



# NEC3 Professional Services Contract (PSC3)

**Contract between Eskom Holdings SOC Limited  
(Reg No. 2002/015527/30)**

**and  
(Reg No. \_\_\_\_\_)**

**for Provision of Hydrogeological Consultancy Services  
to the Majuba UCG Project for a period of five (5) years**

---

<b>Contents:</b>	<b>No of pages</b>
<b>Part C1 Agreements &amp; Contract Data</b>	<b>[•]</b>
<b>Part C2 Pricing Data</b>	<b>[•]</b>
<b>Part C3 Scope of Work: The Scope</b>	<b>[•]</b>

---

**CONTRACT No.**

---

## **PART C1:      AGREEMENTS & CONTRACT DATA**

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
C1.1	Form of Offer & Acceptance	[•]
C1.2a	Contract Data provided by the <i>Employer</i>	[•]
C1.2b	Contract Data provided by the <i>Consultant</i>	[•]

# C1.1 Form of Offer & Acceptance

## Offer

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

### Provision of Hydrogeological Consultancy Services to the Majuba UCG Project for a period of five (5) years

The tenderer, identified in the Offer signature block, has

<i>either</i>	examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.
<i>or</i>	examined the draft contract as listed in the Acceptance section and agreed to provide this Offer.

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 *Consultant* 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.

The offered total of the Prices exclusive of VAT is	<b>Not Applicable – Cost reimbursable</b>
---	---

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 *Consultant* 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

## 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 Consultant 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: The Scope

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the  
Employer**

.....  
*(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

Note:

1. To be completed by the Employer prior to award of contract. 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		Not applicable

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 PSC3 Contract Data

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

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
	dispute resolution Option and secondary Options	<b>G: Term Contract</b> <b>W1: Dispute resolution procedure</b> <b>X1: Price adjustment for inflation</b> <b>X2: Changes in the law</b> <b>X7: Delay damages</b> <b>X9: Transfer of rights</b> <b>X10: Employer's Agent</b> <b>X11: Termination by Employer</b> <b>Z: Additional conditions of contract</b>
	of the NEC3 Professional Services Contract (April 2013) <sup>1</sup>	
10.1	The <i>Employer</i> is (Name):	<b>Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Tel No.	
	Fax No.	
11.2(9)	The <i>services</i> are	<b>Provision of Hydrogeological Consultancy Services to the Majuba UCG Project for a period of five (5) years</b>
11.2(10)	The following matters will be included in the Risk Register	<b>To be finalised on contract award</b>
11.2(11)	The Scope is in	<b>Part 3: Scope of Work</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>

<sup>1</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 and [www.ecs.co.za](http://www.ecs.co.za)

13.3	The <i>period for reply</i> is	<b>1 weeks</b>
13.6	The <i>period for retention</i> is	<b>Five (5) years following Completion or earlier termination.</b>

## 2 The Parties' main responsibilities

25.2	The <i>Employer</i> provides access to the following persons, places and things	<b>access to</b>	<b>access date</b>	
		1	Majuba UCG offices, site and information	Contract start date
		2	[•]	[•]
		3	[•]	[•]

## 3 Time

31.2	The <i>starting date</i> is.	<b>On contract award date</b>		
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is.	<b>5 years following contract award</b>		
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<b>Condition to be met</b>	<b>key date</b>	
		1	As per Task Orders	As per Task Orders

## 4 Quality

40.2	The quality policy statement and quality plan are provided within	<b>Two (2) weeks of the Contract Date.</b>
42.2	The <i>defects date</i> is	<b>Twenty four (24) weeks after completion of the whole of the <i>services</i>.</b>

## 5 Payment

50.1	The <i>assessment interval</i> is	<b>25<sup>th</sup> day of each successive month.</b>
51.1	The period within which payments are made is	<b>Four to six weeks.</b>
51.2	The <i>currency of this contract</i> is the	<b>South African Rand</b>

