



NEC3 Professional Services Contract (PSC3)

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

and

**for THE APPOINTMENT OF THE PROFESSIONAL
CONSULTANT THAT WILL PROVIDE ENERGY
TRADING ADVICE AND TOOLS NEEDED FOR THE
DEVELOPMENT OF AN ENERGY TRADING
PLATFORM FOR 12 MONTHS**

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CONTRACT No. [Insert at award stage]

PART C1: AGREEMENTS & CONTRACT DATA

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C1.1 Form of Offer & Acceptance

Offer

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

THE APPOINTMENT OF THE PROFESSIONAL CONSULTANT THAT WILL PROVIDE ENERGY TRADING ADVICE AND TOOLS NEEDED FOR THE DEVELOPMENT OF AN ENERGY TRADING PLATFORM FOR 12 MONTHS

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	Rate Based Contract
Value Added Tax @ 14% is	Rate Based Contract
The offered total of the Prices inclusive of VAT is	Rate Based Contract
(in words) Rate Based Contract	

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

.....

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.

Schedule of Deviations

Note:

1. To be completed by the Employer prior to award of contract. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Employer prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
3. A tenderer’s covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

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

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

For the tenderer:

For the Employer

Signature		
Name		
Capacity		
On behalf of	<i>(Insert name and address of organisation)</i>	<i>(Insert name and address of organisation)</i>
Name & signature of witness		
Date		

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 and secondary Options	<p>G: Term contract</p> <p>W1: Dispute resolution procedure</p> <p>X2 Changes in the law</p> <p>X4: Parent company guarantee</p> <p>X7: Delay damages</p> <p>X9: Transfer of rights</p> <p>X10 <i>Employer's Agent</i></p> <p>X13: Performance bond</p> <p>X18: Limitation of liability</p> <p>Z: <i>Additional conditions of contract</i></p>
	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.	[•]
	Fax No.	[•]
11.2(9)	The <i>services</i> are	The Appointment Of The Professional Consultant That Will Provide Energy Trading Advice And Tools Needed For The Development Of An Energy Trading Platform For 12 Months

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

Cost: Tenders with prices that are not market/industry related

Scope: Non-response to tenders or Consultants not quoting according to specification.

Skills and Experience: Tenders that do not have the required skills and experience.

Quality: Tenders that do not meet the stipulated quality requirements and renders poor quality work.

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
13.6	The <i>period for retention</i> is	Five (5) years following Completion or earlier termination.

2 The Parties' main responsibilities

25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	access date
		1 Information, systems	As and when required

3 Time

31.2	The <i>starting date</i> is.	TBA	
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is.	TBA	
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	key date
		1 Start date	As per task order
		2 Access date	As per task order
		3 End date	As per task order

31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	Four (4) weeks of the Contract Date.
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	Two (2) weeks of the Contract Date.
42.2	The <i>defects date</i> is	Thirty-six (36) weeks after Completion of the whole of the services.

5	Payment					
50.1	The <i>assessment interval</i> is	After milestone completion per task order.				
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	<table border="1"> <thead> <tr> <th>Item</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>To be stated per task order</td> <td>As per agreed task order</td> </tr> </tbody> </table>	Item	Amount	To be stated per task order	As per agreed task order
Item	Amount					
To be stated per task order	As per agreed task order					
51.1	The period within which payments are made is	<p>For contracts valued below R50 000 000 (Fifty Million Rand) including VAT, Eskom is committed to paying Consultants within 30 days of submission of a tax compliant invoice with a GR number to Eskom Financial Shared Services.</p> <p>For contracts valued above R50 000 000 (Fifty Million Rand) including VAT, Eskom is committed to paying suppliers within 60 days of submission of a tax compliant invoice with a GR number to Eskom Financial Shared Services.</p>				
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 appointment it shall not be necessary to prove) for amounts due in Rand.				
6	Compensation events	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.				
7	Rights to material	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.				
8	Indemnity, insurance and liability	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.				
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	The total of the Prices				
9	Termination	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.				
10	Data for main Option clause					
G	Term contract					

21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than	Four (4) weeks.
50.4	The <i>exchange rates</i> are those published in	Not applicable.

