



NEC3 Professional Services Contract (PSC3)

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

**and
(Reg No.)**

**for Planning, Monitoring and Verification of Air Quality
Offset Phase 2 Project for a period of three (3) years
at Sivukile in the Mpumalanga Province**

Contents:	No of pages
Part C1 Agreements & Contract Data	[•]
Part C2 Pricing Data	[•]
Part C3 Scope of Work: The Scope	[•]

CONTRACT No. [Insert at award stage]

PART C1: AGREEMENTS & CONTRACT DATA

Document reference	Title	No of pages
C1.1	Form of Offer & Acceptance [to be inserted from Returnable Documents at award stage]	[•]
C1.2a	Contract Data provided by the <i>Employer</i>	[•]
C1.2b	Contract Data provided by the <i>Consultant</i> [to be inserted from Returnable Documents at award stage]	[•]
C1.3	Securities proforma	[•]

C1.1 Form of Offer & Acceptance

Offer

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

Planning, Monitoring and Verification (PMV) of Air Quality Offset Phase 2 Project for a period of three (3) years at Sivukile in the Mpumalanga Province

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	R
Value Added Tax @ 14% is	R
The offered total of the Prices inclusive of VAT is	R
(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

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Tender's CIDB registration number

Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the
Employer**

(Insert name and address of organisation)

Name &
signature of
witness

Date

Note: If a tenderer wishes to submit alternative tenders, use another copy of this Form of Offer and Acceptance.

C1.2 PSC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
	dispute resolution Option	A: Priced contract with activity schedule
	and secondary Options	W1: Dispute resolution procedure
		X1: Price adjustment for inflation
		X2: Changes in the law
		X7: Delay damages
		X9: Transfer of rights
		X10: <i>Employer's Agent</i>
		X11: Termination by the <i>Employer</i>
		X18: Limitation of liability
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Professional Services Contract (April 2013) ¹	
10.1	The <i>Employer</i> is (Name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	011 800 8000
	Fax No.	011 800 4754
11.2(9)	The <i>services</i> are	Planning, Monitoring and Verification of Air Quality Offset Phase 2 Project for three (3) years at Sivukile in the Mpumalanga Province

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

11.2(10)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> • Inadvertently selecting the wrong area for offsets • Inadvertently establishing an incorrect baseline • Inadvertently designing an in-effective intervention • Inaccurate monitoring, verification and reporting
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11.2(11)	The Scope is in	Part 3: Scope of Work
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	One (1) week (5 working days)
13.6	The <i>period for retention</i> is	6 months after the services completion date

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 Ambient air quality monitoring equipment including E-Bams	Start of activity 3
		2 Employer's pamphlets, and education & awareness material	Start of activity 4
		3 Eskom Sivukile Project manager	As required

3 Time

31.2	The <i>starting date</i> is.	TBC
11.2(3)	The <i>completion date</i> for the whole of the services is.	TBC
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	To be determined with Eskom at the Kick-off meeting
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	To be determined with Eskom at the Kick-off meeting
42.2	The <i>defects date</i> is	52 weeks after Completion of the whole of the services

5 Payment

50.1	The <i>assessment interval</i> is	between the 25th day of each successive month.
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50.3	The <i>expenses</i> stated by the <i>Employer</i> are	Item	Amount
		[•]	[•]
		[•]	[•]
		[•]	[•]
		[•]	[•]
51.1	The period within which payments are made is	30 days from receipt of a valid invoice and supporting documents.	
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 by 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 appointed it shall not be necessary to prove) for amount due in SA Rand.	
6	Compensation events	Will be dealt with as per clause 60 of the conditions of contract.	
7	Rights to material	Will be dealt with as per clause 60 of the conditions of contract.	
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 <i>services</i> 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>	Whatever the <i>Consultant</i> deems necessary in respect of each claim, without limit to the number of claims	See Notes to Consultants in Annexure A
	death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property arising from or in connection with the <i>Consultant's</i> Providing the Services.	Whatever the <i>Consultant</i> deems necessary for any occurrence or series of occurrences arising out of one event without limit to the number of claims.	See Notes to Consultants in Annexure A

