



## NEC3 Professional Services Contract (PSC3)

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

**and  
(Reg No...2001/007340/07...)**

**for International Financial Reporting Standards (IFRS®  
Accounting Standards) assistance for a period of three  
(3) years**

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**CONTRACT No. [Insert at award stage]**

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## 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]	□

## • C1.1 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:

#### **International Financial Reporting Standards (IFRS® Accounting Standards) assistance for a period of three (3) years**

The tenderer, identified in the Offer signature block, has

<i>either</i>	examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.
<i>or</i>	examined the draft contract as listed in the Acceptance section and agreed to provide this Offer.

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

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

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

Signature(s) \_\_\_\_\_

Name(s)

Capacity

**For the tenderer:**

Name &  
signature of  
witness

Date

## Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the  
Employer**

.....  
.....  
.....  
**Eskom Holdings SOC Ltd, Megawatt Park,  
Maxwell Drive, Sandton, Johannesburg**

.....  
*(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.

## 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	X7.1 Delay Damages	Delay damages of 0.5%: per week to a maximum of 20% of outstanding value on delayed portion
2		
3		

By the duly authorised representatives signing this Schedule of Deviations below, the Employer and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

### For the tenderer:

### For the Employer

Signature \_\_\_\_\_

\_\_\_\_\_

Name

Capacity

On behalf  
of

*(name and address of organisation)*

**Eskom Holdings SOC Ltd, Megawatt Park, Maxwell  
Drive, Sandton, Johannesburg**  
*(name and address of organisation)*

Name &  
signature  
of witness

**Date**

## C1.2 PSC3 Contract Data

### Part one - Data provided by the *Employer*

Clause	Statement	Data
	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	<b>A Priced contract with activity schedule</b>
	dispute resolution Option	<b>W1 Dispute resolution procedure</b>
	and secondary Options	<b>X1 Price adjustment for inflation</b>
		<b>X2 Changes in the law</b>
		<b>X7 Delay Damages</b>
		<b>X9 Transfer of Rights</b>
		<b>X10 <i>Employer's Agent</i></b>
		<b>X11 Termination by the <i>Employer</i></b>
		<b>X18 Limitation of liability</b>
		<b>Z <i>Additional conditions of contract</i></b>
10.1	The <i>Employer</i> is (Name):	<b>Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Tel No.	<b>[011] 800 8111</b>
	Fax No.	<b>[011] 800 4299</b>
11.2(9)	The <i>services</i> are	<b>International Financial Reporting Standards (IFRS® Accounting Standards) assistance for a period of three (3) years</b>
11.2(10)	The following matters will be included in the Risk Register	<b>Matters to be included as and when identified during the contract period</b>
11.2(11)	The Scope is in	<b>Part 3: Scope of Work</b>
12.2	The <i>law of the contract</i> is the law of	<b>The Republic of South Africa</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>3 [three] working days</b>
13.6	The <i>period for retention</i> is	<b>5 [five] years following Completion or earlier termination.</b>

Clause	Statement	Data	
<b>2</b>	<b>The Parties' main responsibilities</b>		
25.2	The <i>Employer</i> provides access to the following persons, places and things	<b>access to</b>	<b>access date</b>
		<b>1 All necessary areas that the consultant needs to gain access to in order to perform the services required</b>	<b>During the contract period as and when required</b>
<b>3</b>	<b>Time</b>		
31.2	The <i>starting date</i> is.	<b>TBA</b>	
11.2(3)	The <i>completion date</i> for the whole of the services is.	<b>TBA</b>	
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<b>Condition to be met</b>	<b>key date</b>
		<b>1 Not Applicable</b>	
31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	<b>1 [one] week of the Contract Date.</b>	
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	<b>1 [one] week.</b>	
<b>4</b>	<b>Quality</b>		
40.2	The quality policy statement and quality plan are provided within	<b>2 [two] weeks of the Contract Date.</b>	
42.2	The <i>defects date</i> is	<b>8 [eight] weeks after Completion of the whole of the services.</b>	
<b>5</b>	<b>Payment</b>		
50.1	The <i>assessment interval</i> is	<b>between the 25th day of each successive month.</b>	
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	<b>Item</b>	<b>Amount</b>
		<b>None</b>	
51.1	The period within which payments are made is	<b>30 days</b>	
51.2	The <i>currency of this contract</i> is the	<b>South African Rand</b>	

