



NEC3 Professional Services Contract (PSC3)

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

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

for PROVISION OF AN INDEPENDENT CONSTRUCTION
QUALITY ASSURANCE (CIVIL) FOR THE ASH
DISPOSAL FACILITY FOR THE MEDUPI POWER
STATION

Contents:	No of pages
Part C1 Agreements & Contract Data	23
Part C2 Pricing Data	7
Part C3 Scope of Work: The Scope	25

PR No.
Tender No.
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]	1
C1.2a	Contract Data provided by the <i>Employer</i>	11
C1.2b	Contract Data provided by the <i>Consultant</i> [to be inserted from Returnable Documents at award stage]	2
C1.3	Securities proforma	5

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 an Independent Construction Quality Assurance (Civil) for the Ash Disposal Facility for the Medupi Power Station

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	Rates Base Contract
Value Added Tax @ 15% is	Rates Base Contract
The offered total of the Prices inclusive of VAT is	Rates Base Contract
See attached pricelist on section C2.2	

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

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Acceptance

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

The terms of the contract, are contained in:

Part C1	Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: The Scope

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the *Employer* during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the *Employer's* agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed and signed original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)	Mr Zweli Witbooi	
Capacity	General Manager Medupi Power Station	
for the Employer	Eskom Holdings SOC Limited Medupi Power Station Private Bag X9003 LEPHALALE 0555	
Name & signature of witness	Mr Justice Mphahlele Project Manager (Medupi Power Station)	
		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	As listed in attached Summary of Assumptions and Exclusions Schedule Annexure B	

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 <i>Employer</i>
Signature		
Name		Mr Zweli Witbooi
Capacity		General Manager: Medupi Generation Division
On behalf of		Eskom Holdings SOC Limited Medupi Power Station Private Bag x9003 LEPHALALE 0555
Name & signature of witness		
Date		

C1.2 PSC3 Contract Data

Part one - Data provided by the *Employer*

The *conditions of contract* are the core clauses and the clauses for main Option

dispute resolution Option
and secondary Options

- G: Term Contract**
- W1: Dispute resolution procedure**
- X2 Changes in the law**
- X7: Delay damages** (Maximum of 10% of Total of the Prices)
- X9: Transfer of rights**
- X10 *Employer's Agent***
- X11: Termination by the *Employer***
- X13: Performance bond**
- X18: Limitation of liability**
- Z: *Additional conditions of contract***

of the NEC3 Professional Services Contract (April 2013)

10.1	The <i>Employer</i> is	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
11.2(9)	The <i>services</i> are	Medupi Power Station Continuous Ash Disposal Facility (ADF) Project Construction Quality Assurance (CQA)
11.2(10)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> • Labour and community unrest • Construction delays (Ash dust, etc) • Inclement weather • Changes in the Environmental legislation and regulations
11.2(11)	The Scope is in	Part 3: of the document entitled Scope of Work
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	Seven (7) working days
13.6	The <i>period for retention</i> is	Ten (10) years following Completion or earlier termination.

2 The Parties' main responsibilities

25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	access date	
		1	Medupi Power Station	On Contract Award Date
		2	Medupi Power Station Ash disposal facility area	On induction completion date
		3	Information and people relevant to provide services	As per kick-off meeting agreement

3 Time

31.2	The <i>starting date</i> is.	TBA		
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is.	TBA		
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	key date	
		1	Key Resources Established on site	On Contract Award Date
		2	Key Resources available for all contractual requirements	On Contract Award Date
		3	Submission of report to regulator as per requirements	Date to be confirmed after contract award
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	Fourteen(14) calendar days		
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	Two (2) weeks		

4 Quality

40.2	The quality policy statement and quality plan are provided within	Thirty (30) calendar days after Contract Date.
42.2	The <i>defects date</i> is	Fifty two (52) weeks after Completion of the whole of the <i>services</i>.

5 Payment

50.1	The <i>assessment interval</i> is	on the 20 day of each successive month.
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	Refer to Part C2 Pricing Data

51.1	The period within which payments are made is	Thirty Calendar Days (30) days after the receipt of an invoice.	
51.2	The <i>currency of this contract</i> is the	South African Rand	
51.5	The <i>interest rate</i> is	the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (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.	
6	Compensation events	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.	
7	Rights to material	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.	
8	Indemnity, insurance and liability		
81.1	The amounts of insurance and the periods for which the <i>Consultant</i> maintains insurance are		
	Event	Cover	Period following Completion of the whole of the services or earlier termination
	Liability for failure by the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	Maximum of twice professional fees.	Three (3) years
	death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property arising from or in connection with the <i>Consultant's</i> Providing the Services.	<u>Loss of or damage to property</u> Maximum of twice professional fees.	Three (3) years
		<u>Bodily injury to or death of a person</u> Maximum of twice professional fees.	
	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	Maximum of twice professional fees.	Three (3) years
81.1	The <i>Employer</i> provides the following insurances		
	Insurance against or name of policy		Minimum amount of cover or minimum limit of indemnity
	Assets All Risk		Per the insurance policy document

