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 Coal and Ash Operating Services at Duvha for a period of 6 Months 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]**

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 *Employer*	[●]
C1.2b	Contract Data provided by the *Contractor* [to be inserted from Returnable Documents at award stage]	[●]
C1.3	Proforma Guarantees	[●]

C1.1 Form of Offer & Acceptance

Section 1.01 Offer

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

Provision of Coal and Ash Operating Services at Duvha for a period of 6 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	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: .....

(Insert name and address of organisation)

Name & signature of witness .....

Date .....

[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 Coal and Ash Operating Services at Duvha for a period of 6 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, 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 .....

Eskom Rotek Industries

Name & signature of witness ..... Date .....

Note: No alternative tenders will be entered into by ERI

Section 1.02 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.

	(i) For the tenderer:	**(ii) For the Employer**
Signature	.....	.....
Name	.....	.....
Capacity	.....	.....
On behalf of	..... *(Insert name and address of organisation)*	..... *Eskom Rotek Industries*
Name & signature of witness	.....	.....

Date .....

C1.2 TSC3 Contract Data

Article II. 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

Section 1	**General**	
	The *conditions of contract* are the core clauses and the clauses for main Option:	
		A: Priced contract with price list
	dispute resolution Option	**W1: Dispute resolution procedure**
	and secondary Options	
		X1: Price adjustment for inflation
		X2 Changes in the law
		X7: Delay Damages
		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 *Employer* 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.	
10.1	The *Service Manager* is (name):	**TBC**
	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	**011 629 4000**
	Fax	
	e-mail	**TBC**
11.2(2)	The Affected Property is	**Duvha Power Station**
11.2(13)	The *service* is	**Provision of Coal and Ash, Operating Services at Duvha for a period of 6 Months on an "as and when required basis.**
11.2(14)	The following matters will be included in the Risk Register	**Standing time, Inclement weather, Strikes, and Absenteeism, Occupational Health and Safety Issues.**
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 *law of the contract* is the law of	**the Republic of South Africa**
13.1	The *language of this contract* is	**English**
		Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract*.
13.3	The *period for reply* is	• 3 working days for instructions and communications in writing
14	**The Service Manager**	
14.1		The Service Manager's acceptance of a communication from the Contractor or of the work does not change the Contractor's responsibility to Provide the Service or his/her liability for his/her plan or his/her design
14.2		The Service Manager, after notifying the Contractor, may delegate any of his actions and may cancel any delegation. A reference to an action of the Service Manager in this contract includes an action by his/her delegate.
14.3		The Service Manager may give an instruction to the Contractor which changes the Service Information
14.4		The Employer may replace the Service Manager

		after he/she has notified the Contractor of the name of the replacement
15.	**Employer provides right of access and things**	
15.1		The Employer provides things which he is to provide as stated in the Service Information/scope of work.
16	**Early warning**	
16.1		The Contractor and the Service Manager give an early warning by notifying the other as soon as either becomes aware of any matter which could • increase the total of the Prices, • interfere with the timing of the service or • impair the effectiveness of the service. Note: any delay with regards to the Service rendered, should be communicated to the Service Manager to avoid penalties from being charge against the Service Provider.
16.2		Either the Service Manager or the Contractor may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees. Note: both parties work in mutual agreement for the benefit of both parties and the project to reduce Risks.
16.3		The Service Manager revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the Contractor. If a decision needs a change to the Service Information, the Service Manager instructs the change at the same time as s/he issues the revised Risk Register.
17	**Ambiguities and inconsistencies**	
17.1		The Service Manager or the Contractor notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The Service Manager gives an instruction resolving the ambiguity or inconsistency.
18	**Illegal and impossible requirements**	
		The Contractor notifies the Service Manager as soon as he/she considers that the Service Information requires him/her to do anything which is illegal or impossible. If the Service Manager agrees, he/she gives an instruction to change the Service Information appropriately.

		NOTE: • The Contractor only accepts instructions from the Service manager. • Searching for defects and repairing defects on WORK completed is not a compensation event but is seen as rework • No person executes or Instructs Work that is an Illegal act in Terms of the Law of the Country • Instructs or execute work that is an UNSAFE act. • Instructs or execute work that will benefit any party unlawfully.
19	**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**
19.1		The *Contractor* Provides the Service in accordance with the Service Information/Scope of work
19.2	The *Contractor* submits a first plan for acceptance within	**1 weeks of the Contract Date**
Section 2	**Time**	
20.1	The Starting date is	TBC on award
20.2.	The Service period is	Six (6) Months
20.3	Instructions to stop or not to start work	The Service Manager may instruct the Contractor to stop or not to start any work and may later instruct him/her that he may re-start or start it. • Due to a delay in approvals • Due to a fault of the Contractor • Etc…
Section 3	**Testing and Defects**	
30.1	People	The *Contractor* either employs each key person named to do the job stated in the Contract Data or employs a replacement person who has been accepted by the *Service Manager*. The *Contractor* submits the name, relevant qualifications, and experience of a proposed replacement person to the *Service Manager* for acceptance. A reason for not accepting the person is that his/her relevant qualifications and experience are not as good as those of the person who is to be replaced.

