



NEC3 Professional Services Contract (PSC3)

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

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

for the provision of environmental management and associated services to the Gauteng Operation Unit which will include Environmental Impact Studies/ Assessment, Environmental Control Officer and Assurance, Environmental Specialists studies on an “as and when” required basis.

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 <i>Employer</i>	[•]
C1.2b	Contract Data provided by the <i>Consultant</i> [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:

Gauteng Cluster scope of work entails the provision of environmental management and associated services to the Eskom business, which will include the following: Environmental Impact Studies/ Assessment, Environmental Control Officer and Assurance, Environmental Specialists studies on an "as and when" required basis.

The tenderer, identified in the Offer signature block, has

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

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

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

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 _____ _____ Name & signature of witness _____ _____ Date _____	_____ _____ _____ _____ _____ _____ _____ _____ _____ _____
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C1.2 PSC3 Contract Data

Part one - Data provided by the Employer

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
	dispute resolution Option and secondary Options	<p>G: Term contract</p> <p>W1: Dispute resolution procedure</p> <p>X1: Price adjustment for inflation</p> <p>X13: Performance bond</p> <p>X18: Limitation of liability</p> <p>Z: Additional conditions of contract</p>
	of the NEC3 Professional Services Contract (April 2013) ¹	
10.1	The <i>Employer</i> is (Name):	<p>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</p>
	Address	<p>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</p>
11.2(9)	The <i>services</i> are	<p>the provision of environmental management and associated services to the Gauteng Operation Unit which will include Environmental Impact Studies/ Assessment, Environmental Control Officer and Assurance, Environmental Specialists studies on an "as and when" required basis.</p>

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

11.2(10) The following matters will be included in the Risk Register

- Cost:** Variation orders because of unforeseen circumstances like route alignment recommended by specialists during studies or additional scope of work provided for by authorities
- Scope:** Scope creep: Additional scope can be requested by Authorities (DFFE)
- Time:** Failure to meet the contractual dates.
- Safety:** Safety - Injury of employees during construction due to not following health and safety standards and practices.
- Environmental:** Possible environmental legal contraventions. Non- Compliance with the Specific EMP and Eskom Operational Procedures e.g. Access to Farms.
- Quality:**
 - Management of retain documented information- completed task orders and reports of professional work completed.
 - Failure of appointed Consultants to comply with the requirements of the specified Task orders.

11.2(11)	The Scope is in	Part 3: Scope of Work
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	1 weeks
13.6	The <i>period for retention</i> is	5 years following Completion or earlier termination.

2 The Parties' main responsibilities

25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	access date
		1 Various Areas within Gauteng	As and when required

3 Time

31.2	The <i>starting date</i> is.	TBC	
11.2(3)	The <i>completion date</i> for the whole of the services is.	4 years after inception	
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	key date
		1 Start date	As per task order
		2 Access date	As per task order
		3 End date	As per task order

31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	1 week of the Task Order Date.	
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	4 weeks	
4	Quality		
40.2	The quality policy statement and quality plan are provided within	2 weeks of the Task Order Date.	
42.2	The <i>defects date</i> is	36 weeks after Completion of the whole of each Task Order	
5	Payment		
50.1	The <i>assessment interval</i> is	After the completion of each deliverable per task order	
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	Item	Amount
		To be stated per task order	As per agreed task order
51.1	The period within which payments are made is	30 days upon submission of a certified tax invoice to Eskom Financial Shared Services	
51.2	The <i>currency of this contract</i> is the	South African Rand	
51.5	The <i>interest rate</i> 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		
81.1	The amounts of insurance and the periods for which the <i>Consultant</i> maintains insurance are		
	Event	Cover	Period following Completion of the whole of the services or earlier termination
	Liability for failure by the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	For Category A and S work a maximum value of R3 200 000,00 professional indemnity insurance is required without limit to the number of claims	See Notes to Consultants in Annexure A

death of or bodily injury to a person (not an employee of the *Consultant*) or loss of or damage to property arising from or in connection with the *Consultant's* Providing the Services.

