NEC3 Professional Services Contract (PSC3)

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

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

for **GC Kusile SHE Legal Compliance Audit Services Provider**

Contents:		**No of pages**
Part C1	**Agreements & Contract Data**	**[●]**
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CONTRACT No. **[Insert at award stage]**

PART C1: AGREEMENTS & CONTRACT DATA

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

C1.1 Form of Offer & Acceptance

Offer

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

Kusile SHE Legal Compliance Audit Service Provider

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	(Not Applicable – Cost reimbursable)
Value Added Tax @ 15% is	
The offered total of the Prices inclusive of VAT is	
(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*

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***
		X13: **Performance bond**
		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 *Employer* is (Name):	**Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa**
	Address	**Eskom Holdings Soc Ltd** **R545 Kendal/Balmoral Rd** **Haartebeesfontein Farm** **Witbank** **Postnet Suite 46** **Emalahleni** **1035** **South Africa**
	Tel No.	**[●] (036) 342 3025**
	Fax No.	**[●] 086 446 4071**

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

11.2(9)	The *services* are	**Provision of SHE Legal Compliance Audit service for Kusile Power Station Project on behalf of Group Capital Division (GCD)**
11.2(10)	The following matters will be included in the Risk Register	**a) Unavailability of Key People** **b) Skill or qualification gaps** **c) High turnover or staffing shortages** **d) Delays in mobilising staff** **e) *Consultant* initiated personnel changes** **f) Industrial action or labour disputes** **g) Health & safety incidents involving personnel** **h) Personnel non-compliance or misconduct** **i) A Risk Register will be compiled prior to the commencement of each task order.**
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	**48 Hours**
13.6	The *period for retention* is	**1 (one) year following Completion or earlier termination.**
2	**The Parties' main responsibilities**	
25.2	The *Employer* provides access to the following persons, places and things	**Not applicable**
3	**Time**	
31.2	The *starting date* is.	**Upon signing of the contract**
11.2(3)	The *completion date* for the whole of the *services* is.	**48 Months from the *starting date***
11.2(6)	The *key date*s and the *condition*s to be met are:	***Condition* to be met** / ***key date***
		1 Acceptance of Contract — **TBA**
		2 Submission of Mandatory and Supplementary information and documentation — **TBA**
		3 Issuing of Task Order — **TBA (on an ongoing basis_**
31.1	The *Consultant* is to submit a first programme for acceptance within	**2 (Two) weeks of receipt of task order**
32.2	The *Consultant* submits revised programmes at intervals no longer than	**1 (one) week.**
4	**Quality**	

40.2	The quality policy statement and quality plan are provided within	**1 (one) week of the Contract Date.**	
42.2	The *defects date* is	**52 weeks after Completion of the whole of the *service*s.**	
5	**Payment**		
50.1	The *assessment interval* is	**between the 24th and 25th day of each successive month.**	
50.3	The *expenses* stated by the *Employer* are	**Item**	**Amount**
	Accommodation Expenses	**Sum**	**As per Eskom Travel Policy 32-1042**
	Travel Reimbursements	**Per km**	**As per Eskom Travel Policy 32-1042**
51.1	The period within which payments are made is	**8 (Eight) weeks.**	
51.2	The *currency of this contract* is the	**South African Rand**	

51.5 The *interest rate* is

i. For South African Rand (ZAR), it is the publicly quoted South African Rand Overnight Index Average (ZARONIA) rate published by the South African Reserve Bank.

ii. For United States Dollar (USD), it is the Secured Overnight Financing Rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate), and depending on the period that interest is incurred, the 30-day, 90-day or 180-day average SOFR (using the simple compounding convention) will apply and, for periods longer than 180 days, interest will be based on the extended period.

iii. For other currencies, it is the publicly quoted risk-free reference rate as published by the applicable Central Bank of the applicable currency,

or, if this is not available,

the policy rate as published by the applicable Central Bank at the time for amounts due in other currencies 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 South African Reserve Bank, 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**	**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 *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**
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 Time Charge and *expenses* at intervals no longer than	**Four (4) weeks.**
50.4	The *exchange rates* are those published in	**N/A.**
11	**Data for Option W1**	
W1.1	The *Adjudicator* is	**the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).**
	Address	**TBA**
	Tel No.	**TBA**
	Fax No.	**TBA**
	e-mail	**TBA**
W1.2(3)	The *adjudicator nominating body* is:	**the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See www.ice-sa.org.za).**
W1.4(2)	The *tribunal* is:	**arbitration**
W1.4(5)	The *arbitration procedure* is	**the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.**
	The place where arbitration is to be held is	**Johannesburg South Africa**

	The person or organisation who will choose an arbitrator • if the Parties cannot agree a choice or • if the *arbitration procedure* does not state who selects an arbitrator, is	**the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.**
12	**Data for secondary Option clauses**	
X1	**Price adjustment for inflation**	
X1.1	The index is	- **Indices to be updated as per accepted offer.** - **15% Non-Adjustable Constant**
	The staff rates are	**Fixed at the Contract Date for the first 12 months and are not variable with changes in salary paid to individuals. After the first 12 months CPA will be calculated as per above indices**
X2	**Changes in the law**	
X2.1	The law of the project is	**The current and applicable law in South Africa shall apply in this contract.**
X7	**Delay damages**	
X7.1	Delay damages for late Completion of the whole of the *services* are	**R5 000 per day per task order**
X9	**Transfer of rights**	**There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.**
X10	**The *Employer's Agent***	
X10.1	The *Employer's Agent* is	
	Name:	**TBA**
	Address	**TBA**
	The authority of the *Employer's Agent* is	**TBA**
X11	**Termination by the *Employer***	**Delete X11.2 and replace with the following "The amount due on termination includes an amount due assessed as for normal payments"**
X13	**Performance bond**	
X13.1	The amount of the performance bond is	**10% of the contract price**
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	**one year after Completion of the whole of the *services*/task order.**
X20	**Key Performance Indicators (not used when Option X12 also applies)**	
X20.1	The *incentive schedule* for Key Performance Indicators is in	**ANNEXURE A**
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	**TBA at issuance of each Task Order**
Z	**The *Additional conditions of contract* are**	**Z1 to Z22 always apply.**

Z1 Cession delegation and assignment

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

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

Z2 Joint ventures

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

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

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

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

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

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

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

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

Z4 Confidentiality

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

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

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

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

Z5 Waiver and estoppel: Add to core clause 12.3:

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

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

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

Z7 Notifying compensation events

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

Z8 *Employer's* limitation of liability

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

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

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

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

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

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

Z11 Ethics

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

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

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

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

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

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

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

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

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

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

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

Z11.3 If the *Employer* terminates the *Consultant*'s obligation to Provide the Services for this reason,

the amounts due on termination are those intended in core clauses 92.1 and 92.2.

