

NEC3 Professional Services Contract (PSC3)

**Contract between Eskom RoteK Industries SOC Ltd
(Reg No. 1990/006897/30)**

**and [Insert at award stage]
(Reg No. _____)**

for [•]

Contents:	No of pages
Part C1 Agreements & Contract Data	[•]
Part C2 Pricing Data	[•]
Part C3 Scope of Work: The Scope	[•]

CONTRACT No. [Insert at award stage]

PART C1: AGREEMENTS & CONTRACT DATA

Document reference	Title	No of pages
C1.1	Form of Offer & Acceptance [to be inserted from Returnable Documents at award stage]	[•]
C1.2a	Contract Data provided by the <i>Employer</i>	[•]
C1.2b	Contract Data provided by the <i>Consultant</i> [to be inserted from Returnable Documents at award stage]	[•]
C1.3	Securities proforma	[•]

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 appointment of a Multi-disciplinary Engineering Entity to provide Engineering and Project management on the job training / skills transfer for Eskom RoteK Industries at various sites on an as and when required basis.

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	R
Value Added Tax @ 15% is	R
The offered total of the Prices inclusive of VAT is	R
(in words)	

If Option E or G apply, for each offered total insert in brackets, "(Not Applicable – Cost reimbursable)"

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

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the
Employer**

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

Schedule of Deviations

Note:

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

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

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

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

For the tenderer:

For the Employer

Signature _____

Name _____

Fatima Laher

Capacity _____

Talent and Learning Head of Department

On behalf of _____
(Insert name and address of organisation)

Name & signature of witness _____

Date _____

C1.2 PSC3 Contract Data

Part one - Data provided by the *Employer*

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

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
	dispute resolution Option and secondary Options	<p>G: Term contract</p> <p>W1: Dispute resolution procedure</p> <p>X1: Price adjustment for inflation</p> <p>X2: Changes in the law</p> <p>X7: Delay damages</p> <p>X9: Transfer of rights</p> <p>X10: <i>Employer's Agent</i></p> <p>X11: Termination by the <i>Employer</i></p> <p>X18: Limitation of liability</p> <p>X20: Key Performance Indicators</p> <p>Z: <i>Additional conditions of contract</i></p>

	of the NEC3 Professional Services Contract (April 2013) ¹		
10.1	The <i>Employer</i> is (Name):	Eskom Rotek Industries SOC Ltd (Reg no: 1990/006897/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa	
	Address	Roshland Office Park Lower Germiston Road Rosherville	
	Tel No.	[•]	
	Fax No.	[•]	
11.2(9)	The <i>services</i> are	The appointment of a Multi-disciplinary Engineering Entity to provide Engineering and Project management training for Eskom Rotek Industries at various sites	
11.2(10)	The following matters will be included in the Risk Register	[•]	
11.2(11)	The Scope is in	Part 3: Scope of Work	
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	[•] weeks	
13.6	The <i>period for retention</i> is	[•] years following Completion or earlier termination.	
2	The Parties' main responsibilities		
25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	access date
		1 [•]	[•]
		2 [•]	[•]
		3 [•]	[•]
3	Time		
31.2	The <i>starting date</i> is.	[•]	
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is.	[•]. 36 months	
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	key date
		1 [•]	[•]
		2 [•]	[•]

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 and www.ecs.co.za

		3	[•]	[•]
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	[•] weeks of the Contract Date.		
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	[•] weeks.		
4	Quality			
40.2	The quality policy statement and quality plan are provided within	[•] weeks of the Contract Date.		
42.2	The <i>defects date</i> is	[•] weeks after Completion of the whole of the <i>services</i> .		
5	Payment			
50.1	The <i>assessment interval</i> is	between the [•] day of each successive month.		
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	Item	Amount	
		[•]	[•]	
		[•]	[•]	
		[•]	[•]	
		[•]	[•]	
51.1	The period within which payments are made is	[•] weeks.		
51.2	The <i>currency of this contract</i> is the	South African Rand		

51.5	The <i>interest rate</i> is	<p>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,</p> <p>and</p> <p>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 <i>mutatis mutandis</i> 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</p>		
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	Rights to material	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	Indemnity, insurance and liability			
81.1	The amounts of insurance and the periods for which the <i>Consultant</i> maintains insurance are			
	Event	Cover	Period following Completion of the whole of the <i>services</i> or earlier termination	
	Liability for failure by the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	Whatever the <i>Consultant</i> deems necessary in respect of each claim, without limit to the number of claims	See Notes to Consultants in Annexure A	

	death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property arising from or in connection with the <i>Consultant's</i> Providing the Services.	Whatever the <i>Consultant</i> deems necessary for any occurrence or series of occurrences arising out of one event without limit to the number of claims.	See Notes to Consultants in Annexure A
	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	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Consultant's</i> common law liability for people falling outside the scope of the Act with a limit of indemnity of not less than R500 000-00 (five hundred thousand) in respect of each claim, without limit to the number of claims	As <i>Consultant</i> deems necessary
81.1	The <i>Employer</i> provides the following insurances	Refer to Annexure A for details of insurance provided by the <i>Employer</i> .	
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	
9	Termination	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.	
10	Data for main Option clause		
A	Priced contract with activity schedule		
21.3	The <i>Consultant</i> prepares forecasts of the total expenses at intervals of no longer than	[•] weeks.	
C	Target contract		
21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and expenses at intervals no longer than	[•] weeks.	
50.4	The exchange rates are those published in	[•] on [•] (date).	
54.1	The <i>Consultant's</i> share percentages and the share ranges are	share range less than [•]% from [•]% to [•]%	<i>Consultant's</i> share percentage [•] % [•] %

		from [•] to [•]% greater than [•]%	[•]% [•]%
E	Time based contract		
21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than [•] weeks.		
50.4	The <i>exchange rates</i> are those published in [•] on [•] (date).		
G	Term contract		
21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than [•] weeks.		
50.4	The <i>exchange rates</i> are those published in [•] on [•] (date).		
11	Data for Option W1		
W1.1	<p>The <i>Adjudicator</i> is</p> <p>An Adjudicator will be appointed between the Contractor and the Employer should a dispute arises.</p> <p>The costs that the Adjudicator charge will be divided between both Parties at 50% for each parties account.</p> <p>Address</p> <p>Tel No.</p> <p>Fax No.</p> <p>e-mail</p>	<p>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).</p> <p>[•]</p> <p>[•]</p> <p>[•]</p> <p>[•]</p>	
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 www.ice-sa.org.za).
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 orif the <i>arbitration procedure</i> 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>
12	Data for secondary Option clauses		

