NEC3 Professional Services Contract (PSC3)

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

and
(Reg No.)

for **Provision of Specialised Investigation Services to Investigate Coal, Heavy Fuel Oil, Fuel and Oil Theft Incidents Affecting the Generation Division for a Period of Three (3) Years.**

Contents:

CONTRACT No.

PART C1: AGREEMENTS & CONTRACT DATA

C1.1 Form of Offer & Acceptance

Offer

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

Provision of Specialised Investigation Services to Investigate Coal, Heavy Fuel Oil, Fuel and Oil Theft Incidents Affecting the Generation Division for a Period of Three (3) Years.

The tenderer, identified in the Offer signature block, has 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.

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.

Options A	The offered total of the Prices exclusive of VAT is	**R**
	Value Added Tax @ 15% is	**R**
	The offered total of the amount due inclusive of VAT is[1]	**R**
	(in words)	

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

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

Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the 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		
Capacity		
On behalf of	*(Insert name and address of organisation)*	*(Insert name and address of organisation)*
Name & signature of witness		
Date		

C1.2 PSC3 Contract Data

1. Part one - Data provided by the Employer

Clause	Statement	Data
1	**General**	
	The *conditions of contract* are the core clauses and the clauses for main Option	
		G: Term contract
	dispute resolution Option	**W1: Dispute resolution procedure**
	and secondary Options	
		X1: Price adjustment for inflation
		X2 Changes in the law
		X7: Delay damages
		X9: Transfer of rights
		X10: *Employer's Agent*
		X11: Termination by the *Employer*
		X18: Limitation of liability
		Z: *Additional conditions of contract*
	of the NEC3 Professional Services Contract (April 2013)[2]	
10.1	The *Employer* is (Name):	**Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa**
	Address	**Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg**
11.2(9)	The *services* are	**Provision of Specialised Investigation Services to Investigate Coal, Heavy Fuel Oil, Fuel and Oil Theft Incidents Affecting the Generation Division for a Period of Three (3) Years.**
11(10)	The following matters will be included in the Risk Register	**Matters to be included in the Risk Register as and when identified during the contract period.**
11.2(11)	The Scope is in	**Part 3: Scope of Work**
12.2	The *law of the contract* is the law of	**the Republic of South Africa**
13.1	The *language of this contract* is	**English**
13.3	The *period for reply* is	**[1] week**

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

2. Parties' main responsibilities

25.2	The *Employer* provides access to the following persons, places and things	**access to**		***access date***
		1	**Investigators will be granted access to all Eskom sites**	**In terms of the agreed and signed off scope**

3. Time

31.2	The *starting date* is.			
11.2(3)	The *completion date* for the whole of the *services* is.			
11.2(6)	The *key date*s and the *condition*s to be met are:	***Condition* to be met**		***key date***
		1	**To be agreed on Task Order level**	
31.1	The *Consultant* is to submit a first programme for acceptance within	**To be agreed on Task Order level**		
32.2	The *Consultant* submits revised programmes at intervals no longer than	**To be agreed on Task Order level**		

4. Quality

40.2	The quality policy statement and quality plan are provided within	**4 weeks of the Contract Date.**
42.2	The *defect date* is	**52 weeks after the Completion of the whole of the services**

5. Payment

50.1	The *assessment interval* is	**between the 25th day of each successive month.**
50.3	The *expenses* stated by the *Employer* are	**To be discussed and agreed on Task Order level**
51.1	The period within which payments are made is	**Within 30 calendar days after receipt of valid Tax Invoice free of any deduction, set-off, arbitrary withholding or discount.**
51.2	The *currency of this contract* is the	**South African Rand**
51.5	The *interest rate* is	**the publicly quoted prime rate of interest (calculated on 365-day) charged from time to time by Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due.**

6.	**Compensation events**	**N/A**
7.	**Rights to material**	**NEC PSC Clause 70 will apply: All material prepared by the consultant in delivery of the service will belong to Eskom Holding SOC LTD.**
8.	**Indemnity, insurance and liability**	
82.1	**The *Consultant*'s total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to**	**Refer to X18 Limitation of Liability below**
9.	**Termination**	**NEC PSC Clause 90 will apply** Notice period, will not withstanding the conditions of the contract or the task order, be no less than 60 days and termination right(s) reciprocal**.**
10.	**Data for main Option clause**	
G	**Term contract**	
21.4	The *Consultant* prepares forecasts of the total Time Charge and *expenses* at intervals of no longer than	**4 weeks.**
11.	**Data for Option W1**	
W1.1	The *Adjudicator* is	**the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).**
W1.2(3)	The *adjudicator nominating body* 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 *tribunal* is:	**Arbitration**
W1.4(5)	The *arbitration procedure* is	**the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.**
	The place where arbitration is to be held is	**Johannesburg South Africa**
	The person or organisation who will choose an arbitrator • if the Parties cannot agree a choice or • if the *arbitration procedure* does not state who selects an arbitrator, is	**the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.**
12.	**Data for secondary Option clauses**	
X1	**Price adjustment for inflation**	
X1.1	The index is	**Average headline CPI index for the previous 12-month period as published by Stats SA.**