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

Z12 Insurance

Z12.1 Replace core clause 81 with the following:

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

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

INSURANCE TABLE A

Insurance against	**Minimum amount of cover**	**For the period following Completion of the whole of the *services* or earlier termination**
Liability of the *Consultant* for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the *services*	Whatever the Consultant deems necessary for any occurrence or series of occurrences arising out of one event without limit to the number of claims.	12 months after contract completion or termination
Liability for death of or bodily injury to a person (not an employee of the *Consultant*) or loss of or damage to property resulting from an action or failure to take action by the *Consultant*	**Loss of or damage to property:** The replacement cost where not covered by the *Employer*'s insurance The *Employer*'s policy deductible, as at Contract Date, where covered by the *Employer*'s insurance **Bodily injury to or death of a person:** The amount required by the applicable law.	12 months after contract completion or termination
Liability for death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law	12 months after contract completion or termination

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

SANAS means the South African National Accreditation System.

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

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

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

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

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

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

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

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

Z18 Security Clearance/ Criminal Checks

Z18.1 The Consultant and its subcontractors implement risk and security management processes and measures to mitigate any threats against any premises, installations or sites, systems, or information of the Employer with only persons with criminal verification record security clearance certificates being given access after verification of these and identifying documents by the Employer's security system.

Z18.2 The Consultant provides, at the Consultant's cost, to the Employer, criminal verification record security clearance certificates for each person the Consultant or its subcontractors requires to access any premises, installations or sites, systems, or information of the Employer, with copies of their identifying documents, such as passports, before allowed such access by the Employer. The Employer's refusal to allow access to premises, installations or site/s, systems or information is at the Employer's sole discretion and is not a compensation event.

Z18.3 The criminal verification record security clearance certificates provided are to have been issued by a service provider which is to be a reputable screening company accredited by the South African Police Services, are to be no older than four weeks since issue and valid for as long as each person is required to access premises, installations or sites, systems or information. The Employer may require updated certificates and identifying documents every 26 to 52 weeks, subject to safety and security concerns and the risk rating of the works or services undertaken and/or premises, installations or sites, systems or information.

Z18.4 If any such criminal verification record security clearance certificates is cancelled, withdrawn, invalidated, amended, or expires, or a criminal conviction is noted against any person requiring access, even if an appeal against the criminal conviction has been noted, the Employer may instruct the Consultant to ensure that such person leaves the premises, installations or site/s and is blocked from systems and information and the giving of this instruction is not a compensation event.

Z19 Health, safety, environmental, professional and other legal requirements
Add to main responsibilities in section 2 of conditions of contract:

Z19.1 The Consultant acts in accordance with all applicable law and regulations and rules, guidelines, policies, standards, directives, occupational health and safety and environmental specifications, requirements and procedures otherwise provided for under this contract and ensures that subcontractors, employees and others under the Consultant's direction and control, likewise, observe these and comply.

Z19.2 The Consultant undertakes all reasonable and proper precautions to ensure the health and safety of persons and to protect the environment in and about the Affected Property or affected by the provision or execution of the services.

Z19.3 The Consultant warrants that the Prices, at the date when this contract came into existence, sufficiently provides for proper compliance with all applicable law and regulations and rules, guidelines and procedures of the law of the contact, and otherwise provided for under this contract, including resourcing and appointment of professionally registered persons as required, and for

properly ensuring the health and safety of persons and to protect the environment in and about or affected by the provision of the services.

Z19.4 Where applicable, the Consultant may not commence with the provision or execution of the services until the Consultant's Health and Safety file has been approved by the professional construction health and safety agent notified by Employer, and accepts that the Employer may appoint the Consultant as the "Principal Contractor" (as defined and provided for under the Construction Regulations (promulgated under the Occupational Health & Safety Act 85 of 1993) for the Affected Property.

Z20 Provision of a tax invoice, payment, and interest
Add the following to section 5 of the conditions of contract:

Z20.1 The Consultant (if registered in South Africa in terms of the Companies Act) complies with the requirements of the Value Added Tax Act, (Act 89 of 1991 (as amended)) and includes the Employer's VAT number 4740101508 on each invoice submitted for payment.

Z20.2 Within one week of receiving a payment certificate from the Employer's acceptance or correction of the Consultant's assessment or application for payment, the Consultant provides the Employer with a tax invoice in the form required by the law of the contract, and this contract, including in accordance with any requirements and procedures stated in the Scope of Works Information, and showing the amount due for payment equal to that stated in the payment certificate, or the accepted or corrected assessment or application for payment.

Z20.3 If the Consultant does not provide a tax invoice in accordance with this Z-clause, and by the time required by this contract, the time by when the Employer is to make a payment, and the date from which interest is assessed for the certified, accepted or corrected amount, is extended by a period equal in time to the delayed submission of such an invoice.

Z20.4 The Consultant's provision of a tax invoice reflecting the certified, accepted, or corrected amount does not affect the Parties' rights in terms of this contract, including with respect to disputed amounts.

