NEC3 Professional Services Contract (PSC3)

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

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

for **Provision of Environmental Management and Associated Services on an as and when basis for a period of 5 years for Gemma Cluster**

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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**	3
	[to be inserted from Returnable Documents at award stage]	
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C1.1 Form of Offer & Acceptance

Offer

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

Provision of Environmental Management and Associated Services on an as and when basis for a period of 5 years for Gemma Cluster

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	**Rates based contract**
Value Added Tax @ 15% is	**Rates based contract**
The offered total of the Prices inclusive of VAT is	**Rates based contract**
(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	Not Applicable	Not Applicable

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

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

	For the tenderer:	**For the Employer**
Signature	.....	.....
Name	.....	.....
Capacity	.....	.....
On behalf of	..... *(Insert name and address of organisation)*	..... *(Insert name and address of organisation)*
Name & signature of witness	.....	.....
Date	.....	.....

C1.2 PSC3 Contract Data

Part one - Data provided by the *Employer*

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

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.

2. The PSC3 options are identified by shading in the left hand column. In the event that the option is not required select and delete the whole row.

3. Where the symbol "**[●]"**is used data is required to be inserted relevant to the clause and statement which requires it.]

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

Clause	Statement	Data
1	**General**	
	The *conditions of contract* are the core clauses and the clauses for main Option	
		A: Price contract with activity schedule
	dispute resolution Option	**W1: Dispute resolution procedure**
	and secondary Options	
		X1: Price adjustment for inflation **X2: Changes in the law**
		X7: Delay damages
		X10 *Employer*'s *Agent*
		X11: Termination by the *Employer*
		X18: Limitation of liability
		Z: *Additional conditions of contract*
	of the NEC3 Professional Services Contract (April 2013)[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	**Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg**
	Tel No.	**011- 800 6347**
	Fax No.	**N/A**

[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 Environmental Management and Associated Services on an as and when basis for a period of 5 years for Gemma Cluster**
11.2(10)	The following matters will be included in the Risk Register	**Non-Compliance to environmental legal requirements.** **Inadequate consideration of socio-economic impacts.** **Inadequate specialist studies** **Poor quality reports.** **Provision of poor quality environmental authorisation/ permits/ licences for construction** **Poor government and key stakeholder relationships** **Scope changes from employer** **Suitably qualified staff to preform crucial tasks**
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	**One week**
13.6	The *period for retention* is	**2 years following Completion or earlier termination.**

2 The Parties' main responsibilities

25.2	The *Employer* provides access to the following persons, places and things	**access to**		***access date***
		1	**To be confirmed at Task Order Level Environmental Practitioner dedicated to the project**	**To be confirmed at Task Order Level**

3 Time

31.2	The *starting date* is.	**TBA**		
11.2(3)	The *completion date* for the whole of the *services* is.	**5 years 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	**Legislative timeframes as per the relevant environmental legislation**	**To be confirmed at Task Order level**
31.1	The *Consultant* is to submit a first programme for acceptance within	**2 (Two) weeks of the Contract Date.**		
32.2	The *Consultant* submits revised programmes at intervals no longer than	**4 (Four) weeks.**		

4	**Quality**		
40.2	The quality policy statement and quality plan are provided within	**As part of tender returnable**	
42.2	The *defects date* is	**24 (Twenty-Four) weeks after Completion of the whole of the *service*s as per the task order.**	
5	**Payment**		
50.1	The *assessment interval* is	**from the 25th day to the last day of each successive month.**	
50.3	The *expenses* stated by the *Employer* are	**Item**	**Amount**
		Relevant activity (BoQ)	**Rate as per BoQ. As per contract and task order**
51.1	The period within which payments are made is	**30 days once a valid invoice is received.**	
51.2	The *currency of this contract* is the	**South African Rand**	
51.5	The *interest rate* is	**the publicly quoted prime rate of interest charged by Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due.**	
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 Task Order values**	
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**		
A	**Priced contract with activity schedule**		
21.3	The *Consultant* prepares forecasts of the total *expenses* at intervals no longer than	**4 (Four) weeks and to be estimated at quotation time.**	

11	**Data for Option W1**	
W1.1	The *Adjudicator* is	**the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).**
W1.2(3)	The *adjudicator nominating body* is:	**the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See www.ice-sa.org.za).**
W1.4(2)	The *tribunal* is:	**arbitration**
W1.4(5)	The *arbitration procedure* is	**the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.**
	The place where arbitration is to be held is	**Johannesburg South Africa**
	The person or organisation who will choose an arbitrator • if the Parties cannot agree a choice or • if the *arbitration procedure* does not state who selects an arbitrator, is	**the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.**
12	**Data for secondary Option clauses**	
X1	**Price adjustment for inflation**	
X1.1	The index is	**CPI. –**
	The staff rates are {state whether "Fixed at the Contract Date and are not variable with changes in salary paid to individuals" or "Variable with changes in salary paid to individuals"}	**The rates will be fixed and firm for the first 12 months and thereafter be adjusted annually in accordance with the applicable indices.**
X2	**Changes in the law**	
X2.1	The law of the project is	**South African Law**
X7	**Delay damages**	
X7.1	Delay damages for late Completion of the whole of the *services* are	**If a delay in completion of the service can be attributed to proven negligence, action or omission on the part of the Consultant; a penalty of ten (10) percent of the contract value may be levied.**
X10	**The *Employer's Agent***	
X10.1	The *Employer's Agent* is	
	Name:	**Andrea van Gensen**

