



## NEC3 Term Service Contract (TSC3)

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

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

for **Analysis of Water from Monitoring Boreholes from  
Majuba UCG**

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<b>Contents:</b>	<b>No of pages</b>
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**CONTRACT No. [Insert at award stage]**

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## PART C1: AGREEMENTS & CONTRACT DATA

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

### Offer

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

#### Analysis of Water from Monitoring Boreholes from Majuba UCG

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.

Option 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 <sup>1</sup>	R [•]
	(in words) [•]	

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

Signature(s)

Name(s) \_\_\_\_\_

Capacity \_\_\_\_\_

**For the  
tenderer:**

\_\_\_\_\_  
(Insert name and address of organisation)

Name &  
signature of  
witness

Date

Tenderer's CIDB registration number:

<sup>1</sup> This total is required by the *Employer* for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*.

## Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1	Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: Service Information

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)

Capacity

**for the  
Employer**

\_\_\_\_\_  
(Insert name and address of organisation)

Name &  
signature of  
witness

Date

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

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

Note:

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

No.	Subject	Details
1	N/A	N/A

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

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

### For the tenderer:

### For the Employer

Signature

Name

Capacity

On behalf  
of

(Insert name and address of organisation)

(Insert name and address of organisation)

Name &  
signature  
of witness

Date

## C1.2 TSC3 Contract Data

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		<b>A: Priced contract with price list</b>
	dispute resolution Option	<b>W1: Dispute resolution procedure</b>
	and secondary Options	
		<b>X2 Changes in the law</b>
		<b>X18: Limitation of liability</b>
		<b>X19: Task Order</b>
		<b>Z: Additional conditions of contract of the NEC3 Term Service Contract (June 2005)</b>
10.1	The <i>Employer</i> is (name):	<b>Eskom Holdings SOC Limited (Reg No: 2002/015527/30), a juristic person incorporated in terms of the company laws of the Republic of South Africa</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
10.1	The <i>Service Manager</i> is (name):	
	Address	
	Tel	
	Fax	
	e-mail	
11.2(2)	The Affected Property is	<b>Majuba UCG Site</b>
11.2(13)	The <i>service</i> is	<b>Analysis of water from monitoring boreholes from Majuba UCG Site.</b>
11.2(14)	The following matters will be included in the Risk Register	<b>Samples of ground water could increase if contamination is detected as well as when the number of monitoring boreholes are increased.</b>
11.2(15)	The Service Information is in	<b>Part 3: Scope of Work and all documents and drawings to which it makes reference.</b>

12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>7 working days</b>
<b>3</b>	<b>Time</b>	
30.1	The <i>starting date</i> is.	
30.1	The <i>service period</i> is	<b>5 years</b>
<b>4</b>	<b>Testing and defects</b>	<b>Two weeks</b>
<b>5</b>	<b>Payment</b>	
50.1	The <i>assessment interval</i> is	<b>25th day of each successive month.</b>
51.1	The <i>currency of this contract</i> is the	<b>South African Rand</b>
51.2	The period within which payments are made is	<b>4 weeks.</b>
51.4	The <i>interest rate</i> is	<b>Zero percent above 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 (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.</b>
<b>7</b>	<b>Use of Equipment Plant and Materials</b>	<b>No data is required for this section of the <i>conditions of contract</i>.</b>
<b>8</b>	<b>Risks and insurance</b>	
80.1	These are additional <i>Employer's</i> risks	<b>N/A</b>
83.1	The <i>Employer</i> provides these insurances from the Insurance Table	<b>as stated for "Format TSC3" available on <a href="http://www.eskom.co.za/live/content.php?Item_ID=9248">http://www.eskom.co.za/live/content.php?Item_ID=9248</a> (See Annexure A for basic guidance).</b>
83.1	The <i>Employer</i> provides these additional insurances	<b>as stated for "Format TSC3" available on <a href="http://www.eskom.co.za/live/content.php?Item_ID=9248">http://www.eskom.co.za/live/content.php?Item_ID=9248</a> (See Annexure A for basic guidance)</b>
83.1	The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is	<b>the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on <a href="http://www.eskom.co.za/live/content.php?Item_ID=9248">http://www.eskom.co.za/live/content.php?Item_ID=9248</a></b>
83.1	The minimum amount of cover for loss of or damage to Plant and Materials provided by the <i>Employer</i> is:	<b>the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on <a href="http://www.eskom.co.za/live/content.php?Item_ID=9248">http://www.eskom.co.za/live/content.php?Item_ID=9248</a></b>
83.1	The minimum amount of cover for insurance in respect of loss of or damage	