	death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Consultant's</i> common law liability for people falling outside the scope of the Act with a limit of indemnity of not less than R500 000-00 (five hundred thousand) in respect of each claim, without limit to the number of claims	As <i>Consultant</i> deems necessary
81.1	The <i>Employer</i> provides the following insurances	None.	
82.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	Limited to the contract value	
9	Termination	Will be dealt with as per clause 60 of the conditions of contract.	
10	Data for main Option clause		
A	Priced contract with activity schedule	See C2.2	
11	Data for Option W1		
W1.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).	
W1.2(3)	The <i>adjudicator nominating body</i> is:	the Chairman of the ICE-SA a joint Division (or its successor body) of the South African Institution of Civil Engineering. (See www.ice-sa.org.za).	
W1.4(2)	The <i>tribunal</i> is:	arbitration	
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.	
	The place where arbitration is to be held is	South Africa	
	The person or organisation who will choose an arbitrator		
	<ul style="list-style-type: none"> if the Parties cannot agree a choice or if the <i>arbitration procedure</i> does not state who selects an arbitrator, is 	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.	

12	Data for secondary Option clauses	
X1	Price adjustment for inflation	
X1.1	The index is	[●].
	The staff rates are {state whether "Fixed at the Contract Date and are not variable with changes in salary paid to individuals" or "Variable with changes in salary paid to individuals"}	[●]
X2	Changes in the law	A change in the law of the project is a compensation event if it occurs after the contract date and only if such change has an effect on the project cost and time. Either Party may notify the other of a compensation event for a change in the law. If the effect of a compensation event which is a change in the law is to reduce the total Time charge, the prices are reduced.
X2.1	The law of the project is	The law of the Republic of South Africa
X5	Sectional Completion	
X5.1		The activities will be requested by the employer on the need analysis and can only be actioned prior to approval by employer
X7	Delay damages	
X7.1		The consultant will pay delay damages at a rate of 0.05% (per day) of the total cost of the task/activity that is affected.
X9	Transfer of rights	The employer holds the consultant's rights over material prepared for this contract by the Consultant except as stated in the Scope.
X10	The <i>Employer's Agent</i>	
X10.1	The <i>Employer's Agent</i> is	
	Name:	Tshilidzi Vilane
	Address	MWP
	The authority of the <i>Employer's Agent</i> is	Senior Advisor, Environmental Management
X11	Termination by the <i>Employer</i>	
X11.1		The employer may terminate the Consultant's obligation to Provide the Services for a reason not stated in this contract by notifying the Consultant
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 years after Completion of the whole of the services/task order.
Z	The Additional conditions of contract are	Z1 to Z11 always apply.

Z1 Cession delegation and assignment

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

Z2 Joint ventures

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

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

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

Z4 Ethics

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

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

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

Z5 Confidentiality

- Z5.1 The *Consultant* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the *Consultant* disclose information to Others in terms of clause 23.1, the *Consultant* ensures that the provisions of this clause are complied with by the recipient.
- Z5.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer*.
- Z5.3 In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z5.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer's* project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

Z6 Waiver and estoppel: Add to core clause 12.3:

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

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

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

Z8 Notifying compensation events

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

Z9 *Employer's* limitation of liability

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

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

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

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

- Z11.1 If the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.
- Z11.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.
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Annexure A: Notes to Consultants

This is guidance to Consultants to assist their decision making about what cover to arrange in the insurance to be provided by the Consultant. The guidance is not part of the contract and the Employer carries no liability for it. The Consultant must obtain its own advice.

1. For the purpose of works contracts, insurance provided by Eskom (the *Employer*) has been arranged on the basis of “project” or “contract” value, where the value is the total of the Prices at Completion of the whole of the works including VAT.

