



## NEC3 Professional Services Contract (PSC3)

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

**and [Insert at award stage]**  
**(Reg No. \_\_\_\_\_ )**

**for Leading with digital fluency Module for a period of 60**  
**months**

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**Contents:**

**No of  
pages**

**Part C1 Agreements & Contract Data**

**[28]**

**Part C2 Pricing Data**

**[4]**

**Part C3 Scope of Work: The Scope**

**[14]**

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**CONTRACT No.**

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## **PART C1:      AGREEMENTS & CONTRACT DATA**

| <b>Document reference</b> | <b>Title</b>   | <b>No of pages</b> |
|---------------------------|--|--------------------|
| <b>C1.1</b>               | <b>Form of Offer &amp; Acceptance</b>                  | <b>[3]</b>         |
| <b>C1.2a</b>              | <b>Contract Data provided by the <i>Employer</i></b>   | <b>[16]</b>        |
| <b>C1.2b</b>              | <b>Contract Data provided by the <i>Consultant</i></b> | <b>[2]</b>         |
| <b>C1.3</b>               | <b>Securities proforma</b>                             | <b>[7]</b>         |

## 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:

### Leading with digital fluency Module for a period of 60 months

The tenderer, identified in the Offer signature block, has

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

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

|   |   |
|---|---|
| The offered total of the Prices exclusive of VAT is | R |
| Value Added Tax @ 14% is                            | R |
| The offered total of the Prices inclusive of VAT is | R |
| (in words)  |   |

If Option E or G apply, for each offered total insert in brackets, "(Not Applicable – Cost reimbursable)"

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

Signature(s)

Name(s)

Capacity

**For the  
tenderer:**

(Insert name and address of organisation)

Name &  
signature of  
witness

Date

## Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the  
Employer**

\_\_\_\_\_  
(Insert name and address of organisation)

Name &  
signature of  
witness

Date

Note: If a tenderer wishes to submit alternative tenders, use another copy of this Form of Offer and Acceptance.

## Schedule of Deviations

Note:

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

| No. | Subject | Details |
|-----|---------|---------|
| 1   |         |         |
| 2   |         |         |
| 3   |         |         |
| 4   |         |         |
| 5   |         |         |
| 6   |         |         |
| 7   |         |         |

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

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

### For the tenderer:

### For the Employer

Signature

Name

Capacity

On behalf  
of

(Insert name and address of organisation)

(Insert name and address of organisation)

Name &  
signature  
of witness

Date

## C1.2 PSC3 Contract Data

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

[Instructions to the contract compiler: (delete these two notes in the final draft of a contract)]

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left-hand column for each statement however other clauses may also use the same data.
2. The PSC3 options are identified by shading in the left-hand column. In the event that the option is not required select and delete the whole row.
3. Where the symbol "■" is used data is required to be inserted relevant to the clause and statement which requires it.]

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

| Clause | Statement  | Data  |
|--------|--|---|
| 1      | <b>General</b>   |   |
|        | The <i>conditions of contract</i> are the core clauses and the clauses for main Option |   |
|        |  | <b>G: Term contract</b>   |
|        | dispute resolution Option  | <b>W1: Dispute resolution procedure</b>   |
|        | and secondary Options  |   |
|        |  | <b>X1: Price adjustment for inflation</b>   |
|        |  | <b>X2 Changes in the law</b>  |
|        |  | <b>X3: Multiple currencies</b>  |
|        |  | <b>X4: Parent company guarantee</b>   |
|        |  | <b>X9: Transfer of rights</b>   |
|        |  | <b>X10 <i>Employer's Agent</i></b>  |
|        |  | <b>X11: Termination by the <i>Employer</i></b>  |
|        |  | <b>X13: Performance bond</b>  |
|        |  | <b>X18: Limitation of liability</b>   |
|        |  | <b>Z: <i>Additional conditions of contract</i></b>  |
|        | of the NEC3 Professional Services Contract (April 2013) <sup>1</sup>                   |   |
| 10.1   | The <i>Employer</i> is (Name):   | <b>Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa</b> |

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

|          |   |   |   |   |
|----------|---|---|---|---|
|          | Address   | Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg                      |   |   |
|          | Represented by  | Marzanne de Klerk   |   |   |
|          | Tel No.   | 011 800 4510  |   |   |
| 11.2(9)  | The <i>services</i> are   | Leading with digital fluency Module   |   |   |
| 11.2(10) | The following matters will be included in the Risk Register                     | Risks will be identified throughout, and the formal risk register will guide us on mitigation |   |   |
| 11.2(11) | The Scope is in   | Part 3: Scope of Work   |   |   |
| 12.2     | The <i>law of the contract</i> is the law of                                    | the Republic of South Africa  |   |   |
| 13.1     | The <i>language of this contract</i> is   | English   |   |   |
| 13.3     | The <i>period for reply</i> is  | 5 working days  |   |   |
| 13.6     | The <i>period for retention</i> is  | 5 year following Completion or earlier termination.   |   |   |
| <b>2</b> | <b>The Parties' main responsibilities</b>                                       |   |   |   |
| 25.2     | The <i>Employer</i> provides access to the following persons, places and things | access to   |   | <i>access date</i>                          |
|          |   | 1   | Information relevant to the provision of the services   | starting date                               |
|          |   | 2   | Premises relevant to the provision of the services  | starting date                               |
|          |   | 3   | People relevant to the provision of the services  | starting date                               |
| <b>3</b> | <b>Time</b>   |   |   |   |
| 31.2     | The <i>starting date</i> is.  | TBA   |   |   |
| 11.2(3)  | The <i>completion date</i> for the whole of the <i>services</i> is.             | TBA   |   |   |
| 11.2(6)  | The <i>key dates</i> and the <i>conditions</i> to be met are:                   | <i>Condition to be met</i>  |   | <i>key date</i>                             |
|          |   | 1   | First content design meeting  | Within one week after contract is signed    |
|          |   | 2   | Project plan: from design to implementation   | 2 days after 1 <sup>st</sup> design meeting |
|          |   | 3   | Implementation dates to accommodate Eskom Executive availability. Supplier flexibility required | Agreed                                      |

|          |  |  |        |
|----------|--|--|--------|
| 31.1     | The <i>Consultant</i> is to submit a first programme for acceptance within   | <b>1 week of the Contract Date.</b>  |        |
| 32.2     | The <i>Consultant</i> submits revised programmes at intervals no longer than | <b>1 week.</b>   |        |
| <b>4</b> | <b>Quality</b>   |  |        |
| 40.2     | The quality policy statement and quality plan are provided within            | <b>2 weeks of the Contract Date.</b>   |        |
| 42.2     | The <i>defects date</i> is   | <b>5 years after Completion of the whole of the services.</b>  |        |
| <b>5</b> | <b>Payment</b>   |  |        |
| 50.1     | The <i>assessment interval</i> is  | <b>between the 25 day of each successive month.</b>  |        |
| 50.3     | The <i>expenses</i> stated by the <i>Employer</i> are                        | Item   | Amount |
|          |  | N/A  | N/A    |
|          |  |  |        |
| 51.1     | The period within which payments are made is                                 | <b>4 weeks.</b>  |        |
| 51.2     | The <i>currency of this contract</i> is the                                  | <b>South African Rand</b>  |        |
| 51.5     | The <i>interest rate</i> is  | <p>the publicly quoted prime rate of interest charged by Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due,</p> <p>and</p> <p>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> |        |
| <b>6</b> | <b>Compensation events</b>   | <p>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.</p>  |        |