	to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one event is:	whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i> .
83.1	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract for any one event is:	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (Five hundred thousand Rands)..
<b>9</b>	<b>Termination</b>	There is no Contract Data required for this section of the <i>conditions of contract</i> .
<b>10</b>	<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with price list</b>	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than	<b>2 weeks.</b>
<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i> is (Name)	the person selected from the Eskom Panel of Adjudicators listed in Annexure B to this Contract Data by the Party intending to refer a dispute to him.
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of the Joint Civils Division of the South African Institution of Civil Engineering. (See <a href="http://www.jointcivils.co.za">www.jointcivils.co.za</a> )
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	<b>South Africa</b>
	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.
<b>12</b>	<b>Data for secondary Option clauses</b>	
<b>X2</b>	<b>Changes in the law</b>	No data is required for this Option
<b>X18</b>	<b>Limitation of liability</b>	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	<b>R0.0 (zero Rand)</b>



X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on <a href="http://www.eskom.co.za/live/content.php?Item_ID=9248">http://www.eskom.co.za/live/content.php?Item_ID=9248</a>
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	<p>The greater of</p> <ul style="list-style-type: none"> <li>the total of the Prices at the Contract Date and</li> <li>the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles in the <i>Employer's</i> assets and works / maintenance policies available on <a href="http://www.eskom.co.za/live/content.php?Item_ID=9248">http://www.eskom.co.za/live/content.php?Item_ID=9248</a></li> </ul>
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<p>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"> <li>Defects due to his design, plan and specification,</li> <li>Defects due to manufacture and fabrication outside the Affected Property,</li> <li>loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials),</li> <li>death of or injury to a person and</li> <li>infringement of an intellectual property right.</li> </ul>
X18.5	The <i>end of liability date</i> is	1 month after the end of the <i>service period</i> .
<b>X19</b>	<b>Task Order</b>	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	3 days of receiving the Task Order
<b>Z</b>	<b>The <i>additional conditions of contract</i> are</b>	<b>Z1 to Z11 always apply.</b>
<b>Z1</b>	<b>Cession delegation and assignment</b>	
Z1.1	The <i>Contractor</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i> .	
Z1.2	Notwithstanding the above, the <i>Employer</i> may on written notice to the <i>Contractor</i> 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 and the Electricity Distribution 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 substantially 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 Works.
- 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.
- Z3.5 The *Employer* may disqualify a tenderer or may cancel the contract, should it be found that the tenderer or Contractor have misrepresented their BEE status

## **Z4 Ethics**

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Contractor*, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Contractor's* obligation to Provide the Service or taking any other action as appropriate against the *Contractor* (including civil or criminal action).
- Z4.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if the *Contractor* (or any member of the *Contractor* where the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.
- Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Contractor* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.
- Z4.3 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P4 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

**Z5 Confidentiality**

- Z5.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z5.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.
- Z5.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z5.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z5.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

**Z6 Waiver and estoppel: Add to core clause 12.3:**

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

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

- Z7.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:
- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2003 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Affected Property;
  - warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and
  - undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.
- Z7.2 The *Contractor*, in and about the execution of the *service*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

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

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

**Z9 Notifying compensation events**

- Z9.1 Delete from the last sentence in core clause 61.3, "unless the *Service Manager* should have notified the event to the *Contractor* but did not".

**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 under the compensation events stated in 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 judicial management order granted against it.

## Annexure A: Insurance provided by the Employer

*These notes are provided as guidance to tendering contractors and the Contractor about the insurance provided by the Employer. Details of the insurance itself are available from the internet web link given below.*

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

[http://www.eskom.co.za/live/content.php?Item\\_ID=9248](http://www.eskom.co.za/live/content.php?Item_ID=9248)

## Annexure B: The *Employer's* Panel of Adjudicators

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

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

Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management, by contacting Leighton Itholeng (Tel.: +27 (0)11 800 4031) (Fax :+27 (0)86 668 0419) E-mail: [Leighton.Itholeng@eskom.co.za](mailto:Leighton.Itholeng@eskom.co.za)

