



NEC3 Professional Services Contract (PSC3)

Contract between ESCAP SOC Ltd
(Reg No. 1993/003340/30)

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

for [•]

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

CONTRACT No. [Insert at award stage]

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:

Title of the Contract

The tenderer, identified in the Offer signature block, has

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

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

The offered total of the Prices exclusive of VAT is	R
Value Added Tax @ 14% is	R
The offered total of the Prices inclusive of VAT is	R
(in words)	

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

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

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the
Employer**

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

Schedule of Deviations

Note:

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

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

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

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

For the tenderer:

For the Employer

Signature

Name

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

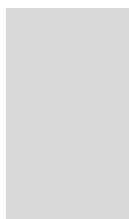
Part one - Data provided by the *Employer*

[Instructions to the contract compiler: (delete these two notes in the final draft of a contract)]

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	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		E: Time based contract
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	X1: Price adjustment for inflation
		X9: Transfer of rights
		X10: <i>Employer's Agent</i>
		X11: Termination by the <i>Employer</i>



X18: Limitation of liability

X20: Key Performance Indicators

Z: Additional conditions of contract

of the NEC3 Professional Services Contract
(April 2013)¹

10.1	The <i>Employer</i> is (Name):	although this contract is between ESCAP and the supplier, invoices should be issued to 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, as all invoices are to be captured in SAP as Escap uses Pastel that does not accommodate the workflow process when dealing with Procurement and Accounts Payable.
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	[011 800 8111•]
	Fax No.	[011 800 4299•]
11.2(9)	The <i>services</i> are	[The appointment of Tax Advisory Service]•]
11.2(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 <i>Scope</i> 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 [three] days
13.6	The <i>period for retention</i> is	[5 (Five)] years following Completion or earlier termination.

2 The Parties' main responsibilities

25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	access date
		1 All necessary areas that the consultant needs to gain access to in order to perform the services required•]	During the contract period and as and when required
		2 [•]	[•]
		3 [•]	[•]

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

3 Time

31.2	The <i>starting date</i> is.	[●1 February 2024]	
11.2(3)	The <i>completion date</i> for the whole of the services is.	[31 January 2029●].	
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	key date
		1 [Reporting In terms of the relevant legislation●]	TBA
		2 [Input in terms of Prov Tax submissions – bi annual. Input in terms of VAT returns - monthly	[●]TBA
		3 [●Other tax and VAT related matters as an when required.	[●]TBA
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	[●]2 (two)weeks of the Contract Date.	
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	[●]2 (two)weeks.	

4 Quality

40.2	The quality policy statement and quality plan are provided within	[●] 4 (Four) weeks of the Contract Date.	
42.2	The <i>defects date</i> is	[●] 8 (eight) weeks after Completion of the whole of the services.	

5 Payment

50.1	The <i>assessment interval</i> is	between the [28th] day of each successive month.	
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	Item	Amount
		[●]None	[●]
		[●]	[●]
		[●]	[●]
		[●]	[●]
51.1	The period within which payments are made is	[●] 4 (four) weeks after receiving invoice.	
51.2	The <i>currency of this contract</i> is the	South African Rand	

51.5 The *interest rate* is

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,

and

the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove

6	Compensation events	. To be applied as the NEC3 PSC
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7 Rights to material

70.1 The Employer has the right to use the material provided by the Consultant for the purpose stated in the Scope.

70.2 The Consultant has the right to use material provided by the Employer only to Provide the Services.

On Completion of the whole of the services, the Consultant returns the material provided by the Employer to him.

70.3 The Parties do not disclose information obtained in connection with the services except when necessary to carry out their duties under this contract.

70.4 The Consultant may use the material provided by him under this contract for other work unless stated otherwise in the Scope.