|             |   |  |
|-------------|---|--|
| <b>7</b>    | <b>Rights to material</b>   | <p>The Employer has the right to use the material provided by the Consultant for the purpose stated in the scope</p> <p>The Consultant has the right to use material provided by the Employer only to provide the services</p> <p>On completion of the whole of the services, the Consultants returns the material provided by the Employer to him.</p> <p>The Parties do not disclose the information obtained in connection with the services except when necessary to carry out their duties under this contract</p> <p>The Consultant may use the material provided by him under this contract for other work unless stated otherwise in the scope</p> |
| <b>8</b>    | <b>Indemnity, insurance and liability</b>   | 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.   |
| <b>82.1</b> | <b>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</b> | <p>The total of the Prices</p> <p>The total of the Prices of the affected task orders</p>  |
| <b>9</b>    | <b>Termination</b>  | <p>Either Party may terminate the Consultant's obligation to provide the services by notifying the other Party if the other Party has done one of the conditions specified in the NEC 3 PSC.</p> <p>The terminating Party provides not less than 90 days' notice of termination to the other Party</p>   |
| <b>10</b>   | <b>Data for main Option clause</b>  |  |
| <b>G</b>    | <b>Term contract</b>  |  |
| <b>21.4</b> | The <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than   | <b>4 weeks.</b>  |
| <b>11</b>   | <b>Data for Option W1</b>   |  |
| W1.1        | The <i>Adjudicator</i> is   | the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).   |
| W1.2(3)     | The <i>adjudicator nominating body</i> is:  | the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ).  |
| W1.4(2)     | The <i>tribunal</i> is:   | arbitration  |

|           |  |   |                       |  |
|-----------|--|---|-----------------------|--|
| W1.4(5)   | The <i>arbitration procedure</i> is  | the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.  |                       |  |
|           | The place where arbitration is to be held is   | South Africa  |                       |  |
|           | The person or organisation who will choose an arbitrator <ul style="list-style-type: none"> <li>if the Parties cannot agree a choice or</li> <li>if the <i>arbitration procedure</i> does not state who selects an arbitrator, is</li> </ul> | the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.   |                       |  |
| <b>12</b> | <b>Data for secondary Option clauses</b>   |   |                       |  |
| <b>X1</b> | <b>Price adjustment for inflation</b>  | Price adjustment will only be applicable after the first twelve (12) months from the Contract Date, Base Date – May 2025.   |                       |  |
| X1.1      | The index is   | <b>Local rates: Average Consumer Price Index (Headline) for 12-month period as published by Statistics South Africa</b><br><b>15% Fixed</b><br><b>85% Adjustable</b><br><br><b>Overseas rates: Euro-zone Consumer Price Index-Source: European Central bank</b> |                       |  |
|           | The staff rates are  | Fixed at Contract date and are not variable with salary paid to individuals   |                       |  |
| <b>X2</b> | <b>Changes in the law</b>  |   |                       |  |
| X2.1      | The law of the project is  | The Law of the Republic of South Africa   |                       |  |
| <b>X3</b> | <b>Multiple currencies</b>   |   |                       |  |
| X3.1      | The <i>Employer</i> will pay for these items or activities in the currencies stated  | <b>Items &amp; activities</b>   | <b>Other currency</b> | <b>Maximum payment in other currency</b> |
|           |  | As per C2.2 Price List  | ZAR                   | As per Purchase Order                    |
|           |  | As per C2.2 Price List  | USD/EUR               | As per Purchase Order                    |
|           |  |   |                       |  |

|       |   |  |
|-------|---|--|
| X3.1  | The <i>exchange rates</i> are those published in  | <p><b>As per Eskom's Treasury website.</b></p> <p>The items &amp; activities will be paid in the other currency</p> <ul style="list-style-type: none"> <li>- to a foreign Bank account nominated by the <i>Consultant</i></li> <li>- to a valid SARB approved CFC account in South Africa</li> <li>- in accordance with an alternative payment method agreed with the <i>Employer</i> before the Contract Date.</li> </ul> <p>(select one of the three methods as agreed with successful tenderer and delete the others and this note)</p> |
| X4    | Parent company guarantee  | There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.   |
| X9    | Transfer of rights  | There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.   |
| X10   | The <i>Employer's Agent</i>   |  |
| X10.1 | The <i>Employer's Agent</i> is  |  |
|       | Name:   | Morongoe Kgari   |
|       | Address   | Eskom Megawatt Park  |
|       | The authority of the <i>Employer's Agent</i> is   | To carry out all actions of the <i>Employer's</i> in this contract with the exception of those required by clause 51.1, 81.1 and 90.3  |
| X11   | Termination by the <i>Employer</i>  | There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.   |
| X13   | Performance bond  |  |
| X13.1 | The amount of the performance bond is   | 10% of the contract value  |
| X18   | Limitation of liability   |  |
| X18.1 | The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:  | R0.00 (Zero Rand)  |
| X18.2 | The <i>Consultant's</i> liability to the <i>Employer</i> for Defects that are not found until after the <i>defects date</i> is limited to:                  | The total of the Prices  |
| X18.3 | The <i>end of liability date</i> is   | five years after Completion of the whole of the <i>services/task order</i> .   |
| Z     | The <b><i>Additional conditions of contract</i></b> are   | Z1 to Z18 always apply.  |
|       |   |  |
| Z1    | Cession delegation and assignment   |  |
| Z1.1  | The <i>Consultant</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i> . |  |

|           |   |
|-----------|---|
| Z1.2      | Notwithstanding the above, the <i>Employer</i> may on written notice to the <i>Consultant</i> 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.  |
|           |   |
| <b>Z2</b> | <b>Joint ventures</b>   |
| Z2.1      | If the <i>Consultant</i> 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 <i>Employer</i> for the performance of this contract.  |
| Z2.2      | Unless already notified to the <i>Employer</i> , the persons or organisations notify the <i>Employer</i> within two weeks of the Contract Date of the key person who has the authority to bind the <i>Consultant</i> on their behalf.   |
| Z2.3      | The <i>Consultant</i> does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the <i>Employer</i> having been given to the <i>Consultant</i> in writing.   |
|           |   |
| <b>Z3</b> | <b>Change of Broad Based Black Economic Empowerment (B-BBEE) status</b>   |
| Z3.1      | Where a change in the <i>Consultant's</i> legal status, ownership or any other change to his business composition or business dealings results in a change to the <i>Consultant's</i> B-BBEE status, the <i>Consultant</i> notifies the <i>Employer</i> within seven days of the change.  |
| Z3.2      | The <i>Consultant</i> is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the <i>Employer</i> within thirty days of the notification or as otherwise instructed by the <i>Employer</i> .   |
| Z3.3      | Where, as a result, the <i>Consultant's</i> B-BBEE status has decreased since the Contract Date the <i>Employer</i> may either re-negotiate this contract or alternatively, terminate the <i>Consultant's</i> obligation to Provide the Services.   |
| Z3.4      | Failure by the <i>Consultant</i> to notify the <i>Employer</i> of a change in its B-BBEE status may constitute a reason for termination. If the <i>Employer</i> 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 <i>Employer</i> of completing the whole of the <i>services</i> in addition to the amounts due in terms of core clause 92.1. |
|           |   |

|           |  |
|-----------|--|
| <b>Z4</b> | <b>Confidentiality</b>   |
| Z4.1      | The <i>Consultant</i> 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 <i>Consultant</i> , enters the public domain or to information which was already in the possession of the <i>Consultant</i> at the time of disclosure (evidenced by written records in existence at that time). Should the <i>Consultant</i> disclose information to Others in terms of clause 23.1, the <i>Consultant</i> ensures that the provisions of this clause are complied with by the recipient. |
| Z4.2      | If the <i>Consultant</i> is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the <i>Employer</i> .   |

|            |   |
|------------|---|
| Z4.3       | In the event that the <i>Consultant</i> is, at any time, required by law to disclose any such information which is required to be kept confidential, the <i>Consultant</i> , to the extent permitted by law prior to disclosure, notifies the <i>Employer</i> 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 <i>Consultant</i> 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 <i>Employer's</i> project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the <i>Employer</i> . All rights in and to all such images vests exclusively in the <i>Employer</i> .   |
|            |   |
| <b>Z5</b>  | <b>Waiver and estoppel: Add to core clause 12.3:</b>  |
| Z5.1       | Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, or the <i>Adjudicator</i> 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.   |
|            |   |
| <b>Z6</b>  | <b>Provision of a Tax Invoice. Add to core clause 51</b>  |
| Z6.1       | The <i>Consultant</i> (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 <i>Employer's</i> VAT number 4740101508 on each invoice he submits for payment.   |
|            |   |
| <b>Z7</b>  | <b>Notifying compensation events</b>  |
| Z7.1       | Delete from the last sentence in core clause 61.3, "unless the <i>Employer</i> should have notified the event to the <i>Consultant</i> but did not".  |
|            |   |
| <b>Z8</b>  | <b><i>Employer's</i> limitation of liability</b>  |
| Z8.1       | The <i>Employer's</i> liability to the <i>Consultant</i> for the <i>Consultant's</i> indirect or consequential loss is limited to R0.00 (zero Rand)   |
|            |   |
| <b>Z9</b>  | <b>Termination: Add to core clause 90.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":</b>  |
| Z9.1       | or had a business rescue order granted against it.  |
|            |   |
| <b>Z10</b> | <b>Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)</b>  |
| Z10.1      | If the <i>Consultant's</i> payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the <i>Employer</i> may terminate the <i>Consultant's</i> obligation to Provide the Services.   |
| Z10.2      | If the <i>Employer</i> 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 <i>Employer</i> of completing the whole of the <i>services</i> in addition to the amounts due in terms of core clause 92.1.  |

