



NEC3 Professional Services Contract (PSC3)

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

and

Reg No. -----

**for Working at Heights Training on as and when
required basis**

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CONTRACT No.: -----

VENDOR 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 procurement of:

Working at Heights Training

The supplier, identified in the Offer signature block, has

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

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

The offered total of the Prices exclusive of VAT is	As per task orders
Value Added Tax @ 15% is	As per task orders
The offered total of the Prices inclusive of VAT is	As per task orders
As per task orders (option G)	

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
Supplier:**

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:

This may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the Supplier 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 Supplier shall within One month 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 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

General Manager Eskom Academy of
Learning

**for the
Employer**

Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sandton, Johannesburg, 2199

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	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>
		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 Limited (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.	n/a
11.2(9)	The <i>services</i> are	Provision of Working at Heights Training, for a contract duration of 60 months as and when required.

11.2(10)	The following matters will be included in the Risk Register	Risks as they arise Issuing of Purchase Orders Issuing of Invoices and T&S Claims Poor Performances	
11.2(11)	The Scope is in	Part 3 of this document	
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	Five (5) business days	
13.6	The <i>period for retention</i> is	12 months following Completion or earlier termination.	
2	The Parties' main responsibilities		
25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	<i>access date</i>
		1	As per task order
3	Time		
31.2	The <i>starting date</i> is:		
11.2(3)	The <i>completion date</i> for the whole of the services is:		
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	<i>key date</i>
		1	As per task order
31.1	The Supplier/ <i>Consultant</i> is to submit a first programme for acceptance within	As per task order	
32.2	The Supplier/ <i>Consultant</i> submits revised programmes at intervals no longer than	As per task order	
4	Quality		
4.1	The quality policy statement and quality plan are provided within	n/a	
4.2	The <i>defects date</i> is	As per the contract Agreement	
5	Payment		
5.1	The <i>assessment interval</i> is	From the 25th day of each month to the 25 th day of the subsequent month.	
5.2	The <i>expenses</i> stated by the <i>Employer</i> are	Item	Amount
		As per the task order	As per the task order

5.3	The period within which payments are made is	Thirty (30) days from date of invoice for other suppliers.	
5.4	The <i>currency of this contract</i> is the	South African Rand	
5.5	The <i>interest rate</i> is	<p>(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 Rand and</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter (and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.</p>	
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	Information and material provided by the Employer for this training shall remain the property of the Employer and shall be used for the employer's purposes only. The Employer will have right to customise the training Material to meet the employers requirements.	
8	Indemnity, insurance and liability	n/a	
81.1	The amounts of insurance and the periods for which the <i>Consultant</i> maintains insurance are	n/a	
	Event	Cover	Period following Completion of the whole of the services or earlier termination

	Liability for failure by the Supplier/ <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	Whatever the Supplier/ <i>Consultant</i> deems necessary in respect of each claim, without limit to the number of claims	See Notes to Consultants in Annexure A
	death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property arising from or in connection with the <i>Consultant's</i> Providing the Services.	Whatever the <i>Consultant</i> deems necessary for any occurrence or series of occurrences arising out of one event without limit to the number of claims.	See Notes to Consultants in Annexure A
	death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Consultant's</i> common law liability for people falling outside the scope of the Act with a limit of indemnity of not less than R500 000-00 (five hundred thousand) in respect of each claim, without limit to the number of claims	As <i>Consultant</i> deems necessary
8.1.1	The <i>Employer</i> provides the following insurances	n/a.	
8.2.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	The total of the prices.	
	The <i>Consultant</i> provides these additional insurances.		
	1 Insurance against:	n/a	
9			
10	Data for main Option clause		
G	Term contract		
10.2	The <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than	2 days after receiving task orders and training schedules	
11	Data for Option W1		

W1.1	The <i>Adjudicator</i> is (Name)	The person selected from the 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 <i>adjudicator nominating body</i> 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).
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	The latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	Any Official selected place in South Africa
	The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the <i>arbitration procedure</i> does not state who selects an arbitrator, is	The Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
12	Data for secondary Option clauses	
	The index is	Gazetted annual average CPI
	The staff rates are {state whether "Fixed at the Contract Date and are not variable with changes in salary paid to individuals" or "Variable with changes in salary paid to individuals"}	Variable with changes in salary paid to individuals at maximum of the gazetted annual average CPI
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 <i>services</i> are	n/a
X10	The <i>Employer's Agent</i>	
X10.1	The <i>Employer's Agent</i> is	
	Name:	
	Address	Eskom Academy of Learning Dale Road Halfway House Midrand
	The authority of the <i>Employer's Agent</i> is	To carry out all the actions of the Employer in this contract