X2	**Changes in the law**	
X2.1	The law of the project is	**The Republic of South African Law**
X7	**Delay damages**	
X7.1	Delay damages for late Completion of each *section* of the *services* are:	**N/A**
X9	**Transfer of rights**	**The Employer shall own the rights to the material produced by the Consultant in delivery of the service.**
X10	**The *Employer's Agent***	
X10.1	The *Employer's Agent* is	
	Name:	
	Address	Eskom Holdings SOC Limited, Maxwell drive, Sunninghill
	The authority of the *Employer's Agent* is	**To carry all actions of the *Employer* in terms of the *contract* with the exception of changes to the *conditions of contract.***
X11	**Termination by the *Employer***	**The Employer has the right to terminate based on NEC PSC Clause 9 and any other reason not stated on provision that the Consultant is notified**
X18	**Limitation of liability**	
X18.1	The *Consultant's* liability to the *Employer* for indirect or consequential loss is limited to:	**R0.00 (Zero Rand)**
X18.2	The *Consultant's* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to:	**R0.00 (Zero Rand)**
X18.3	The *end of liability date* is	**1 year after Completion of the whole of the *services/*task order.**
Z	**The *Additional conditions of contract* are**	**Z1 to Z14 always apply.**

Z1 Cession delegation and assignment

Z1.1 The *Consultant* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer.*

Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Consultant* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

Z2 Joint ventures

Z2.1 If the *Consultant* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract.

Z2.2 Unless already notified to the *Employer*, the persons or organisations notify the *Employer* within two weeks of the Contract Date of the key person who has the authority to bind the *Consultant* on their behalf.

Z2.3 The *Consultant* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Consultant* in writing.

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

Z3.1 Where a change in the *Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant's* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change.

Z3.2 The *Consultant* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*.

Z3.3 Where, as a result, the *Consultant's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Consultant's* obligation to Provide the Services.

Z3.4 Failure by the *Consultant* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *service*s in addition to the amounts due in terms of core clause 92.1.

Z4 Confidentiality

Z4.1 The *Consultant* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the *Consultant* disclose information to Others in terms of clause 23.1, the *Consultant* ensures that the provisions of this clause are complied with by the recipient.

Z4.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer.*

Z4.3 In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer*'s project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

Z5 Waiver and estoppel: Add to core clause 12.3:

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

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

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

Z7 Notifying compensation events

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

Z8 *Employer’s* limitation of liability

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

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

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

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

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

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

Z11 Ethics

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

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

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

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

Committing Party means, as the context requires, the *Consultant*, or any member thereof in the case of a joint venture, or its employees, agents, or Subconsultants or the Subconsultant’s employees,

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

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

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

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

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

Z11.2 The *Employer* may terminate the *Consultant*'s obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Consultant* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Consultant*'s obligation to Provide the Services for this reason.

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

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

Z12 Insurance

Z12.1 Replace core clause 81 with the following:

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

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

INSURANCE TABLE A

Insurance against	**Minimum amount of cover**	**For the period following Completion of the whole of the *services* or earlier termination**
Liability of the *Consultant* for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the *services*	Minimum of twice Professional Fees	30 days after completion of services
Liability for death of or bodily injury to a person (not an employee of the *Consultant*) or loss of or damage to property resulting from an action or failure to take action by the *Consultant*	**<u>Loss of or damage to property</u>:** The replacement cost not covered by the *Employer*'s insurance is minimum of twice Professional Fees. The *Employer*'s policy deductible, as at Contract Date, where covered by the *Employer*'s insurance **<u>Bodily injury to or death of a person</u>:** The amount required by the	30 days after completion of services

	applicable law.	
Liability for death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law	30 days after completion of services

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

INSURANCE TABLE B

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

13. Any additional Z Clauses to add into contract

Z13 Key Performance Areas

Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa and is the holder of a nuclear licence in respect of the KNPS.

Z14 Asbestos

Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer*'s expense, and conducted in line with South African legislation.

C1.2 Contract Data

13. Part two - Data provided by the *Consultant*

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

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

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

[3] Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 or www.ecs.co.za

11.2(10)	The following matters will be included in the Risk Register	**N/A**	
11.2(13)	The *staff rates* are:	**name/designation**	**Rate**
	Either complete here or cross refer to a schedule in Part C2.2 **As per the Task Order**		
25.2	The *Employer* provides access to the following persons, places and things	**access to** **1** **Access will be arranged as per the scope of work.**	***access date***
31.1	The programme identified in the Contract Data is	**N/A**	
50.3	The *expenses* stated by the *Consultant* are **As per the Task Order**	**item**	**Amount**
G	**Term contract**		
11.2(25)	The *task schedule* is in		

C1.3 Forms of Securities

Pro formas for Bonds & Guarantees

For use with the NEC3 Professional Services Contract

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

Option X4: Parent company guarantee

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)

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 ASGI-SA 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:

shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and

5.1 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 **Error! Reference source not found.** 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 G

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

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 • 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 • 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 *staff rates* 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 • the Price for Services Provided to Date, • the amount of the *expenses* properly spent by the *Consultant* in Providing the Services and • other amounts to be paid to the *Consultant* less amounts to be paid by or retained from the *Consultant*. Any tax which the law requires the *Employer* to pay to the *Consultant* is included in the amount due.

