

NEC3 Term Service Contract (TSC3)

**Between Eskom Rotek Industries Soc Ltd
(Reg No. 1990/006897/30)**

**and
(Reg No.)**

**for The Provision of Professional Cleaning Services for
A Period of Five (5) Years**

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CONTRACT No.

PART C1: AGREEMENTS & CONTRACT DATA

Contents:	No of pages
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C1.1 Form of Offer & Acceptance

Offer

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

The Provision of Professional Cleaning Services

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

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

Options A	The offered total of the Prices exclusive of VAT is	Rate based
	Value Added Tax @ 15% is	-
	The offered total of the amount due inclusive of VAT is ¹	Rate based

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:**

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 Rotek Industries SOC Ltd
Lower Germiston Road, Rosherville, 2022

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	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.

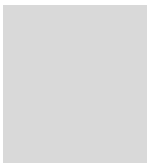
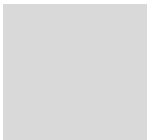
For the tenderer:

For the Employer

Signature	_____	_____
Name	_____	_____
Capacity	_____	_____
On behalf of	_____	Eskom Rotek Industries SOC Ltd
Name & signature of witness	_____	_____
Date	_____	_____

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 and secondary Options	W1: Dispute resolution procedure
		
		X1: Price adjustment for inflation
		X2: Changes in the law
		X17: Low service damages
		X18: Limitation of liability
		X19: Task Order
		Z: Additional conditions of contract
	of the NEC3 Term Service Contract April 2013 ² (TSC3)	
10.1	The <i>Employer</i> is (name):	Eskom Rotek Industries SOC Ltd (Reg no: 1990/006897/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Roshland Office Park Lower Germiston Road Rosherville
10.1	The <i>Service Manager</i> is (name):	
	Address	Roshland Office Park Lower Germiston Road

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

Rosherville

Tel

e-mail

11.2(2)	The Affected Property is	Eskom Rotek Industries - Rosherville
11.2(13)	The <i>service</i> is	Cleaning services
11.2(14)	The following matters will be included in the Risk Register	People, Safety, Environment
11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents and drawings to which it refers.
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	1 week
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 <i>Contractor</i> submits a first plan for acceptance within	N/A
3	Time	
30.1	The <i>starting date</i> is.	
30.1	The <i>service period</i> is	
4	Testing and defects	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
5	Payment	
50.1	The <i>assessment interval</i> is	between the 1st day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	4 weeks.
51.4	The <i>interest rate</i> is	the publicly quoted prime rate of interest (calculated on a 365-day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and

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

6	Compensation events	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	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	1. As per Eskom's requirements
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:	Any that the Contractor deems necessary in addition to the insurances provided by the Employer plus the amount of the deductibles in respect of the Employers Format an insurance Policy
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	N/A

	include cover for Plant and Materials provided by the <i>Employer</i> for an amount of	
83.1	The minimum amount of cover for insurance in respect of loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one event is:	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	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.
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 service at intervals no longer than	N/A
11	Data for Option W1	
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 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	To be appointed when dispute arise.
W1.2(3)	The <i>Adjudicator nominating body</i> is: An Adjudicator will be appointed between the Contractor and the Employer should a dispute arises. The costs that the Adjudicator charge will be divided between both Parties at 50% for each parties account.	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

	The place where arbitration is to be held is The person or organisation who will choose an arbitrator - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is	Arbitrators (Southern Africa) or its successor body. South Africa the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
12	Data for secondary Option clauses	
X1	Price adjustment for inflation	The applicable CPA will be effected on each anniversary of the contract commencement date
X1.1	The base date for the indices	12 Months after signing the contract
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.
X17	Low service damages	
X17.1	The <i>service level table</i> is in	The service table matrix
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 <i>http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</i>
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 <i>http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</i>
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	12 months after the end of the <i>service period</i>.
X19	Task Order	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	14 days of receiving the Task Order
Z	The <i>additional conditions of contract</i> are	Z1 to Z11 always apply.

