

## NEC3 Term Service Contract (TSC3)

Between **ESKOM ROTEK INDUSTRIES SOC Ltd**  
(Reg No. 1990/006897/30)

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

for The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

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

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The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

## PART C1: AGREEMENTS & CONTRACT DATA

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The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

## C1.1 Form of Offer & Acceptance

### Offer

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

**The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.**

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 C	The offered total of the Prices 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 <sup>1</sup>	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 \_\_\_\_\_ General Manager Logistics Services

**For the tenderer:** \_\_\_\_\_  
 Eskom Rotek Industries SOC Ltd  
 Lower Germiston Road  
 Cleveland  
 2022

(Insert name and address of organisation)

Name &  
signature of  
witness

Date

Tenderer's CIDB registration number:

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

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

## 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 \_\_\_\_\_ General Manager

**for the Employer** \_\_\_\_\_  
 Eskom Rotek Industries SOC Ltd  
 Logistics Services  
 Lower Germiston Road  
 Cleveland  
 2022

(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.

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

## 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)

Name & signature of witness \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

General Manager

Eskom RoteK Industries SOC Ltd  
Logistics Services  
Lower Germiston Road  
Cleveland  
2022

\_\_\_\_\_

\_\_\_\_\_

## C1.2 TSC3 Contract Data

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		C Target contract with price list
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	X1: Price adjustment for inflation
		X2 Changes in the law
		X4: Parent company guarantee
		X17: Low service damages
		X18: Limitation of liability
		X19: Task Order
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Term Service Contract April 2013 <sup>2</sup> (TSC3)	
10.1	The <i>Employer</i> is (name):	Eskom Rotek Industries SOC Ltd (Reg no: 1990/006897/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Roshland Office Park Lower Germiston Road Rosherville
	Tel No.	+27 11 629 8289
	Fax No.	N/A
10.1	The <i>Service Manager</i> is (name):	Wiseman Musekiwa
	Address	Roshland Office Park Lower Germiston Road

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

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

		<b>Rosherville</b>
	Tel	<b>+27 11 629 8289</b>
	Fax	<b>N/A</b>
	e-mail	<b>musekiwt@eskom.co.za</b>
11.2(2)	The Affected Property is	<b>Eskom Rotek Industries</b>
11.2(13)	The <i>service</i> is	<b>The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.</b>
11.2(14)	The following matters will be included in the Risk Register	<b>Compliance to TRH-11, National Road Traffic Act</b>
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>5 working days</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>1 week</b>
<b>3</b>	<b>Time</b>	
30.1	The <i>starting date</i> is.	<b>TBA after signing contract</b>
30.1	The <i>service period</i> is	<b>60 months</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>Upon completion of individual service.</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>30 days.</b>
51.4	The <i>interest rate</i> is	<b>the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove)</b>

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for amounts due in Rands and

(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter (and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.

6	Compensation events	Applicable
7	Use of Equipment Plant and Materials	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	<b>Provision of reliable and optimal fleet</b> <b>Damage to high value loads (transformers</b>  <b>Inability to cover value of abnormal loads</b>  <b>On time payment of recoveries in rand value.</b>
83.1	The <i>Employer</i> provides these insurances from the Insurance Table	<b>as stated for “Format TSC3” available on</b> <i><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></i> <b>(See Annexure A for basic guidance).</b>
83.1	The <i>Employer</i> provides these additional insurances	<b>as stated for “Format TSC3” available on</b> <i><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></i> <b>(See Annexure A for basic guidance)</b>
83.1	The <i>Contractor</i> provides these additional insurances:	<b>[•]</b>
83.1	The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is	<b>the amount of the deductibles relevant to the event described in the “Format TSC3” insurance policy available on</b> <i><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></i>
83.1	The insurance against loss of or damage	



