



## NEC3 Professional Services Contract (PSC3)

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

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

**for Ash Dam Geotechnical Investigation at Hendrina  
Power Station**

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**CONTRACT No. [Insert at award stage]**

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## **PART C1:      AGREEMENTS & CONTRACT DATA**

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
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## C1.1 Form of Offer & Acceptance

### Offer

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

### Ash Dam Geotechnical Investigation

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	<b>R</b>
Value Added Tax @ 15% is	<b>R</b>
The offered total of the Prices inclusive of VAT is	<b>R</b>
(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

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## 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

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

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
2. The PSC3 options are identified by shading in the left hand column. In the event that the option is not required select and delete the whole row.
3. Where the symbol "[●]" is used data is required to be inserted relevant to the clause and statement which requires it.]

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
	dispute resolution Option	<b>A: Priced contract with activity schedule</b>
	and secondary Options	<b>W1: Dispute resolution procedure</b>
		<b>X2 Changes in the law</b>
		<b>X7: Delay damages</b>
		<b>X8: Collateral warranty agreements</b>
		<b>X9: Transfer of rights</b>
		<b>X10 <i>Employer's Agent</i></b>
		<b>X11: Termination by the <i>Employer</i></b>
		<b>X18: Limitation of liability</b>
		<b>Z: <i>Additional conditions of contract</i></b>
	of the NEC3 Professional Services Contract (April 2013) <sup>1</sup>	
10.1	The <i>Employer</i> is (Name):	<b>Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa</b>

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

Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
Tel No.	013 296 3473
Fax No.	

11.2(9)	The <i>services</i> are	Ash Dam Geotechnical Investigation
11.2(10)	The following matters will be included in the Risk Register	<p>1. Access to site</p> <p>2. Any other matter posing a risk to the project/contract will be discussed among the Parties and agreed upon before inserted on the Risk register.</p> <p>3. Not adhering to project timelines.</p> <p>4. No agreeing to contract conditions.</p>
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	3 working days
13.6	The <i>period for retention</i> is	52 weeks 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 Ash Dam	After safety File approval
		2	
		3	

## 3 Time

31.2	The <i>starting date</i> is.	TBC		
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is.	TBC		
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<b><i>Condition to be met</i></b>		<b><i>key date</i></b>
		1	Taking of the samples	TBC
		2	Results from the Lab	TBC
		3	Submission of the Report	TBC
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	1 week of the Contract Date.		

32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	<b>One (1) week. A revised programme shall be submitted on a weekly basis during the executions of the works.</b>	
<b>4</b>	<b>Quality</b>		
40.2	The quality policy statement and quality plan are provided within	<b>1 weeks of the Contract Date.</b>	
42.2	The <i>defects date</i> is	<b>52 weeks after Completion of the whole of the services.</b>	
<b>5</b>	<b>Payment</b>		
50.1	The <i>assessment interval</i> is	<b>between the 20<sup>th</sup> and 25<sup>th</sup> day of each successive month.</b>	
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	<b>Item</b>	<b>Amount</b>
		<b>[•]</b>	<b>[•]</b>
51.1	The period within which payments are made is	<b>14 Days after submission of each invoice.</b>	
51.2	The <i>currency of this contract</i> is the	<b>South African Rand</b>	
51.5	The <i>interest rate</i> is	<b>the publicly quoted prime rate of interest charged by [•] Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due,</b>	



<b>6</b>	<b>Compensation events</b>	
60.1	Changing the Scope	Variations to the services are effected by an Employer's instructions to change the Scope. The authority to change the Scope or a Key Date belongs to the Employer. Neither the Consultant nor the Adjudicator can change this.
60.2	Failure to provide access	This compensation event arises when the Employer fails to provide access in accordance with clause 25.2
60.11	Unforeseen events	The events listed in this clause sometimes come into the category of 'force majeure' in certain jurisdictions. The employer carries the financial risk of such events
61.3	Notifying compensation events	To avoid having to deal with a compensation event long after it has occurred there is time limit on notification by the Consultant. The Consultant should notify compensation a week after becoming aware of the event.
<b>7</b>	<b>Rights to material</b>	
70.1	Rights for material to the Employer	The Employer has the right to use the material provided by the Consultant for the purpose stated in the Scope. The Consultant obtains from a Subconsultant equivalent rights for the Employer to use material prepared by the Subconsultant.
70.2	Rights for material to the Consultant	The Consultant has the right to use material provided by the Employer only to Provide the Services. The Consultant may make this right available to a Subconsultant. On Completion of the whole of the services, the Consultant returns the material provided by the Employer to him.
<b>8</b>	<b>Indemnity, insurance and liability</b>	
80.1	Indemnity	The Consultant indemnifies the Employer against claims, proceedings, compensation and costs payable arising out of an infringement by the Consultant of the rights of Others, except an infringement which arose out of the use by the Consultant of things provided by the Employer.

