



NEC3 Term Service Contract (TSC3)

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

and

for
Provision of Security Appliance Governance and
Compliance Toolset for a period of four (4) years

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CONTRACT No.

PART C1: AGREEMENTS & CONTRACT DATA

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C1.1 Form of Offer & Acceptance

Offer

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

Provision of Security Appliance Governance and Compliance Toolset for a period of four (4) 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 A | The offered total of the Prices exclusive of VAT is | |
| | Sub total | |
| | Value Added Tax @ 14% is | |
| | The offered total of the amount due inclusive of VAT is ¹ | (Non-committed) |
| | | |

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**

Name &
signature of
witness

*Eskom Megawatt Park, 2 Maxwell Drive,
Sunninghill, Sandton, 2157*

Date

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

Note:

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

| No. | Subject | Details |
|-----|---------|---------|
| 1 | N/A | N/A |

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

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

For the tenderer:**For the Employer**

Signature

Name

Capacity

On behalf
ofName &
signature
of witness

Date

Eskom Megawatt Park, 2 Maxwell Drive,
Sunninghill, Sandton, 2157

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

| Clause | Statement | Data |
|----------|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | General | |
| | The <i>conditions of contract</i> are the core clauses and the clauses for main Option: | |
| | • | A: Priced contract with price list |
| | dispute resolution Option | W1: Dispute resolution procedure |
| | | X1: Price adjustment for inflation |
| | | X2: Changes in the law |
| | | X3: Multiple currencies |
| | | X17: Low service damages |
| | | X18: Limitation of liability |
| | | X19: Task Orders |
| | | Z: Additional conditions of contract |
| | of the NEC3 Term Service Contract April 2013 ² (TSC3) | |
| 10.1 | The <i>Employer</i> 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. | |
| | Email address | |
| 10.1 | The <i>Service Manager</i> is (name): | |
| | Address | Eskom Megawatt Park, 2 Maxwell Drive, Sunninghill, Sandton, 2157 |
| | Tel | 011 |
| | e-mail | I@eskom.co.za |
| 11.2(2) | The Affected Property is | Various Eskom sites |
| 11.2(13) | The <i>service</i> is | Provision of Security Appliance Governance |

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

and Compliance Toolset for a period of four (4) years

| | | |
|----------|-------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11.2(14) | The following matters will be included in the Risk Register | The risks will be identified during the term of the contract and will be listed on the Risk Register as and when it arises. |
| 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 <i>law of the contract</i> is the law of | the Republic of South Africa |
| 13.1 | The <i>language of this contract</i> is | English |
| 13.3 | The <i>period for reply</i> is | 2 working days |
| 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 | 4 weeks of the contract start date or to be determined by project/task order |
| 3 | Time | |
| 30.1 | The <i>starting date</i> is. | |
| 30.1 | The <i>service period</i> is | Provision of Security Appliance Governance and Compliance Toolset for a period of four (4) years |
| 4 | Testing and defects | Contractor undertakes that services will be performed timeously in a professional manner with skill and care in accordance with IT industry best practise and warranted for a period of 90 days from the date of Service. |
| 5 | Payment | |
| 50.1 | The <i>assessment interval</i> is | On the th of each successive month. |
| 51.1 | The <i>currency of this contract</i> is the | South African Rand (ZAR) |
| 51.2 | The period within which payments are made is | 60 days on receipt of a valid Tax Invoice provided to invoiceseskomlocal@eskom.co.za |
| 51.4 | The <i>interest rate</i> is | Zero percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment shall not be necessary to prove) for amounts due in Rands |
| 6 | Compensation events | There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in |

| | | this Contract Data |
|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7 | Use of Equipment Plant and Materials | Not applicable |
| 8 | Risks and insurance | |
| 80.1 | These are additional <i>Employer's</i> risks | 1. to be defined as the contract progresses |
| 83.1 | The <i>Employer</i> provides these insurances from the Insurance Table | as stated for "Format TSC3" available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx (See Annexure A for basic guidance). |
| 83.1 | The <i>Employer</i> provides these additional insurances | as stated for "Format TSC3" available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx (See Annexure A for basic guidance) |
| 83.1 | The <i>Contractor</i> provides these additional insurances: | As stated in "Annexure A" to this Contract Data, provided by the Employer |
| 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 | the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx |
| 83.1 | The insurance against loss of or damage to the <i>works</i> , Plant and Materials is to include cover for Plant and Materials provided by the <i>Employer</i> for an amount of | [R0] |
| 83.1 | The minimum amount of cover for insurance in respect of loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one event is: | whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i>. |
| 83.1 | The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is: | As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands). |
| 9 | Termination | |
| 9.1 | | The Employer may terminate for a reason not stated in this contract by notifying the Contractor |
| 9.2 | | If the Employer terminates for a reason, other than the Contractor's breach, the Employer shall not be liable to pay for early termination penalties |