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 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	Sandton, 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

X2	Changes in the law	
X2.1	The law of the project is	Law of the Republic of South Africa
X7	Delay damages	
X7.1	Delay damages for late Completion of the whole of the <i>services</i> are	R1500 per day
X9	Transfer of rights	There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.
X10	The <i>Employer's Agent</i>	
X10.1	The <i>Employer's Agent</i> is	
	Name:	
	Address	
	The authority of the <i>Employer's Agent</i> is	

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 Z14 always apply.

Z1 Cession delegation and assignment

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

Z2 Joint ventures

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

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

- Z3.1 Where a change in the *Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant's* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change.
- Z3.2 The *Consultant* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*.
- Z3.3 Where, as a result, the *Consultant's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Consultant's* obligation to Provide the Services.
- Z3.4 Failure by the *Consultant* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *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
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>	As stated in the General ACAR Confirmation Insurance	As stated in the General ACAR Confirmation Insurance
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><u>Loss of or damage to property:</u> 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><u>Bodily injury to or death of a person:</u> The amount required by the applicable law.</p>	As stated in the General ACAR Confirmation Insurance
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	As stated in the General ACAR Confirmation Insurance

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

INSURANCE TABLE B

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



Confirmation of insurance cover - Es

Z13 Nuclear Liability

- Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z13.2 The *Employer* is solely responsible for and indemnifies the *Consultant* or any other person against any and all liabilities which the *Consultant* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Consultant* or any other person or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Consultant* or any other person, or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- 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 <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
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: (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 CV's) are appended to Tender Schedule entitled.
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is	To be confirmed at task order level
11.2(10)	The following matters will be included in the Risk Register	To be confirmed at task order level
11.2(13)	The <i>staff rates</i> are:	name/designation rate

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

	Either complete here or cross refer to a schedule in Part C2.2		
25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	access date
		1	
		2	
		3	
31.1	The programme identified in the Contract Data is		
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	item	amount
G	Term contract		
11.2(25)	The <i>task schedule</i> is in		

C1.3 Forms of Securities

Pro formas for Bonds & Guarantees

For use with the NEC3 Professional Services Contract

[Note to contract compiler:

Once it has been decided which securities are required for this contract delete from this file the ones not required, revise the notes below accordingly and delete this note.]

The *conditions of contract* stated in the Contract Data Part 1 include the following Secondary Options:

Option X4: Parent company guarantee

Option X13: Performance Bond

Each of these secondary Options requires a bond or guarantee “in the form set out in the Service Information”. Pro forma documents for these bonds and guarantees are provided here for convenience but are to be treated as part of the Service Information.

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

Pro forma Parent Company Guarantee (for use with Option X4)

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

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

Date:

Dear Sirs,

Parent Company Guarantee for Contract No

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

Eskom Holdings SOC Ltd (the *Employer*) and

{Insert registered name and address of the *Consultant*} (the *Consultant*), for

{Insert details of the services from the Contract Data} (the *services*).

I/We the undersigned

on behalf of the *Consultant's*
parent company

of physical address

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

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

Signed at _____ on this _____ day of _____ 200_

Signature(s)

Name(s) (printed)

Position in parent company

Signature of Witness(s)

Name(s) (printed)

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

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

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Date:

Dear Sirs

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

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

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

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

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

Signed at _____

Date _____

For and behalf of the Bank

Bank Signatory: _____

Bank Signatory: _____

Witness: _____

Witness: _____

Bank's seal or stamp

PART 2: PRICING DATA

PSC3 Option G

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option G	2
C2.2	<i>Staff rates, expenses and the task schedule.</i>	1

C2.1 Pricing assumptions: Option G

How work is priced and assessed for payment

From Option G: Term contract

Identified and defined terms	11 11.2	(17) The Price for Services Provided to Date is, for each Task, the total of <ul style="list-style-type: none">the Time Charge for work which has been completed on time based items on the Task Schedule anda proportion of the lump sum price for each other item on the Task Schedule which is the proportion of work completed on that item. (20) The Prices are <ul style="list-style-type: none">the Time Charge for items described as time based on the Task Schedule andthe lump sum price in the Task Schedule for each other item.
------------------------------	------------	---

From the Core Clauses:

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

and

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

Any tax which the law requires the *Employer* to pay to the *Consultant* is included in the amount due.