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	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 <b>[●]</b>		
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>	
<b>9</b>	<b>Termination</b>	<b>Breach of contract, unlawful act, bankruptcy, and receiver appointed over assets.</b>	
<b>10</b>	<b>Data for main Option clause</b>		
<b>A</b>	<b>Priced contract with price list</b>	<b>N/A</b>	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than		
<b>C</b>	<b>Target contract with price list</b>		
20.4	The <i>Contractor</i> prepares forecasts of the total Defined Cost for the whole of the <i>service</i> at intervals no longer than	<b>1 week after completion of service.</b>	
50.6	The <i>exchange rates</i> are those published in	<b>N/A</b>	
53.1	The <i>Contractor's</i> share percentages and the share ranges are	<b><i>share range</i></b>  less than <b>[●] %</b> from <b>[●]% to [●]%</b> from <b>[●]% to [●]%</b> greater than <b>[●]%</b>	<b><i>Contractor's share %-age</i></b>  <b>[●]%</b> <b>[●]%</b> <b>[●]%</b> <b>[●]%</b>
53.3	The <i>Contractor's</i> share is assessed on (dates)	<b>25<sup>th</sup> of every months</b>	
<b>E</b>	<b>Cost reimbursable contract</b>	<b>N/A</b>	
20.4	The <i>Contractor</i> prepares forecasts of the total Defined Cost for the whole of the <i>service</i> at intervals no longer than	<b>weeks /months</b>	
	The <i>exchange rates</i> are those published in	<b>South African Rands</b>	

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<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i>	To be appointed when the dispute arise.
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	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.
<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	CPA to apply after twelve months from contract start date
<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>X4</b>	<b>Parent company guarantee</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	Low service damages
<b>X18</b>	<b>Limitation of liability</b>	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	R0.0 (zero Rand)
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	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>
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited	The greater of

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	to	<ul style="list-style-type: none"> <li>the total of the Prices at the Contract Date and</li> <li>the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles in the <i>Employer's</i> assets and works / maintenance policies available on <a href="http://www.eskom.co.za/Tenders/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>the total of the Prices other than for the additional excluded matters.</p> <p>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</p> <ul style="list-style-type: none"> <li>Defects due to his design, plan and specification,</li> <li>Defects due to manufacture and fabrication outside the Affected Property,</li> <li>loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials),</li> <li>death of or injury to a person and</li> <li>infringement of an intellectual property right.</li> </ul>
X18.5	The <i>end of liability date</i> is	6 months after the end of the <i>service period</i> .
<b>X19</b>	<b>Task Order</b>	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	3 days of receiving the Task Order
<b>X20</b>	<b>Key Performance Indicators</b>	
X20.1	The <i>incentive schedule</i> for Key Performance Indicators is in	
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	N/A
<b>Z</b>	<b>The <i>additional conditions of contract</i> are</b>	Z1 to Z11 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

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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 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

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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 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.

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

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

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

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

## **Z9 Notifying compensation events**

- Z9.1 Delete the last paragraph of core clause 61.3 and replace with:

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

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

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

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

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



## Annexure A: Insurance provided by the Employer

*These notes are provided as guidance to tendering contractors and the Contractor about the insurance provided by the Employer. The Contractor must obtain its own advice. Details of the insurance itself are available from the internet web link given below.*

1. Services provided in a TSC3 contract could include some element of construction or refurbishment as well as a continuous maintenance or operational service activity. If an event occurs which causes loss or damage, a claim could be made either against the *Employer's* “works” type policy which may be in place for the *Employer's* portion of the Affected Property concerned or against the *Employer's* assets policy which may be in place for the *Employer's* portion of the Affected Property concerned, or both.
2. The cover provided and the deductibles under the works policy are different to those under the assets policy. Each policy has a range of applicable deductibles depending on the location of the Affected Property and the nature of the insurable event.
3. The *Contractor* is required in terms of Contract Data for clause 83 to provide cover for the deductibles in the insurance provided by the *Employer*. This can be provided from his own resources on a ‘self insured’ basis or obtained by him from his own insurers. In order to assess the extent of this cover, tendering contractors and their brokers should consult the internet web link given below and scroll to ‘**Format TSC3**’ to establish both the cover and the deductibles in relation to the service provided in terms of this contract.
4. Tendering contractors should note that cover provided by the *Employer* is only per the policies available on the internet web link listed below and may not be the cover required by the tendering contractor or as intended by each of the listed insurances in the left hand column of the Insurance Table in clause 83.2. In terms of clause 83.1 “the *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide”. Hence the *Contractor* provides insurance which the *Employer* does not provide and in cases where the *Employer* does provide insurance the *Contractor* insures for the difference between what the Insurance Table requires and what the *Employer* provides.
5. If Marine Insurance is required the *Contractor* needs to obtain a copy of the latest edition of Eskom’s Marine Policies Procedures found at internet website given below.
6. Further information and full details of all Eskom provided policies and procedures may be obtained from:

