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NEC3 Professional Services Contract (PSC3)

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| **Contract between** | **Eskom Holdings SOC Ltd**  **(Reg. No. 2002/015527/30) and its subsidiaries** | |
| **and** | **XXXXX (Pty) Ltd**  **(Reg. No. XXXX)** | |
| **for** | **The provision of Public Relations Services** | |
|  |  | |
| **Contents:** |  | **No of pages** |
| **Part C1** | **Agreements & Contract Data** | **[18]** |
| **Part C2** | **Pricing Data** | **[8]** |
| **Part C3** | **Scope of Work: The Scope** | **[7]** |
|  |  |  |
| **CONTRACT No.** |  | |
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**PART C1: AGREEMENTS & CONTRACT DATA**

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| --- | --- | --- |
| Document reference | Title | No of pages |
| **C1.1** | **Form of Offer & Acceptance** | **[3]** |
| **C1.2a** | **Contract Data provided by the *Employer*** | **[12]** |
| **C1.2b** | **Contract Data provided by the *Consultant*** | **[2]** |
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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 provision of Public Relations Services**

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

By the representative of the Consultant 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.

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signature(s) |  |  |  | |
| Name(s) |  |  |  | |
| Capacity |  |  |  | |
| **For the tenderer:** |  | | | |
| Name & signature of witness |  |  | Date |  |
|  | |  | | |

## Acceptance

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

The terms of the contract, are contained in:

Part C1 Agreements and Contract Data (which includes this Form of Offer and Acceptance)

Part C2 Pricing Data

Part C3 Scope of Work: The Scope

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

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

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

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signature(s) |  |  |  | |
| Name(s) |  |  |  | |
| Capacity |  |  |  | |
| for the Employer | Eskom Holdings SOC Ltd  P O Box 1091  JOHANNESBURG  2000 | | | |
| Name & signature of witness |  |  | Date |  |

## Schedule of Deviations

None

|  |  |  |  |
| --- | --- | --- | --- |
|  | For the tenderer: |  | For the Employer |
| Signature |  |  |  |
| Name |  |  |  |
| Capacity |  |  |  |
| On behalf of |  |  |  |
| Name & signature of witness |  |  |  |
| Date |  |  |  |

C1.2 PSC3 Contract Data

# Part one - Data provided by the *Employer*

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

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| --- | --- | --- | --- | --- |
| Clause | Statement | Data | | |
| 1 | General |  | | |
|  | The *conditions of contract* 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 *Employer*’s *Agent*** | | |
|  |  | **X11: Termination Clause** | | |
|  |  | X18: Limitation of liability | | |
|  |  | X20 Key Performance Indicators | | |
|  |  | Z: *Additional conditions of contract* | | |
|  | of the NEC3 Professional Services Contract (June 2005)[[1]](#footnote-1) with amendments June 2006 |  | | |
| 10.1 | The *Employer* 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, 1 Maxwell Drive, Sandton, Johannesburg** | | |
|  | Tel No. | **011 800 8111** | | |
|  | Fax No. | **011 800 8000** | | |
| 11.2(9) | The *services* are | **The provision of Public Relations Services** | | |
| 11.2(10) | The following matters will be included in the Risk Register | **Items agreed between the *Employer’s Agent* and the *Consultant*** | | |
| 11.2(11) | The Scope is in | **Part 3: Scope of Work** | | |
| 12.2 | The *law of the contract* is the law of | **The Republic of South Africa** | | |
| 13.1 | The *language of this contract* is | **English** | | |
| 13.3 | The *period for reply* is | **2 weeks** | | |
| 13.6 | The *period for retention* is | **5 years following Completion Date or earlier termination** | | |
| 2 | The Parties’ main responsibilities |  | | |
| 25.2 | The *Employer* provides access to the following persons, places and things | **As set out in the Agency Brief** | |  |
| 3 |  |  | | |
| 31.2 | The *starting date* is | **TBC** | | |
| 11.2(3) | The *completion date* for the whole of the *services* is. | **TBC** | | |
| 11.2(6) | The key dates and conditions to be met are: | **Completion of the work as per Agency Brief signed by the Consultant and end user** | | |
| 31.1 | The *Consultant* is to submit a first programme for acceptance within | **N/A** | | |
| 32.2 | The *Consultant* submits revised programmes at intervals no longer than | **N/A** | | |
| 4 | Quality |  | | |
| 40.2 | The quality policy statement and quality plan are provided within | **4 weeks** | | |
| 42.2 | The *defects date* is |  | | |
| 5 | Payment |  | | |
| 50.1 | The *assessment interval* is | **On Completion of each Task Order** | | |
| 51.1 | The period within which payments are made is | **30 days after receipt of a tax invoice** |  | |
|  |  |  |  | |
| 51.2 | The *currency of this contract* is the | **South African Rand** | | |
| 51.3 | 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 | **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 | **NEC PSC Clause 70 will apply: All material prepared by the consultant in delivery of the service will belong to Eskom Holding SOC LTD** | | |
| 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 *service*s or earlier termination** | |
|  | Liability for failure by the *Consultant* to use the skill and care normally used by professionals providing services similar to these *service*s | **Whatever the *Consultant* deems necessary in respect of each claim, without limit to the number of claims** | **Whatever the Consultant deems fit and necessary**  **But,**  **Effective from the starting date;**  **And,**  **The period of the cover, without derogating from or limiting the Consultant’s liability to the Employer or any other party shall be determined by the Consultant. Although this period is at the discretion of the Consultant, the period must be sufficient to cover claims arising from the service** | |
|  | death of or bodily injury to a  person (not an employee of  the Consultant) or loss of or  damage to property resulting  from an action or failure to  take action by the Consultant death | **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 or any other Party 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 R60 000 000 (sixty million Rand)** | **Whatever the Consultant deems fit and necessary**  **But,**  **Effective from the starting date;**  **And,**  **The period of the cover, without derogating from or limiting the Consultant’s liability to the Employer or any other party shall be determined by the Consultant. Although this period is at the discretion of the Consultant, the period must be sufficient to cover claims arising from the service** | |
|  | death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract | **In respect of each claim,**  **without limit to the number of**  **claims**  **As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the Consultant’s common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000-00 in respect of each claim, without limit to the number of claims;**  **and/or**  **As provided by the laws of the Country in which the Consultant’s employees are domiciled.** | **Whatever the Consultant deems fit and necessary**  **But,**  **Effective from the starting date;**  **And,**  **The period of the cover, without derogating from or limiting the Consultant’s liability shall be determined by the Consultant. Although this period is at the discretion of the Consultant, the period must be sufficient to cover claims arising from the services** | |
| 81.1 | The *Employer* provides the following insurances | **Refer to Annexure A for details of insurance provided by the *Employer*.** | | |
| 82.1 | The *Consultant*’s total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | **The total of the Task Order value** | | |
|  | The *Consultant* provides these additional insurances. |  | | |
|  | 1 Insurance against: | **Whatever the *Consultant* deems necessary including cover provided for payment of deductibles** | | |
| 9 | Termination | **Refer to core clause 9 for reference.** | | |
| 10 | Data for main Option clause |  | | |
| **E** | **Time Based contract** |  | | |
| 50.4 | The *exchange rates* are those published in | **Standard Bank of South Africa Limited** | | |