Z1 Cession delegation and assignment

- Z1.1 The *Contractor* does not cede, delegate, or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Contractor* cede and 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 because 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 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 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 influence the actions of an Affected Party unlawfully or illegally,

Fraudulent Action means, any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, 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.

- Z4.2 A Committing Party may not take any Prohibited Action during the procurement of this contract or in execution thereof.
- Z4.3 The Employer may terminate the Contractor's obligation to Provide the Service 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 Service for this reason.
- Z4.4 If the Employer terminates the Contractor's obligation to Provide the Service for this reason, the procedures and amounts due on termination are respectively P1, P2, P3 and P4, and A1

and A3

- Z4.5 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.

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 If 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. If 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, while 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 enough 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 4330196330 on each invoice he submits for payment.

Z9 Notifying compensation events

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

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

Z10 Employer's limitation of liability

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

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

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

Annexure A: Insurance provided by the Employer

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

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

[http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_
From_1_April_2014_To_31_March_2015.aspx](http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx)

C1.2 Contract Data

Part two - Data provided by the *Contractor*

[Instructions to the contract compiler: (delete this note 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. If 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 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.	
11.2(19)	The tendered total of the Prices is	R

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

PART 2: PRICING DATA

TSC3 Option A

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	0
C2.2	The <i>price list</i>	[0]

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 - 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 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 because 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

ADDENDUM B - Pricing Schedule

Code	Item nr	Description	UOM	Period	Qty	Frequency	Total Quantity	Rate	Total cost
	A1	P&G's							
3000017289	A1.1	Vehicle (Total Monthly Vehicle cost including fuel)	Each	Monthly	1	60	60		-
3000026867	A1.2	Shift transport (Night shift)	Each	Monthly	1	60	60		-
3000016363	A1.3	Medicals (Bi-Annual+Exit)	Each	Yr1/Yr3/Y5	52	3	156		-
3000049345	A1.4	Police Clearance	Each	Once off	52	1	52		-
Total P&G's									
	A1.5	PPE							
30000163	A.1.5.1	PPE (overall pants x3)	Each	Annually	156	5	780		-
0566544	A.1.5.2	PPE (overall jacket x3)	Each	Annually	156	5	780		-
0566700	A.1.5.3	PPE (safety boots/shoes x2)	Each	Annually	104	5	520		-
0222555	A.1.5.4	Winter Jackets	Each	Bi-annually	156	3	468		-
Total PPE									
	A1.6	Consumables							
0513594	A1.6.1	Telescopic Feather duster	Each	Quarterly	48	20	960		-
0158461	A1.6.2	Bucket 5 l	Each	Quarterly	48	20	960		-
0548421	A1.6.3	Soft broom	Each	Quarterly	48	20	960		-
0514992	A1.6.4	Long hair Mop	Each	Quarterly	48	20	960		-
0610130	A1.6.5	Fiber Cloth x 3	Each	Monthly	144	60	8 640		-
0546063	A1.6.6	Mutton Cloth	Roll	Monthly	48	60	2 880		-
0605236	A1.6.7	Sponges	Each	Weekly	48	240	11 520		-
0548516	A1.6.8	Dish cloth	Each	Monthly	48	60	2 880		-
0515915	A1.6.9	Telescopic Window Cleaner/Squeegee	Each	Quarterly	48	20	960		-
0550238	A1.6.10	Safety glasses clear	Each	As and when	18	60	1 080		-
0609727	A1.6.11	Gloves	Each	Weekly	48	240	11 520		-
0538192	A1.6.12	Sign Caution wet floor	Each	Annually	48	3	144		-
0566740	A1.6.13	Dust Mask	Each	As and when	48	20	960		-
0550676	A1.6.14	Earplugs	Each	As and when	48	60	2 880		-
0724833	A1.6.15	Vacuum bags	Each	Monthly	20	60	1 200		-
0605233	A1.6.16	Mop bucket with ringer	Each	Once off	20	1	20		-
Total Consumables									
	A1.7	Cleaning Chemicals							
0159845	A1.7.1	Dishwashing Liquid 750ml	Each	Monthly	48	120	5 760		-
0538660	A1.7.2	All purpose Cleaner 750ml	Each	Monthly	48	120	5 760		-
0159800	A1.7.3	Upholstery Cleaner 1l	Each	Monthly	24	60	1 440		-
0157669	A1.7.4	Bleach 750ml	Each	Monthly	48	120	5 760		-
0609803	A1.7.5	Thick bleach 750ml	Each	Monthly	48	120	5 760		-
0545694	A1.7.6	Furniture polish 300ml	Each	Monthly	48	60	2 880		-
0610140	A1.7.7	Anti Slip Floor Polish 5l	Each	Monthly	24	60	1 440		-
0522195	A1.7.8	Air Freshener 210ml	Each	Monthly	48	60	2 880		-
0159800	A1.7.9	Carpet Cleaner 1l	Each	Monthly	24	60	1 440		-
0666591	A1.7.10	Window Cleaner 750ml	Each	Monthly	48	60	2 880		-
Total Cleaning Chemicals									
	A1.8	Tools & Equipment							

