

NEC3 Professional Services Contract (PSC3)

Contract between **ESKOM ROTEK INDUSTRIES SOC LIMITED**
(Reg No. 1990/006897/30)

and

FOR THE PROVISION OF A PROFESSIONAL SERVICE FOR CONDUCTING SHE LEGAL AUDIT

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CONTRACT No.

PART C1: AGREEMENTS & CONTRACT DATA

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C1.1 Form of Offer & Acceptance

Offer

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

For the provision of a professional service for conducting SHE legal audit

The tenderer, identified in the Offer signature block, has

either	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.
or	examined the draft contract as listed in the Acceptance section and agreed to provide this Offer.

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

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

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

Signature(s)				
Name(s)				
Capacity				
For the tenderer:				
Name & signature of witness			Date	

Acceptance

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

The terms of the contract, are contained in:

Part C1 and Acceptance)	Agreements and Contract Data, (which includes this Form of Offer
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 original copy of this document, including the Schedule of Deviations (if any).

Signature(s)				
Name(s)				
Capacity				
for the Employer	Eskom Rotek Industries SOC Ltd.			
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
None

	For the tenderer:		For the Employer
Signature			
Name			
Capacity			
On behalf of			Eskom Rotek Industries SOC Ltd.
Name & signature of witness			
Date			

C1.2a PSC3 Contract Data

Part one - Data provided by the *Employer*

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

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

	of the NEC3 Professional Services Contract (June 2005)[1] with amendments June 2006	
10.1	The *Employer* is (Name):	**Eskom Rotek Industries SOC Limited (reg no: 1990/006897/30), a juristic person incorporated in terms of the company laws of the Republic of South Africa**
	Address	**Eskom Rotek Industries SOC Ltd, Lower Germiston Road, Rosherville, Johannesburg, 2094**
	Tel No.	**+27 11 629 8000**
	Fax No.	**-**
11.2(9)	The *services* are	**For the provision of a professional service for conducting SHE legal audit**
11.2(10)	The following matters will be included in the Risk Register	**Items agreed between the *Employer's* Representative and the *Consultant***
11.2(11)	The Scope is in	**Part 3: Scope of Work**
12.2	The *law of the contract* is the law of	**the Republic of South Africa**
13.1	The *language of this contract* is	**English**
13.3	The *period for reply* is	2 weeks
13.6	The *period for retention* is	
2	**The Parties' main responsibilities**	
25.2	The *Employer* provides access to the following persons, places, and things	**As per the Task Order**
3	**Time**	
31.2	The *starting date* is.	
11.2(3)	The *completion date* for the whole of the *services* is.	
31.1	The *Consultant* is to submit a first programme for acceptance within	**2 weeks of the Contract Date.**
32.2	The *Consultant* submits revised programmes at intervals not longer than	**1 week.**
4	**Quality**	
40.2	The quality policy statement and quality plan are provided within	**N/A**
42.2	The *defects date* is	**3 years after Completion of the whole of the *service*s.**

[1] Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009

5	**Payment**		
50.1	The *assessment interval* is	**between the [30th] day of each successive month.**	
50.3	The *expenses* stated by the *Employer* are	**Refer to schedule of prices/price list**	
51.1	The period within which payments are made is	**Four (4) weeks for LME'S & QSE and Two (2) weeks for EME'S as defined in the BBBEE Act**	
51.2	The *currency of this contract* is the	**South African Rand**	
51.5	The *interest rate* is	**(i) zero percent above the publicly quoted prime rate of interest (calculated on a 365-day year) charged by from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and** **(ii) 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**	**There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.**	

7	**Rights to material**	**There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.**	
8	**Indemnity, insurance, and liability**		
81.1	The amounts of insurance and the periods for which the *Consultant* maintains insurance are		
	Event	**Cover**	**Period following Completion of the whole of the *service*s or earlier termination**
	Liability for failure by the *Consultant* to use the skill and care normally used by professionals providing services similar to the *service*s	**Whatever the *Consultant* deems necessary in respect of each claim, without limit to the number of claims**	
	death of or bodily injury to a person (not an employee of the *Consultant*) or loss of or damage to property arising from or in connection with the *Consultant*'s Providing the Services.	**Whatever the *Consultant* deems necessary for any occurrence or series of occurrences arising out of one event without limit to the number of claims.**	
	death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract	**The amount of the cover, without derogating from or limiting the Consultant's liability to the Employer or any other Party shall be determined by the Consultant. Although this amount is at the discretion of the Consultant, the Employer recommends that the Limit of the Cover should at least be R20,000,000.00 (twenty million Rand)**	**As *Consultant* deems necessary**
81.1	The *Employer* provides the following insurances	**Refer to Annexure A for details of insurance provided by the *Employer*.**	