8	Indemnity, insurance and liability	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.	
82.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	The total of the Prices ????	
9	Termination	. Either Party may terminate the Consultant's obligation to provide the Services by notifying the other Party if the other Party has done one of the conditions specified in the NEC 3 PSC. The terminating Party provides not less than 90 (ninety) days' notice of termination to the other Party	
10	Data for main Option clause		
A	Priced contract with activity schedule		
21.3	The <i>Consultant</i> prepares forecasts of the total expenses at intervals of no longer than	[•] weeks.	
C	Target contract		
21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and expenses at intervals no longer than	[•] weeks.	
50.4	The exchange rates are those published in	[•] on [•] (date).	
54.1	The <i>Consultant's</i> share percentages and the share ranges are	share range less than [•]% from [•]% to [•]% from [•] to [•]% greater than [•]%	Consultant's share percentage [•]% [•]% [•]% [•]%
E	Time based contract		
21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and expenses at intervals no longer than	[•] 4 (four) weeks.	
50.4	The exchange rates are those published in	[•] on [•] (date).	
G	Term contract		
21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and expenses at intervals no longer than	[•] weeks.	
50.4	The exchange rates are those published in	[•] on [•] (date).	
11	Data for Option W1		

W1.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see 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).
	Address	[•]
	Tel No.	[•]
	Fax No.	[•]
	e-mail	[•]
W1.2(3)	The <i>adjudicator nominating body</i> is:	the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See www.ice-sa.org.za).
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> 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 <i>arbitration procedure</i> 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	[•].CPI, base date – starting month of the contract
	The staff rates are {state whether “Fixed at the Contract Date and are not variable with changes in salary paid to individuals” or “Variable with changes in salary paid to individuals”}	[•]
X2	Changes in the law	
X2.1	The law of the project is	[•].Any law within the Republic of South Africa which applied to the Consultant providing the Services. The Consultant shall comply with all applicable laws under the scope of work
X3	Multiple currencies	

X3.1	The <i>Employer</i> will pay for these items or activities in the currencies stated	Items & activities	Other currency	Maximum payment in other currency
		[•]	[•]	[•]
		[•]	[•]	[•]
		[•]	[•]	[•]
X3.1	The <i>exchange rates</i> are those published in	[•]on [•] (date) The items & activities will be paid in the other currency - to a foreign Bank account nominated by the <i>Consultant</i> - to a valid SARB approved CFC account in South Africa - in accordance with an alternative payment method agreed with the <i>Employer</i> before the Contract Date. (select one of the three methods as agreed with successful tenderer and delete the others and this note)		
X4	Parent company guarantee	There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.		
X5	Sectional Completion			
X5.1	The <i>completion date</i> for each <i>section</i> of the services is:	<i>section</i>	<i>description</i>	<i>completion date</i>
		1	[•]	[•]
		2	[•]	[•]
		3	[•]	[•]
X5 & X6	Sectional Completion and bonus for early Completion used together			
X6.1 X5.1	The bonuses for early Completion of each <i>section</i> of the services are:	<i>section</i>	<i>description</i>	<i>amount per day</i>
		1	[•]	R[•]
		2	[•]	R[•]
		3	[•]	R[•]
	Remainder of the services			R[•]
X5 & X7	Sectional Completion and delay damages used together			
X7.1 X5.1	Delay damages for late Completion of each <i>section</i> of the services are:	<i>section</i>	<i>description</i>	<i>amount per day</i>
		1	[•]	R[•]

		2	[•]	R[•]
		3	[•]	R[•]
	Remainder of the <i>services</i>			R[•]
X6				
X6.1				
X7				
X7.1				
X8				
X8.1				
X9	Transfer of rights	The Employer owns the Consultant's rights over material prepared for this contract by the Consultant except as stated otherwise in the Scope. The Consultant provides to the Employer the documents which transfer these rights to the Employer		
X10	The <i>Employer's Agent</i>			
X10.1	The <i>Employer's Agent</i> is			
	Name:			
	Address	[•]Megawatt Park, Maxwell Drive, Sandton, Johannesburg		
	Email Address			
	The authority of the <i>Employer's Agent</i> is	To carry out all the actions of the Employer in the contract wit the exception of those required by clauses 51.1, 81.1		
X11	Termination by the <i>Employer</i>		. The Employer may terminate the Consultant's obligation to Provide the Services for a reason not stated in this contract by notifying the Consultant. If the Employer terminates for a reason not stated in this contract, an additional amount is due on termination which is 5% of the difference between:	
			the forecast of the final total of the Prices in the absence of termination and the total of the other amounts and costs included in the amount due on termination.	
X12				
X12.1				

