

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

NEC3 Term Service Contract (TSC3)

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

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

**for Provision of Ash and Coal Handling Yellow plant services
required for the efficient running of the Eskom Power
Stations under ERI BMS Ash and Coal Handling
Operations for a period 12 months on an 'as and when
required basis**

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

CONTRACT No. [Insert at award stage]

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

PART C1: AGREEMENTS & CONTRACT DATA

Contents:	No of pages
C1.1 Form of Offer and Acceptance	[•]
[to be inserted from Returnable Documents at award stage]	
C1.2a Contract Data provided by the <i>Employer</i>	[•]
C1.2b Contract Data provided by the <i>Contractor</i>	[•]
[to be inserted from Returnable Documents at award stage]	
C1.3 Proforma Guarantees	[•]

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

C1.1 Form of Offer & Acceptance

Offer

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

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 12 months on an 'as and when required basis

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 [•]
	Sub total	R [•]
	Value Added Tax @ 15% is	R [•]
	The offered total of the amount due inclusive of VAT is ¹	R [•]
	(in words) [•]	

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

Signature(s)

Name(s)

Capacity

For the tenderer:

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*.

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

Name & signature of witness
(Insert name and address of organisation)

Date

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

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

(Insert name and address of
organisation)

Date

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

witness _____

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

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

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

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

On behalf	_____	_____
of	<i>(Insert name and address of organisation)</i>	<i>(Insert name and address of organisation)</i>

Name &	_____	_____
signature		
of		
witness	_____	_____

Date	_____	_____
------	-------	-------

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

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

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
	dispute resolution Option	A: Priced contract with price list
	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
		X20 : Key performance indicators
		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
	Tel No.	011 629 4000
	Fax No.	[•]

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

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

10.1	The <i>Service Manager</i> is (name):	to be completed on award
	Address	[•]
	Tel	[•]
	Fax	[•]
	e-mail	[•]
11.2(2)	The Affected Property is	Various Power Stations
11.2(13)	The <i>service</i> is	Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 12 months on an 'as and when required basis
11.2(14)	The following matters will be included in the Risk Register	Low services damages
11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	7 days
2	The <i>Contractor's</i> main responsibilities	Data required by this section of the core clauses is also provided by the <i>Contractor</i> 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	one week of the Contract Date
3	Time	
30.1	The <i>starting date</i> is.	1 August 2025
30.1	The <i>service period</i> is	15 Months
5	Payment	
50.1	The <i>assessment interval</i> is	between the 26th 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	30 days.

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

51.4	The <i>interest rate</i> is	<p>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</p> <p>(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.</p>
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	<ol style="list-style-type: none"> 1. Continuous breakdown of mobile plant 2. Delay in establishing mobile plant
83.1	The <i>Employer</i> provides these additional insurances	<p>The <i>Contractor</i> provides all relevant insurance for all vehicles provided in this contract.</p> <p>The <i>Contractor</i> provides Passenger Liability Insurance at a minimum value of R5 000 000.00</p>

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

		The Contractor provides Public Liability Insurance.
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 Contractor deems necessary in addition to that provided by the Employer.
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 Contractor's 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	Low services damages table X1
10	Data for main Option clause	
A	Priced contract with price list	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than	4 weeks.
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).
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	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.

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

50% for each parties account.

W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	Johannesburg, South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
	- if the arbitration procedure does not state who selects an arbitrator, is	

12 Data for secondary Option clauses

X1	Price adjustment for inflation
X1.1	The <i>base date</i> for indices is Closing date of the tender
X17	Low service damages
X17.1	The <i>service level table</i> below

