



NEC3 Term Service Contract (TSC3)

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

and []
(Reg No.)

for **The Provision Of Laboratory Services For The Preparation, Analysis And Reporting Of Results For Contract Coal and Limestone Samples For Eskom Primary Energy On An “As And When Required” Basis For The Period Of 36 Months.**

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CONTRACT No. [Insert at award stage]

PART C1: AGREEMENTS & CONTRACT DATA

Contents:	No of pages
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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 LABORATORY SERVICES FOR THE PREPARATION, ANALYSIS AND REPORTING OF RESULTS FOR CONTRACT COAL AND LIMESTONE SAMPLES FOR ESKOM PRIMARY ENERGY ON AN “AS AND WHEN REQUIRED” BASIS FOR THE PERIOD OF 32 MONTHS

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	As per the price list (Page 20)
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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: _____

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) Daniel Thenga

Capacity Senior Manager Technical Services

for the Employer
Eskom Holding SOC Limited
PO Box 1091
Sunninghill
(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.

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)* _____
Name & signature of witness _____
Date _____

_____ Daniel Thenga
_____ Senior Manager Technical Services
_____ Eskom Holding SOC Limited
_____ PO Box 1091
_____ Sunninghill
_____ *(Insert name and address of organisation)*

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:	
	dispute resolution Option and secondary Options	<p>A: Priced contract with price list</p> <p>W1: Dispute resolution procedure</p> <p>X1: Price adjustment for inflation</p> <p>X2: Changes in the law</p> <p>X18: Limitation of liability</p> <p>X19: Task Order</p> <p>X20: Key performance indicators</p> <p>Z1-17: <i>Additional conditions of contract</i></p>
	of the NEC3 Term Service Contract April 2013 ¹ (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.	011 800 8111
	Fax No.	011 800 4299

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902 www.ecs.co.za

10.1	The <i>Service Manager</i> is (name):	Livhuwani Mazibuko
	Address	Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel	011 800 8111
	Fax	086 585 2946
	e-mail	MazibuLC@eskom.co.za

11.2(2)	The Affected Property is	<ul style="list-style-type: none">• Eskom Power Station Coal stockyards• Eskom Power Station Coal Laboratories• Eskom Coal suppliers(mines)• Commercial laboratories• Nominated Transporters• Eskom Sidings, and• Other Sites (blending site etc)
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11.2(13)	The <i>service</i> is	The provision of laboratory services for the preparation, analysis and reporting of results for contract coal and limestone samples for Eskom Primary Energy on an “as and when required” basis for the period of 36 months.
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11.2(14)	The following matters will be included in the Risk Register	<ul style="list-style-type: none">• Manipulation of analysed results / and or tempering with instruments data.• Security of the contract coal and limestone samples.• Failure to declare conflict of interest.• Unavailability / or inadequate Technical Signatories and Lab Analysis.• Non-compliance with the turn-around time of 24 hours• Equipment downtime• Human Error during logging of samples and transfer of data from LIMS to Eskom excel report.• Non-compliance with the samples receiving procedure.• Inaccurate test results.• Inadequate technical skills and competency.• Fraud and corruption• Courtesy or gifts• Confidentiality • Strikes / protests / unrests, labour disputes and staff turnover.• Lack of Supervision• Fatigue• Lack of data backup.• Inadequate instrument maintenance and calibrations.
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- Non-adherence with the Coal Quality Management Procedure (CQMP), contractual requirements, and applicable ISO standards.
- Inadequate or lack of equipment to analyse the samples as per Eskom required quality parameters.
- Excessive rain
- Safety threats
- Incapability to render the service as per the contract.
- Load shedding / power cuts

11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents and annexures 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	1 week (5 working days)
2	The Contractor's main responsibilities	Data required by this section of the core clauses is also provided by the <i>Contractor</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data
21.1	The <i>Contractor</i> submits a first plan for acceptance within	2 (two) weeks of the Contract Date
3	Time	
30.1	The <i>starting date</i> is.	01 October 2024
30.1	The <i>service period</i> is	36 months
4	Testing and defects	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
5	Payment	
50.1	The <i>assessment interval</i> is	between 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(four) weeks from the receipt of a valid invoice
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 (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.

6	Compensation events	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
7	Use of Equipment Plant and Materials	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
8	Termination	<i>Employer</i> reserves the right to terminate the <i>Contractor's</i> obligation to Provide the Service or re-allocate the services when deliverables as per the scope of work (Peparation, Analysis and Reporting of results for contractual coal and limestone samples) are not met. Core Clause 90, the procedures on termination and payment on termination of the NEC3 TSC shall apply.
9	Data for main Option clause	
A	Priced contract with price list	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than	4 (four) weeks.
10	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 ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see www.ice-sa.org.za) or its successor body.
W1.4(2)	The <i>tribunal</i> is:	arbitration

W1.4(5)	<p>The <i>arbitration procedure</i> is</p> <p>The place where arbitration is to be held is</p> <p>The person or organisation who will choose an arbitrator</p> <ul style="list-style-type: none"> - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is 	<p>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</p> <p>South Africa</p> <p>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</p>
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11 Data for secondary Option clauses

X1	Price adjustment for inflation													
X1.1	<p>The <i>base date</i> for indices is</p> <p>The proportions used to calculate the Price Adjustment Factor are:</p> <p>CPI</p> <p>Fixed Portion</p>	<p>The date on which the contract commenced.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">proportion</th> <th style="width: 30%;">linked to index for</th> <th style="width: 40%;">Index prepared by</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">85%</td> <td style="text-align: center;">Stats SA, Table A, CPI Headline</td> <td style="text-align: center;">Annually</td> </tr> <tr> <td style="text-align: center;">15%</td> <td style="text-align: center;">non-adjustable</td> <td></td> </tr> <tr> <td style="text-align: center;">100%</td> <td></td> <td></td> </tr> </tbody> </table>	proportion	linked to index for	Index prepared by	85%	Stats SA, Table A, CPI Headline	Annually	15%	non-adjustable		100%		
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15%	non-adjustable													
100%														
X2	Changes in the law	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.												
X18	Limitation of liability													
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	R0.0 (zero Rand)												
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	<p>the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on</p> <p><i>http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</i></p>												
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	<p>The greater of</p> <ul style="list-style-type: none"> • 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 <p><i>http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_</i></p>												