Z20.5 The Consultant at all times complies with Employer's Vendor Management System requirements to ensure invoices are processed and paid timeously. It is the Consultant's responsibility to ensure that the Employer is informed of any changes in its organisation that would affect its vendor status, and to ensure that the necessary actions and due diligences are taken to ensure compliance with the Employer's Vendor Management System. The Employer will not be liable for a delay in payment of invoices as a result of the Consultant's non-compliant status on the Employer's Vendor Management System and no interest will be claimable in this instance.

Z22 Aggregate Liability for Penalties and Termination

Z22.1 If the limits for accumulated damages or other penalties are not otherwise stated in this contract, the total aggregate liability is limited to 10% of the offered total of the Prices when this contract came into existence.

Z22.2 If the amount due for accumulated damages or other penalties reaches the limits stated in this contract, without further notification of default, the Employer may terminate the Consultant's obligation to Provide the Services.

Z22.3 If the Consultant's obligation to Provide the Services is terminated for this reason, the procedure and amount due on termination are those intended as if the Employer has terminated for a reason due to the Consultant's default.

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 *Consultant* is (Name): Address Tel No. Fax No.	
22.1	The *key people* are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities: Qualifications: Experience:	
Only if required		**CV's (and further *key persons* data including CVs) are appended to Tender Schedule entitled .**
11.2(3)	The *completion date* for the whole of the *services* is	**5 months after *Starting date***

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

11.2(10)	The following matters will be included in the Risk Register	**A Risk Register will be compiled prior to the commencement of each task order.**	
11.2(13)	The *staff rates* are:	**name/designation**	**rate**
	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** **1** **2** **3**	***access date***
31.1	The programme identified in the Contract Data is	**To be submitted after issuance of Task Order.**	
50.3	The *expenses* stated by the *Consultant* are	**item**	**amount**
G	**Term contract**		
11.2(25)	The *task schedule* is in		

PART 2: PRICING DATA

PSC3 Option G

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

C2.1 Pricing assumptions: Option G

1. How work is priced and assessed for payment

From Option G: Term contract

Identified and defined terms	11 11.2	(17) The Price for Services Provided to Date is, for each Task, the total of • the Time Charge for work which has been completed on time based items on the Task Schedule and • a proportion of the lump sum price for each other item on the Task Schedule which is the proportion of work completed on that item. (20) The Prices are • the Time Charge for items described as time based on the Task Schedule and • the lump sum price in the Task Schedule for each other item.

From the Core Clauses:

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

and

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

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

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

2. Staff rates and expenses

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

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

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

Rate adjustment for inflation, if necessary, will be based on using Option X1: Price adjustment for inflation. See pages 13 and 14 of the PSC3 Guidance Notes.

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

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

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

3. The function of the Task Schedule

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

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

C2.2 Staff rates, expenses & the task schedule

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

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

1. The *staff rates* are:

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

1) Resources are to be claimed at an hourly rate, where resources shall be allocated to the project on a full-time basis, time schedule shall be 8 hours per day, 5 days per week over 4 weeks per month totalling 160 working hours per month.
2) Should there be a need for overtime, the applicable rate shall be 1.5 times standard rate for *Employer* approved after-hours work and 2 times standard rate for *Employer* approved weekend and South African public holidays worked.
3) Description and explanation of rates to be provided.
4) Definition of seniority levels (as a minimum):
    a) Resource Category: Manager
        I. Staff Category: Environmental Managers.
        II. Experience range, for each level:
            - Intermediate - 5 to 10 years
            - Senior - 10 to 15 years
            - Expert - 15 to 20 years
            - Specialist – more than 20 years

        III. Key attributes:
            - Relevant tertiary qualification
            - Professional registration (where applicable such as SACNASP EAPASA)
            - Relevant skills and knowledge
            - Applicable discipline and industry knowledge

    b) Resource Category: Environmental Specialist
        I. Staff Category: Master Environmental Specialists (Technical).
        II. Experience range, for each level:
            - Intermediate - 5 to 10 years
            - Senior - 10 to 15 years
            - Expert - 15 to 20 years
            - Specialist – more than 20 years

III. Key attributes:
- Relevant tertiary qualification
- Professional registration (where applicable such as SACNASP EAPASA)
- Relevant skills and knowledge
- Applicable industry knowledge

c) Resource Category: Environmental Advisor
I. Staff Category: Chief/Senior Environmental Advisors (Technical).
II. Experience range, for each level:
- Intermediate - 5 to 10 years
- Senior - 10 to 15 years
- Expert - 15 to 20 years
- Specialist – more than 20 years

III. Key attributes:
- Relevant tertiary qualification
- Professional registration (where applicable such as SACNASP EAPASA)
- Relevant skills and knowledge
- Applicable industry knowledge

d) Resource Category: Attorney
I. Staff Category: Attorneys with specialisation in Environmental issues
II. Experience range, for each level:
- Intermediate - 5 to 10 years
- Senior - 10 to 15 years
- Expert - 15 to 20 years
- Specialist – more than 20 years

III. Key attributes:
- Relevant tertiary qualification
- Professional registration (Legal)
- Relevant skills and knowledge
- Applicable industry knowledge

e) Proposals including CV's must be provided before appointment and the relevant General Manager of the department will be required to sign off on evaluation reports. Eskom reserves right of refusal should the proposed resource be found to be unsuitable. Eskom management may request interviews with selected individuals prior to task order contract award.

2. The *expenses* are:

element	**Unit of measure**	**Rate**
Fuel	per Kilometre	R 3.60
Domestic hotel accommodation (inclusive of VAT and Tourism Levy)	per Night	3 star – maximum of: R1 190.00 – room only R1 210.00 – room and breakfast R1 530.00 – room, break fast and dinner
Car Rental Vehicle Category	Group B	Group B or an equivalent class. Where a different class of vehicle is required for a particular terrain or to cater for the special needs of travel, this must be signed off by the appointed contracts manager.