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|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|--------------------------|--|--|--|--|
| 10 | Data for main Option clause | | | | | | | |
| A | Priced contract with price list | | | | | | | |
| 20.5 | The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than | Not Applicable | | | | | | |
| 11 | Data for Option W1 | | | | | | | |
| W1.1 | The <i>Adjudicator</i> | Refer to Annexure B | | | | | | |
| | | the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see 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 | Refer to Annexure B | | | | | | |
| | Tel No. | Refer to Annexure B | | | | | | |
| | Fax No. | Refer to Annexure B | | | | | | |
| | e-mail | Refer to Annexure B | | | | | | |
| 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 www.ice-sa.org.za) 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 | Gauteng, South Africa | | | | | | |
| | The person or organisation who will choose an arbitrator | | | | | | | |
| | - if the Parties cannot agree a choice or | the Chairman for the time being or his nominee | | | | | | |
| | - if the arbitration procedure does not state who selects an arbitrator, is | 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 <i>base date</i> for indices is | [•] | | | | | | |
| | The proportions used to calculate the Price Adjustment Factor are: | CPA will be effective annually on the anniversary of the Agreement on support resources only. The STATSSA website to be used: Http://www.statssa.gov.za to determine relevant movements in indices to establish CPI for local | | | | | | |
| | <table border="1"> <tr> <td>Proportion</td><td>Linked to index for</td><td>Index prepared by</td></tr> <tr> <td></td><td></td><td></td></tr> </table> | Proportion | Linked to index for | Index prepared by | | | | |
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| Non adjustable | | | | | | | | | | | | | | | | | | | | |
| X2 | Changes in the law | There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data. | | | | | | | | | | | | | | | | | | |
| X3 | Multiple currencies | | | | | | | | | | | | | | | | | | | |
| X3.1 | The <i>Employer</i> will pay for these items or activities in the currencies stated | <table><tr><th>Items & activities</th><th>Other currency</th></tr><tr><td>[•]</td><td></td></tr><tr><td>[•]</td><td></td></tr><tr><td>[•]</td><td></td></tr><tr><td>[•]</td><td></td></tr></table> | Items & activities | Other currency | [•] | | [•] | | [•] | | [•] | | | | | | | | | |
| Items & activities | Other currency | | | | | | | | | | | | | | | | | | | |
| [•] | | | | | | | | | | | | | | | | | | | | |
| [•] | | | | | | | | | | | | | | | | | | | | |
| [•] | | | | | | | | | | | | | | | | | | | | |
| [•] | | | | | | | | | | | | | | | | | | | | |
| X3.1 | The <i>exchange rates</i> are those published in | <p>Payment will be made in ZAR</p> <p>The Supplier will take forward cover as follows:</p> <ul style="list-style-type: none">• Hedging will be done for the duration of the new contract period on a annual basis.• This agreed and confirmed forward cover rate will be used for all billing purposes for the applicable period• Eskom shall negotiate the rate of exchange applicable with the supplier and its banker. <p>The supplier shall provide Eskom with documentary evidence of the rate of exchange it receives from its banker.</p> | | | | | | | | | | | | | | | | | | |
| | | <p>The items & activities will be paid in the other currency</p> <p>- to a valid SARB approved CFC account in South Africa</p> <p>- in accordance with an alternative payment method agreed with the <i>Employer</i> before the Contract Date.</p> <p>(select one of the two methods as agreed with the successful tenderer prior to contract award and delete the others and this note)</p> | | | | | | | | | | | | | | | | | | |

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|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | |
| X17 | Low service damages | Refer to clause Z13 |
| X17.1 | The <i>service level table</i> is in | Annexure C |
| X18 | Limitation of liability | |
| 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 http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015 . |
| X18.3 | The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to | The greater of the total of the Prices at the Contract Date and 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 http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx |
| 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 | the total of the Prices other than for the additional excluded matters. The <i>Contractor's</i> total liability for the additional excluded matters is not limited. The additional excluded matters are amounts for which the <i>Contractor</i> 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 <i>Employer's</i> property, Plant and Materials), death of or injury to a person and infringement of an intellectual property right. |
| X18.5 | The <i>end of liability date</i> is | 6 months after the end of the <i>service period</i>. |
| X19 | Task orders | |
| X19.5 | The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within | |
| Z | The additional conditions of contract | |

are

See Z1 to Z20 below

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 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 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.

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

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

- Z8.1 Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z8.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
- Z8.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z9 Notifying compensation events

- Z9.1 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

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

Z12 Supplier Development and Localisation

- A. Skills Development candidates
 TBC
- B. Subcontracting
 TBC
- C. % Black Woman ownership
 TBC

Z13 Service Level performance, reporting and service credits**Z13.1 General**

Z13.1.1 The Contractor shall have three (3) month's from the service commencement date, to perform the services to which the service levels apply as stated in Annexure C so that the service level performance will, in each month, meet, or exceed, the service level and reporting. The service level:

- (a) will commence being measured on the service commencement date;
- (b) will be measured over the duration of the contract; and
- (c) will be reported on a monthly basis, which will be delivered within four (4) business days following the end of the immediately preceding Month ("Reported Month"), unless otherwise specified in the contract.

Z13.1.2 Contractor shall be responsible for monitoring and measuring its performance against the service levels in accordance with the methodology specified in the Annexure C.