30.2		The *Service Manager* may, having stated his/her reasons, instruct the *Contractor* to remove an employee. The *Contractor* then arranges that, after one day, the employee has no further connection with the work included in this contract. NOTE: • Removal may include, not executing the duties as per the Service information diligently • Not reporting unsafe conditions • Being under the influence of a substance such as alcohol or drugs • Provoke violence • AWOL • Theft • Misconduct as per the Conditions of Service of the Supplier and Employer • Nonadherence to Employers Cardinal lifesaving rules
31.	**Working with the *Employer* and Others**	
31.1		The *Contractor* co-operates with Others in obtaining and providing information which they need in connection with the *service*. He co-operates with Others and shares the Affected Property with them as stated in the Service Information. NOTE: all work is done through an Authorized method.
31.2		The *Employer* and the *Contractor* provide facilities and other things as stated in the Service Information. Any cost incurred by the *Employer* as a result of the *Contractor* not providing the facilities and other things, he/she is to provide is assessed by the *Service Manager* and paid by the *Contractor*.
32	**Subcontracting**	
32.1		The *Contractor* submits the name of each proposed Subcontractor to the *Service Manager* for acceptance. A reason for not accepting the Subcontractor is that his/her appointment will not allow the *Contractor* to Provide the Service. The *Contractor* does not appoint a proposed Subcontractor until the *Service Manager* has accepted him
32.2		Reasons for not accepting a Subcontractor:

		They will not allow the *Contractor* to Provide the Service, or They do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation.
33.	**Other Responsibilities**	
33.1		The *Contractor* obtains approval from Others where necessary. • Overtime • Modifications • Access for work (PTW) • Excavation permits • Modifications • Change in Service Information
33.2		The *Contractor* obeys an instruction which is in accordance with this contract and is given to him/her by the *Service Manager*.
33.3		The *Contractor* acts in accordance with the health and safety requirements stated in the Service Information • Conduct monthly Safety audits as per the requirements of the Employers' Safety department • Conform to the requirements of the Department of Labour • Work in accordance to OHSACT and Regulations, ACT 85 of 1993. • Submit a clear criminal check for all the employees which is not older than 30 days • The rules and regulations of the Employer.
Section 4	**Payment**	
40.1	The *assessment interval* is	The first assessment date is decided by the Service Manager to suit the procedures of the Parties and is not later than the *assessment interval* after the starting date. Later assessment dates occur at the end of each *assessment interval* until four weeks after the end of the *service period*. **Between the 25th and 26th day of each successive month.**

40.2		The *Service Manager* corrects any wrongly assessed amount due in a later payment certificate. Any amounts due, discovered to be wrongly accessed will be paid to the Contractor or recovered from the Contractor in the following month, including the proportions of CPA where applicable. Interest rate is as per 51.4
41.1	The *currency of this contract* is the	**South African Rand**
41.2	The period within which payments are made is	**4 weeks.**
41.3	The *interest rate* 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**
Section 5	**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**
Section 6	**Risks and insurance**	
60.1	**These are additional *Employer*'s risks**	Unrests /Protests by Local Communities, Late payments of employees. Theft, Substance abuse by employees, Criminal conducts, Ill health, Absenteeism, Work related injuries.
Section7	**Optional Statements and Clarifications**	
70.1	**Use of Equipment Plant and Materials**	The Contractor may not remove any items, equipment related to the Service that has been paid for by the Employer, at any stage of the Contract term**.**
71.0	The *Employer* 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).**
71.1	The *Employer* provides these additional insurances	**as stated for "Format TSC3" available on** *http://www.eskom.co.za/Tenders/InsurancePolici*

		esProcedures/Pages/EIMS_Policies_ From_1_April_2014_To_31_March_2015.aspx **(See Annexure A for basic guidance)**
71.2	The *Contractor* provides these additional insurances:	**Any other insurance that the contractor deems necessary in addition to that provided by the employer.**
71.3	The minimum amount of cover for insurance against loss and damage caused by the *Contractor* to the *Employer*'s 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/InsurancePolicies Procedures/Pages/EIMS_Policies_ From_1_April_2014_To_31_March_2015.aspx*
71.4	The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Employer* for an amount of	**None**
71.5	The minimum amount of cover for insurance in respect of loss of or damage to property (except the *Employer*'s property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor*'s Providing the Service for any one event is:	**Any amount that the *Contractor* deems necessary in addition to that provided by the *Employer*.**
71.6	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract 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).**
Core clause 9	**Termination**	Subclauses 90.1 to 90.5 Applies
90.1	**Reason for Termination**	Subclauses 91.1 to 91.7 Applies
		Notwithstanding the delay damages indicated in X7, the Employer may terminate this contract agreement due to the following: 1. **Failure by the Contractor to mobilise resources as stated in the task order within 30 days after receipt of the task order.**