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

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

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	Unit	Qty	Rate (R)	Price (R) Monthly
01.	Project Manager	Each	1		
02.	Admin Support	Each	1		
03.	Senior Investigators	Each	6		
04.	Qualified Geologist	Each	1		
05.	Security Intelligence Handlers	Each	3		
06.	Crime Analyst	Each	1		
07.	4x2 Vehicles with maximum of 150 000 on the odometer	Each	10		
08.	A drone (operated by a qualified drone pilot/personnel including maintenance and operational costs) on as and when required basis.	Each	1		

The *expenses* are:

No.	Expense item	Amount / rate excluding VAT
		R
		R
		R
		R
		R

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**
	This cover page	
C3.1	*Employer*'s Scope	
C3.2	*Consultant's* Scope	
	Total number of pages	

C3.1: EMPLOYER'S SCOPE

The scope of work: Provision of Specialised Investigation Services to Investigate Coal, Heavy Fuel Oil, Fuel and Oil Theft Incidents Affecting the Generation Division for a Period of Three (3) Years

- Provision of specialised security intelligence led investigations into coal and fuel oil quality and supply operation within generation coal fired Power Stations.
- Provision of effective surveillance patrols along critical Eskom routes from the source to the stations using physical and technological means.
- Provision of tactical and operational crime analysis through electronic and sophisticated methods, including environmental scanning, forecasting criminal activities, hotspot analysis and trend reporting related to coal and fuel theft in Eskom.
- Provision of proactive security intelligence on coal sample transportation and result manipulation, including syndicate infiltration, crime scene management, and investigative support to SAPS, Eskom disciplinary matters, and legal teams.
- Provision of security intelligence on stockpiles quality as well as fuel oil quality and detect possible manipulations thereof.
- Provision of coal and fuel oil quality sample analysis results and findings by an independent, legally registered Coal Lab contracted to the appointed supplier. The results of the analysis to be made available to Eskom within 4 hours from time of receipt.

1. Description of the services

1.1. Executive overview

1.2. Interpretation and terminology

2. Specification and description of the services

2.1. Consultant's key persons

State any additional constraining requirements on Consultant's key persons over and above those already stated in clause 22.1 or in the Contract Data. Such as need to notify contact details, leave and mentoring requirements where applicable. This section could be used to solicit an organogram from the Consultant showing his people and their lines of authority / communication. This would be essential if the Consultant is a Joint Venture.

2.2. Provision of bonds and guarantees

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.

2.3. Documentation

2.3.1. Identification and communication – Doc Centre

All formal contractual communications shall be on a letterhead and bear as a minimum the date, subject, reference number, identities of sender and receiver and signature of sender and shall be delivered as attachments in the case of emails and not as a message in the email itself. All formal communications to the Employer shall be addressed to the Employer's Agent.

Correspondence on a day-to-day basis may be directed to other parties within the Employer's organisation but care must be taken not to violate contract conditions and other provisions in terms of the contract.
Contractual communications such as notification of Compensation Events or instructions to deliver services which are not directed at/received from the Employer's Agent shall not be acknowledged by the Employer and decisions or actions taken or omitted as a result thereof shall be at the Consultant's own risk.

2.3.2. Retention of documents - Doc Centre

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.
The Consultant retains copies of drawings, specifications, reports and other documents which record the services in the form stated in the Task Order. The time period for which the Consultant is to retain such documents is the period for retention stated in the Contract Data.

2.4. 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.

2.5. Records and forecasting of the Time Charge

If Option C E or G applies first read clause 21.4 then state here any additional requirements you may need for the record keeping and forecasting of the Time Charge. Otherwise delete and delete in any case if Option A applies.

2.6. 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 4740101508;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- (add other as required)

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

2.7. 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.

2.8. 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.

2.9. Quality management

2.9.1. System requirements

The Consultant shall demonstrate, provide and maintain a Quality Management System (QMS) that is ISO 9001:2015 certified or compliant thereto as well as the contractor quality requirements (240-105658000) and Medupi Contractor Quality Specification (348-389557). Compliance with the provisions of this clause in no way relieves the Consultant of the final responsibility to furnish acceptable services certified or compliant thereto. Compliance with the provisions of this clause in no way relieves the Consultant of the final responsibility to furnish acceptable services. Contractors QMS that includes:

a) Ensuring that processes, plans and procedures needed for the QMS are established and maintained and the integrity of the QMS is maintained when changes are implemented.
b) Ensuring that Quality Assurance and Quality Control Depts. are sufficiently manned with competent resources to effectively implement quality requirements.
c) Reporting to top management on the performance of the quality management system and any need for improvement.
d) Ensuring the awareness of customer requirements throughout Contractors organization.

Quality management shall ensure that the Employer's requirements as specified in the Contract are met in full and verified as such to Employer satisfaction.
Quality management shall be in accordance. with ISO 9001:2015 and related ISO 9000 series of Standards, and is to provide full documentary and
Objective evidence that the Works have been designed, manufactured, executed, completed and maintained in accordance with the Contract.
The quality management system shall apply to the Contractor and all persons real or juristic working for or on behalf of the Contractor on or in connection with the Works and regardless of the form of employment contract.
Quality management shall ensure that the Quality Control Plans, Inspection and Test Plans and procedures/instructions/method statements/ECNs/FCNs developed or adopted provide stages at which the Employer may witness what is being done or require what is being done to be subject to inspection before the execution continues.

