



## NEC3 Professional Services Contract (PSC3)

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

and [Insert at award stage]  
(Reg No. \_\_\_\_\_ )

for Feasibility study to assess the business case for a  
mushroom and “eco-brick” production from alien  
vegetation at, or nearby, Komati Power Station

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CONTRACT No. [ ]

## 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]	[3]
C1.2a	Contract Data provided by the <i>Employer</i>	[12]
C1.2b	Contract Data provided by the <i>Consultant</i> [to be inserted from Returnable Documents at award stage]	[2]
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## C1.1 Form of Offer & Acceptance

### Offer

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

**Feasibility study to assess the business case for a mushroom and “eco-brick” production from alien vegetation at, or nearby, Komati Power Station**

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	<b>R</b>
Value Added Tax @ 14% is	<b>R</b>
The offered total of the Prices inclusive of VAT is	<b>R</b>
(in words)	

If Option E or G apply, for each offered total insert in brackets, “(Not Applicable – Cost reimbursable)”

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

Signature(s)			
Name(s)			
Capacity			
<b>For the tenderer:</b>			
Name & signature of witness	(Insert name and address of organisation)	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			
<b>for the Employer</b>			
Name & signature of witness	(Insert name and address of organisation)		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	<i>(Insert name and address of organisation)</i>		<i>(Insert name and address of organisation)</i>
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	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		<b>A: Priced contract with activity schedule</b>
	dispute resolution Option	<b>W1: Dispute resolution procedure</b>
	and secondary Options	
		<b>X2 Changes in the law</b>
		<b>X4: Parent company guarantee</b>
		<b>X7: Delay damages</b>
		<b>X9: Transfer of rights</b>
		<b>X10 Employer's Agent</b>
		<b>X11: Termination by the Employer</b>
		<b>X12: Partnering</b>
		<b>X13: Performance bond</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>
	Tel No.	
	Fax No.	

<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)

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11.2(9)	The <i>services</i> are	<b>Feasibility study to assess the business case for a mushroom and “eco-brick” production from alien vegetation at, or nearby, Komati Power Station</b>	
11.2(10)	The following matters will be included in the Risk Register	<b>Severe weather conditions, community protests, potholes in the station roads, etc. Please ensure that you read and understand the baseline risk assessment for the project.</b>	
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>Within 24 hours for emergencies. 5 Days for contractual matters</b>	
<b>2</b>	<b>The Parties’ main responsibilities</b>		
25.2	The <i>Employer</i> provides access to the following persons, places and things	<b>access to</b>	<b>access date</b>
		<b>1</b>	<b>Access to site</b>
		<b>2</b>	
		<b>3</b>	
<b>3</b>	<b>Time</b>		
31.2	The <i>starting date</i> is.	<b>Starting date TBC</b>	
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is.	<b>[ Within 4 months.</b>	
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>
		<b>1</b>	<b>Inception Report</b>
		<b>2</b>	<b>Draft Report</b>
		<b>3</b>	<b>Final Report</b>
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	<b>2 weeks of the Contract Date.</b>	
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	<b>1 weeks.</b>	

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<b>4</b>	<b>Quality</b>		
40.2	The quality policy statement and quality plan are provided within	<b>2 weeks of the Contract Date.</b>	
42.2	The <i>defects date</i> is	<b>52 weeks after Completion of the whole of the services.</b>	
<b>5</b>	<b>Payment</b>		
50.1	The <i>assessment interval</i> is	<b>Four weeks provided the activities are completed successfully</b>	
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	<b>Item</b>	<b>Amount</b>
		Safety File	
		Medicals	
		Accommodation	
		Travelling	
		Inception Report: confirm the details of the project scope, the method and calendar-based timeframe to achieve the scope, with corresponding interim and final deliverables. The Inception Report must make note of key dependencies and decision-points, and list the risks to achieving the scope within the proposed time frame, with mitigation measures.	10% of the value of the overall work done by the consultant
		Draft report	40% of the value of the overall work done by the consultant
		Final Report	50% of the value of the overall work done by the consultant
51.1	The period within which payments are made is	<b>4 weeks after the submission of invoice</b>	
51.2	The <i>currency of this contract</i> is the	<b>South African Rand</b>	