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| 11 | | | Data for Option W1 |  | | |
| W1.1 | | | The *Adjudicator* is (Name) | **the person selected from the Eskom Panel of Adjudicators listed in Annexure B** | | |
| W1.2(3) | | | The *adjudicator nominating body* is: | **the Chairman of the Joint Civils Division of the South African Institution of Civil Engineering or its successor body. (See** [**www.jointcivils.co.za**](http://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 (Johannesburg)** | | |
|  | | | The person or organisation who will choose an arbitrator   * if the Parties cannot agree a choice or * if the *arbitration procedure* does not state who selects an arbitrator, is | **The Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.** | | |
| 12 | | | Data for secondary Option clauses |  | | |
| **X1** | | | **Price adjustment for inflation** |  | | |
| X1.1 | | | The index is | Average of the CPI (Headline) index for the previous 12 month period as published by Statistics South Africa | | |
|  | | | The staff and production rates are | The staff and production rates are fixed at contract date and are firm for the first twelve months of the contract | | |
| **X2** | | | **Changes in the law** |  | | |
| X2.1 | | | The law of the project is | The law of the Republic of South Africa | | |
|  | | |  |  | | |
| **X7** | | | **Delay damages** |  | | |
| X7.1 | | | Delay damages for late Completion of the whole of the *services* are | **Delay damages will only be applicable to some Task Orders, the delay damage rate to be agreed before acceptance of the Task Order.** | | |
| **X9** | | | **Transfer of rights** | **The *Employer* shall own the rights to the material produced by the Consultant in delivery of the service** | | |
| **X10** | | | **The *Employer*’*s Agent*** |  | | |
| X10.1 | | | The *Employer*’*s Agent* is |  | | |
|  | | | Name: | **TBC** | | |
|  | | | Address | **P O Box 1091, Megawatt Park, 1 Maxwell Drive, Sandton, Johannesburg, 2000** | | |
|  | | | The authority of the *Employer*’*s Agent* is | **To carry out all the actions of the *Employer*** | | |
| **X11** | | | **Termination by the Employer** | **NEC Clause X11 will apply** | | |
| **X18** | | | **Limitation of liability** |  | | |
| X18.1 | | | The *Consultant’s* liability to the *Employer* for indirect or consequential loss is limited to: | **R0.00 (Zero Rand)** | | |
| X18.2 | | | The *Consultant’s* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to: | **The price of the task order in question** | | |
| X18.3 | | | The *end of liability date* is | **Two years after *Completion of the whole of the services / Task order*** | | |
| **X20** | | | **Key Performance Indicators** |  | | |
| X20.1 | | | The *incentive schedule* for Key Performance Indicators is in | **Performance measurement tool used by the Employer is not linked to additional incentives** | | |
| X20.2 | | | A report of performance against each Key Performance Indicator is provided at intervals of | **12 months** | | |
| **Z** | | | **The *Additional conditions of contract* are** | **Z1 to Z14 always apply** | | |
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| **Z1** | | **Cession delegation and assignment** | | | | |
| Z1.1 | | The *Consultant* does notcede, 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 *service*s in addition to the amounts due in terms of core clause 92.1. | | | | |
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| **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 *service*s 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 *Consultant* 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 *services* | **Whatever the *Consultant* deems necessary in respect of each claim, without limit to the number of claims** | **Four (4) weeks** | | Liability for death of or bodily injury to a person (not an employee of the *Consultant*) or loss of or damage to property resulting from an action or failure to take action by the *Consultant* | **Loss of or damage to property:**  The replacement cost where not covered by the *Employer*’s insurance  The *Employer*’s policy deductible, as at Contract Date, where covered by the *Employer*’s insurance  **Bodily injury to or death of a person:**  The amount required by the applicable law. | **Four (4) weeks** | | Liability for death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract | The amount required by the applicable law | **Four (4) weeks** | | | |
| 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 | | | |