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| <b>Z11</b>  | <b>Ethics</b>  |
| For the purposes of this Z-clause, the following definitions apply: |  |
| <b>Affected Party</b>   | means, as the context requires, any party, irrespective of whether it is the <i>Consultant</i> 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,   |
| <b>Coercive Action</b>  | 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,   |
| <b>Collusive Action</b>   | 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,   |
| <b>Committing Party</b>   | means, as the context requires, the <i>Consultant</i> , or any member thereof in the case of a joint venture, or its employees, agents, or Subconsultants or the Subconsultant's employees,  |
| <b>Corrupt Action</b>   | 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,   |
| <b>Fraudulent Action</b>  | 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,  |
| <b>Obstructive Action</b>   | 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  |
| <b>Prohibited Action</b>  | 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 <i>Employer</i> may terminate the <i>Consultant's</i> obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the <i>Consultant</i> did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the <i>Employer</i> 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 <i>Employer</i> can terminate the <i>Consultant's</i> obligation to Provide the Services for this reason. |
| Z11.3   | If the <i>Employer</i> terminates the <i>Consultant's</i> 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 <i>Employer</i> does not have a contractual bond with the Committing Party, the <i>Consultant</i> ensures that the Committing Party co-operates fully with an investigation.  |
|   |  |
| <b>Z12</b>  | <b>Insurance</b>   |
| 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 <i>Consultant</i> provides the insurances stated in the Insurance Table A from the <i>starting date</i> until the earlier of Completion and the date of the termination certificate.   |

| INSURANCE TABLE A |  |  |   |
|-------------------|--|--|---|
|                   | Insurance against  | Minimum amount of cover  | For the period following Completion of the whole of the services or earlier termination |
|                   | Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the <i>services</i>         | The Prices at the Contract Date  | The total of the Prices   |
|                   | Liability for death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i> | <p><b><u>Loss of or damage to property:</u></b><br/>The replacement cost where not covered by the <i>Employer's</i> insurance</p> <p>The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance</p> <p><b><u>Bodily injury to or death of a person:</u></b><br/>The amount required by the applicable law.</p> | The total of the Prices   |
|                   | Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract  | The amount required by the applicable law  | The amount required by the applicable law   |
| 81.3              | The <i>Employer</i> 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  | Per the insurance policy document  |   |

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|  | Terrorism |  |
|--|-----------|--|

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| <b>Z13</b>  | <b>Nuclear Liability</b>  |
| Z13.1   | The <i>Employer</i> 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 <i>Employer</i> is solely responsible for and indemnifies the <i>Consultant</i> or any other person against any and all liabilities which the <i>Consultant</i> or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the <i>Consultant</i> or any other person or the presence of the <i>Consultant</i> or that person or any property of the <i>Consultant</i> or such person at or in the KNPS or on the KNPS site, without the permission of the <i>Employer</i> or of a person acting on behalf of the <i>Employer</i> . |
| Z13.3   | Subject to clause Z13.4 below, the <i>Employer</i> 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 <i>Consultant</i> or any other person, or the presence of the <i>Consultant</i> or that person or any property of the <i>Consultant</i> or such person at or in the KNPS or on the KNPS site, without the permission of the <i>Employer</i> or of a person acting on behalf of the <i>Employer</i> .  |
| Z13.4   | The <i>Employer</i> does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.  |
| Z13.5   | The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.   |
|   |   |
| <b>Z14</b>  | <b>Asbestos</b>   |
| For the purposes of this Z-clause, the following definitions apply: |   |
| <b>AAIA</b>   | means approved asbestos inspection authority.   |
| <b>ACM</b>  | means asbestos containing materials.  |
| <b>AL</b>   | 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.  |
| <b>Ambient Air</b>  | 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.  |
| <b>Compliance Monitoring</b>  | 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.  |
| <b>OEL</b>  | means occupational exposure limit.  |
| <b>Parallel Measurements</b>  | means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.   |



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| <b>Safe Levels</b> | 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.  |
| <b>Standard</b>    | means the <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.   |
| <b>SANAS</b>       | means the South African National Accreditation System.  |
| <b>TWA</b>         | 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 <i>Employer</i> ensures that the Ambient Air in the area where the <i>Consultant</i> 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 <i>Consultant</i> , the <i>Employer</i> 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 <i>Consultant</i> may perform Parallel Measurements and related control measures at the <i>Consultant's</i> 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 <i>Employer</i> 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 <i>Consultant's</i> 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 <i>Consultant</i> 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 <i>Employer</i> at the <i>Employer's</i> expense, and conducted in line with South African legislation.   |
|                    |   |
| <b>Z15</b>         | <b>Supplier Development Localization and Industrialization Obligations</b>  |
|                    | Supplier Obligations  |

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| <b>Z16</b> | <b>POPIA</b>  |
| Z16.1      | For the purposes of this clause 1, the terms “Data Subject”, “Personal Information” and “Regulator” and “Responsible Party” have the meanings given to them in the Protection of Personal Information Act, 2013 (“ <b>POPIA</b> ”).   |
| Z16.2      | Each Party acknowledges that it is an independent Responsible Party in relation to the Personal Information processed in terms of this Agreement (“ <b>Shared Personal Information</b> ”) and that it determines the purposes for which and the manner in which the Shared Personal Information is, or is to be, processed.   |
| Z16.3      | Each Party shall comply at all times with POPIA when performing its obligations under this Agreement and shall not perform any of their respective obligations under this Agreement in such a way as to cause the other Party to breach any of that other Party's obligations under POPIA.  |
| Z16.4      | Each Party shall ensure that, in respect of all Shared Personal Information provided to the other Party and in respect of the use of that Shared Personal Information under this Agreement:   |
| Z16.4.1    | all necessary fair processing notices have been provided to and consents obtained from Data Subjects by that Party, where required, in terms of POPIA, including to specify that the other Party is also a Responsible Party in respect of the Data Subject's Personal Information and to provide a link ( <a href="https://www.eskom.co.za/about-eskom/website-terms-and-conditions/">https://www.eskom.co.za/about-eskom/website-terms-and-conditions/</a> ) to the other Party's Privacy Statement or to include a statement that the other Party's Privacy Statement can be found on the other Party's corporate website; and |
| Z16.4.2    | all necessary steps have been taken to ensure that Shared Personal Information has been collected and processed in accordance with the principles set out in POPIA, including in particular those relating to:  |
|            | <p><b>16.4.2.1</b> lawful, fair and transparent Processing</p> <p><b>16.4.2.2</b> specified, legitimate and explicit purposes of Processing; and</p> <p><b>16.4.2.3</b> adequate, relevant and not excessive Processing.</p>  |
| Z16.5      | If either Party receives any complaint, notice or communication from the Regulator which relates directly to:   |
|            | <p><b>Z16.5.1</b> the other Party's Processing of the Shared Personal Data; or</p> <p><b>Z16.5.2</b> a potential failure by the other Party to comply with POPIA in respect of the activities of the Parties under or in connection with this Agreement,</p> <p><b>Z16.5.3</b> it shall, to the extent permitted by law, promptly notify the other Party and provide such information as it shall reasonably request in that regard.</p>  |
| Z16.6      | If a Data Subject makes a written request to either Party to exercise any of their rights under POPIA, the receiving Party shall respond to that request in accordance with POPIA. To the extent the request concerns processing of Shared Personal Information undertaken by the other Party, the receiving Party shall:   |
|            | <p><b>Z16.6.1</b> promptly and without undue delay forward the request to the other Party; and</p> <p><b>Z16.6.2</b> cooperate and provide reasonable assistance in relation to that request to enable the other Party to respond in accordance with POPIA.</p>   |
| Z16.7      | Each Party acknowledges that the other Party may disclose Shared Personal Information to any Regulator or law enforcement authority with jurisdiction to request access to the Shared Personal Information.   |
| Z16.8      | Neither Party discloses or otherwise makes available the Personal Information to any third Party (including sub-contractors, but excluding its authorised employees who require access to such Personal Information strictly in order for the parties to carry out their  |

