



## NEC3 Professional Services Contract (PSC3)

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

**and**

**for Kendal Power Station Black Start Project -  
Environmental Assessment Impact (EIA) and Water  
Use Application**

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**ENQUIRY No. MPKEN11180PS**

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**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 a contract for the procurement of:

Title of the Contract: **Kendal Power Station Black Start Project – Environmental Assessment Impact (EIA) and Water Use Application**

The tenderer, identified in the Offer signature block, has

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

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the *Consultant* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data.

The offered total of the Prices exclusive of VAT is	
Value Added Tax @ 15% is	
The offered total of the Prices inclusive of VAT is	

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

Signature(s)

Name(s)

Capacity

**For the tenderer:**

Name & signature of witness

Date

## Acceptance

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

The terms of the contract, are contained in:

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

and 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			
<b>for the Employer</b>			
Name & signature of witness		Date	

**Schedule of Deviations**

No.	Subject	Details
1	None	None

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.

	<b>For the tenderer:</b>		<b>For the Employer</b>
Signature			
Name			
Capacity			
On behalf of			
Name & signature of witness			
Date			



## C1.2 (a) PSC3 Contract Data

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		<b>G:</b> Term contract
	dispute resolution Option and secondary Options	<b>W1:</b> Dispute resolution procedure
		<b>X1:</b> Price adjustment for inflation
		<b>X2:</b> Changes in the law
		<b>X10:</b> <i>Employer's Agent</i>
		<b>X11:</b> Termination by the <i>Employer</i>
		<b>X18:</b> Limitation of liability
		<b>Z:</b> <i>Additional conditions of contract</i>
	of the NEC3 Professional Services Contract (April 2013) <sup>1</sup>	
10.1	The <i>Employer</i> is (Name):	<b>Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Tel No.	<b>011 800 5462</b>
	Fax No.	<b>none</b>
11.2(9)	The <i>services</i> are	<b>Kendal Black Start Facility Closure and Replacement EIA and WULA or Amendment</b>
11.2(10)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> <li>• Driving/ travelling for execution of work</li> </ul>
11.2(11)	The Scope is in	<b>Part 3: Scope of Work</b>
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>
13.1	The <i>language of this contract</i> is	<b>English</b>

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

13.3	The <i>period for reply</i> is	<b>21 days</b>
13.6	The <i>period for retention</i> is	<b>Not applicable</b>

## 2 The Parties' main responsibilities

25.2	The <i>Employer</i> provides access to the following persons, places and things	<b>access to</b>	<b>access date</b>
		<b>Site</b>	<b>Contract start date and as and when required</b>

## 3 Time

31.2	The <i>starting date</i> is.	<b>01 August 2024</b>	
11.2(3)	The <i>completion date</i> for the whole of the services is.	<b>31 July 2026</b>	
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<b>Condition to be met</b>	<b>key date</b>
		<b>As per the starting date</b>	
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	<b>Two (2) weeks of the Contract Date.</b>	
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	<b>Twelve (12) weeks.</b>	

## 4 Quality

40.2	The quality policy statement and quality plan are provided within	<b>Four (4) weeks of the Contract Date.</b>
42.2	The <i>defects date</i> is	<b>None</b>

## 5 Payment

50.1	The <i>assessment interval</i> is		
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	<b>Item</b>	<b>Amount</b>
		<b>Refer to C2.2</b>	
51.1	The period within which payments are made is	<b>Four (04) weeks after submission and approval of each invoice, excluding time for correction of invoice.</b>	
51.2	The <i>currency of this contract</i> is the	<b>South African Rand</b>	
51.5	The <i>interest rate</i> is	<b>the publicly quoted prime rate of interest charged by [•] Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due,</b>	