<p>X18.4</p>	<p>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>	<p><i>From_1_April_2014_To_31_March_2015.aspx</i></p> <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.
<p>X18.5</p>	<p>The <i>end of liability date</i> is</p>	<p>1(one) months after the end of the <i>service period</i>.</p>
<p>X19</p>	<p>Task Order</p>	
<p>X19.5</p>	<p>The <i>Contractor</i> submits evidence of work done (signed test reports and the statement in Eskom format) in line with the task order to the <i>Service Manager</i> within</p> <p>The <i>Service Manager</i> shall provide the <i>Contractor</i> with a Task Order/request when a service begins and/or ends</p>	<p>5(five) days of receiving the Task Order</p> <p>1(one) week(7 days including weekends)</p>
<p>X20</p>	<p>Key Performance Indicators (not used when Option X12 applies)</p>	
<p>X20.2</p>	<p>A report of performance against each Key Performance Indicator (set out in Annexure B) is provided at intervals of</p>	<p>3(three) months</p>
<p>Z</p>	<p>The <i>additional conditions of contract</i> are</p> <p>Z1 to Z19 always apply.</p>	

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 (07) 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* shall have signed Non-Disclosure Agreement (NDAs) with all their stakeholders who will have access to Eskom Asset.

Z4.6 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 Information Security Management

Z6.1 The contractor shall comply with the requirements of ISO 17025, clause 7:11 on Control of data and information management.

Z6.2 To ensure information and data security, the Contractor shall comply with Eskom Information Security Policy, 32-2.

Z6.3 The Employer has the right to audit and test the effectiveness of the implemented systems to ensure the security and confidentiality of Eskom Asset.

Z6.4 The Contractor shall conduct internal audits to test the effectiveness of the implemented systems to ensure the security and confidentiality of Eskom Asset, and audit reports shall be shared with the employer as and when required.

Z6.5 The Contractor shall make use of ISO 27000 – Information Technology-Security Techniques as a guideline to ensure that the data and information assets is secured from internal data threats as well as managing cyber attack risks.

Z6.6 The Contractor shall sign a Non-Disclosure Agreement before the commencement of the contract.

Z7 Transfer of data and information.

Z7.1 The contractor shall return all Eskom Information assets, i.e., test reports at the end of the contract, and all access rights to Eskom information are revoked.

Z8 Health, safety and the environment: Add to core clause 27.4

Z8.1 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.

Z8.2 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.

Z9 Provision of a Tax Invoice and interest. Add to core clause 51

Z9.1 Within one (01) 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.

Z9.2 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.

Z9.3 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.

Z10 Notifying compensation events

Z10.1 Delete the last paragraph of core clause 61.3 and replace with:

If the *Contractor* does not notify a compensation event within eight (08) weeks of becoming aware of the event, he is not entitled to a change in the Prices.

Z11 Employer's limitation of liability

Z11.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z11.2 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.

Z12 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z12.1 or had a business rescue order granted against it.

Z13 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 <i>Contractor</i> , 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.

Z 13.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z 13.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Service for this reason.

Z 13.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Service for this reason, the procedures and amounts due on termination are respectively P1, P2, P3 and P4, and A1 and A3.

Z 13.4 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.

Z14 Failure to report accreditation status

Z14.1 The contractor shall comply with all ISO 17025 and other applicable SANAS accreditation requirements, as stated under C3.1 (1.1.1) of the Service Information.

Z14.2 Where the Contractor's ISO and/or SANAS accreditation status changes, the *Contractor* notifies the Employer within three (03) days of the change.

- The *Employer* reserves the right to re-allocate the Services to other contracted service providers should the *Contractors* accreditation status change; until such time *the Contractor's* accreditation has been reinstated by SANAS and the *Contractor* has submitted the updated accreditation certificate and the supporting documentation to the *Service Manager*.

Z14.3 A change in the *Contractor's* accreditation status and failure by the *Contractor* to notify the *Employer* of a change in its accreditation status may constitute a reason for termination. If the *Employer*

terminates in terms of this clause, the procedures on termination are P1 and P4 as stated in clause 92, and the amount due on termination as stated in clause 93.1 (A1) includes an amount due assessed as for normal payments and other Defined Cost reasonably incurred in expectation of completing a task order of the service, and in clause 93.2(A3) the amount due is a deduction of the forecast of the additional cost to the *Employer* of completing the task order of the service

Z14 Adherence to analysis results Turn-around-times (TAT)

Z14.1 The *Contractor* shall at all times ensure that the analysis results are reported within the 24-hour turn-around-times. ("TAT").

Z14.2 Should the *Contractor* fail to declare the results within the prescribed contractual 24-hour TAT, the *Employer* shall give an early warning and a repeat of non-adherence of TAT shall result in either re-allocation of the Services to other contracted service providers or alternatively termination of the *Contractor's* obligation to Provide the Service.

Z14.3 If the *Employer* terminates the *Contractor's* obligation in terms of this clause, the procedures on termination are P1 and P4 as stated in clause 92, and the amount due on termination as stated in clause 93.1 (A1) includes an amount due assessed as for normal payments and other Defined Cost reasonably incurred in expectation of completing a task order of the service, and in clause 93.2(A3) the amount due is a deduction of the forecast of the additional cost to the *Employer* of completing the task order of the service.