82.1	The *Consultant*'s total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	**The total of the Prices**
	The *Consultant* provides these additional insurances.	**Professional Indemnity**
	1 Insurance against:	**Whatever the *Consultant* deems necessary including cover provided for payment of deductibles**
9	**Termination**	**There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.**
10	**Data for main Option clause**	
G	**Term Contract**	
21.4	The *Consultant* prepares forecasts of the total of the *expenses* at intervals of no longer than	**2 weeks.**
50.4	The *exchange rates* are those published in	**Standard Bank of South Africa Limited**
11	**Data for Option W1**	
W1.1	The *Adjudicator* is (Name)	**The person selected from the Eskom Panel of Adjudicators listed in Annexure C to this Contract Data by the Party intending to refer a dispute to him.**
W1.2(3)	The *adjudicator nominating body* is:	**the Chairman of the Joint Civils Division of the South African Institution of Civil Engineering or its successor body. (See www.jointcivils.co.za).**
W1.4(2)	The *tribunal* is:	**Arbitrator appointed in terms of the Arbitration Foundation of Southern Africa (AFSA) rules**
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	**Republic of South Africa in Gauteng**
	The person or organisation who will choose an arbitrator • if the Parties cannot agree a choice or • if the *arbitration procedure* does not state who selects an arbitrator, is	**the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.**
12	**Data for secondary Option clauses**	
X1	**Price adjustment for inflation**	

X1.1	The index is	CPI as published by Statistics SA
	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"}	The staff rates and expenses are fixed at contract date and are firm for 1 year.
X2	**Changes in the law**	
X2.1	The law of the project is	**South African laws**
X7	**Delay damages**	
X7.1	Delay damages for late Completion of the whole of the *services* are	**As per Task Order**
X9	**Transfer of rights**	***Consultant* hereby grants to the *Employer* an irrevocable, nonexclusive, royalty-free license to utilise *Consultant's* intellectual property to the extent necessary for the construction, operation, maintenance, repair or alteration of its facilities or that of a third party.**
X10	**The *Employer's Agent***	
X10.1	The *Employer's Agent* is	
	Name:	**Diane Maunatlala**
	Address	**Eskom Rotek industries, Lower Germiston Road, Rosherville Johannesburg 2020**
	The authority of the *Employer's Agent* is	To carry out all the actions of the *Employer*
X11	**Termination by the *Employer***	**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.**
X18	**Limitation of liability**	
X18.1	The *Consultant's* liability to the *Employer* for indirect or consequential loss is limited to:	**R0.00 (Zero Rand)**
X18.2	The *Consultant's* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to:	**The total of the Prices**
X18.3	The *end of liability date* is	**five years after Completion of the whole of the *services*.**
X20	**Key Performance Indicators**	
X20.1	**The Incentive schedule for Key Performance Indicators is in**	**As per Task Order**
X20.2	**A report of performance against each**	**As per Task Order**

	Key Performance Indicator is provided at intervals of	
Z	**The *Additional conditions of contract* are**	**Z1 to Z11 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 and the Electricity Distribution 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 substantially alter the composition of the joint venture, consortium, or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Consultant* in writing.	
Z3	**Change of Broad Based Black Economic Empowerment (B-BBEE) status**	
Z3.1	Where a change in the *Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant's* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change.	
Z3.2	The *Consultant* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*.	
Z3.3	Where, as a result, the *Consultant's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Consultant's* obligation to Provide the Services.	
Z3.4	Failure by the *Consultant* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *service*s in addition to the amounts due in terms of core clause 92.1.	
Z4	**Ethics**	
Z4.1	Any offer, payment, consideration, or benefit of any kind made by the *Consultant* which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Consultant's* obligation to Provide the Services or taking any other action as appropriate against the *Consultant* (including civil or criminal action).	
Z4.2	The *Employer* may terminate the *Consultant's* obligation to Provide the Services if the *Consultant* (or any member of the *Consultant* where the *Consultant* constitutes a joint	