X1	Price adjustment for inflation			
X1.1	The index is	[•].		
	The staff rates are {state whether “Fixed at the Contract Date and are not variable with changes in salary paid to individuals” or “Variable with changes in salary paid to individuals”}	[•]		
X2	Changes in the law			
X2.1	The law of the project is	[•]. South African Law		
X3	Multiple currencies			
X3.1	The <i>Employer</i> will pay for these items or activities in the currencies stated	Items & activities	Other currency	Maximum payment in other currency
		[•]	[•]	[•]
		[•]	[•]	[•]
		[•]	[•]	[•]
X3.1	The <i>exchange rates</i> are those published in	[•]on [•] (date)		
		The items & activities will be paid in the other currency - to a foreign Bank account nominated by the <i>Consultant</i> - to a valid SARB approved CFC account in South Africa - in accordance with an alternative payment method agreed with the <i>Employer</i> before the Contract Date. (select one of the three methods as agreed with successful tenderer and delete the others and this note)		
X4	Parent company guarantee	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.		
X5	Sectional Completion			
X5.1	The <i>completion date</i> for each <i>section</i> of the services is:	<i>section</i>	<i>description</i>	<i>completion date</i>
		1	[•]	[•]
		2	[•]	[•]
		3	[•]	[•]
X5 & X6	Sectional Completion and bonus for early Completion used together			

X6.1 X5.1	The bonuses for early Completion of each <i>section</i> of the <i>services</i> are:	<i>section</i>	<i>description</i>	<i>amount per day</i>
		1	[•]	R[•]
		2	[•]	R[•]
		3	[•]	R[•]
	Remainder of the <i>services</i>			R[•]
X5 & X7	Sectional Completion and delay damages used together			
X7.1 X5.1	Delay damages for late Completion of each <i>section</i> of the <i>services</i> are:	<i>section</i>	<i>description</i>	<i>amount per day</i>
		1	[•]	R[•]
		2	[•]	R[•]
		3	[•]	R[•]
	Remainder of the <i>services</i>			R[•]
X6	Bonus for early Completion			
X6.1	The bonus for early Completion of the whole of the <i>services</i> is	[•] per day		
X7	Delay damages			
X7.1	Delay damages for late Completion of the whole of the <i>services</i> are	[•] 10% of total charge (i.e. hourly rate x number of hours worked) per day		
X8	Collateral warranty agreements			
X8.1	The <i>collateral warranty agreements</i> are:	agreement reference	third party	
		[•]	[•]	
X9	Transfer of rights	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.		
X10	The <i>Employer's Agent</i>			
X10.1	The <i>Employer's Agent</i> is			
	Name:	[•]		
	Address	[•]		
	The authority of the <i>Employer's Agent</i> is	[•]		
X11	Termination by the <i>Employer</i>	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.		
X12	Partnering			
X12.1	The <i>Client</i> is (Name)	[•]		

	Address	[•]
	Tel	[•]
	Fax	[•]
X12.1(4)	The Partnering Information is in	[•]
X12.2(1)	The <i>Client's</i> objective is.	[•]
X13	Performance bond	
X13.1	The amount of the performance bond is	R[•].
X18	Limitation of liability	
X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	R0.00 (Zero Rand)
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:	The total of the Prices
X18.3	The <i>end of liability date</i> is	five years after Completion of the whole of the services/task order.
X20	Key Performance Indicators (not used when Option X12 also applies)	
X20.1	The <i>incentive schedule</i> for Key Performance Indicators is in	[•]
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	[•] months
Z	The Additional conditions of contract are	
		Z1 to Z11 always apply.
Z1	Cession delegation and assignment	
Z1.1	The <i>Consultant</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i> .	
Z1.2	Notwithstanding the above, the <i>Employer</i> may on written notice to the <i>Consultant</i> cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.	
Z2	Joint ventures	
Z2.1	If the <i>Consultant</i> 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 <i>Employer</i> for the performance of this contract.	
Z2.2	Unless already notified to the <i>Employer</i> , the persons or organisations notify the <i>Employer</i> within two weeks of the Contract Date of the key person who has the authority to bind the <i>Consultant</i> 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 <i>Consultant</i> (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 <i>Employer's</i> VAT number 4330196330 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 <i>Employer</i> should have notified the event to the <i>Consultant</i> but did not".
Z8	<i>Employer's</i> limitation of liability
Z8.1	The <i>Employer's</i> liability to the <i>Consultant</i> for the <i>Consultant's</i> 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 <i>Consultant's</i> payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the <i>Employer</i> may terminate the <i>Consultant's</i> obligation to Provide the Services.
Z10.2	If the <i>Employer</i> 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 <i>Employer</i> of completing the whole of the <i>services</i> in addition to the amounts due in terms of core clause 92.1.
Z11	Ethics
For the purposes of this Z-clause, the following definitions apply:	
Affected Party means, as the context requires, any party, irrespective of whether it is the Consultant or a third party, such party's employees, agents, or Subconsultants or Subconsultant's employees, or any one or more of all of these parties' relatives or friends,	
Coercive Action means, to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,	
Collusive Action means, where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,	
Committing Party means, as the context requires, the Consultant, or any member thereof in the case of a joint venture, or its employees, agents, or Subconsultants or the Subconsultant's employees,	
Corrupt Action means, the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,	

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

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

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

Z 11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z 11.2 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.

Z 11.3 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.

Z 11.4 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.

Annexure A: Notes to Consultants

This is guidance to Consultants to assist their decision making about what cover to arrange in the insurance to be provided by the Consultant. The guidance is not part of the contract and the Employer carries no liability for it. The Consultant must obtain its own advice.

1. For the purpose of works contracts, insurance provided by Eskom (the *Employer*) has been arranged on the basis of "project" or "contract" value, where the value is the total of the Prices at Completion of the whole of the works including VAT.

A "project" is a collection of contracts or work packages to be undertaken as part of a single identified capital expansion or refurbishment of a particular asset or facility.

A "contract" is a single contract not linked to or being part of a "project".

2. There are three main "formats" of cover and deductible structure; Format A, Format B and Format Dx.

Format A is for a project or contract value less than or equal to R350M (three hundred and fifty million Rand) inclusive of VAT.

Format B is for a project or contract value greater than R350M (three hundred and fifty million Rand) inclusive of VAT.

In the case of contracts / packages within a project:

- For a contract / package of R50M which is part of a R400M project, Format B will apply
- For a contract / package of R250M which is part of a R6 billion project, Format B will apply;
- For a contract / package of R120M which is part of a R350M project Format A will apply;

For a contract which is not part of a project the same limits apply:

- For a contract of R50M, Format A will apply
- For a contract of R355M, Format B will apply.

Format Dx applies only to Distribution Division projects and contracts. If a Distribution Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover. Cover and deductibles for Distribution Division are per the relevant policy available on the internet web link given below.

Format A generally applies to Transmission Division projects and contracts. If a Transmission Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover.

3. 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

4. The Insurance which the *Consultant* is to provide against his liability for claims made against him arising out of his failure to use reasonable skill and care (first row in the Insurance Table of clause 81.1 in the PSC3) should also indemnify the *Consultant* for those sums which he could become legally liable to pay as damages arising from any claim first made against him and reported to Insurers some time after Completion of the whole of the *services*. Hence the *Consultant* needs to ensure that his cover is in place at least until all his liabilities under the contract have expired. Such claims could arise out of any negligent act, error or omission committed or alleged to have been committed by the *Consultant* in the conduct of professional services in connection with the contract.