- 51.5 The *interest rate* is the publicly quoted prime rate of interest charged by [•] Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due,
- and
- the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove
- 6 Compensation events To be applied as the NEC3 PSC
- 7 Rights to material To be applied as the NEC3 PSC
- 70.1 The *Employer* has the right to use the material provided by the *Consultant* for the purpose stated in the Scope.
- 70.2 The *Consultant* has the right to use material provided by the *Employer* only to Provide the Services.
- On Completion of the whole of the services, the *Consultant* returns the material provided by the *Employer* to him.
- 70.3 The Parties do not disclose information obtained in connection with the *services* except when necessary to carry out their duties under this contract.
- 70.4 The *Consultant* may use the material provided by him under this contract for other work unless stated otherwise in the Scope.
- 8 Indemnity, insurance and liability

8.1 The amounts of insurance and the periods for which the *Consultant* 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>	Whatever the <i>Consultant</i> deems necessary in respect of each claim, without limit to the number of claims	3 years
death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law.	As <i>Consultant</i> deems necessary

8.2 **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 of the affected Purchase Order

9 **Termination** Either Party may terminate the *Consultant's* obligation to Provide the Services by notifying the other Party if the other Party has done one of the conditions specified in the NEC 3 PSC. The terminating Party provides not less than 90 (ninety) days' notice of termination to the other Party.

## 10 Data for main Option clause

### A Priced contract with activity schedule

11.2 (15) The Price for Services Provided to Date is the total of the Prices for the activities which have been completed. A completed activity is one which is without Defects which would delay immediately following work.

11.2 (18) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract.

21.3 The *Consultant* prepares forecasts of the total expenses at intervals of no longer than **4 [four] weeks.**

## 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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
W1.2(3)	The <i>adjudicator nominating body</i> is:	the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ).
W1.4(2)	The <i>tribunal</i> is:	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 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	
X2	Changes in the law	South African Law
X2.1	The law of the project is	Any law within the Republic of South Africa which applies to the <i>Consultant</i> providing the Services. The <i>Consultant</i> shall comply with all applicable laws under the scope of work
X7	Delay Damages	
X7.1	Delay Damages is	0.5% per week to a maximum of 20% of outstanding value on delayed portion
X9	Transfer of rights	
X9.1	The Employer owns the Consultant's rights over material prepared for this contract by the Consultant except as stated otherwise in the Scope. The Consultant obtains other rights for the Employer as stated in the Scope and obtains from a Subconsultant equivalent rights for the Employer over the material prepared by the Subconsultant. The Consultant provides to the Employer the documents which transfer these rights to the Employer	

<b>X10</b>	<b>The <i>Employer's Agent</i></b>	
X10.1	The <i>Employer's Agent</i> is	
	Name:	<b>Raylene Pretorius</b>
	Address	<b>Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Email Address	<b>PretorRy@eskom.co.za</b>
	The authority of the <i>Employer's Agent</i> is	<b>To carry out all the actions of the Employer in this contract with the exception of those required by clauses 51.1, 81.1</b>
<b>X11</b>	<b>Termination by the <i>Employer</i></b>	
		<b>The Employer may terminate the Consultant's obligation to Provide the Services for a reason not stated in this contract by notifying the Consultant. If the Employer terminates for a reason not stated in this contract, an additional amount is due on termination which is 5% of the difference between</b> <ul style="list-style-type: none"> <li>• the forecast of the final total of the Prices in the absence of termination and the total of the other amounts and costs included in the amount due on termination.</li> </ul>
<b>X18</b>	<b>Limitation of liability</b>	
X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	<b>R0.00 (Zero Rand)</b>
X18.2	The <i>Consultant's</i> liability to the <i>Employer</i> for Defects that are not found until after the <i>defects date</i> is limited to:	<b>The total of the Prices</b>
X18.3	The <i>end of liability date</i> is	<b>Five years after Completion of the whole of the services</b>
<b>Z</b>	<b>The <i>Additional conditions of contract</i> are</b>	<b>Z1 to Z14 always apply.</b>

## **Z1 Cession delegation and assignment**

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

## **Z2 Joint ventures**

- Z2.1 If the *Consultant* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract.

- Z2.2 Unless already notified to the *Employer*, the persons or organisations notify the *Employer* within two weeks of the Contract Date of the key person who has the authority to bind the *Consultant* on their behalf.
- Z2.3 The *Consultant* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Consultant* in writing.

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

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

### **Z4 Confidentiality**

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

### **Z5 Waiver and estoppel: Add to core clause 12.3:**

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

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

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

**Z7 Notifying compensation events**

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

**Z8 Employer's limitation of liability**

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

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

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

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

Z10.1 If the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.

Z10.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

**Z11 Ethics**

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

**Affected Party** means, as the context requires, any party, irrespective of whether it is the *Consultant* or a third party, such party's employees, agents, or Subconsultants or Subconsultant's employees, or any one or more of all of these parties' relatives or friends,

**Coercive Action** means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,

**Collusive Action** means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,

**Committing Party** means, as the context requires, the *Consultant*, or any member thereof in the case of a joint venture, or its employees, agents, or Subconsultants or the Subconsultant's employees,

**Corrupt Action** means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,

**Fraudulent Action** means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,

**Obstructive Action** means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and

**Prohibited Action** means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

Z11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z11.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Consultant* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Consultant's* obligation to Provide the Services for this reason.