ADDENDUM C - Pricing Schedule

Code	Item nr	Description	UOM	Period	Qty	Frequency	Total Quantity	Rate	Total cost
0696204	A1.8.1	Industrial Wet & Dry Cleaning machine	Each	Once off	20	1	20		-
3000026053	A1.8.2	Industrial Carpet & upholstery cleaning machine	Each	Once off	2	1	2		-
0692416	A1.8.3	Industrial polisher/shrubber	Each	Once off	2	1	2		-
0692416	A1.8.4	Industrial portable steam cleaner	Each	Once off	1	1	1		-
Total Tools & Equipment									
	A1.9	Administration fee							
3000020467	A.1.10	Admin Fee	Each	Monthly	1	60	60		-
Total Administration fee									
	B1	Skill Type							
3000020377	B1.1	Site supervisor	Hour	Monthly	346	60	20 760		-
3000017223	B1.2	General worker Hygiene Services	Hour	Monthly	6 920	60	415 200		-
3000017224	B1.3	General worker Shift	Hour	Monthly	1 464	60	87 840		-
3000020377	B1.4	Site supervisor Shift	Hour	Monthly	346	60	20 760		-
3000017223	B1.5	Shift allowance General worker	Hour	Monthly	1 464	60	87 840		-
3000020377	B1.6	Shift allowance Supervisor	Hour	Monthly	366	60	21 960		-
3000017993	B1.7	Overtime x 1.5 Hygiene worker	Hour	Monthly	40	60	2 400		-
3000017992	B1.8	Overtime x 2 Hygiene worker	Hour	Monthly	40	60	2 400		-
3000017993	B1.9	Overtime x 1.5 Hygiene worker	Hour	Monthly	40	60	2 400		-
3000017992	B1.10	Overtime x 2 Hygiene worker	Hour	Monthly	40	60	2 400		-
Total Skills									
Total									

*** Administration fee to be based on negotiated percentage of the monthly invoice

PART 3: SCOPE OF WORK

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

Scope Of Work

1. Purpose

The purpose of this document is to define the cleaning services required for Eskom Rotek Industries (ERI) at Rosherville for a period of five (5) years.

2. Brief overview of our business

Eskom Rotek Industries (ERI) Office Services provide cleaning, deep cleaning, pest control, horticulture & washroom services at Rosherville.

Properties are scattered throughout Rosherville and all areas are stipulated on the cleaning matrix by means of an area description and notional stand number as per the map provided. All Safety, Health, Environmental and Quality requirements should be met by compiling a SHEQ file before work may commence.

3. Description of Services

Cleaning services will include general cleaning, window cleaning, blind & curtain cleaning, bin cleaning, and carpet & upholstery cleaning for offices, bathrooms, kitchens, hallways, lifts, residential properties, common areas and smoking areas at Eskom Rotek Industries (ERI) Rosherville farm for a period of five (5) years on an as and when required basis.