Contractor shall list all documentation needed for the effective implementation of the project quality management system (QMS) and shall, as a minimum, prepare, maintain and implement throughout the life cycle of the project, as part of the project quality management system. The project specific documentation are as follows:

a) Project Quality Policy
b) Project Quality Strategy
c) Project Quality Objectives
d) Project Quality Management Plan
e) Project Organisation Chart.
f) Project RACI Matrix – may be split by Dept. /Phase/Discipline as required.
g) Job Descriptions including performance requirements and measurements.
h) Equipment and Process Criticality Ratings,
i) Project Quality Assurance Plans – per project phase:
    i. Design
    ii. Manufacturing, Inspection and Testing
    iii. Construction, Inspection and Testing
    iv. Commissioning and Taking-Over
    v. Project Quality Control Procedures - per discipline:
    i. Civil and Structural works.
    ii. Mechanical, Piping, Painting and Insulation works.
    iii. Electrical works.
    iv. Control and Instrumentation works.

Project Quality Control Procedures per individual activity identifying specific inspection and test methods and acceptance criteria.

Project Inspection and Test Plans (ITP's) per individual activity that plan, assure quality, and define inspection intervention levels.

Project Quality Verification Records per individual activity - as referenced in ITP's. Manufacturing, Construction and Commissioning Record Books. Except where otherwise stated, all documents that constitute the Quality Management System, including proforma Quality Verification Records, shall be complete, in accordance with the Contract, and ready for use and submitted to Engineer not less than 30 days before the work governed by the documents is planned to start.

Throughout the lifecycle of the project, on a monthly bases, the contractor shall maintain and submit a MDL (Master Documentation List), to the Project Manager for review and approval. Each document on the Master Document List shall have the following marked against it:

a) The planned and actual date of submittal to the Project Manager
b) The classification of documentation (for approval, for review, or for reference) based upon the classification guidelines of Quality specification document.
    i. Class 1 - for the Engineer's approval - where the Contractor may not proceed with the Works that are the subject of the document until it has been approved by the Engineer.
    ii. Class 2 - for the Project Manager's Review - where the Contractor may proceed with the works that are the subject of the documentation if the Project Manager's has made no comment after seven (7) days from the receipt by the Project Manager
    iii. Class 3 - for the Engineer's Reference - where the Project Manager reserves the right to comment, but the Contractor may proceed with the works that are the subject of the documentation.

Where there is an ambiguity or where a document is produced that is not referenced therein clarification as to classification shall be sought from the Project Manager.

The Master Document List shall be submitted to the Project Manager electronically via email in native file format on a monthly basis.

The Contractor submits as a minimum the following documents, as required by the Employer, which requirement does not constitute a compensation event, during the execution of the Works:-

a) Updated QCP register
b) Inspection notifications accompanied by their inspection report
c) Non-conformance and Defects registers and reports
d) Updated Site and off site inspection schedules.
e) Inspection and or FAT dates.
f) Inspections completed/outstanding.
g) Inspection and test reports
h) Monthly contract quality progress report

- Data books for the completed Works, before commissioning can commence (refer to the Record books section 2.5.2 and data books hand over time lines)
- The Supplier agrees to control and professionally preserve and store appropriate documents, records and recordings for a period of 5 years after termination of the agreement to guarantee the traceability of the services rendered and inspection thereof.
- The Supplier agrees to regularly update and implement all the latest technology available as well as the necessary improvements for the installation, production and organisation deemed necessary to meet the requirements of the agreement and in order to enhance capabilities and effectiveness to deliver high quality, cost-effective security services.
- The delivered or services shall be uniform in Quality and condition, consistent with good industry practices and adhere to requested Eskom requirements, without deviation.
- The Employer shall have the right to regularly conduct inspections, assessments , audits and surveys and perform surveillance of the Supplier's and/or Sub-Supplier facilities, sites, premises, records and documentation (including but not limited to data books) to evaluate their capability to comply with the requirements necessary to conform to contractual and QMS requirements.
- The Employer reserves the right to inspect, at reasonable times, any or all of the services performed at the Supplier's or Sub-Supplier's premises or elsewhere. Verification by Eskom shall not absolve the Supplier of the responsibility to provide acceptable product and / or services, nor shall it preclude subsequent rejection by Eskom.
- The services must comply with the agreed specifications and requirements and the applicable directives and standards set out in the Contract. Defects notified by the Employer shall be remedied by the Supplier upon demand by the Employer without undue delay and at no extra cost. The Supplier shall continuously monitor and identify non-conformances, both internal and external, as signals of opportunities for improvement making process and other relevant changes to prevent recurrence.
- The Supplier shall further identify potential problems before they occur by identifying deviations in patterns or trends in product, service or process performance.
- Nothing contained in the Contract and/or purchase order and/or scope of work and /or works information shall relieve in any way the Supplier from the obligation of Quality control thereof.