X11	Termination by the <i>Employer</i>	If the supplier fails to deliver training as per this agreement and scope of work.
X18.1	The Supplier/ <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	Limited to the total prices of the project.
X18.2	The Supplier/ <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:	Total of the prices.
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 Supplier/*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 Supplier/ *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* / Supplier on their behalf.
- Z2.3 The *Consultant/ Supplier* 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 Supplier/*Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the Supplier/*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 Supplier/*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 Supplier/*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 Supplier/*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 Supplier/*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 Supplier/*Consultant* (or any member of the *Consultant* where the Supplier/*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 Supplier/*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 Supplier/*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 Supplier/*Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the Supplier/*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 Supplier/*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 Supplier/*Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the Supplier/*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 Supplier/*Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z5.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer's* project works or any portion thereof, in the course of Providing the *Services* and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

Z6 Waiver and estoppel: Add to core clause 12.3:

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

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

- Z7.1 The Supplier/*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 Supplier/*Consultant* but did not".

Z9 Employer's limitation of liability

- Z9.1 The *Employer's* liability to the Supplier/*Consultant* for the Supplier/*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.

Z12 Non Solicitation clause

- Z12.1 Both Parties agrees not to utilize, engage, solicit for hire, or hire any individual who provided Services to Customer under this Agreement for a period of six (6) months after the termination of this Agreement under which the individual performed the Services.

However, should a position be advertised in the press, and the individual gets appointed as a result of his/her response to said advert, Eskom will not be held liable for any placement fees.

Annexure A: Notes to Consultants

This is guidance to Suppliers/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. 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 R350M, Format A will apply
- For a contract of R355M, Format B will apply.

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

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

http://www.eskom.co.za/live/content.php?Item_ID=9248

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

act, error or omission committed or alleged to have been committed by the *Consultant* in the conduct of professional services in connection with the contract.

C1.2 Contract Data

Clause	Statement	Data
10.1	The Supplier: Address: Tel No; Fax No.	
22.1	The Supplier's <i>key persons</i> are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job: Responsibilities: Qualifications: Experience:	
Info.		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled .
11.2(3)	The <i>completion date</i> for the whole of the services is	
11.2(10)	The following matters will be included in the Risk Register	
11.2(13)	The <i>staff rates</i> are:	name/designation Rate
Refer to Part C2		
25.2	The <i>Employer</i> provides access to the following persons, places and things	Names of trainers/instructors access date
		1
		2
		3

31.1	The services identified in the Contract Data is		
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	Item	amount
G	Term contract		
11.2(25)	The <i>task schedule</i> is in		

PART 2: PRICING DATA
PSC3 Option G

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option G	

C2.1 Pricing assumptions: Option G

	Courses	Course duration	Estimated No. of learners in 5 years	Cost per learner	Total cost per learner
1	Working at heights/ Fall Arrest System	3 days	10371		
2	Basic Rescue training	2 days	12000		
3	Work at height assessment and fall protection plan training	3 days	8400		
4	Hauling (Aerial Rigging) Training for Telecommunications Employees	3 days	2700		
5	FAS Equipment Inspection Training	3 days	10000		
6	Ladder Safety Training	3 days	10500		
7	T&S				
	Total				

1.1. Rebates And Discounts

1.1.1. The *Consultant* shall ensure that all volume discounts and rebates in respect of all *Employer*-related third party costs, including, without limitation, costs incurred in the production process of generating communication shall revert and be passed on by the *Consultant* to the *Employer*.

1.2. Cost Management and Reconciliations

- 1.2.1. It is the obligation of the *Consultant* to manage costs within approved purchase order values, including costs of third party suppliers.
- 1.2.2. 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 a revised cost estimate to the *Employer* together with reasons for the anticipated increase in cost.
- 1.2.3. The *Employer* is under no obligation to accept the revised 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*.
- 1.2.4. The *Consultant* is required to perform quarterly reconciliations between actual costs charged by third party suppliers and the cost estimates and invoices issued by the *Consultant* to the *Employer*.
- 1.2.5. Should an overcharge greater than R1000 arise between the actual cost charged by a third party supplier and the invoice issued by the *Consultant* to the *Employer*, the *Consultant* will issue the *Employer* with a credit note for the overcharge.