4. Performance Specification

- Areas should be cleaned in such a way that they are aesthetically and hygienecally acceptable.
- All areas and cleaning activities are stipulated on the matrix by means of an area description, stand number and building number.
- Quantities and areas might vary and are not guaranteed. Any changes with regards to quantities and areas will be done in consultation with the service provider.
- Ensure that Chemicals used does not have an impact on the health and safety of ERI employees and the environment, where risks exist appropriate measures shall be put in place.
- Ensure that SDS's are not older than Five years.

5. Labour

- The service provider must ensure that labour cost is paid in accordance with section 6(5) of the National Minimum Wage Act, No 9 of 2018. It is amended annually under a Government Notice published in the Government Gazette and applicable on 1 March each year. The current applicable Regulation notice is No. 11792 Vol 716 4 February 2025 No.52053. The contract labour sector applicable to this contract is Contract Cleaning. (Addendum H)
 - All statutory labour cost must be adhered to, including UIF, SDL & Workman's Compensation fund contributions.
-

- Annual & Sick leave allowances must adhere to the Basic Conditions of Employment Act 75 of 1997.
- Normal working hours are from Monday to Friday. (40-hour work week)
- Shift work is required in the workshops for nightshift Monday to Friday (on an as and when basis). Shift work is also required on weekends (day and nightshift, on an as and when basis).
- Night shift will not exceed an 8-hour shift and on weekends it will not exceed an 8-hour dayshift and an 8-hour nightshift. The hours and areas might vary based on the operational requirements from the workshop and will be on an as and when required basis.
- Maximum of 40 hygiene workers is required from Monday to Friday for day shift.
- Maximum of 8 shift workers required for nightshift Monday to Friday. Shift workers also required to work on weekends day and night shift.
- Supervisor x 2 for dayshift Monday to Friday
- Supervisor x 2 for nightshift Monday to Friday, and weekend work as and when required.
- Transport for nightshift to be provided by the service provider.

6. Tools & Equipment

The service provider must provide the following equipment to execute all activities on the contract:

- Minimum of 20 Industrial heavy duty Wet & Dry vacuum cleaners
- Industrial heavy duty carpet cleaning machine x 2
- Industrial polisher/scrubber x 2
- Industrial heavy duty portable steam cleaner for curtains & blinds x 1

7. Site vehicle

The site is very large and scattered and a vehicle is required to deliver materials, consumables, papers and tools and equipment to personnel. Distances are very short and with efficient planning the trips can be optimized.

- Site vehicle x 1 LDV or similar, to collect and deliver all materials, consumables and tools and equipment to different locations on site.
- Vehicle must be licenced, roadworthy and compliant with all safety requirements.
- Driver must be in possession of a valid South-African driver's licence.
- Cost must be done all inclusive as a monthly charge.

8. PPE

The service provider must provide the following PPE to all the personnel on the contract on an annual, bi-annual, and monthly basis:

- PPE (overall pants and jacket minimum of 3, safety boots x 2) annually.
 - Reflector jacket, safety goggles, ear plugs and hard hat, if and when required.
-

-
- PPE consumables gloves, masks, earplugs etc.
 - Provide PPE (Personal protective equipment) as per Eskom PPE Specification 240-44175132 (Addendum G) and all safety consumables (gloves, goggles, masks etc.) for employees on the contract.

9. Chemicals and consumables

- All chemicals to execute the tasks as per the SOW and matrix. (Chemicals must be SABS approved and SDS's not older than 5 years must be provided).
- The correct applicable chemicals must be used, specific to the areas serviced e.g., Ablutions (thick Bleach, bleach, scale remover, disinfectants etc.), Kitchens (dishwashing liquid, tile cleaner, all-purpose cleaner etc.), Offices (furniture polish, wood oil, carpet shampoo, window cleaner etc.) and communal areas and all other services rendered.
- All cleaning consumables must be supplied by the service provider (Industrial buckets, mops, telescopic squeegees, feather dusters, sponges, dish cloths, fibre / mutton cloths etc.).