X12.1(4)	
X12.2(1)	
X13	
X13.1	
X18	Limitation of liability
X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to: R0.00 (Zero Rand)
X18.2	The <i>Consultant's</i> liability to the <i>Employer</i> for Defects that are not found until after the <i>defects date</i> is limited to: The total of the Prices
X18.3	The <i>end of liability date</i> is five years after Completion of the whole of the services/task order.
X20	Key Performance Indicators (not used when Option X12 also applies)
X20.1	
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of [•] 6 (six) months
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 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 <i>Consultant</i> 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 <i>Consultant</i> , 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	means any unlawfully or illegally intentional act or omission that misleads, or attempts

Action 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>	<u>Loss of or damage to property:</u> The replacement cost where not covered by the <i>Employer's</i> insurance The <i>Employer's</i> policy deductible, as at Contract Date, where covered by	Commercial and business to determine [Delete this note after inserting]

	the <i>Employer's</i> insurance <u>Bodily injury to or death of a person:</u> The amount required by the applicable law.	
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:

AAIA	means approved asbestos inspection authority.
ACM	means asbestos containing materials.
AL	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.
Ambient Air	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.
Compliance Monitoring	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 <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
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)² 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		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled _____.
11.2(3)	The <i>completion date</i> for the whole of the services is	28 February 2029
11.2(10)	The following matters will be included in the Risk Register	

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

11.2(13)	The <i>staff rates</i> are:	name/designation	rate
	Either complete here or cross refer to a schedule in Part C2.2		
25.2	The <i>Employer</i> provides access to the following persons, places and things	access to 1 2 3	access date
31.1	The programme identified in the Contract Data is		
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	item	amount
A	Priced contract with activity schedule		
11.2(14)	The <i>activity schedule</i> is in		
11.2(18)	The tendered total of the Prices is	R	(in figures) (in words), excluding VAT
C	Target contract		
11.2(14)	The <i>activity schedule</i> is in		
11.2(18)	The tendered total of the Prices is	R	(in figures) (in words), excluding VAT
G	Term contract		
11.2(25)	The <i>task schedule</i> is in		

C1.3 Forms of Securities

Pro formas for Bonds & Guarantees

For use with the NEC3 Professional Services Contract

[Note to contract compiler:

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

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

Option X4: Parent company guarantee

Option X13: Performance Bond

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

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

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

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

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

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

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Date:

Dear Sirs,

Parent Company Guarantee for Contract No

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

Eskom Holdings SOC Ltd

(the *Employer*) and

{Insert registered name and address of the *Consultant*}

(the *Consultant*), for

{Insert details of the services from the Contract Data}

(the *services*).

I/We the undersigned

on behalf of the *Consultant's*
parent company

of physical address

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

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

Signed at _____ on this _____ day of _____ 200_

Signature(s)

Name(s) (printed)

Position in parent company

Signature of Witness(s)

Name(s) (printed)

PART 2: PRICING DATA
PSC3 Option E

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

C2.1 Pricing assumptions: Option E

How work is priced and assessed for payment

From Option E:

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

From the core clauses:

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

and

Assessing the amount due	50.3	The amount due is • the Price for Services Provided to Date, • the amount of the <i>expenses</i> properly spent by the <i>Consultant</i> in Providing the Services and • other amounts to be paid to the <i>Consultant</i> less amounts to be paid by or retained from the <i>Consultant</i>.
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Any tax which the law requires the *Employer* to pay to the *Consultant* is included in the amount due.