Z13.1.3 Employer shall have the right on written notice to change, add or delete any of the service level(s) during the term of the contract. The Contractor has sixty (60) days of receipt of notice to implement and report on the new service level(s).

Z13.1.4 In addition to all other remedies available to the Contractor in law or under this contract, Employer will be entitled to a service credit calculated in accordance with section Z13.3. If Contractor fails to measure or report service level performance for a service level so that it is not possible to confirm whether the service level has been achieved for a particular month, then the service level performance for such service level will be deemed to be a service level default.

Z13.2 Payment

Z13.2.1 The Parties each acknowledge and agree that the service credits:

- (d) are an adjustment to reflect the Contractor's reduced service level performance as measured against the service levels stated in Annexure C; and
- (e) are neither an estimate of the loss or damage that may be suffered by Employer as a result of a service level default, nor penalties or liquidated damages.

Z13.2.2 Payment of a service credit by Contractor is without prejudice to, and will not limit, any right Employer may have:

- (a) to damages or non-monetary remedies at law or under the contract resulting from, or otherwise arising in respect of, such service level default; or
- (b) to terminate the contract for cause in respect of such service level default.

Z13.3 Service Credit

Z13.3.1 For two or more service level default occurring during a month that relates to a service level, the monthly service charge will be reduced in accordance with section Z13.3.4, by an amount calculated in accordance with section 13.3.2 (a "Service Credit").

Z13.3.2 In respect of each service level default to which section Z13.3.1. applies, the applicable Service Credit will be equal to an amount of 10% of the monthly service charge.

Z13.3.3 Any service credits during a measurement period will be applied against the first invoice submitted following the month when the performance report showing the service level default is issued by Contractor (or applied against the first Invoice submitted by Contractor following the failure to provide a performance report).

Z13.3.4 In no event will the total amount of service credits, in respect of service level defaults occurring during any month, exceed an amount equal to thirty-five percent (35%) of the monthly charge payable for the services.

Z13.4 Service Level Termination

Where service level performance drops below the Target Service Level as stated in annexure C, for any two or more service level for three (3) consecutive measurement periods, irrespective of not being the same service level default, this will be deemed to be a "Critical Service Level Default" and as a result Employer may at its discretion exercise its right to terminate the contract.

Z14 Audit Rights

The Employer reserves the right to audit security and other processes by providing 5 days' written notice to the Contractor. This audit will take place during business hours. The Contractor shall grant the Employer or Employer's agent the right of access to premises, information and personnel.

Z15 Benchmarking and Market Testing**Z15.1 Benchmarking**

Z15.1.1 Employer will have the right, at any time after the first anniversary of the commencement date, but not more than once in each contract year, to benchmark some or all of the Services (the "Benchmarked Services") in accordance with this section.

Z15.1.2 A benchmarking exercise includes (without limitation) evaluating the quality and performance of the Services and/or the charges of the Services provided by the Contractor, against the services provided by one or more person, contractor or entity (other than the Contractor) ("Contractor Competitor(s)").

Z15.1.3 Benchmarking exercises will be conducted by an independent benchmarking service provider from an agreed pool of organisations in the business of providing benchmarking services (the "Benchmarker"). The Benchmarker will be jointly appointed and retained by the Parties, and the costs of the Benchmarker will be shared equally between the Parties on each occasion.

Z15.1.4 The Parties will cooperate with the Benchmarker, including, without limitation, making available knowledgeable personnel and pertinent documents and records. The Benchmarker will enter into a confidentiality agreement with each of Employer and Contractor prior to being provided with Confidential Information of either Party.

Z15.1.5 The Benchmarker will compare the charges of the Contractor ("Benchmarked Services") with that of the Contractor Competitor(s), in accordance with the following:

- (a) the following factors may be used by the Benchmarker to select and normalise the transactions and organisations:
 - (i) volume of Benchmarked Services;
 - (ii) scope of Benchmarked Services;
 - (iii) the extent to which this contract calls for the Contractor to provide and comply with requirements unique to Employer;
 - (iv) the Contractor's invoicing model;
 - (v) Employer's policy and compliance requirements;
 - (vi) deal shaping factors such as contract duration and contract terms;
 - (vii) service levels, KPIs and service credits applicable to the Benchmarked Services;
 - (viii) any material difference in the terms and conditions under which the Benchmarked Services and the services of the Contractor Competitor(s) are delivered; and
 - (ix) such other normalization factors as the Parties may mutually agree on or identify;
- (b) the Benchmarker will select the representative sample of transactions and organisations, and either Party may propose alternative transactions and organisations, subject to the Benchmarker's written approval; and
- (c) the representative sample will be of a sufficient number and variation as determined by the Benchmarker.

Z15.1.6 The Benchmarker will present his findings in a preliminary report to both Parties. On receipt of the report, each Party will in consultation with each other have 10 (ten) Business Days to review, comment on and request changes to the report. The Benchmarker is however not obliged to take account of such comments in the final report.