- The Supplier guarantees that the Quality of the delivered services will comply with the requirements of the contract and/or relevant specifications.
- The Supplier shall, on request, prove its ability to relate to the proposed scope of work which establishes the manner in which the Supplier intends to perform the Contract.
- The Supplier shall, on request, prove its organisational, logistics and support resources to ensure the requirements of the contract can and will be achieved.
- The Employer reserves the right to assess and measure, during the existence of the agreement the qualifications, capability and competence of the key staff (assigned personnel) in relation to the scope of work and to interview any / all of them to confirm the Quality evaluation.
- The identified professional personnel who will be managing the service will be available and accessible on a continuous basis until the conclusion of the project.
- The Supplier shall demonstrate experience in comparable projects or specific aspects of the project and / or performance in similar projects, on request.
- The Quality of the services and the contents thereof will always be in accordance with professional standards.
- For the duration of the Contract, the professional staff managing the service, must be and remain a member of his/her Professional Society
- The Supplier must, at all relevant times, scrutinize and be aware of Eskom's requirements with specific focus on, inter alia, its philosophy, principles, strategies, practices, mission, vision, models, policies and practices.
- The Supplier shall exercise reasonable professional skill, care and diligence in the performance of his obligations in terms of this agreement.
- On awarding of the Contract to the successful Supplier, such Supplier shall present to the Employer an acceptable Quality Control Plan (QCP). The QCP shall comply with the requirements of ISO 10005.

The Contractor shall employ sufficient qualified and knowledgeable quality assurance and quality control and inspection staff. These staff members shall be independent from those responsible for construction and commissioning activities and report directly to the Site Quality Department Manager and not the production team as referenced on Medupi Quality Specification (348-389557 sub-clause 3.4.1).

Quality Payment Schedule

1. The Contractor shall ensure that Quality Assurance is performed at all levels and phases of work carried out for the Employer.
2. The Contractor shall use processes to ensure that quality is built into their products/services i.e., its business processes are organized such that quality is built into the process of producing goods and rendering services. The Contractor shall work according to processes.
3. The Contractor shall ensure that it can be relied on to deliver quality goods and services without the need for the Employer to have to inspect all the time.

The Contractor shall keep the Quality Table of Payments (Quality Payment Schedule) updated with progressive Employer sign-off (as the work is done and payments applications are submitted). This means that as the Contractor completes an activity and has the related ITP/QCP signed by the

Employer, the Contractor shall bring the Quality Table of Payments to the Employer's Quality representative to sign off for that activity.

The updated Quality Table of Payments shall accompany all payment applications (proforma invoices). The Contractor shall attach the signed (or partially signed if applicable) ITPs/QCPs to the payment application. Payment will only be made if the ITPs/QCPs are signed by the Employer.

2.10. Parties use of material provided by the Consultant

2.10.1. Employer's purpose for the material

Clause 70.1 states that the Employer has the right to use the material provided by the Consultant for the purpose stated in the Scope. State here what your intended purpose is.

2.10.2. 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.

2.10.3. 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.

2.11. 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.

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

[If the Consultant may be required to work on Eskom premises, such as a power station, where health and safety requirements additional to those prescribed by law apply, specify these here or state,
The Consultant shall comply with the health and safety requirements contained in Annexure 3.12.7 Annexure B: Eskom SHE rules and requirements_ to this Scope.]

The *Consultant* shall at all times comply with the health and safety requirements prescribed by law and the *Employer* as they apply to the *service*s. Failure to comply shall result in the *Employer* suspending execution of services and removing the *Consultant* from site until compliance is achieved. The *Employer* may cancel a Task Order and/or terminate the contract depending on the situation and risks to people, plant and equipment, reputation and the *Employer's* business of electricity supply.
The *Consultant* shall comply with the health and safety requirements contained on the Task Order (Annexure D to this Scope). The relevant site manager shall require the *Consultant* to attend SHE INDUCTION training provided by the *Employer.* It is essential that the *Consultant* is conversant with Eskom safety procedures training prior commencing any work on site.

2.11.1. Life Saving Rules

In the interest of promoting a safe and healthy working environment, the Eskom Executive Committee has approved the implementation of life saving rules, to improve safety in the organisation. These rules will also be applicable to all contracting staff.
The business is concerned about the emotional, social as well as economic effect of all these unnecessary incidents, and would like to correct behaviour pro-actively.
These rules are determined beforehand to enable the organisation to clearly communicate the established Life Saving Rules and how to deal with non-compliance to the workforce prior to the implementation of such rules.
Failure by any person or Contractor engaged in doing business with Eskom to adhere to these rules, will lead to serious action being taken with serious consequences (including being refused access to site). These actions include termination of service of an individual and even blacklisting of Contractors not taking the rules seriously. It is therefore strongly advised that these rules be taken seriously, communicated to all your staff, ensure that they all understand the rules, understand the consequences of violating a rule and sign a document stating that they understand and acknowledge the implications of these rules.

Eskom Life Saving Rules are:
Rule 1: Open, Isolate, Test, Earth, Bond and/or Insulate before touch (above 1 000 V)
Rule 2: Hook up at heights
Rule 3: Buckle up
Rule 4: Be sober
Rule 5: Ensure that you have a permit to work

2.11.2. SHE/Q Policy

The Service Provider shall have a SHE/Q Policy authorised by their Chief Executive (OHS Act Section 16(1) appointee) that clearly states overall SHE/Q objectives and commitment to improving Safety, Health, Environment and Quality.

Eskom has a SHEQ Policy (32-727) that clearly states the policy principles by which Eskom operates and the commitment to SHEQ excellence and is authorised by the Chief Executive.

Service Providers shall support Eskom SHEQ policy.

2.11.3. Section 37(2) Mandatory agreement

A section 37(2) agreement must be signed between the Client and the Service Provider at the time of awarding the contract. A signed copy of this agreement is submitted to the Client prior to commencement of any activity on site. The Service Provider must ensure that a section 37(2) agreement is signed between them and all their appointed service providers/suppliers for the contract.