## 81.1 Insurance cover

The Consultant provides the insurances stated in the Insurance Table except any insurance which the Employer is to provide as stated in the Contract Data. The insurances provide cover from the Contract Date until the end of the periods stated in the Contract Data.

### INSURANCE TABLE

#### Insurance Against

#### Minimum Amount of cover

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

The amount stated in the Contract Data

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

The amount stated in the Contract Data for any one event

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 greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event

## 81.2 Insurance Cover

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.

## 82.1 Limitations of Liability

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 the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the law of the contract.

## 9 Termination

90.1 Both the Employer and the Consultant have the right to terminate the Consultant's obligations under the contract in certain circumstances

90.2 The Consultant may terminate his obligation to Provide the Services by notifying the Employer if the Employer has not paid an amount due to the Consultant within eight weeks of the issue of a notice by the Consultant to the Employer that payment is overdue

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**90.3 The Employer may terminate the Consultant's obligation to Provide the Services by notifying the Consultant if**

- the Employer no longer requires the services or the Consultant has substantially failed to comply with his obligations and has not put the default right within four weeks of a notification by the Employer

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**90.4 The Employer may terminate the Consultant's obligation to Provide the Services by notifying the Consultant if an event occurs which**

- stops the Consultant completing the services or
- stops the Consultant completing the services by the date shown on the Accepted Programme and is forecast to delay Completion by more than 13 weeks, and which
- neither Party could prevent and an experienced consultant would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it.

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**91.1 Procedures and termination**

**On termination**

- the Consultant does no further work necessary to Provide the Services,
- the Employer may complete the services and may use any material to which he has title,
- the Employer may require the Consultant to assign the benefit of any subconsultancy or other contract related to performance of this contract to the.

After the final payment has been made, the Consultant gives to the Employer information resulting from work carried out to date and information the Consultant has obtained which he has a responsibility to provide under this contract

## 92 Payment on termination

92.1 A final payment is made as soon as possible after termination. The amount due on termination includes

- an amount due assessed as for normal payments and
- other costs reasonably incurred by the Consultant in expectation of completing the whole of the services and to which the Consultant is committed.

92.2 The amount due on termination includes a deduction of the forecast of the additional cost to the Employer of completing the whole of the services.

## 10 Data for main Option clause

A Priced contract with activity schedule

21.3 The *Consultant* prepares forecasts of the total expenses at intervals of no longer than **1 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](http://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](http://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 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

X2 Changes in the law

X2.1	The law of the project is		The law of the Republic of South Africa	
X7	Delay damages			
X7.1	Delay damages for late Completion of the whole of the <i>services</i> are		R6000.00 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.	
X9.1	The rights over drawings, documents, designs and prepared by the Consultant would normally remain with the Consultant. The core clauses recognise this but the Employer entitlement to use any documents for the purpose stated in the Scope If, in addition to this, the Employer wishes to obtain the rights for himself, this Option should be chosen		The Consultant to transfer the rights over drawings, documents and designs to the Employer after the completion of the whole service.	
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>			
X11.1	Under the core clauses the Employer is entitled to terminate following the substantial failure of the Consultant to carry out his obligations, on insolvency of the Consultant or when the Employer no longer requires the service. This Option gives further power to the Employer to terminate the appointment of the Consultant for a reason not stated in the contract which might involve no default of the Consultant.			
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:		Contract Value	
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 <i>services/task order</i> .	