- Z15.1.7 The Benchmarker will thereupon compile the final report (the "Benchmarking Report"), which will include its detailed findings on, among other things:
- (a) services provided by Contractor Competitor(s) that are similar to the Benchmarked Services, as well as the service levels, KPIs, service credits ("SLAs") and the charges ("Competitor Charges") applicable to such Contractor Competitor(s);
 - (b) a comparison between: the Benchmarked Services, charges and the applicable performance standards; and the services rendered by the Contractor Competitor(s), the competitor charges, and the SLAs;
 - (c) recommendations as to increased efficiency by the Contractor in the provision of the Services and decreasing the charges in relation thereto; and
 - (d) the way in which the charges and Contractor's price structure (and if applicable that of the competitor Contractor (s)), compare with good industry practice.
- Z15.1.8 The Benchmarking Report shall, in addition to the findings in section 1.1.6, include recommendations as to the required improvements and acceptable time scales for the implementation thereof, which the Contractor shall consider and discuss with Employer (as part of the performance of the Services). The Contractor shall implement such recommendations in accordance with time scales agreed with Employer, at no additional cost to Employer.
- Z15.1.9 If the Benchmarking Report shows the charges of the benchmarked services to be greater than the lowest quartile of the comparable charges (the "Target"), the Parties will promptly meet, and in any event within 5 (five) business days of the release of the report, to discuss the findings. Employer will have the right to require that Contractor implements the Benchmarker's findings in the Benchmarking Report (including (without limitation) a reduction in the Charges to meet the Target), and will give the Contractor formal notice to do so. Contractor will have 20 (twenty) Business Days from such meeting to comply with such notice by Employer.
- Z15.1.10 If the findings have not been implemented by Contractor on or before the expiry of the aforementioned 20 (twenty) business days, Employer will be entitled to:
- (a) reduce the charges for the remainder of the Term in accordance with the findings of the Benchmarking Report (such reduction in Charges to be off-set against future Invoices with immediate effect); or
 - (b) terminate the Benchmarked Services, or any part thereof, at no cost and without payment of any termination charges.
- Z15.1.11 For the avoidance of any doubt and notwithstanding any results or recommendations determined or made by the Benchmarker, there shall be no upward adjustment to any charges or any downward adjustment of any performance standards as a result of any Benchmarking exercise.
- Z15.1.12 Save as otherwise provided for herein, the cost of any activities arising from a Benchmarking exercise which are required to be carried out by the Contractor, will be for the sole account of the Contractor.

Z15.2 Market Testing

Z15.2.1 Introduction

- (a) The procedure specified in this section Z15.2.2 (the "Market Testing Procedure") will apply to establishing prices for Services that are capable of procurement on a commodity basis, either:
- (x) as set out in section Z15.2.2 (f) below for pre-agreed procured Item(s) ("Pre-Agreed Procured Item(s)"); or
 - (xi) as determined by Employer in its reasonable discretion ("Employer Designated Item(s)").
- (b) Employer reserves the right at its option, to apply the Market Testing Procedure from time to time during the Term (whether in addition to, or in instead of Benchmarking, or otherwise).

Z15.2.2 Market Test Procedure

- (a) The Market Testing Procedure will consist of the following procedure which will

separately apply to each relevant Pre-Agreed Procured Item, or Employer Designated Item, as the case may be.

- (b) Employer will either:
 - (i) obtain alternative price proposals from Contractor in respect of the relevant Pre-Agreed Procured Items; or
 - (ii) gather information through informal market testing on offers or quotes made by other Contractor s in the ICT environment market place, and provide details of these offers or quotes to the Contractor without any obligation on Employer to disclose commercially sensitive information.
- (c) In considering the data collected under section (a), Employer will compare the price proposals made by the Contractor, and the offers or quotes made by other Contractor s in the ICT environment market place, with the precise Pre-Agreed Procured Item(s) or Employer Designated Item(s).
- (d) Contractor will have the right to match or improve upon the best price obtained by Employer.
- (e) Where Contractor (or its existing Subcontractors) is not able to match the best offer, proposal or quote obtained by Employer, Employer may:
 - (i) require Contractor to adjust the charges applicable to the relevant Pre-Agreed Procured Items in order to match or improve upon the best offer, proposal or quote obtained by Employer;
 - (ii) require Contractor to enter into a contract directly with the relevant third party Contractor on the terms of the proposal provided by Employer, in which case such third party will then become a pre-approved subcontractor; or
 - (iii) terminate in part or cease to procure the relevant Services from Contractor and directly engage the relevant third party Contractor to perform those Services.
- (f) Pre-Agreed Procured Items
The Parties agree that the Pre-Agreed Procured Items will include but not limited to the following
 - Rate per mailbox (Local and Foreign)
 - File and print archiving Rate per terabyte (TB)

Z15.2.3 For the avoidance of any doubt and notwithstanding any results borne out by the Market Test Procedure, there shall be no upward adjustment to any charges as a result of the Market Test Procedure being carried out.

Z15.2.4 Save as otherwise provided for herein, the cost of any activities arising from the Market Test Procedure which are required to be carried out by the Contractor, will be for the sole account of the Contractor.