- 1.2.6. Should an undercharge greater than R1000 arise between the actual cost charged by a third party supplier and the invoice issued by the *Consultant* to the *Employer*, the *Consultant* will be entitled to issue the *Employer* with an additional invoice for the undercharge subject to clauses and above.
- 1.2.7. In the event that the *Consultant* sub-contracts to third parties for the performance of any of the Services, it shall ensure that no mark-ups are added to any resource related charges so that costs are not increased and so that the *Employer* shall not pay more than it would have paid the *Consultant* had the *Consultant* itself executed such sub-contracted work.

1.3. Cost Estimates

- 1.3.1. 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.
- 1.3.2. 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.
- 1.3.3. In the performance of the Services, should the service provider receive any commissions, retrospective volume credits, rebates, or other similar payments relating to the utilisation or purchase of a Third Party services, save for those which the service provider receives directly for and on behalf of the *Employer* from a Third Party account, shall not modify or alter the Cost Estimate arrangement.

1.4. Invoicing and payment

The Supplier/*Consultant* shall address the tax invoice to **Eskom Holdings SOC Limited** and include on it the following information:

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

The contract number and title;

Consultant's VAT registration number;

Consultant's vendor number

Consultant's contact information

The *Employer's* VAT registration number 4740101508;

1.5. Audit

- 1.5.1. In respect of all expenditure which is reimbursable by the *Employer* under this Contract the Supplier/*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.
- 1.5.2. The Supplier/*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.

- 1.5.3. Should any audit or inspection of the records by the *Employer* reveal that the *Employer* has been overcharged, the *Supplier/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.
- 1.5.4. The *Supplier/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 *Supplier/Consultant's* business is kept in the strictest confidence and not used for any purpose other than the proper conduct of the audit.
- 1.6. Travel and Substinance cost
- 1.6.1. The *Supplier/Consultant shall make all the travelling and arrangement, pay for such and later **claim for such as reimbursement** from Eskom following the above stipulated invoicing process.*
- 1.6.2. The *Supplier/Consultant shall follow the below stipulated rates when claiming for training delivery related costs from the Employer under this contract:*

Travelling KM's	<ul style="list-style-type: none"> The <i>Supplier/Consultant shall not claim for travelling km if their offices are within 50km radius from the Employer/Eskom training site.</i> <i>Claims from the Supplier's office outside the 50 km radius must be from the Supplier's workplace/offices to the Eskom training site/venue. Claim s must specify the office area/city from where the Supplier/Consultant/Facilitator is travelling from and the area/training site to which they are travelling for training delivery reasons.</i> <i>Kilometres from the Supplier/Consultant/ Facilitators home to Eskom training site can not be claimed</i>
KM rates	R3.18/km
Car rental	<ul style="list-style-type: none"> Group B or Similar with: <ul style="list-style-type: none"> At least have 2 airbags, Air-conditioning ABS brakes for safety purposes
Accommodation	Maximum 3 star hotel or Bed and Breakfast
Flights	Economy Class

Part C3: Scope of Work

Description of the services

Executive overview

Occupational Health and Safety is governed by legislation requirements and the organisation's SHEQ policy, standards and procedures to which the operating units must comply. These sought interventions will ensure that the competencies and skills required by the experts in the field are closed and the learning and experience are met.

Historically each area (power station or site) had its own contract or contracts to deliver safety, health, environmental and quality training, and there were flaws such as different content approach and the same supplier charging different prices for the same course. To control these discrepancies, this important training will be monitored, consolidated, standardised, and managed by EAL Functional Faculty under one national contract.

Procedure 32/477 (Safety, Health and Environment document) provides the basis for this contract(s) scope of work.

Specification and description of the services

As per SOW

Task Orders will be issued to the Suppliers/ *Consultant* based on their approved training material on as and when required basis.

The Supplier/ *Consultant* will not be allowed to provide training for which they have not been approved based on their submitted training material and accreditation of their Facilitators.

Constraints on how the *Consultant* Provides the Services.

5.1.Task Orders will be issued to the Suppliers/ *Consultant* based on their approved courses and training material on as and when required basis

5.2 .Training will be based on the identified competency gaps and scope of work.

