

The hire of Portable Toilet facilities, VIP Toilets and applicable servicing including disposal of sewage from septic tanks at various sites on an “as and when” required basis in the Kwa-Zulu Natal, Eastern Cape and Mpumalanga areas for a period of thirty-six (36) months.

**ENQUIRY NUMBER: E2984DXKZNOU**



## NEC3 Term Service Contract (TSC3)

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

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

**for** the hire of Portable Toilet facilities, VIP Toilets and applicable servicing including disposal of sewage from septic tanks at various sites on an “as and when” required basis in the Kwa-Zulu Natal, Eastern Cape and Mpumalanga areas for a period of thirty-six (36) months.

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**ENQUIRY No. E2984DXKZNOU**

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## **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:

### Title of the Contract

The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto and by submitting this Offer has accepted the Conditions of Tender.

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the *Contractor* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data.

Options A or C	The offered total of the Prices exclusive of VAT is	R [●]
Option E	The first forecast of the total Defined Cost plus the Fee exclusive of VAT is	R [●]
	Sub total	R [●]
	Value Added Tax @ 15% is	R [●]
	The offered total of the amount due inclusive of VAT is <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

**For the tenderer:**

*(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*.

## 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)

**Nontobeko Matli**

Capacity

**Middle Manager O & M**

**for the  
Employer**

**Eskom Holdings Soc Limited**

*(Insert name and address of organisation)*

Name &  
signature of  
witness

Date

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

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

Note:

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

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

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

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

**For the tenderer:**

**For the Employer**

Signature

Name

Capacity

On behalf of

*(Insert name and address of organisation)*

*(Insert name and address of organisation)*

Name & signature of witness

Date

# C1.2 TSC3 Contract Data

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

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

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
2. Some TSC3 options are always selected by Eskom Holdings SOC Ltd. The remaining TSC3 options are identified by shading in the left hand column. In the event that the option is not required select and delete the whole row. Where the following symbol is used “**[•]**” - data is required to be inserted relevant to the specific option selected.]

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

Clause	Statement	Data
1	<b>General</b>	
	<p>The <i>conditions of contract</i> are the core clauses and the clauses for main Option:</p> <div style="background-color: #cccccc; width: 80px; height: 60px; margin-bottom: 10px;"></div> <p>dispute resolution Option</p> <p>and secondary Options</p> <div style="background-color: #cccccc; width: 80px; height: 20px; margin-bottom: 10px;"></div> <div style="background-color: #cccccc; width: 80px; height: 100px; margin-bottom: 10px;"></div> <div style="background-color: #cccccc; width: 80px; height: 40px;"></div>	<p><b>A:</b>    <b>Priced contract with price list</b></p> <p><b>C</b>     <b>Target contract with price list</b></p> <p><b>E:</b>    <b>Cost reimbursable contract</b></p> <p><b>W1:</b>   <b>Dispute resolution procedure</b></p> <p><b>X1:</b>   <b>Price adjustment for inflation</b></p> <p><b>X2</b>    <b>Changes in the law</b></p> <p><b>X3:</b>   <b>Multiple currencies</b></p> <p><b>X4:</b>   <b>Parent company guarantee</b></p> <p><b>X12:</b>   <b>The Partnering Option</b></p> <p><b>X13:</b>   <b>Performance Bond</b></p> <p><b>X17:</b>   <b>Low service damages</b></p> <p><b>X18:</b>   <b>Limitation of liability</b></p> <p><b>X19:</b>   <b>Task Order</b></p> <p><b>X20:</b>   <b>Key performance indicators</b></p> <p><b>Z:</b>     <b><i>Additional conditions of contract</i></b></p>

of the NEC3 Term Service Contract April 2013<sup>2</sup> (TSC3)

10.1	The <i>Employer</i> is (name):	<b>Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Tel No.	<b>[•]</b>
	Fax No.	<b>[•]</b>
10.1	The <i>Service Manager</i> is (name):	<b>[•]</b>
	Address	<b>[•]</b>
	Tel	<b>[•]</b>
	Fax	<b>[•]</b>
	e-mail	<b>[•]</b>
11.2(2)	The Affected Property is	<b>[•]</b>
11.2(13)	The <i>service</i> is	<b>[•]</b>
11.2(14)	The following matters will be included in the Risk Register	<b>[•]</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>[•] weeks</b>
2	<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>[•] weeks of the Contract Date</b>
3	<b>Time</b>	
30.1	The <i>starting date</i> is.	<b>[•] TBA</b>
30.1	The <i>service period</i> is	<b>[•] 36 months</b>
4	<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</b>