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

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

Staff rates and expenses

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

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

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

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

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

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

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

The function of the Task Schedule

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

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

C2.2 Staff rates and expenses

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

Resource list for Energy Trading Optimization

The following is the list of required resources for each of the scope of work items.

1. Evaluation of the operational and commercial optimization of Battery Energy Storage Systems (BESS) within emerging electricity markets.

The service provider's task is to optimize the use of BESS by enhancing market participation through energy arbitrage.

Items	Resources required	Rate/Hr
1	Software developers	
2	Optimization specialists	
3	Data scientists	

2. Evaluation of Off-taker PPA prices and liabilities.

The consultant is required to assist DET with the structuring of PPA, including prices at which it is optimal to enter into such an agreement.

Items	Resources required	Rate/Hr
1	Financial analysts	
2	Legal/contract specialists	
3	Price modelling specialist	

3. Portfolio Optimization for Power Purchases Evaluation.

The service provider is required to support the development and implementation of procurement processes, tools, systems, platforms, and strategies aimed at optimising DET's electricity purchase portfolio.

Items	Resources required	Rate/Hr
1	Quant specialists	
2	Power market analyst	
3	Data scientist	

4. Algorithmic Trading.

The service provider is required to develop and implement a tool, system or platform that automates the algorithmic trading strategies that the Energy Trading department creates.

Items	Resources required	Rate/Hr
1	Power market specialists	
2	Software developers	
3	Quantitative analysts	
4	DevOps/Cloud engineers	

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Scope</i>	10
C3.2	<i>Consultant's Scope</i>	1
Total number of pages		12

C3.1: EMPLOYER'S SCOPE

Contents

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1. Description of the services

1.1 Executive overview

South Africa's electricity sector has entered a decisive new phase. The recently enacted Electricity Regulation Amendment Act (ERAA) remodels the industry around open, competitive trading platforms that include day-ahead, intraday and real-time balancing markets. These reforms unbundle network and market functions, expose all participants to transparent price signals per System Operator (SO) defined network constrained zones and replace regulated cost-recovery with true market performance over time.

Within this setting, EDx Change aims to become the country's preferred energy trader and Balance-Responsible Party (BRP), ultimately handling transactions that could exceed R400 billion a year.

A second pillar of EDx Change's strategy is a dedicated unit that aggregates distributed energy resources, notably a growing fleet of grid-connected Battery Energy Storage Systems (BESS).

A third pillar of EDx Change's strategy is forecasting. Forecasting is the foundation upon which all strategic, operational, and financial decisions in the Energy Trading Department are built.

For Eskom Distribution's Energy Trading Department, forecasting enables the development of robust trading strategies that optimize the purchase and sale of electricity. Demand forecasting ensures that electricity is procured in the right quantities, at the right times, and from the right sources, minimising imbalance charges and reducing costs. Price forecasting, on the other hand, empowers traders to make data-driven decisions when bidding into day-ahead or intra-day markets, managing risk, and securing the best possible returns for the organisation and its stakeholders.

1.2 Interpretation and terminology

The following abbreviations are used in this Scope:

Abbreviation	Meaning given to the abbreviation
ERAA	Electricity Regulation Amendment Act
SO	System Operator
EDx	Energy Distribution
BESS	Battery Energy Storage Systems
DET	Distribution Energy Trading
BRP	Balance-Responsible Party

Specification and description of the services

The services are as follows:



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2. Constraints on how the *Consultant* Provides the Services.

2.1 Management meetings

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

Title and purpose	Approximate time & interval	Location	Attendance by:
Overall contract progress and feedback to Steering Committee	Quarterly	Eskom Academy of Learning or other venue as advised	Employer's Agent and the <i>Consultant</i> representatives
Overall contract progress and feedback	Bi-Monthly	Eskom Academy of Learning or other venue as advised	<i>Eskom Network Engineering & Design</i> representatives and the <i>Consultant</i> representatives

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.