## C1.2 Contract Data

### Part two - Data provided by the *Contractor*

#### Notes to a tendering contractor:

1. Please read both the NEC3 Term Service Contract (June 2005) and the relevant parts of its Guidance Notes (TSC3-GN)<sup>2</sup> 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	
11.2(15)	The Service Information for the <i>Contractor's</i> plan is in:	<b>The Scope of Works</b>
21.1	The plan identified in the Contract Data is contained in:	<b>N/A</b>
24.1	The key persons are:  1 Name:  Job:  Responsibilities:  Qualifications:  Experience:  2 Name:  Job:  Responsibilities:  Qualifications:  Experience:	

<sup>2</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009

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

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



**PART 2: PRICING DATA**  
**TSC3 Option A**

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

## C2.1 Pricing assumptions: Option A

### The *conditions of contract*

#### How work is priced and assessed for payment

Clause 11 in NEC3 Term Service Contract, June 2005 (TSC3) core clauses and Option A states:

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

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

#### Function of the Price List

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

#### Link to the *Contractor's* plan

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

#### Preparing the *price list*

It will be assumed that the tendering contractor has read Pages 14, 15 and 73 of the TSC3 Guidance Notes before preparing the *price list*. Items in the *price list* may have been inserted by the *Employer* and the tendering contractor should insert any additional items which he considers necessary. Whichever party provides the items in the *price list* the total of the Prices is assumed to be fully inclusive of everything necessary to Provide the Service as described at the time of entering into this contract.

1 As the *Contractor* has an obligation to correct Defects (core clause 42.1) and there is no compensation event for this unless the Defect was due to an *Employer's* risk, the lump sum Prices and

rates must also include for the correction of Defects.

2 If the *Contractor* has decided not to identify a particular item in the *price list* at the time of tender the cost to the *Contractor* of doing the work must be included in, or spread across, the other Prices and rates in the *price list* in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.

3 There is no adjustment to lump sum prices in the *price list* if the amount, or quantity, of work within that lump sum item of service later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event. See Clause 60.1.

4 Hence the Prices and rates tendered by the *Contractor* in the *price list* 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.

5 The Contractor does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event. It should be noted that the list of compensation events includes those arising as a result of an *Employer's* risk event listed in core clause 80.1.

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

(From page 73 of 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*

		Quantity	Rate	Total
<b>1</b>	<b>Water Sampling</b>			
<b>1.1.</b>	<b>Inorganic Analysis on Water Sampling</b>			
	Cations,	800		
	Anions	800		
	Other (TDS, pH, p-Alk, m-Alk)	800		
<b>1.2.</b>	<b>Organic Analysis on Water Sampling</b>			
	Phenols	800		
	BTEX	800		
	PAH	800		
<b>1.3</b>	<b>Collection and Transportation of Samples</b> <b>The total number of trips is twenty one</b>	21		
<b>1.4</b>	<b>Supply of sample bottles</b>	800		

Total

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## PART 3: SCOPE OF WORK

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

## C3.1: EMPLOYER'S SERVICE INFORMATION

### 1 Description of the *service*

#### 1.1 Executive overview

Analysis of Water from Monitoring Boreholes from Majuba UCG

#### 1.2 *Employer's requirements for the service*

##### **Ground Water Monitoring**

The contract will make provision for monitoring of compliance wells (25 samples) on a quarterly basis and a full set of sample (80 samples) will be taken once a year. The number of samples may however vary, however the estimated number of samples is 800 for the duration of the contract. All samples will be submitted to a laboratory for inorganic and organic analysis as given in Table 1 and Table 2 below. Units of measure for each analysis as required by the Employer are also given in the Table 1 and Table 2. The UCG project may require additional samples depending on results and site activities, this will be requested as and when needed. The frequency of sampling will decrease to once per year during the contract.

Table 1: Inorganic analysis

Elements	Detection Limit	Elements	Detection Limit
<b>Cations and metals - mg/L</b>		<b>Anions - mg/L</b>	
Ag	<0.05	F	<0.4
Al	<0.05	Cl	<0.4
As	<1	Br	<0.25
B	<0.05	NO <sub>2</sub>	<2
Ba	<0.05	NO <sub>3</sub>	<2
Be	<0.05	PO <sub>4</sub>	<4
Bi	<0.05	SO <sub>4</sub>	<4
Ca	<0.05	NH <sub>3</sub>	
Cd	<0.05		
Co	<0.05		
Cr	<0.05	<b>General Parameters - mg/L</b>	
Cu	<0.05	pH	mg/L
Fe	<0.05	TDS	
K	<0.05	EC	<0.6
Li	<0.05	p-Alk	
Mg	<0.05	m-Alk	
Mn	<0.05	Sum of Cation	
Mo	<0.05	Sum of Anion	
Na	<0.05		
Ni	<0.05		
P	<0.05		
Pb	<1		
Sb	<1		
Se	<1		
Si	<0.05		
Sn	<0.05		
Sr	<0.05		
Ti	<1		
Tl	<1		
V	<0.05		
Zn	<0.05		

