



NEC3 Professional Services Contract (PSC3)

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

and

**for Procurement of the replacement of the existing CRM
(Customer Relationship Management) solution,
including the Web Portal and the Eskom Application.**

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Contract No.

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 lease/ procurement of:

Procurement of the replacement of the existing CRM (Customer Relationship Management) solution, including the Web Portal and the Eskom Application.

The tenderer has

examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.

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

The offered total in Rands exclusive of VAT is	
Value Added Tax @ 15% is	
The offered total of the Prices inclusive of VAT is	

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.

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

Signature(s)

Name(s)

Capacity

**for the
Employer**

Eskom Holdings SOC LTD

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	
		G: Term Contract
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	
		X1 Price Adjustment for Inflation
		X2 Changes in the law
		X7 Delay damages
		X9 Transfer of rights
		X10 <i>Employer's Agent</i>
		X11: Termination by the <i>Employer</i>
		X18: Limitation of liability
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Professional Services Contract (June 2005) ¹ with amendments June 2006	
10.1	The <i>Employer</i> is (Name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a juristic person 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.	+27 11 800-8111
	Email.	
11.2(9)	The <i>services</i> are	Procurement of the replacement of the existing CRM (Customer Relationship Management) solution, including the Web Portal and the Eskom Application.
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	1 week

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009

Customer Relationship Management

13.6 The *period for retention* is

2 The Parties' main responsibilities

25.2 The *Employer* provides access to the following persons, places and things **Access to Eskom premises**

3 Time

31.2 The *starting date* is. **To be advise at contract stage**

11.2(3) The *completion date* for the whole of the *services* is. **To be advise at contract stage**

32.2 The *Consultant* submits revised programmes at intervals no longer than **30 Days after the contract start date**

4 Quality

40.2 The quality policy statement and quality plan are provided within **30 days after contract start date**

41.2 The *defects date* is **Completion date**

5 Payment

50.1 **30th day of each month**

50.3 The *expenses* stated by the *Employer* are **N/A**

51.1 The period within which payments are made is **30 days after receipt of valid VAT invoice.**

51.2 The *currency of this contract* is the **South African Rand**

51.5 The *interest rate* is **(i) zero percent above 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 (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands**

6 Compensation events **No data required for this section of the *conditions of contract*.**

7 Rights to material **No data required for this section of the *conditions of contract*.**

8 Indemnity, insurance and liability

81.1 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

Customer Relationship Management

Liability for failure by the *Consultant* to use the skill and care normally used by professionals providing services similar to the *services*

Whatever the *Consultant* deems necessary in respect of each claim, without limit to the number of claims

The amount of the cover, without derogating from or limiting the *Consultant's* liability to the Employer shall be determined by the *Consultant*. Although this amount is at the discretion of the *Consultant*, the Employer **recommends** that the Limit of the Cover should at least be the value of the contract

Effective from the starting date to the completion date or the termination date
And, following completion or termination of the *services* for a period the *Consultant* deems fit and necessary

The period of the cover, without derogating from or limiting the *Consultant's* liability to the Employer shall be determined by the *Consultant*. Although this period is at the discretion of the *Consultant*, the Employer **recommends** that the period following completion of the whole of the *services* or earlier termination be not less than 3 (Three years) years

death of or bodily injury to a person (not an employee of the *Consultant*) or loss of or damage to property arising from or in connection with the *Consultant's* Providing the *Services*.

Whatever the *Consultant* deems necessary for any occurrence or series of occurrences arising out of one event without limit to the number of claims.

The amount of the cover, without derogating from or limiting the *Consultant's* liability to the Employer shall be determined by the *Consultant*. Although this amount is at the discretion of the *Consultant*, the Employer **recommends** that the Limit of the Cover should at least be value of the contract

Effective from the starting date to the completion date or the termination date
And, following completion or termination of the *services* for a period the *Consultant* deems fit and necessary

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	death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Consultant's</i> common law liability for people falling outside the scope of the Act with a limit of indemnity of not less than R500 000-00 (five hundred thousand) in respect of each claim, without limit to the number of claims	As <i>Consultant</i> deems necessary
81.1	The <i>Employer</i> provides the following insurances	Refer to Annexure A for details of insurance provided by the <i>Employer</i>.	
82.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	Limited to the value of the contract.	
	The <i>Consultant</i> provides these additional insurances.		
	1 Insurance against:	Whatever the <i>Consultant</i> deems necessary including cover provided for payment of deductibles	
9 90.3	Termination	The Employer may terminate the Consultant's obligation to provide the Services for convenience on thirty (30) days written notice to the Consultant.	