Whatever the *Consultant* deems necessary for any occurrence or series of occurrences arising out of one event without limit to the number of claims.

See Notes to Consultants in Annexure A

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

As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the *Consultant's* common law liability for people falling outside the scope of the Act with a limit of indemnity of not less than R500 000-00 (five hundred thousand) in respect of each claim, without limit to the number of claims

As *Consultant* deems necessary

81.1	The <i>Employer</i> provides the following insurances	None
82.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	The total of each Task Order
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 <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than	2 weeks.
50.4	The <i>exchange rates</i> are those published in	n/a
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).

W1.2(3)	The <i>adjudicator nominating body</i> is:	the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See www.ice-sa.org.za).
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	Sandton, South Africa
	The person or organisation who will choose an arbitrator	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
	<ul style="list-style-type: none"> • if the Parties cannot agree a choice or • if the <i>arbitration procedure</i> does not state who selects an arbitrator, is 	

12 Data for secondary Option clauses

X1	Price adjustment for inflation		
X1.1	The index is	SEIFSA Table D3 CPI	0.85
		Fixed Portion	<u>0.15</u>
		Total	1.00
	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 remain firm and fixed for the first 12 months of the contract. Escalation will be implemented thereafter on an annual basis.	
X13	Performance bond		
X13.1	The amount of the performance bond is	30% of the Task Order value if required	
X18	Limitation of liability		
X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	The total of each Task Order	
X18.2	The <i>Consultant's</i> liability to the <i>Employer</i> for Defects that are not found until after the <i>defects date</i> is limited to:	The total of each Task Order	
X18.3	The <i>end of liability date</i> is	five years after Completion of the whole of the services/task order.	
Z	The Additional conditions of contract are		
		Z1 to Z11 always apply.	

Z1 Cession delegation and assignment

- Z1.1 The *Consultant* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Consultant* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its

present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

Z2 Joint ventures

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

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

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

Z4 Ethics

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Consultant* which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Consultant's* obligation to Provide the Services or taking any other action as appropriate against the *Consultant* (including civil or criminal action).
- Z4.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services if the *Consultant* (or any member of the *Consultant* where the *Consultant* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Consultant* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.

Z4.3 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

Z5 Confidentiality

Z5.1 The *Consultant* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the *Consultant* disclose information to Others in terms of clause 23.1, the *Consultant* ensures that the provisions of this clause are complied with by the recipient.

Z5.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer*.

Z5.3 In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z5.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer's* project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

Z6 Waiver and estoppel: Add to core clause 12.3:

Z6.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z7 Provision of a Tax Invoice. Add to core clause 51

Z7.1 The *Consultant* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z8 Notifying compensation events

Z8.1 Delete from the last sentence in core clause 61.3, "unless the *Employer* should have notified the event to the *Consultant* but did not".

Z9 Employer's limitation of liability

Z9.1 The *Employer's* liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z10 Termination: Add to core clause 90.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z10.1 or had a business rescue order granted against it.

Z11 Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)

Z11.1 If the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.

Z11.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

C1.2 Contract Data

Part two - Data provided by the *Consultant*

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

Clause	Statement	Data
10.1	The <i>Consultant</i> is (Name): Address Tel No. Fax No.	
22.1	The <i>key people</i> are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities: Qualifications: Experience:	
Only if required		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled .

11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is		
11.2(10)	The following matters will be included in the Risk Register		
11.2(13)	The <i>staff rates</i> are:	name/designation	rate
	Either complete here or cross refer to a schedule in Part C2.2		
25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	access date
		1	
		2	
		3	
31.1	The programme identified in the Contract Data is		
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	item	amount
G	Term contract		
11.2(25)	The <i>task schedule</i> is in		

C1.3 Forms of Securities

Pro formas for Bonds & Guarantees

For use with the NEC3 Professional Services Contract

[Note to contract compiler:

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

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

Option X4: Parent company guarantee

the provision of environmental management and associated services to the Gauteng Operation Unit which will include Environmental Impact Studies/ Assessment, Environmental Control Officer and Assurance, Environmental Specialists studies on an "as and when" required basis.