Table 2 provides a summarised list of compounds within each organic range that will be required, if any other results are generated concurrently with the specified compounds, this must be indicated.

Table 2 Organic analysis

Elements	Units	Elements	Units	Elements	Units
<b>Phenols</b>	<b>ug/L</b>	<b>GRO / BTEX</b>	<b>ug/L</b>	<b>PAH</b>	<b>ug/L</b>
Phenol	<20	Benzene	<1	Napthalene	<0.1
Methylphenol	<1	Toluene	<10	Acenaphthene	<0.1
Dimethylphenol	<1	Ethyl Benzene	<2	Flourene	<0.1
		Xylene	<2	Phenanthrene	<0.1
		Trimethyl Benzene	<2	Anthracene	<0.1
				Pyrene	<0.1

#### Additional Requirements

- All samples will be taken by the UCG sampling team.
- The contractor is it make provision for the sample to be collected from site and delivered to the

laboratory. The Employer will reserve the right to use this option or deliver the samples themselves.

- The Employer will specify the required analyses for each sample run in a task order that will precede the sample delivery.
- An analytical report / results must be emailed to the Employer within two weeks of receipt of the samples by the Contractor.
- Should the samples submitted by the Employer be insufficient for analysis; the Contractor must notify the Employer within 48 hours of receipt of the samples.
- The Contractor is to be available for interpretation of results on request by the Employer.
- The Contractor is to handle samples with caution as they may contain hazardous elements.
- The Contractor will be responsible for safe disposal of samples after analysis.
- The Contractor is requested to supply sampling bottles. The sampling bottles will be collected by the Employer when dropping off samples at the contractor's premises.
- Number of monthly samples submitted could vary in accordance with the progress of the project.
- The particular analyses required may vary in accordance with sampling objectives
- All the Contractors tendering should have ISO/IEC 17025:2005 accreditation.
- The contractor will be required to sign a non-disclosure agreement.

**Document to be submitted with proposal:**

- All Contractors are to provide an itemised price list
- All Contractors are required to submit all SANAS Accreditation certificates, clearly indicating methods that are accredited.
- Units of measure for each analysis as required by the Employer are given in the Table 1 – 2. Where not specified the contractor is required to provide an indication of their capability.



## 2 Management strategy and start up.

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

The Contractor will advise in the contract the methods and procedures that he proposes in performing the works. These methods and procedures shall not be deemed as terms of the contract. He is also allowed to change his methods and procedures as he see fit subject to the change being approved by the Service Manager. Methods and procedures will not vary the specification and cannot be used to provide qualifications to the proposed agreement. The intention of the method statement is to provide the Service Manager and the Employer with information as how he proposes to perform the said Works.

### 2.2 Management meetings

Meetings will be requested by either party if the need arise.

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 *Contractor's* management, supervision and key people

The Contractor is responsible for supplying the end of job documentation associated with the works. The end of job documentation consists of the signed off (where applicable) completion forms and certificate of acceptance with all the results. The contractor is expected to submit signed lab certificates and an excel work sheet at the end of each sample run.

The Contractor is deemed to have in making his offer, all personnel available to perform the works entirely in the contracted time and cost. In addition he shall comply with the prevailing Act 85 of 1993, Occupational Health and Safety Act and QM58 Supplier Contract Quality Requirements Specification.

### 2.5 Documentation control

All instructions to the Contractor will be in writing and shall be deemed to have been received if left with the Contractor or his agent at the business premises of the Contractor.

Other formal communications by way of letter or other shall be addressed to the Project Manager

The format of the letter, invoices etc., will be determined and agreed at the first site meeting.