51.5 The *interest rate* is

(i) 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 and

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

<b>6</b>	<b>Compensation events</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.	
<b>7</b>	<b>Rights to material</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.	
<b>8</b>	<b>Indemnity, insurance and liability</b>		
81.1	The amounts of insurance and the periods for which the <i>Consultant</i> maintains insurance are		
	<b>Event</b>	<b>Cover</b>	<b>Period following Completion of the whole of the <i>services</i> or earlier termination</b>
	Liability for failure by the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	<b>Whatever the <i>Consultant</i> deems necessary in respect of each claim, without limit to the number of claims</b>	<b>See Notes to Consultants in Annexure A</b>

	death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property arising from or in connection with the <i>Consultant's</i> Providing the Services.	<b>Whatever the <i>Consultant</i> deems necessary for any occurrence or series of occurrences arising out of one event without limit to the number of claims.</b>	<b>See Notes to Consultants in Annexure A</b>
	death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	<b>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Consultant's</i> common law liability for people falling outside the scope of the Act with a limit of indemnity of not less than R500 000-00 (five hundred thousand) in respect of each claim, without limit to the number of claims</b>	<b>As <i>Consultant</i> deems necessary</b>
81.1	The <i>Employer</i> provides the following insurances	<b>Refer to Annexure A for details of insurance provided by the <i>Employer</i>.</b>	
82.1	The <i>Consultant'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	<b>The total of the Prices</b>	
	The <i>Consultant</i> provides these additional insurances.		
	1 Insurance against:	<b>Whatever the <i>Consultant</i> deems necessary including cover provided for payment of deductibles</b>	
<b>9</b>	<b>Termination</b>	<b>There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.</b>	
<b>10</b>	<b>Data for main Option clause</b>		
<b>G</b>	<b>Term contract</b>		
21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than	<b>Twelve (12) weeks.</b>	
<b>11</b>	<b>Data for Option W1</b>		

W1.1	The <i>Adjudicator</i> is (Name)	The person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
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 or its successor body. (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	Johannesburg, South Africa
	The person or organisation who will choose an arbitrator	
	<ul style="list-style-type: none"> <li>• if the Parties cannot agree a choice or</li> <li>• if the <i>arbitration procedure</i> does not state who selects an arbitrator, is</li> </ul>	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>X1</b>	<b>Price adjustment for inflation</b>	
X1.1	The index is	SEIFSA table C3 (labour) and table L2 (travel).
	The staff rates are	Fixed at the Contract Date and are not variable with changes in salary paid to individuals. (Price adjustment will be applicable after 12 months)
<b>X2</b>	<b>Changes in the law</b>	
X2.1	The law of the project is	the law of the Republic of South Africa.
<b>X7</b>	<b>Delay damages</b>	
X7.1	Delay damages for late Completion of the whole of the <i>services</i> are	If a delay in completion of the service can be attributed to proven negligence, action or omission on the part of the Consultant, a penalty of ten percent (10%) of the task value may be levied.
<b>X9</b>	<b>Transfer of rights</b>	There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.
<b>X10</b>	<b>The <i>Employer's Agent</i></b>	

X10.1	<p>The <i>Employer's Agent</i> is</p> <p>Name:</p> <p>Address</p> <p>The authority of the <i>Employer's Agent</i> is</p>	<p><b>Eskom Holdings SOC. Limited Group Technology Division Majuba-UCG P.O Box 382 Volksrust,2470</b></p> <p><b>Tel:</b></p> <p><b>Fax:</b></p> <p><b>e-mail:</b></p> <p><b>To manage contract in consultation with relevant applicable authorities.</b></p>
<b>Z</b>	<p><b>The <i>Additional conditions of contract</i> are</b></p>	<p><b>Z1 to Z14 always apply.</b></p>

**Z1 Cession delegation and assignment**

- Z1.1 The *Consultant* 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 *Consultant* 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 *Consultant* 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 *Employer* within two weeks of the Contract Date of the key person who has the authority to bind the *Consultant* on their behalf.
- Z2.3 The *Consultant* 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 *Consultant* in writing.

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

- Z3.1 Where a change in the *Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant's* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change.
- Z3.2 The *Consultant* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*.

- Z3.3 Where, as a result, the *Consultant's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Consultant's* obligation to Provide the Services.
- Z3.4 Failure by the *Consultant* 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 those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

## **Z4 Confidentiality**

- Z4.1 The *Consultant* 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 *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the *Consultant* disclose information to Others in terms of clause 23.1, the *Consultant* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer*.
- Z4.3 In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, 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 *Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer's* project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

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

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

## **Z6 Provision of a Tax Invoice. Add to core clause 51**

- Z6.1 The *Consultant* (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.

## **Z7 Notifying compensation events**

- Z7.1 Delete from the last sentence in core clause 61.3, "unless the *Employer* should have notified the event to the *Consultant* but did not".

## **Z8 *Employer's* limitation of liability**

Z8.1 The *Employer's* liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to R0.00 (zero Rand)

**Z9 Termination: Add to core clause 90.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":**

Z9.1 or had a judicial management order granted against it.