A “project” is a collection of contracts or work packages to be undertaken as part of a single identified capital expansion or refurbishment of a particular asset or facility.

A “contract” is a single contract not linked to or being part of a “project”.

2. There are three main “formats” of cover and deductible structure; Format A, Format B and Format Dx.

Format A is for a project or contract value less than or equal to R350M (three hundred and fifty million Rand) inclusive of VAT.

Format B is for a project or contract value greater than R350M (three hundred and fifty million Rand) inclusive of VAT.

In the case of contracts / packages within a project:

- For a contract / package of R50M which is part of a R400M project, Format B will apply
- For a contract / package of R250M which is part of a R6 billion project, Format B will apply;
- For a contract / package of R120M which is part of a R350M project Format A will apply;

For a contract which is not part of a project the same limits apply:

- For a contract of R50M, Format A will apply
- For a contract of R355M, Format B will apply.

Format Dx applies only to Distribution Division projects and contracts. If a Distribution Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover. Cover and deductibles for Distribution Division are per the relevant policy available on the internet web link given below.

Format A generally applies to Transmission Division projects and contracts. If a Transmission Division project or contract exceeds the Format A limit, the Eskom Insurance Management Services [EIMS] need to be contacted for advice on how to formulate the insurance cover.

3. Further information and full details of all Eskom provided policies and procedures may be obtained from:

http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx

4. The Insurance which the *Consultant* is to provide against his liability for claims made against him arising out of his failure to use reasonable skill and care (first row in the Insurance Table of clause 81.1 in the PSC3) should also indemnify the *Consultant* for those sums which he could become legally liable to pay as damages arising from any claim first made against him and reported to Insurers some time after Completion of the whole of the *services*. Hence the *Consultant* needs to ensure that his cover is in place at least until all his liabilities under the contract have expired. Such claims could arise out of any negligent act, error or omission committed or alleged to have been committed by the *Consultant* in the conduct of professional services in connection with the contract.

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)² 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		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled .
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	TBC
11.2(3)	The <i>staff rates</i> are:	See Part 2: Pricing data

² Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 or www.ecs.co.za

25.2	The <i>Employer</i> provides access to the following persons, places and things	Items as shown under Receivables in Part 3: Employer's Scope of Work
31.1	The programme identified in the Contract Data is	The first programme of acceptance
A	Priced contract with activity schedule	
11.2(14)	The <i>activity schedule</i> is in	C2.2
11.2(18)	The tendered total of the Prices is	R (in figures) (in words), excluding VAT
C	Target contract	
11.2(14)	The <i>activity schedule</i> is in	
11.2(18)	The tendered total of the Prices is	R (in figures) (in words), excluding VAT
G	Term contract	
11.2(25)	The <i>task schedule</i> is in	

PART 2: PRICING DATA
PSC3 Option A

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

C2.1 Pricing assumptions: Option A

How work is priced and assessed for payment

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

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

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

Function of the Activity Schedule

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

Link to the programme

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

Preparing the activity schedule

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

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

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

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

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

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

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

Expenses

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

Expenses associated with employing a staff member in Providing the Services are listed separately either by the *Employer* in Contract Data provided by the *Employer* or by the *Consultant* in Contract Data provided by the *Consultant*. As only the *expenses* listed may be claimed by the *Consultant*, all other cost to the *Consultant* associated with Providing the Services must be included within the activity schedule prices or *staff rates*.