[http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS\\_Policies\\_  
From\\_1\\_April\\_2014\\_To\\_31\\_March\\_2015.aspx](http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx)

## C1.2 Contract Data

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

#### Notes to a tendering contractor:

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

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

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

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



The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

Qualifications:

Experience:

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

<b>C</b>	<b>Target contract with price list</b>
11.2(12)	The <i>price list</i> is in _____
11.2(20)	The tendered total of the Prices is <b>R</b> _____

## C1.3 Forms of Securities

### **Pro formas for Bonds & Guarantees**

For use with the NEC3 Term Service Contract (TSC3)

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

## PART 2: PRICING DATA

### TSC3 Option C

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

## C2.1 Pricing assumptions: Option C

### How work is priced and assessed for payment

Clause 11 in the core clauses and Option C clauses of the NEC3 Term Service Contract (TSC3) state:

<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.
		(18) The Price for Services Provided to Date is the Defined Cost which the <i>Contractor</i> has paid plus the Fee.
		(20) 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.

Payments are made at Defined Cost plus Fee (See core clauses 11.2(5), 11.2(6) and 11.2(8)). At the dates stated in the Contract Data, the *Service Manager* calculates the *Contractor's* share in terms of clause 53. If the *Contractor* has been paid more than the equivalent Prices in the Price List for the same work he pays the *Employer* a portion of the over-run (the pain) but if he has been paid less than the equivalent Prices in the Price List he is paid a portion of the under-run (the gain). The Prices in the Price List 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

In this Option the Price List is used as a means of arriving at a target price. Clause 54.1 in Option C 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.

### 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 related to items of service priced in the *price list*.

### 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 C 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*:

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

- Has taken account of the guidance given in the TSC3 Guidance Notes relevant to Option C;
- Understands the Price List is only used as a means of arriving at a target and that work done is paid for at Defined Cost and the resulting Fee;
- 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*

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 *price list* includes 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 *price list* includes 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 *price list* includes 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.

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

## C2.2 the *price list*

### PRICING SCHEDULE

Description	Weight Tonnages	Site Establishment	Rate Per Hour	Insurance	Rigger & Rigging Gear	Accommodation	Standing Time
Mobile Crane Gauteng	20 Ton Crane						
Mobile Crane Mpumalanga	20 Ton Crane						
Mobile Crane North West	20 Ton Crane						
Mobile Crane Northren Cape	20 Ton Crane						
Mobile Crane Free State	20 Ton Crane						
Mobile Crane Limpopo	20 Ton Crane						
Mobile Crane Kwazulu Natal	20 Ton Crane						
Mobile Crane Western Cape	20 Ton Crane						
Mobile Crane Eastern Cape	20 Ton Crane						

Description	Weight Tonnages	Site Establishment	Rate Per Hour	Insurance	Rigger & Rigging Gear	Accommodation	Standing Time
Mobile Crane Gauteng	25 Ton Crane						
Mobile Crane Mpumalanga	25Ton Crane						
Mobile Crane North West	25 Ton Crane						
Mobile Crane Northren Cape	25 Ton Crane						
Mobile Crane Free State	25 Ton Crane						
Mobile Crane Limpopo	25 Ton Crane						
Mobile Crane Kwazulu Natal	25 Ton Crane						
Mobile Crane Western Cape	25Ton Crane						
Mobile Crane Eastern Cape	25 Ton Crane						

Description	Weight Tonnages	Site Establishment	Rate Per Hour	Insurance	Rigger & Rigging Gear	Accommodation	Standing Time
Mobile Crane Gauteng	30 Ton Crane						
Mobile Crane Mpumalanga	30Ton Crane						
Mobile Crane North West	30 Ton Crane						
Mobile Crane Northren Cape	30 Ton Crane						
Mobile Crane Free State	30 Ton Crane						
Mobile Crane Limpopo	30 Ton Crane						
Mobile Crane Kwazulu Natal	30 Ton Crane						
Mobile Crane Western Cape	30Ton Crane						
Mobile Crane Eastern Cape	30 Ton Crane						