Z15 Manipulation of analysis results/reports

Z15.1 For the avoidance of doubt, the *Contractor* shall not take any instructions from either the *Employer* or the Mine, to effect any changes to the analysis results and reports.

The *Contractor* shall at all times ensure that the analysis results and reports are accurate and signed off by the duly authorised Technical Signatory/ies. Only the *Service Manager* is authorised to instruct the *Contractor upon an investigation* to effect any related changes on the analysis results and reports.

Z15.2 The *Employer* reserves the right to terminate the *Contractor's* obligation to Provide the Services, should the *Contractor* fail to adhere to the provisions of this clause Z15.

Z15.3 If the *Employer* terminates the Contract in terms of this clause, the procedures on termination are P1 and P4 as stated in clause 92, and the amount due on termination as stated in clause 93.1 (A1) includes an amount due assessed as for normal payment and other Defined Cost reasonably incurred in expectation of completing a task order of the service, and in clause 93.2(A3) the amount due is a deduction of the forecast of the additional cost to the *Employer* of completing the task order of the service.

Z16 Monitoring of Non-conformances

Z16.1 The *Contractor* shall always address the findings (major and minor non-conformances) within the defined timelines as stated in C3.1 of the *Employer Service Information*. Failure to comply with Z16.1, may result in suspension of services and/or re-allocation of services to another contracted service provider.

Z16.2 Major Non-conformances shall be addressed and remedied within 24-hours and minor non-conformances shall be addressed and remedied within 72-hours.

Z16.3 Should the *Contractor* have 2 recurring non-conformances in succession or more than 5 major non-conformances still not closed after the follow – up audit, this shall result in re-allocation of Services to other contracted service providers, and only 2 follow-up audits shall be permitted by the *Employer*. The follow-up audit will be conducted after 15 days or earliest after the main audit.

Z17 Failure to deploy qualified, skilled and competent personnel as specified

Z17.1 The *Contractor* shall ensure that the personnel deployed at the laboratories are qualified, skilled and competent to provide the Services. The *Contractor* shall provide the *Service Manager*, as and when required, with full records of qualifications, training and competency of the laboratories personnel, which records shall include the following:

- Laboratory personnel: Minimum Qualifications-Grade 12 or N3 with Maths and Science
- Minimum of two Technical Signatories: Minimum qualification: National Diploma Natural Sciences (Geology, Chemistry) and Engineering (Metallurgy, Chemical)

Z17.2 Failure to provide the above minimum qualifications requirements may result in the suspension of services, and/or re-allocation of the Services to other third party services providers or alternatively termination of the Services.

Z17.3 If the *Employer* terminates the Contract in terms of this clause, the procedures on termination are P1 and P4 as stated in clause 92, and the amount due on termination as stated in clause 93.1 (A1) includes an amount due assessed as for normal payments and other Defined Cost reasonably incurred in expectation of completing a task order of the service, and in clause 93.2(A3) the amount due is a deduction of the forecast of the additional cost to the *Employer* of completing the task order of the service.

Z18 Supplier Development and Localisation (SD&L)

Z18.1 As part of skills development commitment, the contractor is obliged to at least five as per commitments made during the tender stage. The mentioned skills shall be developed within thirty six months of the contract. The contractor shall provide a training programme for skills training and after the completion of the training, trainees must have acquired skills which shall be accredited by either SETA or any Institute that is accredited by relevant authorities. Failure to comply or fulfil the skills development commitments, Eskom shall deduct two and a half percent of the contract value from such a contractor.

Z18.2 SD&L and the supplier agree that the contractor shall develop 2 Samplers, 3 labs Analyst and Senior Analyst during the contract period. In the event that the contractor does not fulfil the agreed requirement on skill training, Eskom shall penalise the contractor by withholding two percent of the contract value.

Z19 Audits

Z19.1 Internal audit shall be conducted by the Contractor on operational sites at regular intervals and as per planned audit schedule. Audit reports shall be maintained and made available to Eskom as and when required.

Z19.2 External audits of laboratory sites where the Contractor is rendering a service from shall be done by Eskom at regular intervals (Quarterly and as and when required). A 24-hours' notice shall be given to the Contractor before laboratory/Site visits and/or audit by Eskom.

Annexure A: Insurance provided by the Employer

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

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

http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx

C1.2 Contract Data

Part two - Data provided by the Contractor

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

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is	0% 0%
11.2(14)	The following matters will be included in the Risk Register	
11.2(15)	The Service Information for the <i>Contractor's</i> plan is in:	
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:	
CV's (and further key person's data including CVs) are in Contract File.		
A	Priced contract with price list	
11.2(12)	The <i>price list</i> is in	As per C2.2
11.2(19)	The tendered total of the Prices is	As per the price list

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>	2

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 and• where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the <i>Contractor</i> has completed by the rate.
		(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

ANALYSIS OF COAL CONTRACTUAL SAMPLES

Item No.	Description	Unit	Rate
1	Contractual Analyses (Std. coal analyses: sum of preparation and 3 to 11 below)	Rate/Sample	Contractual rate
2	Sampling Preparation for coal		
	50 mm approx... 470 kg or 40 mm approx. 355 kg	Rate/Sample	Contractual rate
	Dispute general analyses 170 kg	Rate/Sample	Contractual rate
	Dispute AI 35 kg	Rate/Sample	Contractual rate
	Dispute/repeat Moisture 35 kg	Rate/Sample	Contractual rate
3	Total Moisture coal	Rate/Sample	Contractual rate
4	Moisture in Analysis Sample	Rate/Sample	Contractual rate
5	Ash Content	Rate/Sample	Contractual rate
6	Calorific Value	Rate/Sample	Contractual rate
7	Volatile Matter	Rate/Sample	Contractual rate
8	Total Sulphur	Rate/Sample	Contractual rate
9	Abrasive Index	Rate/Sample	Contractual rate
10	Ash Fusion Temperature	Rate/Sample	Contractual rate
11	Size Grading (Required Fractions)	Rate/Sample	Contractual rate
12	Hardgrove (Grindability) Index	Rate/Sample	Contractual rate
13	Ultimate Analysis(C,H,O,N,S,Cl)	Rate/Sample	Contractual rate
14	Density and/or Float and sink Analysis	Rate/Sample	Contractual rate

Note: The contract is a rate base and will be on an 'as and when required' basis for sample analyses.