10. Scope of Work

10.1. ADHOC Services (As and When requested hourly)

These services will be requested by the Service Manager as a once off service.

- General Cleaning
Any additional cleaning requested by business.
 - Carpet Vacuuming
Any additional Carpet vacuuming requested by business.
 - Window Cleaning
Additional request to clean a window by business
 - Blind Steam Cleaning
Any request from business to steam clean blinds.
 - Curtain Cleaning
Cleaning of Curtains by business. Curtains to be removed, dry cleaned and re-fitted onto rails
 - Single Quarter room Cleaning
This request will be a once off cleaning before a new tenant occupies the room.
 - Residential Property Cleaning
This request will be a once off cleaning before a new tenant occupies the house and/or on request by business.
 - Water Spillage
On request by business to assist in any emergency water spillage when it may occur.
-

10.2. TGS Workshop Services - After hours & Nightshift (52 Weeks x 7 Days/Week)

- These services to be executed after normal working hours.
- Nightshift will be determined on an as and when basis
- Mondays to Fridays, Saturdays, and Sundays. Areas and hours stipulated as per Addendum C.

10.3. TSS Workshop Services - After hours & Nightshift (52 Weeks x 2 Days/Week)

- These services to be executed after normal working hours.
- Nightshift will be determined on an as and when basis
- Two days during the week only. Areas and hours stipulated as per Addendum E.

10.4. Daily Services (52 weeks X 5 days/week)

The following area description will be part of the daily cleaning services:

- Offices (enclosed or open plan)
- Guard houses (Ground level guard houses only)
- Boardrooms
- Smoking areas (Areas allocated for smokers)
- Communal areas (Areas not in the office space)
- Green areas
- Lifts
- Canteen
- Medical centre
- Staircases (including emergency staircase)
- Kitchens (Twice / day)
- Ablutions (Twice / day)

Daily activities include the following:

- Dusting (Tables, blinds, chairs, cupboards, windowsills, portraits, doors and frames, skirtings and cornices, Ceiling fans, Ceiling lights, rails, office equipment etc.)
- Window cleaning (No step ladders may be used and all cleaning to commence from ground level). Telescopic Window cleaners (squeegees) must be used to reach higher areas that are not reachable from ground level.
- Wiping (Dirty marks to be removed on all surfaces with a damp cloth and dried with a dry cloth where applicable to remove stains and marks)

Controlled Disclosure

-
- Polishing (All wooden surfaces to be polished with a furniture polish and may be applied where necessary on veneer surfaces)
 - Cleaning (All kitchen appliances, ablution touch points that includes, toilet seats, urinal flush masters, zinc's, tops, cupboards, earns, taps, door handles, any push buttons, handrails, ablution hygiene equipment, walls, wall tiles, furniture in waiting areas and green areas, etc. to be wiped off and disinfected.)
 - Bin Cleaning (All bins in the offices, kitchen's, green areas, and ablutions to be cleaned on a regular basis by removing domestic waste and / or replacing the bin liners when necessary)
 - Floor care:
 - 1. All wooden, ceramic tiles, laminated and vinyl floors to be cleaned in a proper way by means of sweeping, mopping, sealing, and buffing process.
 - 2. All carpeted floors to be vacuumed twice a week or when necessary. High traffic areas might require additional vacuuming.
 - Paper replenishment (Replacement of Toilet paper, Jumbo rolls and hand towels in ablutions, kitchens, green areas and some areas where paper centre feeds are fitted.) Paper will be provided by ERI and to be collected by service provider at the ERI Hygiene store.
 - Blind Cleaning (Blinds to be dusted and swiped with damp cloth where necessary). Steam cleaning if and when required.
 - Artificial flowers and holders (To be wiped with a damp cloth when necessary)