Description	Weight Tonnages	Site Establishment	Rate Per Hour	Insurance	Rigger & Rigging Gear	Accommodation	Standing Time
Mobile Crane Gauteng	35 Ton Crane						
Mobile Crane Mpumalanga	35Ton Crane						
Mobile Crane North West	35 Ton Crane						
Mobile Crane Northren Cape	35 Ton Crane						
Mobile Crane Free State	35 Ton Crane						
Mobile Crane Limpopo	35 Ton Crane						
Mobile Crane Kwazulu Natal	35 Ton Crane						
Mobile Crane Western Cape	35 Ton Crane						
Mobile Crane Eastern Cape	35 Ton Crane						

Description	Weight Tonnages	Site Establishment	Rate Per Hour	Insurance	Rigger & Rigging Gear	Accommodation	Standing Time
Mobile Crane Gauteng	50 Ton Crane						
Mobile Crane Mpumalanga	50Ton Crane						
Mobile Crane North West	50 Ton Crane						
Mobile Crane Northren Cape	50 Ton Crane						
Mobile Crane Free State	50 Ton Crane						
Mobile Crane Limpopo	50 Ton Crane						
Mobile Crane Kwazulu Natal	50 Ton Crane						
Mobile Crane Western Cape	50 Ton Crane						
Mobile Crane Eastern Cape	50 Ton Crane						

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

Description	Weight Tonnages	Site Establishment	Rate Per Hour	Insurance	Rigger & Rigging Gear	Accommodation	Standing Time
Mobile Crane Gauteng	80 Ton Crane						
Mobile Crane Mpumalanga	80Ton Crane						
Mobile Crane North West	80 Ton Crane						
Mobile Crane Northren Cape	80 Ton Crane						
Mobile Crane Free State	80 Ton Crane						
Mobile Crane Limpopo	80 Ton Crane						
Mobile Crane Kwazulu Natal	80 Ton Crane						
Mobile Crane Western Cape	80 Ton Crane						
Mobile Crane Eastern Cape	80 Ton Crane						

Description	Weight Tonnages	Site Establishment	Rate Per Hour	Insurance	Rigger & Rigging Gear	Accommodation	Standing Time
Mobile Crane Gauteng	110 Ton Crane						
Mobile Crane Mpumalanga	110 Ton Crane						
Mobile Crane North West	110 Ton Crane						
Mobile Crane Northren Cape	110 Ton Crane						
Mobile Crane Free State	110 Ton Crane						
Mobile Crane Limpopo	110 Ton Crane						
Mobile Crane Kwazulu Natal	110 Ton Crane						
Mobile Crane Western Cape	110 Ton Crane						
Mobile Crane Eastern Cape	110 Ton Crane						

Description	Weight Tonnages	Site Establishment	Rate Per Hour	Insurance	Rigger & Rigging Gear	Accommodation	Standing Time
Mobile Crane Gauteng	150 Ton Crane						
Mobile Crane Mpumalanga	150 Ton Crane						
Mobile Crane North West	150 Ton Crane						
Mobile Crane Northren Cape	150 Ton Crane						
Mobile Crane Free State	150 Ton Crane						
Mobile Crane Limpopo	150 Ton Crane						
Mobile Crane Kwazulu Natal	150 Ton Crane						
Mobile Crane Western Cape	150 Ton Crane						
Mobile Crane Eastern Cape	150 Ton Crane						

Description	Weight Tonnages	Site Establishment	Rate Per Hour	Insurance	Rigger & Rigging Gear	Accommodation	Standing Time
Mobile Crane Gauteng	220 Ton Crane						
Mobile Crane Mpumalanga	220 Ton Crane						
Mobile Crane North West	220 Ton Crane						
Mobile Crane Northren Cape	220 Ton Crane						
Mobile Crane Free State	220 Ton Crane						
Mobile Crane Limpopo	220 Ton Crane						
Mobile Crane Kwazulu Natal	220 Ton Crane						
Mobile Crane Western Cape	220 Ton Crane						
Mobile Crane Eastern Cape	220 Ton Crane						

Description	Weight Tonnages	Site Establishment	Rate Per Hour	Insurance	Rigger & Rigging Gear	Accommodation	Standing Time
Mobile Crane Gauteng	300 Ton Crane						
Mobile Crane Mpumalanga	300 Ton Crane						
Mobile Crane North West	300 Ton Crane						
Mobile Crane Northren Cape	300 Ton Crane						
Mobile Crane Free State	300 Ton Crane						
Mobile Crane Limpopo	300 Ton Crane						
Mobile Crane Kwazulu Natal	300 Ton Crane						
Mobile Crane Western Cape	300 Ton Crane						
Mobile Crane Eastern Cape	300 Ton Crane						