**Z10 Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)**

Z10.1 If the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.

Z10.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

**Z11 Ethics**

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

**Affected Party** means, as the context requires, any party, irrespective of whether it is the *Consultant* or a third party, such party's employees, agents, or Subconsultants or Subconsultant'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 *Consultant*, or any member thereof in the case of a joint venture, or its employees, agents, or Subconsultants or the Subconsultant's employees,

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

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

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

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

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

Z11.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Consultant* 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 *Consultant's* obligation to Provide the Services for this reason.

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

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

**Z12 Insurance**

Z12.1 Replace core clause 81 with the following:

81.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.

81.2 The *Consultant* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

**INSURANCE TABLE A**

Insurance against	Minimum amount of cover	For the period following Completion of the whole of the services or earlier termination
Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the <i>services</i>	The amount required by the applicable law.	Only required for the duration of the contract period.
Liability for death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	<p><b><u>Loss of or damage to property:</u></b> The replacement cost where not covered by the <i>Employer's</i> insurance</p> <p>The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance</p> <p><b><u>Bodily injury to or death of a person:</u></b> The amount required by the applicable law.</p>	Only required for the duration of the contract period.
Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law	Only required for the duration of the contract period.

81.3 The *Employer* provides the insurances stated in the Insurance Table B.

**INSURANCE TABLE B**

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

**Z13 Nuclear Liability**

- Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z13.2 The *Employer* is solely responsible for and indemnifies the *Consultant* or any other person against any and all liabilities which the *Consultant* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Consultant* or any other person or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Consultant* or any other person, or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

**Z14 Asbestos**

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

- AAIA** means approved asbestos inspection authority.
- ACM** means asbestos containing materials.

- AL** means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
- Ambient Air** means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
- Compliance Monitoring** means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
- OEL** means occupational exposure limit.
- Parallel Measurements** means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
- Safe Levels** means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
- Standard** means the *Employer's Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.*
- SANAS** means the South African National Accreditation System.
- TWA** means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.
- Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Consultant* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
- Z14.2 Upon written request by the *Consultant*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Consultant* may perform Parallel Measurements and related control measures at the *Consultant's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z14.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z14.5 The *Consultant's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.

- Z14.6 The *Consultant* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

## C1.2 Contract Data

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

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

1. The tendering consultant is advised to read both the NEC3 Professional Services Contract, April 2013 and the relevant parts of its Guidance Notes (PSC3-GN)<sup>2</sup> in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 158 & 159 of the PSC3 April 2013 Guidance Notes.
2. The number of the clause in the PSC3 which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
3. Whenever a cell is shaded in the left hand column it denotes this data is optional in PSC3 and would be required in relation to the option selected. The *Employer* should already have made the selection and deleted the rows not required.

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

Clause	Statement	Data
10.1	The <i>Consultant</i> is (Name): Address Tel No. Fax No.	
22.1	The <i>Consultant's</i> key persons are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities: Qualifications: Experience:	
		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled .
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	

<sup>2</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 or [www.ecs.co.za](http://www.ecs.co.za)

11.2(10)	The following matters will be included in the Risk Register					
11.2(13)	The <i>staff rates</i> are:	<table border="1"> <thead> <tr> <th data-bbox="829 282 1117 315">name/designation</th> <th data-bbox="1117 282 1452 315">rate</th> </tr> </thead> <tbody> <tr> <td colspan="2" data-bbox="829 338 1452 405" style="text-align: center;"><b>Refer to a schedule in Part C2.2</b></td> </tr> </tbody> </table>	name/designation	rate	<b>Refer to a schedule in Part C2.2</b>	
name/designation	rate					
<b>Refer to a schedule in Part C2.2</b>						
25.2	The <i>Employer</i> provides access to the following persons, places and things	<table border="1"> <thead> <tr> <th data-bbox="829 533 1244 566">access to</th> <th data-bbox="1244 533 1452 566"><i>access date</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="829 611 1244 656">1   UCG Site Access</td> <td data-bbox="1244 611 1452 656">To be advised on Task Order</td> </tr> </tbody> </table>	access to	<i>access date</i>	1   UCG Site Access	To be advised on Task Order
access to	<i>access date</i>					
1   UCG Site Access	To be advised on Task Order					

## **PART 2: PRICING DATA**

### **PSC3 Option G**

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
C2.1	Pricing assumptions : Option G	[•]
C2.2	<i>Staff rates, expenses and the task schedule.</i>	[•]