Staff rates and expenses

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

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

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

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

Expenses associated with employing a staff member in Providing the Services are listed separately either by the *Employer* in Contract Data provided by the *Employer* or by the *Consultant* in Contract Data provided by the *Consultant*. As only the *expenses* listed may be claimed by the *Consultant*, all other cost to the *Consultant* associated with Providing the Services must be included within the *staff rates*.

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

C2.2 Staff rates and expenses

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

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

The *staff rates* are:

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

The *expenses* are:

No.	Expense item	Amount / rate excluding VAT

Document reference	Title	No of pages
C3.1	This cover page <i>Employer's Scope</i>	1
C3.2	<i>Consultant's Scope</i>	
	Total number of pages	

C3.1: EMPLOYER'S SCOPE

Contents

When the document is complete, insert a 'Table of Contents'. To do this go to: Insert, → Reference, → Index and tables → Table of Contents. Three levels and the title (but not the subtitle) may be shown if the formats used in this template are retained.

Otherwise insert list of contents manually.

The scope of tax advisory services includes, but is not limited to:

- Income tax:

- Researching and interpreting the Income Tax Act and amendments, especially relating to non-life insurance
- Providing tax advice and support to Escap for its tax returns
- Supporting Escap for its tax-related interactions with auditors, SARS, Eskom and policyholders
- Advising Escap on tax planning
- Representing and advising Escap in disputes with SARS
- Reviewing documents and providing advice and support to ensure Escap's tax compliance

- VAT:

- Researching and interpreting the VAT Act and amendments, especially relating to non-life insurance
- Providing VAT advice and support to Escap for its VAT returns
- Supporting Escap for its VAT-related interactions with auditors, SARS, Eskom and policyholders
- Advising Escap on VAT planning
- Representing and advising Escap in disputes with SARS
- Reviewing documents and providing advice and support to ensure Escap's VAT compliance

- Employees Tax:

- Reviewing documents and providing advice and support to ensure Escap's employees' tax compliance.

- Other – Tax advice in terms of changes in legislations and accounting standards

Description of the services

Executive overview

Put yourself in the position of the *Consultant's* senior management who need a high level overview of what the *Employer* wants to achieve as a result of these services so that the *Consultant* can decide whether he has the resources and capability to undertake the work. This is the *Employer's* purpose of the services.

Interpretation and terminology

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

The following abbreviations are used in this Scope:

Abbreviation	Meaning given to the abbreviation
ECSA	Engineering Council of South Africa

SACPCMP	South African Council for Project and Construction Management Professionals

Specification and description of the services

The content of this section is the meat of the scope of work and will depend on the nature of the *services* required. The *Consultant* may be appointed for a wide range of duties. The range is almost limitless but would typically include:

- Provide services of an advisory or specialist nature.
- Conduct training on an ad hoc basis.
- Manage a service or facility on behalf of the *Employer*.
- Develop a software application and then implement it throughout the *Employer's* organisation.
- Act as the architect for the design and supervision of a new building.
- Act as the engineer for the design of a new project or structure.
- Act as a cost engineer or quantity surveyor on a project.
- Act as the *Project Manager* in terms of an ECC contract or as a project manager for a total project.
- Act as the *Supervisor* in terms of an ECC contract.

Professional services contracts are by nature specialised and it would be impractical to prescribe formats here to cover such a wide range of duties as those listed above.

For engineering and construction services, document compilers are advised to consult a paper issued by CIDB entitled, "*A generic scope of work for services relating to construction works. 18 October 2006*". This paper identifies a generic format as well as giving guideline scope of services for the appointment of members of the various statutory councils operating in South Africa such as ECSA, SACQSP, SACAP and SACPCMP.