Meal allowance (only applicable for meals not provided by the accommodation)	Breakfast Lunch Dinner	R100.00 R158.50 R158.50 *Not applicable if included in room fee.
Air travel	Domestic and International	Economy class

Cost element	**Unit of measure**	**Rate**
Fuel	per Kilometre	R 3.60
Domestic hotel accommodation (inclusive of VAT and Tourism Levy)	per Night	3 star – maximum of: R1 190.00 – room only R1 210.00 – room and breakfast R1 530.00 – room, break fast and dinner
Car Rental Vehicle Category	Group B	Group B or an equivalent class. Where a different class of vehicle is required for a particular terrain or to cater for the special needs of travel, this must be signed off by the appointed contracts manager.
Meal allowance (only applicable for meals not provided by the accommodation)	Breakfast Lunch Dinner	R100.00 R158.50 R158.50 *Not applicable if included in room fee.
Air travel	Domestic and International	Economy class

Travel requirements:

- Only Employer sanctioned travel will be paid for.
- Eskom Travel Policy (32-1042) requirements shall apply as below but not limited to:
    a) For flights, three quotes must be supplied and the cheapest is to be booked.
    b) For Hired vehicles, only vehicles from category group B (compact or medium sized vehicle category) is to be booked.
    c) Accommodation requests shall be managed as per Eskom Travel Policy (32-1042).

3. The task schedule

The following format could be used:

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

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

PART 3: SCOPE OF WORK

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

C3.1: EMPLOYER'S SCOPE

Refer to Employer's Scope of Work under Annexure A.

1 CONSTRAINTS ON HOW THE *CONSULTANT* PROVIDES THE SERVICES.

1.1 Management meetings

The Employer's Agent will schedule and communicate the meetings as required for work to be caried out under each Task Order. Regular meetings of a general nature will be convened and chaired by the *Employer's Agent* as follows, at a minimum:

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	Weekly on _____ at ___	TBA	Employer's Agent, Consultant and other relevant invitees
Overall contract progress and feedback	Monthly on _____ at ___	TBA	*Employer's Agent* , *Consultant* and other relevant invitees
Technical Meetings	Fortnightly on _____at ____	TBA	Employer's Agent, Consultant and other relevant invitees

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.

a) The *Consultant* and Eskom will review the deliverables in meetings organized and scheduled by the *Consultant*.

b) The *Consultant* ensures that all follow-up actions are carried out within the time stipulated.

c) Eskom may, in addition to the scheduled review meetings indicated, request additional reviews.

d) Eskom may involve independent third parties in any of the review meetings.

1.2 *Consultant*'s *key persons*

The Consultant shall appoint a Project Manager / Team Leader as a key person for the contract who:

a) Functions as single point of contact between Eskom and the Consultant.
b) Plans and manages the delivery of the services in accordance with the contract requirements.
c) Acting with care and diligence: ensuring that all duties are carried out with due care, skill and diligence
d) Compliance with regulations: adhering to the standards and rules set by legislation
e) Fulfilling contractual obligations: meeting the terms of contracts and agreements
f) Management and oversight

The Consultant shall submit to the Employer an organogram for the provision of these services, with contact details and line of communication.

1.3 Provision of bonds and guarantees

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

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

1.4 Documentation control and retention

1.4.1 Identification and communication

All documents, except data sheets, conform to the formatting standards as listed in paragraph Document and data numbering. Any deviation from this format is to be agreed to in writing by the Employer.
Where no standard is prescribed, the Consultant proposes the format and contents to the Employer for review and acceptance.
All deliverable data are expressed in SI (metric) units of measurement.

Document Format
Document and data numbering
A unique Identification Code Number is assigned to each document or data so that it can be:

a) correctly associated with its related data and items;
b) referred to precisely; and
c) retrieved when necessary.

Revision identifiers
Documents and data have revision identifiers to indicate the current revision status.

Document identification
Each document provides the data, as listed below, to properly identify the document. The following are indicated on each page of a document:

a) Company Name
b) Proprietary Classification
c) Document Title
d) Document Number
e) 'Revision' – document revision identifier
f) Date
g) 'Page number' of 'number of pages'
h) Each page of a document, including all attachments, is numbered consecutively from the first to the last page.

Amendment history
Each document includes an amendment history that indicates the following for each revision:

a) Revision identifier.
b) Date (either release date or effective date).
c) Preparer.

Approval signatures
Each document includes the names and signatures of the preparer, reviewer and approver.

Document Copies And Software Formats

Documents for interim reviews are submitted in Adobe PDF format and in Microsoft format. All final versions of documents are submitted as one hard (paper) copy and on a USB drive (in Adobe PDF format and in Microsoft format) which is uniquely identified on it as to its contents.

1.4.2 Retention of documents

Copies of documents, records, calculations and associated raw data are stored in a format that can be read by the user, or converted to human readable form, regardless of the media used. Copies are stored in such a way that they remain legible, readily identifiable and retrievable for the entire lifetime of the services and for at least five years after.

1.5 Invoicing and payment

The following details shall be shown on or attached to each Invoice to show how the amount due has been assessed:
Bill of Items, with unit of measure, quantity, rate and total per item
Task Order Number and Description
Dates/period when services were delivered
Location or place where the services were rendered

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)

The invoice submission must be in compliance with Clause Z20 under Contract Data.

a) Invoice to be submitted with supporting evidence such as:
    1. Travel claims: GPS/ Map image of the distance claimed.
    2. Flights: a boarding pass, a flight confirmation or itinerary, or a receipt from the airline
    3. Accommodation: accommodation invoice and proof of payment.
    4. Car hire invoice.
    5. Billable hours: shall be claimed as per time tracking system evidence supplied. As the Employer is only liable for hours of work related to the scope of this contract.
    6. Travel disbursements will be assessed and paid as per Eskom business travel management policy 32-1042
b) Invoices that are submitted without the correct supporting evidence will be rejected and returned for clarification. Payment periods will recommence upon receipt of a valid and complete invoice with all required supporting documents.
c) The *Employer* reserves the right to request additional supporting documentation for any invoiced amount and to withhold payment for any item not adequately evidenced, pending resolution.

Procedures for invoice submission and payment will be confirmed by the Employer's Agent.