### 2.6 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 Holdings SOC Limited  
Sustainability Division  
Underground Coal Gasification Site, Majuba

PO Box 382  
VOLKSRUST  
2470

and include on each invoice the following information:

- Name and address of the *Contractor* and the *Service Manager*;
- The contract number and title;
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number 4740101508;
- Description of service provided for each item invoiced based on the Price List;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- The words Tax Invoice
- Serialised Invoice Number
- Date of Invoice
- Purchase Order number (45#)

The *Contractor* attaches the detail assessment of the amount due to each tax invoice showing the Price for Work Done to Date for each item in the Price List for work which he has completed.

For Invoices which are posted, please utilise the above address, alternatively hand deliver to Contract Manager/Eskom Representative.

No faxed or copies of Invoices will be accepted, only the original correct Invoice will be processed for payment.

Colour PDF Invoices are also acceptable.

## 2.7 Contract change management

The contract will be managed, but is not limited to, site instructions, letters, minutes of meetings and quality forms endorsed by the Service Manager or his duly appointed representative. The interim certificate comprising, an invoice for work done to date, supported by attached Contract of quantities which is supported by the actual calculations done and verified on site.

If there is a change in analytical methodology or accreditation status, it will be the Contractors responsibility to inform the Employer of such change. If there is any change to detection limits caused by a different analytical method or dilution this needs to be stated on the relevant samples' results certificate

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

N/A

## 2.9 Insurance provided by the *Employer*

N/A

## 2.10 Training workshops and technology transfer

N/A

## 2.11 Design and supply of Equipment

N/A

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

### 2.1.1 Equipment

N/A

### 2.1.2 Information and other things

Analytical report/results must be emailed to the Employer within two weeks of receipts of samples by the Contractor.

## 2.13 Management of work done by Task Order

Task order will be issued by the Service Manager when a need arise.

## 3 Health and safety, the environment and quality assurance

### 3.1 Health and safety risk management

The Service Provider shall comply with the health and safety requirements contained in the Mine Health and Safety Act No 29 of 1996.

### 3.2 Environmental constraints and management

Service Provider must comply with The National Environmental Management Act 107 of 1998 (NEMA), The National Environmental Management: Air Quality Act 39 of 2004 (NEM:AQA), The National Environmental Management: Waste Act 59 of 2008 (NEM:WA), UCG Waste Management Plan Unique Identifier: UCG PN 2073-1501 and Non Conformance corrective Action and Preventative Action Procedure Unique Identifier: UCG PN 2073-1509.

### 3.3 Quality assurance requirements

The contractor is to provide the method statement for all analysis including laboratory standards, methodology used, calibration certificates, detection limits, accreditation status for all analyses.  
Contractor must have a SANAS accreditation certificate  
After each sample run the service provider is to provide a laboratory certificate with all results  
The service provider must comply to Eskom Supplier Quality Requirement as per QM58 Specification, category

## 4 Procurement

N/A

### 4.1 People

#### 4.1.1 Minimum requirements of people employed

N/A

#### 4.1.2 BBBEE and preferencing scheme

N/A

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

N/A

### 4.2 Subcontracting

#### 4.2.1 Preferred subcontractors

N/A

#### 4.2.2 Subcontract documentation, and assessment of subcontract tenders

N/A

#### 4.2.3 Limitations on subcontracting

N/A

#### 4.2.4 Attendance on subcontractors

N/A

### 4.3 Plant and Materials

#### 4.3.1 Specifications

N/A

#### 4.3.2 Correction of defects

N/A

**4.3.3 Contractor's procurement of Plant and Materials**

N/A

**4.3.4 Tests and inspections before delivery**

N/A

**4.3.5 Plant & Materials provided "free issue" by the *Employer***

N/A

## 5 Working on the Affected Property

N/A

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

N/A

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

N/A

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

N/A

### 5.4 Environmental controls, fauna & flora

N/A

### 5.5 Cooperating with and obtaining acceptance of Others

N/A

### 5.6 Records of Contractor's Equipment

N/A

### 5.7 Equipment provided by the Employer

N/A

### 5.8 Site services and facilities

#### 5.8.1 Provided by the Employer

N/A

#### 5.8.2 Provided by the Contractor

N/A

### **5.9 Control of noise, dust, water and waste**

N/A

### **5.10 Hook ups to existing works**

N/A

### **5.11 Tests and inspections**

#### **5.11.1 Description of tests and inspections**

N/A

#### **5.11.2 Materials facilities and samples for tests and inspections**

N/A

## 6 List of drawings

### 6.1 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
N/A		