		2. Termination of the main contract agreement that the Employer has with its client, for any reason under the scope that is executed by the tenderer/contractor. Such termination will be applied as back-to-back contract condition to this agreement. **3. Any interruption to operations because of supplier failing to meet their contract obligations between the supplier and their employees. This includes failure to pay employee salaries by the 25th of each consecutive month.** **4. Any interruption to operations because of supplier and/or its employees failing to meet their contract obligations between the supplier and Eskom Rotek Industries** **5. Contractor performs work outside the parameters as defined in the NEC, NO WORK/PAYMENTS of employees based on other sites will be done in this contract**
92	**Procedures on termination**	Subclauses 92.1 to 92.2 applies
93	**Payment on Termination**	Subclauses 93.1 to 93.2 applies
10	**Data for main Option clause**	
A	**Priced contract with price list**	
20.5	The *Contractor* prepares forecasts of the final total of the Prices for the whole of the *service* at intervals no longer than	**4 weeks.**
	Data for Option W1	
W1.1	The *Adjudicator*	**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	**[•]**
	Tel No.	**[•]**

	Fax No.	**[•]**
	e-mail	**[•]**
W1.2(3)	The *Adjudicator nominating body* 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 *tribunal* is:	**Arbitration**
W1.4(5)	The *arbitration procedure* is	**The latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.**
	The place where arbitration is to be held is	**Johannesburg, South Africa**
	The person or organisation who will choose an arbitrator - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is	**The Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.**
Section 12	**Data for secondary Option clauses**	
X1	**Price adjustment for inflation**	**Not Applicable**
X1.1	The *base date* for indices is	**N/A**
X2	**Changes in the law**	**There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.**
X3	**Multiple currencies**	**Not Applicable**
X3.1	The *Employer* will pay for these items or activities in the currencies stated	**Only South African Rands to be used for the contract.** **Items & activities** **[•]** **[•]** **[•]** **[•]**
X3.1	The *exchange rates* are those published in	**Not applicable** **The items & activities will be paid in the other currency** **- to a foreign Bank account nominated by the *Contractor***

Other currency	**Maximum payment in other currency**

		- to a valid SARB approved CFC account in South Africa **- In accordance with an alternative payment method agreed with the *Employer* before the Contract Date.** **(select one of the three methods as agreed with the successful tenderer prior to contract award and delete the others and this note)**
X4	**Parent company guarantee**	**Not Applicable**
X7	**Delay Damages**	**1% deductible per day after 1 day delay, capped at 10%.**
X12	**Partnering**	**Not Applicable**
X12.1(1)	The *Client* is (Name):	**[●]**
	Address	**[●]**
	Contact details	**[●]**
	Telephone:	**[●]**
	Fax	**[●]**
	e-mail	**[●]**
X12.1(4)	The Partnering Information is in	**Part 3 Scope of Work, section C3. [●]**
X12.2(1)	The *Client's objective* is:	**[●]**
X13	**Performance bond**	
X13.1	The amount of the performance bond is	**R [TBC]**
X17	**Low service damages**	**See Z clauses**
X17.1	The *service level table* is in	**Page 48 of this document**
X18	**Limitation of liability**	
X18.1	The *Contractor*'s liability to the *Employer* for indirect or consequential loss is limited to	**R0.0 (zero Rand)**
X18.2	For any one event, the *Contractor*'s liability to the *Employer* for loss of or damage to the *Employer*'s property is limited to	**the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on** *http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx*
X18.3	The *Contractor*'s 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 *Employer*'s insurance (other**

		than the resulting physical damage to the *Employer*'s property which is not excluded) plus the applicable deductibles in the *Employer*'s assets and works / maintenance policies available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx
X18.4	The *Contractor*'s total liability to the *Employer*, 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 *Contractor's* total liability for the additional excluded matters is not limited.** **The additional excluded matters are amounts for which the *Contractor* 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 *Employer*'s property, Plant and Materials),** • **Death of or injury to a person and** • **Infringement of an intellectual property right.**
X18.5	The *end of liability date* is	**12 months after the service period/contract end date.**
X19	**Task Order**	
X19.1(2)		A Task Order is the *Service Manager*'s instruction to carry out a Task
19.2		A Task Order includes • a detailed description of the work in the Task, • a priced list of items of work in the Task in which items taken from the Price List are identified, • the starting and completion dates for the Task, • the amount of delay damages for the late completion of the Task and • the total of the Prices for the Task when Option A or C is used or the forecast total of the Prices for the Task if Option E is used. The *Service Manager* consults the *Contractor* about the contents of a Task Order before he issues it.

		When a Task Order is issued • the priced list of items for the Task is inserted in the Price List, and • the work involved is added to the Service Information. • An instruction to carry out a Task is not a compensation event.
X19.5	The *Contractor* submits a Task Order programme to the *Service Manager* within	**2 days of receiving the Task Order**
X20	**Key Performance Indicators**	**Page 48 of this document**
X20.1	The *incentive schedule* for Key Performance Indicators is in	**Not Applicable**
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	**Monthly**
Z	**The *additional conditions of contract* are**	• **The penalty of 5% of task order value will be deducted should the contractor fail to meet any of the KPI as stated in page 48 of this document** • **Z1 to Z11 always apply.** • **Z12**

Z1 **Cession delegation and assignment**

Z1.1 The *Contractor* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer.*

Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Contractor* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

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

Z5.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.

Z5.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z5.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.

Z5.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

Z6 Waiver and estoppel: Add to core clause 12.3:

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

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

Z7.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:

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

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

Z8	**Provision of a Tax Invoice and interest. Add to core clause 51**
Z8.1	Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer*'s procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.
Z8.2	If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
Z8.3	The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer*'s VAT number 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.