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|            | obligations pursuant to this contract), unless a Party has provided, to a requesting Party, its prior written consent to do so, and the requesting Party has submitted to the other Party (consenting Party), to its satisfaction, a copy of a written contract or undertaking that the requesting Party has entered into with a third Party for the protection of Personal Information of the Data Subjects or unless there is an applicable exemption in terms of the law to process or further process the personal information.   |
| Z16.9      | The requesting Party indemnifies and holds harmless the consenting Party and its staff, successors, cessionaries, delegates, and assigns, from any and all losses, costs, expenses and damage, as well as penalties and fines arising from the requesting Party's non-compliance with the provision of any relevant legislation applicable to Personal Information/data protection, as well as damage to the consenting Party's reputation and costs of compliance as directed by the Regulator, including but not limited to publication of the data breach.   |
| Z16.10     | No Party may transfer Personal Information about a data subject to a third Party who is in a foreign country unless they have obtained the relevant written consent of the other Party and there is full compliance with section 72 of POPIA and any foreign applicable legislation.  |
| Z16.11     | The <i>Employer</i> or its agent shall have the right to audit the <i>Consultant</i> at any time, with reasonable notice, in order to determine whether the <i>Consultant</i> complies with the terms and conditions of this Agreement with regard to the protection of Personal Information and the security exercised by the <i>Consultant</i> relating thereto. Such audit rights shall include, but not be limited to, the right of access to systems, procedures and software, and inspection of the physical security of the <i>Consultants</i> premises. The <i>Consultant</i> shall offer reasonable assistance and co-operation to the <i>Employer</i> or its agent and/or its auditors or inspectors in the carrying out of such auditing exercise. |
|            |   |
| <b>Z17</b> | <b>Security measures</b>  |
|            | The <i>Consultant</i> shall comply with the requirements set forth in the Security Standards and in all other <i>Employer's</i> policies provided. The <i>Employer</i> will advise the <i>Consultant</i> of any amendments to the Security Standards and any policies applicable to it;   |
|            | The <i>Consultant</i> will take appropriate, reasonable technical and organisational measures to ensure that the integrity of the data including personal information in its possession or under its control is secure and that such data is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access by –   |
|            | <b>Z17.2.1</b> having regard to:<br><b>Z17.2.1.1</b> any requirement set forth in law, stipulated in industry rules or in codes of conduct or by a professional body; and<br><b>Z17.2.1.2</b> generally accepted information security practices and procedures which apply to (i) the <i>Consultant's</i> business; and (ii) to the <i>Employer</i> .   |
| Z17.2.2    | identifying all reasonably foreseeable internal and external risks and, at least once in every 12 (twelve) month period take all necessary steps at its own cost to –   |
| Z17.2.2.1  | identify all reasonably foreseeable internal and external risks relating to data in its possession or under its control and provide the <i>Employer</i> with a detailed written report using generally accepted auditing methodologies, within 30 (thirty) days of having completed its investigations, regardless as to whether the frequency of such investigations is 12 (twelve) monthly or more frequently. In the event that a significant finding is identified during the investigation which has a material impact on the <i>Employer</i> , the <i>Consultant</i> shall notify the <i>Employer</i> immediately and shall not wait for the final report to  |

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|            | be completed;   |
| Z17.2.2.2  | with the Employer prior written approval, implement and maintain appropriate safeguards against the risks identified by the Consultant.   |
| Z17.2.2.3  | regularly verify that the safeguards which the Consultant have in place have been effectively implemented and provide the Employer with a written report within 30 (thirty) days of having completed each such verification exercise. In the event that a significant finding is identified during the investigation which has a material impact on the Employer, the Consultant shall notify the Employer immediately and shall not wait for the final report to be completed as well as with the Employer's prior written approval, implement and maintain appropriate remedial steps to rectify the safeguards implemented within 72 (seventy two) hours. The employer reserves the right to audit the effectiveness of such remedial actions. |
| Z17.2.2.4  | ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards, with all upgrades, which may have an impact on any data within the possession of the Consultant as a result of the Agreement, to be reported to the Employer in writing.  |
| Z17.3      | The Employer or its agent shall have the right to audit the Consultant at any time, with reasonable notice, in order to determine whether the Consultant complies with the terms and conditions of this Agreement with regard to complying with the requirements set forth in the Security Standards and in all other Employer's policies provided. Such audit rights shall include, but not be limited to, the right of access to systems, procedures and software, and inspection of the physical security of the Consultants premises. The Consultant shall offer reasonable assistance and co-operation to the Employer or its agent and/or its auditors or inspectors in the carrying out of such auditing exercise.                         |
|            |   |
| <b>Z18</b> | <b>Notification of Security breach</b>  |
| Z18.1      | In the event of a security compromise or breach, the Consultant shall-  |
| Z18.1.1    | notify the Employer in writing, at infosecurity@eskom.co.za immediately, if possible, but no later than 24 hours of the Consultant becoming aware of or suspecting any unauthorized or unlawful activity:   |
| Z18.1.1.1  | at its own cost, take all necessary steps to mitigate the extent of the loss or risks of the data and to resolve the integrity of the affected information systems as quickly as possible.  |
| Z18.1.1.2  | furnish the Employer with details of the Data Subjects affected by the compromise and the nature and extent of the compromise, and if known, include details of the identity of the unauthorized person who may have accessed or acquired the Personal Information.   |
| Z18.1.1.3  | provide the Employer with a report on its progress in resolving the compromise but at least once per business day following the initial notification to the Employer, until such time as the compromise is resolved to the Employer's satisfaction.   |
| Z18.1.1.4  | In consultation with the Employer and where required by law notify the South African Police Service; and/or the National Intelligence Agency; and any other regulatory bodies for example State Security Agency; and  |
| Z18.1.1.5  | only upon request by the Employer, or otherwise if required by law, notify the Regulator and/or the affected Data Subjects. Any such notification shall be in a form prescribed by the Employer or the Regulator, as the case may be, if applicable, and contain such information as is specified by the Employer and or the Regulator. Notwithstanding the foregoing, a notification to a Data Subject shall always include sufficient information to allow the Data Subject to take protective measures against the potential consequences of the compromise.   |

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|         |   |
| Z18.1.2 | assist the Employer to comply with any requests for access to Personal Information received by the Employer from Data Subjects and, at the request of the Employer, the Consultant shall promptly provide the Employer with a copy of any Personal Information held by the Consultant in relation to a specified Data Subject. The Consultant agrees that notwithstanding the confidentiality provisions of this Agreement, the Employer may disclose to a Data Subject that the Consultant has been or is involved in Processing such Data Subject's Personal Information.   |
| Z18.1.3 | provide reasonable evidence of the Consultant's compliance with its obligations under this clause to the Employer on reasonable notice and request.   |
| Z18.1.4 | under instruction and authority of the Employer, and at no extra cost to the Employer, provide it with all assistance required for the Employer to discharge its duties as Responsible Party relating to a requirement by the Regulator (a) for the Employer as Responsible Party to submit an independent auditor's report or other information relating to interference by the Responsible Party with the Personal Information of a Data Subject, (b) that the Employer is processing Personal Information in accordance with legislation, or (c) that the Employer is otherwise compliant with any other relevant legislation; |
| Z18.1.5 | at the request and option of the Employer, and to its satisfaction, promptly return or destroy all Personal Information in the possession or control of the Consultant, including in accordance with any specific retention, destruction and purging requirements as may be prescribed by the Employer.   |