1.6 Records and forecasting of *expenses*

a) The *Consultant* shall maintain accurate, complete and up to date records of all expenses incurred in connection with the provision of services under this contract.
b) Only time charge, travel costs will be reimbursed as per Eskom's business travel policy 32-1042
c) All expense records shall be supported by appropriate documentation such as time sheets, invoices and payroll summaries shall be made available to the *Employer* upon request.
d) The *Consultant* shall prepare and submit to the *Employer* a monthly forecast of the expected expenses for the duration of the services including staffing levels, rates or other costs elements in line with the reimbursable costs on the pricelist.
e) Forecasts shall include:
    I. Actual expenses incurred to date
    II. Projected expenses for the remaining period of the service
    III. Explanations for any material variances from previous forecasts or budgeted costs

f) Retention of all expense related records shall be as per clause 13.6.
g) The invoices/receipts for all claimed expenses to be reimbursed at cost. In addition, the following must be:
    I. When claiming km travelled the requirements of the Eskom Travel Procedure 32-1042 is adhered to (providing of google maps for the route travelled, deducted the home-work home km from the total km's travelled etc.).
    II. All travel and accommodation need to be pre-approved by the *Employer*. For approval, the planned travel and booking information requirements (as per 32-1042) are to be submitted timeously to the *Employer* for approval.

1.7 Records and forecasting of the Time Charge

a) The *Consultant* shall maintain accurate and verifiable records of time worked by all personnel engaged in the delivery of services under this contract.
b) These records shall include as a minimum, the name and surname of the individual, their role, dates and hours worked, location and the scope to which the time was charged.
c) Time records shall be supported by appropriately authorised timesheets or electronic time-logging systems, and shall be submitted to the *Employer* as supporting evidence for payment.
d) The *Consultant* shall submit to the *Employer* on a monthly basis, a forecast of the time charges for the remainder of the contract period. The forecast shall include:
    I. Cumulative actual time charges to date.
    II. Forecasted time charges to Completion
    III. Any known or anticipate changes in staffing, hours or rates that may impact total time-based costs.
    IV. The *Consultant* shall immediately notify the *Employer* in writing of any significant variance (+- 10%) between the forecasted time charge and the previously agreed budget.
e) The *Employer* shall have the right to inspect and audit the *Consultant*'s time records and forecasting methodology upon reasonable notice during normal working hours.
f) The *Consultant* shall retain all time charge records and supporting documentation as per clause 13.6.
g) Working hours are as per the site agreements
h) Overtime is billable for hours more than hours 8 worked a day at the normal rate, provided it has been pre-approved by the assigned manager
i) The Employer will remunerate 50% of the time the Consultant spends travelling, whereas the project site will be the base for the Consultant. Travelling within a 50km radius from base will not be reimbursable.

1.8 Contract change management

Either of the contracted parties can initiate the process for changes to be enacted on the contract. The initiating party shall officially notify the other party, about the intention to initiate change(s) in the contract. Such notification shall be in writing and issued by the authorised or duly delegated official of either of the parties.

The Contract change process shall be managed as follows:
a) Submission of the notification to request a change in the contract
b) Review of the request to change the contract
c) Meeting to discuss the proposed change(s) to the contract, and the implications thereof
d) Recording and circulating the meeting minutes for adoption
e) Submission of the contract change request to the relevant authorities for consideration
f) Presentation of the change request at the relevant committees for approval, as applicable
g) Communicating the outcomes of the contract change request submission/presentation
h) Preparing and issuing the amended contract or addendum to the contract, based on the approved changes, as applicable
i) Signing of the amended contract by the Consultant and the Employer
j) Record the contract change and close

1.9 Inclusions in the programme

In addition to the requirements defined within 31.2, the *Consultant* will need to adhere to the following:

a) The Work Breakdown Structure (WBS) shall be deliverable orientated and aligned to the activity schedule.
b) The *Consultant* shall provide the detailed WBS to reflect the entire scope of the project that will be used to develop the Integrated Work Breakdown Structure (IWBS).
c) The IWBS for the project shall be based on the final contracted scope of work and will be jointly developed by the Employer's Agent and the *Consultant* and will be agreed and finalised with the *Consultant* within 30 calendar days after contract award.
d) The *Consultant* shall adhere to the IWBS. Any required changes will be submitted as a project change request and will be managed via the Contract Change Management approval process.
e) The programme will be managed in Primavera P6 15.2 or latest version.
f) The programme must be based on the agreed WBS and the activities must be coded according to the agreed IWBS.
g) The activities shall be deliverable based.
h) The method of programming to be used is the CPM (Critical Path Method) and shall be maintained throughout the monitoring and controlling and close out of the contract.
i) The *Consultant* programme shall be a resource loaded programme (to be submitted at tender phase for acceptance).
j) The progress measurements method will be agreed with the *Consultant*.
k) The payments shall be linked to all preceding activities that demonstrate full completion of the activities and shall be aligned with the Forecast Rate of Invoicing (FRI) and shall be linked into the succeeding activities.
l) Once the programme has been accepted by the Employer's Agent (i.e. cost loaded according to the pricing structure), the programme shall be baselined.
m) The accepted programme sequence will be closely monitored and out of sequence works shall be kept to the minimum and shall timeously submitted for acceptance by the Employer's Agent.
n) The *Consultant* shall submit the programme technical checklist for ensuring that the programme meets best practice programming (14-point health check) criteria and supports the Critical Path Method (CPM).
o) The programme must contain sufficient detail to be able to apply the Earned Value Methodology and to supply the Employer with the relevant data as required by this specification.
p) Activities shall not exceed more than thirty (30) days in duration shall be broken down into detailed sub-tasks.
q) The Project Calendar shall be based on 5 day working week or as agreed between the Employer's Agent and *Consultant*.
r) Sigmoid Curve (S-Curve) on baseline, progress and forecast to be submitted with each schedule submission.
s) The *Consultant* will provide a copy of the programme (in Primavera P6 electronic format), with sufficient detail to the working level activities, for inclusion in the project master programme.
t) The *Consultant* programme will be coded with integration codes (IWBS), supplied by the Employer that will enable the integration with the master programme. The *Consultant* will maintain the integration codes in the *Consultant* programme throughout the contract.
u) The *Consultant* must submit the list of Project and Payment Milestones to the Employer's Agent for acceptance 30 calendar days after contact award with the detailed Services Scope Programme.
v) Interim milestones or interface dates between milestones will be clearly identified and documented.
w) The *Consultant*s progress programme shall coincide with the cost assessment cycle and will be submitted as a minimum on a monthly basis or in accordance with contractual conditions. The Planning & Programming monthly progress report will contain the following:
    - Planned Dates vs Current Dates for main, agreed activities, percentage complete, physical percentage complete and remaining duration.
    - Variances, explanations for variances and proposed corrective actions, time impact analysis of each variance (change or delay)
    - 30 day and 90-day Look Ahead programme report for main, agreed activities, longest path activities, full programme of outstanding work, milestone status report, resource histogram, report on calendars used.