Z12	**Proof of registration with any bargaining council will form part of the contractual returnables**

Article III. 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

C1.2 Contract Data

Part two - Data provided by the *Contractor*

Notes to a tendering contractor:

1. Please read both the both the NEC3 Term Service Contract April 2013 and the relevant parts of its Guidance Notes (TSC3-GN)[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.

	Section 3.02 Statement	**Section 3.03 Data**
10.1	The *Contractor* is (Name): Address Tel No. Fax No.	
11.2(8)	The *direct fee percentage* is The *subcontracted fee percentage* is	**%** **%**
11.2(14)	The following matters will be included in the Risk Register	
11.2(15)	The Service Information for the *Contractor*'s plan is in:	
21.1	The plan identified in the Contract Data is contained in:	
24.1	The key people are: 1 Name: Job: Responsibilities: Qualifications:	

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

Experience:

2 Name:

Job

Responsibilities:

Qualifications:

Experience:

		CV's (and further key person's data including)
A	**Priced contract with price list**	
11.2(12)	The *price list* is in	
11.2(19)	The tendered total of the Prices is	**R**

PART 2: PRICING DATA

TSC3 Option A

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	29-30(2 pages)
C2.2	The *price list*	31-33 (3 pages)

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 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.

NOTE:

- **Eskom Rotek Industries is affiliated with various statutory bodies such as the MEIBC. In this case ERI will make use of the MEIBC rates as a benchmark or to conduct market analysis. As such, it will be assumed that *Contractors*, Service Providers, Subcontractors, etc have taken this into account and have done the necessary due diligence to ensure stability on all ERI sites and operations as far as reasonably possible.**

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*

As per BOQ

PART C3: WORKS INFORMATION OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	*Employer*'s Service Information	35-59 (25)
C3.2	*Contractor*'s Service Information	
	Total number of pages	

C3.1: EMPLOYER'S SERVICE INFORMATION

1 Description of the *service*

1.1 *Employer*'s requirements for the *service*

Introduction

This Document details all the work that needs to be done with regards to the scope required for Coal, Ash, Operations and Maintenance services at Duvha, Kendal and Bulk Water Handling on an 'as and when required' basis.

Purpose

The purpose is to preserve the status of the plant availability and reliability through maintenance of the assets and maintaining of good housekeeping standards.

Applicability

This document shall apply to the site with attached addendum.

This document shall be effective from the authorisation date.

The stations where the services are required are

Site	Operation
Duvha Power Station	Ash and Coal operations

Normative/Informative References

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs and additional site-specific ones.

Normative

1. ISO 9001 Quality Management Systems

2. OSHAS 1800 Safety Management Systems
3. Occupational Health and Safety Act and Regulations (85 of 1993)
4. 36-681_Generation Plant Safety Regulation
5. 240-62196227_Eskom Life Saving Rules
6. 32-95_Environmental, Occupational Health and safety Incident Management Procedure

Informative

1. Criminal Procedures Act 51 of 1977
2. National Road Traffic Act 93 of 1996
3. Labour Relations Act 66 of 1995
4. Basic Conditions of Employment Act 75 of 1997

Definitions

Description	Definition
Appointed Contractor	Means a contractor appointed by the principal contractor.
Appointed Person	A person who has been authorised in terms of 36-681_Generation Plant Safety Regulation to: **(i)** Determining appropriate and effective isolations for the anticipated work to be carried out safely. **(ii)** Ensuring that the isolation and de-isolation on the plant covered by a permit to work is effectively carried out taking health and safety precautions into account. **(iii)** Issuing of prepared permits once all the associated test certificates are available and the required risk assessments have been presented to the appointed person by the responsible person for review in terms of these regulations.
Baseline Risk Assessment	(32-520) baseline operational risks refer to the health and safety risks associated with all standard processes and routine activities in the business
Cleaning Activity	Means the safe cleaning of transfer chutes from the outside by the disabling of mechanisms to inhibit starting of the plant during the cleaning process, which is done in accordance with formulated safe procedures.
Contractor (includes	means an employer as defined in section 1 of the Act who performs

appointed contractor)	contract work and includes principal contractors
Competent Person	(OHS Act) means any person having knowledge, training, experience, and qualifications, specific to work or task being performed, provided that, where appropriate, qualifications and training are registered in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).
Danger/Dangerous	Means a condition/substance that constitutes a risk of personal injury, impairment of health, or death
Employee	(OHS Act) means, subject to the provisions of subsection (2), any person who is employed by or works for an employer and who receives remuneration or who works under the direction or supervision of an employer or any other person.
Employer	(OHS Act) means, subject to the provisions of subsection (2), any person who employs or provides work for any person and remunerates that person or expressly or tacitly undertakes to remunerate him/her, but excludes TES (ex. labour broker) as defined in section 1(1) of the Labour Relations Act.
Field / Plant Operator	Employee designated to conduct routine Plant inspections, Preventative Maintenance (PM) and (report) defect any breakdowns or abnormal Plant conditions
Lifesaving Rules	(240-62196227) a rule that, if not adhered to, has the potential to cause serious harm to people.
Permit To Work	Means the printed form containing sections entitled application, permits to work, suspension, suspension revocation, clearance and revocation, and used for the authorisation of all work to be carried out on the plant in terms of these regulations.
Plant	Means structure, machinery, low voltage electrical equipment or equipment, which does not fall within the scope of the Operating Regulations for High-voltage Systems, and excludes, mobile, portable lifting equipment, domestic circuits, appliances and tools.
Responsible Person	Means a person who has been authorised in terms of these regulations to be responsible for ensuring that the work on the plant covered by a permit to work can be carried out and executed taking health and safety