	Address	**80 Bultfontein Road, Kimberley, 8301**
	The authority of the *Employer's Agent* is	**To carry out all actions of the *Employer* in this contract**
X11	**Termination by the *Employer***	**There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.**
X18	**Limitation of liability**	
X18.1	The *Consultant's* liability to the *Employer* for indirect or consequential loss is limited to:	**R0.00 (Zero Rand)**
X18.2	The *Consultant's* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to:	**The total of the Task Order values**
X18.3	The *end of liability date* is	**Five years after Completion of the whole of the *services*/task order.**
Z	**The *Additional conditions of contract* are**	**Z1 to Z14 always apply.**

Z1 Cession delegation and assignment

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

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

Z2 Joint ventures

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

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

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

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

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

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

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

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

Z4 Confidentiality

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

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

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

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

Z5 Waiver and estoppel: Add to core clause 12.3:

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

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

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

Z7 Notifying compensation events

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

Z8 *Employer's* limitation of liability

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

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

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

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

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

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

Z11 Ethics

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

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

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

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

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

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

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

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

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

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

Z11.2 The *Employer* may terminate the *Consultant*'s obligation to Provide the Services if a

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

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

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

Z12 Insurance

Z12.1 Replace core clause 81 with the following:

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

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

INSURANCE TABLE A

Insurance against	**Minimum amount of cover**	**For the period following Completion of the whole of the *services* or earlier termination**
Liability of the *Consultant* for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the *services*	Commercial and business to determine. [Delete this note after inserting]	Commercial and business to determine [Delete this note after inserting]
Liability for death of or bodily injury to a person (not an employee of the *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.	Commercial and business to determine [Delete this note after inserting]
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	Commercial and business to determine [Delete this note after inserting]

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

INSURANCE TABLE B

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

Z13 Nuclear Liability

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

Z13.2 The *Employer* is solely responsible for and indemnifies the *Consultant* or any other person against any and all liabilities which the *Consultant* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Consultant* or any other person or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Consultant* or any other person, or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.

Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z14 Asbestos

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

AAIA	means approved asbestos inspection authority.
ACM	means asbestos containing materials.
AL	means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
Ambient Air	means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
Compliance Monitoring	means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
OEL	means occupational exposure limit.
Parallel Measurements	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
Safe Levels	means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
Standard	means the *Employer*'s Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
SANAS	means the South African National Accreditation System.
TWA	means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

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

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

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

Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is

conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.

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

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

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

C1.2 Contract Data

Part two - Data provided by the *Consultant*

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

1. The tendering consultant is advised to read both the NEC3 Professional Services Contract, April 2013 and the relevant parts of its Guidance Notes (PSC3-GN)[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 & relevant Professional Registration (and further *key persons* data including CVs & relevant Professional Registration) are appended to Tender Schedule entitled CVs & Professional Registration.**
11.2(3)	The *completion date* for the whole of the *services* is	**To be confirmed at Task Order level**

[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	**To be confirmed at Task Order level**		
11.2(13)	The *staff rates* are:	**name/designation**	**rate**	
	Either complete here or cross refer to a schedule in Part C2.2	**Refer to Schedule in Part C2.2**	**Refer to Schedule in Part C2.2**	
25.2	The *Employer* provides access to the following persons, places and things	**access to**		***access date***
		1	**To be confirmed at Task Order level- dedicated Environmental Officer/Practitioner**	**To be confirmed at Task Order level**
31.1	The programme identified in the Contract Data is	**To be confirmed at Task Order level.**		
50.3	The *expenses* stated by the *Consultant* are	**item**		**amount**
		Refer to a schedule in Part C2.2		**Refer to a schedule in Part C2.2**
G	**Term contract**			
11.2(25)	The *task schedule* is in	**To be confirmed at Task Order level, see scope of work, in line with legislation.**		

PART 2: PRICING DATA

PSC3 Option G

Document reference	Title	No of pages
C2.1	Pricing assumptions : Option G	**[20]**
C2.2	*Staff rates, expenses* and the *task schedule*.	**[22]**

C2.1 Pricing assumptions: Option G

1. How work is priced and assessed for payment

From Option G: Term contract

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

From the Core Clauses:

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

and

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

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

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

2. Staff rates and expenses

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

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

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

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

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

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

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

3. The function of the Task Schedule

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

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

C2.2 Staff rates, expenses & the task schedule

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

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

1. The *staff rates* and expenses are:

Eskom

Environmental BoQ Schedule

	Contract Name:	**Provision of Environmental Management and Associated Services**		
Item No.	**Description**	**Unit**	**Quantity**	**Rate excl. VAT**
1	**Resource**			
1.1	Project Leader/Lead EAP	hr	1	
1.2	Admin Support	hr	1	
1.3	Environmental Assessment Practitioner (EAP)	hr	1	
1.4	Heritage Specialist	hr	1	
1.5	Culture Specialist (Intangible)	hr	1	
1.6	Environmental Control Officer (ECO)	hr	1	
1.7	Hydrologist (Wetland & River)	hr	1	
1.8	Agriculturalist	hr	1	
1.9	Paleontologist	hr	1	
1.10	Archaeologist	hr	1	
1.11	Town Planner	hr	1	
1.12	Graphic Designer/ GIS practitioner	hr	1	
1.13	Visual Assessment specialist	hr	1	
1.14	Ecologist	hr	1	
1.15	Avi Fauna specialist	hr	1	
1.16	Public Participation / Facilitator	hr	1	
1.17	Training Facilitator	hr	1	
2	**Other**			
2.1	The rate for any other resource that is not mentioned above will be equivalent to EAP rate	hr	1	
3	**Expenses**			
3.1	Accomodation	p.p.p.n	1	
3.2	Meals	p.p.p.d	1	
3.3	Travel	km	1	
3.4	Travelling (Flight).Air travel (local) must be restricted to economy class.	Sum	1	
3.5	Car rental from the local airport (Day rate) Group B (Sedan/Hatch back) 1550cc maximum allowable.	Sum	1	
3.6	Car rental from the local airport (Day rate) Group N (Bakkie) 2500cc maximum allowable.	Sum	1	
			Total Price Excluding VAT	

Value Added Tax @ 15%	
Total price including VAT	

The expenses are:	
*** Note**	
Travelling	Travelling - Pre- approval to be given by requesting Eskom Representative, and estimated kilometres of travel to be included in the task order.
	Home-work-home travelling is not reimbursable.
	Any excess of 50 km of business travel per day will be reimbursed at the agreed rate/km.
Accommodation / Meals	Pre- approval to be given by requesting Eskom Representative, and estimated days to be included in the Task Order as per agreed rates/day above.
	Rates for three star or equivalent accommodation and a maximum of three meal per day will be refunded.

Abbreviation	**Unit**
hr	hour
p.p.p.n	per person per night
p.p.p.d	per person per day
km	kilometre

2. The task schedule

Will be confirmed at task order level

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	24
C3.1	*Employer*'s Scope	25
C3.2	*Consultant's* Scope	
	Total number of pages	

C3.1: EMPLOYER'S SCOPE

1 Description of the *services*

1.1 Executive overview

The term Environmental Services in this contract is used to describe the environmental input that is required by the various Environmental legislation. The scope of work entails the provision of environmental management and associated services for the Gemma Cluster, Distribution business on an "as and when" required basis.

The following abbreviations are used in this Scope:

Abbreviation	Meaning given to the abbreviation
EA	Environmental Authorisation
BID	Background Information Document
I&APs	Interested and Affected Parties
EMPr	Environmental Management Programme
EAP	Environmental Assessment Practitioner
EAPASA	Environmental Assessment Practitioner Association of South Africa

2 Specification and description of the *service*s

The term Environmental Services in this document is used to describe the environmental input that is required by the various Environmental legislation. The scope of work entails the provision of environmental management and associated services for the Gemma Cluster, Distribution business on an "as and when" required basis, which will include and not be limited to the following:

- The provision of relevant Environmental Impact Studies/ Assessments/ Environmental Management Programmes and associated processes/ specialist studies.
- Rectifications and amendments of authorisations and EMPs
- Public Participation Process
- Environmental Appeals Processes
- Maintenance Management Plans
- Environmental Control Officer
- Environmental Legal Compliance Audits/ Reviews/ Investigations,
- Environmental Specialists Studies/ Assessments/ Reviews as follows et al:
    - o Biodiversity management / biodiversity-offset studies
    - o Rehabilitation Assessment and Mitigation
    - o Faunal and Avifaunal studies
    - o Air Quality, Dust and Noise Abatement Studies and Mitigation
    - o Community engagement / public participation
    - o Contaminated land analysis, Land Assessments and Land Monitoring
    - o Ecology/ Botanical studies (Including search & rescue)
    - o Effluent management
    - o Energy management
    - o Environmental and social audits and due diligence assessment/audits in terms of Funders requirements (IPP studies)
    - o Ground water
    - o Stormwater Studies
    - o Agricultural Assessment
    - o Geo-technology