- Earned Value Management report

x) The reports will be in PDF and native format.
y) The updated XER program file of the programme shall be submitted via a clearly identified medium e.g permanent format that cannot be over written or modified or changed.
z) The baseline schedule shall be submitted in PDF format.
aa) Narrative report of all changes and movement within the programme.
bb) All changes (variations) shall have separate activities and shall be monitored and progressed accordingly.
cc) Printout presenting calendar information in PDF format.
dd) On a weekly basis, the *Consultant* shall provide a 2 week look-ahead report indicating the current week progress and the next 2 week planned work.
ee) The *Consultant* will be required to attend regular meetings with the Employer's Agent where the progress of work will be reviewed. These meetings are normally held monthly.
ff) Presumptions to be taken into consideration in planning activities:
    i. The Employer's internal approval process at each phase can take up to 2 months of preparation
    ii. The readiness for committee meeting must be at least 1 month prior to the set meeting date, this date will be communicated by the Employers Agent
    iii. It can take up to 2 attempts to obtain approval for each gate

1.10 Quality management

1.10.1 System requirements

The Consultant is required to produce high-quality work products in accordance with best practice. This means, among other things, the following:

a) All reports and documents will be clear in their identification of issues, be logically structured and drafted or prepared to ultimately meet financier requirements.
b) All key outputs will be proof-read, cross-referenced, consistent etc. and have been reviewed in their entirety and approved by the Team Leader before being issued to Eskom and other stakeholders.
c) All project documents would be subject to Eskom's approval before being shared with any external parties.
d) The Consultant would be required to enter into a non-disclosure agreement with Eskom.
e) All reports and other outputs must be in English.

1.10.2 Information in the quality plan

Clause 40.1 requires that the Consultant operate a quality management system as stated in 240-105658000 Supplier Quality Management Specification (also referred to in Eskom as QM-58)

1.11 The Parties use of material provided by the *Consultant*

1.11.1 *Employer*'s purpose for the material

Clause 70.1 states that the Employer has the right to use the material provided by the Consultant for the purpose stated in the Scope. Such material will amongst other things be used by the Employer for strategic planning, internal governance approvals, external legislative and regulatory approvals and consultation. The Employer may use the material for any purpose deemed fit in relation with the Project.

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

The *Consultant*'s use of material provided for this contract an only be used for any purpose deemed fit in relation with this project scope of work.

1.11.3 Transfer of rights

a) No Exceptions to core clause X9.1
b) The *Consultant* is required to provide documents that transfer these rights to the Employer for use as the Employer sees fit.
c) The *Consultant* must ensure that any subconsultancy contract includes a provision that transfers IP to the employer in the main contract.
d) 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.
e) If the contractor's design team is unwilling to transfer rights, the employer can terminate in accordance with clause 90.4

1.12 Management of work done by Task Order

a) Task Orders will be prepared in the format stated in an Annexure C attached to the Scope.
b) *Consultant* to only commence work once the task order has been issued and accepted.
c) The *Consultant* to provide resource schedule and timeline for the completion of the task order as well as financial projection in line with the pricelist.
d) The Employer reserves the right to influence the *Consultant*'s timeline.
e) The task order must contain an exit strategy. The exit strategy will clearly define how the scope will conclude, ensuring a smooth transition and continued benefit realisation.
f) The task order returnables must include a structured checklist that will be used to ensure all necessary steps for the task to be completed.
g) Proposed timelines:
    I. The *Consultant* will have 7 days from receipt of the task order to submit a proposal inclusive of the required returnables.
    II. The *Employer* shall evaluate the proposal and returnables and respond within 7days.
    III. Once the proposal has been accepted, the *Consultant* will have 30days to mobilise and commence work.

1.13 Health and safety

The *Consultant* shall at all times comply to health and safety requirements prescribed by law and the *Employer* as they may apply to the *service*s.

The *Consultant* is expected to establish a SHE Plan which meets the employer's SHE requirements included in the procurement documents as well as all the relevant applicable legislation. Eskom in no way assumes the *Consultant's* legal responsibilities. The *Consultant* as a legal entity, therefore an employer is and remains accountable for the quality and the execution of the health and safety program for their employees and contractor employees. The supplemented *Employer's* SHE requirements reflects minimum requirements and should not be construed as all encompassing.

The *Consultant* shall comply with the health and safety requirements contained in Annexure B of the *Employer's* SHE requirements to this Scope. In the event of site visits to Employer's premises, the *Consultant* shall comply to the site's specified requirements.

1.14 Procurement

1.14.1 BBBEE and preferencing scheme

The service provider shall maintain or improve their B-BBEE Recognition Level for the duration of the contract, and the foreign company shall be expected to comply with South African Law once it has been awarded the Contract.

The service provider shall complete and submit the SDL&I Implementation Schedule 28 days after contract award.

This SDL&I Implementation Schedule will be used as a reference document for monitoring, measuring, and reporting on the Contractor's progress in delivering on their stated SDL&I commitments.