Item #	Activity description	Duration	Penalty
1	Establish the required mobile plant on time.	Within 72 hours upon receipt of the Task Order	The Employer issues an Early Warning demanding that mobile plant be issued within 48 hours.
2	Establish the required mobile plant in response to the Early Warning issued.	Within 48 hours upon receipt of the Early Warning	Failure to establish mobile plant results in initiation of the contract termination process.
3	Repair or replace plant on breakdown.	Within 48 hours upon receipt of the Early Warning	Failure to repair or replace plant on breakdown will result in a penalty of 5% per day late, capped at 10% of the monthly assessment
4	Hold monthly meetings with employees and submit minutes to the Employer	Monthly	Failure to hold a monthly meeting will result in a penalty on 2% of the monthly assessment

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>	the amount of the deductibles relevant to

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

	liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited 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
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<p>the total of the Prices other than for the additional excluded matters.</p> <p>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</p> <ul style="list-style-type: none"> • 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	one 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	7 days of receiving the Task Order
X20	Key Performance Indicators (not used when Option X12 applies)	
X20.1	The <i>incentive schedule</i> for Key Performance Indicators is in	Annexure [●] to this Contract Data
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	one month
Z	The <i>additional conditions of contract</i> are	Z1 to Z11 always apply.

Z1 Cession delegation and assignment

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

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

Z2 Joint ventures

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

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

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

Z4 Ethics

- Z4.1 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

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

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.

- Z4.2 A Committing Party may not take any Prohibited Action during the course of 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

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.

- Z5.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.
- Z5.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z5.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z5.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z6 Waiver and estoppel: Add to core clause 12.3:

- Z6.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Service Manager* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z7 Health, safety and the environment: Add to core clause 27.4

- Z7.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:
- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Affected Property;
 - warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and
 - undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

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.

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

Annexure A: Insurance provided by the Employer

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

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

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

C1.2 Contract Data

Part two - Data provided by the Contractor

[Instructions to the contract compiler: (delete this notes before issue to tenderers with an enquiry)

Whenever a cell is shaded in the left hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row.]

Notes to a tendering contractor:

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

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

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. 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	
A	Priced contract with price list	
11.2(12)	The <i>price list</i> is in	
11.2(19)	The tendered total of the Prices is	R

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

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

PART 2: PRICING DATA
TSC3 Option A

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

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

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

Identified and defined terms 11 11.2 (12) The Price List is the *price list* unless later changed in accordance with this contract.

(17) The Price for Services Provided to Date is the total of

- the Price for each lump sum item in the Price List which the *Contractor* has completed and
- where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Contractor* has completed by the rate.

(19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.

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

Function of the Price List

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

Link to the *Contractor's* plan

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

Preparing the *price list*

Before preparing the *price list*, both the *Employer* and tendering contractors should read the TSC3 Guidance Notes pages 14 and 15. In an Option A contract, either Party may have entered items into the *price list* either as a process of offer and acceptance (tendering) or by negotiation

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

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.

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

C2.2 the *price list*

As pe attached BOQ for each station

The total of the Prices

PART 3: SCOPE OF WORK

Page 25 of 34

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 15 months on an 'as and when required basis

C3.1: EMPLOYER'S SERVICE INFORMATION

1 Description of the service

1.1 Executive overview

The Operation is on a twenty four hour per day, seven days per week basis.

The volumes of material to be handled vary from month to month depending on the Power Stations coal burning and ashing demands.

Operation activities required entails:

- Loading, stockpiling, and compacting of coal to the emergency and strategic piles
- Reclaiming of coal from the emergency, and strategic stockpiles to mobile feeders
- Hauling of coal from the emergency offloading area to the emergency or strategic stockpiles
- Building of the ash dam and dump
- Maintaining and operating of ash dam and coal stockpile
- Maintain high, "Good Housekeeping" standards in and around the machinery and work area
- Avoid any spillages from Mobile plant due to maintenance or operating that contaminates the environment
- Comply to sites specific requirements as clearly displayed by the site management including but not limited to SHEQ requirements

The successful Mobile plant service provider shall supply, deliver and operate mobile Mobile plant as agreed upon in the contract.

The successful Mobile plant service provider shall provide all labour, supervision, administration and management to perform the mobile Mobile plant service as required at all times.