C1.2 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		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled .
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	
11.2(10)	The following matters will be included in the Risk Register	
11.2(13)	The <i>staff rates</i> are:	name/designation rate
	Either complete here or cross refer to a schedule in Part C2.2	
25.2	The <i>Employer</i> provides access to the following persons, places and things	access to access date
		1

		2	
		3	
31.1	The programme identified in the Contract Data is		
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	item	amount
A	Priced contract with activity schedule		
11.2(14)	The <i>activity schedule</i> is in		
11.2(18)	The tendered total of the Prices is	R	(in figures) (in words), excluding VAT
C	Target contract		
11.2(14)	The <i>activity schedule</i> is in		
11.2(18)	The tendered total of the Prices is	R	(in figures) (in words), excluding VAT
G	Term contract		
11.2(25)	The <i>task schedule</i> is in		

C1.3 Forms of Securities

Pro formas for Bonds & Guarantees

For use with the NEC3 Professional Services Contract

[Note to contract compiler:

Once it has been decided which securities are required for this contract delete from this file the ones not required, revise the notes below accordingly and delete this note.]

The *conditions of contract* stated in the Contract Data Part 1 include the following Secondary Options:

Option X4: Parent company guarantee

Option X13: Performance Bond

These secondary Options require a bond or guarantee “in the form set out in the Scope”. Pro forma documents for these bonds and guarantees are provided here for convenience but are to be treated as part of the Scope.

The *Consultant* shall guarantee his ASGI-SA Obligations by providing the *Employer* with an ASGI-SA Guarantee in the form provided here.

[Note to contract compiler: *If there are no ASGI-SA Obligations in this contract, delete the above statement*]

The organisation providing the bond / guarantee does so by copying the pro forma document onto his letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Employer* within the time stated in the contract.

Pro forma Parent Company Guarantee (for use with Option X4)

(to be reproduced exactly as shown below on the letterhead of the Consultant's Parent Company)

**Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg**

Date:

Dear Sirs,

Parent Company Guarantee for Contract No

With reference to the above numbered contract made or to be made between

Eskom Holdings SOC Ltd (the *Employer*) and
{Insert registered name and address of the Consultant} (the *Consultant*), for
{Insert details of the services from the Contract Data} (the *services*).

I/We the undersigned

on behalf of the *Consultant's*
parent company

of physical address

and duly authorised thereto do hereby unconditionally guarantee to the *Employer* that the *Consultant* shall Provide the Services in accordance with the above numbered Contract.

1. If for any reason the *Consultant* fails to Provide the Services, we hereby agree to cause to Provide the Services at no additional cost to the *Employer*.
2. If we fail to comply with the terms of this Deed of Guarantee, the *Employer* may itself procure such performance (whether or not the Agreement be formally determined). The *Employer* is to notify us and we shall indemnify the *Employer* for any additional cost or expense it incurs.
3. Our liability shall be as primary obligor and not merely as surety and shall not be impaired or discharged by reason of any arrangement or change in relationship made between the *Consultant* and the *Employer* and/or between us and *Consultant*, nor any alteration in the obligations undertaken by the *Consultant* or in the terms of the Agreement; nor any indulgence, failure, delay by you as to any matter; nor any dissolution or liquidation or such other analogous event of the *Consultant*.
4. The *Employer* shall not be obliged before taking steps to enforce the terms of this Deed of Guarantee to obtain judgement against the *Consultant* in any court or other tribunal, to make or file any claim in liquidation (or analogous proceedings) or to seek any remedy or proceed first against the *Consultant*.
5. This Deed of Guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa and we hereby submit to the non-exclusive jurisdiction of the Supreme Court of South Africa.

Signed at _____ on this _____ day of _____ 200_

Signature(s)

Name(s) (printed)

Position in parent company

Signature of Witness(s)

Name(s) (printed)

Pro forma Performance Bond – Demand Guarantee (for use with Option X13)

(to be reproduced exactly as shown below on the letterhead of the Consultant's Parent Company)

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Date:

Dear Sirs

Reference No. [●] [Drafting Note: Bank reference number to be inserted]

Performance **Bond – Demand Guarantee**: [Drafting Note: Name of Consultant to be inserted]

Project [] Contract Reference: [Drafting Note: Consultant contract reference number to be inserted]

1. In this Guarantee the following words and expressions shall have the following meanings:-
 - 1.1 “Bank” - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]
 - 1.2 “Bank’s Address” - means [●]; [Drafting Note: Bank’s physical address to be inserted]
 - 1.3 “Contract” – means the written agreement relating to the Services, entered into between Eskom and the Consultant, on or about the [●] day of [●] 200[●] (Contract Reference No. [.]as amended, varied, restated, novated or substituted from time to time; [Drafting Note: Signature Date and Contract reference number to be inserted])
 - 1.4 “Consultant” – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of Consultant to be inserted]
 - 1.5 “Eskom” - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30].
 - 1.6 “Expiry Date” - means the earlier of
 - the date that the Bank receives a notice from Eskom stating that all amounts due from the Consultant as certified in terms of the contract have been received by Eskom and that the Consultant has fulfilled all his obligations under the Contract, or
 - the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by Eskom
 - 1.7 “Guaranteed Sum” - means the sum of R [●] ([●] Rand);
 - 1.8 “Services” - means [insert if applicable.].
2. At the instance of the Consultant, we the undersigned _____ and _____, in our respective capacities as _____ and _____ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of Eskom, as security for the proper performance by the Consultant of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to Eskom, on written demand from Eskom received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.
3. A demand for payment under this guarantee shall be made in writing at the Bank’s address and shall:

- 3.1 be signed on behalf of Eskom by a Group Executive, Divisional Executive, Senior General Manager, General Manager or its delegate;
- 3.2 state the amount claimed ("the Demand Amount");
- 3.3 state that the Demand Amount is payable to Eskom in the circumstances contemplated in the Contract.
4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:
 - 4.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
 - 4.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
5. The Bank's obligations in terms of this Guarantee:
 - 5.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
 - 5.2 shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between Eskom and the Consultant.
6. Eskom shall be entitled to arrange its affairs with the Consultant in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the Consultant or any variation under or to the Contract.
7. Should Eskom cede its rights against the Consultant to a third party where such cession is permitted under the Contract, then Eskom shall be entitled to cede to such third party the rights of Eskom under this Guarantee on written notification to the Bank of such cession.
8. This Guarantee:
 - 8.1 shall expire on the Expiry Date until which time it is irrevocable;
 - 8.2 is, save as provided for in 7 above, personal to Eskom and is neither negotiable nor transferable;
 - 8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
 - 8.4 shall be regarded as a liquid document for the purpose of obtaining a court order; and
 - 8.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.
 - 8.6 Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.
9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at _____