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<b>Z</b>	<b>The Additional conditions of contract are</b> <b>Z1 to Z14 always apply.</b>
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**Z1 Cession delegation and assignment**

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

**Z2 Joint ventures**

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

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

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

**Z4 Confidentiality**

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

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

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

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

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

**Z7 Notifying compensation events**

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

**Z8 *Employer's* limitation of liability**

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

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

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

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

- Z10.1 If the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.
- Z10.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

## **Z11 Ethics**

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

- Affected Party** means, as the context requires, any party, irrespective of whether it is the *Consultant* or a third party, such party's employees, agents, or Subconsultants or Subconsultant's employees, or any one or more of all of these parties' relatives or friends,
- Coercive Action** means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,
- Collusive 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 <i>Consultant</i> for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the <i>services</i>	Commercial and business to determine. [Delete this note after inserting]	Commercial and business to determine [Delete this note after inserting]
Liability for death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	<p><b><u>Loss of or damage to property:</u></b> The replacement cost where not covered by the <i>Employer's</i> insurance</p> <p>The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance</p> <p><b><u>Bodily injury to or death of a person:</u></b> The amount required by the applicable law.</p>	Commercial and business to determine [Delete this note after inserting]
Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law	Commercial and business to determine [Delete this note after inserting]

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

### Z13 Nuclear Liability

- Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z13.2 The *Employer* is solely responsible for and indemnifies the *Consultant* or any other person against any and all liabilities which the *Consultant* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Consultant* or any other person or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Consultant* or any other person, or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

### Z14 Asbestos

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

<b>AAIA</b>	means approved asbestos inspection authority.
<b>ACM</b>	means asbestos containing materials.
<b>AL</b>	means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
<b>Ambient Air</b>	means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
<b>Compliance Monitoring</b>	means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's

requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.

**OEL** means occupational exposure limit.

**Parallel Measurements** means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.

**Safe Levels** means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.

**Standard** means the *Employer's* Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.

**SANAS** means the South African National Accreditation System.

**TWA** means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Consultant* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.

Z14.2 Upon written request by the *Consultant*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Consultant* may perform Parallel Measurements and related control measures at the *Consultant's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

Z14.3 The *Employer* manages asbestos and ACM according to the Standard.

Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.

Z14.5 The *Consultant's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.

Z14.6 The *Consultant* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.

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

## C1.2 Contract Data

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

**[Instructions to the tendering consultant: (delete these notes in the final draft of a contract)]**

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)<sup>2</sup> 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.

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		<b>CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled.</b>
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	

<sup>2</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 or [www.ecs.co.za](http://www.ecs.co.za)

11.2(13)	The <i>staff rates</i> are:	<b>name/designation</b>	<b>rate</b>
	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	<b>access to</b>	<b>access date</b>
		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	<b>item</b>	<b>amount</b>
<b>A</b>	<b>Priced contract with activity schedule</b>		
11.2(14)	The <i>activity schedule</i> is in		
11.2(18)	The tendered total of the Prices is	<b>R</b>	<b>(in figures)</b>
		<b>excluding VAT</b>	<b>(in words),</b>

**PART 2: PRICING DATA**  
**PSC3 Option A**

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

## Document reference

No of  
pages

Total number of pages

## C3.1: *Employer's scope*

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## 1. Description of the services

### 1.1 Executive overview

Hendrina power station is located approximately 40km south of Middelburg at the town of Hendrina in Mpumalanga. At the time it was built it was the largest station to be designed by ESKOM (Electricity Supply Commission), with an ultimate generating capacity of 2000MW, consisting of ten 200 MW machines.

Hendrina power station has an ash dam that was recently categorized as a dam with a safety risk. According to the National Water Act, Act No 36 of 1998, a dam with a safety risk is any dam which can contain, store or dam more than 50 000 cubic metres of water, whether that water contains any substance or not, and which has a wall of a vertical height of more than five metres and thus with a category change from category 2 to category 3 geotechnical studies and slope stability assessment must be conducted

### Interpretation and terminology

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
OHSA	Occupational Health & Safety Act
ISO	International Organization for Standardization
KPI	Key Performance Index
N/A	Not Applicable
QIP	Quality Inspection Plan
QCP	Quality Control Plan
SANS	South African National Standards
SHERQ	Safety, Health, Environmental, Risk and Quality
SANAS	South African National Accreditation System

## 2. Specification and description of the services

The *Consultant* shall be responsible to provide a scope of work for Geotechnical studies and Dam safety evaluations.

