



NEC3 Term Service Contract (TSC3)

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

and

for **The Provision of Lifting Equipment Statutory
Inspections in terms of OHSAct DMR Regulations at
Majuba Underground Coal Gasification Site (UCG)
from the UCG site**

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CONTRACT No. [Insert at award stage]

PART C1: AGREEMENTS & CONTRACT DATA

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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:

The Provision of Lifting Equipment Statutory Inspections in terms of OHSAct DMR Regulations at Majuba Underground Coal Gasification Site (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.

Options A	The offered total of the Prices exclusive of VAT is	R
	Sub total	R
	Value Added Tax @ 15% is	R
	The offered total of the amount due inclusive of VAT is ¹	R
	.	

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:

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

Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

for the
Employer

**Eskom Holdings SOC Limited
Majuba UCG
PO Box 382
VOLKSRUST
2470**

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

No.	Subject	Details
1	None	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)***Ouma Bosaletsi****COE Manager**

**Eskom Holdings SOC Limited
Majuba UCG
PO Box 382
VOLKSRUST
2470**

Name & signature of witness

Date

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option:	
		A: Priced contract with price list
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	X1: Price adjustment for inflation
		X2 Changes in the law
		X18: Limitation of liability
		X19: Task Order
		Z: Additional conditions of contract
	of the NEC3 Term Service Contract April 2013 ² (TSC3)	
10.1	The <i>Employer</i> is (name):	Eskom 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
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	
	Fax No.	
10.1	The <i>Service Manager</i> is (name):	
	Address	PO Box 382 VOLKSRUST 2470
	Tel	
	Fax	
	e-mail	
11.2(2)	The Affected Property is	Majuba UCG Site
11.2(13)	The <i>service</i> is	The Provision of Lifting Equipment Statutory

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

		Inspections in terms of OHSAct DMR Regulations at Majuba Underground Coal Gasification Site (UCG)
11.2(14)	The following matters will be included in the Risk Register	Pre Task Risk Assessment shall be conducted
11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	7 working days
2	The Contractor's main responsibilities	
21.1	The <i>Contractor</i> submits a first plan for acceptance within	2 weeks of the Contract Date
3	Time	
30.1	The <i>starting date</i> is.	
30.1	The <i>service period</i> is	36 months
4	Testing and defects	
42.1	Correcting Defects.	1 day for safety related defects 1 week for all other defects
42.2	The Defect date is	4 weeks after completion
5	Payment	
50.1	The <i>assessment interval</i> is	On the 25th day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	4 weeks.
51.4	The <i>interest rate</i> is	the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and
6	Compensation events	As per Clause 60
7	Use of Equipment Plant and Materials	The contractor provides the machinery and or plant required to executed the scope of this contract.
8	Risks and insurance	
81.1	These are additional <i>Contarctor</i> risks	

82.1	Indemnity Clause 82.1
83.1	The <i>Contractor</i> provides these additional insurances:

83.2 The *Contractor* 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 or minimum limit of indemnity
Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
Loss of or damage to Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
Loss of or damage to Equipment	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
The <i>Contractor's</i> liability for 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	<u>Loss of or damage to property</u> The replacement cost <u>Bodily injury to or death of a person</u> The amount required by the applicable law.
Liability for 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	The amount required by the applicable law

9	Termination	As per Clause 90
10	Data for main Option clause	
A	Priced contract with price list	
11	Data for Option W1	
W1.1	The <i>Adjudicator</i>	the person selected from the ICE-SA Division (or its successor body) of the South African

		Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA)..
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of the Joint Civil Division of the South African Institution of Civil Engineering
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	South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	The Chairman for the time being or his nominee
	- if the arbitration procedure does not state who selects an arbitrator, is	of the Association of Arbitrators (Southern Africa) or its successor body.
12	Data for secondary Option clauses	
X1	Price adjustment for inflation	
X1.1	The <i>base date</i> for indices is	
	The proportions used to calculate the Price Adjustment Factor are:	CPI
X2	Changes in the law	No Data is required for this Option
X18	Limitation of liability	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	
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 http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	The greater of <ul style="list-style-type: none"> the total of the Prices at the Contract Date and the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles in the <i>Employer's</i> assets and works / maintenance policies available on http://www.eskom.co.za/Tenders/InsurancePolicies

		<p>ciesProcedures/Pages/EIMS_Policies_ From_1_April_2014_To_31_March_2015.aspx</p>
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<p>The total of the Prices other than for the additional excluded matters.</p> <p>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</p> <ul style="list-style-type: none"> • Defects due to his design, plan and specification, • Defects due to manufacture and fabrication outside the Affected Property, • loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials), • death of or injury to a person and • Infringement of an intellectual property right.
X18.5	The <i>end of liability date</i> is	1 Year after the end of the <i>service period</i>.
X19	Task Order	
X19.5	The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within	3 days of receiving the Task Order
Z	The <i>additional conditions of contract</i> are	Z1 to Z11 always apply.