Labour recruitment shall follow established recruitment protocols at that particular operating site

1.2 Employer's requirements for the service

The Employer's objectives are to:

- Obtain mobile plant service providers to supply Mobile Plant to for the operations.
- Manage and control the risks associated with the Mobile plant maintenance and operation at different operating sites for Limestone, Ash and Coal Handling Operations.

1.2.1 Mobile Plant Specifications

1.2.1.1. The successful Mobile plant service provider is responsible to provide the following Mobile plant as per bill of quantities supplied on an as and when required basis.

1.2.1.2 The successful service provider shall be **provided with diesel** for the operations and thus needs to bear that in mind when pricing.

1.2.1.3 The operator rate shall include medicals, transport, accommodation and any other costs related to the operator.

1.2.1.4 The rate for the machinery shall include both establishment and de-establishment.

1.2.1.5 The supplier is expected to respond to the breakdown within 48 hours and failure shall result in the supplier replacing the machine with like machinery within 2 days after the first 48 hours.

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 12 months on an 'as and when required basis

1.2.2.0. Sourcing conditions

1.2.2.1 Mobile plant working shifts.

- Mobile plant pricing must be per hour at a dry rate and exclude the Operator.
- The minimum hours paid per week day for the machine will be 9 hours (Excluding Saturdays and Sundays); above 9 hours will be as per the hour meter reading
- 4 x Operators per machine (4 shift cycle), where applicable to the operations. **Supplier to follow the shift roster of that particular site**
- Transportation and accommodation of operators shall be included in the operator rates.
- The Operator rate will be fixed for 22 hours for each day of the month.
- In the event of a mobile plant breakdown, all payment will be forfeited for the breakdown hours.
- Establishment and de-establishment will form part of the plant rate and paid after the assessment is concluded, no pre-payment to be entered into.
- The costs for the establishment and de-establishment of Mobile plant at the beginning and at the end of the contract are included in the rate.
- Any service provider that is involved in unsafe act or environmental contravention will have the total fleet on site stopped until an improvement plan is approved by the ERI BMS site management.

1.3. Mobile plant working day shifts only.

- Mobile plant pricing must be per hour at a dry rate and the operator rate is provided separately; the service provider must include transportation and accommodation of operators in the operators rate.
- The minimum hours paid per day for the machine will be 9 hours; above 9 hours will be as per the hour meter reading
- 1 x Operator per machine
- Overtime during the week and weekends will be required if conditions necessitate it.
- In the event of a breakdown, all payment will be forfeited for the breakdown hours.
- Establishment and de-establishment at the beginning and ending of the contract will be paid after the fact as they are included in the rate and no pre-payment to be entered into.
- Any service provider that is involved in an unsafe act or environmental contravention will have the total fleet on site stopped until an improvement plan is approved by the ERI BMS site management.

1.4. Deliverables

1.4.1. The successful mobile plant service provider shall provide a Mobile plant maintenance plan for all Mobile plant supplied under the contract

1.4.2. The successful mobile plant service provider provides Mobile plant to BMS within the specified time of notice given in writing

1.4.3. The successful mobile plant service provider provides plant with the following;

- All wheeled plant to have stop blocks
- All mobile plant to have oil drip tray per unit of plant,

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 12 months on an 'as and when required basis

- Competent Mobile plant operators with all documents.
- Weight meter is not a requirement
- Fitted air-condition
- Canopy fully sealed from dust or water ingress
- Fitted with OEM approved comfortable chair with safety belt
- That is within five years or maximum six thousand hours in use. Note any Mobile plant above five years or six thousand hours in use must provide reliability test certificate issued by competent approved tester or OEM
- Fitted with fuel flow sensor
- Fitted with a strobe light

1.5 Required mobile plant specification

The specification included is a minimum guideline for the required plant and can only be used as an indicator of the class of the equipment that is required. The quantities are an estimate of requirements is based on and as and when required basis.