  - o Heritage / archaeological palaeontology / cultural landscape
  - o Hydrological (Water analysis, Water balance modelling and Water impact study / wetlands, wetland delineation, floodline studies, Water treatment, Waste Water Monitoring)
  - o Socio-economic studies
  - o Soil Sampling
  - o Surface Water Monitoring/Ground Water Monitoring
  - o Terrestrial ecology
  - o Traffic Impact Assessment
  - o Visual Impact Assessment
  - o Waste management
  - o GIS Mapping/ Modelling/ Fine-Scale mapping
  - o Climate Change Assessment
- Environmental Permit/ Authorisation/ Licence Applications and associated processes/ specialist studies,
- Environmental related Training
- Environmental Management System
- Strategic environmental assessment
- Any other environmental legal requirement

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

3.1 Management meetings

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

Title and purpose	Approximate time & interval	Location	Attendance by:
Project Initiation Meeting	After Task Order award	Online	Project Team
Project Meetings	TBA	TBA	Project Team
ADHOC	TBA	TBA	Project Team

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.

3.2 Consultant's key persons

The key persons will be confirmed at task order level as per the requirements of the legislation to be met and the process to be followed during service provision. An organogram of the key persons will be submitted at task order level to Employer. The valid professional registration, CVs and relevant experience of key persons (e.g. lead EAP and/or specialist/s) will be submitted to the Employer at task order level ahead of task execution.

3.4 Documentation control and retention

3.4.1 Identification and communication

All documentation, spatial and related attribute data generated in any part of the Eskom project cycle will be deemed to be the property of Eskom. All spatial and related attribute data will be delivered to Eskom in the requested electronic GIS format on a suitable device such as a USB or via large date transfer.
Further *Employer's* documentation and date requirements shall be specified in the Task Order.

3.4.2 Retention of documents

The Consultant retains copies of the reports and documentation for a period of 5 years following Completion or earlier termination.

3.5 Records and forecasting of *expenses*

The *Consultant* shall maintain clear records of expenses and be submitted on request to the Employer.

3.6 Records and forecasting of the Time Charge

The *Consultant* shall maintain clear records of time charged and be submitted on request to the Employer.

3.7 Invoicing and payment

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

The *Consultant* shall address the tax invoice to **Eskom Holdings SOC Ltd** 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;
- CPI escalation (if applicable)

Invoices must be submitted to the employer for verification of work completion and capture/receipt on the system ahead of payment being carried out.

3.8 Contract change management

Any additional requirements to the compensation event clauses in section 6 of the core clauses; such as the use of standard forms will be confirmed at the time of the compensation event.

3.9 Quality management

3.9.1 System requirements

Clause 40.1 requires that the *Consultant* operate a quality management system as stated in the Scope. Refer to tender quality requirements/ returnable.

3.10.2 Information in the quality plan

Clause 40.2 requires that the *Consultant* provide a quality policy statement and quality plan which complies with requirements stated in the Scope. Refer to tender quality requirements/ returnable.

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

3.11.1 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.

3.12 Management of work done by Task Order

The Task schedule/activities which lists the items of services to be carried out will be prepared by the Employer and will be sent to the Consultant to price as per the approved contracted rates.

3.13 Health and safety

The *Consultant* shall at all times comply with the Eskom health and safety requirements as well as the requirements prescribed by law as they may apply to the *service*s.
The *Consultant* may be required to work on Eskom premises, such as a substation, where health and safety requirements additional to those prescribed by law apply. The *Consultant* shall comply with the Eskom health and safety requirements at the relevant premises.

3.14 Procurement

3.14.1 BBBEE and preferencing scheme

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

3.15 Correction of Defects

Correction of defects will be 24 (twenty-four) weeks after completion of the whole of the services as per the task order

3.16 Working on the *Employer*'s property

Most of the work is performed outside the Employer's property; however should there be a need to do work on the Employer's property it will be confirmed at task order level. All Eskom procedures will be maintained.

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

Most of the work is performed outside the Employer's property; however should there be a need to do work on the Employer's property; the *Consultant* shall at all times comply with the Eskom health and safety requirements as well as the entrance requirements prescribed by the site and or the law as they may apply to the *service*s.

3.16.2 People restrictions, hours of work, conduct and records

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

3.17 Cooperating with and obtaining acceptance of Others

The Consultant will co-operate with Others in obtaining and providing information which they need in connection with the services. Where necessary to provide the services, the *Consultant* may hold or attend meetings with Others. The *Consultant* will inform the *Employer* of these meetings beforehand and the *Employer* may attend them

3.18 Things provided by the *Employer*

The Employer will provide any available information or data that may be related to the project and required for the execution of the task order.

4 List of drawings

4.1 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