	venture, consortium, or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices. Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Consultant* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.
Z4.3	If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *service*s in addition to the amounts due in terms of core clause 92.1.
Z5	**Confidentiality**
Z5.1	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.
Z5.2	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.*
Z5.3	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.
Z5.4	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*.
Z6	**Waiver and estoppel: Add to core clause 12.3:**
Z6.1	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.
Z7	**Provision of a Tax Invoice. Add to core clause 51**
Z7.1	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.
Z8	**Notifying compensation events**
Z8.1	Delete from the last sentence in core clause 61.3, "unless the *Employer* should have notified the event to the *Consultant* but did not."

Z9	***Employer's* limitation of liability**
Z9.1	The *Employer's* liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to R0.00 (zero Rand)
Z10	**Termination: Add to core clause 90.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":**
Z10.1	or had a judicial management order granted against it.
Z11	**Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)**
Z11.1	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.
Z11.2	If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *service*s in addition to the amounts due in terms of core clause 92.1.
Z12	**Transfer of Skills**
	The *Consultant,* within the Task Order execution period or part thereof, may be required from time to time and depending on the nature of the task to actively train candidate learners. The Skills transfer process may take place in the Consultant's offices, the *Employer's* offices or on site, as agreed with *the Employer.* During this period, the candidate will remain in the employ of the *Employer* or as otherwise agreed. The *Consultant* has the right to refuse a candidate in the event that the identified candidate is not qualified, committed, or for any other legitimate reason. The training program will be put in place by the *Employer.* The cost of the training shall be borne by the Employer.

Annexure A: Notes to Consultants

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

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

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

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

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

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

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

   In the case of contracts / packages within a project:

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

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

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

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

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

3. **Further information and full details of all Eskom provided policies and procedures may be obtained from:**

   http://www.eskom.co.za/live/content.php?Item_ID=9248

4. The Insurance which the *Consultant* is to provide against his liability for claims made against him arising out of his failure to use reasonable skill and care (first row in the Insurance Table of clause 81.1 in the PSC3) should also indemnify the *Consultant* for those sums which he could become legally liable to pay as damages arising from any claim first made against him and reported to Insurers sometime after Completion of the whole of the *service*s. Hence the *Consultant* needs to ensure that his cover is in place at least until all his liabilities under the

contract have expired. Such claims could arise out of any negligent act, error or omission committed or alleged to have been committed by the *Consultant* in the conduct of professional services in connection with the contract.

Annexure B: The *Employer*'s Panel of Adjudicators

The following persons listed in alphabetical order of their surname have indicated their willingness to be included in the Eskom Panel of Adjudicators. Their CV's may be obtained by using the contact details provided.

Name	Location	Contact details (phone & e mail)

C1.2b Contract Data

Part two - Data provided by the

Clause	Statement	Data		
10.1	The *Consultant* is (Name): Address Tel No. Fax No.			
11.2(3)	The *completion date* for the whole of the *services* is			
11.2(10)	The following matters will be included in the Risk Register	**As agreed between the *Employer's Agent* and the *Consultant***		
11.2(13)	The *staff rates* are:	**See Part C2.2**		
	Either complete here or cross refer to a schedule in Part C2.2			
25.2	The *Employer* provides access to the following persons, places, and things	**access to**		***access date***
		1	**ERI Sites/Offices**	**Contract Duration**
31.1	The programme identified in the Contract Data is	**As required and stated in the Task Order**		
50.3	The *expenses* stated by the *Consultant* are	**As per the price schedule**		

G	Term contract
11.2(25)	The task schedule is in part C2.2

PART 2: PRICING DATA

PSC3 Option G

Document reference	Title	No of pages
C2.1	Pricing instructions: Option G	**[2]**
C2.2	Staff rates, expenses.	**[2]**

C2.1 Pricing instructions: Option G

1. Pricing Schedule

1.2. Staff rates and expenses

Rate adjustments for inflation are based adjustments by using Option X1: Price adjustment for inflation.