<b>6</b>	<b>Compensation events</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
<b>7</b>	<b>Rights to material</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
<b>8</b>	<b>Indemnity, insurance, and liability</b>	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.
82.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	The total of the Prices
<b>9</b>	<b>Termination</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
<b>10</b>	<b>Data for main Option clause</b>	
<b>G</b>	<b>Term Contract</b>	
21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than	<b>Six Months</b>
50.4	The <i>exchange rates</i> are those published in	<b>N/A</b>
<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i> is	The person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	
	Fax No.	
	e-mail	
W1.2(3)	The <i>adjudicator nominating body</i> is:	the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ).
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"> <li>• if the Parties cannot agree a choice or</li> <li>• if the <i>arbitration procedure</i> does not state who selects an arbitrator, is</li> </ul>	<p><b>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</b></p> <p><b>Johannesburg, South Africa</b></p> <p><b>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</b></p>
<b>12</b>	<b>Data for secondary Option clauses</b>	
<b>X2</b>	<b>Changes in the law</b>	
X2.1	The law of the project is	Law of Republic of South Africa
<b>X10</b>	<b>The <i>Employer's Agent</i></b>	
X10.1	The <i>Employer's Agent</i> is	
	Name:	<b>Justice Ramagoma</b>
	Address	<b>Eskom GX Megawatt Park</b>
	The authority of the <i>Employer's Agent</i> is	<b>Deidre Herbst</b>
<b>X11</b>	<b>Termination by the <i>Employer</i></b>	
		<b>There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.</b>
<b>X18</b>	<b>Limitation of liability</b>	
X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	<b>R0.00 (Zero Rand)</b>
X18.2	The <i>Consultant's</i> liability to the <i>Employer</i> for Defects that are not found until after the <i>defects date</i> is limited to:	<b>The total of the Prices</b>
X18.3	The <i>end of liability date</i> is	<b>Five (5) years after Completion of the whole of the services.</b>
<b>Z</b>	<b>The <i>Additional conditions of contract</i> are</b>	
		<b>Z1 to Z14 always apply.</b>

**Z1 Cession delegation and assignment**

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

## **Z2 Joint ventures**

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

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

- Z3.1 Where a change in the *Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant's* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change.
- Z3.2 The *Consultant* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*.
- Z3.3 Where, as a result, the *Consultant's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Consultant's* obligation to Provide the Services.
- Z3.4 Failure by the *Consultant* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

## **Z4 Confidentiality**

- Z4.1 The *Consultant* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the *Consultant* disclose information to Others in terms of clause 23.1, the *Consultant* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer*.
- Z4.3 In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken, if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer's* project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

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

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

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

Z6.1 The *Consultant* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

**Z7 Notifying compensation events**

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

**Z8 Employer's limitation of liability**

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

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

Z9.1 or had a business rescue order granted against it.

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

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

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

**Z11 Ethics**

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

**Affected Party** means, as the context requires, any party, irrespective of whether it is the *Consultant* or a third party, such party's employees, agents, or Subconsultants or Subconsultant's employees, or any one or more of all of these parties' relatives or friends,

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

**Collusive** means where two or more parties co-operate to achieve an unlawful or illegal

- Action** purpose, including to influence an Affected Party to act unlawfully or illegally,
- Committing Party** means, as the context requires, the *Consultant*, or any member thereof in the case of a joint venture, or its employees, agents, or Subconsultants or the Subconsultant’s employees,
- Corrupt Action** means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,
- Fraudulent Action** means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,
- Obstructive Action** means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and
- Prohibited Action** means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

- Z11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z11.2 The *Employer* may terminate the *Consultant’s* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Consultant* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Consultant’s* obligation to Provide the Services for this reason.
- Z11.3 If the *Employer* terminates the *Consultant’s* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.
- Z11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Consultant* ensures that the Committing Party co-operates fully with an investigation.

**Z12 Insurance**

- Z12.1 Replace core clause 81 with the following:
- 81.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
- 81.2 The *Consultant* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