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

Description	Weight Tonnages	Site Establishment	Rate Per Hour	Insurance	Rigger & Rigging Gear	Accommodation	Standing Time
Mobile Crane Gauteng	400 Ton Crane						
Mobile Crane Mpumalanga	400 Ton Crane						
Mobile Crane North West	400 Ton Crane						
Mobile Crane Northren Cape	400 Ton Crane						
Mobile Crane Free State	400 Ton Crane						
Mobile Crane Limpopo	400 Ton Crane						
Mobile Crane Kwazulu Natal	400 Ton Crane						
Mobile Crane Western Cape	400 Ton Crane						
Mobile Crane Eastern Cape	400 Ton Crane						

- All abnormal equipment must meet Eskom Vehicle Specifications and will be made available to our Technical Department for inspections before work can start.
- Suppliers are required to quote according to the pricing schedule above. Any deviation from the pricing schedule will render the supplier non-compliant and therefore, disqualified.
- Tender validity is 16 weeks from date of advertisement, with that said, kindly note that prices should be valid for more than the time frame stipulated.
- Suppliers may tender for any tonnage as stipulated on the Scope of Work



## PART 3: SCOPE OF WORK

Hire of mobile cranes with competent operators ranging from 20 ton to 400 ton to conduct work at sites as and when required.

Mobile cranes with operators will be required to work on sites for the following

- During outages or maintenance work on transformers at sub stations and power stations
- Loading and offloading of transformers, rotors and cradles
- Breakdown work as and when required

Hire of mobile cranes to conduct operations at various sites

Hire of mobile cranes from a panel of 8 will be on an ad hoc basis, (as and when needed)

### Functional Specification

As tabled below the services will be required for mobile crane hire ranging from 20 ton to 400 ton mobile cranes

### Performance Specification

Mobile cranes will be required to conduct operations as requested and suppliers to comply with all requirements pertaining to SHEQ, Technical etc.

## PURPOSE

The objective of this annexure is to guide the subcontractor when performing work for Eskom Rotek Industries SOC limited, Logistics Services, Multi Axles and Lowbed department in terms of technical specifications.

This is to assist Logistics services in delivering their services to Power Generation, Transmission and Distribution and in complying with the demand in electricity supply and to reduce outages to the limit in supplying electricity to the nation.

This includes and is not limited to the specialized equipment to transport commodities of any abnormality or nature collected from ports or between stations and engineering work shops.

This is also creating an opportunity for Logistics services to invest in better fleet and equipment for the need.

## AREA OF OPERATION

Areas of operation will include various sub station and power stations throughout Gauteng, Mpumalanga, Limpopo, North West, Free State as well as in lessor cases Western, Northern, Eastern Cape and KZN provinces.

Suppliers to have a national and international footprint for operational requirements.

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

## CRANES

In general, the work / product covered by this Contracting Strategy include Rental or hire of Mobile Cranes for Eskom Rotek Industries as and when required basis, site establishment and provision of operators and rigging teams. See the table below for a list of cranes to be hired within South Africa.

Item	Description (Quantities to be provided)	
1	20 Ton mobile crane	468 For 5-year period
2	25 Ton mobile crane	468 For 5-year period
3	30 Ton mobile crane	468 For 5-year period
4	35 Ton mobile crane	252 For 5-year period
5	50 Ton mobile crane	252 For 5-year period
6	80 Ton mobile crane	216 For 3 year period
7	110 Ton mobile crane	324 For 3 year period
8	150 Ton mobile crane	288 For 3 year period
9	220 Ton mobile crane	180 For 3 year period
10	300 Ton mobile crane	288 For 3 year period
11	400 Ton mobile crane	288 For 3 year period

The required plant will be used but not limited to the following works;

- Transformer works
- Switch gear
- Tap changers
- ISO tanks
- Bushings
- Ballasts-Multi axles
- Rotor cradles- Refurbish rotables to maintain modular spare availability
- Breakdown work

### Technical Documents required:

**Please be advised that a compliant Crane company will not operate without the below required documents, therefore Suppliers who do not provide the below listed documents in their submissions will be rendered Non- Complaint and will not be evaluated further.**

Mobile crane Registration documents in compliance and accordance to TRH11. If Subcontracting, please ensure that you provide a letter of intent between you and the intended subcontractor and the below documents:

1. Vehicle registration.
2. Abnormal Vehicle Registration.
3. Valid certificate of fitness.
4. Valid Certificate of Compliance.
5. A valid 6 months Load Testing Certificate from a credible LMI and LME
6. Company Registration Documents.  
If subcontracting, please provide your Company Registration documents and the Company Registration Documents of the subcontractor of your choice.