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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,
<b>6</b>	<b>Compensation events</b>	As per core clause 6 of the NEC3 PSC
<b>7</b>	<b>Rights to material</b>	As per core clause 7 of the NEC3 PSC
<b>8</b>	<b>Indemnity, insurance and liability</b>	As per core clause 8 of the NEC3 PSC
<b>9</b>	<b>Termination</b>	As per core clause 9 of the NEC3 PSC
<b>10</b>	<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with activity schedule</b>	
21.3	The <i>Consultant</i> prepares forecasts of the total <i>expenses</i> at intervals of no longer than	<b>4 weeks.</b>
<b>11</b>	<b>Data for Option W1</b>	
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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
	Address	
	Tel No.	
	Fax No.	
	e-mail	
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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ).
W1.4(2)	The <i>tribunal</i> is:	<b>arbitration</b>
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	<b>[●] South Africa</b>

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	<p>The person or organisation who will choose an arbitrator</p> <ul style="list-style-type: none"> <li>• if the Parties cannot agree a choice or</li> <li>• if the <i>arbitration procedure</i> does not state who selects an arbitrator, is</li> </ul>	<b>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</b>
<b>12</b>	<b>Data for secondary Option clauses</b>	
<b>X2</b>	<b>Changes in the law</b>	
X2.1	The law of the project is	<b>the law of Republic of South Africa,</b>
<b>X4</b>	<b>Parent company guarantee</b>	<b>If a parent company owns the Consultant, the Consultant gives to the Employer a guarantee by the Consultant's parent company of the Consultant's performance in the form set out in the Scope. If the guarantee was not given by the Contract Date, it is given to the Employer within two weeks of the Contract Date.</b>
<b>X7</b>	<b>Delay damages</b>	
X7.1	Delay damages for late Completion of the whole of the <i>services</i> are	<b>0.05% of task order per day</b>
<b>X9</b>	<b>Transfer of rights</b>	<b>The rights of the research and data pertaining to scope should be transferred to the employer.</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>The Employer may terminate the Consultant's obligation to Provide the Services for a reason not stated in this contract by notifying the Consultant.</b>
<b>X12</b>	<b>Partnering</b>	
X12.1	The <i>Client</i> is (Name)	
	Address	
	Tel	
	Fax	
X12.1(4)	The Partnering Information is in )	
X12.2(1)	The <i>Client's</i> objective is. )	

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<b>X13</b>	<b>Performance bond</b>	
X13.1	The amount of the performance bond is	<b>10% of the contract value</b>  <b>The consultant is to send the bond document to the employer by the contract date. The bond stays in place until the end of the defects liability period when the final certificate is issued.</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>Contract Value</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>52 weeks after Completion of the whole of the services</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.

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- 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**

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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**       means any one or more of a Coercive Action, Collusive Action Corrupt Action,

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**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 <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>	Total of the prices.	Liable during the contract and within the defect period.
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>	<p><b><u>Loss of or damage to property:</u></b> The replacement cost where not covered by the <i>Employer's</i> insurance</p> <p>The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance</p> <p><b><u>Bodily injury to or death of a person:</u></b> The amount required by</p>	Liable during the contract and within the defect period.

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	the applicable law.	
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	For the duration of the contract

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.