**INSURANCE TABLE A**

Insurance against	Minimum amount of cover	For the period following Completion of the whole of the services or earlier termination
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<p>Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the <i>services</i></p>	<p>Whatever the <i>Consultant</i> deems necessary in respect of each claim, without limit to the number of claims</p> <p>The amount of the cover, without derogating from or limiting the <i>Consultant's</i> liability to the Employer shall be determined by the <i>Consultant</i>. Although this amount is at the discretion of the <i>Consultant</i>, the Employer recommends that the Limit of the Cover should least be the total value of the contract.</p>	<p>Whatever the <i>Consultant</i> deems fit and necessary</p> <p>But, effective from the starting date.</p> <p>And, the period of cover, without derogating from or limiting the <i>Consultant's</i> liability to the Employer shall be determined by the <i>Consultant</i>. Although this period is at the discretion of the <i>Consultant</i>, the Employer recommends that the period following completion of the whole of the services or earlier termination be not less than 2 (two) years</p>
<p>Liability for death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i></p>	<p><b><u>Loss of or damage to property:</u></b>                  The replacement cost where not covered by the <i>Employer's</i> insurance</p> <p>The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance</p> <p><b><u>Bodily injury to or death of a person:</u></b>                  The amount required by the applicable law.</p>	<p>Whatever the <i>Consultant</i> deems fit and necessary</p> <p>But, effective from the starting date.</p> <p>And, the period of cover, without derogating from or limiting the <i>Consultant's</i> liability to the Employer shall be determined by the <i>Consultant</i>. Although this period is at the discretion of the <i>Consultant</i>, the Employer recommends that the period following completion of the whole of the services or earlier termination be not less than 12 (twelve) months.</p>
<p>Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract</p>	<p>The amount required by the applicable law</p>	<p>Whatever the <i>Consultant</i> deems fit and necessary</p> <p>But, effective from the starting date.</p> <p>And, the period of cover, without</p>

		derogating from or limiting the <i>Consultant's</i> liability to the Employer shall be determined by the <i>Consultant</i> . Although this period is at the discretion of the Consultant, the Employer recommends that the period following completion of the whole of the services or earlier termination be not less than 12 (twelve) months.
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81.3 The *Employer* provides the insurances stated in the Insurance Table B.

**INSURANCE TABLE B**

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

**Z13 Nuclear Liability**

- Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa and is the holder of a nuclear licence in respect of the KNPS.
- Z13.2 The *Employer* is solely responsible for and indemnifies the *Consultant* or any other person against any and all liabilities which the *Consultant* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 44 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Consultant* or any other person or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the

aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Consultant* or any other person, or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 44 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:

<b>AAIA</b>	means approved asbestos inspection authority.
<b>ACM</b>	means asbestos containing materials.
<b>AL</b>	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 to control asbestos exposure to prevent exceeding the OEL.
<b>Ambient Air</b>	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.
<b>Compliance Monitoring</b>	means compliances 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.
<b>OEL</b>	means occupational exposure limit.
<b>Parallel Measurements</b>	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
<b>Safe Levels</b>	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.
<b>Standard</b>	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.
<b>SANAS</b>	means the South African National Accreditation System.
<b>TWA</b>	means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Consultant* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance

with HSG248 and monitored according to HSG173 and OESSM.

- Z14.2 Upon written request by the *Consultant*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Consultant* may perform Parallel Measurements and related control measures at the *Consultant's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z14.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z14.5 The *Consultant's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z14.6 The *Consultant* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

## C1.2 (b) Contract Data

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

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

Clause	Statement	Data								
10.1	The <i>Consultant</i> is (Name):  Address  Tel No.  Fax No.									
22.1	The <i>key people</i> are:  1 Name:  Job:  Responsibilities:  Qualifications:  Experience:  2 Name:  Job  Responsibilities:  Qualifications:  Experience:									
Only if required										
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	<b>31 July 2026</b>								
11.2(10)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> <li>• <b>Late submission of reports impact</b></li> <li>• <b>Insufficient time to cover more stations</b></li> <li>• <b>Driving/ travelling for execution of work</b></li> <li>• <b>Risk of different site verification</b></li> </ul>								
11.2(13)	The <i>staff rates</i> are:	Refer to Part C2.2								
25.2	The <i>Employer</i> provides access to the following persons, places and things	<table border="1"> <thead> <tr> <th></th> <th>access to</th> <th>access date</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Eskom Generation Kendal power stations</td> <td rowspan="2">As per starting date</td> </tr> <tr> <td>2</td> <td>Printer, Transport to and from internal power station</td> </tr> </tbody> </table>		access to	access date	1	Eskom Generation Kendal power stations	As per starting date	2	Printer, Transport to and from internal power station
	access to	access date								
1	Eskom Generation Kendal power stations	As per starting date								
2	Printer, Transport to and from internal power station									