Z16 Disengagement

Z16.1 The Contractor shall provide disengagement services to enable the transfer of the terminated services to the successor Contractor which disengagement services will commence on either;

- (a) Six (6) months prior to expiry of the contract; or
- (b) Termination of the services.

Z16.2 Contractor will perform the disengagement services and the terminated services will continue to be performed in such a manner so that:

- (a) the terminated services are transferred to the Employer or successor Contractor(s) in an efficient and orderly manner without degradation or interruption of performance; and
- (b) the impact on the Employer's business (including their personnel and customers) and the internal and third party costs incurred by Employer in transferring the terminated services, are minimised.

Z16.3 The disengagement services will not continue for more than ninety (90) days after the date of termination of the services or such other longer period agreed by the parties to ensure the

completion of the disengagement services.

- Z16.4 The charges will accordingly be reduced during the disengagement period.
- Z16.5 Within three (3) month of the commencement date, Contractor will deliver the disengagement plan to Employer for its comments and review. Such disengagement plan shall set out the steps and dependencies for disengagement using, as its assumed base, the scenario of an exit at the end of the term from Contractor to Employer or another successor Contractor(s). Contractor will incorporate the reasonable comments or suggestions of Employer and will finalise the disengagement plan within four (4) weeks following receipt of Employer's comments or suggestions. The final disengagement plan will be subject to Employer's written approval.
- Z16.6 The disengagement plan will be reviewed by the Parties at least once every twelve (12) months and will be updated by Contractor, within thirty (30) days following such review, to incorporate agreed changes and amendments to reflect the then current services that are performed, so that such disengagement plan is kept current.
- (a) During Disengagement, the Parties shall cooperate fully with one another to facilitate a smooth transition of the terminated services from Contractor to the Employer and/or the Replacement Contractor.
 - (b) Contractor shall provide such cooperation for the duration of the disengagement period, and such cooperation shall include provision of full, complete, detailed, and sufficient information (including all information then being utilised by Contractor) and knowledge transfer with respect to all such information in order to enable Employer's and/or the replacement Contractor(s) to fully assume, become self-reliant with respect to, and continue without interruption, the provision of the services.
- Z16.7 On the 4th anniversary of the contract, the Contractor shall provide a detailed disengagement plan to the Employer. The parties will meet within two (2) weeks of receipt of the detailed disengagement plan to finalise all activities outlined in the plan. Within two (2) months, the final detailed disengagement plan will be provided to Employer's for it's written approval.
- Z16.8 On completion of the disengagement services, the Contractor shall provide a written undertaking signed by the representative of the Contractor that it has transferred or returned all Employer's data to the Employer or successor Contractor(s) and that it has no Employer data stored any of its equipment.
- Z16.9 Contractor shall have no right to Employer's data, which shall always remain vested with Employer.

Z17 Termination

- Z17.1 The Employer may terminate for a reason not stated in this contract by notifying the Contractor in writing.
- Z17.2 If the Employer terminates for a reason, other than the Contractor's breach, the Employer shall pay an additional amount due on termination which is 5% of the difference between:
- the forecast of the final total of the Prices in the absence of termination and
 - the total of charges included in the amount due on termination, excluding non-committed amounts.

Z18 Data privacy and protection of personal information

The Contractor shall comply with all applicable legislations and bills to be enacted into legislation from time to time relating to data privacy and protection of personal information and also with all Eskom policies relating to information security and data protection and privacy or any other policy or law relating to the services.

Z19 Chain of custody

The Contractor will ensure that the integrity of the Employer's data relating to the services is maintained during the term of contract and the disengagement period, in a chronological manner and in the same format it was generated, retrieved, stored, controlled, transferred, and disposed of.

Z20 POPIA Clause

- 20.1. For the purposes of this clause, the terms "Data Subject", "Personal Information" and "Regulator" and "Responsible Party" have the meanings given to them in the Protection of Personal Information Act, 2013 ("POPIA").
- 20.2 Each Party acknowledges that it is an independent Responsible Party in relation to the Personal Information processed in terms of this Agreement ("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.
- 20.3 Each Party shall comply at all times with POPIA when performing its obligations under this Agreement and shall not perform any of their respective obligations under this Agreement in such a way as to cause the other Party to breach any of that other Party's obligations under POPIA.
- 20.4 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 Agreement:-
- 20.4.1 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 (<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
- 20.4.2 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:
- 20.4.2.1 lawful, fair and transparent Processing;
- 20.4.2.2 specified, legitimate and explicit purposes of Processing; and
- 20.4.2.3 adequate, relevant and not excessive Processing.
- 20.5 If either Party receives any complaint, notice or communication from the Regulator which relates directly to:
- 20.5.1 the other Party's Processing of the Shared Personal Data; or
- 20.5.2 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 Agreement,
- 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.
- 20.6 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:

- 20.6.1 promptly and without undue delay forward the request to the other Party; and
20.6.2 cooperate and provide reasonable assistance in relation to that request to enable the other Party to respond in accordance with POPIA.
- 20.7 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.
- 20.8 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.
- 20.9 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/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.
- 20.10 No Party may transfer Personal Information about a data subject to a third Party who is in a foreign country unless they have obtained the relevant written consent of the other Party and there is full compliance with section 72 of POPIA and any foreign applicable legislation.