ANALYSIS FOR AD HOC ACTIVITIES

*Rates as per the contractual analyses:

Item No.	Description	Unit Description.	Rate
1	Verification	Rate/ sample	Contractual rate
2	Variability	Rate/test	Contractual rate
3	Drainage tests	Rate/test	Contractual rate
4	Washabilities	Rate/test	Contractual rate
5	*Calibration(AI)	For PS	
6	Bias Testing	Rate/test	Contractual rate
7	Waste Classification	Rate/test	Contractual rate

** Eskom Power Stations

ANALYSIS OF LIMESTONE CONTRACTUAL SAMPLES

Item No.	Description	Unit	Rate
1	Contractual Analyses : Elemental Analyses by XRF pressed pellet method and/or fused beads;(Calcium Carbonate (CaCO3); Magnesium Carbonate (MgCO3); Silica Dioxide (SiO2);Aluminium Oxide (Al2O3);Iron-Oxide (Fe2O3) and other inerts	Rate/Sample	Contractual rate
2	Sampling Preparation for Limestone	Rate/Sample	Contractual rate
3	Total Moisture Limestone	Rate/Sample	Contractual rate
4	Size Grading (Required Fractions)	Rate/Sample	Contractual rate

Note: The contract is a rate base and will be on an 'as and when required' basis for sample analysis

ANALYSIS FOR AD HOC ACTIVITIES

*Rates as per the contractual analyses above:

1	Bulk Density Analysis	Rate /Sample	Contractual rate
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PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Service Information</i>	
C3.2	<i>Contractor's Service Information</i>	
	Total number of pages	16

C3.1: EMPLOYER'S SERVICE INFORMATION

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1 Description of the service

1.1 Executive overview

The provision of laboratory services for the preparation, analysis and reporting of results for contract coal and limestone samples for Eskom Primary Energy on an “as and when required” basis for the period of 32 months.

1.1.1 PREPARATION, ANALYSIS AND REPORTING OF RESULTS FOR CONTRACTUAL COAL AND LIMESTONE SAMPLES

- Preparation, analysis and reporting of results shall be performed for all Eskom contract coal and limestone samples delivered at the laboratory.
- The work includes preparation and analysis of dispute samples, contractual samples, variability tests samples, drainage test samples, verification samples, samples for bias testing and other ad hoc request special samples.
- The laboratory contracted for Eskom preparation, analysis and reporting shall have procedures and systems in place specifically Laboratory Information Management System (LIMS) for sample receipt, registration and data processing of contract coal and limestone samples.
- In terms of contract coal sample preparation, the laboratory shall endeavour to eliminate the element of human error and ensure compliance to Eskom’s requirements.
- All laboratory equipment should be locally supported.
- Laboratories shall comply with all environmental, health and safety and associated legislation related to the scope of work.
- The laboratory shall comply with the Environmental Management System (EMS) (ISO 14001), Occupational Health and Safety Act 85 of 1993, and ISO 9001 requirements.
- The laboratory shall comply with Eskom environmental, health, and safety as well as quality and risk (SHERQ) management systems and principles.
- The laboratory may be selected as a sample for auditing purposes against the Eskom EMS, and Occupational Health and Safety. Eskom will communicate this at the relevant time periods.
- Waste from the analysis will be stored and disposed of in a responsible and correct manner at a licenced facility. Disposal certificates for waste and left-over coal are to be sent to Eskom Environmental department monthly.
- All environmental and health and safety incidents that occur during the analysis of coal / limestone need to be reported to Eskom PED.
- A portion of the sample will be sent to Eskom Research Technology & Development (RT&D) for emissions testing.

1.1.1.1 Laboratory Accreditations

- The laboratory contracted to analyse Eskom contract coal and limestone samples shall have accreditation on the following methods:
- ISO 17025: General requirements for the competence of testing and calibration laboratories.
- ISO 1928: Solid minerals fuels - Determination of Gross Calorific Values (CV) by the bomb calorimetric method, and calculation of Net Calorific Value.
- ISO 1171: Solid minerals fuels - Determination of Ash content.
- ISO 562: Hard coal and code – Determination of Volatile Matter or equivalent method.

- ISO 540: Solid minerals fuels – Determination of fusibility of Ash high temperature tube method in reducing Atmosphere or equivalent method.
- ISO 589, (one or two step): Hard coal – Determination of Total Moisture or equivalent method.
- ISO 11722: Solid minerals fuel- hard coal - Determination of moisture in the general analysis test sample by drying in Nitrogen or
- SANS 5925: Moisture content of coal samples intended for general analysis (air-oven dry)
- ISO 13909-4: Part 4 – Preparation of test samples or ISO 18283: Hard coal and coke- manual sampling.
- ISO 3310-1: 2000 Test sieves – Technical requirements and testing or ISO 1953: size Determination by dry method or equivalent method.
- ISO 567: Bulk density or equivalent method.
- ASTM D4239: Total Sulphur or equivalent standard.
- ASTM C25-06 Standard test methods for chemical analysis of limestone, quicklime and hydrated lime.
- ASTM C50-00 Standard Practice for Sample Preparation, Packaging, and Marking of Lime and Limestone Products.