<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)

**this Contract Data**

<b>5</b>	<b>Payment</b>	
50.1	The <i>assessment interval</i> is	<b>between the [●] day of each successive month.</b>
51.1	The <i>currency of this contract</i> is the	<b>South African Rand</b>
51.2	The period within which payments are made is	<b>[●] weeks.</b>
51.4	The <i>interest rate</i> is	<p><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) for amounts due in Rands and</b></p> <p><b>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter (and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.</b></p>
<b>6</b>	<b>Compensation events</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>7</b>	<b>Use of Equipment Plant and Materials</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>8</b>	<b>Risks and insurance</b>	
80.1	These are additional <i>Employer’s</i> risks	<p><b>1. [●]</b></p> <p><b>2. [●]</b></p> <p><b>3. [●]</b></p>
<b>9</b>	<b>Termination</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>10</b>		<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with price list</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	[•] weeks.	
<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	[•] weeks.	
50.6	The <i>exchange rates</i> are those published in	[•] on [•] (date)	
53.1	The <i>Contractor's</i> share percentages and the share ranges are	<i>share range</i>	<i>Contractor's share %-age</i>
		less than [•] %	[•]%
		from [•]% to [•]%	[•]%
		from [•]% to [•]%	[•]%
		greater than [•]%	[•]%
53.3	The <i>Contractor's</i> share is assessed on (dates)	[•]	
<b>E</b>	<b>Cost reimbursable contract</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	weeks /months	
	The <i>exchange rates</i> are those published in	[•] on [•] (date)	
<b>11</b>		<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i>	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).	
	Address	[•]	
	Tel No.	[•]	
	Fax No.	[•]	
	e-mail	[•]	
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London)	

		(see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ) or its successor body.
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	[•] South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	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

<b>X1</b>	<b>Price adjustment for inflation</b>			
X1.1	The <i>base date</i> for indices is	[•].		
	The proportions used to calculate the Price Adjustment Factor are:	proportion	linked to index for	Index prepared by
		0.	[•]	[•]
		0.	[•]	[•]
		0.	[•]	[•]
		0.	[•]	[•]
		0.	[•]	[•]
		[•]	non-adjustable	
		1.00		
<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>X3</b>	<b>Multiple currencies</b>			
X3.1	The <i>Employer</i> will pay for these items or activities in the currencies stated	Items & activities	Other currency	Maximum payment in other currency
		[•]		
		[•]		
		[•]		
		[•]		
X3.1	The <i>exchange rates</i> are those published in	[•] on [•] (date)		

		<p><b>The items &amp; activities will be paid in the other currency</b></p> <ul style="list-style-type: none"> <li>- to a foreign Bank account nominated by the <i>Contractor</i></li> <li>- to a valid SARB approved CFC account in South Africa</li> <li>- in accordance with an alternative payment method agreed with the <i>Employer</i> before the Contract Date.</li> </ul> <p>(select one of the three methods as agreed with the successful tenderer prior to contract award and delete the others and this note)</p>
<b>X4</b>	<b>Parent company guarantee</b>	<b>There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.</b>
<b>X12</b>	<b>Partnering</b>	
X12.1(1)	The <i>Client</i> is (Name):	<b>[•]</b>
	Address	<b>[•]</b>
	Contact details	<b>[•]</b>
	Telephone:	<b>[•]</b>
	Fax	<b>[•]</b>
	e-mail	<b>[•]</b>
X12.1(4)	The Partnering Information is in	<b>Part 3 Scope of Work, section C3.[•]</b>
X12.2(1)	The <i>Client's objective</i> is:	<b>[•]</b>
<b>X13</b>	<b>Performance bond</b>	
X13.1	The amount of the performance bond is	<b>R [•]</b>
<b>X17</b>	<b>Low service damages</b>	
X17.1	The <i>service level table</i> is in	<b>[•]</b>
<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	<b>R0.0 (zero Rand)</b>
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	<b>the amount of the deductibles relevant to the event</b>
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	<p><b>The greater of</b></p> <ul style="list-style-type: none"> <li>• 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</li> </ul>