Option X13: Performance Bond

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

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

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

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

Pro forma 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 _____

the provision of environmental management and associated services to the Gauteng Operation Unit which will include Environmental Impact Studies/ Assessment, Environmental Control Officer and Assurance, Environmental Specialists studies on an "as and when" required basis.

For and behalf of the Bank

Bank Signatory: _____

Bank Signatory: _____

Witness: _____

Witness: _____

Bank's seal or stamp

Pro forma ASGI-SA Guarantee

(to be reproduced exactly as shown below on the letterhead of the Bank providing the Guarantee)

**Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg**

Date:

Dear Sirs

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

Pro-Forma ASGI-SA 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 Project, entered into between the *Employer* 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 "*Consultant's ASGI-SA Obligations*" – means the *Consultant's ASGI-SA Obligations* under and as defined in the Contract.
 - 1.6 "*Employer*" - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/06.
 - 1.7 "Expiry Date" - means the [●] day of [●] 200[●]; *[Drafting Note: anticipated date of issue of ASGI-SA Performance Certificate to be inserted.]*
 - 1.8 "Guaranteed Sum" - means the sum of R [●] ([●] Rand);
 - 1.9 "Project" – means the
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 the *Employer*, as security for the proper performance by the *Consultant* of the *Consultant's ASGI-SA Obligations* and hereby undertake to pay to the *Employer*, on written demand from the *Employer* 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 state the amount claimed ("the Demand Amount");
 - 3.2 state that the Demand Amount is payable to the *Employer* in the circumstances contemplated in the Contract.

the provision of environmental management and associated services to the Gauteng Operation Unit which will include Environmental Impact Studies/ Assessment, Environmental Control Officer and Assurance, Environmental Specialists studies on an "as and when" required basis.

- 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 the *Employer* and the *Consultant*.
- 6. The *Employer* 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 the *Employer* cede its rights against the *Consultant* to a third party where such cession is permitted under the Contract, then the *Employer* shall be entitled to cede to such third party the rights of the *Employer* 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 the *Employer* 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

PART 2: PRICING DATA

PSC3 Option G

Document reference	Title	No of pages
C2.1	Pricing assumptions : Option G	[•]
C2.2	<i>Staff rates, expenses and the task schedule.</i>	[•]

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 <ul style="list-style-type: none"> 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 <ul style="list-style-type: none"> 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 <i>staff rates</i> multiplied by the total staff time appropriate to that rate properly spent on work in this contract.
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and

Assessing the amount due	50.3	The amount due is <ul style="list-style-type: none"> the Price for Services Provided to Date, the amount of the <i>expenses</i> properly spent by the <i>Consultant</i> in Providing the Services and other amounts to be paid to the <i>Consultant</i> less amounts to be paid by or retained from the <i>Consultant</i>.
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Any tax which the law requires the *Employer* to pay to the *Consultant* is included in the amount due.

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:

the provision of environmental management and associated services to the Gauteng Operation Unit which will include Environmental Impact Studies/Assessment, Environmental Control Officer and Assurance, Environmental Specialists studies on an "as and when" required basis.

- 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

Recommended Rates

PROJECT COMMENCEMENT				
Category A	hourly	R 2 476,59		R 0,00
Category B	hourly	R 2 117,61		R 0,00
Category C	hourly	R 1 256,43		R 0,00
Category D	hourly	R 902,10		R 0,00
Accommodation	p.p.p.n	R 1 000,00		R 0,00
Travel	km	R 5,72		R 0,00
Meals	p.p.p.m	R 150,00		R 0,00
TOTAL (VAT EXCL) : PROJECT COMMENCEMENT				

PART 3: SCOPE OF WORK

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

C3.1: EMPLOYER'S SCOPE

Contents

1 Description of the services

1.1 Executive overview

Gauteng Cluster scope of work entails the provision of environmental management and associated services to the Eskom business, which will include the following: Environmental Impact Studies/ Assessment, Environmental Control Officer and Assurance, Environmental Specialists studies on an “as and when” required basis.