2.2 *Consultant's* key persons

An organogram from the *Consultant* showing key persons and their lines of authority / communication shall be submitted to the *Employer* within 4 (four) weeks of the Contract Date. The *Consultant* shall be required to notify the *Employer* of the contact details, leave and 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 impacts on the *Consultant's* ability to deliver the services.

2.3 Documentation control and retention

2.3.1 Identification and communication

Standard forms to be used by the *Consultant* in the administration of the contract, for example early warning and compensation event notifications to be addressed to the *Employer's Agent*. All formal contractual communications shall be on a letterhead and bear as a minimum the date, subject, reference number, identities of sender and receiver and signature of sender and shall be delivered as attachments in the case of emails and not as a message in the email itself. All formal communications to the *Employer* shall be addressed to the *Employer's Agent*. Correspondence on a day-to-day basis may be directed to other parties within the *Employer's* organisation but care must be taken not to violate contract conditions and other provisions in terms of the contract.

2.3.2 Retention of documents

Eskom retains copies of drawings, specifications, reports and other documents which records the services in the form stated in the Task Order.

2.4 Records and forecasting of expenses

Estimated forecasts of itemised expenses shall be submitted by the *Consultant* at each assessment period for the acceptance of the *Employer* (Requesting Manager) before expenses are incurred. Clear records of expenses shall be maintained by the *Consultant* and submitted on request to the *Employer* for verification.

THE APPOINTMENT OF THE PROFESSIONAL CONSULTANT THAT WILL PROVIDE ENERGY TRADING ADVICE AND TOOLS NEEDED FOR THE DEVELOPMENT OF AN ENERGY TRADING PLATFORM FOR 12 MONTHS

Only invoices from service providers (e.g. hotel or car hire company) showing actual expenses incurred in the case of T&S expenses shall be accepted for processing by the *Employer*.

2.5 Records and forecasting of the Time Charge

The *Consultant* shall submit forecasts of time charges for each assessment period and maintain records thereof. Clear records of hours worked or time sheets in respect of all time charges shall be kept by the *Consultant* and shall indicate the resource utilised, location, duration and times, associated expenses incurred, and a summary of the services rendered which shall be cross-referenced to deliverables rendered. The records of hours shall indicate the Requesting Manager to whom services were delivered. The Requesting Manager shall review all time sheets during Assessment and the *Consultant* shall obtain signed timesheets and assessment documentation from the Requesting Manager and submit the assessment package to the *Employer's* Contract Management function for processing.

The *Consultant* shall maintain records of all documentation and make available to the *Employer* any or all such documentation on request.

2.6 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 Limited** and include on it the following information:

- Name and address of the *Consultant* and the *Employer's Agent*;
- The contract number and title;
- *Consultant's* VAT registration number;
- The *Employer's* VAT registration number 4740101508;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- Date of the invoice
- Task Order number
- Description of the services and quantities
- Purchase Order number

Procedures for invoice submission and payment

- The *Consultant* will invoice per milestone completed in arrears; however, the *Consultant* will send pro-forma invoices to the relevant GC representative 3 working days before submitting final Tax invoices to Accounts Payable Services (APS) to allow Goods Receipt (GR's) to be done timeously and avoid invoices being parked in the system. The invoices will be submitted after the following milestones:
- DRA Approval by the Investment Committee.
- Design Handover (DHO) received by Project Execution
- Technical support, as and when, site visits and/or inspections have been conducted during construction in accordance with budgeted number of site visits and/or inspections.
- The process can be amended as required from time to time per mutual agreement between both parties.

2.7 Contract change management

Not applicable

2.8 Inclusions in the programme

As per the task order requirement

2.9 Quality management

2.9.1 System requirements

The *Consultant* shall have a fully documented, implemented and maintained Quality Management System which complies with the requirements of the ISO 9001 or their quality management system shall carry valid certification from an acceptable QMS Certification body. The *Consultant* has to provide the quality plan at tender stage. Performance evaluation templates will be discussed during contract award by both Eskom and the *Consultant*. Service performance will be measured twice a year by the *Consultant* and provide feedback to Eskom.

Non-conformance report will be issued if the *Consultant* does not meet Eskom requirements. If there are any defects as per technical specification, the non-conformance report will be issued and monitored until closure. Control of non-conforming products or services procedure Control of non-conforming products or services procedure - 240-44175038 will be applied.