The Construction Industry Council (UK) has developed a generic approach suitable for the appointment of most professional disciplines in the engineering and construction sector. This requires the Scope to be compiled for stages of the services associated with a project and is described on pages 1 and 3 of the above referenced paper. If this approach were to be followed, this section could be developed as follows:

Stage 1 Preparation

Develop a strategic brief which defines project objectives, business need, acceptance criteria and the *Employer's* priorities and aspirations:

Stage 2 Concept

Development of initial design which establishes the detailed brief, scope, scale, form and budget for the project culminating in the Concept Report

Stage 3: Design development

Detailed development of approved concept to establish detailed form, character, function and cost plan (Design report)
Review Design Report for conformity with general design intent and *Employer's* requirements.

Stage 4: Production information

Final detailing, performance definition, specification, sizing and positioning of all systems and components enabling either construction or the production of manufacturing and installation information.

Stage 5: Manufacture, Installation and Construction Information:

Definition of the fabrication, manufacturing details and installation of all components. Review, for adherence to general design intent, the manufacture, installation and construction information prepared by others; and the construction of the Works

Stage 6: Post Practical Completion

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

Constraints on how the *Consultant* Provides the Services.

Management meetings

The *conditions of contract* (e.g. Clause 15.2) and other sections of this Scope may require that a meeting be held. However the intention of all NEC contracts is that the Parties and their agents use the techniques of partnering to manage the contract by holding meetings designed to pro actively and jointly manage the administration of the contract with the objective of minimising the adverse effects of risks and surprises for both Parties.

Depending on the size and complexity of the *services*, it is probably beneficial for the *Employer's Agent* to hold a weekly risk register meeting (Clause 15.2). This could be used to discuss compensation events, subconsulting, overall co-ordination and other matters of a general nature. Separate meetings for specialist activities such as programming and activities of a technical nature may also be warranted.

Describe here the general meetings and their purpose. Provide particulars of approximate times, days, location, and attendance requirements, stipulating that attendees shall have the necessary delegated authority to make decisions in respect of matters discussed at such meetings. The following text could be used as a model for this section:

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

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

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

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

Consultant's key persons

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 organogramme from the *Consultant* showing his people and their lines of authority / communication. This would be essential if the *Consultant* is a Joint Venture.

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.

Documentation control and retention

Identification and communication

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

Retention of documents

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

Records and forecasting of expenses

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

Records and forecasting of the Time Charge

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.

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)]

Contract change management

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

Inclusions in the programme

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

Quality management

System requirements

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

Information in the quality plan

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

The Parties use of material provided by the *Consultant*

Employer's purpose for the material

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.

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

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

Transfer of rights if Option X 9 applies

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

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

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

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

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

Management of work done by Task Order

Only use this heading if main Option G applies to this contract.

Please read Option G before drafting requirements here as much of the procedure for the use of Task Orders is already provided in Option G. For example clause 55.1 specifies what a Task Order should include.

Information included here could be:

- That Task Orders will be prepared in the format stated in an Annexure attached to the Scope
- What the basis or formula will be for calculation of delay damages for a Task Order (if required).
- How expenses for a Task will be assessed and managed.
- (etc)

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.]

Procurement

BBBEE and preferencing scheme

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

Other constraints

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

Preferred subconsultants

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

Subcontract documentation, and assessment of subcontract tenders

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

Limitations on subcontracting

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

Attendance on Subconsultants

State requirements for attendance on Subconsultants, if any

Correction of Defects

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

Working on the *Employer's* property

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

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

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

People restrictions, hours of work, conduct and records

Restrictions and hours of work may apply on some sites. It is very important that the *Consultant* keeps records of his people working on the *Employer's* property, including those of his Subconsultants. State that the *Employer's Agent* shall have access to these records at any time. These records may be needed when assessing compensation events.

Cooperating with and obtaining acceptance of Others

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

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

Things provided by the *Employer*

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

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).

List of drawings

Drawings issued by the *Employer*

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

Drawing number	Revision	Title