Copies of all agreements must form part of the Service provider's OHS file.

2.11.4. OHS Requirements

The Client expects the Service Provider to engage in safety culture initiatives in line with the Eskom SHEQ Policy and value, Zero Harm.

It is required that the Service Provider comply with the relevant applicable legislation, specifications and standards in accordance with the scope of the project. (i.e. Occupational Health and Safety Act 1993 (Act 85 of 1993) and its regulations; Compensation for Occupational Injuries and Diseases Act; and other applicable South African legislation).

This project will abide by applicable legislative requirements and be aligned to Eskom SHEQ Policies, standards and procedures.

The Service Provider, at all times, considers itself to be the "employer" for the purposes of the OHS Act, and shall not consider itself under the supervision or management of the Client regarding compliance with the OHS requirements.

The Service Provider shall furthermore not consider itself to be a subordinate or under supervision of the Client in respect of these matter. The Service Provider is at all times responsible for the supervision of its employees and assumes full responsibility and accountability for ensuring they are competent, aware of the OHS requirements and execute the works in accordance with the OHS requirements and legislative requirements.

The Service Provider must implement their OHS management system and requirements and incorporate the applicable Eskom requirements into their system.

The Service Provider shall ensure that all statutory appointments and appointments required by the management system are in place, and that all appointees fully understand their responsibilities and are trained and competent to execute their duties. The Service Provide supervises the execution of their duties by all such appointees.

2.11.5. Legal and Other requirements

It is required that all Service Providers on the project comply with the relevant applicable legislation, specifications and standards in accordance with the scope of the project:

As a minimum but not limited to the following:

- The Constitution of the Republic of South Africa (particularly Section 24 of the Bill of Rights)
- Occupational Health and Safety Act 1993 (Act 85 of 1993) and its Regulations
- Compensation for Occupational Injuries and Diseases Act 130 of 1993
- Any other applicable South African legislation (local, provincial and National)
- Applicable South African National Standards (SANS)
- Applicable international standards
- Relevant Eskom Procedures and standards
- OHSAS 18001/ISO 45001 - Service Provider shall use as guidelines.
- Disaster Management Act 57 of 2002: Regulations issued in Terms of Section 27(2) of the Act (GG 43258 - GN 480 – 29 April 2020)

- Directive: COVID-19 Direction on Health and Safety in the Workplace Published 29 April 2020 Government Gazette 43257, GNR 479
- Directive: Consolidated COVID-19 Direction on Health and Safety in the Workplace Published 4 June 2020, Government Gazette 43400, GNR 639
- Directive: Consolidated Directions on Occupational Health and Safety Measures in Certain Workplaces – Published 1 October 2020, Government Gazette 43751, GNR 1031
- Local Authority by Laws

It is the duty of the Service Provider and consultant to ensure that they are familiar with the necessary OHS legislation required.

When there is an amendment to the Acts and/or to the Regulations, the OHS plan must be reviewed, updated accordingly and send through to the client. Changes must be communicated to all relevant employees.

2.11.6. Service Provider: Details, Accountabilities and Responsibilities

The Service Provider carries primary accountability and responsibility for the health and safety of his/her employees within his/her working area, as contemplated by Section 37(2) of the OHS Act No. 85 of 1993 and Regulations. None of the additional safety requirements specified by the Client reduces the Service Provider's accountability and responsibility for the health and safety of his employees within his working area.

The Service Provider shall have a disciplinary process and an organisational structured procedure to deal with employees who have transgressed organisational and legal requirements.

The Service Provider shall provide a list of names and contact telephone numbers of all his employees on site. This list shall be updated as and when new employees commence on site.

The Service Provider shall keep a record of all employees, including date of induction, relevant skills and licenses, and be able to produce this list at the request of the relevant officials. These records shall be filed in the OHS File.

Every employee must undergo site induction provided by the Client before commencement of the contracted work. Only once this induction has been received, will each employee receive a site access permit.

Employees are responsible for their own health and safety and that of their co-workers in their respective areas of work on the project.

Employees must be made aware of their responsibilities during induction and awareness sessions some of which are:

- Familiarising themselves with their workplaces and health and safety procedures.
- Working in a manner that does not endanger them or cause harm to others.
- Keeping their work area tidy.
- Reporting all incidents/accidents and near misses
- Protecting fellow workers from injury.
- Reporting unsafe acts and unsafe conditions.
- Reporting any situation that may become dangerous.

- Carrying out lawful orders and obeying health and safety rules. Declaring to the employer if taking medication which may have intoxicating effects.
- If an employee has a reasonable belief that the work to be undertaken is likely to endanger him/her or any other person/s due to sub-standard acts or conditions, inadequate precautions or a lack of protective equipment or clothing, he/She has the right to refuse to work and shall report such situation to the employer.
- An employee does have the right not to work in any area or perform any task where that employee has reasonable justification to believe that the work situation presents a serious danger to his/her health and safety, organizational assets or the environment.
- It must be highlighted to all employees, that anyone who becomes aware of any person disregarding a health & safety notice, instruction or regulation shall immediately report this to the person concerned. If the person persists, stop the person from working and report the matter to the Eskom Site/Project Manager immediately.

2.11.7. Annexure B: Eskom SHE rules and requirements

Annexure B is the acknowledgement of Eskom's SHE rules and requirements form signed and submitted by the tenderer.