31.1	The programme identified in the Contract Data is	<b>N/A</b>	
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	<b>item</b>  Disbursement cost	<b>amount</b>  <b>Refer to Part C2.2</b>
G	Term contract		
11.2(25)	The task schedule is in	<b>Refer to Part C2.2</b>	

## **PART 2: PRICING DATA**

### **PSC3 Option G**

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

<b>KENDAL REFURBISHMENT PROJECT</b>					
<b>Project Title: Kendal Power Station Black Start Facility EIA Project</b>					
<b>ITEM NO</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QUANTITY</b>	<b>RATE</b>	<b>AMOUNT (R)</b>
<b>1</b>	<b>Independent Environmental Audit Practitioner</b>	Hours			
	Screening- Environmental and Social Impact		included		
	Scoping- Environemntal and Social Impact Assessment		included		
	Water Use License Application/ Amendment		included		
	Registration of Waste Storage Facility: Category C		included		
	Environmental Management Plan		included		
<b>2</b>	<b>Travelling</b>	kms			
<b>3</b>	Accomodation	monthly	24		
<b>4</b>	<b>Health and Safety</b>				
	Medicals (Entry&Exit)	Once-off	2		
	PPE	Item	1		
	Annual Medical Assessment	Item	1		
<b>TOTAL</b>					

## C2.1 Pricing assumptions: Option G

### How work is priced and assessed for payment

From Option G: Term contract

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

From the Core Clauses:

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

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

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

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

### Staff rates and expenses

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

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

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

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

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

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

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

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

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

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

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

This section can be used when the *staff rates* and *expenses* are considerable in number and more conveniently located here than in the Contract Data. Entries in the Contract Data should refer to this section of Part 2.

State whether the *staff rates* and *expenses* exclude or include VAT.

**1. The staff rates are:**

No.	Designation (or category) or name of staff member	Rate per hour excluding VAT
01	Project Manager/EAP	
02		
03		

**The expenses are:**

No.	Expense item	Amount / rate excluding VAT
01	Disbursement	

**The task schedule**

The following format could be used:

No.	Items of work to be carried out on a time basis
01	Kendal Black Start Facility Closure and Replacement EIA and WULA or Amendment

No.	Items of work priced on a lump sum basis	Price (excluding VAT)



## C3.1: EMPLOYER'S SCOPE

### 1 Description of the services

#### 1.1 Executive overview

To sustain the Transmission grid, Kendal Power Station is equipped with a Black Start Facility, namely the Kendal Black Start Facility (KBSF). The facility serves to restart the grid in the case of a nationwide blackout. The KBSF has two Gas Turbines (GTs), Gas Turbine 1 (GT1) and Gas Turbine 2 (GT2). Both GTs were purchased as second hands and installed at Kendal Power Station in 1994 and 2007 respectively. GT1 was first installed in 1976 at Paratus in Namibia, and GT2 was first installed at Glendale in California, USA. These GTs were supplied without maintenance service records and are now failing more frequently on multiple components due to poor maintenance and aging.

### 2. Scope of work/supply

The scope of work entails, appointing an independent Environmental and Social Consultant to conduct an Environmental Impact Assessment (EIA) process with associated Environmental Management Programme (EMPr) for the closure of the existing Black Start Facility and proposed new Kendal Black Start Facility installation and it includes two Gas Turbines (2x100%), each with the capability to start any of the six Kendal Power Station Units in the event of nationwide blackout. The KBSF must be able to produce a minimum of 30MW (per Gas Turbine) output power. The EIA and associated EMPr will therefore need to be submitted to the Department of Forestry, Fisheries and the Environment (DFFE) in terms of the National Environmental Management Act (No. 107 of 1998), 2014 EIA Regulations, as amended for decision, as well as the process of Water Use Licence Application (WULA) with the Department of Water and Sanitation in terms of Section 40 of the National Water Act (No. 36 of 1998).

#### 1.2 Interpretation and terminology

The following Eskom procedures form part of the contract.