Date _____

For and behalf of the Bank

Bank Signatory: _____

Bank Signatory: _____

Witness: _____

Witness: _____

Bank's seal or stamp

Pro forma ASGI-SA Guarantee

(to be reproduced exactly as shown below on the letterhead of the Bank providing the Guarantee)

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Date:

Dear Sirs

Reference No. [●] [Drafting Note: Bank reference number to be inserted]

Pro-Forma ASGI-SA Guarantee: [Drafting Note: Name of Consultant to be inserted]

Project [] Contract Reference: [●] [Drafting Note: Consultant contract reference number to be inserted]

1. In this Guarantee the following words and expressions shall have the following meanings:-
 - 1.1 "Bank" - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]
 - 1.2 "Bank's Address" - means [●]; [Drafting Note: Bank's physical address to be inserted]
 - 1.3 "Contract" – means the written agreement relating to the Project, entered into between the *Employer* and the *Consultant*, on or about the [●] day of [●] 200[●] (Contract Reference No. [●] as amended, varied, restated, novated or substituted from time to time; [Drafting Note: Signature Date and Contract reference number to be inserted])
 - 1.4 "*Consultant*" – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of *Consultant* to be inserted]
 - 1.5 "*Consultant's ASGI-SA Obligations*" – means the *Consultant's ASGI-SA Obligations* under and as defined in the Contract.
 - 1.6 "*Employer*" - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/06.
 - 1.7 "Expiry Date" - means the [●] day of [●] 200[●]; [Drafting Note: anticipated date of issue of ASGI-SA Performance Certificate to be inserted.]
 - 1.8 "Guaranteed Sum" - means the sum of R [●] ([●] Rand);
 - 1.9 "Project" – means the
2. At the instance of the *Consultant*, we the undersigned _____ and _____, in our respective capacities as _____ and _____ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of the *Employer*, as security for the proper performance by the *Consultant* of the *Consultant's ASGI-SA Obligations* and hereby undertake to pay to the *Employer*, on written demand from the *Employer* received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.
3. A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:
 - 3.1 state the amount claimed ("the Demand Amount");
 - 3.2 state that the Demand Amount is payable to the *Employer* in the circumstances contemplated in

the Contract.

4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:
 - 4.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
 - 4.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
5. The Bank's obligations in terms of this Guarantee:
 - 5.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
 - 5.2 shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between the *Employer* and the *Consultant*.
6. The *Employer* shall be entitled to arrange its affairs with the *Consultant* in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the *Consultant* or any variation under or to the Contract.
7. Should the *Employer* cede its rights against the *Consultant* to a third party where such cession is permitted under the Contract, then the *Employer* shall be entitled to cede to such third party the rights of the *Employer* under this Guarantee on written notification to the Bank of such cession.
8. This Guarantee:
 - 8.1 shall expire on the Expiry Date until which time it is irrevocable;
 - 8.2 is, save as provided for in 7 above, personal to the *Employer* and is neither negotiable nor transferable;
 - 8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
 - 8.4 shall be regarded as a liquid document for the purpose of obtaining a court order; and
 - 8.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the courts of the Republic of South Africa.
 - 8.6 Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.
9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at _____

Date _____

For and behalf of the Bank

Bank Signatory: _____

Bank Signatory: _____

Witness: _____

Witness: _____

Bank's seal or stamp

PART 2: PRICING DATA

PSC3 Option A

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

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

Option A is a lump sum form of contract where the work to be done is broken down into well defined activities each listed in the *activity schedule* and priced by the tendering consultant as a lump sum. (See clause 11.2(18)).

Only completed activities which are without Defects are assessed for payment at each assessment date; no part payment is made if the activity is not completed by the assessment date. (See clause 11.2(15)).

The *activity schedule* may change after the Contract Date as a result of compensation events. (See clause 11.2(14)).

Function of the Activity Schedule

The Activity Schedule is only a pricing document. Clause 53.1 in Option A states: "Information in the Activity Schedule is not Scope". Specifications and descriptions of the service or any constraints on how it is to be done are included in the Scope and per Clause 21.1, "The *Consultant* Provides the Services in accordance with the Scope" and therefore not in accordance with the Activity Schedule.

Link to the programme

Clause 31.4 states that "The *Consultant* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance". Ideally the tendering consultant will develop a high level programme first then resource each activity on the programme and thus arrive at the lump sum price for that activity both of which can be entered into the *activity schedule*.

Preparing the activity schedule

Generally it is the tendering consultant who prepares the *activity schedule* by breaking down the work described within the Scope into suitable activities which can be well defined, shown on a programme and priced as a lump sum.

The description of each activity must be sufficient to determine exactly what work is included within it and to know when it has been completed.

The *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Consultant* to include in his *activity schedule* and be priced accordingly.

It is assumed that in preparing his *activity schedule* the *Consultant*:

- Has taken account of the guidance given in the PSC3 Guidance Notes;
- Understands the function of the Activity Schedule and how work is priced and paid for;
- Is aware of the need to link the Activity Schedule to activities shown on each programme which he submits for acceptance by the *Employer*;
- Has listed and priced activities in the *activity schedule* which are inclusive of everything necessary and incidental to Providing the Service in accordance with the Scope, as it was at the Contract Date, as well as correct Defects except correcting a Defect for which the *Consultant* is not liable;
- Has priced work he decides not to show as a separate activity within the Prices of other listed activities in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.
- Understands there is no adjustment to the lump sum Activity Schedule price if the amount, or

quantity, of work within that activity later turns out to be different to that which the *Consultant* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event.

However, the *Consultant* does not have to allow in his Prices for matters that may arise as a result of a compensation event.

Expenses

Expenses are not included in the *activity schedule* items and are assessed separately at each assessment date, unless an additional condition of contract (Z clause) is included which requires that expenses be included within activity Prices and not paid separately.

Expenses associated with employing a staff member in Providing the Services are 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 activity schedule prices or *staff rates*.

Rate adjustment for inflation of *expenses* is explained in the PSC3 Guidance Notes.

Staff rates

When a compensation event occurs changes to the affected Activity Schedule item or new priced items in the Activity Schedule are assessed as the actual Time Charge for work already done and the forecast Time Charge for work not yet done. (See clause 63.1 and 63.14 in Option A)

The Time Charge is the sum of the products of each of the *staff rates* multiplied by the total staff time appropriate to that rate properly spent on work in this contract. (Clause 11.2(13))

Tendering consultants are advised to consult the NEC3 Professional Services Contract Guidance Notes and Flow Charts before entering *staff rates* into Contract Data, or in C2.2 below.

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 in the PSC3 Guidance Notes.

C2.2 the *activity* schedule

Use this page as a cover page to the *Consultant's activity schedule* or include here in this format:

Item No.	Programme Reference	Activity description	Price (excl VAT)
		Total of the Prices	

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.

Remember to state whether the *staff rates* and *expenses* exclude or include VAT.

