NEC3 Professional Services Contract (PSC3)

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

and

for **The Provision of analytical services – toxicity analysis and reporting on an "as and when required" basis "for a period of 36 months**

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CONTRACT No. **[ ]**

PART C1: AGREEMENTS & CONTRACT DATA

Document reference	Title	No of pages
C1.1	**Form of Offer & Acceptance**	
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C1.2b	**Contract Data provided by the *Consultant***	

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 analytical services – toxicity analysis and reporting on an "as and when required" basis for a period of 36 months.

The tenderer, identified in the Offer signature block, has 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

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

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

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

Signature(s)

Name(s) ....

Capacity ....

For the tenderer: ....

.....

Name & signature of witness

Date:

Acceptance

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

The terms of the contract, are contained in:

Part C1	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)	Bathandwa Cobo		
Capacity	Senior Manager, Sustainability Department, Research Testing & Development		
for the Employer	Eskom Holdings SOC Ltd PO Box 1091 P O Box 221, Johannesburg 2000		
Name & signature of witness		Date	

C1.2 PSC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	**General**	
	The *conditions of contract* are the core clauses and the clauses for main Option	
		A: Priced 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
		X20: Key Performance Indicators
		Z: *Additional conditions of contract*
	of the NEC3 Professional Services Contract (April 2013)[1]	
10.1	The *Employer* is (Name):	**Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa**
	Address	**Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg**
	Tel No.	**+27 (11) 800 0000**
	Fax No.	**+27 (86) 661 1103**
11.2(9)	The *services* are	**Provision of analytical services – toxicity analysis and reporting on an "as and when required" basis**
11.2(10)	The following matters will be included in the Risk Register	**Risks will be noted as and when encountered**
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	**Weeks**

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

13.6	The *period for retention* is	**5 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	**All the necessary areas that the consultant needs to gain access to in order to perform the services required**	**During the contract period**

3 Time

31.2	The *starting date* is.	
11.2(3)	The *completion date* for the whole of the *services* is.	
31.1	The *Consultant* is to submit a first programme for acceptance within	**2 Weeks**
32.2	The *Consultant* submits revised programmes at intervals no longer than	**Not Applicable**

4 Quality

40.2	The quality policy statement and quality plan are provided within	**N/A weeks of the Contract Date.**
42.2	The *defects date* is	**24 weeks after Completion of the whole of the *service*s.**

5 Payment

50.1	The *assessment interval* is	**A month from the day the report has been submitted**
51.1	The period within which payments are made is	**4 weeks / 30 days of invoice**
51.2	The *currency of this contract* is the	**South African Rand**

51.5	The *interest rate* is	**(i) zero percent above the publicly quoted prime rate of interest (calculated on a 365-day year) charged by from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands** **and** **(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter (and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.**
6	**Compensation events**	**There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.**
7	**Rights to material**	**There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.**
8	**Indemnity, insurance and liability**	
82.1	**The *Consultant*'s total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to**	**The total of the Prices**
9	**Termination**	**There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.**
10	**Data for main Option clause**	
A	**Priced contract with activity schedule**	
21.3	The *Consultant* prepares forecasts of the total of the *expenses* at intervals of no longer than	**A date will be mutually agreed between the *Employer* and the *Consultant.***

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	**Republic of 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	**N/A**
	The staff rates are	**Rands**
X2	**Changes in the law**	
X2.1	The law of the project is	**Any law within the Republic of South Africa which applies to the contractors providing the service**
X7	**Delay damages**	
X7.1	Delay damages for late Completion of the whole of the *services* are	**N/A**
X10	**The *Employer's Agent***	
X10.1	The *Employer's Agent* is Name: Gundo Mathoho	

	Address: Eskom Holdings SOC Ltd PO Box 1091 P O Box 221, Johannesburg 2000	
	The authority of the *Employer's Agent* is	**Managing the contract**
	Tel: +27 11 629 5643	
	Email: mathohg@eskom.co.za	
X11	**Termination by the *Employer***	**There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.**
X18	**Limitation of liability**	
X18.1	The *Consultant's* liability to the *Employer* for indirect or consequential loss is limited to:	**R0.00 (Zero Rand)**
X18.2	The *Consultant's* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to:	**The total of the Prices**
X18.3	The *end of liability date* is	**Five years after Completion of the whole of the *services*.**
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 goods 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 like the *services*	Whatever the Consultant deems necessary in respect of each claim, without limit to the number of claims	And to the extend the Consultant deems further
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.	And to the extend the Consultant deems further
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	And to the extend the Consultant deems further