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

7. If Sub-contracting, please provide a Letter of Intent with the intended Subcontractor.
8. PDP
9. Certificate of operator competency from (20ton – 400ton)
10. Riggers: Red Seal Certification
11. Proof of Insurance cover (Comprehensive)

**Threshold for Technical Evaluation Criteria is 75%**

1. Proof of prior permits (to prove capability of application)
2. Abnormal load permits will be required for cranes only from 50ton and larger.
3. Suppliers are to provide proof of insurance cover (comprehensive insurance) value stipulated as per insurance company.
4. Suppliers without ownership of mobile cranes are required to provide an agreement or letter of intent to enter into an agreement with a mobile crane operator.
5. An international footprint or the capability to source mobile cranes from outside the country will be an advantage.

**The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.**

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

## C3.1: EMPLOYER’S SERVICE INFORMATION

### 1 Description of the service

#### 1.1 Executive overview

Put yourself in the position of the *Contractor’s* senior management who need a high level overview of what is involved – the scope of work - so that they can decide when tendering whether they have the resources and capability to undertake the work. Include a description of the different services and disciplines of work involved within the *service* and the location where most of the work will be carried out.

#### 1.2 *Employer’s requirements for the service*

Either

Describe in detail what the *Employer* requires the *Contractor* to do and how he is to do it if the *Contractor* is mainly providing labour and tools to carry out the *Employer’s* requirements

Or

Provide the *Employer’s* operating philosophy / user requirement specification (URS) / performance specification giving deliverables and constraints for the *service* from which the *Contractor* is to plan in detail how he is to achieve the required deliverables.

Reference could be made to an Annexure for a detailed classification of services or to the Price List in the case of Option A or C and if the Price List descriptions are complete.

#### 1.3 Interpretation and terminology

If required include here definitions additional to those used in the *conditions of contract* which are required only for the purpose of making the Service Information easier to draft and read. Also list abbreviations used and provide a full interpretation of each one, for example:

The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the abbreviation
OBL	Outside battery limits

## 2 Management strategy and start up.

### 2.1 The Contractor’s plan for the service

In the TSC3 the *Contractor’s* plan is his “design” for performing the *service* throughout the *service period*. Section 2 of the *conditions of contract* describes what the *Contractor* is to show in his plan both in the core clauses and some additional requirements in each of the main Options.

The extent of the *Contractor’s* plan will depend on whether the *Contractor* is required to develop a plan in accordance with the *Employer’s* broad outline of the *service* or whether the *Employer* has provided a plan for the *Contractor* to follow. Read the TSC3 Guidance Notes pages 21 and 22 for more information on the *Contractor’s* plan.

Use this section to describe any particulars which must be taken into account by the *Contractor* in developing his plan as required by clause 21.2. For example information about the order and timing or method of carrying out particular items of work.

List technical reporting and scheduling requirements which are to be incorporated into the *Contractor’s* plan.

### 2.2 Management meetings

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

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

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

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

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

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	Once in 3 months	TBA	<i>Employer and Contractor</i>
Overall contract progress and feedback	Once in 3 months	TBA	<i>Employer and Contractor</i> ____
SHEQ compliance	Once in 3 months	TBA	<i>Employer and Contractor</i>

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

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

instructions under the contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

## 2.3 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.

## 2.4 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.

## 2.5 Documentation control

Specify how documentation will be identified with an alpha numeric which indicates source, recipient, communication number etc. Provide details of any particular format or other constraints; for example that all contractual communications will be in the form of properly compiled letters or forms attached to e mails and not as a message in the e mail itself. State any particular routing requirements but note from TSC3 who issues what to whom.