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|  |  | |
| **Z13** | **Nuclear Liability** | |
| Z13.1 | The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa and is the holder of a nuclear licence in respect of the KNPS. | |
| Z13.2 | The *Employer* is solely responsible for and indemnifies the *Consultant* or any other person against any and all liabilities which the *Consultant* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 44 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Consultant* or any other person or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*. | |
| Z13.3 | Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Consultant* or any other person, or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*. | |
| Z13.4 | The *Employer* does not waive its rights provided for in section 30 (7) of Act 44 of 1999, or any replacement section dealing with the same subject matter. | |
| Z13.5 | The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned. | |
|  |  | |
| **Z14** | **Asbestos** | |
| For the purposes of this Z-clause, the following definitions apply: | | |
| **AAIA** | | means approved asbestos inspection authority. |
| **ACM** | | means asbestos containing materials. |
| **AL** | | means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL. |
| **Ambient Air** | | means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet. |
| **Compliance Monitoring** | | means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard’s requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles. |
| **OEL** | | means occupational exposure limit. |
| **Parallel Measurements** | | means measurements performed in parallel, yet separately, to existing measurements to verify validity of results. |
| **Safe Levels** | | means airborne asbestos exposure levels conforming to the Standard’s requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles. |
| **Standard** | | means the *Employer*’s Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles. |
| **SANAS** | | means the South African National Accreditation System. |
| **TWA** | | means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA. |
| Z14.1 | The *Employer* ensures that the Ambient Air in the area where the *Consultant* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) (“Asbestos Regulations”). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM. | |
| Z14.2 | Upon written request by the *Consultant*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Consultant* may perform Parallel Measurements and related control measures at the *Consultant*’s expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan. | |
| Z14.3 | The *Employer* manages asbestos and ACM according to the Standard. | |
| Z14.4 | In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe. | |
| Z14.5 | The *Consultant*’s personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable. | |
| Z14.6 | The *Consultant* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001. | |
| Z14.7 | Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer*’s expense, and conducted in line with South African legislation. | |

# 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”.

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

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

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

In the case of contracts / packages within a project:

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

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

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

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

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

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

[**http://www.eskom.co.za/live/content.php?Item\_ID=9248**](http://www.eskom.co.za/live/content.php?Item_ID=9248)

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 *service*s. 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](mailto:andrewbaird@ecsconsult.co.za) |
| Christopher BINNINGTON | Gauteng | +27 11 888-6141  [cdb@bca.co.za](mailto: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](mailto:info@thurlowassoc.com) |

**Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management, by contacting Marumo Lekoto: 011 800 5383 or [LekotoMH@eskom.co.za]**

C1.2 Contract Data

# Part two - Data provided by the *Consultant*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Clause | Statement | Data | | | |
| 10.1 | The *Consultant* is (Name): |  | | | |
|  | Address |  | | | |
|  | Tel No. |  | | | |
|  | Fax No. | **n/a** | | | |
| 22.1 | The *Consultant’s* *key person*s are: |  | | | |
|  | 1 Name: |  | | | |
|  | Job: |  | | | |
|  | Responsibilities: |  | | | |
|  | Qualifications: |  | | | |
|  | Experience: |  | | | |
|  | 2 Name: |  | | | |
|  | Job |  | | | |
|  | Responsibilities: |  | | | |
|  | Qualifications: |  | | | |
|  | Experience: |  | | | |
| 11.2(3) | The *completion date* for the whole of the *services* is | **TBC** | | | |
| 11.2(10) | The following matters will be included in the Risk Register | **As agreed between the *Employer’s Agent* and the *Consultant*** | | | |
| 11.2(13) | The *staff rates* are: | **See Part C2.2** | |  | |
| 25.2 | The *Employer* provides access to the following persons, places and things | **access to** | | | ***access date*** |
|  |  | **1** | **Eskom/ Sites/ offices** | | **Contract Duration** |
| 31.1 | The programme identified in the Contract Data is | **As agreed between the *Employer’s Agent* and the *Consultant***  **in relation to each Agency Brief** | | | |
| 50.3 | The *expenses* stated by the *Consultant* are | **Billed at cost and subject to the limits set out in the Eskom T&S (Travel & Expenses) policy attached hereto as Annexure [C]** | |  | |
|  |  |  | |  | |
| **G** | **Term Contract** |  | | | |
| 11.2(25) | The *task schedule* is in Part C2.2 |  | | | |

Part 2: Pricing Data

**PSC3 Option G**

|  |  |  |
| --- | --- | --- |
| **Document reference** | **Title** | **No of pages** |
| C2.1 | Pricing assumptions: Option G | 1 |
| C2.2 | *Staff rates, expenses* | 7 |

C2.1 Pricing assumptions: Option G

# The *conditions of contract*

## How work is priced and assessed for payment

**From Option G: Term contract**

|  |  |  |
| --- | --- | --- |
| Identified and defined terms | 11 11.2 | (20) The Prices are   * the Time Charge for items described as time based on the Task Schedule and   (21) A Task is work within the *services* which the *Employer* may instruct the *Consultant* to carry out within a stated period of time.  (22) Task Completion is when the *Consultant* has done all the work which the Task Order requires him to do by the Task Completion Date, and corrected Defects which would have prevented the *Employer* or Others from using the *services* and Others from doing their work.  (23) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with this contract.  (24) A Task Order is the *Employer’*s instruction to carry out a Task. |
| The *Consultant*’s obligations | 21 21.4 | The *Consultant* prepares forecasts (Cost Estimates) of the total Time Charge and *expenses* for the whole of the *services* in a Task Order and submits them to the *Employer*. Should a forecast change an explanation of the changes made since the previous forecast is submitted with each new forecast. |
| Assessing the amount due | 50 50.6 | Payments for staff whose staff rate is stated in the Contract Data in a currency other than the currency of this contract are included in the amount due as payments to be made to the Consultant in the same currency. |
| Accounts and records | 52 52.2 | The *Consultant* keeps accounts and records of his Time Charge and *expenses* and:   * Submits them monthly to the *Contract Manager* * Allows the *Employer* to inspect them at any time within working hours. |
| Assessing Tasks | 55 55.1 | A Task Order (Briefing Document) includes:   * a detailed description of the work in the Task, * The starting and completion dates for the Task.   The *Employer* consults the *Consultant* about the contents of a Task Order before he issues it. |
|  | 55.3 | The *Consultant* does not start any work included in the Task until he has received an Approved Quote and a Purchase Order number and does the work so that Task Completion is on or before the Task Completion Date. No Task Order is issued after the Completion Date. |

In effect Option G is a cost reimbursable form of contract with work is ordered by the *Employer* on a Task by Task basis.