<i>works</i> 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

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

G Term Contract

21.3 The *Consultant* prepares forecasts of the total *expenses* at intervals of no longer than **Thirty (30) calendar days**

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 <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	Johannesburg, South Africa	
	The person or organisation who will choose an arbitrator	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.	
	1. if the Parties cannot agree a choice or 2. if the <i>arbitration procedure</i> does not state who selects an arbitrator, is		
12	Data for secondary Option clauses		
X1	Price adjustment for inflation		
X1.1	The index is	SEIFSA	
		Non-adjustable	0.00
		Total	1
	Local Labour	SEIFSA Table C3 (All hourly Paid employees)	
	Transport (Travel kms)	SEIFSA Table L1 – (A) (Road Freight Costs)	
	Accommodation and Consumables	SEIFSA Table D	
	The base date for the indices is	Based date is one month prior to the month on which tender closes (closing).	
X2	Changes in the law		
X2.1	The law of the project is	the Law of Republic of South Africa.	
X7	Delay damages		
X7.1	Delay damages for late Completion of each <i>section</i> of the <i>services</i> are:	R5000.00 per day up to 5% of the contract value	
X9	Transfer of rights	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.	
X10	The <i>Employer's Agent</i>		
X10.1	The <i>Employer's Agent</i> is		
	Name:	Justice Mphahlele	
	Address	Medupi Power Station, Lephalale	
	The authority of the <i>Employer's Agent</i> is	<ul style="list-style-type: none">Project Management and Contract ManagementExecutes the duties of the <i>Employer</i>	
	Tel No.	014 762 2251	

X11	Termination by the <i>Employer</i>	As stipulated in the NEC 3 Professional Services Contract
X13	Performance bond	
X13.1	The amount of the performance bond is	10% of the Contract Price
X18	Limitation of liability	
X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	R0.00 (Zero Rand)
X18.2	The <i>Consultant's</i> liability to the <i>Employer</i> for Defects that are not found until after the <i>defects date</i> is limited to:	The total of the Prices
X18.3	The <i>end of liability date</i> is	Five (5) years after Completion of the whole of the <i>services/task order</i>.
Z	The <i>Additional conditions of contract</i> are	Z1 to Z11 always apply.

Z1 Cession delegation and assignment

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

Z2 Joint ventures

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

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

- Z3.1 Where a change in the *Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant's* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change.
- Z3.2 The *Consultant* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*.
- Z3.3 Where, as a result, the *Consultant's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Consultant's* obligation to Provide the Services.

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

Z4 Confidentiality

- Z4.1 The *Consultant* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the *Consultant* disclose information to Others in terms of clause 23.1, the *Consultant* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer*.
- Z4.3 In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer's* project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

Z5 Waiver and estoppel: Add to core clause 12.3:

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

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

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

Z7 Notifying compensation events

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

Z8 Employer's limitation of liability

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

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

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

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


- Z10.1 If the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.
- Z10.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the services in addition to the amounts due in terms of core clause 92.1.

Z11 Ethics

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

- Affected Party means, as the context requires, any party, irrespective of whether it is the *Consultant* or a third party, such party's employees, agents, or Sub*Consultants* or Sub*Consultant'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 Sub*Consultants* or the Sub*Consultant's* employees,
- Corrupt Action means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,
- Fraudulent Action means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,
- Obstructive Action means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and
- "Prohibited Action" means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.
- Z 11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z 11.2 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.
- Z 11.3 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.

Z 11.4 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.



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)¹ 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		
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	None

11.2(13)	The <i>staff rates</i> are:	name/designation	Refer to the pricing schedule
	Either complete here or cross refer to a schedule in Part C2.2	Part C2.2	
25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	<i>access date</i>
		1 Key Resources Established on site	On Contract Award Date
		2 Medupi Power Station Ash disposal facility area	On induction completion date
		3 Information and people relevant to provide services	As per kick-off meeting agreement
31.1	The programme identified in the Contract Data is	Based on approved construction contract programme	
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	Item Part C2.2	Amount
G	Term Contract		
11.2(25)	The <i>task schedule</i> is in	Part C2.2	

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 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.