2.9.2 Information in the quality plan

Clause 40.2 of the NEC contract requires that the *Consultant* provide a quality policy statement and quality plan which complies with requirements stated in the Scope. The quality policy statement and quality plan to be provided at tender stage.

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

2.10.1 Employer's purpose for the material

All rights to material belong to *Employer* for purposes stated in the Scope.

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

As per the Task Order

2.10.3 Transfer of rights if Option X 9 applies

The *Employer* owns the *Consultants* rights over material prepared for this contract by the *Consultants*. The *Consultant* provides to the *Employer* the documents which transfer these rights to the *Employer*.

2.11 Management of work done by Task Order

No work shall be carried out without a signed Task Order issued by the *Employer's Agent*. The Task Order shall specify the scope of *services, deliverables, starting and completion dates* and the cost allocation. The *Consultant* shall deliver *services* within the constraints stipulated on the Task Order and engage the *Employer* as soon as the *Consultant* becomes aware of any risk in this regard. Any work executed outside the parameters stipulated on the Task Order, including cost, shall be for the *Consultant's* account notwithstanding delivery and acceptance of *services* that may be made by the *Employer* or people in the *Employer's* organisation.

The *Consultant* shall include itemised estimated expenses in all proposals in response to Requests for Quotation issued by the *Employer*. All Expenses shall be paid for by the *Consultant* and reimbursed at cost agreed upon as per the quotation and the Task Order. Forecasts of estimated *Expenses* shall be submitted to the *Employer's* Requesting Manager for acceptance at the Assessment meeting. Expenses that are incurred without the *Employer's* prior acceptance in writing shall not be reimbursed by the *Employer*.

2.12 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 APPOINTMENT OF THE PROFESSIONAL CONSULTANT THAT WILL PROVIDE ENERGY TRADING ADVICE AND TOOLS NEEDED FOR THE DEVELOPMENT OF AN ENERGY TRADING PLATFORM FOR 12 MONTHS

As part of Eskom's Consultant Management System, it is a requirement for all service providers who wish to undertake work for Eskom to undergo an occupational safety, health and environment (SHE) evaluation process. The *Consultant* shall respond to the corresponding non-negotiable minimum SHE requirements as stipulated in **Annexure C 4: OHS Tender Evaluation Template (Construction work)** of the NEC contract. Subsequent to that the *Consultant* shall compile a SHE File in line with Contractor Construction Evaluation Sheet (OHSAS 18001 aligned) which will be submitted to Eskom SHE functionary for acceptance/approval. The end user/project manager/contract custodian must co-sign the approved SHE File.

All findings/observations in the SHE tender evaluation report and SHE file requirements must be addressed with the *Employer* at the negotiation meeting. When the *Consultant* is awarded a contract, an OHS Act section 37(2) agreement shall be concluded and signed between the *Consultant* and the contract custodian/end-user, together with the contractual documents.

The *Consultant* shall at all times comply with the health and safety requirements prescribed by law and the *Employer* as they apply to the *services*. Failure to comply shall result in the *Employer* suspending the execution of services and removing the *Consultant* from site until compliance is achieved. The *Employer* may cancel a Task Order and/or terminate the contract depending on the situation and risks to people, plant and equipment, reputation and the *Employer's* business of electricity supply.

The *Consultant* shall comply with the health and safety requirements contained on the Task Order. The relevant Site / Project Manager shall require the *Consultant* to attend SHE Induction training provided by the *Employer*. It is essential that the *Consultant* is conversant with Eskom safety procedures training prior commencing any work on site.

If the *Consultant* may be required to work on Eskom premises, such as a substation, where health and safety requirements additional to those prescribed by law apply, specify these here or state.

2.12.1 Life Saving Rules

In the interest of promoting a safe and healthy working environment, the Eskom Executive Committee has approved the implementation of life saving rules, to improve safety in the organisation. These rules will also be applicable to all contracting staff. The business is concerned about the emotional, social as well as economic effect of all these unnecessary incidents, and would like to correct behaviour pro-actively. These rules are determined beforehand to enable the organisation to clearly communicate the established Life Saving Rules and how to deal with non-compliance to the workforce prior to the implementation of such rules.