X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<p><b>the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles</b></p> <p><b>the total of the Prices other than for the additional excluded matters.</b></p> <p><b>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</b></p> <p><b>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</b></p> <ul style="list-style-type: none"> <li>• 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	<b>[●] months after the end of the <i>service period</i>.</b>
<b>X19</b>	<b>Task Order</b>	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	<b>[●] days of receiving the Task Order</b>
<b>X20</b>	<b>Key Performance Indicators (not used when Option X12 applies)</b>	
X20.1	The <i>incentive schedule</i> for Key Performance Indicators is in	<b>Annexure [●] to this Contract Data</b>
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	<b>[●] months</b>
<b>Z</b>	<b>The <i>additional conditions of contract</i> are</b>	<b>Z1 to Z14 always apply.</b>

**Z1      Cession delegation and assignment**

- Z1.1 The *Contractor* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Contractor* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

## **Z2      Joint ventures**

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

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

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

## **Z4      Confidentiality**

- Z4.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.
- Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all

such images vests exclusively in the *Employer*.

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

**Z5      Waiver and estoppel: Add to core clause 12.3:**

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

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

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

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

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

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

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

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

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

**Z8      Notifying compensation events**

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

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

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**Z9      *Employer's limitation of liability***

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

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

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

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

**Z11      *Ethics***

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

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

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

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

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

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

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

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

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

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

Z11.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or

remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor’s* obligation to Provide the Services for this reason.

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

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

## Z12 Insurance

### Z 12 .1 Replace core clause 83 with the following:

#### Insurance cover 83

- 83.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
- 83.2 The *Contractor* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

**INSURANCE TABLE A**

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

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

**Z 12.2      Replace core clause 86 with the following:**

**Insurance by the Employer**

86

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

**INSURANCE TABLE B**

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

**Z13      Nuclear Liability**

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

Z13.2      The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from

nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

- Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

## **Z14      Asbestos**

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

<b>AAIA</b>	means approved asbestos inspection authority.
<b>ACM</b>	means asbestos containing materials.
<b>AL</b>	means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
<b>Ambient Air</b>	means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
<b>Compliance Monitoring</b>	means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
<b>OEL</b>	means occupational exposure limit.
<b>Parallel Measurements</b>	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
<b>Safe Levels</b>	means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
<b>Standard</b>	means the <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
<b>SANAS</b>	means the South African National Accreditation System.
<b>TWA</b>	means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

- Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) (“Asbestos Regulations”). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
- Z14.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor’s* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z14.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z14.5 The *Contractor’s* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z14.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer’s* expense, and conducted in line with South African legislation.

## 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.

<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)

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: Qualifications: Experience:	
<b>CV's (and further key person's data including CVs) are in .</b>		
<b>A</b>	<b>Priced contract with price list</b>	
11.2(12)	The <i>price list</i> is in	
11.2(19)	The tendered total of the Prices is	<b>R</b>
<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>
<b>E</b>	<b>Cost reimbursable contract</b>
11.2(12)	The <i>price list</i> is in

## C1.3 Forms of Securities

### Pro formas for Bonds & Guarantees

For use with the NEC3 Term Service Contract (TSC3)

**[Note to contract compiler:**

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

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

- Option X4: Parent company guarantee
- Option X13: Performance Bond

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

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

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

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

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

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

**Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
Sandton  
Johannesburg**

Date:

Dear Sirs,

### Parent Company Guarantee for Contract No

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

**Eskom Holdings SOC Ltd** (the *Employer*) and

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

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

I/We the undersigned

on behalf of the *Contractor's*  
parent company

of physical address

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

1. If for any reason the *Contractor* fails to Provide the Service, we hereby agree to cause to Provide the Service at no additional cost to the *Employer*.
2. If we fail to comply with the terms of this Deed of Guarantee, the *Employer* may itself procure such performance (whether or not the Agreement be formally determined). The *Employer* is to notify us and we shall indemnify the *Employer* for any additional cost or expense it incurs.
3. Our liability shall be as primary obligor and not merely as surety and shall not be impaired or discharged by reason of any arrangement or change in relationship made between the *Contractor* and the *Employer* and/or between us and *Contractor*; nor any alteration in the obligations undertaken by the *Contractor* or in the terms of the Agreement; nor any indulgence, failure, delay by you as to any matter; nor any dissolution or liquidation or such other analogous event of the *Contractor*.
4. The *Employer* shall not be obliged before taking steps to enforce the terms of this Deed of Guarantee to obtain judgement against the *Contractor* in any court or other tribunal, to make or file any claim in liquidation (or analogous proceedings) or to seek any remedy or proceed first against the *Contractor*.
5. This Deed of Guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa and we hereby submit to the non-exclusive jurisdiction of the High Court of South Africa.

ESKOM HOLDINGS SOC Ltd      The hire of Portable Toilet facilities, VIP Toilets and applicable servicing including disposal of sewage from septic tanks at various sites on an “as and when” required basis in the Kwa-Zulu Natal, Eastern Cape and Mpumalanga areas for a period of thirty-six (36) months. **ENQUIRY NUMBER: E2984DXKZNOU**

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 200\_

Signature(s)

Name(s) (printed)

Position in parent company

Signature of Witness(s)

Name(s) (printed)

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

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

**Eskom Holdings SOC Ltd**  
**Megawatt Park**  
**Maxwell Drive**  
**Sandton**  
**Johannesburg**

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

Date:

Dear Sirs

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

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

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1. In this Guarantee the following words and expressions shall have the following meanings:-
  - 1.1 “Bank” - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]
  - 1.2 “Bank’s Address” - means [●]; [Drafting Note: Bank’s physical address to be inserted]
  - 1.3 “Contract” – means the written agreement relating to the Services, entered into between Eskom and the Contractor, on or about the [●] day of [●] 200[●] (Contract Reference No. [.] as amended, varied, restated, novated or substituted from time to time; [Drafting Note: Signature Date and Contract reference number to be inserted]
  - 1.4 “Contractor” – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of Contractor to be inserted]
  - 1.5 “Eskom” - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30).
  - 1.6 “Expiry Date” - means the earlier of
    - the date that the Bank receives a notice from Eskom stating that all amounts due from the Contractor as certified in terms of the contract have been received by Eskom and that the Contractor has fulfilled all his obligations under the Contract, or
    - the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by Eskom
  - 1.7 “Guaranteed Sum” - means the sum of R [●] ([●] Rand);
  - 1.8 “Services” - means [insert as applicable].
2. At the instance of the Contractor, we the undersigned \_\_\_\_\_ and \_\_\_\_\_, in our respective capacities as \_\_\_\_\_ and \_\_\_\_\_ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of Eskom, as security for the proper performance by the Contractor of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to Eskom, on written demand from Eskom received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.
3. A demand for payment under this guarantee shall be made in writing at the Bank’s address and shall:
  - 3.1 be signed on behalf of Eskom by a Group Executive, Divisional Executive, Senior General

Manager or its delegate;

3.2            state the amount claimed ("the Demand Amount");

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

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

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

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

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

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

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

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

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

8.            This Guarantee:

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

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

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

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

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

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

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

Signed at \_\_\_\_\_

Date \_\_\_\_\_

ESKOM HOLDINGS SOC Ltd      The hire of Portable Toilet facilities, VIP Toilets and applicable servicing including disposal of sewage from septic tanks at various sites on an “as and when” required basis in the Kwa-Zulu Natal, Eastern Cape and Mpumalanga areas for a period of thirty-six (36) months. **ENQUIRY NUMBER: E2984DXKZNOU**

For and behalf of the Bank

Bank Signatory: \_\_\_\_\_

Bank Signatory: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Bank's seal or stamp

## Pro forma ASGI-SA Guarantee

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

**Eskom Holdings SOC Ltd**  
**Megawatt Park**  
**Maxwell Drive**  
**Sandton**  
**Johannesburg**

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

Date:

Dear Sirs

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

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

1. In this Guarantee the following words and expressions shall have the following meanings:-
  - 1.1 “Bank” - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]
  - 1.2 “Bank’s Address” - means [●]; [Drafting Note: Bank’s physical address to be inserted]
  - 1.3 “Contract” – means the written agreement relating to the Project, entered into between the *Employer* and the *Contractor*, on or about the [●] day of [●] 200[●] (Contract Reference No. [●] as amended, varied, restated, novated or substituted from time to time; [Drafting Note: Signature Date and Contract reference number to be inserted]
  - 1.4 “Contractor” – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of Contractor to be inserted]
  - 1.5 “Contractor’s ASGI-SA Obligations” – means the *Contractor’s* ASGI-SA Obligations under and as defined in the Contract.
  - 1.6 “Employer” - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30.
  - 1.7 “Expiry Date” - means the [●] day of [●] 200[●]; [Drafting Note: anticipated date of issue of ASGI-SA Performance Certificate to be inserted.]
  - 1.8 “Guaranteed Sum” - means the sum of R [●] ([●] Rand);
  - 1.9 “Project” – means the .....
2. At the instance of the *Contractor*, we the undersigned \_\_\_\_\_ and \_\_\_\_\_, in our respective capacities as \_\_\_\_\_ and \_\_\_\_\_ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of the *Employer*, as security for the proper performance by the *Contractor* of the *Contractor’s* ASGI-SA Obligations and hereby undertake to pay to the *Employer*, on written demand from the *Employer* received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.
3. A demand for payment under this guarantee shall be made in writing at the Bank’s address and shall:
  - 3.1 state the amount claimed (“the Demand Amount”);
  - 3.2 state that the Demand Amount is payable to the *Employer* in the circumstances contemplated in the Contract.

4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:
- 4.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
- 4.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
5. The Bank's obligations in terms of this Guarantee:
- 5.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
- 5.2 shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between the *Employer* and the *Contractor*.
6. The *Employer* shall be entitled to arrange its affairs with the *Contractor* in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the *Contractor* or any variation under or to the Contract.
7. Should the *Employer* cede its rights against the *Contractor* to a third party where such cession is permitted under the Contract, then the *Employer* shall be entitled to cede to such third party the rights of the *Employer* under this Guarantee on written notification to the Bank of such cession.
8. This Guarantee:
- 8.1 shall expire on the Expiry Date until which time it is irrevocable;
- 8.2 is, save as provided for in 7 above, personal to the *Employer* and is neither negotiable nor transferable;
- 8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
- 8.4 shall be regarded as a liquid document for the purpose of obtaining a court order; and
- 8.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the courts of the Republic of South Africa.
- 8.6 Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.
9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at \_\_\_\_\_ Date \_\_\_\_\_

For and behalf of the Bank

Bank Signatory: \_\_\_\_\_ Bank Signatory: \_\_\_\_\_

Witness: \_\_\_\_\_ Witness: \_\_\_\_\_

Bank's seal or stamp

## **PART 2: PRICING DATA**

### **TSC3 Option A**

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
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:

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

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

### Function of the Price List

Clause 54.1 in Option A states: “Information in the Price List is not Service Information”. This confirms that instructions to do work or how it is to be done are not included in the Price List but in the Service Information. This is further confirmed by Clause 20.1 which states, “The *Contractor* Provides the Service in accordance with the Service Information”. Hence the *Contractor* does **not** Provide the Service in accordance with the Price List. The Price List is only a pricing document.

### Link to the *Contractor’s* plan

Clause 21.4 states “The *Contractor* provides information which shows how each item description on the Price List relates to the operations on each plan which he submits for acceptance”. Hence when compiling the *price list*, the tendering contractor needs to develop his first clause 21.2 plan in such a way that operations shown on it can be priced in the *price list* and result in a satisfactory cash flow in terms of clause 11.2(17).

### Preparing the *price list*

Before preparing the *price list*, both the *Employer* and tendering contractors should read the TSC3 Guidance Notes pages 14 and 15. In an Option A contract, either Party may have entered items into the *price list* either as a process of offer and acceptance (tendering) or by negotiation depending on the nature of the *service* to be provided. Alternatively the *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Contractor* to include in the *price list* to be prepared and priced by him.

It is assumed that in preparing or finalising the *price list* the *Contractor*:

- Has taken account of the guidance given in the TSC3 Guidance Notes relevant to Option A;
- Understands the function of the Price List and how work is priced and paid for;
- Is aware of the need to link operations shown in his plan to items shown in the Price List;
- Has listed and priced items in the *price list* which are inclusive of everything necessary and incidental to Providing the Service in accordance with the Service Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer's* risk;
- Has priced work he decides not to show as a separate item within the Prices or rates of other listed items in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.
- Understands there is no adjustment to items priced as lump sums if the amount, or quantity, of work within that item later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the (lump sum) Prices is as a result of a compensation event.