## 2.6 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 4330196330;
- Description of service provided for each item invoiced based on the Price List;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- (add other as required)

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

## 2.7 Contract change management

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

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*

If Option C or E applies first read clause 52.2 and then state whether the *Contractor* is required to keep any other records. Include any other constraint which may be required in regard to format and filing of the records, and whether access for the *Service Manager* shall be provided in hard copy or electronically.

Could delete if Option A applies unless the *Employer* requires some form of control over the *Contractor's* record keeping for the purpose of compensation event management. N/A

## 2.8 Insurance provided by the *Employer*

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

## 2.9 Training workshops and technology transfer

Describe type and frequency of any on job training workshops, as well as any obligation for technology transfer being included as part of the *service* or at the end of the *service period*.

## 2.10 Design and supply of Equipment

On some complex services (e. g. nuclear) it could be in the Parties best interests that some details of the design of Equipment are shared with the *Service Manager*, not necessarily for his acceptance but as an assurance that the Equipment will be able to allow the *Contractor* to Provide the Service efficiently and without delay. For example specialised handling Equipment for a particular maintenance operation. Clause 23.1 is always available to the *Service Manager* if this paragraph is not used.

Also the *Employer* may wish to exercise constraints or include witness and hold points during manufacture, assembly or delivery of such Equipment. Include these constraints here.

Draft in such a way that there is no doubt that the liability for such design supply and use of the Equipment remains with the *Contractor*.

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

### 2.11.1 Equipment

The *Employer* may wish to use some of the Equipment used by the *Contractor* after the end of the *service period*. Clause 70.2 requires that details of such requirement be stated in the Service Information. Complete here or if not applicable retain the heading and state 'None'. N/A

### 2.11.2 Information and other things

Clause 70.2 requires that information and other things which the *Contractor* is to provide at the end of the *service period* be stated in the Service Information. N/A



The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

## 2.12 Management of work done by Task Order

Only use this heading if Option X19 applies to this contract.

In some cases all work may be done in terms of Task Orders in which case it may be logical to move this section closer to the start of this part 2 of the Service Information. In some cases only parts of the *service* may require to be handled by Task Order, for example a major repair which has become necessary during a continuous maintenance service contract.

Please read Option X19 before drafting requirements here as much of the procedure for the administration of Task Orders is already provided in X19, for example X19.2 specifies what a task Order should include

A Task Order format could be provided in an Annexure to this Service Information.

Many considerations can apply to Task Orders, such as availability of resources, arrangements for emergency work, Task Order reporting (work carried out and service results), assessment of additional Prices for *service* not included in the Price List etc.

Clause X19.6 requires information which should be included on a Task Order programme.

Further requirements for Task Orders include things to be provided by the *Employer* under a Task Order and the conditions under which the *Employer* or Others are to work.

### 3 Health and safety, the environment and quality assurance

#### 3.1 Health and safety risk management

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

The Divisional/Regional Safety Risk Manager or his representative having jurisdiction over the *service* must provide the relevant safety, health and environmental (SHE) criteria for incorporation into this Service Information. **Transportation of Loads above 32 Tonnes Services SHEQ Specification** / scope must be signed off by the Divisional/Regional Safety Risk Manager or his representative confirming that the applicable safety criteria have been taken into account.

The Commodity Manager / Buyer must refer the tender to the Divisional/Regional Safety Risk Manager or his representative in order to evaluate against enquiry-specific safety criteria.

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

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

The *Contractor* shall comply with the health and safety requirements contained in **Transportation of Loads above 32 Tonnes Services SHEQ Specification** to this Service Information

#### 3.2 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 (ISO 14001 and NEMA)\_\_\_\_\_

The contractor shall comply with the requirements legal requirements of the National Environmental Management: Waste Act, National Waste Act, Occupational Health & Safety Act etc.

The contractor shall also comply with the procedures of the client.

The Contractor shall comply with the environmental criteria and constraints in Transportation of Loads above 32 Tonnes Services SHEQ Specification to this Service Information.

The contractor shall have an Environmental Management Plan (EMP) in place to address environmental aspects / impacts.

The contractor shall ensure that an Aspects and Impacts register is submitted based on the scope of work.

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

The contractor shall ensure that Lowbed transportation is maintained and serviced; a maintenance plan shall be submitted upon contract award. All Lowbed transportation shall have an up-to-date maintenance history as per the requirements of the manufacturer.

Contractors must be trained on spill management and be provided with spill kits in case of any emergencies. All Lowbed transportation shall be equipped with fire extinguishers.