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

Staff rates

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

The Time Charge is the sum of the products of each of the *staff rates* multiplied by the total staff time appropriate to that rate properly spent on work in this contract. (Clause 11.2(13))

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

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

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

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

C2.2 the *activity schedule*

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

Activity No.	Sub-activity No.	Activity description	Price (excl VAT)
1	Ethical Clearance		
	1.1	Ethical clearance for year 1	
	1.2	Ethical clearance for year 2 (update)	
	1.3	Ethical clearance for year 3 (update)	
2	Area Intelligence		
	2.1	Area intelligence for year 1 (baseline)	
	2.2	Area intelligence for year 3 (update)	
3	Household Surveys		
	3.1	Household survey for year 1(baseline)	
	3.2	Household survey for year 3 (update)	
4	Ambient Air Quality Monitoring		
	4.1	Ambient air quality monitoring for year 1	
	4.2	Ambient air quality monitoring for year 3	
5	Emissions Inventory		
	5.1	Emissions inventory for year 1 (baseline)	
	5.2	Emissions inventory for year 3 (update)	
6	Air Quality Modelling		
	6.1	Air quality modelling for year 1	
	6.2	Air quality modelling for year 3	
7	Project Effectiveness Review		
	7.1	Project effectiveness review for year 1	
	7.2	Project effectiveness review for year 2	
	7.3	Project effectiveness review for year 3	
8	Database development and reporting		
	8.1	Database development and reporting for year 1	
	8.2	Database maintenance and reporting for year 2	
	8.3	Database maintenance and reporting for year 3	
		Total of the Prices	

The *staff rates* are:

No.	Designation (or category) or name of staff member	Rate per hour excluding VAT

Document reference

No of
pagesC3 PSC3 COVER PAGE

C3.1: EMPLOYER'S SCOPE

Description of the services

Executive overview

Put yourself in the position of the *Consultant's* senior management who need a high level overview of what the *Employer* wants to achieve as a result of these services so that the *Consultant* can decide whether he has the resources and capability to undertake the work. This is the *Employer's* purpose of the services.

Interpretation and terminology

If required include here definitions additional to those used in the *conditions of contract* which are required only for the purpose of making the Scope easier to draft and read. Also list abbreviations used and provide a full interpretation of each one, for example:

The following abbreviations are used in this Scope:

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

Specification and description of the services

The content of this section is the meat of the scope of work and will depend on the nature of the services required. The *Consultant* may be appointed for a wide range of duties. The range is almost limitless but would typically include:

- Provide services of an advisory or specialist nature.
- Conduct training on an ad hoc basis.
- Manage a service or facility on behalf of the *Employer*.
- Develop a software application and then implement it throughout the *Employer's* organisation.
- Act as the architect for the design and supervision of a new building.
- Act as the engineer for the design of a new project or structure.
- Act as a cost engineer or quantity surveyor on a project.
- Act as the *Project Manager* in terms of an ECC contract or as a project manager for a total project.
- Act as the *Supervisor* in terms of an ECC contract.

Professional services contracts are by nature specialised and it would be impractical to prescribe formats here to cover such a wide range of duties as those listed above.

For engineering and construction services, document compilers are advised to consult a paper issued by CIDB entitled, "A generic scope of work for services relating to construction works. 18 October 2006". This paper identifies a generic format as well as giving guideline scope of services for the appointment of members of the various statutory councils operating in South Africa such as ECSA, SACQSP, SACAP and SACPCMP.

The Construction Industry Council (UK) has developed a generic approach suitable for the appointment of most professional disciplines in the engineering and construction sector. This requires the Scope to be

compiled for stages of the services associated with a project and is described on pages 1 and 3 of the above referenced paper. If this approach were to be followed, this section could be developed as follows:

Stage 1 Preparation

Develop a strategic brief which defines project objectives, business need, acceptance criteria and the *Employer's* priorities and aspirations:

Stage 2 Concept

Development of initial design which establishes the detailed brief, scope, scale, form and budget for the project culminating in the Concept Report

Stage 3: Design development

Detailed development of approved concept to establish detailed form, character, function and cost plan (Design report)
Review Design Report for conformity with general design intent and *Employer's* requirements.

Stage 4: Production information

Final detailing, performance definition, specification, sizing and positioning of all systems and components enabling either construction or the production of manufacturing and installation information.