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

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

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

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Date:

Dear Sirs

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

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

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

In this Guarantee the following words and expressions shall have the following meanings:-

“Bank” - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]

“Bank’s Address” - means [●]; [Drafting Note: Bank’s physical address to be inserted]

“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])

“*Consultant*” – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of *Consultant* to be inserted]

“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].

“Expiry Date” - means the earlier of

1. 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
2. the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by Eskom

“Guaranteed Sum” - means the sum of R [●] ([●] Rand);

“Services” - means [insert if applicable.].

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.

A demand for payment under this guarantee shall be made in writing at the Bank’s address and shall:

be signed on behalf of Eskom by a Group Executive, Divisional Executive, Senior General Manager, General Manager or its delegate;

state the amount claimed ("the Demand Amount");

state that the Demand Amount is payable to Eskom in the circumstances contemplated in the Contract.

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:

is and shall be absolute provided demand is made in terms of this bond in all circumstances; and

is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.

The Bank's obligations in terms of this Guarantee:

shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum;
and

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*.

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.

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.

This Guarantee:

shall expire on the Expiry Date until which time it is irrevocable;

is, save as provided for in 0 above, personal to Eskom and is neither negotiable nor transferable;

shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;

shall be regarded as a liquid document for the purpose of obtaining a court order; and

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.

Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.

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. "Bank" - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]
 2. "Bank's Address" - means [●]; [Drafting Note: Bank's physical address to be inserted]
 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])
 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]
 5. "*Consultant's* ASGI-SA Obligations" – means the *Consultant's* ASGI-SA Obligations under and as defined in the Contract.
- 1.1 "*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.
6. "Expiry Date" - means the [●] day of [●] 200[●]; [Drafting Note: anticipated date of issue of ASGI-SA Performance Certificate to be inserted.]
7. "Guaranteed Sum" - means the sum of R [●] ([●] Rand);
8. "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:
 1. state the amount claimed ("the Demand Amount");
 2. state that the Demand Amount is payable to the *Employer* in the circumstances contemplated in the Contract.

2. 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:
- 2.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
3. is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
4. The Bank's obligations in terms of this Guarantee:
1. shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
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*.
5. 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.
6. 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.
7. This Guarantee:
1. shall expire on the Expiry Date until which time it is irrevocable;
2. is, save as provided for in 0 above, personal to the *Employer* and is neither negotiable nor transferable;
3. shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
4. shall be regarded as a liquid document for the purpose of obtaining a court order; and
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.
6. Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.
8. 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 C2: PRICING DATA

Document reference	Title	No of pages
C2.1	Pricing assumptions : Option G	3
C2.2	<i>Staff rates and expenses</i>	4

C2.1 Pricing Assumptions: Option G

1. How work is priced and assessed for payment

Identified and defined terms	11	
	11.2	(17) The Price for Services Provided to Date is, for each Task, the total of <ul style="list-style-type: none">the Time Charge for work which has been completed on time based items on the Task Schedule anda proportion of the lump sum price for each other item on the Task Schedule which is the proportion of work completed on that item.

(20) The Prices are

- the Time Charge for items described as time based on the Task Schedule and
- the lump sum price in the Task Schedule for each other item.

From the Core Clauses:

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

and

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

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

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

2. Staff rates and expenses

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

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

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

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

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

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

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

3. The function of the Task Schedule

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

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

C2.2 Staff rates, expenses & the task schedule

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

1. Construction Quality Assurance *staff rates* and *expenses* are:

The *staff rates* are:

No.	Designation (or category) or name of staff member	Rate per {hour, day, month} excluding VAT
1.	Construction Manager SACPMP Pr registered	
2.	Quality Assurance- With Civil Engineering Experience	
3.	Construction Safety Officer SACPMP Pr Registration	
4.	Senior Environmental Control Officer	

The *expenses* are:

No.	Expense item	Amount / rate excluding VAT
1.	Travelling	
2.	Accommodation	
3.	Subsistence	
4.	Off-site laboratory testing for geomembrane incl. courier	
5.	SHEQ (incl. medicals, Induction, PPE, Environ & Quality)	

WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Scope</i>	25
C3.2	<i>Consultant's Scope</i>	
	Total number of pages	

C3.1: EMPLOYER’S SCOPE

Contents

Description of the services

1. INTRODUCTION

1.1 BACKGROUND

Medupi Power Station is a 4,764 MW installed capacity base load coal fired power station, consisting of 6 units. The ash disposal facility is located on the western end of the ash dump footprint, and forms part of the ash disposal facility once the excess coal has been reclaimed.

1.2 PROJECT OVERVIEW

The Medupi Power Station Ash Disposal Facility (ADF) Extension is required to ensure that there is sufficient ash storage capacity available for the life of the Power Station and to comply with the National Environmental Management Act (NEMA).