Document Number	Specification / Code / Standard Title
32-727	Safety and Health, Environment and Quality (SHEQ) Policy
240-82410629	Eskom Environmental Strategy
32-95	Occupational Health and Safety incident Management Procedure
32-136	Contractor Health and Safety Requirements
240-133087117	Environmental incident Management Procedure
QM-58	Supplier Contract Quality Requirements Specification
240-56927206	Generation Environmental Management Operation Plan
ISO 14001: 2015	Environmental Management System
OHSAS 18001:2007	Occupational Health and Safety Management systems
ISO 9001:2015	Quality Management System

## **2 Specification and description of the services**

The project entails closure of the existing Black Start Facility and replacement, with a new Black Start Facility to be composed of gas turbine plant with two gas turbines, each with a capability to start any Kendal Power Station Single Unit, to be used as a Black Start Facility in the event of the nationwide blackout. These gas turbines shall be able to be started independently from the onboard control panel and at the Power Station's Electrical Control Desk (EOD).

The Existing Kendal Black Start Facility shall be demolished by the Contractor and sold by the Employer as metal scraps or parts. The new Black Start Facility shall be constructed with all new components, such as: Gas Turbines (from air intake filters to Generator), fuel purification system, fuel skidding, diesel tanks, fire protection system, LV / MV switch gear, etc. The Tenderer needs to provide a comprehensive and cost-effective proposal for undertaking the EIA studies for the Closure of the existing KBSF and installation of a new Black Start Facility within efficient delivery timelines and for execution of EIA and EMP including the submission of the reports to DFFE for decision making for an EA as well as WULA or amendment processes.

- Task 1: Screening phase- Environment and Social Impacts
- Task 2: Scoping phase- Environment and Social Impacts Assessment
- Task 3: Environmental and Social Impact Assessment
- Task 4: Environmental Management Programme
- Task 5: Water Use License Application or Amendment
- Task 6: Registration of a Waste Storage Facility: Category C

### **2.1 Stage 1 Preparation**

- Site clarification will be undertaken at Kendal Power Station on the site

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

### **3.1 Management meetings**

Any additional service such as meetings or engagements requested by Eskom will be handled on a time-cost basis. The time-costs per resource must be included in the proposal.

### **3.2 *Consultant's key persons***

Not applicable

### **3.3 Provision of bonds and guarantees**

Not applicable

### **3.4 Documentation control and retention**

#### **3.4.1 Identification and communication**

All correspondence of either commercial or technical nature, whether hard copy or email, either to Contractor or from Contractor shall clearly include the following information: file number, contract number and subject matter respectively when available.

Documents shall be delivered in electronic format (Microsoft Office compatible or Adobe Acrobat (pdf) files). In addition a document list shall be delivered in Microsoft Excel format that contains the following fields: "document name", "document type", "version number", "date created" and "created by".

### **3.5 Records and forecasting of expenses**

The Consultant prepares forecasts of the total expenses at intervals of no longer than four weeks

### **3.6 Records and forecasting of the Time Charge**

Not applicable

### **3.7 Invoicing and Payment**

The *Consultant* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment. The period within which payments are made is two to five weeks after submission and approval of each invoice, excluding time for correction of invoice. The following details shall be shown on or attached to each Invoice to show how the amount due has been assessed:

The Consultant shall address the tax invoice to

Eskom Holdings SOC Limited  
PO Box 1091  
Johannesburg  
2001

VAT 4740101508

and include on it the following information:

- a) Name and address of the Consultant and the Employer's Agent;
- b) The contract number and title;
- c) Consultant's VAT registration number;
- d) The Employer's VAT registration number 4740101508;
- e) Description of the services provided for each item invoiced based on the Price List;
- f) Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- g) The purchase order number
- h) The invoice must read as Tax Invoice

### **3.8 Contract change management**

Not applicable

### **3.9 Inclusions in the programme**

The contract is expected to start from 01 February 2022 to 31 December 2023 in executing the entire scope as prescribed.

### **3.10 Quality management**

#### **3.10.1 System requirements**

The Contractor shall comply with the Supplier Quality Management Specification 240-105658000 (QM-58).

#### **3.10.2 Information in the quality plan**

The quality policy statement and quality plan are provided within four (4) weeks of the Contract Date.