Z1 Cession delegation and assignment

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

Z2 Joint ventures

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

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

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

Z4 Confidentiality

- Z4.1 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.
- Z4.2 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*.
- Z4.3 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.

Z4.4 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*.

Z4.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

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, 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.

Z6 Health, safety and the environment: Add to core clause 27.4

Z6.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:

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

Z6.2 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.

Z7 Provision of a Tax Invoice and interest. Add to core clause 51

Z7.1 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.

Z7.2 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.

Z7.3 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.

Z8 Notifying compensation events

Z8.1 Delete the last paragraph of core clause 61.3 and replace with:

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

Z9 *Employer's* limitation of liability

Z9.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z9.2 The *Contractor's* entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer's* liability under the indemnity is limited to compensation as provided for in core clause 63 and X19.11 if Option X19 Task Order applies to this contract.

Z10 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z10.1 or had a business rescue order granted against it.

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 *Contractor* or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,

Coercive Action means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,

Collusive Action means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,

Committing Party means, as the context requires, the *Contractor*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,

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

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

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

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

- 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 *Contractor's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Services for this reason.
- Z11.3 If the *Employer* terminates the *Contractor'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 *Contractor* ensures that the Committing Party co-operates fully with an investigation.

Z12 Insurance

Z 12 .1 Replace core clause 83 with the following:

Insurance cover 83

- 83.1 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.
- 83.2 The *Contractor* 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 or minimum limit of indemnity
Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
Loss of or damage to Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
Loss of or damage to Equipment	The replacement cost where not covered by the <i>Employer's</i> insurance. The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance.
The <i>Contractor's</i> liability for 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	<u>Loss of or damage to property</u> The replacement cost <u>Bodily injury to or death of a person</u>

person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service	The amount required by the applicable law.
Liability for 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	The amount required by the applicable law

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 *Contractor* or any other person against any and all liabilities which the *Contractor* 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 *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* 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 *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* 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 <i>Employer's</i> 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 *Contractor* 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 *Contractor*, 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 *Contractor* may perform Parallel Measurements and related control measures at the *Contractor'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 *Contractor'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 *Contractor* 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 Contractor

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	N/A N/A
11.2(14)	The following matters will be included in the Risk Register	1. Pre task Risk assessments shall be conducted
11.2(15)	The Service Information for the <i>Contractor's</i> plan is in:	The Scope of Work
21.1	The plan identified in the Contract Data is contained in:	
24.1	The key people are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job: Responsibilities: Qualifications: Experience:	
A	Priced contract with price list	
11.2(12)	The <i>price list</i> is in	CC.2 The Price List
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>	1

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

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

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

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

Function of the Price List

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

Link to the *Contractor's* plan

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

Preparing the *price list*

Before preparing the *price list*, both the *Employer* and tendering contractors should read the TSC3 Guidance Notes pages 14 and 15. In an Option A contract, either Party may have entered items into the *price list* either as a process of offer and acceptance (tendering) or by negotiation depending on the nature of the service to be provided. Alternatively the *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Contractor* to include in the *price list* to be prepared and priced by him.

It is assumed that in preparing or finalising the *price list* the *Contractor*:

- Has taken account of the guidance given in the TSC3 Guidance Notes relevant to Option A;
- Understands the function of the Price List and how work is priced and paid for;
- Is aware of the need to link operations shown in his plan to items shown in the Price List;
- Has listed and priced items in the *price list* which are inclusive of everything necessary and incidental to Providing the Service in accordance with the Service Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer's* risk;
- Has priced work he decides not to show as a separate item within the Prices or rates of other listed items in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.
- Understands there is no adjustment to items priced as lump sums if the amount, or quantity, of work within that item later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the (lump sum) Prices is as a result of a compensation event.

Format of the *price list*

(From the example given in an Appendix within the TSC3 Guidance Notes)

Entries in the first four columns in the *price list* in section C2.2 are made either by the *Employer* or the tendering contractor.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tendering contractor enters the amount in the Price column only, the Unit, Expected Quantity and Rate columns being left blank.

If the *Contractor* is to be paid an amount for an item of work which is the rate for the work multiplied by the quantity completed, the tendering contractor enters the rate which is then multiplied by the Expected Quantity to produce the Price, which is also entered.

If the *Contractor* is to be paid a Price for an item proportional to the length of time for which a service is provided, a unit of time is stated in the Unit column and the expected length of time (as a quantity of the stated units of time) is stated in the Expected Quantity column.