Jaws and Wagner (J&W) was appointed on 15 February 2021 by Eskom (SOC) Ltd, to undertake the basic and detailed design of the Medupi Power Station continuous ash disposal facility (ADF) project, in accordance with the approved licences received from Department of Environmental Forestry and Fisheries (DEFF) and Department of Water and Sanitation (DWS). The design was completed and presented to the then DWS in November 2021.

It is required by Department of Environmental Forestry and Fisheries (DEFF) and Department of Water and Sanitation (DWS) to appoint a third party controller (as define in SANS 10409:2020) also known as an Independent Construction Quality Assurance (CQA) person , who will be responsible for assuring that the procedures of document management on site are followed and that independent laboratory test are undertaken and the results reflects compliance with SANS1526:2015 for HDPE Geomembrane on the liner and SANS 0409:2020 for the installation along with other Quality Assurance records.

The provision of this project is to employ the CQA services for the ASH Disposal Facility Project at Medupi Power Station to ensure compliance with the conditions set out by DFFE for approval of design drawings

2. SUPPORTING CLAUSES

Refer to Normative table 2.2.1

2.1 SCOPE OF DOCUMENT

2.1.1 Purpose

The purpose of this document it to give a high-level scope of work for the sourcing of engineering services from an Independent CQA Subject Matter Expert (SME), for the undertaking of the Independent CQA of the design monitoring and construction supervision.

2.1.2 Applicability

This document applies to Medupi Power Station.

2.2 NORMATIVE/INFORMATIVE REFERENCES

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs:

2.2.1 Normative References

1. Occupational Health and Safety (OHS) Regulation's act (85 of 1993)
2. National Water Act, Act 36 of 1998
3. National Environmental Management Act, Act 107 of 1998
4. National Environmental Management Waste Act, Act 59 of 2008
5. Regulations GN704 and GN139
6. NEMWA National Norms and Standards (GN R 634, 635, 636) (2013), DEA
7. Applicable SANS Standards
8. 240-107981296, Constructability Assessment Guideline
9. 240-53113685: Eskom Design Review Procedure
10. 240-56364545: Structural Design and Engineering Standard
11. 240-57127955: Geotechnical and Foundation Engineering Standard
12. 240-57127953: Execution of Site Preparation and Earthworks Standard
13. 240-57127951: Standard for the Execution of Site Investigations
14. 240-92460850: Geotechnical Standard for CSY and ADF Site Investigation
15. 240-91244751: Specification for Geotechnical Investigations Standard
16. 240-125171334: Guideline for the Design of Ash Disposal Facilities for Coal Fired Power Stations
17. 240-98349953: Check sheet for Geotechnical Investigations
18. 240055864300: Dam Design Standard
19. 200-39192: Medupi Geohydrological Investigation Report
20. 240-53114026: Project Engineering Change Procedure
21. 240-53114002: Engineering Change Management Procedure

2.2.2 Informative References

22. 240-134566324: Medupi Power Station ROC for 4 to 20 Year Ash Dump
23. 348-947651: Stakeholder Requirements Definition for Medupi Ash Dump Facility
24. JW 158/17/G145 - Rev 1: Medupi Power Station Northern Ash and Gypsum Disposal Facility Concept Design Report, November 2017
25. JW 214/17/G145 – Rev 1: Medupi Power Station Northern Ash and Gypsum Disposal Facility Operation Manual, November 2017
26. G145-Min-r1-sljscnn-DWSmeeting-20171009: Minutes of the Design Approval Meeting Held at DWS Pretoria on 9 October 2017
27. 200-38829: Medupi Power Station Ash Dump Geotechnical Investigation, November 2008, Rev 0
28. 200-81757: Final Report on the Geotechnical Investigations Carried out for the ECSY, PCD and Haul Road on the Farms Eenzaamheid 687 LQ and Naauwontkome 509 LQ, Rev 0
29. 200-77521: First Interim Report Presenting Findings of test Pit Investigation carried out across Footprint of ECSY, Rev 0
30. 200-79053: Second Interim Report on the Geotechnical Investigations Carried Out for the ECSY, PCD and Haul Road on the Farms Eenzaamheid 687 LQ and Naauwontkome 509 LQ, Rev 0
31. 200-93179: First Interim Report on Geotechnical Investigations Carried out for Second Phase of the ECSY, PCD D4 and Access/Haul Roads on Farm Eenzaamheid 687 LQ, Rev 0
32. 200-128851: First Interim Report on the Geotechnical Investigations Carried out for the ECSY Phase 3, Haul Road and Associated PCD's on the Farms Eenzaamheid 687 LQ and Naauwontkome 509 LQ, Rev 0
33. 200-210507: Waste Management Licence for Medupi Power Station Ash Dump
34. 200-234039: Medupi Amended Water Use Licence, December 2015

2.3 DEFINITIONS

2.3.1 Classification

Controlled Disclosure: means controlled disclosure to external parties (either enforce by law, or discretionary).