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 44 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 44 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*

Clause	Statement	Data		
10.1	The *Consultant* is (Name): Address Tel No. Fax No.			
22.1 Only if required	The *key people* are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities: Qualifications: Experience:			
11.2(3)	The *completion date* for the whole of the *services* is			
11.2(10)	The following matters will be included in the Risk Register	**Risks will be recorded as and when they are identified**		
11.2(13)	The *staff rates* are:	**name/designation**	**Rate**	
	Either complete here or cross refer to a schedule in Part C2.2		**As per pricing structure**	
25.2	The *Employer* provides access to the following persons, places and things	**access to**		***access date***
		1	**All necessary areas will be arranged as and when required**	**Within the contract period**
31.1	The programme identified in the Contract Data is	**As per the scope**		

50.3	The *expenses* stated by the *Consultant* are	**Item** **As per the pricing structure**	**Amount** **As per the pricing structure**
A	**Priced contract with activity schedule**		
11.2(14)	The *activity schedule* is in	**Rands**	
11.2(18)	The tendered total of the Prices is	**Rands**	

PART 2: PRICING DATA

PSC3 Option A

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	**2**
C2.2	The *activity schedule*	**1**

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

Option A is a lump sum form of contract where the work to be done is broken down into well-defined activities each listed in the *activity schedule* and priced by the tendering consultant as a lump sum. (See clause 11.2(18)).

Only completed activities which are without Defects are assessed for payment at each assessment date; no part payment is made if the activity is not completed by the assessment date. (See clause 11.2(15)).

The *activity schedule* may change after the Contract Date as a result of compensation events. (See clause 11.2(14)).

Function of the Activity Schedule

The Activity Schedule is only a pricing document. Clause 53.1 in Option A states: "Information in the Activity Schedule is not Scope". Specifications and descriptions of the service or any constraints on how it is to be done are included in the Scope and per Clause 21.1, "The *Consultant* Provides the Services in accordance with the Scope" and therefore not in accordance with the Activity Schedule.

Link to the programme

Clause 31.4 states that "The *Consultant* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance". Ideally the tendering consultant will develop a high-level programme first then resource each activity on the programme and thus arrive at the lump sum price for that activity both of which can be entered into the *activity schedule*.

Preparing the activity schedule

Generally, it is the tendering consultant who prepares the *activity schedule* by breaking down the work described within the Scope into suitable activities which can be well defined, shown on a programme and priced as a lump sum.

The description of each activity must be sufficient to determine exactly what work is included within it and to know when it has been completed.

The *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Consultant* to include in his *activity schedule* and be priced accordingly.

It is assumed that in preparing his *activity schedule* the *Consultant:*

- Has taken account of the guidance given in the PSC3 Guidance Notes;
- Understands the function of the Activity Schedule and how work is priced and paid for;
- Is aware of the need to link the Activity Schedule to activities shown on each programme which he submits for acceptance by the *Employer*;
- Has listed and priced activities in the *activity schedule* which are inclusive of everything necessary and incidental to Providing the Service in accordance with the Scope, as it was at the Contract Date, as well as correct Defects except correcting a Defect for which the *Consultant* is not liable;
- Has priced work he decides not to show as a separate activity within the Prices of other listed activities in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.
- Understands there is no adjustment to the lump sum Activity Schedule price if the amount, or quantity, of work within that activity later turns out to be different to that which the *Consultant*

estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event.

However, the *Consultant* does not have to allow in his Prices for matters that may arise as a result of a compensation event.

Expenses

Expenses are not included in the *activity schedule* items and are assessed separately at each assessment date, unless an additional condition of contract (Z clause) is included which requires that expenses be included within activity Prices and not paid separately.

Expenses associated with employing a staff member in Providing the Services are 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 activity schedule prices or *staff rates*.

Rate adjustment for inflation of *expenses* is explained in the PSC3 Guidance Notes.

Staff rates

When a compensation event occurs changes to the affected Activity Schedule item or new priced items in the Activity Schedule are assessed as the actual Time Charge for work already done and the forecast Time Charge for work not yet done. (See clause 63.1 and 63.14 in Option A)

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. (Clause 11.2(13))

Tendering consultants are advised to consult the NEC3 Professional Services Contract Guidance Notes and Flow Charts before entering *staff rates* into Contract Data, or in C2.2 below.

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 in the PSC3 Guidance Notes.