	precautions into account and within the terms of 36-681_Generation Plant Safety Regulation
Safe/Safely/Safety	Means a condition not posing any danger, an activity that can be carried out without danger, or protection against danger.
Shall and Should	The word "shall" is to be understood as mandatory and "should" as recommended.
Skilled Person	Means a person who has been trained, has adequate knowledge for the task at hand and declared competent in writing.
Supervision/Supervise	Means to oversee the actions of a person(s) to such an extent as to prevent any dangerous act, as far as reasonably practicable. Such a supervisor must be trained in risk assessment techniques and be able to understand the dangers / hazards associated with the task and who has the authority to ensure that precautionary measures taken are implemented.
Visitor	Any person visiting a workplace with the knowledge of, or under the supervision of, an employer.

Abbreviations

Abbreviation	**Explanation**
RA	Risk Assessment
AP	Appointed Person
DHP	Dust Handling Plant
LAR	Limited Access Register
ERI	Eskom Rotek Industries
OHSACT	Occupational Health And Safety Act
OEM	Original Equipment Manufacturer
RP	Responsible Person
PPE	Personal Protective Equipment

Provision of Coal and Ash Operating Services at Duvha for a period of 6 Months on an "as and when required basis"

Abbreviation	Explanation
RA	Risk Assessment
AP	Appointed Person
PTW	Permit To Work
H&S Rep	Health and Safety Representative
RA	Risk Assessment
-	-

Supporting Clauses

Scope

The scope of work is the provision of Coal and Ash Operating Services at Duvha Power Station for Eskom Rotek Industries (ERI) Bulk Material Services (BMS) **for the duration of 6 months on an "as and when required basis".**

Duvha Ash & Coal Handling SOW:

The scope of work will include all Coal Handling Operations also Ash Handling Operations services for Duvha Power Station on an "as and when required basis" plant components at Duvha ERI BMS site.

Coal and Ash Operations systems

- The maintenance mode is initiated on those parts of the live/strategic stockpiles where no coal is removed. During this mode the Contractor maintains the stockpiles in sound condition to control spontaneous combustion, wind and water erosion and pollution. Drains up to, but excluding the coal stockyard pollution control dam, roadways and access ramps will at all times be maintained in good condition and free of plant growth
- Stockpile maintenance is essential in order to limit potential pollution and degradation or loss of coal. The Contractor is responsible for the proper maintenance of the live/strategic stockpiles.
- The Contractor assists in grading, watering and compacting of the stockpiles from time to time in order to minimise erosion by wind. Care will be taken to ensure that berm crests are always kept gently rounded and at a horizontal level.

- The Contractor properly maintains berms and cross-berms to the specified lines and levels in order to limit the runoff of storm water. The Contractor back-fills and repairs erosion channels immediately after they have formed to prevent the formation of gas. Where necessary, additional berms shall be constructed to limit water erosion. This will be directed by the Project Manager.
- Whenever hot spots are found during temperature monitoring of the strategic stockpiles the Contractor re- compacts the affected area with an impact roller under the Project Manager Instruction. The compacted area will then be finished off with a grader and either a vibrating or rubber-tyre roller. Should this operation prove unsuccessful in preventing further temperature increases, the hot coal will be dug out and spread out in a thin layer in a suitable area to cool off. Care will be taken to avoid side slopes steeper than 1:2 during the excavation process. The excavated hole is then back-filled and compacted in layers using fresh coal from a suitable source.
- Access ramps will be built as required in writing by the Employer from time to time

Stockpile construction

Coal haulage road maintenance (Where applicable)

- The haul road should be maintained 24/7 using graders and using water carts to supress dust caused mobile plant.
- The haul road should have road signs and be cleaned by spotters when not visible
- Speed limit on the on the haul road to be adhered as per traffic management plan

Ash Dams Construction

- Construction as per operations manual of all areas on the Ash Dams as per Clients scope of work
- Penstock and DB box construction and operating
- Site inspections and record keeping as per operations manual

Stockpile compaction

- Each layer of coal spread is compacted to the required density by the Contractor. The required density will be site specific. Under no circumstances will un-compacted layers or portions of layers be allowed in the strategic stockpile. Compaction is to be carried out across the entire width of the layer, starting at one edge. The layer is compacted by first rolling half the number of passes in one direction and then the other half at right angles to the previous direction.
- Those areas, which have been constructed by the Contractor and are found to be outside requirements as outlined in the Code of Safe Practice report shall be repaired to the cost of the Contractor. In case that the repair fails to achieve the specification of the Code of Safe

Practice report, the repaired areas of the strategic stockpile will be removed completely and rebuilt to the correct specifications.