The *staff rates* are:

No.	Designation (or category) or name of staff member	Rate per {hour, day, month} excluding VAT

The *expenses* are:

No.	Expense item	Amount / rate excluding VAT

PART 2: PRICING DATA

PSC3 Option C

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option C	[•]
C2.2	The <i>activity schedule</i>	[•]

C2.1 Pricing assumptions: Option C

How work is priced and assessed for payment

Clause 11 in NEC3 Professional Services Contract, (PSC3) Option C states:

Identified and defined terms	11	
	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.
		(14) The Activity Schedule is the <i>activity schedule</i> unless later changed in accordance with this contract.
		(16) The Price for Services Provided to Date is the Time Charge for work which has been completed.
		(18) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract.

This confirms that Option C is a cost reimbursable form of contract where the *Consultant* is paid *staff rates* for hours properly spent on completed work at each assessment date.

Function of the Activity Schedule

In Option C the Activity Schedule is only used as a means of arriving at the total of the Prices which becomes the 'target'. Clause 54 requires that a comparison is then made between this total of the Prices and the total amounts paid at the Time Charge. The difference is then shared between the Parties in the manner stated in clause 54. (This is the "gain" for being under the target and the "pain" for being over the target). This arrangement incentivises the *Consultant* to perform better than he tendered to do when formulating his *activity schedule* at the time of tender. The target is adjusted by compensation events in order to keep an equitable share arrangement.

The Activity Schedule is only a pricing document. Clause 53.1 in Option A states: "Information in the Activity Schedule is not Scope". Specifications and descriptions of the service or any constraints on how it is to be done are included in the Scope and per Clause 21.1, "The *Consultant* Provides the Services in accordance with the Scope" and therefore not in accordance with the Activity Schedule.

Link between programme and activity schedule

Clause 31.4 states that "The *Consultant* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance". Ideally the tendering consultant will develop a high level programme first then resource each activity on the programme and thus arrive at the lump sum price for that activity both of which can be entered into the *activity schedule*.

Preparing the activity schedule

Generally it is the tendering consultant who prepares the *activity schedule* by breaking down the work described within the Scope into suitable activities which can be well defined, shown on a programme and priced as a lump sum.

The description of each activity must be sufficient to determine exactly what work is included within it and to know when it has been completed.

The *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Consultant* to include in his *activity schedule* and be priced accordingly.

It is assumed that in preparing his *activity schedule* the *Consultant*:

- Has taken account of the guidance given in the PSC3 Guidance Notes;
- Understands the function of the Activity Schedule and how work is priced and paid for in Option C;
- Is aware of the need to link the Activity Schedule to activities shown on each programme which he submits for acceptance by the *Employer*;
- Has listed and priced activities in the *activity schedule* which are inclusive of everything necessary and incidental to Providing the Service in accordance with the Scope, as it was at the Contract Date, as well as correct Defects except correcting a Defect for which the *Consultant* is not liable;
- Has priced work he decides not to show as a separate activity within the Prices of other listed activities in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.
- Understands there is no adjustment to the lump sum Activity Schedule price if the amount, or quantity, of work within that activity later turns out to be different to that which the *Consultant* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event.

However, the *Consultant* does not have to allow in his Prices for matters that may arise as a result of a compensation event.

Expenses

Expenses are not included in the activity schedule items and are assessed separately at each assessment date.

Expenses associated with employing a staff member in Providing the Services are 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 activity schedule or *staff rates*.

Rate adjustment for inflation of *expenses* is explained in the PSC3 Guidance Notes.

Staff rates

When a compensation event occurs changes to the affected Activity Schedule item or new priced items in the Activity Schedule are assessed as the actual Time Charge for work already done and the forecast Time Charge for work not yet done. (See clause 63.1 and 63.14)

The Time Charge is the sum of the products of each of the *staff rates* multiplied by the total staff time appropriate to that rate properly spent on work in this contract. (Clause 11.2(13))

Tendering consultants are advised to consult the NEC3 Professional Services Contract Guidance Notes and Flow Charts before entering *staff rates* into Contract Data, or in C2.2 below.

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.

C2.2 the *activity schedule*

Either use this page as a cover page to the *Contractor's activity schedule* or include here.

An activity schedule could have the following format:

Item No.	Programme Reference	Activity description	Price

PART 2: PRICING DATA

PSC3 Option E

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option E	
C2.2	<i>Staff rates and expenses</i>	

C2.1 Pricing assumptions: Option E

How work is priced and assessed for payment

From Option E:

Identified and defined terms	11	
	11.2	(16) The Price for Services Provided to Date is the Time Charge for the work which has been completed.
		(19) The Prices are the Time Charge.

From the core clauses:

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

and

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

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 C2.2 below.

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 are 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 Guidance Notes.

C2.2 Staff rates and expenses

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.

Remember to state whether the *staff rates* and *expenses* exclude or include VAT.

The *staff rates* are:

No.	Designation (or category) or name of staff member	Rate per {hour, day, month} excluding VAT

The *expenses* are:

No.	Expense item	Amount / rate excluding VAT

PART 2: PRICING DATA

PSC3 Option G

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

C2.1 Pricing assumptions: Option G

1. How work is priced and assessed for payment

From Option G: Term contract

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

From the Core Clauses:

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

and

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

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

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

2. Staff rates and expenses

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

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

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

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

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

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

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

3. The function of the Task Schedule

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

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

C2.2 Staff rates, expenses & the task schedule

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 (Trainers)	Rate per {hour, day, month} excluding VAT
	Construction Services	
1.	Project Manager	
	Bulk Material Services	
1.	Project Manager	
2.	Coal and Ash Handling Area Manager	
3.	Ash Conveyor Area Manager	
4.	Coal Plant Area Manager	
5.	DHP and Silos Area Manager	
6.	Auxiliary Systems and FGD (Kusile) Area Matla	
7.	Maintenance Manager – Slurry Plant	
8.	Supervisor Technical	
9.	Maintenance Manager (Matla) – Slurry Plant	
10.	Ops Manager – Slurry Plant	

2. The *expenses* are:

No.	Expense item	Amount / rate excluding VAT
1.	TRAVEL	
2.	Accommodation	
3.	Cell Phone	
4.	Living Out	

3. The task schedule

The following format could be used:

No.	Items of work to be carried out on a time basis

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

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
C3.1	This cover page <i>Employer's Scope</i>	1
Total number of pages		

C3.1: EMPLOYER'S SCOPE

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Description of the services

A multi-disciplinary engineering entity with expertise in power station bulk material handling and construction activities is required for an on-the-job training academy to build competence in technical and project management roles of Bulk Material Services (BMS) and Construction Services (CS) in ERI. This training academy will aim to reduce human errors, delays and rework which impact on timelines, increased costs and quality of work. Equally important is to increase the capabilities of the human resources to understand on the job knowledge spanning from planning, plant inspections, first-line fault finding, supervisory and management aspects of the operations. The envisaged training academy will drive the up-skilling and re-skilling of the employees for enhanced performance in the medium to long term. The operations / business units require this training approach to increase the quality of work. This is expected to be reflected in –among others- the customer satisfaction survey and feedback on performance.