The Contractor shall, on a quarterly basis, submit a report to Eskom in accordance with Quarterly Reporting Template on their compliance with the SDL&I obligations described above

Eskom shall review the SDL&I reports submitted by the Contractor within thirty (30) days of receipt of the reports and notify the supplier on its performance progress

Upon notification by Eskom that the supplier is not meeting its SDL&I obligations, the Contractor shall be required to implement corrective measures to meet those SDL&I obligations before the commencement of the following report.

SDL&I or the Eskom agent will monitor the meeting of the SDL&I targets in the contract. SDL&I collates SDL&I commitments by contractors and suppliers as stated in their contracts with Eskom. A minimum of 1.5% penalty shall be invoked should a contractor/supplier fail to meet its contractual obligations in terms of the SDL&I targets.

1.14.2 Contribution towards Corporate Social Investment (CSI):

The CSI contribution will be ONE PERCENT (1%) of the Contract Value, and the Service Provider will be expected to either match or exceed this amount for its own CSI philanthropic contribution.

1.14.2.1 Skills Development (Professional Development Programme)

The objective of Skills Development Programme is to ensure that Eskom's personnel, South African Environment related courses' Graduates gets access to opportunities for Graduate-in-Training programmes. These may include Climate Change, Environmental Social and Governance (ESG) - very current and key require skills now either in Eskom or outside. In terms of registration South African Council of Natural Scientist Professionals, - (SACNASP) registration in the Botany or Ecological or Wetland related field. Eskom still struggles with these skills even now. Additional registration that can allow personnel to either become consultants or apply for EIA internally within organisations such as the Environmental Assessment Practitioners Association of South Africa (EAPASA) registration.

The service provider is expected to assist Eskom with the development of skills and professional registration of Eskom employees and/or unemployed Graduates through the Professional Development Programme (PDP), as per the categories and targets presented below.

Eskom's Proposed Targets:			
Qualification	**Number**	**Entry Level**	**Output/Qualifications**
Environment Management/ Scientist/ Engineer/ Technician related Skills/Qualifications, etc.	50	Degree/Advanced Diploma: Environmental Science or Management	Professional Registration, e.g. South African Council of Natural Scientist Professionals (SACNASP) registration, etc.
Total	**50**		

The beneficiaries of Skills Development shall be South Africans, preferably from the vicinity of where the projects will be executed and should be reflective of the population demographics of the area of the District Municipality.

NIPP is a programme that seeks to leverage economic benefits and support the development of South African industry by effectively using the instrument of government procurement. The NIPP programme is mandatory for all government and parastatal purchases or lease contracts (goods and services) with an imported content equal to or exceeding USD 5 million.

Should the import content that is equal to or exceeds the threshold of USD 5 million compels the winning bidder to negotiate and enter into a NIPP obligation agreement with the DTIC before signing the contract with Eskom. Proof of the agreement is to be provided to the Employer.

The *Consultant* will be expected to spend at least 1% of the Contract Value on CSI initiatives that would be agreed upon with Eskom.

1.15 Working on the *Employer*'s property

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

1.15.2 *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.

a) All employees working on the Eskom Project Sites may require to complete induction before work can start.
b) Obtain and provide evidence of police clearance required to enter the Employer's site.
c) Personal Protective Equipment (PPE) must be worn at all-times except in the PPE free zones.
d) All employees must comply to Eskom Life Saving Rules:
    - Open, isolate, test, earth, bond and/or insulate before touch.
    - Hook up on heights
    - Buckle Up
    - Permit to work
    - Be sober.

Security Vetting:

Acceptance of this tender is subject to the condition that both the contracting firm and its personnel providing the service must be subjected to vetting and or screening in line with Eskom's Vetting Policy and Vetting Procedure. If the principal contractor appoints a subcontractor, the same provisions and measures will apply to the subcontractor.

As per section 2A(b) of the National Strategic Intelligence Act 39 of 1994, as amended by the General Intelligence Laws Amendments Act 11 of 2013, to conduct the security screening and vetting investigations to determine the competence of a person if such a person:

a) Is rendering a service or has given notice of intention to render a service to an organ of state, which service may:
    i. give him or her access to classified information and intelligence in the possession of the organ of state; or
    ii. give him or her access to areas designated as National Key Points in terms of the National Key Points Act 102 of 1980.

Security vetting is a requirement for access to the Employer's sites as well as information, therefore, the Consultant shall ensure that all required information required for the completion of the security vetting process is provided correctly, completely, truthfully and timeously. Note:

a) *Consultant* is to allow for the following vetting turnaround timelines when submitting task order planning:
    I. For local employees – one week from receipt of fully completed vetting pack
    II. For international employees – three weeks from receipt of fully completed vetting pack

b) The Employer will not be liable for costs associated to access delays on account of incomplete submitted required vetting information.
c) Should the result of the vetting process declare the applicant unsuitable, their application will be rejected, and the Consultant will provide another candidate for vetting.
d) The *Consultant* staff shall consent to all the required tests, failure to do so will result in the applicant being rejected and the *Consultant* will have to provide a replacement as per requirements.

e) Every successfully vetted human resource shall sign a Non-disclosure agreement.

Access into site is managed through compliance to several of relevant security legislative frameworks not limited to National Key Points Act, Firearms Control Act, Control of Access to Public premises and vehicles Act inclusive of Site-specific Standard Operating Procedures not excluding the Contractor Access Control Standard that outlines the brief responsibilities of gaining access to site, i.e.:

a) Only a fingerprint criminal clearance record of less than 30 days from the date of issue will be accepted.
b) Only fingerprint criminal clearance record with a clear criminal result issued by the SAPS CRC and/or an accredited supplier linked to the SAPS Automated Fingerprint System (AFIS) will be allowed.
c) Access/Exit is subject to security protocols and measures applicable to site which includes but not limited to Declaration and bringing personal equipment to site (OV18 Process), prohibited items (i.e. Drugs, Alcohol, weapons, pets etc), prohibition in removing any asset without authorization, Returning of permits on termination, Principles of access – i.e. Only authorized personnel will be granted access, Immediate reporting of incidents to the Security Control Room before tampering, Visitors Pre-arrangement and escort Security Process, etc
d) Passive and active substance abuse screening/testing on entry, while inside and on leaving any of the sites controlled by Eskom.
e) Access to sites will be revoked in any of the following circumstances prevails (i.e. End of contract, security violations or breaches, Security threat or compromise, Contractor terminated or resigns).