1.1.1.2 Sample receipt and registration

- On arrival at the laboratory, each sample shall be weighed, registered on LIMS and an electronic or soft copy delivery note shall be sent to Eskom. The laboratory shall not analyse a sample below the minimum required mass. Such a sample shall be returned to the mine after consultation with Eskom.
- Laboratories shall ensure that all Eskom samples are stored in a secure and safe manner, where the integrity of analytical results will not be compromised as per the requirements of the Coal Quality Management Procedure (CQMP). Samples must be accessible and easily retrievable according to a documented system.

1.1.1.3 Sample preparation and analysis

The laboratory shall meet the Eskom standards for sample preparation and analysis for coal as listed below:

- Sample preparation of coal shall be done according to ISO 13909 part 4 and ISO 18283. The service provider shall endeavour to eliminate the element of human error in the process of sample preparation.
- Eskom samples shall be split in a 6- or 8-way cascade splitter to achieve minimum masses for analysis as per ISO 13909 part 4 and the Eskom CQMP.
- Drying of Total Moisture, Size Grading and General Analysis samples shall be done in the oven at the relevant controlled temperatures (environment) or shaded area.
- The final prepared sample for General Analysis shall be ground to 100% passing a 212-micron sieve.

- Splitter verification shall be done on Ash and CV , minimum six (06) monthly.
- All analytical parameters of Eskom samples shall all be done in duplicate.
- No repeat analysis shall be conducted on duplicate samples that are within the repeatability limit.

The laboratory shall meet the Eskom standards for sample preparation and analysis for limestone as listed below:

- ASTM C25-06 Standard test methods for chemical analysis of limestone, quicklime, and hydrated lime.
- Limestone samples shall be split using a cascade splitter according to the agreed testing method.
- Sample preparation of limestone shall be done according to the X-ray Fluorescent Spectrometer pressed pellets or fused beads methods.
- Sample preparation and analysis of limestone for moisture and sizing shall be done as per agreed laboratory developed and validated method.
- Analysis of Eskom samples shall be done in duplicates.
- No repeat analysis shall be conducted on duplicate samples that are within the repeatability limit.

1.1.1.4 Analysis turn-around-time

- The laboratory shall guarantee a turn-around time of 24 hours for all contract coal samples from the time the samples are received from the transporter to the time the results are reported to the specified parties.

1.1.1.5 Laboratory Information Management System (LIMS)

All contracted laboratories shall have a LIMS to support assurance according to the following:

- The laboratory shall have all equipment (e.g. balances and analytical instruments) linked to LIMS for automatic transfer of data and results.
- The laboratory shall ensure that they are always using the latest version of LIMS.
- The LIMS must be fully integrated or linked to Eskom LIMS (SAP Manager), as well as Coal Automation Systems and Eskom should have access to real time results.
- LIMS must be fully secured to prevent possible manipulation of results.
- LIMS must autogenerate Eskom Laboratory Test reports.
- There must be an auditable process to separate system rights (reading, editing, capturing, data export, rights etc.) for various approved users on the system.
- The system must automatically backup test results, minimum, hourly.

1.1.1.6 Laboratory Quality Controls

- The laboratory shall have a documented quality control procedure. The laboratory shall ensure that Certified Reference Material (CRM) is run after every 5 samples (in duplicate) and Ash Fusion Temperature (AFT) CRM's are to be included with each load.
- Quality Control (QC) charts shall be updated on a shift basis and plotted on a graph, and the QC charts shall be executed in the following manner:
- QC charts shall be plotted on "dry basis" :
 - When 3 successive points are on the same side of the graph between warning and action limit, corrective measures shall be put in place to address the potential negative/positive bias or potential outlier,
 - When 7 successive points are on the same side of the centreline, corrective measures shall be put in place to address the negative/positive bias.

1.1.1.7 Contractual Coal and Limestone Sample Security

- Installation of auditable surveillance cameras with a view of the whole process from the sample receiving point to the reporting of the results, as well as the storage area.
- The laboratory must allow access to the surveillance cameras as and when requested by Eskom.
- The laboratory must allow linkage of systems or integration with Eskom Contractual Sample Security Systems.
- Device a system to ensure traceability of the sample from receipt to reporting of results, and the storage area.

1.1.1.8 Proficiency testing schemes

- The laboratory shall participate in a minimum of two proficiency testing schemes and forward the results to Eskom. The laboratory shall ensure that all Eskom parameters are covered.

1.1.1.9 Reporting of Results

- The results shall be reported on Air Dried, Moisture Free and As Received basis, except for AFT, Sizing, Analytical Moisture, Total Moisture, oxides, and Abrasive Index.
- Reporting of results shall be done according to the Eskom provided Excel format.
- Each analytical report shall be checked and signed off by a competent Technical Signatory as mandated by SANAS.
- The analytical report shall be sent electronically via email simultaneously to both Eskom and the Mine in line with the provided distribution list, as well as to Eskom SAP system. Results shall be reported according to Eskom's requirements.
- Incomplete or incorrect analytical report shall not be sent to Eskom and the Supplier, only the final report evaluated and signed by the Technical Signatory shall be sent out.
- No information shall be shared with third parties without consent from Eskom.
- The laboratory shall comply with Eskom Information Security Policy.

1.1.1.9 Laboratory deliverables

- The analytical report shall be sent electronically via email simultaneously to both Eskom personnel and Eskom SAP and the Mine without compromising information security.
- The laboratory shall have all analytical results readily available for the duration of the contract and 3 years post contract expiry and make them available to Eskom SAP as and when requested.
- All analytical results reported shall be traceable from LIMS to all analytical equipment or vice versa.
- The results will be reported within twenty-four (24) hours for all Eskom samples received and analysed. This is from receiving of the samples to reporting of the results.
- The laboratory shall ensure that all methods are accredited by SANAS.