Stage 5: Manufacture, Installation and Construction Information:

Definition of the fabrication, manufacturing details and installation of all components. Review, for adherence to general design intent, the manufacture, installation and construction information prepared by others; and the construction of the Works

Stage 6: Post Practical Completion

Deal with outstanding issues and feedback and assisting with familiarising Project users with the design of the works.

Constraints on how the *Consultant* Provides the Services.

Management meetings

The *conditions of contract* (e.g. Clause 15.2) and other sections of this Scope may require that a meeting be held. However the intention of all NEC contracts is that the Parties and their agents use the techniques of partnering to manage the contract by holding meetings designed to pro actively and jointly manage the administration of the contract with the objective of minimising the adverse effects of risks and surprises for both Parties.

Depending on the size and complexity of the *services*, it is probably beneficial for the *Employer's Agent* to hold a weekly risk register meeting (Clause 15.2). This could be used to discuss compensation events, subconsulting, overall co-ordination and other matters of a general nature. Separate meetings for specialist activities such as programming and activities of a technical nature may also be warranted.

Describe here the general meetings and their purpose. Provide particulars of approximate times, days, location, and attendance requirements, stipulating that attendees shall have the necessary delegated authority to make decisions in respect of matters discussed at such meetings. The following text could be used as a model for this section:

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

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	Weekly on _____ at _____	[•]	[•]
Overall contract progress and feedback	Monthly on _____ at _____	[•]	<i>Employer's Agent</i> , <i>Consultant</i> and [•]_____

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.

Consultant's key persons

State any additional constraining requirements on *Consultant's key persons* over and above those already stated in clause 22.1 or in the Contract Data. Such as need to notify contact details, leave and mentoring requirements where applicable. This section could be used to solicit an organogramme from the *Consultant* showing his people and their lines of authority / communication. This would be essential if the *Consultant* is a Joint Venture.

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.

Documentation control and retention

Identification and communication

Specify how documentation will be identified with an alpha numeric which indicates source, recipient, communication number etc. Provide details of any particular format or other constraints; for example that all contractual communications will be in the form of properly compiled letters or forms attached to e mails and not as a message in the e mail itself. State any particular routing requirements but note from PSC3 who issues what to whom.

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.

Records and forecasting of expenses

First read clause 21.3 (Option A) and 21.4 (Option C E and G) and then state here any additional requirements you may need for the record keeping and forecasting of expenses. Otherwise delete.

Records and forecasting of the Time Charge

If Option C E or G applies first read clause 21.4 then state here any additional requirements you may need for the record keeping and forecasting of the Time Charge. Otherwise delete and delete in any case if Option A applies.

Invoicing and payment

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. Also state what must be shown on the Invoice. The following text is suggested.

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

[List them]

The *Consultant* shall address the tax invoice to _____ 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)

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

Contract change management

This section is intended to deal with any additional requirements to the compensation event clauses in section 6 of the core clauses; such as the use of standard forms. Not the same thing as documentation control.

Inclusions in the programme

First read clause 31.2 and then include here any matters regarding the order and timing of the work of the *Employer* and Others which the *Consultant* is take account of in his programme. Also describe any information other than that already requested in clause 31.2 which the *Consultant* is to show on each programme he submits for acceptance.

Quality management

System requirements

Clause 40.1 requires that the *Consultant* operate a quality management system as stated in the Scope. Include your requirements here

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. Include your requirements here

The Parties use of material provided by the *Consultant*

Employer's purpose for the material

Clause 70.1 states that the *Employer* has the right to use the material provided by the *Consultant* for the purpose stated in the Scope. State here what your intended purpose is.

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

Read clause 70.4 first and if you want to restrict the *Consultant's* use of material provided by him for this contract on other work state these here.

Transfer of rights if Option X 9 applies

Only use this heading if Option X9 is included in the conditions of contract.