Failure by any person or *Consultant* engaged in doing business with Eskom to adhere to these rules will lead to serious action being taken with serious consequences (including being refused access to site). These actions include termination of service of an individual and even blacklisting of *Consultants* not taking the rules seriously. It is therefore strongly advised that these rules be taken seriously, communicated to all your staff, ensure that they all understand the rules, understand the consequences of violating a rule and sign a document stating that they understand and acknowledge the implications of these rules.

2.12.2 Eskom Life Saving Rules are:

Rule 1: Open, Isolate, Test, Earth, Bond and/or Insulate before touch (above 1 000 V)

Rule 2: Hook up at heights

Rule 3: Buckle up

Rule 4: Be sober

Rule 5: Ensure that you have a permit to work

2.13 Procurement (Consultant Development, Localisation and Industrialisation (SDL&I))

2.13.1 BBBEE and preferencing scheme

Transformation remains an area of focus, where Eskom continuously strives to align itself with national transformation imperatives to unlock growth, drive industrialization, create employment and contribute to skills development.

THE APPOINTMENT OF THE PROFESSIONAL CONSULTANT THAT WILL PROVIDE ENERGY TRADING ADVICE AND TOOLS NEEDED FOR THE DEVELOPMENT OF AN ENERGY TRADING PLATFORM FOR 12 MONTHS

Eskom encourages its suppliers to constantly strive to improve their B-BBEE rating. Whereas Tenderer/s will be allocated points in terms of a preference point system based on specific goals, Eskom also requests that tenderer/s submits their B-BBEE improvement or retention plan within 30 days of signing the contract.

Tenderer/s are therefore requested to indicate the extent to which they will maintain (only if the respondent is a Level 1-3). Tenderer/s with a B-BBEE status level 4 at the time of contract award, shall migrate and achieve as a non-negotiable a milestone of B-BBEE Level 3 by the end of the first year of the contract and thereafter maintain their B-BBEE status level throughout the duration of the contract.

Tenderer/s with a B-BBEE recognition status of Level 5 to Level 8 or non-compliant at the time of contract award, shall migrate and achieve as a non-negotiable a milestone of Level 4 by the end of the first year of the contract and thereafter improve at least one B-BBEE Level higher to a B-BBEE level 3 by the second anniversary of the contract.

Tenderer/s are requested to submit their B-BBEE Improvement Plan as an essential document within 30 days of signing the contract.

NB: A valid B-BBEE certificate or Sworn Affidavit is a condition for contract award, if your company's annual Total Revenue is R10 Million or less you qualify as an Exempted Micro Enterprise therefore you can submit Sworn Affidavit. If your annual Total Revenue is R50 Million or less, you qualify as Qualifying Small Enterprise and must comply with all the elements of QSE score card relevant to your sector unless an entity is at least 51% Black owned you are required to obtain a Sworn affidavit. If your Annual Total Revenue is above R50m you need to submit a Valid B-BBEE certificate.

2.13.2 Localisations

“Local Procurement Content” refers to value added in South Africa by South African resources. Where a single contract involves a combination of local and imported goods and/or services, the tender response must be separated into its components as per the Price Schedule included with the tender documents. Local procurement content is total spending minus the imported component.

Tenderers are required to submit their proposals in the table below.

Local Procurement Content	Eskom target	Tenderer Proposal
	100%	

2.13.3 Procurement spends on entities with a minimum 51% black ownership

The winning tenderer/s is/are encouraged to procure/spend on designated groups on the following paid invoices for both:

- the indirect expenses (e.g. overheads) on goods and services supplied to the contractor/supplier by designated groups; and
- direct spend on goods and services supplied by the subcontractors for the execution of the scope of work.

Activities, as a proportion of the local procurement content, which may be subcontracted to designated black owned enterprises must be submitted in a table below.

Procurement from Designated Group	Eskom Target	Tenderer Proposal
Black Owned	4%	
Black Women Owned	3%	
Black Youth Owned	2%	
Black Persons with Disability	1%	

2.13.4 Industrialisation

Not Applicable.