C2.2 Staff rates, expenses

**PRICES - AGENCY REMUNERATION:**

1. **Preamble**
   1. The *Consultant* is appointed to provide Public Relations - Corporate for all Eskom Programmes.
   2. For the purposes of this agreement, the following definitions shall apply:
      1. Task Order is defined as an *Employer* approved cost estimate which must include a Purchase Order number.
      2. Task Schedule is defined as an *Employer* approved project/campaign timing plan.
   3. The content and format of a cost estimate, project/campaign timing plan and briefing document will be included in the Service Level Agreement, which will be compiled and agreed by both parties upon commencement of the contract.
   4. All prices listed in this contract exclude VAT.
   5. Rate adjustment for inflation is based adjustments by using Option X1: Price adjustment for inflation.
   6. As a standard, the *Consultant* will work on a pay as you go (PAYG)/ Task order remuneration method for most Eskom programmes, as business needs and programme direction changes, some programmes may move to a fee/retainer based remuneration method.
   7. On a Task Order remuneration method the *Employer* will request quotes for specific tasks and the *Consultant* will only start a task once the quote has been accepted and approved. The employer does not provide any guarantees in terms of spend.
   8. On a fee/retainer remuneration method a programme will commit to a monthly fee over a period in exchange for dedicated hours from specific resources. The hours accumulated by each resource will be recorded and reported on monthly and reconciled annually.
2. **Service Fees**
   1. For provision of Public Relations Services, the *Consultant* will be entitled to charge a resource based fee according to the hourly rates in the resource table below:

|  |  |  |
| --- | --- | --- |
|  | **Resource Level** | **PAYG**  **Hourly rate** |
| 1 | Executive |  |
| 2 | Senior |  |
| 3 | Middle |  |
| 4 | Junior |  |

* 1. The above rates will be applicable to Public Relations Services on all Eskom programmes.
  2. Should the *Consultant* indicated that AV services will be outsourced, the clauses for third party costs shall apply to AV services

1. **Key Resources**
   1. The *Consultan*t will provide suitably qualified key resources to deliver on the scope of services as agreed by the parties.
2. **Recordal**
   1. It being recorded that this is an enabling agreement, where all programmes will make use of the consultant’s Public Relations Services as and when required.
   2. The *Employer* provides no guarantee in terms of budget and/or estimated spend, but to maintain a proper record, the estimated spend must be used by the *Consultant* to anticipate the volume of work. The estimated spend by each marketing campaign will be provided after contract award.
   3. The *Consultant* will provide the *Employer* with reconciliations of remuneration by programme on a monthly basis.
3. **Disbursements**
   1. The following costs will be charged to the *Employer* at net cost only (no commissions, mark-ups or handling fees will apply) and should be included in cost estimates approved by the *Employer*:
      1. Travel and accommodation expenses outside Gauteng, subject to the *Consultant* adhering to the *Employer*’s Travel policy – Policy 32-1041 for Business travel management, please refer to National Treasury Cost Containment;
      2. Competitor materials;
      3. Research, if specifically requested but excludes general research;
      4. Courier and delivery charges
      5. Third party costs (outsourced production, printing, courier, etc.)
4. **Third Party Costs**
   1. Third party costs are defined as costs charged by third parties that arise directly in the process of provision of the services.
   2. No commissions, mark-ups or handling fees will be added to third party costs by the *Consultant.*
   3. Third party costs must be approved on cost estimates and approved by the *Employer*.
   4. The *Consultant* must provide 3 (Three) quotes for third party costs amounting to more than R100 000.00 Excl. VAT (one hundred thousand)
   5. The *Employer* may request the *Consultant* to provide 3 (three) quotes for third party costs less than R100 000.00 (one hundred thousand) Excl. VAT
   6. Where third party costs amount to a value of more than R 500 000.00 Excl. VAT (five hundred thousand rand) the *Employer’s Agent* may approve, at his/her sole discretion, up to 50% pre-payment for large scale events and production.
   7. “Distribution of material” to the *Employer’s* regional offices may be charged as a third party cost.
   8. It is agreed that the *Consultant* where possible, will make use of developmental (EME and QSE) third party companies with preference towards black woman and black youth owned business’s
5. **Special Conditions Relating to Price**
   1. Review of Prices
      1. The agreed Prices shall apply for the first 12 months of the contract.
      2. Before the anniversary of the contract and annually thereafter, the parties will meet to review estimated budgets, remuneration methods and rates for the next period of the contract.
      3. If the Parties have not concluded an agreement on Prices by the end of the first month of the new period, the *Consultant*’s remuneration will remain the same as the previous period until new prices are agreed.
   2. Performance and Incentive Bonus
      1. The Parties agree to a performance measurement which will be performed by the *Employer*. The results of the performance evaluation as set out in the performance feedback report shall be final and binding on the Parties.
      2. The Scope, minimum agreed services levels are defined as a minimum performance measurement score of 50%.
      3. **The Parties agreed that no performance and/or incentive bonuses will apply for the duration of the contract period.**
   3. Territory
      1. For the purposes of this contract, Territory is defined as the Republic of South Africa and other SADC countries.
   4. Key Resources
      1. The *Consultant* will inform the *Employer* of any changes to key resources as soon as the *Consultant* becomes aware of such a change, where after clause 7.4.3 below will apply.
      2. The *Employer* may, having stated reasons, instruct the *Consultant* to remove a key resource.
      3. The *Consultant* will be required to respond within 1 (one) business day:
         1. Confirming the removal of the key resource from the account;
         2. Confirming that the *Consultant* will have replaced the key resource with a suitably qualified resource, on a temporary basis, within 10 (ten) business days of removal of the key resource
         3. Confirming that a replacement of the key resource will be made within 90 (ninety) days of the removal of the key resource. Provided that the *Employer* will approve the replacement key resource.
   5. Amendments and Changes
      1. The *Employer* may request, in writing by an authorised representative, to change, reject or stop any and all plans, schedules or work in progress and the *Consultant* will take all reasonable steps to comply with such a request. In this regard, the *Consultant* will be required to respond within 1 (one) business day acknowledging receipt of such instruction and informing the *Employer* of the cost implications to be occasioned by such action.
      2. Failing to receive written instruction to the contrary within 1 (one) business day of submitting the abovementioned response to the *Employer*, the *Consultant* will action the instruction to change, reject or stop plans, schedules or work in progress.
      3. In the event of the cancellation of a campaign/project, the circumstances of which are outside the *Consultant’s* control, the *Consultant* will be entitled to charge a fee for the time utilised up to date of cancellation, except for losses arising from the gross negligence, wilful fault, fraud or intentional misconduct by the *Consultant.*
      4. The *Employer* will, in circumstances referred to above, reimburse the *Consultant* for all outside costs payable to third parties, including any damages or charges arising from the early termination of the contract with a third party to the extent of the costs incurred, subject to clause 7.5.1 above. The *Consultant* will provide documentation to substantiate re-imbursement of costs.
      5. In the event of a significant change to a previously agreed strategy or brief of a campaign, project or task the *Consultant* will be allowed to charge a fee for the resource time utilised up to the date of the change, provided the change is not required through fault of the *Consultant.* The *Employer* will need to provide a revised brief to the *Consultant* incorporating the changes.
      6. Before the *Employer* reaches the maximum number of reverts on material/content as stated in the SLA after the material/content has reached the layout stage the *Consultant* will notify the *Employer* that one more change to material can be made and any future changes will be charged for in line with the agreed rates, provided the changes to material are not required through fault of the Consultant.
      7. No additional charges shall be allowed if the *Consultant* fails to notify the *Employer* in terms of clause 7.5.6 above.
   6. Rebates And Discounts
      1. The *Consultant* shall ensure that all discounts and rebates in respect of all *Employer*-related material and third party costs shall revert and be passed on by the *Consultant* to the *Employer*.
   7. Cost Management and Reconciliations
      1. It is the obligation of the *Consultant* to manage costs within approved purchase order values, including costs of third party suppliers.
      2. If it becomes evident that a purchase order value will be exceeded without a change to the scope of work requested by the *Employer*, the *Consultant* is required to issue an additional cost estimate to the *Employer* together with reasons for the anticipated increase in cost.
      3. The *Employer* is under no obligation to accept the additional cost estimate and may request the *Consultant* to continue to deliver the work as per the original purchase order value, in which case the increased cost must be borne by the *Consultant*.
   8. Cost Estimates
      1. **Only the *Employers Agent* or the delegated *Contract Manager* can approve a Cost Estimate, any Cost Estimate which has not been signed by the *Employers Agent* or the delegated *Contract Manager* is not considered valid.**
      2. Irrespective of the urgency, the *Consultant* will not carry out any work without being in possession of an approved Cost Estimate as described in 7.8.1 and a corresponding Purchase Order number
      3. **The *Employer* is under no obligation to reimburse the *Consultant* for work done in the absence of an approved Cost Estimate as described in 7.8.1.**
      4. For avoidance of doubt, all cost estimates approved by the *Employer* are considered as final unless the parties agree upon request of the *Employer* to a change in the scope of the services.
      5. Approved cost estimates will be deemed as final and binding communications with respect to the services or assignments covered by such cost estimates and should only be modified or altered by writing and signed by both parties.
   9. Invoicing and payment
      1. 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;*