Z11.3 If the *Employer* terminates the *Consultant's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.

Z11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Consultant* ensures that the Committing Party co-operates fully with an investigation.

**Z12 Insurance**

Z12.1 Replace core clause 81 with the following:

81.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.

81.2 The *Consultant* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

**INSURANCE TABLE A**

Insurance against	Minimum amount of cover	For the period following Completion of the whole of the services or earlier termination
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Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the <i>services</i>	Consultant deems necessary in respect of each claim, without limit to the number of claims	3 years
Liability for death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	<p><b><u>Loss of or damage to property:</u></b> The replacement cost where not covered by the <i>Employer's</i> insurance</p> <p>The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance</p> <p><b><u>Bodily injury to or death of a person:</u></b> The amount required by the applicable law.</p>	3 years
Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law	<b>As <i>Consultant</i> deems necessary</b>

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

**INSURANCE TABLE B**

<b>Insurance against or name of policy</b>	<b>Minimum amount of cover or minimum limit of indemnity</b>
Assets All Risk	Per the insurance policy document
Contract Works insurance	Per the insurance policy document
Environmental Liability	Per the insurance policy document
General and Public Liability	Per the insurance policy document
Transportation (Marine)	Per the insurance policy document
Motor Fleet and Mobile Plant	Per the insurance policy document
Terrorism	Per the insurance policy document
Cyber Liability	Per the insurance policy document
Nuclear Material Damage and Business Interruption	Per the insurance policy document
Nuclear Material Damage Terrorism	Per the insurance policy document

**Z13 Nuclear Liability**

Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic

of South Africa, and is the holder of a nuclear licence in respect of the KNPS.

- Z13.2 The *Employer* is solely responsible for and indemnifies the *Consultant* or any other person against any and all liabilities which the *Consultant* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 44 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Consultant* or any other person or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Consultant* or any other person, or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 44 of 1999, or any replacement section dealing with the same subject matter.
- Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

#### **Z14 Asbestos**

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

- AAIA** means approved asbestos inspection authority.
- ACM** means asbestos containing materials.
- AL** means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
- Ambient Air** means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
- Compliance Monitoring** means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
- OEL** means occupational exposure limit.
- Parallel Measurements** means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
- Safe Levels** means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
- Standard** means the *Employer's* Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
- SANAS** means the South African National Accreditation System.

**TWA** means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

- Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Consultant* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) (“Asbestos Regulations”). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
- Z14.2 Upon written request by the *Consultant*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Consultant* may perform Parallel Measurements and related control measures at the *Consultant*'s expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z14.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z14.5 The *Consultant*'s personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z14.6 The *Consultant* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer*'s expense, and conducted in line with South African legislation.

## C1.2 Contract Data

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

#### [Instructions to the tendering consultant]:

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

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

Clause	Statement	Data
--------	-----------	------

10.1	The <i>Consultant</i> is (Name):	
------	----------------------------------	--

Address

Tel No.

Fax No.

22.1	The <i>key people</i> are:	
------	----------------------------	--

1 Name:

Job:

Responsibilities:

Qualifications:

Experience:

2 Name:

Job

Responsibilities:

Qualifications:

Experience:

3 Name:

Job

Responsibilities:

Qualifications:

Experience:

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

**CV's (and further *key persons* data including CVs) are appended to Tender Schedule entitled**

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Only if required			
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	TBA	
11.2(10)	The following matters will be included in the Risk Register	Risks identified and treatment plans	
11.2(13)	The <i>staff rates</i> are:	<b>name/designation</b>	<b>r a t e</b>
	<b>Either complete here or cross refer to a schedule in Part C2.2</b>		
25.2	The <i>Employer</i> provides access to the following persons, places and things	<b>access to</b>  1 All necessary areas that the consultant needs to gain access to in order to perform the services required	<b>access date</b>  During the contract period as and when required
31.1	The programme identified in the Contract Data is	<b>Accepted project plan provided by consultant</b>	
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	<b>Total Value of the contract</b>	
<b>A</b>	<b>Priced contract with activity schedule</b>		
11.2(14)	The <i>activity schedule</i> is in	<b>In the price list</b>	
11.2(18)	The tendered total of the Prices is	<hr/> <b>(in words), excluding VAT</b>	

## PART 2: PRICING DATA

### PSC3 Option A

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
C2.1	Pricing assumptions: Option A	[2]
C2.2	The <i>activity schedule</i>	[3]

## • 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***

**Refer to Annexure M: Pricing Schedule**

IFRS Assistance

**PART 3: SCOPE OF WORK**

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
	This cover page	1
C3.1	<i>Employer's Scope</i>	6
	Total number of pages	7

**PART 3: SCOPE OF WORK**

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
	This cover page	1
C3.1	<i>Employer's Scope</i>	10
	Total number of pages	11

## C3.1: EMPLOYER'S SCOPE

### Description of the services

The procurement of International Financial Reporting Standards (IFRS® Accounting Standards) assistance. Refer to Annexure N for a detailed scope of work.