## C2.1 Pricing assumptions: Option G

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

From Option G: Term contract

Identified and defined terms	11 11.2	(17) The Price for Services Provided to Date is, for each Task, the total of <ul style="list-style-type: none"><li>the Time Charge for work which has been completed on time based items on the Task Schedule and</li><li>a proportion of the lump sum price for each other item on the Task Schedule which is the proportion of work completed on that item.</li></ul>
		(20) The Prices are <ul style="list-style-type: none"><li>the Time Charge for items described as time based on the Task Schedule and</li><li>the lump sum price in the Task Schedule for each other item.</li></ul>

From the Core Clauses:

Identified and defined terms	11.2	(13) The Time Charge is the sum of the products of each of the <i>staff rates</i> multiplied by the total staff time appropriate to that rate properly spent on work in this contract.
------------------------------	------	--

and

Assessing the amount due	50.3	The amount due is <ul style="list-style-type: none"><li>the Price for Services Provided to Date,</li><li>the amount of the <i>expenses</i> properly spent by the <i>Consultant</i> in Providing the Services and</li><li>other amounts to be paid to the <i>Consultant</i> less amounts to be paid by or retained from the <i>Consultant</i>.</li></ul> <p>Any tax which the law requires the <i>Employer</i> to pay to the <i>Consultant</i> is included in the amount due.</p>
--------------------------	------	--

In effect Option G is a cost reimbursable form of contract with work ordered by the *Employer* on a Task by Task basis using the Task Schedule to compile the cost of carrying out a Task.

*Expenses* are calculated separately and added to the amount due for the services provided.

### 2. Staff rates and expenses

Tendering consultants are advised to consult the NEC3 Professional Services Contract Guidance Notes before entering *staff rates* into Contract Data, or in section C2.2 which follows.

This is because *staff rates* can be established in one of three ways:

- rates for named staff,

- rates for categories of staff, or
- rates related to salaries paid to staff.

Rate adjustment for inflation, if necessary, can be based either on actual salary adjustments or by using Option X1: Price adjustment for inflation. See pages 13 and 14 of the PSC3 Guidance Notes.

*Expenses* associated with employing a staff member in Providing the Services can be listed separately either by the *Employer* in Contract Data provided by the *Employer* or by the *Consultant* in Contract Data provided by the *Consultant*.

As only the *expenses* listed may be claimed by the *Consultant*, all other cost to the *Consultant* associated with Providing the Services must be included within the *staff rates*.

Rate adjustment for inflation of *expenses* is explained on page 15 of the PSC3 Guidance Notes.

### **3. The function of the Task Schedule**

The Task Schedule may include items of work to be paid for on a rate (Time Charge) or on a lump sum price for the item. Any work ordered during the term of the contract – i. e. before the Completion Date – for which there is no priced item in the Task Schedule is priced using the compensation event procedure and the resulting Price is added into the Price List.

The *task schedule* is prepared by the *Employer* for the *Consultant* to price, or may be prepared jointly with the *Consultant*. It is typically priced in two parts as items of work to be carried out on a time basis and lump sum prices for other items of work. The task schedule must be as complete as possible and fully representative of all the work and *services* which the *Employer* may require the *Consultant* to carry out. The only unknown is when the work is to be carried out; the Task Order will be used to instruct when work to be done.

## C2.2 Staff rates, expenses & the task schedule

The *staff rates* and *expenses* exclude VAT.

No	Description	Units	Estimated Quantities	Rates (Rands)	Total
1	<b>Ground Water Monitoring (Data analysis, Reporting and Modelling)</b>				
1.1	Principal Hydrogeologist	Hour	160		
1.2	Senior Hydrogeologist	Hour	320		
1.3	Hydrogeologist	Hour	320		
1.4	Drafting/GIS	Hour	160		
1.5	Geochemist	Hour	480		
2	<b>General Hydrogeology Consulting (Compliance, Permitting, UCG Closure and Rehab)</b>				
2.1	Principal Specialist	Hour	480		
2.2	Senior Specialist	Hour	640		
2.3	Specialist (hydrogeologist, geologist, water licencing)	Hour	320		
2.4	Drafting/GIS	Hour	320		
2.5	Junior	Hour	160		
3	<b>Disbursement and Reimbursables</b>				
3.1	Accommodation and Subsistence	Sum	5		
3.2	Travel	/km	3000		
<b>Total</b>				R	

## 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 Scope</i>	
C3.2	<i>Consultant's Scope</i>	
	Total number of pages	

## C3.1: EMPLOYER'S SCOPE

### 1. Description of the services

#### 1.1. Executive overview

The Provision of Hydrogeological Consultancy Services to the Majuba UCG Project for a period of 5 years.