## C1.2 Contract Data

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

**[Instructions to the tendering consultant: (delete these notes in the final draft of a contract)]**

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

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

| Clause           | Statement   | Data  |
|------------------|---|---|
| 10.1             | The <i>Consultant</i> is (Name):                            |   |
|                  | Address   |   |
|                  | Tel No.   |   |
|                  | Fax No.   |   |
| 22.1             | The <i>key people</i> are:                                  |   |
|                  | 1 Name:   |   |
|                  | Job:  |   |
|                  | Responsibilities:   |   |
|                  | Qualifications:   |   |
|                  | Experience:   |   |
|                  | 2 Name:   |   |
|                  | Job   |   |
|                  | Responsibilities:   |   |
|                  | Qualifications:   |   |
|                  | Experience:   |   |
| Only if required |   | 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 |   |

<sup>2</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 or [www.ecs.co.za](http://www.ecs.co.za)

|          |   |                  |  |             |
|----------|---|------------------|--|-------------|
| 11.2(13) | The <i>staff rates</i> are:   | name/designation |  | rate        |
|          | Either complete here or cross refer to a schedule in Part C2.2                  |                  |  |             |
|          |   |                  |  |             |
|          |   |                  |  |             |
| 25.2     | The <i>Employer</i> provides access to the following persons, places and things | access to        |  | access date |
|          |   | 1                |  |             |
|          |   | 2                |  |             |
|          |   | 3                |  |             |
| 31.1     | The programme identified in the Contract Data is                                |                  |  |             |
| 50.3     | The <i>expenses</i> stated by the <i>Consultant</i> are                         | item             |  | amount      |
|          |   |                  |  |             |
|          |   |                  |  |             |
|          |   |                  |  |             |
|          |   |                  |  |             |
| G        | Term contract   |                  |  |             |
| 11.2(25) | The <i>task schedule</i> is in  |                  |  |             |

## C1.3 Forms of Securities

### Pro formas for Bonds & Guarantees

For use with the NEC3 Professional Services Contract

**[Note to contract compiler:**

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

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

Option X4: Parent company guarantee  
Option X13: Performance Bond

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

The *Consultant* shall guarantee his ASGI-SA Obligations by providing the *Employer* with an ASGI-SA Guarantee in the form provided here.

**[Note to contract compiler: If there are no ASGI-SA Obligations in this contract, delete the above statement]**

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



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

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

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

Date:

Dear Sirs,

### ***Parent Company Guarantee for Contract No***

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

**Eskom Holdings SOC Ltd**

(the *Employer*) and

**{Insert registered name and address of the *Consultant*}**

(the *Consultant*), for

**{Insert details of the services from the Contract Data}**

(the *services*).

I/We the undersigned

on behalf of the *Consultant's*  
parent company

of physical address

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

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

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 200\_

Signature(s)

Name(s) (printed)

Position in parent company

Signature of Witness(s)

Name(s) (printed)

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

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

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

Date:

Dear Sirs

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

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

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

---

1. In this Guarantee the following words and expressions shall have the following meanings:-

1.1 "Bank" - means [●], [●] Branch, (Registration No. [●]); *[Drafting Note: Name of Bank to be inserted]*

1.2 "Bank's Address" - means [●]; *[Drafting Note: Bank's physical address to be inserted]*

1.3 "Contract" – means the written agreement relating to the Services, entered into between Eskom and the Consultant, on or about the [●] day of [●] 200[●] (Contract Reference No. [.] as amended, varied, restated, novated or substituted from time to time; *[Drafting Note: Signature Date and Contract reference number to be inserted]*

1.4 "Consultant" – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. *[Drafting Note: Name and details of Consultant to be inserted]*

1.5 "Eskom" - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30].

1.6 "Expiry Date" - means the earlier of

- the date that the Bank receives a notice from Eskom stating that all amounts due from the Consultant as certified in terms of the contract have been received by Eskom and that the Consultant has fulfilled all his obligations under the Contract, or
- the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by Eskom

1.7 "Guaranteed Sum" - means the sum of R [●] ([●] Rand);

1.8 "Services" - means [insert if applicable.].

2. At the instance of the Consultant, we the undersigned \_\_\_\_\_ and \_\_\_\_\_, in our respective capacities as \_\_\_\_\_ and \_\_\_\_\_ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of Eskom, as security for the proper performance by the Consultant of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to Eskom, on written demand from Eskom received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.

3. A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:

3.1 be signed on behalf of Eskom by a Group Executive, Divisional Executive, Senior General Manager, General Manager or its delegate;

3.2 state the amount claimed ("the Demand Amount");

3.3 state that the Demand Amount is payable to Eskom in the circumstances contemplated in the Contract.

4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:

4.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and

4.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.

5. The Bank's obligations in terms of this Guarantee:

5.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and

5.2 shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between Eskom and the Consultant.

6. Eskom shall be entitled to arrange its affairs with the Consultant in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the Consultant or any variation under or to the Contract.

7. Should Eskom cede its rights against the Consultant to a third party where such cession is permitted under the Contract, then Eskom shall be entitled to cede to such third party the rights of Eskom under this Guarantee on written notification to the Bank of such cession.

8. This Guarantee:

8.1 shall expire on the Expiry Date until which time it is irrevocable;

8.2 is, save as provided for in **Error! Reference source not found.** above, personal to Eskom and is neither negotiable nor transferable;

8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;

8.4 shall be regarded as a liquid document for the purpose of obtaining a court order; and

8.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.

8.6 Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.

9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at \_\_\_\_\_

Date \_\_\_\_\_

For and behalf of the Bank

Bank Signatory: \_\_\_\_\_

Bank Signatory: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Bank's seal or stamp

## Pro forma ASGI-SA Guarantee

(to be reproduced exactly as shown below on the letterhead of the Bank providing the Guarantee)

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

Date:

Dear Sirs

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

**Pro-Forma ASGI-SA Guarantee:** [Drafting Note: Name of Consultant to be inserted]

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

1. In this Guarantee the following words and expressions shall have the following meanings:-
  - 1.1 "Bank" - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]
  - 1.2 "Bank's Address" - means [●]; [Drafting Note: Bank's physical address to be inserted]
  - 1.3 "Contract" – means the written agreement relating to the Project, entered into between the *Employer* and the *Consultant*, on or about the [●] day of [●] 200[●] (Contract Reference No. [●] as amended, varied, restated, novated or substituted from time to time; [Drafting Note: Signature Date and Contract reference number to be inserted])
  - 1.4 "*Consultant*" – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of *Consultant* to be inserted]
  - 1.5 "*Consultant's* ASGI-SA Obligations" – means the *Consultant's* ASGI-SA Obligations under and as defined in the Contract.
  - 1.6 "*Employer*" - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/06.
  - 1.7 "Expiry Date" - means the [●] day of [●] 200[●]; [Drafting Note: anticipated date of issue of ASGI-SA Performance Certificate to be inserted.]
  - 1.8 "Guaranteed Sum" - means the sum of R [●] ([●] Rand);
  - 1.9 "Project" – means the .....
2. At the instance of the *Consultant*, we the undersigned \_\_\_\_\_ and \_\_\_\_\_, in our respective capacities as \_\_\_\_\_ and \_\_\_\_\_ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of the *Employer*, as security for the proper performance by the *Consultant* of the *Consultant's* ASGI-SA Obligations and hereby undertake to pay to the *Employer*, on written demand from the *Employer* received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.
3. A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:
  - 3.1 state the amount claimed ("the Demand Amount");

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

Signed at \_\_\_\_\_

Date \_\_\_\_\_

For and behalf of the Bank

Bank Signatory: \_\_\_\_\_

Bank Signatory: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Bank's seal or stamp

**PART 2: PRICING DATA**  
**PSC3 Option G**

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

## C2.1 Pricing assumptions: Option G

### How work is priced and assessed for payment

From Option G: Term contract

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

From the Core Clauses:

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

and

|                          |      |  |
|--------------------------|------|--|
| Assessing the amount due | 50.3 | The amount due is <ul style="list-style-type: none"> <li>the Price for Services Provided to Date,</li> <li>the amount of the <i>expenses</i> properly spent by the <i>Consultant</i> in Providing the Services and</li> <li>other amounts to be paid to the <i>Consultant</i> less amounts to be paid by or retained from the <i>Consultant</i>.</li> </ul> <p>Any tax which the law requires the <i>Employer</i> to pay to the <i>Consultant</i> is included in the amount due.</p> |
|--------------------------|------|--|

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

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

### Staff rates and expenses

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

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



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

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

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

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

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

## **The function of the Task Schedule**

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

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

## C2.2 Staff rates, expenses & the task schedule

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

State whether the *staff rates* and *expenses* exclude or include VAT.