2.4 ABBREVIATIONS

Abbreviation	Description
CQA	Construction Quality Assurance
DFFE	Department Of Forestry, Fisheries & Environment
DWS	Department of Water and Sanitary
EIA	Environmental Impact Assessment
GTE	Group Technology Engineering
PCD	Pollution Control Dam
N/A	Not Applicable
SME	Subject Matter Expert
SRD	Stakeholders Requirements Document
SoW	Scope of Work

2.5 RELATED/SUPPORTING DOCUMENTS

Geotechnical Report on the Ash Disposal Site for Medupi Power Station. Jones & Wagener Inc. August 2021.
Report No: JW221/21/I935 – Rev 0.

3. SCOPE OF WORK

The scope of work entails the Independent CQA Design and Construction Monitoring of the detailed designs for the extension of the Ash Dump Area 2 (4-8 years). All construction and operating philosophies must be in line with the existing ashing area's WUL and the new ashing area's Waste and Water Use Licence requirements.

3.1 Scope of Services

The scope includes the following:

- Familiarise himself with the Medupi Continuous ADF Detailed Design and all design progression which has occurred to date.
- Technical queries including review of method statements and inspection plans when necessary.
- To keep record for the certified welding technicians (CWTs) certification.
- Construction and commissioning monitoring of Phase 2 and 3 developments including:

Full-time representation on site by a construction monitoring team including:

- Monitoring of installation of liner components.
- Weekly review and sign-off of Quality Control documentation.
- Weekly review of data book documentation.
- Review and participate on NCRs and/or ITPs.
- ✓ Fortnightly site inspections by the Independent Professional Engineer,
- ✓ Laboratory verification testing to verify the properties of the materials as well as analysis of results.
- ✓ Technical support including attendance of technical meetings and input into Engineering documentation, technical input into installed quantities were requested by Eskom.
- ✓ Technical compliance in terms of environmental authorisation licences.

- ✓ Risk identification, monitoring and mitigation.
- ✓ Submission of reports to Authorities (DEFF & DWS) on progress of construction
- ✓ Independent Laboratory verification testing (Required ADHOC - verification of material properties, sample acquisition and review of results),

3.2 Technical support:

Technical support is broken down as follows:

- ✓ Managing interfaces with other Eskom Consultants and consultant
- ✓ Technical meetings
- ✓ Input into Eskom documentation
- ✓ Reviewing method statements
- ✓ Updates on the project progress
- Research time for specific queries.

The construction work that will be monitored by the Independent CQA:

- Commercial sourcing, Borrow and management of construction materials as required by the detailed design,
- Preparing the liner terrace of Area 2 Phase 1 and Phase 2 for an ashing capacity of 42 000 000 m³,
- Lining the footprint of Area 2 Phase 1 and Phase 2 two separate phases,
- Construction of Dam 3 complex (blasting and drilling will be required because of quarzitic sandstone will be encountered from a depth of 2.8m),
- Construction of storm water management infrastructure,
- Construction of roads, fences, and other ancillary infrastructure.
- Silt traps associated with Ash Dams.
- Installation of subsoil herringbone drainage network which will drain into the perimeter canal.
- Construction of the liner system

3.3 Site Supervision

The CQA personnel responsible for site quality is required to be available on site during all liner related activities, should 24-hour construction monitoring be required, additional resources will be required to manage the higher workload.

4. DELIVERABLES

The deliverables for the above scope are as follows and not limited to the Independent CQA to review the following work performed by the Designer and the Consultant:

- ✓ Updated Geomembrane performance specification.
- ✓ Reports to authorities on progress, construction.
- ✓ Defects report,
- ✓ Construction completion report and related documentation,
- ✓ Professional Eligibility Certificates for completed works.
- Concrete/structural detail Drawings,
- Updated reports

4.1 Programme

The expected duration for Independent CQA is: months

5. RESOURCE REQUIREMENTS

The minimum required resources are as follows:

Resource Required	Details	Time Requirement
Professional Engineers x1 Pr. Eng / Pr. Tech) – Part time 5-10 years'	Head office-based resources must oversee the technical details of various aspects of the installation requirements.	Part Time
Construction Manager x1 SACPCMP Registered	Office based project manager will assist in team co-ordination, invoicing, cost and time management, bridge interface for consolidation of technical data and responses from consultant. (Knowledge of NEC essential)	Full Time
Senior Environmental Control Officer x1	Office based to execute environmental management activities within the project.	Full Time
Quality Assurance x1 With Civil Engineering Experience	Oversee day to day construction site activities,	Full Time
	technical document review and quality inspections.	