C2.2 the *price list*

INSPECTIONS					
Ref	Description	Unit	Quantity	Frequency	Total
1	3 Tons Lever Blocks Ilula	each	2	12	
2	1.5 Tons Chain Blocks Ilula	each	2	12	
3	4.4 Tons Two legged chain sling	each	2	12	
4	5 Tons Two legged chain sling	each	2	12	
5	3 Tons Steel Wire Rope Sling 1.5m	each	2	12	
6	3.25 Ton D Shackles	each	10	12	
7	3.2 Ton Bow Shackle	each	17	12	
8	2 Ton Crawl beam	each	1	12	
9	Manitou 3.5 Tons	each	1	12	
10	Manitou 7.5 Tons	each	1	12	
11	High Up 0.5 T	each	1	12	
12	15 Tons drill Rig Winch	each	1	12	
13	Drill Rig Winch 3 Tons	each	1	12	

Load Testing					
Ref	Description	Unit	Quantity	Frequency	Total
14	3 Tons Lever Blocks Ilula	each	2	3	
15	1.5 Tons Chain Blocks Ilula	each	2	3	
16	4.4 Tons Two legged chain sling	each	2	3	
17	5 Tons Two legged chain sling	each	2	3	
18	3 Tons Steel Wire Rope Sling 1.5m	each	2	3	
19	3.25 Ton D Shackles	each	10	3	
20	3.2 Ton Bow Shackle	each	17	3	
21	2 Ton Crawl beam	each	1	3	
22	Manitou 3.5 Tons	each	1	3	
23	Manitou 7.5 Tons	each	1	3	
24	High Up 0.5 T	each	1	3	
25	15 Tons drill Rig Winch	each	1	3	
26	Drill Rig Winch 3 Tons	each	1	3	

The total of the Prices

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Service Information</i>	10
C3.2	<i>Contractor's Service Information</i>	
	Total number of pages	11

C3.1: EMPLOYER'S SERVICE INFORMATION

1 Description of the service

1.1 Executive overview

Provide the services of Approved Inspection Authority (AIA) as regulated in OHSAct DMR 18. These services are for the inspecting, testing and certification of all lifting tackle and lifting machines at Majuba UCG site. This service shall be provided by AIA inspection authority approved in terms of provisions of the Occupational Health and Safety Act.

1.2 Employer's requirements for the service

Provide the services of AIA as regulated in OHSAct DMR 18. These services are for the inspecting, testing and certification of all lifting tackle and lifting machines at Majuba UCG site. This service shall be provided by AIA inspection authority approved DOL or DME.

The contractor provides the following services:

1. Inspection and load testing of lifting gear in accordance with the requirements of Driven Machinery Regulations of the OHSAct.
2. Inspection and load testing lifting machines in accordance with the requirements of Driven Machinery Regulations of the OHSAct.
3. Provide certification of Inspections and load testing
4. Replacement of damaged Lifting gear as and when required
5. Operator authorisation and re certification of the following machinery: (**AS AND WHEN REQUIRED**
 - i) Manitou MRT2540
 - ii) Manitou MVT675
 - iii) 5 ton High up crane

Other Requirements

1. The company must be a certified Lifting Machinery Entity (LME). Attach a certified copy of certificate	Occupational Health and Safety Act DMR 18
2. Proof of ECSA Registration of Lifting Machinery Inspectors is required.	Occupational Health and Safety Act DMR 18
3. Proof of Registration as an Approved Inspection Authority (AIA).	Occupational Health and Safety Act DMR 18

The contractor must have the ability to perform load testing of the Manitou, drill rig and high up at the premises of the employer.

1.3 Interpretation and terminology

The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the Abbreviation
SANS	South African National Standards
SHEQ	Safety, Health, Environmental and Quality
NEMA	National Environmental Management Act
UCG	Underground Coal Gasification
DMR	Driven Machinery Regulations

2 Management strategy and start up.

2.1 The Contractor's plan for the service – to be completed by contractor

- The contractor must provide proof of the following
 - Method statement
 - Aspect and Impact register as per the scope of work
- All equipment and services provided must comply with the mandatory requirements of the Mine Health and Safety Act 93 of 1995 and regulations (as amended) and the Occupational Health and Safety Act 84 of 1993 and Regulations.
- Access to the UCG site is restricted and all work will be performed under the supervision of UCG staff
- All vehicles and personnel are subject to being searched when entering and exiting the Eskom property
- Contractors tools and equipment are subject to Eskom inspection, testing and authorisation before being deemed suitable for operation
- All equipment entering site must be declared and inspected by security
- Safety induction will be required by all contractor performing work on site.