### 1. The *staff rates* are:

| No. | Designation (or category) or name of staff member | Rate per {hour, day, month} excluding VAT |
|-----|---|---|
|     |   |   |
|     |   |   |
|     |   |   |
|     |   |   |

### 2. The task schedule

The following format could be used:

| No. | Items of work priced on a lump sum basis  | Price (excluding VAT) |
|-----|---|-----------------------|
| 1   | Design and development – Once off   |                       |
| 2   | Facilitation (A 1-day module for Senior Managers, Middle Managers and Supervisors respectively)<br><br>Quote based on cost per cohort <ul style="list-style-type: none"> <li>Senior Managers: 12 cohorts of 25 people each</li> <li>Middle Managers: 54 cohorts of 25 people each</li> <li>Supervisors: 54 cohorts of 25 people each</li> </ul> |                       |
|     | <b>Total</b>  |                       |

### 3. The *expenses* are:

| No. | Expense item | Amount / rate excluding VAT |
|-----|--------------|-----------------------------|
|     |              |                             |
|     |              |                             |
|     |              |                             |

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

## C3.1: EMPLOYER'S SCOPE

### 1. Description of the services

#### 1.1 Executive overview

Against an organisational context of turning around Eskom business while transitioning to a future desired state, Exco and the Board prompted the repositioning of leadership development as a strategic human capital initiative. Eskom's complex business challenges necessitates a step change that entails the review, crafting and implementation of a strategy that will immediately improve leadership effectiveness in the organisation.

An explicit focus is imperative to have leaders who exhibit both the mindset and behaviour to realise this quest because new ways of 'doing things around here' (culture), requires new ways of 'thinking around here' (mindset).

To respond effectively to such a need, the approach to leadership development is therefore:

- characterised by a strategy-aligned needs analysis and development solutions
- development solutions that tackle both the mindset and behaviour of such a future-fit leader
- and implying that the new learning requires an 'inside-out' approach, since the barriers to effectiveness, change and excellence reside fundamentally inside the individual first.

To give clear expression to such a focused leadership development approach, it is critical to ensure there's a clear purpose (and objectives) of what's to be achieved and a defined leadership brand on which every solution will pivot (incl. competencies, assessments, development solutions, effectiveness measures, and talent management).

To successfully reposition leadership development the focus is on the following:

- Ensure best in class leadership development solutions.
- Integrate all aspects of the leadership value chain into a coherent and synergetic solution.
- Ensure prioritised emphasis on aspects of culture and leadership skills beyond technical competence.
- Deliberate closing of leadership competency gaps at all levels.
- Cultivate and establish a consistent leadership language across the organisation.
- Facilitate outside-in perspectives and partnerships with leadership specialists.
- Build a strong leadership pipeline to ensure continuity in critical positions.
- In the delivery of leadership development, to have a defined leadership brand, development initiatives, and measurement of leadership effectiveness.

#### 1.2 Interpretation and terminology

The following abbreviations are used in this Scope:

| Abbreviation | Meaning given to the abbreviation |
|--------------|-----------------------------------|
| EDP          | Executive Development Programme   |
| PSC          | Professional Services Contract    |
| RFP          | Request for Proposal              |
| IP           | Intellectual Property             |
| TO           | Task Order                        |
| PO           | Purchase Order                    |
| TBA          | To be Advised                     |

## 2. Specification and description of the services

### Description of Service/ product that needs to be provided

The provision of services related to the design and delivery of a 1-day module across the leadership segments: Supervisory, Middle and Senior managers under the theme of Lead Others/ Organisation\_Leading with digital fluency.

Design and development of module content will take place in sound partnership between Eskom and the service provider, all content will be co-designed to ensure its relevance to the organisational context. The module/s form part of a larger leadership development programme architecture and hence it is crucial that content also aligns to the leadership capacity Eskom is required to build through the programme.

It is imperative that the service provider can demonstrate how to provide connection opportunities with other content pieces across the architecture.

This module will be delivered within the theme LEAD OTHERS/ ORGANISATION. The lead-in will be lead others and the lead-out will be the focus of lead others to set the context for deeper understanding of the implications of digital fluency in the organisation.

The learning methodology should have the requisite experiential balance between classroom based and self-directed learning content pieces to drive application of learning. Some virtual components could be built in, should it be fit for purpose.

- In cases where face-to-face learning will be utilised, inclusion of digital learning elements will also be an added advantage. Face-to-face learning will take place both at an Eskom premises, typically but not limited to the Eskom Academy of Learning and at the related Business School / learning institution of the partner.
- The final structure and content will be finalised in collaboration with the Eskom Leadership Effectiveness Unit.
- The ability to seamlessly integrate with other programme modules as an independent solution to be demonstrated.

The delivery of this module to 1350 Supervisors, 1350 Middle Managers and 300 Senior Managers over the next 5 years, will be divided into cohorts of approximately 25 people per cohort, to ensure a quality experiential learning experience for each.

Facilitators are expected to have in-depth knowledge and experience on the facilitation processes both on virtual and classroom platforms, which includes:

- Participating in the overall design and planning of the programme.
- Using appropriate facilitation methods and tools (both virtual and face-to-face) aligned to leading practice. To enable experiential learning methods to deepen the learning for participants.
- Ability to challenge mindsets of participants with thought provoking questions.

## 3. Constraints on how the *Consultant* Provides the Services.

### 3.1 Management meetings

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

| Title and purpose                     | Approximate time & interval | Location | Attendance by:                              |
|---------------------------------------|-----------------------------|----------|---|
| Risk register and compensation events | As required                 | Any      | Employer's personnel, the Employer's Agent, |

|  |             |     |  |
|--|-------------|-----|--|
| Overall contract progress and feedback | As required | Any | the Consultant, and Others as required |
|--|-------------|-----|--|

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.

### 3.2 Consultant's key persons

The *Consultant* ensures that all key personnel are assigned to the services are competent in the field for which they are appointed. The *Consultant* and key personnel shall be professionally registered. The *Consultant* shall ensure that all key personnel meet the requirements of the *Employer's* security, training and experience. The *Employer* reserves the right to examine the certification of all key personnel and if they don't meet requirements upon investigation, the *Employer* reserves the right to cancel the contract.

### 3.3 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.

### 3.4 Documentation control and retention

#### 3.4.1 Identification and communication

All communication is addressed to the Employer's Agent. All communication is in accordance with the contract requirements and the procedure agreed with the Employer's Agent. All communication makes reference to:

- The contract number that is issued by the Employer i.e. 46000.....;
- The title of the contract;
- The specific PSC clause under which the communication is issued; and
- A unique letter reference number.

The unique reference numbers to be used for written correspondence between the Employer's Agent and Consultant and vice versa is as follows:

- From the Employer's Agent to the Consultant: 46000..... E/C 0xxx; and
- From the Consultant to the Employer's Agent: 46000.... C/E 0xxxwith 46000..... referring to the contract number and the next sequential letter (channel) number.
- All documents transmitted to the Employer's Agent for review / acceptance / record / information are transmitted under cover of a document transmittal note with a completed and signed transmittal coversheet.
- The title of each letter clearly summarise the purpose of the letter.

All documents transmitted to the Employer's Agent for review/acceptance/record/information are transmitted under cover of a document transmittal note with a completed and signed transmittal cover sheet as prescribed by the procedure agreed with the Employer's Agent, to facilitate the capture of relevant document attributes within the Employer's documentation management system.