The contractor shall have an existing and approved contract in place with a competent service provider who is able to assist with emergencies / spill management where internal clean-up is not effective.

The contractor shall demonstrate to Logistics Services on the protocols to be followed for an environmental incident.

All Lowbed transportation shall be inspected jointly with the supplier prior to being accepted by Eskom Rotek Industries. All Lowbed transportation shall be cleaned prior to being delivered to Eskom Rotek Industries.

All Lowbed transportation shall be free of leakages and excessive smoke.

Defective Lowbed transportation shall be returned to the supplier for fixing and maintenance.

### 3.3 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.

As per contractor's standard policies and procedure. As per ISO 9001:2015 compliance.

## 4 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.

### 4.1 People

#### 4.1.1 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.

#### 4.1.2 BBEE 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.

### 4.2 Subcontracting

#### 4.2.1 Preferred subcontractors

TSC3 does not make use of nominated subcontracting, but the *Employer* may list which subcontractors or suppliers the *Contractor* is required to enter into subcontracts with. This is usually only required where specialist services need to be obtained from a particular supplier or group of suppliers in order to comply with operational standards.

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

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

Specify any constraints on how the *Contractor* is to prepare subcontract documentation, whether use of the NEC system is compulsory or not (compulsory is recommended) and how subcontract tenders are to be issued, received, assessed (using a joint report?) and awarded.

#### 4.2.3 Limitations on subcontracting

The *Employer* may require that the *Contractor* must subcontract certain specialised work, or that the *Contractor* shall not subcontract more than a specified proportion of the whole of the contract.

#### 4.2.4 Attendance on subcontractors

State requirements for attendance on Subcontractors, if any

### 4.3 Plant and Materials

#### 4.3.1 Specifications

Plant and Materials are defined as items intended to be included in the Affected Property. This will refer to replacement of worn or defective parts, routine replacement as part of regular preventative maintenance and supply of spare parts. Quality is usually designed in or specified in the technical specifications. However to cover circumstances where quality may not be prescribed, this sub-paragraph could also be used to state an overarching default requirement – fitness for purpose etc.

Either specify here or provide a list of the applicable specifications and attach them as Annexure or state where they can be obtained from.

#### 4.3.2 Correction of defects

State any constraints when dealing with defective Plant and Materials such as how repairs are carried out - can the item be fixed up or must it be replaced by a new one.

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

Specify any constraints on how the *Contractor* is to order, codify, expedite, freight, import, transport to the Affected Property and any other requirements for delivery and storage before installation. The *Employer* may require warranties from suppliers to be in favour of the *Employer* and not just to the *Contractor*. The *Employer* may also need schedules of vendor data for his own use after the end of the *service period*.

#### 4.3.4 Tests and inspections before delivery

Core Clause 41.1 makes reference to the Service Information stating which Plant and Materials are to be inspected and tested before delivery. Specify any requirements particularly if such tests and inspections are to be carried out by agents of the *Employer* overseas.

#### 4.3.5 Plant & Materials provided “free issue” by the *Employer*

List any Plant and Materials which are to be provided by the *Employer*.

State arrangements for collection by *Contractor* or delivery by others on behalf of the *Employer*, off loading, inspection, storage, care custody and control, return of unused Plant and Materials, etc. Always include a statement to the effect that ‘all other Plant and Materials are to be provided by the *Contractor*’.

## 5 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.

### 5.1 *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

### 5.2 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.

### 5.3 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.

### 5.4 Environmental controls, fauna & flora

This sub-paragraph may not be required in a service contract or if these matters are dealt with in the general environmental requirements referred to in section 3 above.

### 5.5 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.

### 5.6 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.

The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

## 5.7 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.

## 5.8 Site services and facilities

### 5.8.1 Provided by the *Employer*

This is a mandatory cross reference from 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.

### 5.8.2 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.

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

State requirements, if any.

## 5.10 Hook ups to existing works

State any constraints

## 5.11 Tests and inspections

### 5.11.1 Description of tests and inspections

Describe the tests and inspections to be carried out by the *Contractor* and the *Service Manager* and others [40.1].

### 5.11.2 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.

## CONFIDENTIALITY AGREEMENT

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

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

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

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

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



The supply and hire of various Crane services on an “as-and-when” required basis for a period of Five (5) years”.

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

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