Senior Planner	Head office-based resource must provide an effective planning and scheduling advisory and support to the project.	Part Time
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6. ROLES AND RESPONSIBILITIES

Role as Engineering Support during Construction	Requirements of Role
Site Communications	All site communication between the Consultant and the Design Consultant must always include Employer representative. No instructions are to be issued to the Consultant without knowledge of the NEC Project Manager or/and Supervisor. Records of these correspondence shall be sent to the Project Manager for record keeping and document archives.
Technical Assurance	The Independent CQA ensures that the civil engineering construction is done in accordance to the Detailed Design, and therefore aligns to the Works Information technical specifications. Refer to the following: SANS 1526 (2015) SANS 10409 (2020) GRI GM 13 & 19 SANS 1200D
Attendance to site meetings	The Independent CQA attends all technical, quality and progress meetings.
Review of Consultants Quality Control Plans, Inspection. and Test Plans & Method Statements	The Independent CQA reviews the QCP, ITP and Method Statement documentation for review from Construction Management Department. All quality and technical documents to form part of reports submitted to Authorities.
Inspection of Hold Points	The Independent CQA evaluates test results and construction procedures related to the identified hold points. The Independent CQA communicates findings to the allocated CMD Supervisor. The CMD Supervisor then communicated the findings to the Consultant and will relay work stoppages or continuations (as required).
Handling of technical queries and resolutions	The Independent CQA receives Technical Queries via the PM/CMD Supervisor. The Independent CQA assesses the query and the solution to ensure there are no deviations to the Detailed Design. (Interface is made with the responsible Designer to ensure that the necessary checks have been completed).
Record of site activities	The Independent CQA is required to keep a record of site activities impacting technical assurance and report it on a weekly basis through the relevant weekly reports

Review of as built information.	The Independent CQA reviews the as built information against the required design to ensure that the construction has been done in accordance to the detailed design.
Independent checks of tests and Laboratory verification of tests	The Independent CQA may conduct additional tests to verify the Consultants findings. This is done to ensure adequate Technical Assurance is conducted throughout the installation of the liner.
Construction Close out reports and alignment to Hand-Over procedures	The Independent CQA conducts the necessary technical assurance to ensure that all civil engineering construction has been conducted according to the Works Information technical specifications. The Independent CQA ensures that all the necessary checks have been conducted to allow the certificates to be issued.

7. Documentation Management

7.1 Document Identification

The *Consultant* is responsible for the compilation and the supply of the documentation during the various project stages and to provide the documentation programme linked to the milestone dates. Completion dates for documentation to meet the milestone dates in accordance with the agreed Vendor Document Submission Schedule (VDSS) agreed by both parties.

7.2 Documents Submission

All documents and records are submitted according to Technical Document and Record Management Work Instruction (240-76992014), Reporting and Data Requirements Specification for Consultants (240-83561037) and all other Engineering standards referenced in this works information. The *Employer* ensures that the Consultant is provided with the latest revisions of all these documents. All documents used within the project follows the same standard of layout, style and formatting as described in the documents mentioned above.

The *Employer* provides the *Consultant* with a mailbox address to be used for all contractual documentation/correspondence to and from the *Consultant*.

The *Employer* sets up a workflow system in the Eskom Documentation Management System (EDMS) for documentation transmittal to and from the *Consultant*. The *Consultant* is given access rights to the Eskom EDMS for all documentation to be submitted and reviewed. Where a document cannot be attachment due to size, the document is zipped or hand delivered on an electronic mass storage device (preferably USB) to the *Employer's Agent*. The *Consultant* submits final documents, excluding drawings as electronic in pdf format on an electronic mass storage device (preferably USB) and hard copies are delivered to the *Employer's Agent* with a transmittal note.

Any uncertainty regarding all specified documents is clarified with the *Employer*. The *Consultant* complies with all minimum document metadata as specified in Technical Documentation Classification.

All documentation is submitted in accordance with the communication plan, and with a transmittal containing the following fields as a minimum:

- Name of the Package
- Name of *Consultant*
- Transmittal Number
- *Consultant* Details
- Date of Submission
- Description of Document
- Document Number
- Document revision
- Document type
- Document media type
- Number of copies
- Purpose of submission
- Signed by and date

7.3 Documentation Review and Turn-around

The *Consultant* is given access to Eskom electronic document management system portal collaboration system for submission of all documentation to be reviewed. The *Consultant* maintains Master Document List (MDL) of all documents submitted and submits monthly to the *Employer*.