1.1.2 AD HOC ACTIVITIES

- The service provider shall conduct preparation, analysis and report results of verification, variability, drainage testing, bias testing of the sampling plants, abrasive index calibration, bulk density, and stockpile auger samples, and coal washability, disputes, density and waste classification on an ad hoc basis.
- The laboratory shall ensure that all methods are accredited by SANAS.
- The company shall comply with applicable safety, health, environment, risk and quality management standards and laws, Eskom standards as well as the Mine Health and Safety Act when working at the Mine or the Occupational Health and Safety Act at the Power Station.

1.2 *Employer's requirements for the service*

1.2.1 *Contractor's Deliverables:*

- 1 The analytical report shall be signed off by the Technical Signatory and sent electronically via email simultaneously to both Eskom and the Mine without compromising information security.
- 2 The laboratory shall have all analytical results readily available for the duration of the contract and 3 years post contract expiry and make them available to Eskom as and when requested.
- 3 All analytical results reported shall be traceable from LIMS to all analytical equipment or vice versa.
- 4 The results will be reported within 24 hours for all Eskom samples received.

1.2.2 *Monitoring of non-conformances:*

- 5 Major non-conformance is a non-conformance that may have potential impact on the Quality Management System and may reduce its ability to assure the controlled processes and may have potential impact to the credibility of the final analytical results which may pose a high risk to the business. Major non-conformances shall be corrected (corrective plan sent to the *Employer*) within 24 hours by the *Contractor*.
- 6 Minor non-conformance is as a result of sporadic lapse in the system caused by not adhering to the standard and procedures at all the times. It may not directly affect the quality of results but when left unattended it can lead to system failure. Minor non-conformances shall be corrected (corrective plans sent to Eskom) within 3 calendar days by the *Contractor*.

1.3 Interpretation and terminology

If required include here definitions additional to those used in the *conditions of contract* which are required only for the purpose of making the Service Information easier to draft and read. Also list abbreviations used and provide a full interpretation of each one, for example:

The following abbreviations are used in this Service Information:

Abbreviation	Meaning given to the abbreviation
ECSA	Engineering Council of South Africa
SANAS	South Africa National Accreditation System
CPI	Consumer Price Index
VAT	Value Added Tax
B-BBEE	Broad Based Black Economic Empowerment
PPPFA	Preferential Procurement Policy Framework Act
OBL	Outside battery Limits
CSA	Coal Supply Agreement
CQMP	Coal Quality Management Procedure
LQMP	Limestone Quality Management Procedure
ISO	International Organization for Standardization
CHN	Carbon, Hydrogen, and Nitrogen
O	Oxygen
S	Sulfur
LIMS	Laboratory Information Management Systems
AFT	Ash Fusion Temperature
ASTM	American Society Testing and Materials

2 Management strategy and start up.

2.1 The Contractor's plan for the service

The *Contractor* shall provide the plan as to how they will achieve the 24 hours turnaround time on analysis of Eskom samples. The *Contractor* shall provide the plan as to how they will achieve the 24 hours turnaround time on transport of Eskom contractual samples to the laboratory.

2.2 Management meetings

Regular meetings of a general nature may be convened and chaired by the *Supply Manager* as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk registers and compensation events	Monthly basis	Eskom nominated venues	<i>Employer and Contractor</i>
Overall contract progress, performance and feedback	Monthly basis / as and when required (Performance-quarterly)	Eskom nominated venues	<i>Employer and Contractor</i>
Laboratory Audits	Quarterly basis/as and when required	Laboratory physical Sites	<i>Employer and Contractor</i>
Outstanding Nonconformities	As and when required	Laboratory physical site	<i>Employer and Contractor</i>

Meetings of a specialist nature may be convened as specified elsewhere in this Service Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the *service*. Records of these meetings shall be submitted to the *Service Manager* by the person convening the meeting within three days of the meeting.

All meetings shall be recorded using minutes, MS Teams recordings 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* shall provide the company organogram showing the people and their lines of authority/communication. This will be accompanied by their CV's and relevant copies of qualifications.

The above will be in line with ISO 17025 requirements.

2.4 Documentation control

All information pertaining to work instructions and proof of work shall be stored for audit purposes and back-up done. All data shall be stored for audit purposes and back- up done. Invoices and supporting documents shall be stored for audit purposes and back-up done.

Analysis report of Eskom work shall be access controlled with a username and password for each user. Each analyst shall have unique login credentials with clearly defined access rules. Each analyst shall not work under anybody else's credentials. Data transfer shall be traceable to the person performing the test.Changes to data shall be validated, authorised and recorded

The contractor shall comply with the requirements of ISO 9001, ISO 17025 and the Eskom Security Information Security.

Z6 and Z7 shall apply.

2.5 Invoicing and payment

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

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

The *Contractor* shall address the tax invoice to
Contract Manager: NAME
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;
- (add other as required)

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

2.6 Contract change management.

For any additional requirement that is not covered by this contract but are mandatory or serve as a mitigation to manage identified risks, either the *Contractor* or the *Employer* will have to submit the early warning letter to the accompanied by the quotation for approval, the proof of request from the business or Mine or Power Station and the scope of work from Eskom Primary Energy.

2.7 Records of Defined Cost to be kept by the *Contractor*.

The *Contractor* is required to keep any other records related to this contract. Eskom may require in regard to format and filing of the records, and whether access for the *Service Manager* shall be provided in hard copy or electronically.
the *Employer* requires some form of control over the *Contractor's* record keeping for the purpose of compensation event management.

Clause Z6 and Z7 shall apply.

2.8 Training workshops and technology transfer

Eskom can provide training/technology transfer workshops as and when required (not Employers obligation). Workshops can be provided to the Contractors to improve contract performance.
Management of work done by Task Order

A Task Order format is provided in an Annexure A to this Service Information as per the scope and allocation of work.

3 Health and safety, the environment and quality assurance

3.1 Health and safety risk management

In addition to the requirements of the laws governing health and safety, Eskom may have some additional requirements particular to the *service* and the Affected Property for this contract.