2.2 Management meetings

Meetings of a general nature may be convened and chaired by the Contract Manager as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
Initiation Meeting	Start of contract	Majuba UCG	Employer and Service Provider
Analysis Progress or queries on results	As and when need	Majuba UCG	Employer and Service Provider

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 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 instruction 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 works or at the business premises of the Contractor or at his office on the site.
- Other formal communications by way of letter or other shall be addressed to the Contract Manager.
- Use of Standard NEC forms and all forms in:
- Employer's construction and completions procedure
- Quality Management System
- Task Order

2.6 Invoicing and payment

The Contract Manager will provide a Task Order to the Contractor for each task to be carried out. The Contractor signs the accepted Task Order and Provides the Service in accordance with the Scope on receipt of each Task Order

No work shall commence without the Task Order and the assigned Purchase Order Number

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
- 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 utilize 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

Not Applicable

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

Not Applicable

2.9 Insurance provided by the *Employer*

Not applicable

2.10 Training workshops and technology transfer

Not Applicable

2.11 Design and supply of Equipment

Not Applicable

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

2.1.1 Equipment

All equipment supplied by Eskom during this contract remains the property of Eskom.

2.1.2 Information and other things

N/A

2.13 Management of work done by Task Order

Task order will be issued by the Service Manager when a need arise. In the event that the services are required anymore, the Service Manager will inform the contractor in advance.
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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. The Contractor must submit a SHE file in accordance with Eskom requirements.

3.2 Environmental constraints and management

The service provider must provide proof of the following

- Method statement
- Aspect and Impact register as per the scope of work

3.3 Quality assurance requirements

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

4 Procurement

4.1 People

4.1.1 Minimum requirements of people employed

- People used must be qualified to perform the respective tasks
- Drivers will comply with the Road Traffic Act No 93 of 1996
- The driver must be trained and certified on transportation of hazardous waste

4.2 Subcontracting

4.2.1 Preferred subcontractors

N/A

4.2.2 Subcontract documentation.

The subcontractor will be evaluated based on all SHEQ requirements and mandatory requirement where applicable as set out in this contract

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

4.3.2 Correction of defects

No work will take place until the Service Manager has accepted/cleared all equipment. The Contractor will be responsible to supply the correct equipment, Eskom will not be responsible for delays or holding time if the contractor's equipment is incorrect.

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*

No plant or material will be supplied by Eskom.

5 Working on the Affected Property

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

- Access to the UCG site is restricted and all work will be performed under the supervision of UCG staff.
- All vehicles and personnel are subject to being searched when entering and exiting the Eskom property.
- The Eskom regulations stipulates that the alcohol test reading must be zero before an employee will be allowed on site.
- Contractors tools and equipment are subject to Eskom inspection, testing and authorisation before being deemed suitable for operations.
- All equipment entering site must be declared and inspected by security
- Contractor's staff will require access permits, supplied by the Employer to enter the site.
- Access permits will only be supplied after all contractor staff performing work have completing the safety, environmental and security induction courses.
- The cost and duration for the initial entry, exit and annual medicals are deemed to be covered in the rates subject to the provisions of clause 60 of the Conditions of Contract.
- Compliance with Life-saving rules
- Site roads are gravel roads

5.2 People restrictions, hours of work, conduct and records

07:00 – 16:15 Monday to Thursday
07:00 – 12:00 Fridays

5.3 Health and safety facilities on the Affected Property

Health and safety facilities will be communicated to the Contractor during the induction of the Contractor's staff members. The contractor must supply all personnel with the required PPE to perform site work as per the scope.

5.4 Environmental controls, fauna & flora

The contractor is to stay on the designated road

The Contractor must report any spillages on site immediately to the Contract Manager. Control of the spillage and remediation of the affected area must be managed by the contractor.

5.5 Cooperating with and obtaining acceptance of Others

N/A

5.6 Records of Contractor's Equipment

All equipment entering and leaving site must be declared and inspected by security. Contractors tools and equipment are subject to Eskom inspection, testing and authorisation before being deemed suitable for operations.

5.7 Equipment provided by the Employer

N/A

5.8 Site services and facilities

5.8.1 Provided by the Employer

The Contractor will use the existing facilities (Toilets, etc) during the full period of his Site work

5.8.2 Provided by the Contractor

N/A

5.9 Control of noise, dust, water and waste

NA

5.10 Hook ups to existing works

N/A

5.11 Tests and inspections

5.11.1 Description of tests and inspections

The contractor performs statutory inspection of all lifting equipment specified in this contract at Majuba UCG site

5.11.2 Materials facilities and samples for tests and inspections

N/A

List of drawings

N/A