### **Format of the *price list***

(From the example given in an Appendix within the TSC3 Guidance Notes)

Entries in the first four columns in the *price list* in section C2.2 are made either by the *Employer* or the tendering contractor.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tendering contractor enters the amount in the Price column only, the Unit, Expected Quantity and Rate columns being left blank.

If the *Contractor* is to be paid an amount for an item of work which is the rate for the work multiplied by the quantity completed, the tendering contractor enters the rate which is then multiplied by the Expected Quantity to produce the Price, which is also entered.

If the *Contractor* is to be paid a Price for an item proportional to the length of time for which a service is provided, a unit of time is stated in the Unit column and the expected length of time (as a quantity of the stated units of time) is stated in the Expected Quantity column.

## C2.2 the *price list*

### **Margate, Empangeni, Newcastle and Mkondeni areas (Estimate of ( Based on estimate of 25 Non Flush Portable Toilets and 7 VIP Toilets)**

Item no.	Description of service	Unit of issue	Price
1.	Hire of portable toilet - Non Flush	Monthly	
2.	Service of portable toilet - Non flush	Each	
3.	Transportation delivery of portable toilet - Non Flush	km	
4.	Transportation collection of portable toilet - Non Flush	km	
5.	Transportation service of portable toilet - Non Flush	km	
6.	Damage Waiver of portable toilet - Non Flush	Monthly	
7.	Hire of portable toilet - VIP	Monthly	
8.	Service of portable toilet - VIP	Each	
9.	Replenishment service -VIP	Monthly	
10.	Hand sanitiser dispenser - VIP	Monthly	
11.	Battery change - VIP	Quarterly	
12.	Damage Waiver - VIP	Monthly	
13.	Transportation delivery and collection	Each	
14.	Transportation service of portable toilet - VIP	km	

### **Eastern Cape including East London, Queenstown and King Williams Town ( Based on estimate of 5 Non Flush Portable Toilets and 2 VIP Toilets)**

Item no.	Description of service	Unit of issue	Price
1.	Hire of portable toilet - Non Flush	Monthly	
2.	Service of portable toilet - Non flush	Each	
3.	Transportation delivery of portable toilet - Non Flush	km	
4.	Transportation collection of portable toilet - Non Flush	km	
5.	Transportation service of portable toilet - Non Flush	km	
6.	Damage Waiver of portable toilet - Non Flush	Monthly	
7.	Hire of portable toilet - VIP	Monthly	
8.	Service of portable toilet - VIP	Each	
9.	Replenishment service -VIP	Monthly	
10.	Hand sanitiser dispenser - VIP	Monthly	
11.	Battery change - VIP	Quarterly	
12.	Damage Waiver - VIP	Monthly	
13.	Transportation delivery and collection	Each	
14.	Transportation service of portable toilet - VIP	km	

ESKOM HOLDINGS SOC Ltd            The hire of Portable Toilet facilities, VIP Toilets and applicable servicing including disposal of sewage from septic tanks at various sites on an “as and when” required basis in the Kwa-Zulu Natal, Eastern Cape and Mpumalanga areas for a period of thirty-six (36) months. **ENQUIRY NUMBER: E2984DXKZNOU**

**Mpumalanga including Witbank, Standarton and Mbombela. (Based on estimate of 3 Non Flush Portable Toilets and 1 VIP Toilet)**

Item no.	Description of service	Unit of issue	Price
1.	Hire of portable toilet - Non Flush	Monthly	
2.	Service of portable toilet - Non flush	Each	
3.	Transportation delivery of portable toilet - Non Flush	km	
4.	Transportation collection of portable toilet - Non Flush	km	
5.	Transportation service of portable toilet - Non Flush	km	
6.	Damage Waiver of portable toilet - Non Flush	Monthly	
7.	Hire of portable toilet - VIP	Monthly	
8.	Service of portable toilet - VIP	Each	
9.	Replenishment service -VIP	Monthly	
10.	Hand sanitiser dispenser - VIP	Monthly	
11.	Battery change - VIP	Quarterly	
12.	Damage Waiver - VIP	Monthly	
13.	Transportation delivery and collection	Each	
14.	Transportation service of portable toilet - VIP	km	