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

Annexure B: The Employer's Panel of Adjudicators

The following persons listed in alphabetical order of their surname have indicated their willingness to be included in the Eskom Panel of Adjudicators. Their CV's may be obtained by using the contact details provided.

| Name | Location | Contact details (phone & e mail) |
|------------------------|----------|---------------------------------------------------------------------------------------------------|
| Nigel ANDREWS | Gauteng | +27 11 836-6760 nigela@quoin.net |
| Andrew BAIRD | Gauteng | +27 11 803 3008 andrewbaird@ecsconsult.co.za |
| Christopher BINNINGTON | Gauteng | +27 11 888-6141 cdb@bca.co.za |
| Peter HIGGINS | UK | +44 1293 873 868 peterhiggins@pdconsult.co.uk |
| Bruce LEECH | Gauteng | +27 11 290 4000 leech@counsel.co.za |
| Nigel NILEN | Gauteng | +27 11 465 3601; nilences@global.co.za |
| Peter THURLOW | Gauteng | +27 11 787 6226 info@thurlowassoc.com |

Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management, by contacting Ms Marumo Lekoto on 011 800 5383 or [LekotoMH@eskom.co.za]

Annexure C: Service Level Requirements

. Service Level Agreement requirements

The Service Provider must provide **24/7/365** second- and third-line support with OEM

| Service Level | Description | Escalation to SP | Escalation to OEM |
|---------------|-----------------------------------------------------|------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| Critical | Business has stopped | Response within 1 (one) hour – Level 1 Response within 3 (three) hour – Level 2 | Response within 4 (four) hours – Level 3 |
| Major | Business severely impacted | Response within 1 (one) hour – Level 1 Response within 3 (three) hour – Level 2 | Response within 4 (four) hours – Level 3 |
| Normal | Minor business impact / product failure | Response within 1 (one) business day – Level 1 Response within 2 (two) business days – Level 2 | Response within 1 (one) business day – Level 3 |
| Low | No business impact but requires one or more updates | Response within 2 (two) business days – Level 1 Response within 2 (two) business days – Level 2 | Response within 2 (two) business days – Level 3 |
| Informational | Request for information | Response within 3 (three) business days – Level 1 Response within 3 (three) business days – Level 2 | Response within 3 (three) business days – Level 3 |

Penalties of 5% shall be applied on all invoices for non-compliance to the service levels

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 <i>Contractor</i> is (Name): Address Tel No. Email address. | |
| 11.2(8) | The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is | 100% 0% |
| 11.2(14) | The following matters will be included in the Risk Register | As and when risks arise |
| 11.2(15) | The Service Information for the <i>Contractor's</i> plan is in: | Refer to data provided by the Employer. |
| 21.1 | The plan identified in the Contract Data is contained in: | Refer to data provided by the Employer. |
| 24.1 | The key people are: 1 Name: Job: Responsibilities: Qualifications: | |

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

Experience:
2 Name:
Job
Responsibilities:
Qualifications:
Experience:

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

| | | | |
|----------|-------------------------------------|---|--|
| A | Priced contract with price list | | |
| 11.2(12) | The <i>price list</i> is in | | |
| 11.2(19) | The tendered total of the Prices is | R | |

PART 2: PRICING DATA
TSC3 Option A

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

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

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

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

C2.2 the *price list*

| Item nr | Description | Unit | Estimated Quantity | Rate | Price |
|---------|----------------------------------------|------|--------------------|------|-------|
| 1. | Refer to Annexure M – Pricing Schedule | | | | |
| 2. | | | | | |
| 3. | | | | | |
| 4. | | | | | |
| 5. | | | | | |
| 6. | | | | | |

NB:

If the prices are in USD, the ROE to be used must be: USD1 = Rx; this is for common base comparison purposes. The adjustments for prevailing rates and the basis for future price adjustments will be determined at time of contracting. Exchange rate variations may not be claimed for the local mark-up in the pricing structure.

All Prices must be exclusive of VAT

PART 3: SCOPE OF WORK

| Document reference | Title | No of pages |
|--------------------|---------------------------|-------------|
| | This cover page | 1 |
| C3.1 | <i>Employer's Scope</i> | 10 |
| C3.2 | <i>Consultant's Scope</i> | |
| | Total number of pages | 11 |

C3.1: EMPLOYER'S SCOPE

1 Description of the *services*

Provision of Security Appliance Governance and Compliance Toolset for a period of four (4) years

Specification and description of the *services*

2 High level requirements

Provision of Security Appliance Governance and Compliance Toolset for a period of four (4) years

3 Detailed requirements

Technology components and functionality govern the core requirements of the system. The tool of choice should have capability to be deployed and or operate both in Operational Technology, Information Technology, and Cloud Space. The tool should allow definition of approved traffic policies to regulatory and organisational standards. The following capability should come as standard to the presented tool of choice:

1. Firewall policy planning and rule management
2. Automated Policy Orchestration
3. Device and Application Auto-Discovery
4. Policy Compliance Auditing
5. Attack Path Simulation Testing
6. Anomalous Event or Behaviour Deviation
7. Vulnerability Scans
8. Firewall Rule Clean-up

3.1. Solution Capability and Functionality 3.1.1. Indicate the number of years the responded has provided maintenance and professional services for this product.