5.3. The Supplier/ *Consultant* will not be allowed to provide training for which they have not been approved based on their submitted training material and accreditation of their Facilitators.

5.4. Cancellation

5.4. Cancellation of training by either party

5.4.1. In the case where the employer must cancel training due to unforeseen circumstances, the employer will give notice to the *Consultant* 7 days before training and not pay for such cancellation. However, in the case where the employer must cancel training due to unforeseen circumstances 6 days and less before training, the employer will pay for a minimum of 10 learners for that cancelled class. If training is for Work at Heights (FAS) and Rescue courses where the minimum is 8, the employer will pay for such minimum number of learners.

5.4.2. The above cancellation clause will also apply to the *Consultant*. Eskom will recover the cost of the cancelled course from the *consultant* for the same minimum numbers by deducting the cost of the cancelled course from the next course the *Consultant* will be presenting to Eskom at any training site.

5.4.3. Should the *Consultant* incur cancellation costs for travel and accommodation where the Employer has issued a cancellation notification less than 7 days before training, the employer

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will be responsible for such costs. The Consultant can submit an invoice with supporting documents for such cancellation to be covered under T&S Cost.

5.4.4. No decision to cancel already started training where a PO has been issued or changing the structure, contents and duration of training will be accepted by the Consultant or Facilitators without the consent of the Employer's Agent

5.5. The Supplier/ Consultant will not be allowed to change the training durations and prices and to provide training for which they have not been approved based on their submitted training material and accreditation of their Facilitators.

5.6. Notification time required to book specific training events and payment process:

- 1) Eskom will give the supplier a minimum of 2 week s notice using a PO/Task Order requesting training and at least a week to cancel planned training;
- 2) Suppliers will submit a Completion Certificate together with copies of attendance registers 2 days after training delivered to the Eskom Administrator for payment processing;
- 3) The Eskom Administrator will send back to the supplier the Completion Certificate with Service Entry and Goods Receipt numbers 3 days after receiving the Completion Certificate from the Supplier;
- 4) The supplier will then send the invoice containing both the SE and GR numbers as soon as possible to the nearest Eskom Documentation Centre for payment processing;
- 5) Eskom Finance department will process the invoice as per the PO an Completion Certificate and the supplier should be paid within a reasonable time as per their BEE status.

For courses that do not require SETA credits, the service provider should submit completed completion certificate, attendance registers, tax invoices, assessments results and feedback reports within 7 days after training before claiming for payment.

Where SETA credits are required, the service provider should submit completed completion certificate, attendance registers, tax invoices, and proof of submission of assessment results to the applicable SETA before claiming for payment.

5.7. Facilitator. Moderator & Assessor:

- 1) The service provider must submit to the Employer s agent/Contract Manager a list of ail their Facilitators who will present the training, Moderators and Assessors stating their names, accreditation, qualifications and related experience.
- 2) If Facilitators are to be changed during the execution of the contract, the credentials of the replacement trainers must be submitted timely to the Contract Manager for approval.

5.8. Facilitator. Moderator & Assessor Qualifications:

Facilitators, moderators and assessors should be SETA accredited on the specific unit standard they present or for courses where SETA Credits are not required, must be weii experienced and qualified to present, assess and moderate such courses.

Minimum: National Diploma in Safety Management or equivalent safety qualification, with relevant certificate in Instruction and Training.

Preferred: Post Graduate Qualification in Safety Management and /or Diploma in Adult Education.

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5.9. Facilitator. Moderator & Assessor Accreditation/Reqistration Requirements

Minimum: Registration as a Professional with the Institute of Safety Management or a recognised professional body or recognised as a subject matter expert and experienced facilitator in their own right that is registered with ETDPSETA.

Preferred: Registration with Internationally Recognised Institute or Association and accredited to facilitate SHE training by Health and Welfare SETA (HWSETA) or other SETAs.

Facilitator. Moderator & Assessor Experience

Minimum: 5 years in technical industries as a SHE practitioner

Preferred: 10 years related industry experience as SHE Practitioner/Safety Manager or Professional Trainer

5.10. Class Size:

Classes shall be made up of a minimum of 10 learners and 4/6 for FAS Training and class maximum will differ from course to course.