Executive overview

The need for the on job training was triggered by some of the plant failures that have been experienced at various sites which pointed to the lack of knowledge and skill. Over the years, the business has lost a number of skills due to natural attrition whilst taking on a number of additional activities.

The academy will support improved plant availability, decrease load losses, compliance to asset management principles, increase the mean time between failures taking a proactive approach to plant maintenance and reduce risks affiliated with poor quality work at the power stations.

Fields targeted for Up-skilling

The training will be structured as on the job and real time knowledge transfer of technical skills from an expert trainer in the respective fields to the BMS employee in the following fields of work:

- Technical project management
- Area management
- Slurry plant operating and maintenance
- Bulk handling plant operating and maintenance (Coal, FGD, Ash and Limestone plants)
- Maintenance planning
- Technical supervisory skill

Interpretation and terminology

The following abbreviations are used in this Scope:

Abbreviation	Meaning given to the abbreviation
ASAQS	The Association of South African Quantity Surveyors
BMS	Bulk Material Services
CS	Construction Services
ECSA	Engineering Council of South Africa
ISO	International Standards Organisation
SACPCMP	South African Council for Project and Construction Management Professionals
OHS	Occupational Health and Safety
PCM	Process Control Manual
PLCM	Project Life Cycle Model
PMBOK	Project Management Body Of Knowledge
PMSA	Project Management South Africa

Specification and Description of the services

The entity will provide all adequate and competent personnel, technical trainers from the fields of work to provide on-the-job training including the development of training modules and schedules for the following competences per site (Kusile and Medupi):

Required areas	Total Trainers required
Project Management	3 trainers
Coal and Ash Handling (area manager (AM)	1 trainer
Ash Conveyor AM	1 trainer
Coal Plant AM	1 trainer
DHP and Silos AM	1 trainer
Auxiliary Systems and FGD AM:	1 trainer
Maintenance Planner	1 trainer
Supervisory technical	2 trainers

Two trainers will also be required for Matla slurry plant, with required expertise being in the operations and maintenance of slurry plant.

Internal employees may shadow the Entity (Technical Experts) to note down critical training aspects and a knowledge repository and technical skills transfer can be built for sustainability of this academy in the long term. The documentation of the training content can be designed for later use and reference.

Critical skills gaps at BMS and CS to be addressed by the trainers mentioned in the table above, and for slurry plant, in the program include:

Project Management gaps

- Document management, knowledge management, information systems, data, integrity, licensing, activity planning and managing critical paths, permitting and project reporting effort throughout the project life cycle. Run Projects aligned to our Policies and Procedures (e.g. PMBOK).
- Direct and Manage the Integration of the Project Services within the project.
- Report on deliverables of the project services function.
- Manage the project services team performance.
- Prioritize the project services function compliance to financial management principles.
- Evaluate project deliverables against the original stakeholder requirements
- Management communication and relationships with all key stakeholders.
- Manage compliance with all Eskom and Site related governance and safety, health environment, risk and quality requirements.

Coal plant, ash plant, dust handling plant, auxiliary systems, FGD plant Gaps

- Maintenance activities such as Mechanical, Electrical and Control & Instrumentation maintenance on planned maintenance (PM) as well as corrective/breakdown maintenance(CM)
- Operating activities such as walking the plant for plant checks, report defects as and when identified, reset plant after tripping, communicate with control room in case there are issues in the plant, high level fault finding and root cause identification
- Understanding of seasonal implications and management thereof for both maintenance and operations

Gaps to be addressed by all trainers

2.3.1 Time Management

- Planning (Meeting of target dates and deadlines, link resources JIT principle, Procurement – have materials and services on Site at the right time)

- Integration of all project services. Weekly scheduled meetings to confirm plan
- Monitoring and Control

2.3.2 SHEQ Management (internal training supported by real time on the job application):

- Quality inspections by quality personnel
- Completion of Data Books and ITP's
- Mandatory and Statutory (OHS Act and Legal) compliance training.
- Incident/Accident Investigating and Reporting

2.3.3 Procurement Management (internal training supported by real time on the job application):

- Procurement plans.
- Needs to be treated as a live document with constant follow ups timeously before the service and or materials are required)
- Management of Orders and Contracts (DCF) in SAP

2.3.4 Risk Management

- Management and maintenance of identified and documented risks
- Constant identification and documenting new risks.
- Issue Logs needs to be maintained till close out

2.3.5 Human Resource Management (internal training supported by real time on the job application):

- Resourcing of project with correct skills on the JIT principle
- Competencies and Mandatory training.
- Planning
- Performance management

2.3.6 Contract/Commercial Management (internal training supported by real time on the job application):

- Contractual communications (NEC)
- Manage service/commodities providers in SAP. DCF
- Governance and Compliance

2.3.7 Cost Control

- Allowable vs Cost

- Reviewing and reporting on Earned Value Management to determine early warnings for corrective action

2.3.8 Project Close Out

- Lessons learnt
- Evaluating the final product against the original user requirement specification (URS)
- Retainers – Hand over documentation
- Close project in SAP

2.3.9 Soft Skills

- Communication and presentation skills – Verbal and Written
- Report writing
- Time management (Meeting target dates)
- Negotiation Skills
- Conflict Management
- Team management
- Stakeholder Management - Communities/SD&L
- Communication
- Planning
- Organizing

Constraints on how the *Entity* Provides the Services.

Management meetings

The Parties will hold regular meetings to pro-actively and jointly manage the administration of the contract with the objective of minimising risks. Regular meetings of a general nature may be convened and chaired by the *Employer's Agent* as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	Weekly or as agreed by the Parties	• On Site,(as per Employer' requirement)	<i>Employer's Agent , Entity and Others</i>
Overall contract progress and feedback	Monthly or as agreed by the Parties	• On Site,(as per Employer' requirement)	<i>Employer's Agent , Entity and Others</i>

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

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the Contract as these shall be done separately by the person identified in the *Conditions of Contract* to carry out such actions or instructions.

Entity's key persons

The entity will provide details of Key Personnel, Contact Details, Qualifications and other information the Entity deem necessary in the provision of the services. The Entity will provide the Organogram of the staff that will be assigned to provide the services.

Provision of bonds and guarantees (N/A)

The form in which a bond or guarantee required by the *conditions of contract* (if any) is to be provided by the *entity* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

The *Employer* may withhold payment of amounts due to the *Entity* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Entity* by the *Employer's Agent* to receive and accept such bond or guarantee. Such withholding of payment due to the *Entity* does not affect the *Employer's* right to termination stated in this contract.

Documentation control and retention

Identification and communication

All Communication will be managed as per the requirement of the Contract.

Invoicing and payment

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

The *Entity* shall address the tax invoice to **Accounts Payable** and include on it the following information:

- Name and address of the *Entity* and the *Employer's Agent*;
- The contract number and title;
- *Entity's* VAT registration number;
- The *Employer's* VAT registration number 4740101508;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- (add other as required)

Management of work done by Task Order

To be advised.