### 2.1 Geotechnical Studies Scope

- Seismic Cone Penetration tests (SCPTu) with dissipation testing. To be done on 6 sections, with 3 probes per section line for a total of 18 probes.
- SCPTu probes must continue to at least 3m into foundation soils
- Dissipation tests must be conducted in every probe at 2.0m intervals
- Seismic cone tests must be conducted in every probe at 2.0m intervals
- Mostap samples to be taken in the probes.
- Samples of the ash residue to be taken from the surface and via Mostap sampling in the CPTs.
- Samples to be submitted to a SANAS accredited laboratory for the following testing:
  - Particle size distribution to 2µm
  - Atterberg Limits
  - Specific Gravity (SG)
  - Maximum and minimum density (void ratios)
  - Triaxial testing (critical state line)
  - Permeability
  - Soil water characteristic curve
- Submit a detailed geotechnical report

### 2.2 Stability assessment scope:

APP application notification

Desk Study

Dam Inspection: inspection must also include a drone flight to allow for aerial inspection.

Compilation of Stability Report

Submission to the DSO for Approval

## 2.3 Normative/informative references

### 2.3.1 Normative

- 9001 Quality Management Systems.
- ISO 45001 Occupational Health & Safety Management Systems
- ISO 14001 Environmental Management System
- SANS 10286 Code of Practice for Mine Residue

### 2.3.2 Informative

- Occupational Health and Safety Act (OHSA) Act 85 of 1993
- Eskom Hendrina power station Ash dam operating manual.
- National Environmental Management Act, 1998 (Act No.107 of 1998)
- South African Council of large dams (SANCOLD) guidelines
- National Water Act, 1998 (Act No. 36 of 1998) – More specifically, Chapter 12

## 2.4 Procedure for submission and acceptance of *Consultant's* report

- Preliminary studies by the *Consultant* must be sent to the client for approval. The Client has the right to reject or change the submitted studies.
- Once the final studies have been agreed upon, the *Consultant* is to submit a detailed report. The document must be in Eskom template.
- The final report will then be presented to the Site Change Control Committee where it will be approved.

## 2.5 Other requirements of the *Consultant* Report

- Detailed report to be submitted in Eskom Format
- The *Consultant* will also be responsible for providing a detailed bill of material for the studies
- The *Consultant* must provide a detailed cost breakdown of the amount required to execute the work.



## 2.6 Use of *Consultant's* report

- The *Consultant* gives rights to the *Employer* to use the detailed report upon completion of the studies.
- *Consultant* provides to the *Employer* the documents, which transfers these rights to the *Employer* to use his report.

## Stage 1 Preparation

The purpose of this contract is to develop reports based on the conducted studies

## 2.7 Stage 2 Concept

Detailed report to be provided by the *Consultant* to the *Employer* and refer to the studies conducted

## 2.8 Stage 3: Design development

Detailed development of approved concept to detailed report to include specifications, bill of quantities, review detailed report for conformity with general report intent and *Employers* requirements.

## 2.9 Stage 4: Production information

Final detailing, performance definition, specifications, sizing and positioning of all systems and components for construction.

## 2.10 Stage 6: Post Practical Completion

Deal with outstanding issues and feedback and assisting with familiarising Project users with the design of the works.

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

### 3.1 Management meetings

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:
Kick off Meeting	1 week after contract start date	TBC	<i>Employer's Agent</i> and <i>Consultant</i>
Risk register and	Weekly on Wednesday's	TBC	<i>Employer's Agent</i> and

compensation events			<i>Consultant</i>
Overall contract progress and feedback	Bi weekly	TBC	<i>Employer's Agent and Consultant</i>

All Meetings shall be recorded using minutes or a register prepared and circulated by the person who convening 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.

### 3.2 Consultant key persons

The *Consultant* to provide an organigram showing his people and their line of authority / communication. The *Consultant* does not have a right to replace any key person and can only replace him if the replacement is acceptable by the *Employer*. Proof of qualifications for persons conducting the works to be provided to the *Employer* before commencement of any work e.g. Engineer's qualifications, professional registration etc.