5.11. Training Content and Material Delivery Specifications:

Accreditation of Service Providers and training material:

- 1) Eskom requires all service providers to provide their SAQA ID registration numbers and the accredited SETA certificate as proof of their accreditation for all that they are tendering for, for which SETA credits are required
- 2) For those courses where SETA credits are not required, training providers will be allowed to present them based on their business accreditation level and Eskom's content evaluation process
- 3) All education and training should emphasise the importance of meeting requirements and the needs and expectations of the customer and other interested parties
- 4) Service providers must have knowledge of all the operating units in Eskom's critical tasks
- 5) Service providers must be prepared to update or customise, if required, their existing training material and training methodologies to address any Eskom business standard procedures/directives and specific risks.
- 6) Service providers are expected to provide the client with training content which is unit standard based, including formative assessment, summative assessment criteria and other assessment instruments.
- 7) Service providers may be required to customise their material content to accommodate Eskom's policies and procedures (which will be provided).
- 8) Service providers must understand that they may at any time be assessed and evaluated with regards to course content, training methodology, trainer's knowledge and experience.
- 9) All service providers must be accredited as training providers by the relevant SETAs and use accredited Facilitators, Assessors and Moderators
- 10) All service providers will be evaluated and reference checks will be undertaken to verify their accreditation.
- 11) Where there is a registered Unit Standard for the course/training the service provider and the facilitator must be accredited and registered for delivering that Unit Standard.

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- 12) Unit standards are quoted as a guide to assist in the standardisation of our training. Courses where participants are expected to acquire SETA credits have been specified.

5.12. Training Delivery:

- 1) Eskom will require Suppliers to use other training delivery methodologies different from classroom training as per the EAL Learning strategy where necessary.
- 2) Service Providers will be required to use other South African official languages other than English where there is a need.

5.13. Quality Assurance on training material:

- 1) Training material will be quality assured by the EAL QA Committee or OHS Learning Committee or similar process, if required.
- 2) The tender enquiry and the contract must have a clause stating how Eskom will evaluate if the service provider is indeed providing in line with the contracted criteria. This may include requiring all facilitators to present to an evaluation panel and stating that SMEs or other suitably competent evaluators may on a random basis sit in during courses.
- 3) If the training material is required in the EAL format/template, EAL will avail the templates to the tenderers with the issuing of the tender enquiry. State if a CDD, LG, FG, AG, PP presentations are required.
- 4) Courses and training material have to be submitted to Eskom at least 21 days before the first training event is delivered for Eskom to accept/approve the content
- 5) EAL (Eskom Academy of Learning) will reserve the right to evaluate and assess the training facilitators and course material content, come unannounced to the sessions for spot checks as part of quality assurance and control and to request the service providers to make the required changes to the course content or change the facilitator as may be recommended by the quality assurance assessments
- 6) Service providers must be prepared to offer refresher-training programmes, if required

5.14. Duration of Training interventions:

- 1) The duration of each training intervention will be as per the scope in this document.
- 2) The supplier should stick to the stipulated durations and not shorten nor lengthen the training. Eskom will raise a non-conformance report (NCR) against such actions.

5.15. Learner Assessment and Competency Certificates

3) Learners must be assessed upon completion of training according to the outlined outcomes and be given a course completion certificate. The certificate must include the following: SETA logo and service providers accreditation number, South African identification number of the learner and the name of the course the learner would have successfully completed. Certificates must be issued within 30 days of course completion.

4) For courses with credits, if there are assignments, these need to be compiled and marked. The service provider must make provision for moderation as well. The certificate must include the following' SETA logo, ES/ETQA registration number of the assessor with his/her signature, South African identification number of the learner and the name of the course the learner would have successfully completed, and number of credits acquired. Certificates must be issued within 14 days of feedback received from the SETA.

5) All training material, registration documentation, assessment tools, approved facilitators and moderators qualifications to be submitted during the pre-tender phase (electronically- on a CD).

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5.16. CRD points:

Training must carry CRD points and unit standard credits where indicated.

Management meetings

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

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	Weekly on _TBA_____ at ____	TBA	<i>Employer's Requesting Managers, Contract Management and Consultant</i>
Overall contract progress and feedback	Monthly on ____TBA__ at ____	Eskom MWP or other venue as advised on the Task Order	<i>Employer's Agent, Employer's Requesting Managers, Contract Management and interested parties and Consultant</i>

Attendees shall have the necessary delegated authority to make decisions in respect of matters discussed at such meetings.