Health and safety

The *Entity* at all times complies with the health and safety requirements of the Employer. The Entity complies with the all conditions as prescribed by law as they may apply to the *services*. The *Entity* complies with the health and safety requirements of the specific project site.

Working on the Employer's property

The Entity works on the Employer's property and comply with the requirements of the Employer. The Employer makes all the necessary arrangements for the Entity to provide the services while working at the Employer's property.

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

The Entity complies with the entry requirements to the Employer's property. The Employer provides the Entity with the entry requirements for any particular project site.

People restrictions, hours of work, conduct and records

The Entity keeps records of working hours on the site. The *Employer's Agent* shall have access to these records at any time

Things provided by the *Employer*

The Employer makes all the arrangements and provides the facilities for the Entity to prove the services.

Information relating to Providing the Services

Assessment of Competence – post Training

The assessment of competence has been explored in the skills audit conducted prior to the project inception. Each employee in the roles of listed in Section 1.2 will be trained for a month and thereafter will be assess on the key skills required to optimally function in the job. The line manager of the delegate will be enabled with the tools to continuously monitor the competence of the employee. In an event where there are noted skills gaps post training on the job, the employee will be engaged and re-sent for refresher training.

The Performance Compacts will be aligned to work outputs required and monitored in an ongoing manner. The Individual Development Plan (IDP) will address further training interventions if and where required. A constant focus on performance will build an efficient and high performing organization.

Logistics

An on-the-job training real time facility will be set-up at Medupi and Kusile for BMS and CS, as well as Matla slurry plant for BMS. The technical experts will be located on these sites to upskill and reskill employees from Medupi and Kusile then other sites will send delegates through. This can cover 240 employees per year in BMS. The Entity (or Technical Experts) who do not reside in the surrounding geography of the power stations will be accommodated by ERI for the duration of the training.

Key Performance Areas / Indicators

The project key performance indicators will be reviewed at length on a yearly basis

Documents Issued by the *Employer*

This is the list of documents issued by the Employer at or before the Contract Date and which apply to this contract.

Document Number	Revision	Title
240-46315120		On Job Training
240-46315190		Operator Safety during Training on Equipment in Operation

240-46314619		Operator Assessment Authorization and Moderation
240-46315160		Training and Development of Power Plant Operating Staff
240-46315224		Practitioner Development & Authorisation Procedure

C3.1: EMPLOYER'S SCOPE

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Description of the services

Executive overview

A Multi-disciplinary Engineering Entity to build competence in the critical technical and project management roles of Bulk Material Services in ERI in order to reduce human errors, delays and rework which impact on timelines, increased costs and quality of work. Equally important is to increase the capabilities of the human resources to understand on the job knowledge spanning from planning, plant inspections, supervisory and management aspects of the operations.

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 Scope 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 Scope:

Abbreviation	Meaning given to the abbreviation
ECSA	Engineering Council of South Africa
SACPCMP	South African Council for Project and Construction Management Professionals

Specification and description of the services

The entity will provide all adequate and competent personnel, technical trainers from the fields of work to provide on-the-job training including the development of training modules and schedules for the following competences per site (Kusile and Medupi):

Required areas	Total Trainers required
Project Management	3 trainers
Coal and Ash Handling (area manager (AM)	1 trainer
Ash Conveyor AM	1 trainer
Coal Plant AM	1 trainer
DHP and Silos AM	1 trainer
Auxiliary Systems and FGD AM:	1 trainer
Maintenance Planner	1 trainer
Supervisory technical	2 trainers

Two trainers will also be required for Matla slurry plant, with required expertise being in the operations and maintenance of slurry plant.

Internal employees may shadow the Entity (Technical Experts) to note down critical training aspects and a knowledge repository and technical skills transfer can be built for sustainability of this academy in the long term. The documentation of the training content can be designed for later use and reference.

Stage 1 Preparation

N/A

Stage 2 Concept

N/A

Stage 3: Design development

N/A

Stage 4: Production information

N/A

Stage 5: Manufacture, Installation and Construction Information:

N/A

Stage 6: Post Practical Completion

N/A

Constraints on how the *Consultant* Provides the Services.

Management meetings

Refer to the Scope of Work

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

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	Weekly on _____ at _____	[•]	[•]
Overall contract progress and feedback	Monthly on _____ at _____	[•]	<i>Employer's Agent</i> , <i>Consultant</i> and [•]__

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

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

Consultant's key persons

The Employer requires an accredited professional trainer.
CVs of trainers to be provided.

Provision of bonds and guarantees (N/A)

The form in which a bond or guarantee required by the *conditions of contract* (if any) is to be provided by the *Consultant* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

The *Employer* may withhold payment of amounts due to the *Consultant* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Consultant* by the *Employer's Agent* to receive and accept such bond or guarantee. Such withholding of payment due to the *Consultant* does not affect the *Employer's* right to termination stated in this contract.

Documentation control and retention

Identification and communication

Specify how documentation will be identified with an alpha numeric which indicates source, recipient, communication number etc. Provide details of any particular format or other constraints; for example that all contractual communications will be in the form of properly compiled letters or forms attached to e mails and not as a message in the e mail itself. State any particular routing requirements but note from PSC3 who issues what to whom.
All documents generated during the course of the contract remains the property of the Employer

Retention of documents

Clause 13.6 states that the *Consultant* retains copies of drawings, specifications, reports and other documents which record the *services* in the form stated in the Scope. State here what that form is. Note the time period for which the *Consultant* is to retain such documents is the *period for retention* stated in the Contract Data.

Records and forecasting of expenses

First read clause 21.3 (Option A) and 21.4 (Option C E and G) and then state here any additional requirements you may need for the record keeping and forecasting of expenses. Otherwise delete.

Records and forecasting of the Time Charge

N/A

Invoicing and payment

Clause 50.2 states invoices submitted by the *Consultant* include the details stated in the Scope to show how the amount due has been assessed. Also state what must be shown on the Invoice. The following text is suggested.

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

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

- Name and address of the *Consultant* and the *Employer's Agent*;
- The contract number and title;

- *Consultant's* VAT registration number;
- The *Employer's* VAT registration number 4330196330;
- 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)]

Contract change management

This section is intended to deal with any additional requirements to the compensation event clauses in section 6 of the core clauses; such as the use of standard forms. Not the same thing as documentation control.

Inclusions in the programme

First read clause 31.2 and then include here any matters regarding the order and timing of the work of the *Employer* and Others which the *Consultant* is take account of in his programme. Also describe any information other than that already requested in clause 31.2 which the *Consultant* is to show on each programme he submits for acceptance.

Quality management

System requirements

Clause 40.1 requires that the *Consultant* operate a quality management system as stated in the Scope. Include your requirements here

All work is carried out under an experienced trainer.

The *Consultant* complies with the *Employer's* Quality Requirements as specified in Eskom Generation Standard QM58.

The *Consultant* develops training material and this must be registered.