3.1.2. Implemented toolset solutions and its components to a client with 5k employees or more.

3.1.3. Indicate the product certification level and the years' experience of human resources relevant to the scope.

3.1.4. Indicate which components the service provider has implemented and/or provided professional service.

3.1.5. The service provider has at least one support personnel located in South Africa to provide a service to Eskom.

3.1.6. Indicate the capability to manage or integrate/ interface with multiple vendor firewall products

3.1.7. Automatic discovery of business applications and services used in the environment and automatically associate the discovered business applications to firewall policy rules.

3.1.8. Configuration Analysis Capability 3.1.8.1. Analyse the configuration of multiple vendor firewalls

3.1.8.2. Ability to define and enforce network segmentation throughout entire hybrid network.

All the requirements detailed below will need to be demonstrated by the tool chosen.

3.1.8.3. Visualize/ Draw the entire hybrid firewall network security topology

3.1.8.4. Back up each device configuration

3.1.8.5. Ability to customizable workflows to automate the entire security policy and rules change process

3.1.8.6. Ability to search rules, devices, users, and workflows across the entire environment from a single console

3.1.9. Rule Analysis Capability 3.1.9.1. Analyse impact of rule changes for all interconnected firewalls

3.1.9.2. Highlight change section in a rule for comparison

3.1.9.3. Analyse rules for duplicates

3.1.9.4. Provide optimisation of rules (e.g. combine 3 rules to 1 rule)

3.1.9.5. Report on the administrator who made the change

3.1.9.6. Provide visibility for cloud and on-premises rules deployed

3.1.9.7. Highlight syntax errors in rules

3.1.10. Change Management Capability 3.1.10.1. Provide interface to request new rules or changes

3.1.10.2. Automated end to end to end change management workflow process

3.1.10.3. Auto pre & post change policy audits & escalation of unauthorized change

3.1.10.4. Provide interface to define the exact rule parameters

3.1.10.5. Provide risk analysis for proposed changes

3.1.10.6. Provide interface to enable authorization for rule changes

3.1.10.7. Provide interface to enable multi-level authorization of rule changes

3.1.10.8. Option for external change authorization ref.- e.g. paper form, email etc

3.1.10.9. Option for multi-level authorization for specific firewalls/or risk levels

3.1.10.10. Provide means to track the implementation of proposed rule changes

3.1.11. Compliance Management Capability 3.1.11.1. Map / compare deployed rules against high level corporate policies (e.g. no any-any rule).

3.1.11.2. Ability to provide automated auditing and compliance capability against industry regulation plus best practice or Eskom policies with pre-build or customisable reports.

3.1.11.3. Ability to identify compliance gaps across entire hybrid network.

3.1.11.4. Cater for multiple compliance regimes in a managed services environment?

3.1.11.5. Track time-limited firewall rules (e.g. open this port for a proof of concept).

3.1.11.6. Track individual changes in firewall rules and accountable credentials.

3.1.11.7. Track individual changes in firewall configuration and accountable credentials.

3.1.11.8. Track the time and source of the change (e.g. from direct console logon or remote log on)

3.1.12. Risk Analysis Capability 3.1.12.1. Analyse impact of change to downstream FW's e.g., closing port x impacts other firewalls because they allow it opened

3.1.12.2. Analyse the risk of opening certain ports due to known vulnerabilities that exploit that port

3.1.12.3. Proactively Analyse proposed firewall rule change against network interconnectedness to check if it does not break the strategy, introduce risk, or violate compliance.

3.1.12.4. Create a risk analysis report based on policy compliance and or requirements for standards.

3.1.12.5. Ability to discover the business flows already present in your network.

3.1.13. Provisioning Support Capability

3.1.14. Interface Capability

3.2. Maintenance and Support for all Hardware and Software

3.2.1. Maintenance and Support and Renewal of existing software subscription

3.2.2. Software Licences for all components

3.2.3. Access vendor portal and knowledge base

3.2.4. Access to vendor software download centre

3.2.5. Access to download and evaluate new release software

3.2.6. Telephonic/Remote and On-Site Support

3.3. Premium Support

3.3.1. Telephonic/Remote and On-Site Support

3.3.2. All hardware support, failure, and replacement: 4 Hour turnaround time, including SFP's

3.3.3. 24 x 7 SLA with OEM

3.3.4. 24 x 7 x 365 expert level support with OEM

3.3.5. TAC and remote support centre for software problem solving and failures

3.3.6. Access to support base and vendor portal

3.3.7. Full suite software licensing - All components

3.3.8. Full software updates - including major versions with no cost implications

3.3.9. Full software stack functionality, no limitations9) Software vulnerabilities support and notification / updates and bug fix support

3.3.10. Automatic daily subscription signatures updates. No user intervention – non negotiable

3.3.11. Firmware updates where applicable and available as per SLA

3.3.12. Devices should support all IEEE standards to ensure interoperability between different vendors on the network layer. e.g., LACP etc

3.4. Professional services and architectural re-design and advice will be required from time to time as the network and increase of traffic evolves when degraded performance is experienced. 3.4.1. Regular reviews of current implementation and provide recommendations to improve the solution.