2.11.8. Cost allocation for OHS Compliance

The Service Provider shall ensure that the submitted tender adequately made provision for the cost of Occupational Health and Safety measures.

Note: the costing for OHS must be detailed that is itemised based on the overall scope of the project (i.e.) Medical surveillance (Medicals), Training, provision of PPE, COVID-19 compliance, safety equipment purchases, resources and etc.

2.11.9. Personal Protective Equipment (PPE)

In terms of Section 8 of the OHS Act, the duty of the employer is to take steps to eliminate or mitigate (hierarchy of control measures) any hazard or potential hazard to the safety or health of employees before resorting to PPE.

Service Provider's employees on site, including visitors, shall use SANS approved risk-based PPE at all times, as a minimum:

- Head protection hard hat (with chin straps)
- Steel toe capped safety boots.
- Eye protection. Wearing of impact Safety Spectacles with side shields. Prescription glasses must comply with the same standard or cover impact safety spectacles must be worn over them.
- Long sleeved and long pants protective clothing.
- High visibility vests.
- Refer to General Safety Regulation 2 of the OHS Act.

The Service Provider shall ensure that his employees understand why the personal protective equipment is necessary and that they use them correctly.

Strict non-compliance measures must be administered to any employee not complying with the use of PPE and that employee shall be removed from the Site.

Note: Certain areas will be subjected to specific/extra PPE requirement.

2.11.10. Compensation of Occupational Injuries and Diseases Act (COIDA)

The Service Provider shall submit proof of registration and letter of good standing with the compensation fund or with a licensed compensation insurer for his company based on South African legislative requirements. This must remain valid for the duration of the contract. The Letter of Good Standing shall reflect the name of the Service Provider.

2.11.11. Emergency Care

A list of emergency numbers must be displayed at notice boards and public areas for ease of access to all employees and visitors. The Service Provider shall ensure that his employees are familiar with the emergency numbers

Emergency numbers will also be part of the OHS induction.

Eskom Medupi Power Station has established a contract with a Service Provider for all employees and its Service Provider's employees for emergency medical assistance incurred whilst on duty. The telephone number is 014 762 2555 or 078 100 5614.

Service Provider shall have one first aid box for the first 5 persons and thereafter one for every 50 or team of workers on site or part thereof. There should be a trained and appointed person to render first aid service when required.

2.11.12. COVID-19: Health and Pandemic

The Service Provider shall ensure compliance to all Covid-19 regulations and requirements. A Covid-19 risk assessment should be conducted and appropriate measures taken to minimise exposure to COVID-19. Any new developments regarding Covid-19 and latest updates should be communicated to the employees and visitors to stay well informed.

2.11.13. OHS Plan

All Service Providers must use the applicable OHS information to develop a suitable and sufficient OHS plan, submitted with tender documents, which will indicate to the Client the level of compliance to the OHS requirements. The occupational health and safety plan shall identify each activity to be undertaken by the Service Provider, the foreseeable internal and external hazards, the specific precautions and controls that shall be necessary to ensure that the works proceeds safely and without risks to health or adjacent operations.

Upon discussions with the Service Provider, a final accepted OHS plan would be signed and approved.

The plan shall demonstrate management's commitment to OHS.

The safety plan shall be reviewed to ensure that it fully addresses all the issues and complies with the requirements of the OHS Specifications and contract. If necessary the Service Provider shall amend the OHS Plan as required by the Client.

2.11.14. Hazard Identification and Risk Assessment

It is a legal requirement in terms of Section 8 (2)(d) of the OHS Act for an employer to carry out risk assessments, to establish which risks and hazards are attached to the health and safety of persons due to any work which is performed, any article or substance which is, handled, stored, transported.

The Service Provider shall prepare and provide a Baseline Risk Assessment for an intended work project to the client. The Service Provider is expected to have different types of risk assessments for their scope of work.

2.11.15. Medical Surveillance Programme

The Service Provider shall ensure that the employees are registered on a medical surveillance programme and are in possession of a valid medical fitness certificate, completed in South Africa. The certificate of fitness should be relevant to the type of work (risk based) that the employee will be exposed to. This will require each employee to have a risk-based person job specification that will be used as a basis for medical examination.

The Service Provider must ensure that his employees have undergone pre-entry medical examination before starting work on site, no employee will access site without a valid medical fitness certificate. Upon completion, an exit medical examination must be done for all employees working in the project.

2.11.16. OHS Audits

Eskom reserves the right to monitor and conduct unannounced audits to ensure compliance and provide assurance to the Client representatives and their key stakeholders.

2.11.17. Incident management

The Consultant shall report and investigate all incidents/accidents as required in terms of the legislation.

All incidents reporting, recording, classification and investigation will be done according to the requirements set out in the Eskom document 32-95 (latest revision).

2.11.18. OHS Performance Status Reports

The Consultant shall provide OHS statistical and Non-statistical reports, dashboards, presentations as per the Client requirements which will be defined and provided at a later stage.

2.11.19. Hours of Work

All work conducted on site shall fall within the legal requirements in accordance with the Basic Conditions of Employment Act.

The Consultant will notify their Eskom responsible manager/supervisor of any work that needs to be performed after hours according to the agreed arrangements. (The application needs to be submitted timeously). Where applicable, the notification should include proof of application, for overtime, to the Department of Employment and Labour and/or the letter of approval from the Department of Employment and Labour.