The contract number and title;

*Consultant’s* VAT registration number;

*Consultant’s* vendor number

*Consultant’s* contact information

The *Employer*’s VAT registration number 4740101508;

* + 1. The Consultant will be paid within 30 days from receipt of the invoice by Accounts Payable at Eskom.
    2. It being recorded that where the *Consultant* charges interest to the *Employer* on late payment of invoices, such interest shall be calculated 30 (thirty) days from the date of receipt of the invoice by the *Employer*, to be calculated at the rate stipulated in clause 51.5. For the purposes of this clause, the invoice shall be deemed to have been received by the *Employer* 5 (five) days after the invoice date. The *Consultant* shall thus charge interest after 35 (thirty-five) days from invoice date.
  1. Audit
     1. In respect of all expenditure which is reimbursable by the *Employer* under this contract the *Consultant* shall maintain such accounts and records as are reasonably necessary, but no longer than 5 (five) years, for the purpose of enabling the *Employer* to conduct an audit of that expenditure.
     2. The *Consultant* will allow the *Employer*’s own personnel or a professionally qualified independent auditor access to all records during the term and for 3 (three) months afterwards on not less than 30 (thirty) days’ notice at any time during normal business hours for the purpose of auditing or otherwise inspecting them.
     3. Should any audit or inspection of the records by the *Employer* reveal that the *Employer* has been overcharged, the *Consultant* will reimburse the *Employer* the amount of the overcharge within 30 (thirty) days and interest calculated at prime rate charged by the *Employer*’s banker on overdraft facilities plus 0% (zero percent) per annum.
     4. The *Consultant* will afford to the *Employer* all reasonable assistance in the carrying out of such audit, whilst the *Employer* and its auditors will ensure that any information obtained in the course of the audit concerning the *Consultant*’s business is kept in the strictest confidence and not used for any purpose other than the proper conduct of the audit.
  2. Travel
     1. The *Consultant* must at all times adhere to the *Employers’* Travel Policy 32-1041 and the National Treasury cost containment guidelines.
     2. The *Consultant* will only be reimbursed for travel outside of Gauteng
     3. The Consultant may not bill for time spent traveling to meetings, only for time spent in the meeting.
     4. Travel costs will be charged to the Employer at net cost only (no commissions, mark-ups, handling fees or credit card fees will apply) and should be included in Cost Estimates signed off by the Employer.
     5. In line with the Eskom Travel Policy 32-1041 and the National Treasury cost containment guidelines, the following rates will apply:

|  |  |  |
| --- | --- | --- |
| **Cost element** | **Unit of measure** | **Rate** |
| Fuel | per Kilometre | R 3.60 |
| Domestic hotel accommodation (inclusive of VAT and Tourism Levy) for dinner bed and breakfast and 2 soft drinks at dinner may not exceed the following | per Night | Maximum of R1400 |
| Domestic hotel accommodation (inclusive of VAT and Tourism Levy) for bed and breakfast only | per Night | Maximum of R1200 |
| Domestic hotel accommodation (inclusive of VAT and Tourism Levy) for room only | per Night | Maximum of R1100 |
| Car Rental Vehicle Category | Group B/C | Economy vehicle with air-conditioning |
| Meal allowance (only applicable for meals not provided by the accommodation) | per Meal | R160 |
| Air travel | Domestic and International | Economy class |

* + 1. The *Consultant* may motivate for the car hire class to be upgraded to minibus / kombi where a group will be traveling and costs can be saved.
    2. The fuel rate per kilometre may be used when the *Consultant* travels in their private/company vehicle outside of Gauteng.