The *Employer* has a minimum 14 calendar days to review, consolidate and send back review comments for documentation submitted by the *Consultant*. The *Consultant* also has a minimum 14 calendar days to respond and/rectify as per the comments by the *Employer* or as stipulated on the contract.

Final documentation is submitted in both electronic and hard copies to the Project Documentation Centre. The *Consultant* submits two (2) hard copies, one (1) electronic copy (USB) for each file and one Master electronic copy for all documents submitted one month after the completion of the contract.

8. Records and forecasting of expenses

Forecasted Rate of Invoicing (FRI) should be send monthly, based on the programme for outstanding work to be performed.

9. Records and forecasting of the Time Charge

As per clause 21.4 of the NEC PSC3

10. Invoicing and payment

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

The Consultant shall address the tax invoice to Eskom Holding SOC Limited and include on it the following information:

- Name and address of the *Consultant* and the *Employer's Agent*.
- The contract number and title.
- *Consultant's* VAT registration number.
- The *Employer's* VAT registration number 4740101508;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT; (add other as required)

Invoice should be send to the following address and Finance team on site should be copied:
invoiceseskomlocal@eskom.co.za

11. Inclusions in the programme

As per clause 31. of the NEC PSC3

12. Quality management

12.1 System requirements

Clause 40.1 requires that the Consultant operate a quality management system as stated in the Scope. The Consultant to comply with Supplier Quality Management Specification 240- 105658000

12.2 Information in the quality plan

Clause 40.2 requires that the Consultant provide a quality policy statement and quality plan which complies with requirements stated in the Scope. The Consultant is to submit: Quality Method statement based on the scope; Quality policy; Quality Objectives; information for defined roles, responsibilities and authorities; Control of Externally Provided Processes; Products and Services and Form A

13. The Parties use of material provided by the *Consultant*

Employer's purpose for the material

Reports and information by the Consultant's might be used for handover and all associated activities to the Client.

14. Health and safety

14.1 General

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

In carrying out its obligations to the Employer in terms of this contract, which obligations include, amongst others, providing the works; using Plant, Materials and Equipment; and whilst at the site for any reason, the Consultant is the "Employer" in terms of the Occupational Health and Safety Act,

No. 85 of 1993, in respect of its activities and in relation to its employees, agents, Subcontractor/s and mandatories.

The Consultant is responsible for the supervision of its employees, agents, Subcontractors and mandatories and takes full responsibility and accountability for ensuring that they are competent, aware of the Safety Health and Environmental requirements, whilst executing the works in accordance with the Safety Health and Environmental requirements.

The Consultant ensures compliance with, amongst others:

- a) The provisions of the Occupational Health and Safety Act, No. 85 of 1993 and all applicable Regulations (as amended), binding in terms thereof.
- b) The latest versions of standards, procedures, specifications, rules, systems of work and Requirements of the Employer, copies of which will be provided to the Consultant on request.
- c) The provisions of the National Environmental Management Act (as amended) and all regulations in force from time to time in terms of that Act, including Record of Decisions/ Environmental Authorisation.

The documentation referred to is collectively referred to as the Safety Health and Environmental requirements and forms a part of the contract Works Information.

The Consultant ensures that its employees, agents, Subcontractors and mandatories comply with the provisions of the Occupational Health and Safety Act, No. 85 of 1993, and all applicable regulations binding in terms thereof as well as the Employer's Safety Health and Environmental Specification whilst making use of plant, materials and equipment and whilst at the Site for any reason whatsoever.

The Consultant shall ensure that such a person is contactable 24 hours a day, and is registered with a registered professional council approved by the Principal Director of the Department of Labour, as per the requirements of the latest Construction Regulations, inclusive of all exemptions and amendments pertaining thereto.

The Consultant hereby indemnifies the Employer and holds the Employer harmless in respect of any and all loss, costs, claims, demands, liabilities, damage, penalties or expenses that may be made against the Employer and/or suffered or incurred by the Employer (as the case may be) as a result of, any failure of the Consultant, its employees, agents, Subcontractors and mandatories to comply with their obligations, and/or the failure of the Employer to procure the compliance by the Consultant, its employees, agents, Subcontractors and/or mandatories with their responsibilities and/or obligations in terms of or arising from the Occupational Health and Safety Act, No. 85 of 1993.

Immediately reports any occupational or other injuries, near miss events, property damage, environmental related incidents as well as any potential threat to the health and safety of individuals at the works or on the site, as soon as he becomes aware thereof, to the Employer's Agent.