Expenses associated with employing a staff member in providing the Services are listed separately.
As only the *expenses* listed may be claimed by the *Consultant*, all other cost to the *Consultant* associated with providing the Services are included within the *staff* rates.

1.3. The function of the Task Schedule

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

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

C2.2 Staff rates, expenses & the task schedule

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

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

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	**For the provision of a professional service for conducting SHE legal audit**	
	Total number of pages	

Constraints on how the *Consultant* Provides the Services.

Management meetings

Regular meetings of a general nature may be convened and chaired by the *Employer's Agent* from time to time.
Meetings of a specialist nature may be convened at times and locations to suit the Parties.
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.

Documentation control

Identification and communication

The Task Order will, where applicable, specify how documentation should be identified.

Invoicing

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

- 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.

Quality management

System requirements

The *Consultant* operate a quality management system as stated in the Scope and in the Task Order

Health and safety

The *Consultant* shall at all times comply with the health and safety requirements prescribed by law as they may apply to the services and to the health and safety requirements applicable at any of the *Employer's* sites.

Working on the *Employer's* property

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

The *Consultant* shall comply with all the *Employer's* site entry requirements and obtain at his cost all the necessary permits.

People restrictions, hours of work, conduct and records

The *Consultant* keeps detailed records of his people working on the *Employer's* property, including those of his *Sub Consultants.* The *Employer's Agent* shall have access to these records at any time.

Scope of Work

1. INTRODUCTION

Occupational Safety, health and environmental compliance audit examines the legal compliance of an organization or operation with applicable legislation regulations and licenses and other requirements to which the organization subscribes to. Compliance audits are applicable at project, site and organizational level and any other areas where the activities of the organization are taking place.
The legal compliance audit forms part of fulfilling the requirements of the organization to ISO 14000:2015, ISO 45001:2018 and ISO 9001:2015 management systems. This requires the services of a competent service provider to guide and advise on relevant occupational health, safety and environmental legislation.

2. Eskom Rotek Industries scope of operation

Eskom Rotek Industries is made up of five Product Groups / Business Units and Support Functions. Namely Bulk Material services, Turbo Gen Services, Transformer and Switchgear Service, Logistics Services and Construction Services. Support Services function is made up of Human capital, Finance, Risk and Strategy and Governance and Compliance.
ERI has a total staff compliment of approximately 6500 employees and 7000 contractors. The following provides a brief outline of service offerings.

2.1 Bulk Materials Services Product Group Outline

The group manages bulk material handling activities such as ash, coal and water which is handled from a central place. It offers a wide range of services from delivering coal via road to power stations, to provision and maintenance of coal conveyer. The following are Bulk Material Services' core product offerings.

2.1.2 Bulk Water Supply Infrastructure Operations

Contracted to manage the Komati Water Scheme, a network of pipes originating at the reservoir in Mpumalanga and supplying water to various Eskom power stations. Part of the core function is the mechanical and electrical maintenance of three Pump Stations through engineering processes.

2.1.3 Coal and Ash Handling Operations

These coal operations focus on operation, maintenance and reclaiming of coal stockyards; screening and crushing of coal; operation and maintenance of ash dumps; rehabilitation of ash dumps; moving of conveyor structures.

2.1.4 Power Station Maintenance

Bulk Material Services offers electrical and mechanical maintenance to coal fired power stations including maintenance on transformers, generators, and motors ensuring.

2.2 Turbo Gen Services

Turbo Gen Services is a turbine generator maintenance service provider. This division is uniquely positioned within the organisation because of its capability to refurbish large power generation turbines, generators and related equipment, with a special focus on the maintenance engineering of the turbine and the generator island.

2.2.1 Turbine and Generator Refurbishment

This process that takes place either on-site, or in the Turbo Gen Services Rosherville based workshops. The services offered refer to all maintenance, refurbishment, modification and repair of power generating and auxiliary equipment.

2.2.2 Power Station Maintenance

Turbo Gen Services manages turbine, generator and auxiliary specialised and first line maintenance on all Eskom power stations. Services include the executing of preventative and corrective maintenance, continuous standby assistance and call-out services on strategic plant.