PLANT	SPECIFICATIONS
Tipper Truck	Tipper Truck, Min Power 206 Kw, Min load Cap 10m ³
Water Cart	Watercarts, Min Power 206 kW , Vol 18000L
Smooth Drum Roller	Smooth Drum Roller, Min Power 62.6, Cap W 10Ton
Front End loader	Front End Loader, Min Power 210 kW, Min Vol. 6m ³
Skid Steer Loader	Skid Steer Loader, Min Power 35 kW, Min Operating Cap. 610 kg
Grader	Motor Grader, Min Power 135 kW, Min Cut depth 650 mm
Dozer 1	Bull Dozer Big, Min Power 210 kW, Blade Cap 10.5 m ³
Dozer 2	Bull Dozer Medium, Min Power 140 kW, Blade Cap 5 m ³
Diesel Truck	Diesel Truck, Min Power 185 Kw, Cap vol 4500 L
Vacuum Truck	Vacuum Truck, Min Power 125 Kw, Cap vol 16000 L
ADT	ADT, Min Power 240 kW, Weight 30 Tons
Diesel Truck	Diesel Truck, Min Power 125 Kw, Cap vol 16000 L
Excavator	Excavator min 20 Ton less 30 Ton

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 12 months on an 'as and when required basis

1.6.1.3. Diesel driven equipment is maintained at availability in excess of average 95%, measured at weekly intervals

1.6.1.4. The successful Mobile plant service provider replaces Mobile plant when the successful Mobile plant service provider cannot attain average 95% availability per week per Equipment

1.6.1.5. The successful Mobile plant service provider notifies the site management when the Mobile plant is taken out of operation for maintenance purposes and the duration of the maintenance activity.

1.6.1.6. The successful Mobile plant service provider obtains the acceptance of the Project Manager in writing prior to reallocation of Mobile plant to other work.

2 Management strategy and start up.

2.1 The Contractor's plan for the service

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

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

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

2.2 Management meetings

The *conditions of contract* (e.g. Clause 16.2) and other sections of the Service Information (e.g. safety risk management) may require that a meeting shall be held. However the intention of all NEC contracts is that the Parties and their agents use the techniques of partnering to manage the contract by holding meetings designed to pro actively and jointly manage the administration of the contract with the objective of minimising the adverse effects of risks and surprises for both Parties. Depending on the size and complexity of the *service*, it is probably beneficial for the *Service Manager* to hold a weekly risk register meeting (Clause 16.2). This could be used to discuss safety, compensation events, subcontracting, overall co-ordination and other matters of a general nature. Separate meetings for specialist activities such as planning and activities of a technical nature may also be warranted.

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

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

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 12 months on an 'as and when required basis

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.

2.3 Invoicing and payment

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

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

The *Contractor* shall address the tax invoice to

_____ and include on each invoice the following information:

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

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

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 12 months on an 'as and when required basis

3 Health and safety, the environment and quality assurance

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

3.1 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 _____

3.2 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.

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 12 months on an 'as and when required basis

4 Working on the Affected Property

4.1 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.

4.2 Health and safety facilities on the Affected Property

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

4.3 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.

4.4 Site services and facilities

4.4.1 Provided by the *Employer*

This is a mandatory cross reference from clause 25.2 in TSC3. The *Employer* will provide in the way of power, water, waste disposal, ablutions, fire protection and lighting (etc) on the Affected Property. The *Contractor* shall provide everything else necessary for Providing the Service.

4.4.2 Provided by the *Contractor*

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

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 12 months on an 'as and when required basis

CONFIDENTIALITY AGREEMENT

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

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

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

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

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

Provision of Ash and Coal Handling Yellow plant services required for the efficient running of the Eskom Power Stations under ERI BMS Ash and Coal Handling Operations for a period 12 months on an 'as and when required basis

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, this Agreement has been executed by the parties as of and effective from the date first written above.