Part 3: Scope of Work

|  |  |
| --- | --- |
| **Document reference** | **Title** |
|  | This cover page [1] |
| C3. | Scope [6] |
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C3: scope

**Contents**

1. **Description of the Service**
2. **Specifications and description of the services**
3. **Special conditions relating to Scope**

# Description of the *services*

## 

**Executive Overview**

* Account management
* Public relations strategy
* Media relations
* Public relations collateral /content development
* Reputation management
* Issues and crisis management
* Media training

The scope of work was compiled by the Strategic Marketing Department, and was stated in the enquiry as follows:

* 1. **PR Strategy – The PR agency is expected to –**

1. study and understand the *Employer’s* business, which includes but is not limited to: the organisational structure, operating environment, operating principles, regulation, shareholding, and stakeholders. This understanding is essential for the *Consultant* to analyse and interpret a programme’s brand strategies, research reports, media reports, etc. and to observe market activity with a view to identifying any opportunities and risks that may impact Eskom’s brand reputation and achievement of marketing objectives;
2. develop PR strategies which set measureable objectives, identify target markets, develop communication messages, and identify suitable PR tactics, activities, and touch points to achieve the marketing objectives of the specific campaign; and
3. study and understand the consumers/target markets of each programme and extract relevant communication insights to provide the *Employer* with information on PR trends and best practices in the industry.
   1. **Media Relations – The PR agency is expected to –**
4. build and maintain relationships with relevant media owners, media titles, spokespersons, editors, and journalists in the print and digital formats. These close relationships are essential for the *Consultant* to proactively identify opportunities which will allow Eskom to showcase and profile its various programmes, and cross-leverage its media investments;
5. conduct desktop research and interact with Eskom specialists when preparaing for writing documents, such as press releases, media statements, speeches, and holding statements. This research must also be used when briefing Eskom spokespersons;
6. prepare media plans in response to the media requirements of a campaign. The Media Plan should include the arranging by the *Consultant* of media engagements (briefings, interviews, conferences) to generate publicity for the *Employer,* including proactive interventions, and identifying newsworthy opportunities;
7. once the Media Plan has been formulated and execution has begun, the *Consultant* must analyse and evaluate the *Employer’s* media coverage and prepare media coverage analysis reports which can be used to inform the media training of the *Employer’s* media spokespersons.
   1. **Content creation – The PR agency is expected to –**
8. conduct desktop research and interact with Eskom specialists to gain an understanding of the subject matter relating to the various Eskom campaigns. This is essential as the *Consultant* will be required to proofread and edit the general and technical copy to ensure that consumers understand the technical subject matter. When global reports relating to a campaign or industry are available, these must be localised to ensure local relevance. This intimate understanding of Eskom’s programmes should enable the *Consultant* to develop themes as well as message hierarchies;
9. write/produce "consumer-friendly” technical and general content for print and digital channels, e.g. brochures, websites, exhibitions, infographics, and video. Proactively identify publicity opportunities where the produced content can be used for ensuring the ongoing dissemination of publicity and campaign information. When required, the communication material produced by the *Consultant* must be packaged and distributed to Eskom's main regional offices and other main sites; and
10. provide full video production services to package campaign content in a format relatable to the target audience. Similar to written content, media and publicity plans will also be required for video, in order to generate the campaign awareness that is described in the campaign objectives.
    1. **Issues and crisis management – The PR agency is expected to –**
11. maintain a database of crisis management case studies and best practices, which will be beneficial when monitoring the external environment to identify and anticipate potential crisis situations. If any potential crisis situation does materialise, the *Consultant* will be responsible for developing and implementing the crisis communication strategies in partnership with the CAD and Eskom’s leadership teams, as requested;
12. once the Crisis Communication Plan has been rolled out, the *Consultant* must monitor and measure the response of stakeholders and target markets to the crisis communication interventions, and provide strategic counsel to Eskom’s executive management team, as requested.
    1. **Reputation management – The PR agency is expected to –**
13. study and understand the *Employer’s* reputation measurement methodology and associated reputation drivers, and continuously identify PR opportunities which can be used to enhance the *Employer’s* reputation. The *Consultant* must also monitor the media environment for any potential threats to the *Employer’s* reputation and prepare contingency measures to address any reputational risks that may arise.
    1. **Activations – The PR agency is expected to –**
14. provide activation ideas to the *Employer* to support a marketing campaign. Many of the current campaigns are focused on rural and peri-urban communities, so the *Consultant* must have a history of working in communities showing its capability to understand the dynamics of each community, and to translate this understanding into an engaging activation to which the audience can relate;
15. once the activation idea has been approved, the *Consultant* will be responsible for the full execution and management of the activation, which includes invitations, managing RSVPs, venue identification and hire, catering, transport, accommodation, logistics, labour, and post-activation reporting. A full list of responsibilities is provided in Appendix A – Work breakdown structure.
16. **Specification and description of the *service*s**