3.4.2. Development, testing, configuration, documentation, and implementation of enhancements of products that are currently deployed including associated interfaces to Eskom applications.

3.4.3. Project management for major products and functionality upgrades

3.4.4. Expert level Network Security Technical Resources

3.4.5. Expert level Senior Project Manager

3.5. Training Services (online & classroom training) on product of choice (i.e., with advance level certification) 3.5.1. Services

3.5.2. Configurations

3.5.3. Administrator training

3.5.4. Optimization and fine-tuning training

3.6. Project management Services

Safety:

| No | SHE Requirement | Legislation | Explanation |
|----|----------------------------------------------------------|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | OHS plan/manual/ OHS system documentation | OHS ACT Section 8 (1) , CR 5(1)(i,m,n) | <p>Means a site, activity or project documented plan in accordance with the clients SHE requirements. The plan must be scope or project based. The plan must reflect an organised system (method statements, processes, resources etc) which the supplier will comply to and enforce to manage the SHE risks during the lifecycle of the project.</p> <p>Safety, Health and Environmental Plan for Scope of work not limited to the following:</p> <ul style="list-style-type: none"> • SHE organization within the Company-Responsibility & Accountability • SHE Incident management • Medical Surveillance Program • Fall protection plan • Method statement • Baseline Risk Assessment including routine and non-routine tasks • PPE- Personal Protective Equipment – i.e., issuing register • Emergency planning and fire risk management • Vehicle and driver behaviour safety • Contractor or supplier selection and management • Competency, training, appointments incl. OHS training matrix • Communication and awareness • Management commitment and visible felt leadership |
| 2 | Project Specific Risk Assessment | OHS ACT Section 8 (1), 2 (b)(d) | SHE hazards and risks that are identified associated with the applicable scope of work. The risk assessment shall include tasks / activities, risk rating; control measures etc. as well as the methodology thereof. |
| 3 | Letter of good standing | COID Act Chapter 9 section 80 | Registration with the Compensation Commissioner (COID) or a licenced mutual company or an equivalent of it (for international bidders). |
| 4 | SHE policy | OHS Act Section (7) 32- 136, 32-726 | A statement of intention by the employer which provide a framework for setting SHE objectives to improve SHE performance and also emphasize management commitment to employee's wellbeing and duty of care to the environment. |
| 5 | Annexure B | Eskom requirement 32-726 | The specific requirements mandatory to the tenderer and has to comply with when submitting the tender returnable |

| | | | |
|---|--------------------------|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6 | 16(2) appointment | OHS Act – Section 16.2 | CEO/MD to assign any person under his/her control to assist him/her in executing his/her duties of the employer |
| 7 | 37-2 Agreement | OHS Act – Section 37.2 | In terms of this agreement the Service provider warrants that he agrees to the arrangements and procedures, as prescribed by the Client, and as provided for in terms of Section 37(2) of the Occupational Health and Safety Act 85 of 1993 and Regulations ("the OHS Act"), for the purposes of compliance with the OHS-Act. The Service provider acknowledges that this agreement constitutes an agreement in terms of Section 37(2) of the OHS-Act, whereby all responsibility for health and safety matters relating to the work the Service provider and his/her employees are to perform on Eskom premises in terms of the scope of work shall be the obligation of the Service provider. 37-2 Agreement to be signed by service provider and Eskom Project manager at tender award |

Quality Requirements (Category 4)

SECTION A: Quality Management System Requirements ISO 9001 – Objective evidence of documented QMS that is not certified but complies with ISO 9001

A.1 Quality Method statement based on scope (Method Statement Template-Ref 240-126469599)

A.2 Quality Policy Approved by top management

A.3 Quality Objectives Approved by top management

Section A Score Option 2

SECTION B: Evidence of QMS in operation (Tender Quality Requirements-Ref 240-105658000)

B.1 Documented information for defined roles, responsibilities and authorities – Organization chart and Responsibility matrix (must include but not limited to quality management function/role)
Clause 5.3 of ISO 9001:2015

B.2 Documented information for Control of Externally Provided Processes, Products and Services (Must include criteria for evaluation, selection, monitoring of performance, and re-evaluation of external providers (Clause 8.4 of ISO 9001:2015)

Section B Score

SECTION E: User defined additional requirements and miscellaneous (Ref 240-105658000)
Customer specific requirements & other standards and required can be listed and evaluated here

E.1 Form A is completed and signed

Section E Score

Invoicing and payment

The following details shall be shown on or attached to each Invoice to show how the amount due has been assessed:

The *Consultant* shall address the valid undisputed tax invoice to Invoiceseskomlocal@eskom.co.za and include on it the following information:

- Name and address of the *Consultant* and the *Employer's Agent*;
- The contract number and title;
- *Consultant'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;