2.11.20. Project Close-out

On completion of the project or service rendered, the appointed Service Providers shall close out their project documentation and OHS files and handover to the Eskom Project Manager. All required documentation shall be submitted and handed over using relevant medium as per the procedure (Project Closeout and H&S documentation, 348-9942695). A checklist shall accompany the submission to verify that all documents are submitted/or handed in to the client.

2.12. Environmental Management

The Service Provider shall comply with the Projects' Environmental Management Plan (EMPr), Environmental Authorisations, Licences, permits and other related requirements.

Minimum requirements for compliance by Service Providers:

- Ensure that Eskom environmental policies and procedures are always adhered to. Any lack of adherence to this shall be considered as non-compliance to the requirements.
- Ensure that any instructions issued by the Client are adhered to.
- Service Provider shall maintain the environmental legal register.
- Establish communication channels with all relevant stakeholders and keep updated registers especially in relation to reporting requirements.
- Ensure that a register is kept at the site office, which lists all the transgressions issued by the ECO.
- Ensure that a register of all public complaints is maintained.
- Ensure that all employees, including visitors' complete induction before the undertaking activities or commencement with monitoring activities onsite in order for them to constructively contribute towards the successful implementation of the environmental requirements.
- Ensure compliance with the environmental requirements, relating to the provision of adequate resources for the implementation and monitoring of the requisite environmental controls.
- Compile an Environmental monitoring plan outlining activities that will be undertaken to monitor environmental compliance on site.
- Ensure that the project pricing makes provision for environmental costs.
- Appropriate measures shall be undertaken to minimise the generation of dust when conducting day to day activities.
- The work area is kept clean, tidy, and free of waster/rubbish. Waste shall be disposed of in clearly labelled designated bins.

2.12.1. Spillage of Hazardous Chemical Agents

- Any spillages that occur shall be managed using project procedures and legal requirements and as indicated on the SDS.
- Disposal of hazardous waste materials must be done in terms of the relevant legal requirements.
- Limit spillage of hazardous substances or substances with the potential to cause contamination of the environment. In case of spillages ensure prompt response and clean-up.
- Undertake environmental awareness to the site staff and discuss the contents in detail with the Project Management Team and Contractors.

2.12.2. Fire hazard

- The Consultant must implement projects emergency protocols and requirement stipulated in the National Veld and Forest Fire Act (No 101 of 1998) and ensure that all staff is educated in fire prevention and shall be held responsible to avoid the risk of fire.
- No open fires are allowed on site. The Consultant shall ensure that operations always comply with statutory requirements.
- Shall ensure that areas with a high fire danger are communicated to staff.
- Smoking shall be restricted to designated areas or shall not be allowed, particularly in areas that have a high fire danger rating. Cigarettes butts must be extinguished and disposed of inside designated receptacle.

2.12.3. Waste

- All waste generated shall be disposed of and/or placed inside clearly designated waste receptacles. Employees must be fully conversant with the contents of the Medupi Waste Management Work Instruction (SPO NO: 348-22367) and applicable legislations.

2.12.4. Material requirement

- The use of any material or property belonging to any landowner shall not be permitted prior to arrangements with the relevant landowner. Written proof of such agreement shall be handed to project leader / co-coordinator for record keeping.

2.12.5. Environmental Incidents

- All environmental incidents such as pollution (air, water, land, noise, etc.), bird kills, and animals killed, plants destroyed, public complaints etc. shall be reported to TM before the end of the shift.
- All environmental incidents occurring on site shall be recorded according to current Eskom Environmental Incident Management Procedure (SPO No. 348 – 693723) detailing how each incident was dealt with. Proof thereof shall be submitted to Client.
- The Service Provider shall be held liable for any infringement of any Environmental statutory requirements.

2.12.6. Water

- Always implement the current project Water Use Licences and applicable legislative requirements.

2.12.7. Environmental legislations and other requirements

- Ensure compliance to all relevant environmental legislations and other requirements this amongst others include lenders requirements, sustainable development goals.
- Ensure compliance to the project available licences, authorisations and permits.
- Ensure that the environmental legal register is updated continuously and maintained.

2.12.8. Project Close-out

- At contract expiry the Consultant must handover all records generated during contract period to client. This information must be submitted electronically (in a memory stick and External Hard drive) to the Client as part of contract closeout.

2.13. Procurement

2.13.1. BBBEE and preferencing scheme

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

2.13.2. Other constraints

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

2.13.3. Preferred subconsultants

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

2.13.4. Subcontract documentation, and assessment of subcontract tenders

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

2.13.5. Limitations on subcontracting

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

2.13.6. Attendance on Subconsultants

State requirements for attendance on Subconsultants, if any

2.14. 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.

2.15. 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.

2.15.1. 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.

2.15.2. People restrictions, hours of work, conduct and records

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

2.16. 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.

2.17. 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.

2.18. Cataloguing requirements by the Consultant

State whether cataloguing is applicable, if it is, reference the requirements for cataloguing that need to be satisfied by the Consultant (consult Procurement Instruction Number 1 of 2018 – Incorporating Cataloguing into the Procurement Environment, Unique Identifier 240-1289988974).

3. List of drawings

3.1. 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.

Drawing number	Revision	Title