### 3.3 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.

### 3.4 Documentation control and retention

#### 3.4.1 Identification and communication

- Contractual Communication – All contractual communication is addressed in writing to the project manager on a letterhead of the *Consultant* company.
- Signed hard copies (original) of inspection reports are submitted to the Main Documentation Centre after finalising for purpose of record keeping.
- Operational documents, such as philosophies, procedures, and test plans, etc. whether new or existing, are compiled in accordance with Hendrina Power Station Standard Format and/or Content requirements for the Compilation and/or or Review of System and/or Process documents (HSSPA001)

### 3.4.2 Retention of documents

Clause 13.6 states that the *Consultant* retains copies of drawings, specifications, reports and other documents which record the services for the period for retention. The copies are retained in the form stated in the Scope.

Note: the time for which the *Consultant* is to retain such documents is the period for retention stated in the Contract Data.

Copies of all documents are retained in hardcopy format as well as electronic format (pdf format for signed documents).

### 3.5 Records and forecasting of expenses

Forecast of the total expenses to be provided by the *Consultant*, they are required for budget purposes, they are to be updated at regular intervals. They enable the *Employer* to judge the likely final cost to him of expenses which are additional to the prices.

### 3.6 Invoicing and payment

The *Consultant* is required to make an assessment of an amount due to each assessment date. He is required to submit an invoice for the change in the amount due since the previous invoice and provide the detailed stated in the Scope to show how the amount due has been calculated.

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

The *Consultant* shall address the tax invoice to **Hendrina Power Station Finance Department** and include on it the following information:

Name and address of the *Consultant* and the *Employer's Agent*;

The contract number and title;

*Consultant* 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)

### 3.7 Contract change management

- Early Warning
- Notification of compensation event

### 3.8 Inclusions in the programme

- The starting date, access dates, Key Dates and Completion Date,
- Planned Completion,

The order and timing of the operations which the *Consultant* plans to do in order to Provide the Services,

The order and timing of the work of the Employer and Others as last agreed with them by the *Consultant* or, if not so agreed, as stated in the Scope, the dates when the Consultant plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the Employer and Others to do their work. For each operation, a statement of how the *Consultant* plans to do the work identifying the resources which he plans to use and other information which the Scope requires the *Consultant* to show on a programme submitted for acceptance.

### **3.9 Quality management**

#### **3.9.1 System requirements**

The *Consultant* operates a quality management system for Providing the Services as stated in the Scope. The quality management system complies with the requirements stated in the Scope. The Quality Inspection Plan to be submitted for approval by the *Employer's* project engineer before any work commences. The *Consultant* to adhere to ISO 9001: 2015 Quality Management System. The *Employer* requires a fully certified quality assurance system under ISO standards.

#### **3.9.2 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. The quality management system is required of the *Consultant* should the *Employer* recognise the equivalent requirements on other *Consultants* and become compatible with them

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

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

*Employer* has the right to use the material provided by the *Consultant* for the purpose stated in the Scope. The *Employer* has the right to use the material provided by the *Consultant* for the purpose stated in the Scope. The *Consultant* obtains from a *Subconsultant* equivalent rights for the *Employer* to use material prepared by the *Subconsultant*.

#### **3.10.2 Restrictions on the Consultant use of the material for other work**

The *Consultant* may not use the material produced under this contract for other work

#### **3.10.3 Transfer of rights if Option X 9 applies**

The *Consultant* to transfer rights over drawings, documents, designs and the like to the *Employer* after completion of the whole of the works.

### **3.11 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. 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*.

[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 \_\_\_\_\_ to this Scope.]

The *Consultant* complies with the Occupational Health and Safety Act 85 of 1993 and its regulations, Eskom SHE Policy, Standards, Procedures, Guidelines, Specifications and Regulations

The *Consultant* ensures awareness at all times through continuous training.

The *Consultant* is at all times responsible for the supervision of his employees, agents and *SubConsultant* and takes full responsibility and accountability for ensuring that they are competent, compliant and aware of the legal requirements and other requirements and execute the works accordingly.

The *Consultant* ensures that all statutory appointments and appointments required by an Eskom Regulations are made in writing and all appointed employees fully understands their responsibilities and are trained and competent to execute their duties.

The *Employer*, or any person appointed by the *Employer*, may, at any stage during the term of the contract

- Conduct Health and Safety audits by a competent person regarding all aspects of compliance with the SHERQ requirements, at any off-site place of work, or site establishment of the *Consultant*.
- Refuse any employee, *SubConsultant* or agent of the *Consultant* access to the premises if such a person has been found to commit an unsafe act or any unsafe working practice or is found not to be competent or authorised.
- Issue the *Consultant* with a stop order, should the *Employer* become aware of any unsafe working procedure or conditions or any non- compliance.
- 

The *Consultant* immediately reports any incidents, disabling injury, near miss, first aid incident as well as any threat to the health and safety of which it becomes aware at the works or on the site to the Project Manager.