Complies with the Employer's Environmental, Occupational Health & Safety Incident Management Procedure - 32-95, relating to the reporting and investigation of incidents. The classification of incidents contained in such document are considered final and must be applied by the Consultant relating to any incidents/ injuries relating to its employees, agents, Consultants, Subcontractors and mandatories whilst on Site;

The Consultant will ensure that a valid Letter of Good Standing is handed in to the SHE Department.

The Consultant will ensure that a valid medical certificate is handed in at the time of inductions.

15. Procurement

15.1 BBBEE and preference scheme

The Consultant shall maintain or improve the B-BBEE Level of contribution's status with which it was it has been awarded the Contract. Should the Contractor's B-BBEE Level of contribution's status be reduced, then the Consultant must inform the Employer with five (5) working days of receiving or knowing about the results of the verification. Then the Employer shall provide the Consultant with a grace period of sixty days (60) days to restore the status quo ante.

15.2 Supplier Development, Localisation and Industrialisation's Undertaking

The Consultant complies with and fulfils the Consultant's obligations in respect of the Supplier Development, Localisation and Industrialisation (SDL&I)'s Obligations in accordance with and as provided for in the Contractor's SDL&I Undertaking.

The Consultant will develop skills as well as create and/or retaining the number of jobs as agreed during the Negotiations and Contract award. The beneficiaries for Skills Development will be graduates from Waterberg District.

The Consultant shall keep accurate records and provide the Employer's Agent with reports on the Consultant's actual delivery against the above stated SD&L criteria.

The Consultant's failure to comply with his SD&L obligations constitutes substantial failure on the part of the Consultant to comply with his obligations under this Contract.

16. Working on the *Employer's* property

16.1 General

Access to the site is controlled and it is governed by the terms and conditions lay down by Medupi Power Station security officials. The proposed site will be shown to the *Consultant* during the site meeting or clarification meeting by the *Employer*.

The *Consultant* liaises with the *Employer's* SHE Practitioner/Officers for SHE Induction prior work to commence. During Safety Induction, site access permits with a copy of the medical and an ID copy/passport should be handed to the *Employer's* SHE Practitioner/Officer for approval.

The *Consultant* will take the signed site access documents to security reception official in order to finalize their site access.

The *Consultant ensures* that all its employees carry their site access forms with them all the time.

The *Consultant* is subjected to alcohol testing on a daily basis.

The *Consultant* submits his application for vehicle permit to the *Employer's Agent*. The personnel and vehicles entering and leaving the site are subjected to routine searches.

The *Consultant* obtains a "Gate Removal Permit" from the *Employer's Agent* before materials and equipment can be removed from site. The "Gate Removal permit" gives itemised list of materials and equipment to be removed from site.

The *Consultant* ensures that a tool list is available on the day of arrival and that all tools are captured on the tool list. The tool list will be handed over to the Reception Security official that will stamp the tool list. The tool list will be kept safe and will be used when tools need to be removed from site. This message should be handed over to any Subcontractor that will be working on Medupi Power Station

16.2 People restrictions, hours of work, conduct and records

Restrictions and hours of work may apply at Medupi Power Station. The *Consultant* keeps records of his people on Site, including those of his Subcontractors which the *Employer's Agent* or *Supervisor* have access to at any time. These records may be required when assessing compensation events. Signed timesheets to be submitted with the invoices to the relevant *Employer's Agent* on a monthly basis.

16.3 Cooperating with and Obtaining Acceptance of Others

Other *Contractors* are working in the same area as the work of this contract. In this regard, the *Consultant* co-ordinates his work with the *Employer's Agent* to maintain harmonious working conditions on Site.

During the progress of the *works* the *Consultant* provides access to others who also execute work in the same area, on an as and when required basis.

The *Consultant* makes his own assessment of the problems and difficulties which may be encountered for providing access to and interfacing with Others (this includes access difficulties experienced during construction or commissioning phase).

16.4 Publicity and Progress Photographs

The taking of photographs at Medupi Power Station including the Project *works* is restricted and subject to the approval by the *Employer's Agent*.

For the purpose of the Progress Reporting Requirements, the *Consultant* is required to make arrangements directly with the *Employer's Agent* for the taking of the photographs required by the *Consultant* for the purpose of the Progress Reporting Requirements.

17. Things provided by the *Employer*

Equipment provided by the *Employer*

No Equipment will be supplied by the *Employer*; however, the *Employer* does reserve the right to negotiate with the *Consultant* that different equipment be used of another origin for whatever purpose that may become apparent at the time.

18. List of drawings

Relevant reference drawings will be supplied on site as and when required by the *Consultant* for the purpose of rendering the *Service* as per the *Contract*.