C2.2 the *activity schedule*

Item	Quantity	Cost/sample	Total/ 3 years
Toxicity testing and hazard classification (up to 4 trophic levels)			
Vibrio fischeri bioluminescent test	840 screening samples	R	R
Selenastrum capricornutum growth inhibition test	840 screening samples	R	R
Daphnia magna acute toxicity test	840 screening samples	R	R
Poecilia reticulata acute toxicity test	840 screening samples	R	R
Vibrio fischeri bioluminescent test	45 definitive samples	R	R
Selenastrum capricornutum growth inhibition test	45 definitive samples	R	R
Daphnia magna acute toxicity test	45 definitive samples	R	R
Poecilia reticulata acute toxicity test	45 definitive samples	R	R
Hazard classification and reporting (Inclusive of all screening & definitive tests per survey)	9 reports	R	R
GRAND TOTAL		R	R

The *staff rates* exclude VAT.

Na

Signature _____ Date

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
C3.1	*Employer*’s Scope	7
	Total number of pages	

C3.1: EMPLOYER'S SCOPE

Description of the *services*
Executive overview

SCOPE OF WORK

- Lab and office work - analysis of samples and reporting. A full report for each set of samples/ results submitted, undertaken on an 'as and when required basis'.

Specification of the product

Reports will be internally reviewed by Eskom Environmental Practitioners for quality control.

Interpretation and terminology

Specification and description of the *service*s

Specification of goods and services:

Reports will be internally reviewed by Eskom Environmental Practitioners for quality control.

The training must be DWS accredited to ensure practitioners are eligible to partake in the SASS5 accreditation thereafter.

Constraints on how the *Consultant* Provides the Services.
Management meetings

Meetings will be scheduled and convened as and when required.

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

Records and forecasting of *expenses*
Not Applicable

Invoicing and payment
Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice showing the amount due for payment equal to that stated in the *Service Manager*'s payment certificate.

The *Contractor* shall address the tax invoice to
The Office of the Company Secretary
and include on each invoice the following information:

- Name and address of the *Consultant* and the *Employer's Agent;*
- The contract number and title;
- *Consultant's* VAT registration number;
- The *Employer*'s VAT registration number 4740101508;

- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- (add other as required)

[Add procedures for invoice submission and payment (e. g. electronic payment instructions)]

Contract change management *Employer*'s property

Any changes to the agreed processes must be communicated to all parties in writing.

Inclusions in the programme

Not Applicable

Quality management

System requirements

Clause 40.1 requires that the *Consultant* operate a quality management system as stated in the Scope. The required documents were submitted and evaluated, and will be monitored throughout the contract term.

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. The required documents were submitted and evaluated, and will be monitored throughout the contract term.

The Parties use of material provided by the *Consultant*

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.

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

Clause 70.4, covered by the NDA.

Health and safety

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

Procurement

Name: _____

Signature _____ Date _____

Correction of Defects
Clause 41.2

Working on the *Employer*'s property
The contractor may be requested to carry out certain tasks from the *Employer*'s property so as to access servers.

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

The Employer will arrange access to the facilities, and the contractor must adhere to the Sites entrance requirements.

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/if applicable.

The *Employer's Agent* shall have access to these records at any time. These records may be needed when assessing compensation events.

Cooperating with and obtaining acceptance of Others
Not Applicable

Things provided by the *Employer*
Where required, the Research & Innovation Centre within the Office of the Company Secretary will provide the supplementary datasets required to carry out specified tasks.

Cataloguing requirements by the *Consultant*
Not Applicable

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

- Letter of Good Standing
- Acknowledgment of Life Saving Rules
- Signed SHE Policy
- 37(2) Eskom Agreement
- Baseline Risk Assessment

Eskom’s cardinal rules

The Eskom Cardinal Rules are non-negotiable safety rules that aim to prevent serious at-risk behaviours and promoting a safe working environment at all locations. There may be instances where divisions and or business units have additional cardinal rules addressing their specific risks and these will be supplementary to the five Eskom Cardinal Rules.

The five Eskom Cardinal Rules that the service provider must adhere to, and are as follows:

- Rule 1: “Open, isolate, test, earth, bond and/or insulate before touch”
- Rule 2: “Hook up at height”
- Rule 3: “Buckle Up”
- Rule 4: “Be Sober”
- Rule 5: “Ensure that you have a permit to work”

All safety rules and requirements are important and must be adhered to. The Eskom Cardinal Rules are different from regular safety rules in that they are considered higher order rules. If any of the Eskom Cardinal Rules are not adhered to, it will result in a disciplinary process in accordance with the Eskom Disciplinary Code and Procedure, which will have the power of dismissal