### **3.11 The Parties use of material provided by the *Consultant***

#### **3.11.1 *Employer's* purpose for the material**

Not Applicable

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

Not Applicable

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

Not applicable.

### **3.12 Management of work done by Task Order**

Not applicable

### **3.13 Health and safety**

#### **Health and Safety Risk Management**

- Occupational Health and Safety (OHS) plan / OHS manual
- Baseline OHS risk assessment
- Valid letter of good standing or equivalent
- OHS policy (must be signed)

#### **Environmental Constraints and Management**

The Service provider shall comply with the environmental criteria and constraints stated in the Environmental Management Plan (EMP)

#### **Quality Assurance Requirements**

- The supplier and sub-supplier shall develop, implement and maintain a formal quality management system that conforms to the latest ISO 9001 standard or any applicable standard of quality management system (latest applicable revision) and in accordance with the requirements of this specification.
- Such a formal system shall consist of the appropriate documentation such as a quality manual, quality plans, work procedures, work instructions, method statements, work flow documentation, quality policy, quality objectives etc., as the case may be.

### 3.14 Procurement

#### 3.14.1 BBBEE and preferencing scheme

Specify constraints which *Consultant* must comply with after contract award in regard to any Broad Based Black Economic Empowerment (B-BBEE) or preferencing scheme measures.

#### 3.14.2 Other constraints

Delete if not required or state any other constraints that may be applicable to people employed by the *Consultant* and change the heading to suit the subject matter.

#### 3.14.3 Preferred subconsultants

PSC3 does not make use of nominated subconsultants but the *Employer* may list which subconsultants or suppliers the *Consultant* is required to enter into subcontracts with. This is usually only required where very specialist services need to be obtained from a particular supplier or group of suppliers in order to comply with operational standards.

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

Specify any constraints on how the *Consultant* is to prepare subcontract documentation, whether use of the NEC3 system is compulsory or not (compulsory is recommended) and how subcontract tenders are to be issued, received, assessed (using a joint report?) and awarded.

#### 3.14.5 Limitations on subcontracting

The *Employer* may require that the *Consultant* must subcontract certain specialised work, or that the *Consultant* shall not subcontract more than a specified proportion of the whole of the contract.

### 3.15 Attendance on Subconsultants

State requirements for attendance on Subconsultants, if any

### 3.16 Correction of Defects

Not applicable

### 3.17 Working on the *Employer's* property

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

Sites have very strict entrance requirements which tendering consultants need to allow for in their prices, and the *Consultant* has to comply which includes site induction, entrance permit for both personnel and other required equipment for execution on scope

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

Restrictions and hours of work may apply on some sites. It is very important that the *Consultant* keeps records of his people working on the *Employer's* property,

### 3.18 Cooperating with and obtaining acceptance of Others

Not applicable

**3.19 Things provided by the Employer**

Site Facilities, Utilities and Services	Provided by		Details
	Contractor	Employer	
Item			
Transportation to site and undertaking work in construction site	X		Driving to work Performing duties driving in rough terrains, etc
<b>Communication</b>	X	X	
Internet connection	X		
Cell phone communication	X		
<b>Electrical Power</b>			
Construction main power source and maintenance		X	
Construction power primary distribution system and maintenance		X	
Construction power energy usage payment		X	
<b>Water - potable and non-potable</b>			
Construction water usage payment		X	
Drinking water distribution		X	
<b>Heat</b>			
Temporary heating facilities/system		X	
<b>Sanitary Facilities</b>			
Construction primary sanitary facilities and maintenance		X	
<b>Access Roads</b>			
Primary access roads and maintenance		X	
Primary access road dust control		X	
Provide construction parking area and maintenance		X	
<b>Security</b>			
Overall site security		X	
Overall site security access card and fingerprint system and materials		X	
<b>Medical Facilities</b>			
Onsite first aid/medical services		X	
Project emergency ambulance		X	
Heliport Area		X	
<b>Food Services</b>			
Allowed onsite - Yes/No	Yes		
Canteen	X		

### **3.20 Cataloguing requirements by the *Consultant***

Not applicable

## **4 List of drawings**

### **4.1 Drawings issued by the *Employer***

Not applicable