|  |  |
| --- | --- |
| **No** | **Service** |
|  | **ACCOUNT MANAGEMENT** |
| 1 | Attend Client meetings, workshops, information gathering and brainstorming sessions |
| 2 | Obtain and verify Client briefs |
| 3 | Issue contact reports |
| 4 | Attend status meetings |
| 5 | Provide advice and guidance on PR strategies |
| 6 | Issue status reports for all projects that include but are not limited to project number, description, current status, next steps, timeline and due date |
| 7 | Screen work before presentation to Client (on brief and strategy) |
| 8 | Submit work for approval by Client |
| 9 | Prepare and submit campaign timing plans |
| 10 | Obtain sign-off from authorised Client representative |
| 11 | Manage third party suppliers |
| 12 | Coordinate and manage projects |
| 13 | Prepare financial reconciliations |
| 14 | Prepare and submit cost estimates |
| 15 | Provide three quotes for third party amounts exceeding R100 000 |
| 16 | Maintain a digital guard-book, of all work done for the Employer, information must be indexed and arranged by programme. |
| 17 | Issue invoices and statements |
| 18 | Manage and resolve financial queries |
| 19 | Issue financial reports |
|  | **PR and/or INTERNAL COMMUNICATIONS STRATEGY** |
| 20 | Study and understand Client's business: organisational structure, operating environment, operating principles, regulation, shareholding, stakeholders, etc. |
| 21 | Analyse and interpret Client's brand strategies, research reports, media reports, etc. and observe market activity with the view to identifying opportunities and risks that may impact Client's brand reputation and achievement of marketing objectives |
| 22 | Develop PR strategies in support of marketing objectives: set measureable objectives, identify target markets, develop messages, identify suitable tactics |
| 23 | Recommend and make use of relevant internal market research |
| 24 | Study and understand the consumers/target markets of Client's brands and extract relevant communication (connection touch points) insights |
| 25 | Develop communication messages |
| 26 | Identify relevant PR tactics and activities |
| 27 | Provide Client with information on PR trends and best practices |
|  | **MEDIA RELATIONS** |
| 28 | Build and maintain relationships with relevant media owners, media titles, editors and journalists (print, electronic and digital) |
| 29 | Build and maintain relationships between key relevant media and Client spokespersons |
| 30 | Proactively identify opportunities which will allow Client to showcase and profile its various brands |
| 31 | Proactively seek and propose opportunities that will allow Client to cross-leverage its various media investments |
| 32 | Brief and prepare Client spokespersons prior to media engagements |
| 33 | Conduct desk research in preparation for press releases, media statements, speeches, etc. |
| 34 | Write holding statements, press releases, key speeches and media statements |
| 35 | Generate publicity for Employer, including proactive interventions and identifying newsworthy opportunities |
| 36 | Arrange media engagements (briefings, interviews, conferences, etc.) |
| 37 | Provide media training to Client's media spokespersons |
| 38 | Analyse and evaluate Client brand coverage and report on AVE values per campaign |
| 39 | Prepare media coverage and analysis reports |
| 40 | Prepare PR strategies in response to brands' media performance |
|  | **CONTENT CREATION FOR INTERNAL AND EXTERNAL CAMPAIGNS** |
| 41 | Conduct desk research to gain an understanding of various subject matters and ask client for access to subject experts in Eskom where needed |
| 42 | Localise global reports to ensure local relevance |
| 43 | Develop themes and message hierarchies |
| 44 | Write content for print, electronic and digital channels |
| 45 | Proofread and edit technical copy to ensure consumer understanding of technical subject matter |
| 46 | Proactively identify publicity opportunities for Client's brands |
| 47 | Write/produce "consumer friendly' technical content for brochures, web-sites, exhibitions. |
| 48 | Provide Photographic, video and audio production services to package campaign content in a format relatable to the target audience. |
| 49 | Provide media and publicity services in the generation of campaign awareness as may be required and identified in the plans |
| 50 | Coordinate and liaise with Client and/or Client agencies to ensure ongoing dissemination of publicity and campaign information |
| 51 | Design and revise the look and feel of presentations. |
| 52 | Packaging and distribution of communication material to Eskom offices and power stations as needed |
|  | **ISSUE / CRISIS MANAGEMENT** |
| 53 | Identify potential crisis situations and monitor the external environment to anticipate the occurrence of such situations on request |
| 54 | Develop and implement crisis communication strategies as requested |
| 55 | Maintain a database of crisis management case studies and best practices |
| 56 | Monitor and measure the response of stakeholders and target markets to the crisis communication interventions if and when implemented |
| 57 | Provide strategic counsel to Client's executive management team upon request |
|  | **REPUTATION MANAGEMENT** |
| 58 | Study and understand the Client’s Reputational Drivers |
| 59 | Continuously identify PR opportunities which can be used to strengthen Client’s reputation |
| 60 | Monitor the media environment for any potential threats to Client’s reputation |
| 61 | Prepare contingency measures to address reputational risks |
|  | **INTERNAL AND EXTERNAL PROJECT & ACTIVATION MANAGEMENT SERVICES** |
| 62 | Ideation of activation concepts |
| 63 | Venue identification and hire |
| 64 | Management of invitations and RSVPs |
| 65 | Provide protocol advice |
| 66 | Booking and management of catering |
| 67 | Booking and management of entertainment |
| 68 | Booking and management of décor and venue dressing |
| 69 | Booking and management of technical staging |
| 70 | Design and production of activation collateral (invitations, menus, programmes, signage, etc.) |
| 71 | Booking and management of security and emergency services |
| 72 | Project and logistics management |
| 73 | Book promoters |
| 74 | Arrange JOC certificate for all relevant activations |
| 75 | Supply promoters with promotional kit |
| 76 | Train promoters |
| 77 | Supervise promoters |
| 78 | Evaluate promoters |
| 79 | Activation coordination/logistics management |
| 80 | Venue management |
| 81 | Promotional fulfilment (delivery of prizes) |
| 82 | Photography |
| 83 | Transport bookings (local) |
| 84 | Transport bookings (international) |
| 85 | Accommodation bookings (local) |
| 86 | Accommodation bookings (international) |
| 87 | Post activation reporting |