- The title of each letter clearly summarise the purpose of the letter. In accordance with PSC Core Clause 13.7, each notification deals with only one specific issue at a time and where letters are submitted electronically, the title of the letter is reflected in the subject line and only one letter is submitted per e-mail.
- The *Employer* and the *Consultant* keep a Document Control Ledger (DCL) of all transmittals between the two, whilst the *Consultant* keeps a DCL for each Sub-consultant.
- 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.
- 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. The *Employer's Agent* as well as the *Consultant's* contractual lead will be copied in on all e-mail correspondence related to the services between the *Consultant's* and *Employer's* personnel.
- 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.
- All documents transmitted to the *Employer's Agent* for review / acceptance / record / information are transmitted under cover of a document transmittal note with a completed and signed transmittal cover sheet.

The *Consultant* performs the following:

- Handles all formal communication between the *Consultant* and the *Employer* through the *Employer's Agent*, or other person designated in writing by the *Employer's Agent*,
- Conducts informal day-to-day oral communications with Others as necessary for the purpose of Providing the Services; and
- Maintains an up-to-date record of the receipt and delivery of any communication required for the purposes of the *services*.

### 3.4.2 Retention of documents

Clause 13.6 states that the Consultant retains copies of drawings, specifications, reports and other documents which record the services in the form stated in the Scope. Records such as contracts, addendums, task orders, work completion certificates, reports etc. must be retained in PDF format. Working files, such as drawings, designs, correspondence, information etc. must be retained in its original file format or hard copy where applicable. Note the time period for which the Consultant is to retain such documents is five years after the completion date of the contract.

## 3.5 Invoicing and payment

### 3.5.1 Payment terms

Every invoice must follow an established payment process according to your contracted payment terms. Payment will take place as per contract term, from date of valid tax invoice receipt.

### 3.5.2 Ordering and payment

Eskom pays its registered vendors via EFT. No goods or services should be supplied without receiving an Eskom purchase order. All purchase order numbers must be included on the invoice. No invoice will be paid if the correct purchase order number is not quoted on the invoice.

To ensure faster processing of your invoices, please ensure that your billing invoice:

- Reflects the purchase order number. No invoice will be paid if the correct purchase order number is not referenced on the invoice
- Reflects your VAT registration number

- Reflects Eskom's VAT registration number 4740101508
- Reflects the total amount invoiced excluding VAT, the VAT amount and the invoiced amount including VAT
- Supplier Bank details
- Matches our purchase order (line by line)
- Contains the proper units of measure
- Aligns with the purchase order price; and
- That the agreed payment terms on the invoice agrees with the payment terms on the order.

**Note:** You do not require a goods receipt (GR) number to submit your invoices.

We will not affect payment until the goods or services have been received and supported by either a delivery note, works completion certificate and or timesheet.

Always ensure the remittance email address and name on your invoice are correct and that we have received the same information to update our records.

### 3.5.3 Where to and how to send invoices

Invoice should be submitted using the Email address below:

- **Local invoices:** [invoiceseskomlocal@eskom.co.za](mailto:invoiceseskomlocal@eskom.co.za)
- **Foreign invoices:** To be sent to the contract advisor for processing

#### Details on how to submit invoices and additional information:

- The subject line on your email should only contain your vendor number.
- All electronic invoices must be sent in PDF format only.
- Each invoice in PDF should be named with your invoice number only.
- Each PDF file should contain one invoice, one debit note, or one credit note only. You may not submit more than one invoice per email.
- If there is Cost Price Adjustment (CPA) or Rate of Exchange (ROE) on your contract, we request that you issue a separate invoice for CPA and/or ROE.
- Where CPA and ROE are applicable, please attached the signed CPA or ROE calculation sheet to the invoice in one/single attachment. The invoice must also clearly state that it is for CPA or ROE
- The amount used to calculate the CPA/ROE value on the CPA/ROE calculation sheet must match the base invoice amount.

### 3.5.4 Other requirements

The following documents are returnable every year and should be submitted to Eskom Vendor Management at the following email address: [VendorMDM@eskom.co.za](mailto:VendorMDM@eskom.co.za) before the expiry date:

- Valid B-BBEE certificate / Affidavit
- Letter of good standing with the Department of Labour (COIDA)
- Tax clearance certificate

Any changes of directorship of the company during the period of any contract held with Eskom, you need to submit the changes together with supporting documents as issued by CIPC.

You also need to ensure that the National Treasury Central Supplier Database (CSD) is updated with all relevant information. Please visit [www.csd.gov.za](http://www.csd.gov.za) for the details.

#### Note:

- Failure to comply with the requirements above, may lead to your vendor number being blocked for transacting and payment.
- Please note that the [crm\\_mdm@eskom.co.za](mailto:crm_mdm@eskom.co.za) is a system generated email with no-reply settings. DO NOT REPLY to it instead send correspondence to [vendormdm@eskom.co.za](mailto:vendormdm@eskom.co.za)



### 3.5.5 Who to contact for payment queries:

All queries and follow up on invoice payments, should be made by contacting the FSS Contact Centre:

E-mail: [FSS@eskom.co.za](mailto:FSS@eskom.co.za)

Tel: 011 800 5060

### 3.6 Contract change management

If the Consultant believes an event to be a Compensation Event, it notifies the Employers Agent which event under PSC Clause 60.1 it believes it to be.

The Consultant provides quotations for compensation events detailing the following items as a minimum:

- Introduction
- Executive summary
- Contractual basis of compensation event (Refer to PSC Core Clause 60.1)
- Details of the compensation event
- Assessment of compensation event (PSC Core Clause 63)
- Conclusion
- Accepted programme showing impact of delay (PSC Core Clause 62.2) – If the programme for remaining work is altered by the Compensation Event.

For compensation events to be implemented, the Employer requires the Consultant to sign a compensation event register form. For any payments required because of the compensation event, the Consultant is required to submit the signed compensation event register form, at latest, prior to the 15th of the month in which any associated amount should be assessed. This is to allow sufficient time for the Employer to load the associated costs onto its SAP system.

It is specifically stated that the Employer will not accept any forecasted payments relating to compensation event acceptance.

### 3.7 Inclusions in the programme

#### 3.7.1 Required Vendor Registration documents

- CSD registration
- BBBEE certificate
- Banking details
- Share certificates
- COIDA Certificate
- SHE Report or Exemption letter from SHE Official
- Quality Report or Exemption letter from Quality Official
- Declaration of Interest
- Signed JV agreement (if applicable)
- Signed Trust Documents (if applicable)

#### 3.7.1 Vendor Management Change Process

The following documents are yearly returnable and should be submitted to Eskom Holdings SOC Limited (using email address: [vendormdm@eskom.co.za](mailto:vendormdm@eskom.co.za)) on or before the expiry date:

# BBBEE certificates

# Letter of good standing with the Department of Labour

You also need to ensure that you are registered with the National Treasury Central Supplier Database (CSD).

**Note:** Failure to comply with any of the above may lead to your Vendor Number with Eskom Holdings SOC Limited being blocked.

Changes to VM - profile it is the responsibility of the consultant to submit changes and supporting documents to [vendormdm@eskom.co.za](mailto:vendormdm@eskom.co.za)

### 3.7.3 Onboarding process

Eskom requires that all *consultants* that are awarded a task order be onboarded in order to gain the below.

- Unique number
- VPN access
- System access

On boarding process will be shared and timelines managed. Time taken to onboard resources cannot be claimed.

- The subject line on your email should only contain your vendor number.
- All electronic invoices must be sent in PDF format only.
- Each invoice in PDF should be named with your invoice number only.
- Each PDF file should contain one invoice, one debit note, or one credit note only. You may not submit more than one invoice per email.

## 3.8. Quality management

### 3.8.1. System requirements

Clause 40.1 requires that the *Consultant* operate a quality management system as stated in the Scope.