The Contractor shall complete and submit the Contractors pack, safety file, site inductions and red ticket at site where applicable. The Contractor shall at all times comply with the health and safety requirements prescribed by law as they may apply to the services. The Contractor shall comply with the health and safety requirements contained in this scope.

The Divisional/Regional Safety Risk Manager or his representative having jurisdiction over the *service* must provide the relevant safety, health and environmental (SHE) criteria for incorporation into this Service Information. The SHE specification / scope must be signed off by the Divisional/Regional Safety Risk Manager or his representative confirming that the applicable safety criteria have been taken into account.

The Commodity Manager / Buyer must refer the tender to the Divisional/Regional Safety Risk Manager or his representative in order to evaluate against enquiry-specific safety criteria.

The Divisional Safety Managers who will be responsible for the allocation of resources to assist P&SCM with the above processes are as follows:

Generation PED: Health and Safety Department

3.2 Environmental constraints and management

- The Supplier warrants that it is complying and will continue to comply with all its obligations under all current and future applicable South African applicable to its operation and associated infrastructures, including but not limited to the Specific Environmental Management Acts ("SEMA"); MPRDA, the National Water Act, No. 36 of 1998 ("NWA"); the National Environmental Management Act, No. 107 of 1998 ("NEMA"); the National Environmental Air Quality Act, No. 39 of 2004.
- The service providers must comply with the Laboratory Service Provider Environmental Management System Requirements (document no. 240- 144163159) and Collection, delivery and receiving of contractual samples to the laboratories and the disposal of left over coal samples by the laboratories procedures (document no. 240-159601016).
- Eskom shall be entitled to conduct reviews in respect of the provisions of the above clauses to ensure the Supplier's compliance herewith and the Supplier agrees to co-operate with Eskom in this regard. To that end, Eskom and its designated representatives, including without limitation, its attorneys, auditors, environmental representatives, shall at all reasonable times, with reasonable prior notice to the Supplier, have access to the Suppliers' operation and facilities utilised for the service to be rendered under this Agreement and to all records, wherever located, pertaining to this Agreement, which access will be at Eskom's expense and risk.
- Eskom will provide feedback on outcomes and risks identified from the reviews conducted above clause. The Supplier shall provide Eskom with an action plan and the Parties shall mutually agree on the action plan, including the timelines, to address the identified risks. Should the parties be unable to agree on the risks and/or the action plan; then the dispute will be resolved in terms dispute clauses of this Agreement.

3.3 Quality assurance requirements

- The Contractor shall demonstrate, provide and maintain a Quality Management System in line with ISO 9001. Compliance with the provisions of this clause in no way relieves the Contractor of the final responsibility to furnish an acceptable product and/or services.
- The Contractor agrees to control and professionally preserve and store appropriate documents, records and recordings for a period of at least 3 years after termination of the agreement to guarantee the traceability of the services rendered and inspection thereof.
- The Contractor agrees to regularly update and implement all the latest technology available as well as the necessary improvements for the installation, production and organisation deemed necessary to meet the requirements of the agreement and in order to enhance all system capabilities and effectiveness to deliver high quality, cost-effective services.
- The delivered product and / or services shall be uniform in Quality and condition, sound and free from defects or external copyright or intellectual property rights, consistent with good industry practices and adhere to requested Eskom requirements, without deviation.
- Eskom shall have the right to conduct surveys and perform surveillance of the Contractor's and/or Sub-Contractor facilities to evaluate their capability to comply with the requirements necessary to conform to contractual requirements.
- Eskom reserves the right to inspect, at reasonable times, any or all of the work included in the Works Information at the Contractor's or Sub-Contractor's premises or elsewhere. Verification by Eskom shall not absolve the Contractor of the responsibility to provide acceptable product and / or services, nor shall it preclude subsequent rejection by Eskom.
- The services must comply with the agreed specifications and the applicable directives and technical standards set out in the contract and annexures. Defects notified by Eskom shall be remedied by the Contractor upon demand by Eskom without undue delay and at no extra cost. The Contractor shall continuously monitor, identify and investigate non-conformances, both internal and external, as signals of opportunities for improvement making process and other relevant changes to prevent recurrence.
- The contractor shall ensure that employees have attended awareness training on ISO 17025 and ISO 9001, including nonconformity management and corrective actions.
- The Contractor shall further identify potential problems before they occur by identifying deviations in patterns or trends in product, service or process performance. nothing contained in the contract and/or scope of work and /or works information shall relieve in any way the Contractor from the obligation of Quality control thereof.
- The Contractor guarantees that the quantity, Quality and outward appearance of the delivered product/services comply with the requirements of the contract and/or relevant specifications.
- The Contractor shall, on request, prove its ability to relate to the proposed scope of work which establishes the manner in which the Contractor intends to perform the Contract.
- The Contractor shall, on request, prove its organisational, logistics and support resources to ensure the requirements of the contract can and will be achieved.
- Eskom reserves the right to assess and measure , during the existence of the agreement, the qualifications , capability and competence of the key staff (assigned personnel) in relation to the scope of work and to interview any / all Contractors to confirm the Quality evaluation.
- The Contractor shall demonstrate experience in comparable projects or specific aspects of the project and / or performance in similar projects, on request.
- The Quality of the service / product and the contents thereof will always be in accordance with professional standards.
- The Contractor must , at all relevant times , scrutinise and be aware of Eskom's requirements with specific focus on , inter alia , its philosophy , principles , strategies , practises , mission , vision , models , policies and practises.
- It is the Contractor's obligation to ensure that their operations and the products and services it provides to Eskom comply with any applicable statutes and or regulations. Any non-compliance by the Contractor and the resultant corrective actions shall be the responsibility of the Contractor.

- The Contractor shall ensure that he complies with the works information and that appropriate quality requirements (as in the main contract) are included in subcontracts placed by Contractors to ensure sub-contractor's compliance with the works Information.