1.2 Interpretation and terminology

The following abbreviations are used in this Scope:

Abbreviation	Meaning given to the abbreviation
ECSA	Engineering Council of South Africa
SACPCMP	South African Council for Project and Construction Management Professionals
DFFE	Department of Forestry and Fisheries and Environment

2 Specification and description of the services

Environmental Services

Scope of work

Basic Assessment study

To conduct Basic Assessment study according to National Environmental Act, 1998 (Act no 107 of 1998) and Regulations on environmental impact assessment, relevant environmental regulations which will include:

- To liaise with Department of Forestry and Fisheries and Environment (DFFe) to register the project
- Conduct the initial site visit with Eskom for confirmation of the site.
- Conduct site visit with specialists
- Conduct environmental investigations
- Conduct public participation if required
- Liaise with the department until the Environmental Authorization (EA) is issued.
- Notify the interested and affected parties as per Environmental Authorization (EA) conditions.
- Compile Environmental Management Programme (EMPr)

Heritage study

The study will include the following:

- Identify and map all archaeological or heritage resources.
- To conduct assessment on significant resources in terms of section 6(2) and 7 of the National Heritage Resources Act 25 of 1999.
- Assessment the impact of the development on heritage resources.
- Evaluation of the impact of the development on

heritage and archaeological resources relative to and develop mitigation measures.

- The study should include baseline information; occurrences and structures of archaeological, heritage or cultural importance
- Liaise with community and tribal authority
- Provide report with findings and recommendation
- Submit report to South African Heritage Resource Agency (SAHRA) on behalf of Eskom.

Palaeontology Study The study will include the following:

- Conduct research on prehistoric life forms and the evolution of plant and animal life at the proposed project location/site
- Investigate and determine the possible impacts proposed development will cause on the paleontological resources through desktop study and site verification when necessary
- Produce report with findings and recommendation
- Submit report to South African Heritage Resource Agency (SAHRA) on behalf of Eskom if there is a need.

Avifauna study The study will include the following:

- Brief introduction containing information, details concerning the specific investigation and description to define the problem.
- Investigation on the types of birds found on the area (including, red data, rare and endangered)
- Determine the impacts to be caused by the development
- A general description of the problem and methodology of the investigation.
- Description of the location of the problem by referring to pole number and/or GPS readings
- Compile are report with all possible impacts and mitigation measures or recommendations.
- Digital photos and sensitivity maps to be included in the report.

Botanical/ Ecological study The study will include the following:

- Investigate the condition of the vegetation, compile species composition (Species List), rare and endangered species and declared weeds and invader plants.
- Recommendations regarding existing infrastructure – the botanist should give an estimation/description of what the impact on the vegetation will be if bush clearing is done to normal Eskom standards, and make recommendations if the impact is seen as unacceptable or acceptable.
- Identification of specific species that will be impacted

upon and under which national and provincial legislation these species are protected or listed.

- A list with GPS co-ordinates of these species must be forwarded to Eskom in order to obtain the required permits for the cutting, trimming or felling of protected trees, should these be identified during the survey. Assistance to obtain the required permits must be rendered, although Eskom will have to submit the application themselves.
- Any other conditions that is specific to the project.
- Provide Botanical study report showing impacts and recommendations.
- General counting of trees.
-

Hydrological study
(Floodline, Wetland
and water use
license application

The study will include the following:

- Determine the state of water resource within the proposed development area.
- Determine the impacts of the proposed development on water resource.
- Provide recommendations regarding the positioning of infrastructure in order to ensure that impacts on wetland/water resources are minimized.
- Provide advice on any other condition relating to wetland and wetland delineation in the forms maps, Geographic Information System (GIS) Shape file, Design Graphic Norms (DGN) file or Auto Computer Aided Drawing Designs (CADD).
- Provide wetland study report with impacts and recommendations.
- Interpretation of Survey data for the power line route
- Create a map for floodline delineation for 1:100 year floodline on a Geographic Information System (GIS) Shape file, Design Graphic Norms (DGN) file or Auto Computer Aided Drawing Designs (CADD) for streams crossing.
- Conduct Water Use License related study and acquire Water Use License.
- Create a map for flood line delineation for 1:100 year floodline on a GIS Shape file.
- Create a map for floodline delineation for 1:100 year floodline on a GIS Shape file, DGN file or Auto Computer Aided Drawing Designs (CADD) for streams crossing.
- Compiling a report of an overview of the technical methodology used to reach the outcomes of the study and recommend mitigation measures.

