

## 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	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
	dispute resolution Option and secondary Options	<b>A: Priced contract with activity schedule</b> <b>W1: Dispute resolution procedure</b>  <b>X2 Changes in the law</b> <b>X5: Sectional Completion</b> <b>X7: Delay damages</b> <b>X10 Employer's Agent</b> <b>X11: Termination by the Employer</b> <b>X18: Limitation of liability</b> <b>Z: Additional conditions of contract</b>
	of the NEC3 Professional Services Contract (April 2013) <sup>1</sup>	
10.1	The <i>Employer</i> is (Name):	<b>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</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>

<sup>1</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 and [www.ecs.co.za](http://www.ecs.co.za)

Tel No.

11.2(9)	The <i>services</i> are	<b>The provision of professional engineering services by an Approved Professional Person (APP) to undertake statutory dam safety inspections, condition assessments and a feasibility study for dam lining and associated interventions for the dams at Kendal Power Station</b>
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11.2(10)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> <li>• <b>Delays in access to site or restrictions within Kendal Power Station impacting inspections, surveys or investigations.</b></li> <li>• <b>Incomplete, inaccurate or unavailable historical data, drawings or previous dam safety reports.</b></li> <li>• <b>Discovery of unforeseen structural defects, seepage conditions or safety-critical issues during inspections.</b></li> <li>• <b>Non-compliance findings requiring urgent intervention and potential impact on ongoing station operations.</b></li> <li>• <b>Delays in obtaining approvals, comments, or acceptance from the <i>Employer</i>, Department of Water and Sanitation (DWS) or other regulatory authorities.</b></li> <li>• <b>Adverse weather conditions affecting site inspections, surveys and data collection activities.</b></li> <li>• <b>Health and safety risks associated with accessing dams.</b></li> <li>• <b>Changes in applicable legislation, regulatory requirements or dam safety standards.</b></li> <li>• <b>Constraints impacting feasibility recommendations, including operational limitations, access restrictions or constructability challenges.</b></li> <li>• <b>Delays in submission of reports or deliverables impacting statutory compliance timelines.</b></li> </ul>
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11.2(11)	The Scope is in	<b>Part 3: Scope of Work</b>
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>One (1) week</b>
13.6	The <i>period for retention</i> is	<b>Five (5) years following Completion or earlier termination.</b>

**2 The Parties' main responsibilities**

25.2	The <i>Employer</i> provides access to the following persons, places and things	<b>access to</b>	<b><i>access date</i></b>
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1	Kendal Power Station dams and associated infrastructure (including Raw Water Reservoirs, Clean Water Dam, Dirty Water Dam, Emergency Dam, Maturation Dam and Coal Stockyard Dam)	Within 7 days of Contract Date
2	Site access permits, security clearance, and induction facilities	Within 7 days of Contract Date
3	Existing drawings, reports, dam safety inspection records and historical data	Within 7 days of Contract Date
4	Access to operational areas and facilities required for inspections, subject to plant availability and safety requirements	As agreed with the Employer
5	Escort personnel where required for high-risk or restricted areas	As required
6	Access for surveys (LiDAR, bathymetric, geotechnical, and geophysical investigations)	As agreed with the Employer
7	Relevant permits and authorisations required for site access	As required

**3 Time**

31.2	The <i>starting date</i> is.	To be confirmed	
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is.	To be confirmed	
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<b>Condition to be met</b>	<b>key date</b>
		1 Submission of Inception Report, including methodology, programme, and inspection plan for acceptance by the Employer	To be confirmed
		2 Completion of all site inspections, surveys, and submission of Draft Dam Safety Inspection Report(s) for review by the Employer	To be confirmed

		<b>3</b>	<b>Submission of Final Feasibility Study Report, including preferred dam lining option, cost analysis and implementation strategy, for acceptance by the Employer</b>	<b>To be confirmed</b>
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within		<b>Two (2) weeks of the Contract Date.</b>	
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than		<b>Four (4) weeks.</b>	
<b>4</b>	<b>Quality</b>			
40.2	The quality policy statement and quality plan are provided within		<b>Two (2) weeks of the Contract Date.</b>	
<b>5</b>	<b>Payment</b>			
50.1	The <i>assessment interval</i> is		<b>between the 25<sup>th</sup> and 30<sup>th</sup> day of each successive month.</b>	
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	<b>Item</b>	<b>Amount</b>	
		<b>Travel and accommodation for site visits to Kendal Power Station</b>	<b>At cost (no mark-up)</b>	
		<b>LiDAR survey services</b>	<b>Provisional Sum</b>	
		<b>Bathymetric survey services</b>	<b>Provisional Sum</b>	
		<b>Geotechnical, hydrogeological, and geophysical investigations</b>	<b>Provisional Sum</b>	
51.1	The period within which payments are made is		<b>30 calendar days after receipt of an undisputed valid tax invoice.</b>	
51.2	The <i>currency of this contract</i> is the		<b>South African Rand</b>	
51.5	The <i>interest rate</i> is		<b>the publicly quoted prime rate of interest charged by Standard Bank of South Africa Limited at the time an amount payable in SA Rands</b>	
<b>6</b>	<b>Compensation events</b>		<b>As per core clause 6 of the NEC3 PSC</b>	
<b>7</b>	<b>Rights to material</b>		<b>As per core clause 7 of the NEC3 PSC</b>	
<b>8</b>	<b>Indemnity, insurance and liability</b>		<b>As per core clause 8 of the NEC3 PSC</b>	