4 Procurement

4.1 People

4.1.1 Minimum requirements of people employed

Matrix for skills developments.

4.2 Subcontracting

4.2.1 Preferred subcontractors

Subcontracting is only limited to the use of *Contractors* that are offering the same services to Eskom and the costs shall be as per this contract.

The Contractor shall ensure that all risks related to subcontracting are assessed and mitigated accordingly.

4.2.2 Subcontract documentation, and assessment of subcontract tenders

The conditions in the scope of work and the deliverables for this contract shall apply when subcontracting scope items.

4.2.3 Limitations on subcontracting

Subcontracting of the entire work or portion of the work is permitted up to a full month period during which the Contractor shall implement a long-term solution. Any work to be subcontracted shall be declared to Eskom Service Manager in writing, subcontracted work shall be documented in the final report.

If the contractor wishes to subcontract for a period longer than a month then a special permission needs to be obtained from Eskom *Service Manager*, a detailed project plan with completion date should accompany the formal request letter to Eskom. Eskom reserves the right to cancel the contract or extend the subcontracting period. Any additional costs incurred due to subcontracting shall be borne by the main Contractor.

5 Working on the Affected Property

This part of the Service Information addresses constraints, facilities, services and rules applicable to the *Contractor* whilst he is doing work on the Affected Property.

5.1 People restrictions, hours of work, conduct and records

Contractor should keep the records of his people working on the allocated sites, including those of his Subcontractors. The *Service Manager* shall have access to them at any time. These records may be needed when assessing compensation events. The *Contractor* shall complete daily time sheets at each allocated site as in the scope of work.

5.2 Health and safety facilities on the Affected Property

The *Contractor* shall at all times comply with the health and safety requirements prescribed by law as they may apply to the service. The Contractor shall comply with the following Eskom Life-Saving Rules:

- Rule 1 – Open, Isolate, Test, Earth, Bond, and / or Insulate before touch
- Rule 2 – Hook up at height
- Rule 3 – Buckle up
- Rule 4 – Be sober
- Rule 5 – Ensure you have a permit to work

Eskom Life-Saving Rules are non-negotiable Health and Safety rules which must not be broken under any circumstances. It must be highlighted that Eskom takes a ZERO TOLERANCE stance to violation of these rules. These rules are applicable to any person entering Eskom Sites. Contractor shall comply with all other rules at non-Eskom Sites.

The *Contractor* shall at all times comply with all Mine and Eskom, including Power Station health and safety requirements wherever they shall be deployed.

5.3 Site services and facilities

5.3.1 Provided by the *Employer*

This is a mandatory for meetings. *Employer* will provide in the way of power, water, waste disposal, telecoms, ablutions, fire protection and lighting (etc) on the Affected Property. Always conclude by stating that the *Contractor* shall provide everything else necessary for providing the Service.

5.3.2 Provided by the *Contractor*

The Contractor shall provide ALL equipment necessary to complete work as provided in the scope of work. All equipment and facilities provided by the Contractor shall be removed by the Contractor at the end of Service if necessary. The *Contractor* shall provide shelter for employees where applicable.

5.4 Control of noise, dust, water and waste

Dust extraction fans to be used at the laboratory when samples are prepared. All control measures shall be in place as required by law. As per the laws and regulations and the Employers requirements.

5.5 Tests and inspections

5.5.1 Description of tests and inspections

- Audits- Contractual and Joint audits
- Witnessing and Observations
- Reporting of breakdowns

ANNEXURE A

Task Order Template



PO Box 1051
Johannesburg
2000
South Africa

To the Contractor	XXXX Analytical Services	Tel	+27
Address		Fax	+27
Attention	XXXX XXXXX	Date	
E mail	XXXXX		

Dear XXXXX,

Contract title	The Provision Of Laboratory Service For The Preparation, Analyse And Reporting Of Results For Condensate Oil Samples For Eskom Primary Energy Oil An 'As And When Required' Basis For The Period Of 36 Months	Number	48XXXXXXX
Contract action	Clause XIX.2 Task Order/Purchase Order		

Following the commencement of the new laboratory contracts from the 1st November 2017, also the work allocated to your company, the content of the Task Order and in terms of clause X19.1(1) and X19.1(2) in secondary Option XIX of the above contract, I hereby instruct the Contractor to carry out the work as stated below as Task within the service.

Task Order No. 48XXXXXXX (0)	service see attached table below
Detailed description of the Work in Task	The provision of laboratory services for the preparation, analysis and reporting of results for contract cost samples for Eskom Primary Energy oil on an 'as and when required' basis
Starting date for the Task	21/09/2020
Task Completion Date	30/10/2020
A price list of items of work in the Task are extracted from the Price List as attached in the signed contract- clause C2.2	

Yours faithfully,

Signature (Service Manager) _____
Name Alshande Noshoo _____ Date _____

ESKOM HOLDINGS SOC Ltd
Laboratory Services for the preparation, analysis and reporting of results for contract cost samples for Eskom Primary Energy on an 'as and when required' basis. CONTRACT NO. 480004700

Table 1: Work Allocation for XXXXX Analytical Services (for 21 September to 30 October)

- Contractual Analyse
- Deposits analysis and
- Verification Analyse - Kusile/Kendal

Supplier	Source
XXXX	

ANNEXURE B

CONTRACTOR KEY PERFORMANCE INDICATORS

SERVICES	KEY PERFORMANCE INDICATOR	WEIGHT
Laboratory Analysis		
	Sample analysis and accurate reporting turn-around time – 24hours	40%
	% non-conformities (major and minor) remedied within the defined turnaround times	20%
	Number of Early Warnings issued	15%
	Maintenance of Laboratory Equipment	15%
	Participation in Proficiency Testing Schemes	10%

ANNEXURE C:

CHECKLISTS:

C1. SAMPLE DELIVERY NOTES