2.2.3 Condition Monitoring

This service is rendered through condition monitoring by remote, on-line, as well as manual plant assessment.

2.3 Transformer and Switchgear Services

Transformer and Switchgear Services, a division of Eskom Rotek Industries, offers maintenance, refurbishment, repair and modification services for transformers and switchgear, both on site and at workshop facilities in Rosherville.

2.3.1 Transformer Services

On-site transformer services range from loading and off-loading, transporting, installation and commissioning, treatment of oil with mobile oil plants and performing various transformer tests together with technical assessments to determine the condition and general health of the transformer. Testing, servicing, repairs and replacement is performed in the field on tap-changers, bushings and auxiliary equipment.

2.3.2 Switchgear Services

Switchgear maintenance involves work on all types of circuit-breakers, disconnectors and isolators, both AC and DC equipment of voltages from 11kV to 765kV. Switchgear services include installation and removal, routine maintenance, as well as refurbishment and repairs on site.

2.3.3 Engineering Services

Transformer and switchgear engineering services perform investigations into plant failure or poor performance; advise on repair strategies and provide cost versus benefit analyses.

2.4 Logistics Services Product Group Outline

Logistics Services offers road transport, materials handling, warehousing and road logistics services. These include the transport of boilers and turbines to and from power stations, transformers and switchgear from substations, poles and pylons to remote sites, as well as all power generation and distribution equipment.

2.4.1 Transport Services

Logistics Services ship anything from 1 kg to 500 tons anywhere in South Africa. It operates from its main yard in Rosherville, but has a wide network of depots in Johannesburg, Polokwane, Durban, Richards Bay, Cape Town, Middelburg and East London.

2.4.2 Materials Handling and Consolidation

In addition to transport services, Logistics Services offers the consolidation or breaking of bulk materials, not only for full utilisation of loads. The division also offers warehouse management services to its clients.

2.4.3 Waste Management

The management, collection, transport and disposal of waste as per the client's requirements,

2.5 Construction Services Product Group Outline

Construction Services (CS) specializes in both civil and electrical construction, from constructing conveyor systems at coal stockpiles; to terracing and reticulation in preparation for building new power stations; building and cabling sub-stations and erecting towers for power lines. The following are CS core product offerings:

2.5.1 Infrastructure Construction

CS constructs new substations of up to 765 kV and upgrade existing substations of all voltages. With a specialist road building team, CS construct all types of roads from gravel to regional and provincial black topped roads.

2.5.2 Cable Installation and Green Power Services

The service includes the installation and maintenance of underground cables in residential areas with specialist teams having been developed to operate under these unique conditions.

2.5.3 Power Line Construction and Electrification

Eskom Rotek Industries Construction Services is involved with installation of rural overhead reticulation networks. This includes erecting of wood or concrete pole structures; stringing of conductors; installation of all auxiliary equipment; and installation of meters and airduct in houses.

2.6 Support Services

The Support Services entails Business unit with specialised knowledge and expertise and provides standardised and consistent services to the whole organisation or the product groups. The support services are made up of: Human Capital Management, Risk & Strategy, Information management, Investigations and Loss control, and Finance, Commercial & Shared Services, Governance and Compliance. These business units perform centralised and sustained supporting activities in order for the operational areas to focus on the business at hand.

3. Scope of Work

3.1 The SHE legal audit will cover:

Legal & Other Requirements

a) Review of compliance all applicable OHS and environmental legislation, regulations, standards, permits, and licenses as per the scope of the department/site/project.
b) Verification of recent updates, applicability, and alignment with business activities
c) The final audit sample will be agreed upon between the ERI and the service provider before the commencement of the contract.

3.2 ISO 45001:2018 (OHSMS) Requirements

a) Legal and other requirements identification (Clause 6.1.3).
b) Evaluation of compliance and evidence of compliance (Clause 9.1.2).
c) Operational controls for worker health and safety.

3.4 ISO 14001:2015 (EMS) Requirements

a) Compliance obligations (Clause 6.1.3).
b) Evidence of compliance evaluation (Clause 9.1.2).
c) Waste management, emissions control, and resource use compliance.
d) Permit and license conditions related to environmental management.