2.13.5 Skills Development

Tenderers are required to submit proposals of the skill types / occupations to be upskilled for this transaction. The candidates selected for skills development shall be currently unemployed graduates from university schools and technical, vocational, education and training (TVET) campuses of South Africa.

The threshold will be as follows to ensure successful implementation of this initiative:

- ✓ The successful tenderer will be obligated to skill one candidate for every R4 Million spend cumulatively through purchase orders/instructions awarded to the supplier.
- ✓ The tenderer will be expected to submit a letter of competence/proof of attendance/service contract/certificate of compliance as proof that a candidate has been appointed for work experience. The supplier will be required to implement this requirement a month after the threshold is reached.

Candidates shall be from all provinces in the country, and their composition shall be a representative of the population demographics of South Africa.

Skill type / Occupation	Tenderer Proposal		
	No	Skill Type	Quantity
Scope of work-related skill types/Occupation	1.		
	2.		
	3.		
	4.		
	5.		

The process of developing these skills shall involve the participation by tenderers directly and through their supply network. In certain cases, the SETA's accredited training providers can be approached to participate in developing critical and scarce skills.

Note: Tenderers are required to take full responsibility for the total cost of developing the requisite skills, and Eskom shall not make any financial contribution towards the fulfilment of this obligation. Tenderers also are advised to approach their relevant SETAs to access grants, subsidies and incentives as well as South African Revenue Services for tax rebates that are earmarked for skills development initiatives.

2.13.6 Job Creation

Tenderers are required to submit proposals for the type and number of jobs that will be created and retained in South Africa as a direct result of being awarded a contract.

Type of Jobs to be created	Number of Jobs to be created

Type of Jobs to be retained	Number of Jobs to be retained

2.13.7 SDL&I Penalty

As security for the fulfilment of SDL&I obligations, Eskom will apply a retention of 2.5% on every invoice amount (excluding VAT) for failure to submit SDL&I performance reports every quarter; **or** failure to meet the SDL&I obligations in this contract. The 2.5% retention clause will be applied as follows:

- Submission of the tenderer's performance reports on a quarterly basis towards SDL&I obligations.
- SDL&I will assess the submitted performance report then issue a compliance report.
- Should the report yield a non-compliance outcome, Eskom will retain the 2.5%.
- Should the compliance results be positive, Eskom will release the retained funds to the tenderer

2.13.8 Consultant Development

2.13.8.1 Sub-contracting

Not applicable

2.13.8.2 Reporting and Monitoring

The suppliers shall on a half yearly basis submit a report to Eskom in accordance with Data Collection Template on their compliance with the SDL&I obligations described above.

Eskom shall review the SDL&I reports submitted by the suppliers within 90 (ninety) days of receipt of the reports and notify the suppliers in writing if their SDL&I obligations have not been met.

Upon notification by Eskom that the suppliers have not met their SDL&I obligations, the suppliers shall be required to implement corrective measures to meet those SDL&I obligations before the commencement of the following report, failing which Retention clauses shall be invoked.

Every contract shall be accompanied by the SDL&I Implementation Schedule which must be completed by the suppliers and returned to SDL&I representative for acceptance 28 days after contract award.

2.14 Correction of Defects

Not applicable

2.15 Working on the *Employer's* property

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

The *Employer's* sites are controlled and regulated by law. Persons under the influence of intoxicating substances and alcohol are strictly not permitted to enter the *Employer's* premises. All persons entering or leaving the *Employer's* premises may be subjected to physical security checks including alcohol tests.

In addition to the above there may be other restrictions applicable on sites and *Consultants* shall be required to comply at all times. Temporary Access Permits may be arranged for a limited number of the *Consultant's* *Key Persons* who require frequent access to the *Employer's* premises for purposes of delivering the *Services* which may include the attendance of regular meetings.

2.15.2 People restrictions, hours of work, conduct and records

It is very important that the *Consultant* keeps records of his people working on the *Employer's* property, including those of his Sub-consultants. The *Employer's* Agent shall have access to these records at any time. These records may be needed when assessing compensation events. The restrictions on hours worked shall be specified on the Task Order.

2.16 Cooperating with and obtaining acceptance of Others

Not applicable