- The Employer will from time to time employ a coal stockpile testing consultant. The findings of this consultant are final and the Contractor shall repair, at his costs, all defects indicated by the testing consultant within the specified time so instructed by the Employer

Dust suppression

- Water trucks will continuously do dust suppression to minimize the dust.
- In terms of excess dust employees must report to the responsible Supervisors
- Water tanker shall be made available by the employer • Care must be taken not to cause muddy conditions.
- Dust suppression will only be done when going down the steep hill
- The water tank should not be over filled
- Dust control will be optimized by means of Water Tankers spraying water in the Rotek Industries Laydown area, loading area, throughout the haul road and in the Excess Stock Pile. Water spraying will be done by means of Water Tanks driving slowly forward and/ backwards water spraying out of water spouts or taps placed on the back of the water truck

Spillages

- ERI and all contractors must appoint spill responders.
- All shift Supervisors must ensure that they have contact details of the spill response team
- The spillage response team must have a spill register on which they will register the amount of spilled materials
- The accumulation of material on the tar road inside the Power Station, coming off the wheels, must be cleaned during shift changes on a daily basis.
- Spilled coal collected shall be taken to the dedicated area to be processed.
- Spilled hydrocarbon should be cleaned and all contaminated soil should be taken into the contaminated soil skip at ERI yard.
- Trucks shall not be overloaded to reduce the chances of spilling.
- Trucks shall be inspected for oil leaks, and be fixed of any defects to avoid spillages along the haul road.

Parking of Plant

- Sufficient and appropriate parking areas for plant and machinery will be allocated.
- Plant must be parked at least 2/3 meters apart to keep safe distance from each other.

- Drip trays and stop blocks will be placed.
- Ensure all plant are parked in reverse
- Ensure all plant buckets is lowered and secure on the ground.
- Ensure parking brake is in place and all lights are switched off. •
- All plant to be locked and all keys to be removed from plant.
- Ensure all tankers outlet valves are closed

Site Operations

- Provide Persons on all shifts on a 24 hour basis
- Operations 24 hours a day, based upon a 4 x 4 shift cycle (2 day 12 hours, 2 nights 12 hours, 4 days off) shift cycle.
- The development of Operating and safe working procedures will be a joint venture between Generation Power Stations and ERI and the contractor
- Investigate plant failures within the Coal and Ash systems plant area fixed plant
- Provide recommendations to improve the Coal and Ash Operations systems plant area and plant performance

Work To be performed by Contractor

General

This section stipulates the work to be performed by the Contractor for the works, based on the minimum standard of maintenance specified by the Employer. The Contractor ensures that the plant meets the criteria specified in this section.

The Contractor:

- Provides a maintenance plan and schedule, compiled in liaison with Duvha Power Station Operating Contractor. The Contractor submits this maintenance schedule to the Services Manager for acceptance before the Contractor starts with any work on Site.
- Provides complete maintenance of all mechanical plant, electrical plant, civil works and structures.
- Provides 24 hours on-site supervision, suitably qualified to perform electrical resets and plant isolations (HV and LV as Responsible Person according to Eskom Plant Safety Regulations).
- Performs repairs and provides on-site support for breakdowns on a 24-hour basis (7 days a week). Response times for failures call-outs are 60 minutes from call.

- Collects from the Employer's yard, installs (when required) and performs the routine maintenance of the free issued spares.
- Where applicable, procures, delivers and stores all other spares agreed with Services Manager and consumables necessary to maintain the overland conveyor and OTS systems.
- Obtains all maintenance parameters from the Original Equipment Manufacturers (OEMs). This forms the basis of the Contractor's maintenance procedures, for acceptance by the Services Manager.
- Establishes and maintains a records keeping system, accepted by the Services Manager. The Contractor records all routine inspections, failures, the causes, the remedial actions taken, etc. SAP PM system (at Duvha Power Station) should be utilised for this purpose as per Eskom's Work management Process.

Co-operation with Others

The Contractor interfaces with Services Manager for planned shutdown periods for maintenance purposes, taking due cognisance of the mine's coaling production schedules.

The Contractor interfaces with Services Manager for any unplanned maintenance and operating activities (e.g. breakdown recovery, etc.)

The Employer will, during the course of the contract, implement modifications or changes to the conveyor system and/or peripheral systems whenever necessary. The Employer may choose to utilise others, with whom the Contractor will co-operate.

The Contractor attends the weekly maintenance meeting, arranged by Services Manager at their offices.

The Contractor designs maintenance schedules in co-operation with Duvha Power Station Quality Assurance and Quality Control and Operating Contractors' plant log sheets. These are submitted to the Services Manager for acceptance before the Contractor starts with any work on Site.

Supervision

The Contractor provides a supervisor or delegated employee(s) on site 24 hours per day, 7 days per week.

The Contractor's supervisor and/or delegated employee(s):

- Is/are qualified to perform first-line fault finding when equipment has failed and repair to clear fault.
- Is/are qualified and certified competent as Responsible Person in terms of
- Eskom's High Voltage Regulations and Plant Safety Regulations systems.

- Apply Permits-to-Work for any such required maintenance work on the works
- information.
- Is, on the initiative of the Contractor trained and authorised, for the Employer's account in the use of Eskom's Plant Safety Regulations and the Operating Regulations for High Voltage Systems.