4.Deliverables

4.1 Audit Plan

a) Detailing timelines, sites to be visited, and key stakeholders to be engaged.

4.2 Audit Report /Checklist

a) Based on ISO 45001:2018 & ISO 14001:2015 legal and other compliance requirements.

4.3 Compliance Report

a) Detailed findings indicating compliant, partially compliant, and non-compliant areas.
b) Risk rating of findings as per the ERI auditing procedure.
c) Recommendations and required corrective actions.
d) Audit findings tracking register.
e) Close-Out Presentation: Present key findings and improvement actions to ERI management per site.

Note: The auditors will be expected to travel to ERI sites as per the final agreed scope.

4. Methodology

Document Review: Legal register, permits, risk assessments, procedures, records of compliance evaluation.
Onsite Verification: Physical inspection of facilities, observation of activities, sampling where necessary.
Interviews: Engagement with SHEQ personnel, line managers, and employees to confirm implementation.
Compliance Evaluation: Compare current practices to legal and ISO requirement.

5. Minimum qualifications of auditor(s)

The auditor (s) shall have the following qualification as a minimum.
Bachelor of Laws LLB, B Tech Degree / B degree or equivalent in Environmental Health/Environmental management/Safety management and 10 yrs experience in implementing and managing OHS systems and programmes.
SHE legislation training will be advantageous.

See scope of work for full details regarding the sites to be audited.

CONFIDENTIALITY AGREEMENT

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

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

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

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

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain
confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the 'Subject Information') may include but not be limited to the parties' inventions, trade secrets, knowledge, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.

2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other.

3. The parties each agree that they shall maintain in secrecy in accordance with the terms of this Agreement all the Subject Information each party receives (the 'Receiving Party') from the other party (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.

4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.

5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information

it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.

6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes, and other writings prepared by the parties, or their advisors, based on the Subject Information of each other, shall be destroyed, and such destruction shall be certified in writing by an authorized officer supervising such destruction.

7. If a party, with the written consent of the Proprietor of Subject Information, discloses any Subject Information received from its Proprietor to any third party, it shall do so only under a secrecy agreement having a scope similar to and which is consistent with this Agreement, and the disclosing party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party

8. Each party agrees that it shall not, while and for so long as it is obligated to maintain Subject Information in secrecy, use for its own benefit, or for the benefit of others or exploit, commercialize, develop, test promote, sell, lease, market or otherwise dispose of any products or services using, incorporating, or relying on Subject Information received from its Proprietor without the written consent of the Proprietor.

9. The obligations of the party receiving Subject Information pursuant to this Agreement shall be effective with respect of each item of Subject Information for a term of five (5) years from the date of submission of the Subject Information to the Receiving Party by its Proprietor unless the Proprietor agrees otherwise in writing.

10. For purposes of this Agreement, each party shall include (to the extent applicable) the officers, directors, employees, agents, representatives, attorneys, joint ventures, partnerships, affiliates, subsidiaries, and divisions of the party, and any other entity or entities which such party controls or which controls it, and, further, shall include any transferee, successor and assign of the assets of the party.

11. This Agreement shall be construed (both as to validity and performance) and enforced in accordance with, and governed by, the laws of Republic of South Africa.

12. Neither this Agreement nor the exchange of Subject Information between the parties shall create or be relied on by either party as a basis for creating any license between the parties under any patent, or other industrial or intellectual property rights of the Proprietor of the Subject Information, or any other license between the parties in the absence of any express written license agreement between them

13. The parties agree that no contract or agreement providing for a transaction shall be deemed to exist between them unless and until a definitive agreement has been executed and delivered, the parties hereby waive, in advance, any claim (including, without limitation, breach of contract) in connection with a possible transaction with each other unless and until they shall have entered into a definitive agreement. The parties also agree that unless and until a definitive agreement between them has been executed and delivered, neither party has any legal obligation of any kind whatsoever with respect to any such transaction by virtue of this Agreement or any other written or oral expression with respect to such transaction, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this paragraph, the term 'definitive agreement;' does not include an executed letter of intent, memorandum of understanding.

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