The total of the Prices excluding VAT

## PART 3: SCOPE OF WORK

**The hire of Portable Toilet facilities, VIP Toilets and applicable servicing including disposal of sewage from septic tanks at various sites on an “as and when” required basis in the Kwa-Zulu Natal, Eastern Cape and Mpumalanga areas for a period of thirty-six (36) months.**

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C3.1	<i>Employer’s Service Information</i>	
C3.2	<i>Contractor’s Service Information</i>	
	Total number of pages	

## C3.1: EMPLOYER’S SERVICE INFORMATION

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## Description of the service

The hire of Portable Toilet facilities, VIP Toilets and applicable servicing including disposal of sewage from septic tanks at various sites on an “as and when” required basis in the Kwa-Zulu Natal, Eastern Cape and Mpumalanga areas for a period of thirty-six (36) months.

## Executive overview

The hire of Portable Toilet facilities, VIP Toilets and applicable servicing including disposal of sewage from septic tanks at various sites on an “as and when” required basis in the Kwa-Zulu Natal, Eastern Cape and Mpumalanga areas for a period of thirty-six (36) months.

## 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.

## 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

## Management strategy and start up.

### 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.

## 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	Weekly on _____ at _____		
Overall contract progress and feedback	Monthly on _____ at _____		<i>Employer, Contractor and _____</i>

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

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

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

## **Contractor's management, supervision and key people**

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

## **Provision of bonds and guarantees**

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

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

## **Documentation control**

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.

## **Invoicing and payment**

The Z clauses make reference to invoicing procedures stated here in this Service Information. Also include a list of information which is to be shown on an invoice.

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

The *Contractor* shall address the tax invoice to

\_\_\_\_\_ and include on each invoice the following information:

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

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

## Contract change management

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

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

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.

## 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.

## 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*.

## 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*.

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

### 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’.

#### **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.

### **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.

## Health and safety, the environment and quality assurance

### Health and safety risk management

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

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

The 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: Kerseri Pather

The *Contractor* shall comply with the health and safety requirements contained in Annexure \_\_\_\_\_ to this Service Information.

### Environmental constraints and management

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

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

### Quality assurance requirements

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

## Procurement

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

## People

### Minimum requirements of people employed

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

### BBBEE and preferencing scheme

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

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

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

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

*[Insert the agreed ASGI-SA Compliance Schedule here]*

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

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

## Subcontracting

### Preferred subcontractors

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.

### **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.

### **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.

### **Attendance on subcontractors**

State requirements for attendance on Subcontractors, if any

## **Plant and Materials**

### **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.

### **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.

### ***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*.

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### **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.

### **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*’.

### **Cataloguing requirements by the *Contractor***

State whether cataloguing is applicable, if it is, reference the requirements for cataloguing that need to be satisfied by the *Contractor* (consult Procurement Instruction Number 1 of 2018 – Incorporating Cataloguing into the Procurement Environment, Unique Identifier 240-1289988974).

## Working on the Affected Property

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

### **Employer’s site entry and security control, permits, and site regulations**

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

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

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

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

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

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

### **Environmental controls, fauna & flora**

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.

### **Cooperating with and obtaining acceptance of Others**

This sub-paragraph could be used to deal with two issues.

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

## Records of *Contractor's* Equipment

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

## Equipment provided by the *Employer*

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

## Site services and facilities

### Provided by the *Employer*

This is a mandatory cross reference 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.

### Provided by the *Contractor*

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

## Control of noise, dust, water and waste

State requirements, if any.

## Hook ups to existing works

State any constraints

## Tests and inspections

### 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].

## Materials facilities and samples for tests and inspections

ESKOM HOLDINGS SOC Ltd      The hire of Portable Toilet facilities, VIP Toilets and applicable servicing including disposal of sewage from septic tanks at various sites on an “as and when” required basis in the Kwa-Zulu Natal, Eastern Cape and Mpumalanga areas for a period of thirty-six (36) months. **ENQUIRY NUMBER: E2984DXKZNOU**

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