#### 1.2. Interpretation and terminology

The following abbreviations are used in this Scope:

Abbreviation	Meaning given to the abbreviation
BETX	Benzene, Toluene, Ethylbenzene & Xylene
DWS	Department of Water and Sanitation
EIA	Environmental Impact Assessment
PAH	Polycyclic Aromatic Hydrocarbons
SANS	South African National Standards
UCG	Underground Coal Gasification
WUL	Water Use Licence

### 2. Specification and description of the services

#### Ground Water Monitoring

Maintain and further develop a long term groundwater database in order to improve the understanding and interpretation of data, as well as to identify any variation in ground water quality and investigate potential sources of those variations.

On the Majuba UCG site there are approximately 70 wells which are sampled routinely. Eskom will sample boreholes, the current sampling method used is by bailer, and samples will be sent to a SANAS accredited Laboratory for analysis. Analysis conducted include Inorganic and Organic (Phenol, BTEX, PAH) analysis. Water quality data from the laboratory along with site specific data (water level in wells, site activities and rainfall) will be sent to the Contractor for analysis and interpretation.

The Hydrogeological Consultant (Contractor) will be required to analyse the data and provide Eskom with 2 reports.

- UCG Project Internal Report (annual); This report focused on the geochemical and mineralogical analysis of each well. The contractor will be required to report on the water level and water quality of all wells, identify unusual fluctuation within the results, and propose possible causes and further investigation. Experience of UCG operations and possible impact on hydrogeology is essential in this interpretation. The contractor will be required to have an understanding of site specific seasonal variations in ground water, past incidents and the recorded impact on ground water, as well as site specific hydrogeological characteristic of the aquifers systems. Regional knowledge (Northern Natal coal sequence and specifically the Amersfoort area.) and knowledge of ground water impact of traditional mining method will be beneficial.

- Report for submission to DWS (quarterly); this report will only contain the information of the wells within the Compliance Zone and will compare the data to the relevant WUL conditions, SANS standard and baseline data.

The Contractor will be required to provide additional report as and when needed. This may include topic such as, but not limited to: hydrocensus, requirement for further investigation based on quarterly results, groundwater status post UCG operations, reports on the overall environmental statue of the UCG site, recommendation on the UCG projects future development or rehabilitation. In depth knowledge of the UCG technology will be required to successfully complete these reports.

**Ground Water Model**

If a ground water model is a requirement of the new water use licence (as it is with the current licence) or a requirement of any other compliance obligation, one will need to be developed and / or updated. This will need to be a 3-dimensional conceptual hydrogeological model and numerical groundwater flow and transport model. The model should be developed in FEFLOW or in an equivalent modelling package. The model must be based on site specific baseline data and regional hydrogeological data. The model must represent hydrogeological condition on the Majuba UCG site prior to gasification and predict hydrogeological condition during various phases of UCG activities as well as long term predictions after UCG operation have ceased. The model must be developed specifically for UCG condition and therefore will require a contractor that has knowledge and experience with the development of UCG ground water models.

**General Hydrogeological Consultancy**

Hydrogeological consultancy services will also be required in terms of licencing and compliance on an as and when needed basis. This will include the development of various reports, some of which will be for submission to the Department of Water and Sanitation, including but not limited to: hydrogeological requirement for permits and licences, proposals for meeting compliance obligations for septic tank and sewage works, proposals to meet other water related compliance obligations including condition of any existing or new water use licences, assessment of the storm water management system, specialist studies, EIA renewal/extension, update the Integrated Waste and Water Management Plan. Any work not identified will be discussed and when agreed upon, will be specified in a professional service task order.

**Additional Requirements**

The contractor may be required to prepare and present presentation to external parties, as well as interact with other stakeholders, based on the content of the scope of work. It would be highly beneficial if the hydrogeological consultant has an in-depth knowledge of the UCG process as well as the past operations, research and testing conducted to date at the Majuba site. A thorough knowledge of permitting processes and environmental compliance obligations is also essential.