The Meetings of a specialist nature may be convened as specified elsewhere in this Scope or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the *services*. Records of these meetings shall be submitted to the *Employer's Agent* by the person convening the meeting within five days of the meeting.

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

Consultant's key persons

An organogram from the *Consultant* showing key persons and their lines of authority / communication shall be submitted to the Employer within 4 (four) weeks of the Contract Date. The *Consultant* shall be required to notify the Employer of the contact details, leave and alternative where applicable in respect of each key person. Any

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changes in this regard shall be notified in writing in advance or within 1 (one) week of occurring and measures taken to avoid negative impacts on the *Consultant's* ability to deliver the services.

Provision of bonds and guarantees

The form in which a bond or guarantee required by the *conditions of contract* (if any) is to be provided by the *Consultant* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

The *Employer* may withhold payment of amounts due to the *Consultant* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Consultant* by the *Employer's Agent* to receive and accept such bond or guarantee. Such withholding of payment due to the *Consultant* does not affect the *Employer's* right to termination stated in this contract.

Documentation control and retention

Identification and communication

The *Employer's* documentation requirements shall be specified in the Task Order.

All formal contractual communications shall be on a letterhead and bear as a minimum the date, subject, reference number, identities of sender and receiver and signature of sender and shall be delivered as attachments in the case of emails and not as a message in the email itself. All formal communications to the *Employer* shall be addressed to the *Employer's Agent*.

Correspondence on a day to day basis may be directed to other parties within the *Employer's* organisation but care must be taken not to violate contract conditions and other provisions in terms of the contract.

Contractual communications such as notification of Compensation Events or instructions to deliver services which are not directed at/received from the *Employer's Agent* shall not be acknowledged by the *Employer* and decisions or actions taken or omitted as a result thereof shall be at the *Consultant's* own risk

Retention of documents

The *Consultant* retains copies of drawings, specifications, reports and other documents which record the services in the form stated in the Task Order. The time period for which the *Consultant* is to retain such documents is the *period for retention* stated in the Contract Data.

Records and forecasting of expenses

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

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

Records and forecasting of the Time Charge

The *Consultant* shall submit forecasts of time charges for each assessment period and maintain records thereof.

Clear records of hours worked or time sheets in respect of all time charges shall be kept by the *Consultant* and shall indicate the resource utilised, location, duration and times, associated expenses incurred and a summary of the services rendered which shall be cross-referenced to deliverables rendered. The records of hours shall

indicate the Requesting Manager to whom services were delivered. The Requesting Manager shall review all time sheets during Assessment and the *Consultant* shall obtain signed timesheets and assessment documentation from the Requesting Manager and submit the assessment package to the Employer's Contract Management function for processing.

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

Invoicing and payment

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

The *Consultant* shall address the tax invoice to **Eskom Holdings SOC Limited** and include on it the following information:

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

All tax invoices must be submitted to Eskom Shared Services.

Quality management

System requirements

Refer to QM58 procedure

Information in the quality plan

Clause 40.2 requires that the *Consultant* provide a quality policy statement and quality plan which complies with requirements stated in the Scope. The quality policy statement and quality plan to be provided within Four (4) weeks of the Contract Date.

The Parties use of material provided by the *Consultant*

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

Clause 70.1 states that the Employer has the right to use the material provided by the *Consultant* for the purpose stated in the Scope. The Employer's intended purpose is: refer to the Task Order.

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

As per the Task Order

Transfer of rights if Option X 9 applies

There are no exceptions to the transfer of rights except those mutually agreed upon and documented before contract award. The *Consultant* shall not challenge or assist any other party challenging at any time the validity or ownership of any of the intellectual property rights relating to the material created and developed for this contract.

Management of work done by Task Order

Refer to Annexure C for the format of a Task Order which shall be used by the *Employer* as the means of instructing the *Consultant* to deliver *services*. No work shall be carried out without a signed Task Order issued by the *Employer's Agent*.

The Task Order shall specify the scope of *services*, *deliverables*, *starting and completion dates* and the cost allocation. The *Consultant* shall deliver *services* within the constraints stipulated on the Task Order and engage the *Employer* as soon as the *Consultant* becomes aware of any risk in this regard. Any work executed outside the parameters stipulated on the Task Order, including cost, shall be for the *Consultant's* account notwithstanding delivery and acceptance of *services* that may be made by the *Employer* or people in the *Employer's* organisation.