1.15.3 People restrictions, hours of work, conduct and records

a) 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.
b) The *Employer* will reject unsuitable personnel should they not meet the requirements as per the contract.
c) Upon termination of the *Consultant's* human resource's engagement for any reason, the resource shall promptly return to the *Employer* all property belonging to the *Employer* including (but not limited to) equipment, devices, documents, files, access credentials and any other tangible or intangible assets.
d) The resource shall also return or securely delete all copies of (electronic or physical) of any confidential or intellectual property created or obtained during the course of the engagement.
e) Furthermore, the resource shall promptly assign and transfer to the *Employer* any work product, inventions, discoveries, developments, improvements, processes, or other intellectual property created, conceived, or developed whole or in part during the engagement and shall cooperate fully in executing any necessary documents to perfect the *Employer's* rights therein.
f) Failure to return such assets or to comply with the obligations under this clause may result in legal action and/or withholding of any final compensation to the extent permitted by law.

1.15.3.1 Work hours and overtime

Should there be a need for overtime, the Employer shall be advised and shall provide approval. Overtime shall be assessed and paid as follows:

a) Weekdays 1.5 times the resource rate after the standard 8hour day has been worked Monday to Friday local time.
b) Saturday: 1.5times the resource hourly rate
c) Sunday: 2 times the resource hourly rate
d) Public holidays: 2 times the resource hourly rate. Only south African public holidays shall be recognised.

1.15.3.2 Billable hours

a) Billable hours are those directly attributable to the performance of services under this contract as documented in daily time logs.

b) Billable hours exclude non-productive time such as Consultant internal training, general staff meetings and administrative overheads.

1.15.3.3 Timekeeping and records

The Consultant shall maintain daily time records using the agreed upon timekeeping software which is to include:

a) Employees details
b) Date
c) Hours worked
d) Labour category
e) Brief description of work performed

All time sheets to be approved and confirmed for accuracy by the employee's supervisor and available for audit by the Employer.

1.16 Cooperating with and obtaining acceptance of Others

a) Facilitate regular co-ordination meetings to align expectations and address concerns.
b) Submit documents timeously for review and approval
c) Incorporate feedback efficiently and maintain schedule and quality.
d) Promote transparency and collaboration through documentation, shared platforms and responsive communication.

1.17 Things provided by the *Employer*

Should the need arise, the following will be provided should the Employer deem necessary:

a) Access to site or premises
b) Relevant project background documents
c) Stakeholders contact information
d) Meeting and workspace facilities
e) Security access and permits to enter restricted areas.
f) Timely review and feedback on submitted deliverables.

1.18 Cataloguing requirements by the *Consultant*

TBA.

2 LIST OF DRAWINGS

2.1 Drawings issued by the *Employer*

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

Drawing number	Revision	Title

ANNEXURE A.

C1.3 Forms of Securities

Pro formas for Bonds & Guarantees

For use with the NEC3 Professional Services Contract

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

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

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

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg Date:

Dear Sirs

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

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

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

1. In this Guarantee the following words and expressions shall have the following meanings:-

1.1 "Bank" - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]

1.2 "Bank's Address" - means [●]; [Drafting Note: Bank's physical address to be inserted]

1.3 "Contract" – means the written agreement relating to the Services, entered into between Eskom and the Consultant, on or about the [●] day of [●] 200[●] (Contract Reference No. [.]as amended, varied, restated, novated or substituted from time to time; [Drafting Note: Signature Date and Contract reference number to be inserted]

1.4 "Consultant" – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of Consultant to be inserted]

1.5 "Eskom" - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30].

1.6 "Expiry Date" - means the earlier of

- the date that the Bank receives a notice from Eskom stating that all amounts due from the Consultant as certified in terms of the contract have been received by Eskom and that the Consultant has fulfilled all his obligations under the Contract, or
- the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by Eskom

1.7 "Guaranteed Sum" - means the sum of R [●] ([●] Rand);

1.8 "Services" - means [insert if applicable.].

2. At the instance of the Consultant, we the undersigned _____ and _____, in our respective capacities as _____ and _____ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of Eskom, as security for the proper performance by the Consultant of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to Eskom, on written demand from Eskom received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.

3. A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:

3.1 be signed on behalf of Eskom by a Group Executive, Divisional Executive, Senior General Manager, General Manager or its delegate;

3.2 state the amount claimed (“the Demand Amount’);

3.3 state that the Demand Amount is payable to Eskom in the circumstances contemplated in the Contract.

4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank’s obligation/s to make payment:

4.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and

4.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.

5. The Bank’s obligations in terms of this Guarantee:

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

5.2 shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between Eskom and the Consultant.

6. Eskom shall be entitled to arrange its affairs with the Consultant in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the Consultant or any variation under or to the Contract.

7. Should Eskom cede its rights against the Consultant to a third party where such cession is permitted under the Contract, then Eskom shall be entitled to cede to such third party the rights of Eskom under this Guarantee on written notification to the Bank of such cession.

8. This Guarantee:

8.1 shall expire on the Expiry Date until which time it is irrevocable;

8.2 is, save as provided for in 7 above, personal to Eskom and is neither negotiable nor transferable;

8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;

8.4 shall be regarded as a liquid document for the purpose of obtaining a court order; and

8.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.

8.6 Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.

9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank’s Address.

Signed at _____ Date _____

For and behalf of the Bank

Bank Signatory: _____ Bank Signatory: _____

Witness: _____ Witness: _____
Bank's seal or stamp