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	2 weeks.
11	Data for Option W1	
W1.1(3)	The Adjudicator is (Name)	the person selected from Eskom Panel of Adjudicators listed in Annexure C to this Contract Data by the Party intending to refer a dispute to him.
W1.2(3)	The Adjudicator nominating body is	the Chairman of the Joint Civil Division of the South African Institution of Civil Engineering or its successor body. (See www.jointcivils.co.za)
W1.4(2)	The tribunal is:	Arbitration
W1.4(5)	The arbitration procedure is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	South Africa
	The person or organisation who will choose an arbitrator	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.
	<ul style="list-style-type: none">• If the parties cannot agree a choice or• If the arbitration procedure does not state who selects an arbitrator	
12	Data for secondary Option clauses	
X1	Price Adjustment for Inflation	On each anniversary of the Contract Date
X2	Changes in the law	
X2.1	The law of the project is	South African Law
X7	Delay damages	The Consultant pays delay damages at the rate stated in the Contract Data for each day from the Completion Date until Completion.
X9	Transfer of rights	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 Sub consultant equivalent rights for the Employer over the material prepared by the Sub consultant. The Consultant provides to the Employer the documents which transfer these rights to the Employer.

X10	The <i>Employer's Agent</i>	
X10.1	<p>The <i>Employer's Agent</i> is</p> <p>Name: Lebohang Mollo</p> <p>Address Eskom Megawatt Park</p> <p>The authority of the <i>Employer's Agent</i> is to carry out all the actions of the <i>Employer</i> in this contract with the exception of those required by clauses 51.1 and 81.1.</p>	
X11	Termination by the Employer	
X11.1	The <i>Employer</i> may terminate for a reason not stated in this contract by notifying the <i>Consultant</i> . The supplier will be given 30 days' notice to terminate the contract.	
X11.2	<p>If the <i>Employer</i> terminates for a reason, other than the <i>Consultant's</i> breach, the <i>Employer</i> shall pay an additional amount due on termination which is 5% of the difference between:</p> <ul style="list-style-type: none"> the forecast of the final total of the Prices in the absence of termination and the total of fees included in the amount due on termination, excluding non-committed amounts. 	
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 contract value
X18.3	The <i>end of liability date</i> is	One year after Completion of the whole of the services.
Z	The <i>Additional conditions of contract</i> are	
	Z1 to Z11 always apply.	

Z1 Cession delegation and assignment

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

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- 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 substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Consultant* in writing.

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

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

Z4 Ethics

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Consultant* which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Consultant's* obligation to Provide the Services or taking any other action as appropriate against the *Consultant* (including civil or criminal action).
- Z4.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services if the *Consultant* (or any member of the *Consultant* where the *Consultant* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.
- Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Consultant* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.
- Z4.3 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the services in addition to the amounts due in terms of core clause 92.1.

Z5 Confidentiality

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

Z6 Waiver and estoppel: Add to core clause 12.3:

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

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

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

Z8 Notifying compensation events

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

Z9 Employer's limitation of liability

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

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

- Z10.1 or had a judicial management order granted against it.

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

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

Annexure A: Notes to Consultants

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

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

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

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

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

<http://www.eskom.co.za/c/101/insurance-policies-procedures/>

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

Annexure B: The Employer's Panel of Adjudicators

The following persons listed in alphabetical order of their surname have indicated their willingness to be included in the Eskom Panel of Adjudicators. Their CV's may be obtained by using the contact details provided.

Name	Location	Contact details (phone & e mail)
Nigel ANDREWS	Gauteng	+27 11 836-6760 nigela@quoin.net
Andrew BAIRD	Gauteng	+27 11 803 3008 andrewbaird@ecsconsult.co.za
Christopher BINNINGTON	Gauteng	+27 11 888-6141 cdb@bca.co.za
Peter HIGGINS	UK	+44 1293 873 868 peterhiggins@pdconsult.co.uk
Bruce LEECH	Gauteng	+27 11 290 4000 leech@counsel.co.za
Nigel NILEN	Gauteng	+27 11 465 3601; nilences@global.co.za
Peter THURLOW	Gauteng	+27 11 787 6226 info@thurlowassoc.com

Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management.

C1.2 Contract Data

Part two - Data provided by the *Consultant*

Clause	Statement	Data
10.1	The <i>Consultant</i> is (Name): Address Tel No. Email.	
11.2(3)	The <i>completion date</i> for the whole of the services is	
11.2(10)	The following matters will be included in the Risk Register	To be registered as and when it happens.
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	See price schedule

PART 2: PRICING DATA

C2.1 Pricing

Refer to Pricing Schedule – Annexure L

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;
- *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;
- The Purchase Order; Service Entry and Goods Receipt number
- Invoices shall be mailed to invoiceseskomlocal@eskom.co.za

PART 3: DETAILED SCOPE OF WORK – ANNEXURE J1