## Feasibility study to assess the business case for a mushroom and “eco-brick” production from alien vegetation at, or nearby, Komati Power Station

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.
<b>Standard</b>	means the <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
<b>SANAS</b>	means the South African National Accreditation System.
<b>TWA</b>	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



**Feasibility study to assess the business case for a mushroom and “eco-brick” production from alien vegetation at, or nearby, Komati Power Station**

the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

- Z14.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z14.5 The *Consultant's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z14.6 The *Consultant* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

## C1.2 Contract Data

### Part two - Data provided by the *Consultant*

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

1. The tendering consultant is advised to read both the NEC3 Professional Services Contract, April 2013 and the relevant parts of its Guidance Notes (PSC3-GN)<sup>1</sup> in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 158 & 159 of the PSC3 April 2013 Guidance Notes.
2. The number of the clause in the PSC3 which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
3. Whenever a cell is shaded in the left hand column it denotes this data is optional in PSC3 and would be required in relation to the option selected. The *Employer* should already have made the selection and deleted the rows not required.

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

Clause	Statement	Data
10.1	The <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		<b>CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled.</b>
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	

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

## FEASIBILITY STUDY TO ASSESS THE BUSINESS CASE FOR A MUSHROOM AND "ECO-BRICK" PRODUCTION FROM ALIEN VEGETATION AT, OR NEARBY, KOMATI POWER STATION

11.2(13)	The <i>staff rates</i> are:	<b>name/designation</b>	<b>rate</b>
	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	<b>access to</b>	<b>access date</b>
		<b>1</b>	
		<b>2</b>	
		<b>3</b>	
31.1	The programme identified in the Contract Data is		
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	<b>item</b>	<b>amount</b>
<b>A</b>	<b>Priced contract with activity schedule</b>		
11.2(14)	The <i>activity schedule</i> is in		
11.2(18)	The tendered total of the Prices is	<b>R</b> (in figures)  (in words), excluding VAT	

## 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

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 Parent Company Guarantee (for use with Option X4)

(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,

### Parent Company Guarantee for Contract No

With reference to the above numbered contract made or to be made between

Eskom Holdings SOC Ltd (the *Employer*) and  
{Insert registered name and address of the *Consultant*} (the *Consultant*), for  
{Insert details of the services from the Contract Data} (the *services*).

I/We the undersigned	
on behalf of the <i>Consultant's</i> parent company	
of physical address	

and duly authorised thereto do hereby unconditionally guarantee to the *Employer* that the *Consultant* shall Provide the Services in accordance with the above numbered Contract.

1. If for any reason the *Consultant* fails to Provide the Services, we hereby agree to cause to Provide the Services at no additional cost to the *Employer*.
2. If we fail to comply with the terms of this Deed of Guarantee, the *Employer* may itself procure such performance (whether or not the Agreement be formally determined). The *Employer* is to notify us and we shall indemnify the *Employer* for any additional cost or expense it incurs.
3. Our liability shall be as primary obligor and not merely as surety and shall not be impaired or discharged by reason of any arrangement or change in relationship made between the *Consultant* and the *Employer* and/or between us and *Consultant*; nor any alteration in the obligations undertaken by the *Consultant* or in the terms of the Agreement; nor any indulgence, failure, delay by you as to any matter; nor any dissolution or liquidation or such other analogous event of the *Consultant*.
4. The *Employer* shall not be obliged before taking steps to enforce the terms of this Deed of Guarantee to obtain judgement against the *Consultant* in any court or other tribunal, to make or file any claim in liquidation (or analogous proceedings) or to seek any remedy or proceed first against the *Consultant*.
5. This Deed of Guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa and we hereby submit to the non-exclusive jurisdiction of the Supreme Court of South Africa.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 200\_

Signature(s)		
Name(s) (printed)		
Position in parent company		
Signature of Witness(s)		
Name(s) (printed)		

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

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

Eskom Holdings SOC Ltd  
Megawatt Park  
Maxwell Drive  
Sandton  
Johannesburg

Date:

Dear Sirs

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

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

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

1. In this Guarantee the following words and expressions shall have the following meanings:-
  - 1.1 "Bank" - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]
  - 1.2 "Bank's Address" - means [●]; [Drafting Note: Bank's physical address to be inserted]
  - 1.3 "Contract" – means the written agreement relating to the Services, entered into between Eskom and the Consultant, on or about the [●] day of [●] 200[●] (Contract Reference No. [.]as amended, varied, restated, novated or substituted from time to time; [Drafting Note: Signature Date and Contract reference number to be inserted])
  - 1.4 "Consultant" – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of Consultant to be inserted]
  - 1.5 "Eskom" - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30].
  - 1.6 "Expiry Date" - means the earlier of
    - the date that the Bank receives a notice from Eskom stating that all amounts due from the Consultant as certified in terms of the contract have been received by Eskom and that the Consultant has fulfilled all his obligations under the Contract, or
    - the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by Eskom
  - 1.7 "Guaranteed Sum" - means the sum of R [●] ([●] Rand);
  - 1.8 "Services" - means [insert if applicable.].
2. At the instance of the Consultant, we the undersigned \_\_\_\_\_ and \_\_\_\_\_, in our respective capacities as \_\_\_\_\_ and \_\_\_\_\_ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of Eskom, as security for the proper performance by the Consultant of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to Eskom, on written demand from Eskom received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.

3. A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:
  - 3.1 be signed on behalf of Eskom by a Group Executive, Divisional Executive, Senior General Manager, General Manager or its delegate;
  - 3.2 state the amount claimed ("the Demand Amount");
  - 3.3 state that the Demand Amount is payable to Eskom in the circumstances contemplated in the Contract.
4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:
  - 4.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
  - 4.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
5. The Bank's obligations in terms of this Guarantee:
  - 5.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
  - 5.2 shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between Eskom and the Consultant.
6. Eskom shall be entitled to arrange its affairs with the Consultant in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the Consultant or any variation under or to the Contract.
7. Should Eskom cede its rights against the Consultant to a third party where such cession is permitted under the Contract, then Eskom shall be entitled to cede to such third party the rights of Eskom under this Guarantee on written notification to the Bank of such cession.
8. This Guarantee:
  - 8.1 shall expire on the Expiry Date until which time it is irrevocable;
  - 8.2 is, save as provided for in 7 above, personal to Eskom and is neither negotiable nor transferable;
  - 8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
  - 8.4 shall be regarded as a liquid document for the purpose of obtaining a court order; and
  - 8.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.
  - 8.6 Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.
9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.



Signed at \_\_\_\_\_

Date \_\_\_\_\_

For and behalf of the Bank

Bank Signatory: \_\_\_\_\_

Bank Signatory: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Bank's seal or stamp

## 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.
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 A

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	[ 2 ]
C2.2	The <i>activity schedule</i>	[ 2 ]

## C2.1 Pricing assumptions: Option A

### 1. 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)).

### 2. 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.

### 3. 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*.

### 4. 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.

## **5. 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.

## **6. 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*

Please consider using the attached unpriced bill of quantities (BOQ) form for detailed information.

Use this page as a cover page to the *Consultant's activity schedule* or include here in this format:

Item No.	Programme Reference	Activity description	Price (excl VAT)
Total of the Prices			



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

Remember to state whether the *staff rates* and *expenses* exclude or include VAT.

**The *staff rates* are:**

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

**The *expenses* are:**

No.	Expense item	Amount / rate excluding VAT

## PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3 1	<i>Employer's Scope</i>	10
C3 2	<i>Consultant's Scope</i>	
	Total number of pages	

## C3.1: EMPLOYER’S SCOPE

### Contents

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## 1 Description of the services

### 1.1 Executive overview

The feasibility study for assessment of the viability of setting up a mushroom and "eco-brick" production facility in the Komati Power Station area. The feasibility study must cover critical areas such as biomass volume and suitability (looking at what is available and what needs to be planted), product marketability (locally and internationally), regulatory requirements, and job creation. The study must include the following:

- **Resource and Feasibility Assessment:** identify and quantify invasive plant species around Komati Power Station, assess suitability for various types of mushroom cultivation and brick production, evaluate market demand for mushrooms and alternative bricks, and analyse regulatory requirements for certifying Mycoblocks as a building material in South Africa.
- **Operational and Financial Modelling:** Estimate job creation potential, develop an operating model, and conduct a detailed financial analysis, covering income, expenses, capital expenditure, and financing needs and propose an ownership structure that appropriately apportions risk/reward for the owner and community alike.
- **Implementation Planning:** Create a roadmap for implementation with cost estimates and perform a risk assessment to guide project execution. List the identified potential clients and the expected volumes (both mushroom and the by-product)

### 1.2 Interpretation and terminology

1.2.1 Mycoblocks - The building blocks that are produced by combining the mycelium and agricultural waste.

The following abbreviations are used in this Scope

Abbreviation	Meaning given to the abbreviation
SOW	Scope of Work
JET	Just Energy Transition
OHS	Occupational Health & Safety
QMS	Quality management System

## 2 Specification and description of the services

As per the attached SOW

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

#### 3.1 Management meetings

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

Title and purpose	Approximate time & interval	Location	Attendance by
Risk reduction meeting	As and when required	MS teams	Employer's Agent , Consultant and all relevant stakeholders
Pre-inaugural meeting	1 week after contract is signed	On site	Employer's Agent, Consultant and all relevant Stakeholders,
Inaugural meeting	After safety and environmental files have been assessed and approved	On site	Employer's Agent, Consultant and all relevant Stakeholders
Overall contract progress and feedback	Biweekly on Wednesday at 10h00	Ms teams	<i>Employer's Agent</i> , <i>Consultant</i> and all relevant 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

#### 3.2 *Consultant's key persons*

Position	Minimum Experience	Experience Requirements
Project manager	7+ years in managing feasibility studies, preferably with experience new product/ frontier market development	<ul style="list-style-type: none"> <li>Proven track record delivering successful, bankable feasibility projects and business strategy projects</li> <li>Experience in overseeing detailed, multi-phase business feasibility studies, including market assessment, regulatory analysis, and project/ business financial analysis</li> </ul>
Environmental scientist/ plant biologist	5+ years in environmental assessments	<ul style="list-style-type: none"> <li>Strong background in plant biology and knowledge of invasive plant species in South Africa</li> <li>Knowledge of fungal biology and mycology</li> <li>Fieldwork experience, including plant sampling, surveying, and reporting</li> </ul>
Building materials expert	5+ years in the building materials industry	<ul style="list-style-type: none"> <li>In-depth understanding of South African building materials industry and the associated regulatory requirements</li> </ul>

Position	Minimum Experience	Experience Requirements
		<ul style="list-style-type: none"> <li>• Familiarity with eco-friendly and non-traditional building materials</li> <li>• Familiarity with sustainability certification processes, and green building standards (e g , LEED or Green Star)</li> </ul>
Market and Business Analyst	5+ years in market and business analysis, financial modelling	<ul style="list-style-type: none"> <li>• Strong expertise in conducting market assessments</li> <li>• Proven skills in demand forecasting, pricing analysis, and assessing potential offtake agreements in local and export markets</li> <li>• Financial modelling experience, including capital expenditure, operating expenses, and revenue forecasting</li> <li>• Ability to synthesise financial and market insights into recommendations for operational models and business strategy</li> </ul>
Research Specialist	5 + years in food research and analysis and by-product usage	<ul style="list-style-type: none"> <li>• 3 years + experience in researching agri-based and food commodities in South Africa</li> <li>• Ability to assess new technology applications given insights into successes and failures in the Southern African agri-based arena</li> </ul>

### 3.3 Provision of bonds and guarantees

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

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

### 3.4 Documentation control and retention

#### 3.4.1 Identification and communication

- All correspondence is to be addressed to the Employer's Agent with a sequential numbering system
- Properly compiled letters on official Company letterhead or forms attached to an email and not as a message in an email itself