**3. Constraints on how the Consultant Provides the Services.**

**3.1. Management meetings**

Regular meetings of a general nature may be convened and chaired by the *Employer's Agent* as follows:

Title and purpose	Approximate time interval	Location	Attendance by:
Contract initiation	At the start of the contract	UCG Site	All

Start and end of each task	As and when required	Teams / UCG site	Responsible Contract Team Members and Employer Agent
----------------------------	----------------------	------------------	--

Meetings of a specialist nature may be convened as specified elsewhere in this Scope or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the *services*. Records of these meetings shall be submitted to the *Employer's Agent* 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.

### 3.2. Consultant's key persons

The key personal will be confirmed at task order level as per the requirements of that particular task.

### 3.3. Provision of bonds and guarantees

Not Applicable

### 3.4. Documentation control and retention

#### 3.4.1. Identification and communication

All work/deliverables will be initiated through a task order and discussed prior to initiation of any task. All data shared and generated during this contract will be deemed the property of Eskom and may not be shared with any 3<sup>rd</sup> party without written consent from Eskom. All data, maps, drawings and models are to be handed over to Eskom in the raw file format at the conclusion of the task order.

#### 3.4.2. Retention of documents

All drawing, specifications, reports and other documents are to be retained for a period of 5 years following completion of the contract.

### 3.5. Invoicing and payment

The following details shall be shown on or attached to each Invoice to show how the amount due has been assessed:

The *Consultant* shall address the tax invoice to Eskom Holding SOC and include on it the following information:

Name and address of the *Consultant* and the *Employer's Agent*;

The contract number and title;

*Consultant's* VAT registration number;

The *Employer's* VAT registration number 4740101508;

Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;

CPI Escalation (if Applicable)

Banking Detail of the *Consultant*

Purchase Order Number (task Order 45....) as given by the Employer

Within one week of receiving a payment certificate from the Service Manager in terms of core clause 51.1, the Employer will provide an Assessment to the Contractor for signature. The Contractor provides the Employer with a tax invoice thereafter showing the amount due for payment equal to that stated in the Service Manager's payment certificate and / or time sheets.

### **3.6. Contract change management**

Any additional requirements to the compensation event clauses in Section 6 of the core clauses will be confirmed at the time of the compensation event.

### **3.7. Inclusions in the programme**

Not Applicable

### **3.8. Quality management**

#### **3.8.1. System requirements**

The contractor must comply to Eskom Supplier Quality Requirement as per QM58 Specification

#### **3.8.2. Information in the quality plan**

Not Applicable

### **3.9. The Parties use of material provided by the Consultant**

#### **3.9.1. Employer's purpose for the material**

Not Applicable

#### **3.9.2. Restrictions on the Consultant's use of the material for other work**

Not Applicable

#### **3.9.3. Transfer of rights if Option X 9 applies**

The Employer owns the Consultants rights over the reports prepared for this contract by the Consultant except as if stated otherwise in the scope.

The Consultant shall not challenge or assist any other party challenging at any time the validity or ownership of any of the intellectual property rights relating to the material created and developed for this contract.

### **3.10. Management of work done by Task Order**

All work will be managed by task order.

### **3.11. Health and safety**

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

Should the Consultant be required to perform any work on the UCG site, they shall comply with the health and safety requirements contained in the Mine Health and Safety Act No 29 of 1996. The *Consultant* will be guided by the *Employer* to set up a SHE File which will be audited for correctness before any site work can commence.

### **3.12. Procurement**

#### **3.12.1. BBEE and preferencing scheme**

As per agreement during pre-award negotiation meeting.

#### **3.12.2. Preferred subconsultants**

Not Applicable

#### **3.12.3. Subcontract documentation, and assessment of subcontract tenders**

Not Applicable

#### **3.12.4. Limitations on subcontracting**

Not Applicable

**3.12.5. Attendance on Subconsultants**

Not Applicable

**3.13. Working on the Employer's property**

**3.13.1. Employer's entry and security control, permits, and site regulations**

Should the scope require work to be conducted on site the Consultant's representative will be required to complete induction after which temporary access will be granted for the duration of the activity. Daily alcohol testing will be conducted before entry into the UCG site will be permitted.

**3.13.2. People restrictions, hours of work, conduct and records**

Not Applicable

**3.14. Things provided by the Employer**

All available past data and report will be made available to the consultant. The information is considered confidential and can only be used to successfully complete the scope of this contract and may not be shared with any third party.

**4. List of drawings**

**4.1. Drawings issued by the Employer**

Drawing will be issued by the Employer if they are required by the activity of the specific Task Order.