		3	[•]	[•]
<b>X5 &amp; X7</b>	<b>Sectional Completion and delay damages used together</b>			
X7.1 X5.1	Delay damages for late Completion of each <i>section</i> of the <i>services</i> are:	<b>section</b>	<b>description</b>	<b>amount per day</b>
		1	Completion of dam safety inspections and submission of Dam Safety Inspection Report(s) accepted by the <i>Employer</i>	R5 000.00
		2	Completion of feasibility study and submission of Final Feasibility Study Report accepted by the <i>Employer</i>	R5 000.00
		3	Submission of final accepted reports to the Department of Water and Sanitation (DWS) and relevant authorities	R7 500.00
	Remainder of the <i>services</i>			R3 000.00
<b>X7</b>	<b>Delay damages</b>			
X7.1	Delay damages for late Completion of the whole of the <i>services</i> are	<b>[•] per day</b>		
<b>X10</b>	<b>The <i>Employer's Agent</i></b>			
X10.1	The <i>Employer's Agent</i> is			
	Name:			
	Address			
	The authority of the <i>Employer's Agent</i> is			
<b>X11</b>	<b>Termination by the <i>Employer</i></b>	<b>As per core clause 11 of the NEC3 PSC</b>		
<b>X18</b>	<b>Limitation of liability</b>			
X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	<b>R0.00 (Zero Rand)</b>		
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:	<b>The total of the Prices</b>		
X18.3	The <i>end of liability date</i> is	<b>five years after Completion of the whole of the <i>services/task order</i>.</b>		
<b>Z</b>	<b>The <i>Additional conditions of contract</i> are</b>			
	<b>Z1 to Z14 always apply.</b>			

## **Z1 Cession delegation and assignment**

- Z1.1 The *Consultant* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Consultant* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

## **Z2 Joint ventures**

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

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

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

## **Z4 Confidentiality**

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

- Z4.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer*.
- Z4.3 In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer's* project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.
- Z5 Waiver and estoppel: Add to core clause 12.3:**
- Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.
- Z6 Provision of a Tax Invoice. Add to core clause 51**
- Z6.1 The *Consultant* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.
- Z7 Notifying compensation events**
- Z7.1 Delete from the last sentence in core clause 61.3, "unless the *Employer* should have notified the event to the *Consultant* but did not".
- Z8 Employer's limitation of liability**
- Z8.1 The *Employer's* liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z9 Termination: Add to core clause 90.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":**
- Z9.1 or had a business rescue order granted against it.
- Z10 Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)**
- Z10.1 If the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.
- Z10.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts

due in terms of core clause 92.1.

## Z11 Ethics

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

- Affected Party** means, as the context requires, any party, irrespective of whether it is the *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**

<b>Insurance against</b>	<b>Minimum amount of cover</b>	<b>For the period following Completion of the whole of the services or earlier termination</b>
Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the <i>services</i>	R 2 000 000.00 (Two million Rand)	Five (5) years
Liability for death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	<b><u>Loss of or damage to property:</u></b> The replacement cost where not covered by the <i>Employer's</i> insurance  The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance  <b><u>Bodily injury to or death of a person:</u></b> The amount required by the applicable law.	Until Completion of the services
Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law	Until Completion of the services

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

**INSURANCE TABLE B**

<b>Insurance against or name of policy</b>	<b>Minimum amount of cover or minimum limit of indemnity</b>
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:

<b>AAIA</b>	means approved asbestos inspection authority.
<b>ACM</b>	means asbestos containing materials.
<b>AL</b>	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.
<b>Ambient Air</b>	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.
<b>Compliance Monitoring</b>	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.
<b>OEL</b>	means occupational exposure limit.
<b>Parallel Measurements</b>	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
<b>Safe Levels</b>	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.