#### 3.4.2 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. State here what that form is. Note the time period for which the *Consultant* is to retain such documents is the *period for retention* stated in the Contract Data

### 3.5 Records and forecasting of expenses

As per Clause 21 3 (Option A) The *Consultant* prepares forecasts of the total expenses for the whole of the services and submits them to the Employer. Forecasts are prepared at the intervals stated in the Contract Data from the starting date until Completion of the whole of the services. An explanation of the changes made since the previous forecast is submitted with each forecast

### 3.6 Invoicing and payment

In terms of Clause 50.2 states invoices submitted by the Consultant include the details stated in the Scope to show how the amount due has been assessed. The *Consultant* applies for payment with a tax invoice addressed to the *Employer* as follows:

The *Contractor* includes the following information on each tax invoice:

1. The words "**TAX INVOICE**" in a prominent place (preferably at the top of the page)
  2. **Name, address and VAT registration number of the supplier.**
  3. **Name, address and VAT registration number of the recipient.** \*
- Please note: Eskom's name has to be reflected as **Eskom Holdings SOC Limited** on all tax invoices and Eskom's VAT number is 4740101508. The word just Eskom is not acceptable.
4. An **individual serial number** (tax invoice number) and **date issued.**
  5. A **full and proper description** of goods and/or services supplied.
- Please note: Merely referring to a contract is not sufficient.
6. The **quantity or volume** of goods or services supplied. \*
  7. Where the supply is subject to VAT at the standard rate, the following in Rand:  
The pre-VAT value, VAT amount and consideration OR  
The total consideration with a statement that VAT is included @15% OR  
The total consideration and the Rand amount of VAT charged

### 3.7 Contract change management

Where standard forms are available they should be used. No change to this contract, unless provided for by the conditions of contract, has effect unless it has been agreed, confirmed in writing and signed by the Parties.

### 3.8 Inclusions in the programme

A comprehensive and fully detailed programme is to be submitted within the seven (7) days after the inaugural meeting and should be in MS Project format, indicating all milestones and critical dates. This programme must first be approved by the Employer's Agent and must be updated fortnightly or as requested by the Employer's Agent.

The following dates shall be clearly reflected on the programme:  
Starting and completion dates for all activities as well as relevant key dates for hold or witness points. All relevant significant activities shall be shown in order to monitor the progress on site or in the workshop.

Updated programmes must be available at all site meetings reflecting progress to date.  
Strict adherence to the programme will be monitored and updated to achieve the completion dates and submitted to Employer's Agent. Non-conformance to the stated programme will be liable for delay damages.

### 3.9 Quality management

#### 3.9.1 System requirements

The Contractor shall control his activities and processes in accordance with Eskom's **(Form A) tender & contract quality requirements for 240-105658000** and **quality requirements for ISO 9001 standard.**

#### 3.9.2 Information in the quality plan



**FEASIBILITY STUDY TO ASSESS THE BUSINESS CASE FOR A MUSHROOM AND "ECO-BRICK" PRODUCTION FROM ALIEN VEGETATION AT, OR NEARBY, KOMATI POWER STATION**

A quality control plan template is to be provided, indicating all abbreviations for intervention points and acceptance criteria, as well as columns for involvement of consultant quality control/employer and third-party inspectors, including signatories

**3.10 The Parties use of material provided by the Consultant****3.10.1 Employer's purpose for the material**

The Employer has the right to use the material provided by the Consultant for the purpose stated in the Scope. The Consultant obtains from a Subconsultant equivalent rights for the Employer to use material prepared by the Subconsultant

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

The consultant's use the material provided for only this contract, unless otherwise stated in the scope

**3.10.3 Transfer of rights if Option X 9 applies**

The Employer owns the Consultant's rights over material prepared for this contract by the Consultant except as stated otherwise in the Scope. The Consultant obtains other rights for the Employer as stated in the Scope and obtains from a Subconsultant equivalent rights for the Employer over the material prepared by the Subconsultant. The Consultant provides to the Employer the documents which transfer these rights to the Employer

**3.11 Management of work done by Task Order**

Clause 55 applies.