#### 12.6 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.

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	To be agreed by the Employer's Agent and Consulting Project Manager	MS Teams ( Face to Face)	<i>Employer's Agent</i> , <i>Consultant</i> and Employer's Cross Functional Team
Overall contract progress and feedback	To be agreed by the Employer's Agent and Consulting Project Manager	MS Teams ( Face to Face)	<i>Employer's Agent</i> , <i>Consultant</i> and Employer's Cross Functional Team

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

The *Consultant* must provide:

- Contact details of *Consultant's key persons* (including landline and mobile number)
- Contact details of alternate, suitable key person. An organogram from the *Consultant* showing Key persons and their lines of authority shall be submitted to the *Employer* within one(1) week of the contract date. The *Consultant* shall be required to notify the *Employer* of the contact details, leave & alternative where applicable in respect of each key person. Any changes in this regard shall be notified in writing in advance or within 1 (one) week of occurring and measures taken to avoid negative impact on the consultants ability to deliver the services.

## Documentation control and retention

### Identification and communication

The NEC templates will be used for communication (e.g. Early warning) and the originator will generate own numbering system. Communication to be directed to the lead person of the consultant and the employer's contracts manager (Vice Versa)

### 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. All the relevant documentation (reports) generated at various points of the scope execution to be kept safe and shared with the employer.

### 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 Holdings SOC Ltd** and include on it the following information::

Name and address of the *Consultant* and the *Employer's Agent*;

The contract number and title;

Purchase Order number

*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;

- Documentary evidence for travel and subsistence reimbursement where applicable.

### 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; Early Warning to be used by both parties and recipient to respond in three days.

### Inclusions in the programme

The contractor to submit the program and risk assessment within 7 days of contract award.

### Quality management System requirements

Not Applicable

### The Parties use of material provided by the *Consultant*

#### *Employer's* purpose for the material

Clause 70.1 states that the *Employer* has the right to use the material provided by the *Consultant* for the purpose stated in the Scope.

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

Not applicable.

### Health and safety

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

The *Consultant* is also expected to comply with the following documents when rendering a service to Eskom but not limited to the following:

- a. Eskom contractor Health and Safety requirements standards 32-136
- b. SHE specification provided
- c. Occupational Health and Safety Act 85 of 1993
- d. Compensation for Occupational Diseases and Illnesses Act 130 of 1993
- e. 240-62196227 Life- saving Rules
- f. 32-37 Eskom Substance Abuse Procedure
- g. 32-727 SHEQ Policy
- h. National Road Traffic Act 93 of 1996.

### Procurement

#### BBBEE and preferencing scheme

Eskom SoC Ltd has a Directive on B-BBEE implementation. The Directive gives preference to companies complying with the B-BBEE Codes of Good Practice, Level 1 to Level 4."

Eskom SoC Ltd has a Directive on B-BBEE implementation. The Directive gives preference to companies complying with the B-BBEE Codes of Good Practice, Level 1 to Level 4."

The *Contractor* must be in possession of a valid BBBEE status level of contribution.

#### Supplier Development & Localisation

**Refer to Annexure P - SDL&I strategy document (Bidders Template) for specific SDL&I requirements that will be included as a contractual obligation with the successful supplier.**

The *Consultant* shall keep accurate records and provide the *Employer's Agent* with Quarterly 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.

#### Preferred subconsultants

Not applicable

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

Use of NEC is recommended following their own processes

#### Limitations on subcontracting

The *Consultant* shall not subcontract more than 25% of the whole of the contract.

**Attendance on Subconsultants**

The main contract to attend meetings and other relevant communication

**Working on the *Employer's* property**

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

The *Employer* will at all times furnish the *Consultant* with the minimum security requirements for the affected property. *Employer's* entry and security control, permits, and site regulations shall be adhered to.

**People restrictions, hours of work, conduct and records**

The *Consultant* keeps records of his people working on the *Employer's* property. The *Employer's Agent* shall have access to these records at any time.

**Things provided by the *Employer***

The *Employer* shall provide access to its facilities to the *Consultant* as and when required during the contract period.