The quality requirements are as follows:

| DOCUMENT No. |                       | DESCRIPTION  | APPLICATION AND RESPONSIBILITY   |
|--------------|-----------------------|--|--|
| 1            | 240-12248652          | List of Tender Returnables / Quality Requirement Document  | Tenderer to submit all tender returnables for section A, B and E, as per list ( <b>Category 4</b> )                          |
| 2            | 240-68099512          | <b>FORM A:</b> Tender & Contract Quality Requirements for QM 58 and Quality Requirements for ISO 9001 Standard | Tenderer to complete (section A and E) and sign it.  |
| 3            | 240-105658000 (QM 58) | Supplier Quality Management: Specification   | Specifying Eskom supplier quality requirements. Tenderer to comply with the selected requirements as per <b>Category 4</b> . |
| 4            | 240-126469599         | Method Statement template  | Tenderer to compile and submit method statement based on the scope of work   |

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

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

The *Employer* has the right to use the material provided by the *Consultant* in relation to the execution of the work as stated in C3.1 of the contract data.

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

The *Consultant* may not use the material provided by him under this contract for other work unless prior approval is granted by the *Employer*.

#### **3.10.3 Transfer of rights if Option X 9 applies**

Option X9 states: The *Employer* owns the *Consultant's* rights over material prepared for this contract by the *Consultant*, *there is no exception to this clause*.

If a subconsultant is brought in to assist in the execution of the works, the *Consultant* obtains rights over material prepared by the subconsultant on behalf of the *Employer*.

### **3.11 Management of work done by Task Order**

Procedures for management of Task orders:

- When the *Employer* requires a portion of the scope to be executed, a Task Order will be issued to the *Consultant* detailing what is required with expected costs as outlined in C2.2 of the contract data.
- The *Consultant* returns the signed Task Order accepting the task and associated prices.
- Upon receipt of the signed Task Order the *Employer* will create a Purchase Order and provide the Purchase Order to the *Consultant*.
- The *Consultant* does not render services until they are in receipt of a valid Purchase Order corresponding to a particular Task Order.
- Once the work as outlined on the Task Order is complete the *Consultant* will submit a Work Completion Certificate (template to be provided) to the *Employer* detailing what work has been done and the amount due to the *Consultant* for the work done. The Work Completion Certificate must be accompanied by relevant evidence that the work was completed.
- The *Employer* will review the Work Completion Certificate for completeness and accuracy and return a signed copy to the *Consultant*.
- The *Consultant* may only submit an invoice for payment after receiving a signed work Completion Certificate from the *Employer*.

### **3.12 Health and safety**

The *Consultant* shall comply with the Health and Safety requirements as contained in the Occupational Health and Safety Act 85 of 1993 including its applicable Regulations. Furthermore, *Contractor* shall be required to comply to Eskom's SHEQ policy, procedures and Eskom Life Saving rules.

*Consultant* to ensure supervision of works at all times and works are carried out as per approved *Contractors* Health and Safety plan.

The *Consultant* shall comply with the health and safety requirements contained in **Annexure C3** to this Scope.

## 4. Procurement

### 4.1 BBBEE and preferencing scheme

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

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

Tenderer/s are therefore requested to indicate the extent to which they will maintain (only if the respondent is a Level 1) or may improve/maintain their B-BBEE status over the contract period if their B-BBEE status is level 2 or 3. Tenderer/s with a B-BBEE status level 4 at the time of contract award, shall migrate and achieve as a non-negotiable a milestone of B-BBEE Level 3 by the end of the first year of the contract and thereafter improve their B-BBEE status level or migrate by one level higher.

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

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

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

### 4.2 Local Procurement Content

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

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

| Local Procurement Content | Eskom target | Tenderer Proposal |
|---------------------------|--------------|-------------------|
|                           | 100%         |                   |

### 4.3 Skills Development

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

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

- The successful tenderer will be obligated to skill one candidate for every R2 Million spend cumulatively through purchase orders/instructions awarded to the supplier.
- The tenderer will be expected to submit a letter of competence/proof of attendance/service contract/certificate of compliance as proof that a candidate has been appointed for work experience. The supplier will be required to implement this requirement a month after the threshold is reached.

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

| Skill type /<br>Occupation                           | Tenderer Proposal |            |     |
|--|-------------------|------------|-----|
|  | No.               | Skill type | Qty |
|  | 1.                |            |     |
|  | 2.                |            |     |
| Scope of work-<br>related skill type /<br>Occupation | 3.                |            |     |

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

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

#### 4.4 Procurement spend on entities with a minimum 51% black ownership

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

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

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

| Procurement from Designated Group | Eskom Target | Tenderer Proposal |
|-----------------------------------|--------------|-------------------|
| Black Owned                       | 4.0%         |                   |
| Black Women Owned                 | 3.0%         |                   |
| Black Youth Owned                 | 2.0%         |                   |
| Black Persons with Disability     | 1.0%         |                   |

#### 4.5 Jobs created and retained

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

| Type of Jobs to be created | Number of Jobs to be created |
|----------------------------|------------------------------|
|                            |                              |

| Type of Jobs to be retained | Number of Jobs to be retained |
|-----------------------------|-------------------------------|
|                             |                               |

#### 4.6 SDL&I Retention and Performance Security

As security for the fulfilment of SDL&I obligations, Eskom will apply a retention of 2.5% on every invoice amount (excluding VAT) for failure to submit SDL&I performance reports every quarter; or failure to meet the SDL&I obligations in this contract. The retained amounts shall only be released to the contractor upon:

- The tenderer will be expected to submit their performance reports on a quarterly basis towards SDL&I obligations.
- SDL&I will assess the submitted performance report against the Implementation plan then issue a compliance report.
- Should the report yield non-compliance results, Eskom will retain the 2.5%.
- Should the compliance results be positive, Eskom will release the retained funds to the tenderer.

#### 4.7 SDL&I Reporting and Monitoring

- The suppliers shall on a quarterly basis submit a report to Eskom in accordance with Data Collection Template on their compliance with the SDL&I obligations described above.
- Eskom shall review the SDL&I reports submitted by the suppliers within 60 (sixty) days of receipt of the reports and notify the suppliers in writing if their SDL&I obligations have not been met.
- Upon notification by Eskom that the suppliers have not met their SDL&I obligations, the suppliers shall be required to implement corrective measures to meet those SDL&I obligations before the commencement of the following report, failing which Retention clauses shall be invoked.

### 5. Working on the *Employer's* property

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

Before work starts on Site, a Site inaugural meeting is held between the *Consultant* and the *Employer*, where details of the works are discussed and clarified. The *Consultant* is informed of the access procedures through Site regulations and that such procedures may change depending on the prevailing security situation.

It is mandatory that the *Consultant* adheres to all security regulations in force during the period of the contract.

#### 5.2 People restrictions, hours of work, conduct and records

##### 5.2.1 People restrictions

The *Consultant* employs in and about the Provision of the Service only such persons that are careful, competent and efficient in their several trades and callings, and the *Employer* reserves the right to object to and require the *Consultant* to remove from the *service*, forthwith, any person employed by the *Consultant* in or about the Provision of the Service who, in the opinion of the *Employer's Agent*, misconducts himself or is incompetent or negligent in the proper performance of his duties and such person is not again employed for the *service* without the written permission of the *Employer's Agent*.

The *Consultant* ensures that the *Consultant's* employees are reasonably fluent in the language of the contract. The *Consultant* maintains at all times a harmonious relationship with and co-operates with the *Employer* and all its suppliers and sub-suppliers or their employees who may be involved.

##### 5.2.2 Hours of work

Normal working hours:

Mon-Thu: 07h30 – 16h35

The *Consultant* takes due cognisance of the *Employer's* working hours whilst Providing the Service and performs regular reporting of person hours worked on a monthly basis to the *Employer's Agent*.

### 5.3 Cooperating with and obtaining acceptance of Others

The work of Others on Affected Property will be co-ordinated by the *Employer's Agent*. The *Consultant* co-operates with and does not delay, impede or otherwise impair the work of Others.

### 5.4 Things provided by the *Employer*

The *Employer* provides:

- Workspace for the *Consultant's* use during performance of the services at the *Employer* offices;
- Available documentation related to the project; and
- Access to project team members

### 5.5 Cataloguing requirements by the *Consultant*

Not applicable.

## 6. List of drawings

### 6.1 Drawings issued by the *Employer*

This is the list of drawings issued by the *Employer* at or before the Contract Date and which apply to this contract.

| Drawing number | Revision | Title |
|----------------|----------|-------|
| N/A            |          |       |
|                |          |       |
|                |          |       |