**3.12 Health and safety**

Clause 25.4 states that the Consultant acts in accordance with the health and safety requirements stated in the Scope. It is suggested that this part of the Scope address how the Consultant acts when doing his services. These requirements may be no more than just complying with the law. However if the Consultant is required to work on Eskom premises, then whatever requirements which personnel working in those premises need to comply with should be included here or referred to in an Annexure. If when doing his services the Consultant is required to carry out a design which needs to take account of certain health and safety criteria, then this should be included in the specification of that design service stated elsewhere in the Scope. A draft for this section could start as follows:

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

[If the Consultant may be required to work on Eskom premises, such as a power station, where health and safety requirements additional to those prescribed by law apply, specify these here or state, The Consultant shall comply with the health and safety requirements contained in Annexure \_\_\_\_\_ to this Scope.]

### 3.13 Procurement

#### 3.13.1 BBBEE and preferencing scheme

- 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 Supplier notifies the Employer's agent within seven days of the change
- 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's agent within thirty days of the notification or as otherwise instructed by the Employer's agent
- Where, as a result, the Consultant's B-BBEE status has decreased since the Contract Date the employer's agent may either re-negotiate this contract or alternatively, terminate the Consultant's obligation to Provide the services
- Failure by the Consultant to notify the Employer of a change in its B-BBEE status may constitute a reason for termination

#### 3.13.2 Preferred subconsultants

The Employer reserves the right to approve all sub- consultants that the Consultant intends to enter into sub- consultants with in order to make sure that the sub- consultants complies with operational standards

#### 3.13.3 Subcontract documentation, and assessment of subcontract tenders

The NEC system is compulsory for all subcontract documentation

#### 3.13.4 Limitations on subcontracting

According to Eskom Procurement policy, the main Consultant must not subcontract more than 25% of the total contract.

#### 3.13.5 Attendance on Subconsultants

If the Consultant subcontracts work, he is responsible for Providing the Services as if he had not subcontracted This contract applies as if a Subconsultant's employees were the Consultant's

### 3.14 Correction of Defects

As per Clause 41 of NEC PSC3

### 3.15 Working on the Employer's property

The Consultant shall comply with the Employer's site requirements

All people employed on site shall be sober on site and may be subjected to random breathalyser tests

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

Commented [A1]: S&H / Risk to verify

- The Consultant applies for temporary access permits at the Security gate, prior to the Possession Date
- The Consultant personnel are required to be always in possession of a Consultant's Permit
- All Supplier personnel are issued with a temporary access permit which contains the following information
  - Name
  - ID Number
  - Company
  - Validity date

#### 3.15.2 People restrictions, hours of work, conduct and records

**FEASIBILITY STUDY TO ASSESS THE BUSINESS CASE FOR A MUSHROOM AND "ECO-BRICK" PRODUCTION FROM ALIEN VEGETATION AT, OR NEARBY, KOMATI POWER STATION**

- The Consultant is to supply Eskom with Police clearance for all the employees on site before Work commences
- Working hours will be from 08h00 to 16h30 during week day Weekend work to be carried out only on request from Eskom
- The Consultant must keep records of his people on Site, including those of Subconsultants which the employer's agent have access to at any time These records may be needed when assessing compensation events

**3.16 Cooperating with and obtaining acceptance of Others**

Not applicable

**3.17 Things provided by the *Employer***

- Working space while on site

**3.18 Cataloguing requirements by the *Consultant***

Not applicable

**4 List of drawings****4.1 Drawings issued by the *Employer***

Not applicable

Drawing number	Revision	Title