PERFORMANCE SPECIFICATION

- The employees must be in a mental and physical healthy condition to be able to work an average of 12 hours per shifts for the Department.
- Working of overtime as per cleaning requirements when needed.
- Employees must be medically fit.
- Employees meet requirements of Eskom Security access, Police Clearance checks.
- Minimum educational requirement for General workers/ Cleaner is Grade 12.
- Minimum requirements for **Supervisors** are Grade 12 plus 3 years Cleaning experience

Working times

People restrictions, hours of work, conduct and records WORKING HOURS

All plant cleaning activities must be based to accommodate the Duvha Power Station working hours as follows:

Office hours for Day-shift workers

- Monday to Friday, 07h00 to 16h15
- Lunch Break 12h00 to13h00

Shift workers

- Monday to Sunday, 24 hrs,
- 12 hour cycle shift
- Shift roster (A – D Shift) must be drawn up and agreed upon with the Service Manager before commencement of the contract

Working hours shall remain flexible to alteration, if required. No overtime will be paid if it was not approved by the Service Manager prior. The *Contractor* shall implement a stringent electronic time management process which requires less human intervention, e.g. fingerprint or facial scanning recorders used for access control and time and attendance systems, etc.

Employees are not allowed to go to the service manager but through the site manager. The service manager will not be involved in any employee/ employer disputes unless it affects remuneration that will obviously affects the physical works which end up affecting the coal supply to the station.

Management strategy and start up

The *Contractor*'s plan for the *service*

Operations services schedule to be supplied by the Contractor after the employer has given them the maintenance plans.

Management meetings

There will be a monthly meeting for the *Contractor* with the *Employer* held at the *Employer's* premises where contract issues will be discussed i.e. monthly report form the *Contractor* which will include safety meetings, call-out report, incident report an any other issues relating to the service being delivered. The following meetings are to be attended by the *Contractor's* Supervisor:

- Safety meeting (once a month / as and when required)
- Contractor's meetings (to be specified)
- Assessments meetings (end of the month on the 25th)
- Any other meetings relating to the *Contractor's* outputs or necessary for business continuity
- Risk register meeting with the client.

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or registers shall not be used for the purpose of identified in the *conditions of contract* to carry out such actions or instructions.

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

The *Contractor's* staff structure – supervisors and workforce is to be submitted in the form of an organogram. The employer must approve any changes to such staff structure, and after the approval, the contractor shall submit an updated staff structure.

The *Contractor* shall provide a competent representative to be available on site during all normal working hours (Supervisor).

The Contractor's representative will be required to keep the time sheets, which are required, signed at the end of each month.

NB: The Contractor's representative will assume the role of a supervisor or lead for this contract

Documentation control

The service provider shall submit all proof of purchase, SHE bin certificates, time sheets and delivery note to the employer for assessment. Cleaning control sheets to be signed after each cleaning is completed.

Invoicing and payment

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
Eskom Rotek Industries,
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)

Contract change management

Task Order form to be used when work within the service is instructed to be carried out within a stated period. A task Order will be sent to the *Contractor* via an email. In the case of a compensation event, the *Contractor* must give the *Employer* an early warning and a quotation for the total costs, must be submitted electronically by the *Contractor* for that compensation event by email

Records of defined cost to be kept by the *Contractor*

The Employer will do all hours worked by the Contractor. Timesheets will be submitted to and kept by the *Employer* on a weekly basis, and these will be used for assessment purposes.

Training workshops

- Any training required by the *Employer* will be provided e.g. Ethics, HIRA, etc however, any other training additional that the *Contractor* will need, the training costs will be for the *Contractor*. Training may not be conducted during working hours, unless permission is given by the *Employer.*
- The *Contractor* will be trained during the Job Specification Induction training that will be provided by the *Employer* at the beginning of the contract. The *Contractor* may also be trained during Work Stoppages and also any other training as per employer's requirements.
- The following training is necessary for the Supervisor and Team leaders. The cost will be for the *Contractor*:
  - Safety, Health and Environment Representative (SHE Rep.)
  - Applying SHE Principles and Procedure
  - Hazard Identification and Response
  - First Aid level 1

People

Eskom Holdings Limited's requirements regarding employment of unskilled or semi-skilled workers are as follows:

- ERI requires that during recruitment of unskilled or semi-skilled labour, a contractor should make every effort to employ minimum target of 100 % suitable candidates from all disciplines from the local community and will only resort to other avenues if the local community cannot provide the required resources.

Plant and Materials

Correction of defects

If there is part of work that the *Employer* is not happy with, this will be indicated to the *Contractor* and will have to be rectified by the *Contractor* immediately where reasonably possible or within 5 working days after the defect was reported.

Plant & Materials provided by the *Employer*

a. Water and Electricity
b. Lighting and Ventilation
c. Ablution facilities
d. Sitting facilities
e. Kitchen facilities
f. All required tools
g. Specialised PPE

NB: The *Contractor* will be responsible for their meals, own accommodation, and transport to and from the place of work.

Health and safety, the environment and quality assurance

Health and safety risk management

The *Contractor* shall at all times comply with the health and safety requirements prescribed by law as they may apply to the *service*s.

The *Contractor* shall, when coming on site abide by the Lifesaving Rules and COVID-19 safety requirements at all times. The Employer on the start of the contract will provide these. The

Contractor shall also abide by Safety, Health and Environmental Specifications for Contractors Procedure, which will also be provided by the *Employer*.