All Expenses shall be paid for by *Consultants* and reimbursed at cost after assessment. The *Consultant* shall include itemised estimated expenses in all proposals in response to Requests for Proposals issued by the *Employer*. Forecasts of estimated *Expenses* shall be submitted to the *Employer's* Requesting Manager for acceptance at the Assessment meeting. Expenses that are incurred without the *Employer's* prior acceptance in writing shall not be reimbursed by the Employer.

Health and safety

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

The *Consultant* shall comply with the health and safety requirements contained on the Task Order (Annexure D to this Scope). The relevant site manager shall require the *Consultant* to attend SHE Induction training provided by the *Employer*. It is essential that the *Consultant* is conversant with Eskom safety procedures training prior commencing any work on site.

Should the *Consultant* be required to work on Eskom premises, such as a power station, where health and safety requirements additional to those prescribed by law apply, such extra safety requirements will be communicated to the *Consultant*.

Life Saving Rules

In the interest of promoting a safe and healthy working environment, the Eskom Executive Committee has approved the implementation of life saving rules, to improve safety in the organisation. These rules will also be applicable to all contracting staff.

The business is concerned about the emotional, social as well as economic effect of all these unnecessary incidents, and would like to correct behaviour pro-actively.

These rules are determined beforehand to enable the organisation to clearly communicate the established Life Saving Rules and how to deal with non-compliance to the workforce prior to the implementation of such rules.

Failure by any person or Contractor engaged in doing business with Eskom to adhere to these rules, will lead to serious action being taken with serious consequences (including being refused access to site). These actions include termination of service of an individual and even blacklisting of Contractors not taking the rules

seriously. It is therefore strongly advised that these rules be taken seriously, communicated to all your staff, ensure that they all understand the rules, understand the consequences of violating a rule and sign a document stating that they understand and acknowledge the implications of these rules.

Eskom Life Saving Rules are:

- Rule 1: Open, Isolate, Test, Earth, Bond and/or Insulate before touch (above 1 000 V)
- Rule 2: Hook up at heights
- Rule 3: Buckle up
- Rule 4: Be sober
- Rule 5: Ensure that you have a permit to work

Procurement

BBBEE and preferencing scheme

Refer to clause Z13 for the Supplier Development and Localisation (SDL&I) obligations for this contract.

Other constraints

Preferred sub-consultants

Should the Consultant will be required to sub-contract, he/she will be provided with a list of preferred sub-contractors as per the approved mandate by the Procurement Tender Committee. (List of these suppliers will be provided).

Subcontract documentation, and assessment of subcontract tenders

The *Consultant* shall be required to prepare subcontract documentation using the NEC3 system. Subcontract tenders are to be issued, received, assessed and awarded with the *Employer's* commercial representatives notified in the entire process. The *Employer* reserves the right to accept or reject the appointment of a sub-consultant in terms of this contract. The *Employer* reserves the right to terminate the contract should the Consultant fails to adhere to the SD&L requirements of subcontracting.

Limitations on subcontracting

The *Consultant* shall not subcontract a portion of the contract in excess of that agreed with the *Employer* and documented before contract award.

Working on the *Employer's* property

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

The *Employer's* sites are classified as National Key Points and access is controlled and regulated by law. Sites such as Koeberg Nuclear Power Station have very strict entrance requirements and allowances for security clearance checks and processes of about two hours need to be made by *Consultants* requiring access at the sites. The taking of photographs is prohibited at all sites and special permission shall be required if necessary for the provision of *Services*. Persons under the influence of intoxicating substances and alcohol are strictly not permitted to enter the *Employer's* premises. All persons entering or leaving the *Employer's* premises may be subjected to physical security checks including alcohol tests.

In addition to the above there may be other restrictions applicable on sites and *Consultants* shall be required to comply at all times. Temporary Access Permits may be arranged for a limited number of the *Consultant's*

Key Persons who require frequent access to the Employer's premises for purposes of delivering the *Services* which may include the attendance of regular meetings.

People restrictions, hours of work, conduct and records

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

Things provided by the *Employer*

The Employer shall provide special software and access to systems, training and guidance on requirements specific to the Employer that are not common in the industry to enable the *Consultant* to deliver the services as required by the Employer

Exclusions

The *Consultant* shall provide and use own tools, special equipment, IT hardware and software, PPE, stationery and acquire all necessary licences, permits and authorisations required to perform the services.