Read the first sentence of Option X9 and then state whether there is any exception to the ownership rights as may have been agreed with the *Consultant* prior to contract award. For example, ownership of some of the material may not be required or is excluded, or the ownership may be the subject of a separate licence agreement. If there are no exceptions, state there is no exception.

If other rights - per the second sentence of X9.1 - are required state these here.

The third sentence of X9.1 requires that the *Consultant* provide to the *Employer* the documents which transfer these rights to the *Employer*. It would be sensible to specify here exactly what documents the *Employer* is expecting the *Consultant* to provide, and may be even in what form they are to be provided.

State any other constraints on the *Consultant* relating to the transfer of rights. For example that the *Consultant* shall not challenge or assist any other party challenging at any time the validity or ownership of any of the intellectual property rights relating to the material created and developed for this contract.

Management of work done by Task Order

Only use this heading if main Option G applies to this contract.

Please read Option G before drafting requirements here as much of the procedure for the use of Task Orders is already provided in Option G. For example clause 55.1 specifies what a Task Order should include.

Information included here could be:

That Task Orders will be prepared in the format stated in an Annexure attached to the Scope
What the basis or formula will be for calculation of delay damages for a Task Order (if required).
How expenses for a Task will be assessed and managed.
(etc)

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.]

Procurement

BBBEE and preferencing scheme

Specify constraints which *Consultant* must comply with after contract award in regard to any Broad Based Black Economic Empowerment (B-BBEE) or preferencing scheme measures.

Other constraints

Delete if not required or state any other constraints that may be applicable to people employed by the *Consultant* and change the heading to suit the subject matter.

Preferred subconsultants

PSC3 does not make use of nominated subconsultants but the *Employer* may list which subconsultants or suppliers the *Consultant* is required to enter into subcontracts with. This is usually only required where very specialist services need to be obtained from a particular supplier or group of suppliers in order to comply with operational standards.

Subcontract documentation, and assessment of subcontract tenders

Specify any constraints on how the *Consultant* is to prepare subcontract documentation, whether use of the NEC3 system is compulsory or not (compulsory is recommended) and how subcontract tenders are to be issued, received, assessed (using a joint report?) and awarded.

Limitations on subcontracting

The *Employer* may require that the *Consultant* must subcontract certain specialised work, or that the *Consultant* shall not subcontract more than a specified proportion of the whole of the contract.

Attendance on Subconsultants

State requirements for attendance on Subconsultants, if any

Correction of Defects

First read clause 41.2 and if any particular additional constraints are required when correcting Defects, state them here. Otherwise delete this heading.

Working on the *Employer's* property

This part of the Scope addresses constraints, facilities, services and rules applicable to the *Consultant* whilst he is doing work on the *Employer's* property. Delete this section if not applicable.

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

Sites such as Koeberg Nuclear Power Station have very strict entrance requirements which tendering consultants need to allow for in their prices, and the *Consultant* has to comply with. State these or similar requirements here. In addition to the above there may be other restrictions once on the site.

People restrictions, hours of work, conduct and records

Restrictions and hours of work may apply on some sites. It is very important that the *Consultant* keeps records of his people working on the *Employer's* property, including those of his Subconsultants. State that the *Employer's Agent* shall have access to these records at any time. These records may be needed when assessing compensation events.

Cooperating with and obtaining acceptance of Others

This sub-paragraph could be used to deal with two issues.

- 1) The cross reference from core clause 23.1 about cooperation generally as well as details about Others with whom the *Consultant* may be required to work. See clause 11.2(7) for the definition of Others.
- 2) Requirements for liaison with and acceptance from statutory authorities or inspection agencies.

Things provided by the *Employer*

Provide details of any facilities and equipment made available by the *Employer* for the *Consultant's* use during performance of the *services*. State any conditions relating thereto.

List of drawings

Drawings issued by the *Employer*

This is the list of drawings issued by the *Employer* at or before the Contract Date and which apply to this contract.

Drawing number	Revision	Title