The *Consultant* agrees that the *Employer* is relieved of any and all of its responsibilities and liabilities in terms of the Occupational Health and Safety Act no 85 of 1993 in respect of any acts or omission of the *Consultant*, and the *Consultant* employees, agents, or *SubConsultants*, to the extend permitted by the Occupational Health and Safety Act no 85 of 1993

The *Consultant* ensures that all his personnel attends Health and Safety Induction course presented by Safety Officers, Monday to Friday – 09H00 to 10H00, free of charge prior commencement of any works. This is a one (1) hour course and is valid for one (1) year at Hendrina Power Station.

The *Consultant* works strictly to regularly update risk assessment.

The *Consultant* ensures supervise and authorise entry to the plant.

The *Consultant* barricade the entire parameter of the site.

The *Consultant* complies with the Occupational Health and Safety Act and Regulations and all any regulations or by law of any statutory authority

The *Consultant* acknowledges that he is fully aware of the requirements of all the above and undertakes to employ people who have received sufficient training that they can comply therewith. The *Consultant*

undertakes not to do, or not to allow anything to be done which will contravene any provisions of the act, regulations or operating procedures.

All employees of the *Consultant* must attend safety induction course before they are allowed to work on site.

It is the responsibility of the *Consultant* to ensure all his employees attend safety induction.

The *Consultant* conduct toolbox talks and inspect all PPE before any works commences and keep proof of such actions.

The *Consultant* complies with all of the applicable procedures as required by the *Employer*, Procedures are available form *Employer's* Documentation Centre on request.

The *Consultant* familiarises himself with the permit requirement for the work to be done on all plant systems and ensures that permits are applied for accordingly

The following risk are identified by the *Employer*, and the *Consultant* must include these in his risk assessment

- Injury caused by tools
- High noise level
- Falling objects
- Dust
- Loos trench covers

Any tempering with the *Employers* fire equipment is strictly prohibited

All work done by the *Consultant* shall comply with the latest revision of *Employers* SHERQ requirement as stated in the Safety Health and Environmental Specifications for Principal *Consultant* and all other *Employers* safety requirements.

*Employer* compiles a baseline risk assessment to identify all the possible risk during the implementation of the project. The risk assessment includes all the mitigating strategies in order to minimise all the possible risks. The *Employer* provides the *Consultant* with the baseline risk assessment to use it as a minimum requirement to compile a risk assessment by identifying all the risk before the implementation commences. The risk assessment compiled by the *Consultant* will clearly show all the mitigating strategies in order to minimise all possible risks. No work shall be carried out without the risk assessment identifying all the risks and the mitigating strategies in place in order to address the identified risks.

### **3.12 Procurement**

#### **3.12.1 BBBEE and preferencing scheme**

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

#### **3.12.2 Preferred SubConsultants**

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

### **3.12.3 Subcontract documentation, and assessment of subcontract tenders**

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

### **3.12.4 Limitations on subcontracting**

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

### **3.13 Correction of Defects**

The *Consultant* corrects a Defect whether or not the *Employer* notifies him of it. The *Consultant* corrects Defects within a time which minimises the adverse effect on the *Employer* or Others. If the *Consultant* does not correct a Defect within the time required by this contract, the *Employer* assesses the cost to him of having the Defect corrected by other people and the *Consultant* pays this amount. 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.

### **3.14 Working on *Employer's* Property**

#### **3.14.1 *Employer's* sentry and security control, permits, and site regulations**

Limited access register must be signed before entering the Ash Dam Premises

#### **3.14.2 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 Sub*Consultants*. State that the *Employer's* Agent shall have access to these records at any time. These records may be needed when assessing compensation events.

### **3.15 Cooperating with and obtaining acceptance of Others**

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

- 1) The *Consultant* co-operates with others in obtaining and providing information which they need in connection with the services.
- 2) Requirements for liaison with and acceptance from statutory authorities or inspection agencies.

### **3.16 Cataloguing requirements by the *Consultant***

Not Applicable

4 List of drawings

4.2 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