Visual impact study

The study will include the following:

- Determine the extent of impact.
- Conduct site visit.
- Understand the proposed project and the receiving environment.
- Establishment of view catchment area, view corridors,

viewpoints and receptors.

- Indication of potential lighting impacts at night.
- Description of alternatives, mitigation measures and monitoring programmes in a form of a report.

Social impact study The study will include the following:

- Determine project impacts on the social, economic, cultural and livelihood activities of affected communities.
- Conduct community meetings.
- Come up with a social plan.
- Come up with mitigation measures and recommendation in a report.

Traffic flow impact The study will include the following:

- Assesses the effects that a particular development will have on the transportation network in the community.
- What needs to be done in the immediate vicinity of the site to meet the access needs of the development.
- Provide report with associated impacts of the proposed development on traffic network and recommendation.

Environmental Control Officer (ECO)

To Manage, supervise and inspect overall construction environmental performance against environmental requirements and ensure legal compliance to Environmental Authorization (EA), Environmental Management Plan (EMP) and Environmental Permits which include the following;

- Support Eskom and contractors throughout the construction phase of the projects and report project deviations and the implications on the project schedule to the responsible environmental practitioners.
- Conduct contractor environmental induction and awareness.
- Attend monthly construction meetings and follow up on site instructions.
- Monitor and submit monthly reports of a standard acceptable to the department of environmental affairs, audit checklist and minutes to Eskom.
- Conduct a post construction audit and submit a final report to Eskom within the time period specified in the Environmental Authorization (EA).

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

Meetings to be held on a project specific task order

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

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	As required	To be determined	All required stakeholders
Overall contract progress and feedback	AS required by Project Manager	To be determined	All required stakeholders

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.

3.1 **Consultant's key persons**

Consultant needs to provide an organogram of the company structure with each task order and should there be any changes to the structure of the organogram the client should be informed immediately.

3.2 **Provision of bonds and guarantees**

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

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

3.3 **Documentation control and retention**

3.3.1 **Identification and communication**

Documentation will be identified with an alpha numeric which indicates source, recipient, communication number etc. Details of any format or other constraints; for example, that all contractual communications will be in the form of properly compiled letters or forms attached to e mails and not as a message in the e mail itself.

3.3.2 **Retention of documents**

Clause 13.6 states that the Consultant retains copies of drawings, specifications, reports, and other documents which record the services in the form stated in the Scope.

3.4 **Records and forecasting of expenses**

Quotations needs to be provided to the client on a project specific basis prior to issuing the task order

3.5 Invoicing and payment

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

[List them]

The *Consultant* shall address the tax invoice to the responsible Eskom environmental specialist that is mentioned in the task order 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;
- Company invoice number
- Goods receipt number

3.6 Inclusions in the programme

As per clause 31.2

3.7 Quality management

3.7.1 System requirements

AS per ISO9001 latest version...2015

3.7.2 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 of works on the task order

3.8 Management of work done by Task Order

All reports must be submitted within the timeframe that is stated on the task order and only after the Eskom Environmental Department specialist has approved the environmental studied report will the professional services consultant be asked to send a Pro Forma invoice for payment.

3.9 Health and safety

As per the OHS Act 85 of 1993 in its current version and any possible future amendments

3.10 Working on the *Employer's* property

Access to all Eskom related properties or servitudes will be stated in the task order on when the consultant will have access to these project specific sites and the time duration thereof.

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

All of these permits will be issued to the consultant by the employer on the task order for the specific project.

3.10.2 People restrictions, hours of work, conduct and records

Restrictions and hours of work may apply on some sites. It is very important that the *Consultant* keeps records of his people working on the *Employer's* property, including those of his 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. After hours and public holidays may apply.