1. **Special Conditions Relating to Scope**
   1. Intellectual Property and Copyright
      1. The *Consultant* shall deliver to the *Employer* all codes, forms and materials prepared in terms of this contract and shall, where necessary, do what may be necessary to assign such right of intellectual property in respect of the aforesaid material to the *Employer*.
      2. The *Consultant* assigns all its rights, title and interest in and to the material prepared or to be created in the future, which includes, but is not limited to, the codes, forms, and any other document, in terms of this contract to the *Employer* and the *Employer* accepts assignment of the rights, title and interest in and to the material prepared or to be created in the future in terms of this contract.
      3. All material that has been developed by the *Consultant* in terms of this contract shall be handed over to the *Employer* on a regular basis (at least once per calendar year), the details of format to be agreed and documented in the Service Level Agreement.
   2. Service Level Agreement
      1. The Service Level Agreement will be reviewed annually by the *Employer* and will be agreed and signed by all parties.
      2. The *Employer* reserves the right to terminate the contract if the *Consultant* fails to deliver the minimum agreed service levels, and after having been notified of the underperformance, fails to remedy such underperformance within a period of time notified by the *Employer’s Agent,* which time period will not exceed a maximum of 3 (three) months.
      3. In the event of a conflict between the contract and the SLA, the provisions in the contract shall prevail.
   3. Approval and authority
      1. Only the *Employers Agent* or the delegated *Contract Manager* has the authority to approve a Cost Estimate/Quotation.
      2. The *Employer* is under no obligation to reimburse the *Consultant* for work done in the absence of an approved Cost Estimate/Quotation.
      3. The *Consultant* shall, after obtaining a written brief from the *Employer*, provide the *Employer* with quotations of the cost of the various services covered by the *Consultant* Remuneration Agreement.
      4. The *Employer*, in its sole discretion may waive the requirement to obtain 3 (three) quotes for third party amounts over R100,000 (one hundred thousand Rand), provided that the *Consultant* supplies the *Employer* with a written motivation that has been accepted in writing by the *Employer*.
   4. Contact Reports
      1. The *Consultant* will issue contact reports detailing matters of substance discussed at meetings or in telephone conversations between the *Employer* and the *Consultant* within 48 (forty eight) hours following the meeting or conversation.
      2. If the subject matter of the contact report is not questioned by the *Employer* within 72 (seventy two) hours of its receipt, the contact report will be taken to be an accurate record of the meeting or telephone conversation to which it refers.
   5. Escalation of Disputes
      1. In the event of a dispute arising, the *Employer* and *Consultant* agree to follow the escalation procedure set forth below:
         1. The subject of the dispute will be referred firstly to the *Employer*’s delegated Contract Manager;
         2. Failing to resolve the dispute with the *Employer’s* Contract Manager, the dispute will be referred to the *Employer’s Agent*;
         3. Failing to resolve the dispute by means of any of the clauses above, reference is to be made to the dispute resolution clauses included in the contract.
   6. Effect of Termination
      1. Upon termination, cancellation or expiry of this contract, subject to this clause, the provision of all services shall forthwith cease.
      2. Any agreements which are in existence as at the date of termination, cancellation or expiry, which have been made with the *Employer’s* authorization but which are not capable of being assigned by *Consultant* to the *Employer*, shall be completed by *Consultant* in accordance with the terms of this contract, and each Party shall deliver to the other Party, or at the other Party’s option destroy, and procure the delivery of or destruction by sub-contractors, of all originals and copies of confidential information and proprietary materials in its or their possession or under its or their control.
      3. Termination of this contract shall not affect the enforceability of the provisions which are intended to operate after such expiry or termination.
      4. Immediately upon expiry or termination of this contract for any reason whatsoever, the *Consultant* shall transfer, assign and/or make over to the *Employer* all property and materials in the *Consultant’s* possession or over which the *Consultant* has control on behalf of the *Employer* together with all information in its possession with regard to the *Employer’s* communications.
      5. The *Consultant* agrees to give all reasonable co-operation towards transferring all assignable interests and agreements with advertising media and other third parties for advertising space, broadcast times or materials yet to be used and all claims thereto and therein upon being duly released from the obligations in respect thereof.
      6. In the case of termination for breach, other than that stated in the Introduction to C2.1, the *Employer* shall pay all remuneration payable up to the date of the breach where after the *Employer’s* obligation in this regard shall end.
   7. Health and safety
      1. The *Consultant* shall at all times comply with the health and safety requirements prescribed by law as they may apply to the *services* and to the health and safety requirements applicable at any of the *Employer’*s sites.
   8. Working on the Employers property
      1. The Consultant shall comply with all the Employer’s site entry requirements and obtain at his cost all the necessary permits.
      2. The Consultant keeps detailed 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.
   9. Procurement
      1. **BBBEE and preferencing scheme**

The Consultant shall comply with the below Supplier Development and Localisation negotiated outcome as follow:

**SUPPLIER DEVELOPMENT, LOCALISATION AND INDUSTRIALISATION (SDL&I) UNDERTAKING**

Suppliers will be required to contribute towards the elements of SDL&I, namely: B-BBEE (Black ownership) and Job Creation/Retention for the duration of the contract.

**Job Creation**

Not Applicable

**Skills Development**

Successful tenderers will be required to develop skills in the fields listed below:

|  |  |  |
| --- | --- | --- |
| **Skills Type** | **Eskom’s Target** | **Tenderer’s Proposal** |
| Learner ships (core skills that are industry related) | 3 |  |
| Tertiary Bursaries (on industry related skills) | 3 |  |

Note:

A total of three (3) Learnerships and three (3) Bursaries will be created as part of the skills development program over a period of 3 years. Details of the candidates will be supplied to Eskom as and when they are recruited.

The actual targets for skills development will be determined at a transactional level depending on the duration and allocated value of the task order.

* 1. Retention

All agreed SD&L contractual requirements will form part of the NEC contract then they shall be monitored on quarterly basis throughout the duration of the contract to ensure all the obligations and undertakings are fulfilled. Failure not to achieve agreed and contracted SD&L requirement will result in 2.5% retention but not limited to your task order(s) being given to an alternative service provider. The 2.5% retention will be deducted from all outstanding payment or future invoices and released only after SD&L obligations has been satisfied.

1. Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 [↑](#footnote-ref-1)