Information in the quality plan

Clause 40.2 requires that the *Consultant* provide a quality policy statement and quality plan which complies with requirements stated in the Scope. Include your requirements here

The Parties use of material provided by the *Consultant*

Employer's purpose for the material

The *Employer* has the right to use the training material provided by the *Consultant* for the purpose of refreshing trained employees.

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

Read clause 70.4 first and if you want to restrict the *Consultant's* use of material provided by him for this contract on other work state these here.

Transfer of rights if Option X 9 applies

Only use this heading if Option X9 is included in the *conditions of contract*.

Read the first sentence of Option X9 and then state whether there is any exception to the ownership rights as may have been agreed with the *Consultant* prior to contract award. For example, ownership of some of the material may not be required or is excluded, or the ownership may be the subject of a separate licence agreement. If there are no exceptions, state there is no exception.

If other rights - per the second sentence of X9.1 - are required state these here.

The third sentence of X9.1 requires that the *Consultant* provide to the *Employer* the documents which transfer these rights to the *Employer*. It would be sensible to specify here exactly what documents the *Employer* is expecting the *Consultant* to provide, and may be even in what form they are to be provided.

State any other constraints on the *Consultant* relating to the transfer of rights. For example that the *Consultant* shall not challenge or assist any other party challenging at any time the validity or ownership of any of the intellectual property rights relating to the material created and developed for this contract.

Management of work done by Task Order

The *Employer* issues a Task Order to the *Consultant* which specifies clearly the work to be provided, additional specifications and procedures and any other constraints the *Contractor* complies with in providing the Works. The Task Order is issued before the *Consultant* Provides the Work.

Health and safety

Clause 25.4 states that the *Consultant* acts in accordance with the health and safety requirements stated in the Scope. It is suggested that this part of the Scope address how the *Consultant* acts when doing his *services*. These requirements may be no more than just complying with the law. However if the *Consultant* is required to work on Eskom premises, then whatever requirements which personnel working in those premises need to comply with should be included here or referred to in an Annexure.

If when doing his *services* the *Consultant* is required to carry out a design which needs to take account of certain health and safety criteria, then this should be included in the specification of that design service stated elsewhere in the Scope. A draft for this section could start as follows:

The *Consultant* shall at all times comply with the health and safety requirements prescribed by law as they may apply to the *services*. The *Consultant's* personnel must undergo Safety Induction Training at specific power stations prior to commencement work on each site..

Procurement

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.

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.

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.

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.

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.

Attendance on Subconsultants

State requirements for attendance on Subconsultants, if any

Correction of Defects

First read clause 41.2 and if any particular additional constraints are required when correcting Defects, state them here. Otherwise delete this heading. N/A

Working on the *Employer's* property

This part of the Scope addresses constraints, facilities, services and rules applicable to the *Consultant* whilst he is doing work on the *Employer's* property. Delete this section if not applicable.

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

Sites such as Koeberg Nuclear Power Station have very strict entrance requirements which tendering consultants need to allow for in their prices, and the *Consultant* has to comply with. State these or similar requirements here. In addition to the above there may be other restrictions once on the site.

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, including those of his Subconsultants. State that the *Employer's Agent* shall have access to these records at any time. These records may be needed when assessing compensation events.

Cooperating with and obtaining acceptance of Others

This sub-paragraph could be used to deal with two issues.

- 1) The cross reference from core clause 23.1 about cooperation generally as well as details about Others with whom the *Consultant* may be required to work. See clause 11.2(7) for the definition of Others.
2) Requirements for liaison with and acceptance from statutory authorities or inspection agencies.

Things provided by the *Employer*

Provide details of any facilities and equipment made available by the *Employer* for the *Consultant's* use during performance of the *services*. State any conditions relating thereto.

The Employer will provide the following for the Consultant's use:

- Offices
- Water
- Electricity

List of drawings

Drawings issued by the *Employer*

This is the list of drawings issued by the *Employer* at or before the Contract Date and which apply to this contract.

[illegible]

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ('Agreement') is entered into between the Employer and the Consultant.

WHEREAS, the Employer and the Consultant (the Parties) desire to exchange certain confidential information; and consider further business dealings with each other.

WHEREAS, the parties desire to evidence their agreements governing the exchange of certain confidential information as set forth below.

Now therefore, for good and valuable consideration, including the mutual agreements hereinafter recited, the parties hereby agree as follows:

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the 'Subject Information') may include but not be limited to the parties' inventions, trade secrets, know-how, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.
2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other.
3. The parties each agree that they shall maintain in secrecy in accordance with the terms of this Agreement all of the Subject Information each party receives (the 'Receiving Party') from the other party (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.
4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.
5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.
6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes and other writings prepared by the parties, or their advisors, based on the Subject

Information of each other, shall be destroyed, and such destruction shall be certified in writing by an authorised officer supervising such destruction.

7. If a party, with the written consent of the Proprietor of Subject Information, discloses any Subject Information received from its Proprietor to any third party, it shall do so only under a secrecy agreement having a scope similar to and which is consistent with this Agreement, and the disclosing party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party
8. Each party agrees that it shall not, while and for so long as it is obligated to maintain Subject Information in secrecy, use for its own benefit, or for the benefit of others or exploit, commercialise, develop, test promote, sell, lease, market or otherwise dispose of any products or services using, incorporating or relying on Subject Information received from its Proprietor without the written consent of the Proprietor.
9. The obligations of the party receiving Subject Information pursuant to this Agreement shall be effective with respect of each item of Subject Information for a term of five (5) years from the date of submission of the Subject Information to the Receiving Party by its Proprietor, unless the Proprietor agrees otherwise in writing.
10. For purposes of this Agreement, each party shall include (to the extent applicable) the officers, directors, employees, agents, representatives, attorneys, joint ventures, partnerships, affiliates, subsidiaries, and divisions of the party, and any other entity or entities which such party controls or which controls it, and, further, shall include any transferee, successor and assign of the assets of the party.
11. This Agreement shall be construed (both as to validity and performance) and enforced in accordance with, and governed by, the laws of Republic of South Africa.
12. Neither this Agreement nor the exchange of Subject Information between the parties shall create or be relied on by either party as a basis for creating any license between the parties under any patent, or other industrial or intellectual property rights of the Proprietor of the Subject Information, or any other license between the parties in the absence of any express written license agreement between them
13. The parties agree that no contract or agreement providing for a transaction shall be deemed to exist between them unless and until a definitive agreement has been executed and delivered, the parties hereby waive, in advance, any claim (including, without limitation, breach of contract) in connection with a possible transaction with each other unless and until they shall have entered into a definitive agreement. The parties also agree that unless and until a definitive agreement between them has been executed and delivered, neither party has any legal obligation of any kind whatsoever with respect to any such transaction by virtue of this Agreement or any other written or oral expression with respect to such transaction, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this paragraph, the term 'definitive agreement'; does not include an executed letter of intent, memorandum of understanding.

IN WITNESS WHEREOF, and intending to be legally bound, this Agreement has been executed by the parties as of and effective from the date first written above.