10.5. Half Yearly Services (2 X / YEAR)

- **Carpet Washing** – Shampooing carpets may be cleaned with a wet or dry process. Some areas have tile carpets, and some areas has carpet with underfelt installed. Prior arrangements must be made with the clients before delivering this service which can only be done after working hours or weekends. Proof of Service delivery (POD's) to be provided for payment purposes.
- **Couch Upholstery Cleaning**- Irrespective of the size and shape of the couch, all couches to be cleaned on a regular basis when that area's carpets are serviced.
- **Chair Upholstery Cleaning**- Irrespective of the size and shape of the chair, all material covered chairs to be cleaned on a regular basis when that area's carpets are serviced.

NOTE: Carpets, couches, and chairs to be washed during normal working hours and arrangements with clients should be made prior to cleaning

11. General

- Generally, all areas stipulated on Matrix should be cleaned.
-

- Quantities and services will be agreed upon based on service matrix and payment will be made in accordance to approved POD's.
- ERI will provide the site office, toilet paper, jumbo rolls, hand towel paper, toilet brush sets and bin liners. ERI will also provide beverages. All items to be collected by the service provider from the hygiene services storeroom.
- All quantities and the servicing of stands are subject to change. Services / activities on certain stands might be discontinued during the contract duration.
- Square meters indicate the area, which must be serviced and the activities as per the scope of work section 10, must be catered for daily, weekly, monthly, ad hoc and bi-annually.
- All electrical equipment (Industrial vacuum cleaners, steam cleaner, carpet shampooer, polisher, wet and dry vacuum cleaner etc.) must be provided by service provider to execute their duties. The service provider must ensure that the quantities will be enough to service all areas as per the SOW.
- The contractor must ensure that they always have a sufficient number of cleaning staff on site to ensure that the cleaning service is adequately rendered.
- Provide Transport (after hours & nightshift) and daily transport on site
- Provide PPE (Personal protective equipment) as per Eskom PPE Specification 240-44175132 (Addendum G) and all safety consumables (gloves, goggles, masks etc.) for employees on the contract.

12. Service Requirements

- Facility to be inspected and cleaned daily by service provider.
- Record keeping (Proof of service delivery) in areas serviced is essential as per matrix. Weekly and Monthly timesheets to be submitted to the service manager for approval. Service delivery summaries must accompany the timesheets, chemical & consumable issues etc.
- Service delivery should be discussed with customer to comply with their needs and according to their work environment.
- Regular meetings with customer to discuss service delivery, complaints, ad hoc services etc.

13. Addendums

13.1. Addendum: A

ERI Cleaning Service Matrix

13.2. Addendum: B

ERI Cleaning Pricing Schedule

13.3. Addendum: C

ERI TGS Workshop Services - After hours & Nightshift

13.4. Addendum: D

ERI Curtain Cleaning Matrix

13.5. Addendum: E

ERI TSS Workshop Services - After hours & Nightshift

13.6. Addendum: F

ERI Carpets, Blinds and Window Matrix

13.7. Addendum: G

Eskom PPE Specification 240-44175132

13.8. Addendum: H

National Minimum Wage Act, No 9 of 2018. Regulation notice No. 11792 Vol 716 4
February 2025 No.52053.

NOTE: The quantities, on the Matrix is just a guideline and not guaranteed. Areas stipulated may change as services progresses. Quantities to be verified before acceptance. Service reports to be provided with all services rendered.

1.1 Invoicing and payment

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

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

The *Contractor* shall address the tax invoice to

_____ and include on each invoice the following information:

- Name and address of the *Contractor* and the *Service Manager*.
- The contract number and title.
- *Contractor's* VAT registration number.
- The *Employer's* VAT registration number 4330196330.
- Description of service provided for each item invoiced based on the Price List.
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT.
- (Add other as required)

CONFIDENTIALITY AGREEMENT

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

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

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

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

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

Information of each other, shall be destroyed, and such destruction shall be certified in writing by an authorised officer supervising such destruction.

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

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