The *Employer* follows an accident/ incident prevention policy that includes the investigation of all accidents/ incidents involving personnel and property. This is done with the intention of introducing control measures to prevent recurrence of the same incidents. The *Contractor* is expected to fully co-operate to achieve this objective. Refer to 32-95_Environmental, Occupational Health and safety Incident Management Procedure

The *Contractor* implements a safety plan and maintains the safety system until completion of the whole of the works. The plan, will as a minimum, contain PPE information, written safe work procedures, job specific risk assessments, safety meetings, etc. The plan will be to the *Employer*'s satisfaction and will be accepted prior to the commencement of any work.

The *Contractor* will be subject to periodic audits by the *Employer* in order to ensure compliance with the plan. Any deviations will be corrected to the *Employer*'s satisfaction.

The *Project Manager* has the right to stop the *Contractor*'s work activities which, in the opinion of the *Project Manager*, is un-safe. The *Contractor* may only continue with work activities when all safety deficiencies have been corrected to the *Service Manager's* satisfaction. The *Contractor* shall have no claim against the *Employer* in respect of delay due to the above.

Environmental constraints and management

The *Contractor* shall comply with ERI management system. This includes the identification, collection, storage, transportation, and disposal of waste. Hazardous waste shall be disposed of in line with the applicable environmental legislation. It is important to note that all spillages must be cleaned immediately and reported to the project manager as soon as possible. It is the responsibility of the polluter to clean all spillages and for the rehabilitation of the polluted land and the cost associated with that.

NB: In cases of inclement weather, the Project Manager will assess the risk of continuing with the works. When it is unsafe to continue, the Project Manager will stop the works and payment will be per the work covered in this instance.

Provision of Coal and Ash Operating Services at Duvha for a period of 6 Months on an "as and when required basis"

Quality assurance requirements

The *Contractor* implements a quality system and maintains the quality system until the completion of the whole of the *works*. The system, will as a minimum, comply with the provisions of the ISO9001 series. The system will be to the *Employer's* satisfaction and will be accepted prior to the commencement of any work on site. The *Contractor* will be subject to self-assessments by the *Employer* in order to ensure compliance with the system. Any deviations will be corrected to the *Employer*'s satisfaction.

The *Project Manager* has the right to stop the *Contractor's* work activities, which, in the opinion of *Project Manager*, does not meet the requirements of the system and will have a detrimental effect on plant performance. The *Contractor* may only continue with work activities when all deficiencies have been corrected to the *Project Manager's* satisfaction. The *Contractor* shall have no claim against the *Employer* in respect of delay due to the above.

The *Contractor* ensures that all plant and materials for the *works* are to the standard and quality accepted by the *Employer* and ensures that they are suitable for the purpose intended by the manufacturer.

The *Contractor* will work according to the *Employer's* standards, specifications, guidelines and procedures. Where no standards, specifications, guidelines and procedures are available, the *Contractor* will work according to the Generation Quality manual and professional guidelines. Where possible, standards will be reflected in the Task Order.
The employer shall evaluate, control and monitor the performance and effectiveness of the Contractor.

Working on the Affected Property

Employer's site entry and security control, permits, and site regulations

The service provider applies for access permits at the security gate when access to Eskom Power Stations/Construction sites is required.

The service provider's personnel are in the possession of their access permits at all times when on the Site.

The service provider provides security for protection of construction their equipment and Materials required in providing the Works.

Records of *Contractor*'s Equipment

The Maintenance service provider keeps records of all tasks executed by the service provider as specified by the original equipment manufacturers.

Control of noise, dust, water and waste

The contractor must supply their own dust masks and cloth masks as part of PPE. Drinking water is available on site as well as waste bins for disposing waste

List of drawings

Drawings issued by the *Employer*

This is the list of drawings issued by the *Employer* at or before the Contract Date and which apply to this contract.

Drawing number	Revision	Title
TBC	TBC	TBC

Key Performance Indicators							
KPI's	**Measure Frequency**	**Weight %**	**Floor -10%**	**Kick - 5%**	**Norm 0%**	**Stretch 5%**	**Ceiling 10%**
Number of NCR's issued	Quarterly	10%	4	3	2	1	0
Safety incidents (FA, Medicals, LTI)	Monthly	20%	2	1	0	0	0
Damage to Employer Property	Quarterly	10%	4	3	2	1	0
Submitting of Invoices Timeously to Site (3 Days after receiving timesheets)	Monthly	10%	5	4	3	2	1

CONFIDENTIALITY AGREEMENT

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

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

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

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

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the 'Subject Information') may include but not be limited to the parties' inventions, trade secrets, know-how, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.

2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other.

3. The parties each agree that they shall maintain in secrecy in accordance with the terms of this Agreement all of the Subject Information each party receives (the 'Receiving Party') from the other party (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.

4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.

5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.

6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes and other writings prepared by the parties, or their advisors, based on the Subject

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

7. If a party, with the written consent of the Proprietor of Subject Information, discloses any Subject Information received from its Proprietor to any third party, it shall do so only under a secrecy agreement having a scope similar to and which is consistent with this Agreement, and the disclosing party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party

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.