictions once on the site, plus rules relating to roads, walkways and the provision of barricades

People restrictions, hours of work, conduct and records

Restrictions and hours of work may apply on some sites. It is very important that the *Contractor* keeps records of his people working on the Affected Property, including those of his Subcontractors. State that the *Service Manager* shall have access to them at any time. These records may be needed when assessing compensation events.

Health and safety facilities on the Affected Property

Section 3 deals with contractual H & S requirements in addition to those of the OHSA Act. This section allows the *Employer* to state what measures are to be taken on the Affected Property by describing where First Aid facilities provided by the *Employer* are located and any other emergency arrangements. Do not use if already addressed in 2.3.

Environmental controls, fauna & flora

N/A

Cooperating with and obtaining acceptance of Others

This sub-paragraph could be used to deal with two issues.
1) The cross reference from core clause 25.1 about cooperation generally as well as details about Others with whom the *Contractor* may be required to share the Affected Property. See clause 11.2(9) for the definition of Others.
2) Requirements for liaison with and acceptance from statutory authorities or inspection agencies.

Records of *Contractor*'s Equipment

This sub-paragraph is intended to address how records are to be kept of Equipment on Site including whether it is owned or hired. Include any constraints about scaffolding, rigs, heavy lifts and cranes, including removal from the Affected Property.

Equipment provided by the *Employer*

Provide details of equipment (e.g. overhead cranes) made available for use by the employer and set out conditions relating thereto.

Site services and facilities

Provided by the *Employer*

This is a mandatory cross reference form clause 25.2 in TSC3. State what the *Employer* will provide in the way of power, water, waste disposal, telecomms, ablutions, fire protection and lighting (etc) on the Affected Property. Give hook up locations and any constraints on how the hook up is to be done. Always conclude by stating that the *Contractor* shall provide everything else necessary for Providing the Service.

Provided by the *Contractor*

Describe what the *Contractor* is to provide in the way of accommodation, laboratories, storage, vehicles and office equipment for the *Service Manager* and any restrictions or minimum requirements concerning the *Contractor*'s own facilities. Also state what happens to these facilities upon completion of the contract.

Control of noise, dust, water and waste

N/A

Hook ups to existing works

N/A

Tests and inspections

Description of tests and inspections

- The Contractor shall inspect the equipment and advice if in good condition to be calibrated before collecting.
- The Contractor to prove to the Employer that the equipment returned after calibration are in good working condition.

Materials facilities and samples for tests and inspections

State what materials facilities and samples for tests and inspections the *Contractor* and the *Employer* are to provide, per core clause 40.2.

List of drawings

Drawings issued by the *Employer*

N/A

Annexure A

When Suppler does not meet the obligations of this contract, the following percentage will be deducted as per the issued task order/purchase order value:

Event	Percentage of per day per task order	Maximum percentage per task order
Late delivery after calibration including documentation or certification	2%	10%
Rework on calibration per line item	5% (line-item value)	5%