



NEC3 Professional Services Contract (PSC3)

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

and [Insert at award stage]
(Reg No. _____)

for Professional services to develop and/ enhance solution to
source Commodity Market Prices.

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CONTRACT No. [46]

Start Date:

End Date:

PART C1: AGREEMENTS & CONTRACT DATA

Document reference	Title	No of pages
C1.1	Form of Offer & Acceptance [to be inserted from Returnable Documents at award stage]	[•]
C1.2a	Contract Data provided by the <i>Employer</i>	[•]
C1.2b	Contract Data provided by the <i>Consultant</i> [to be inserted from Returnable Documents at award stage]	[•]
C1.3	Securities proforma	[•]

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:

Title: Professional services to develop and/ enhance solution to source Commodity Market Prices.

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 @ 15% 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:

Name & signature of _____ *(Insert name and address of organisation)* _____ Date _____

witness

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)	Employers Agent Signature:
Name(s)	Name:
Capacity	Capacity:
for the Employer	Eskom Holdings SOC Limited
Name & signature of witness	(Insert name and address of organisation)
	Date
Name:	Contract Advisor

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

C1.2a 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. If 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	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		G: Term contract
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	
		X2: Changes in the law
		X4: Parent company guarantee
		X7: Delay damages
		X9: Transfer of rights
		X10 Employer's Agent
		X11: Termination by the <i>Employer</i>
		X13: Performance bond
		X18: Limitation of liability
		Z: <i>Additional conditions of contract</i>

of the NEC3 Professional Services Contract (April 2013)¹

10.1	The <i>Employer</i> is (Name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa	
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg	
11.2(9)	The <i>services</i> are	Professional services to develop and/ enhance solution to source Commodity Market Prices for a period of 12 months.	
11.2(10)	The following matters will be included in the Risk Register	TBA	
11.2(11)	The Scope is in	Part 3: Scope of Work	
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa	
13.1	The <i>language of this contract</i> is	English	
13.3	The <i>period for reply</i> is	1 week	
13.6	The <i>period for retention</i> is	12 Months following Completion or earlier termination.	
2	The Parties' main responsibilities		
25.2	The <i>Employer</i> provides access to the following persons, places and things	access to	access date
		1 Eskom Facilities	TBA
		2 Stakeholders	TBA
		3 Eskom systems if applicable	TBA
3	Time		
31.2	The <i>starting date</i> is.	January 2024 or soon thereafter	
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is.	12 months after contract start date	
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	key date
	SDL&I Implementation plan submission	1 TBA	[•]
	<i>SDL&I Key Dates</i>	2 TBA	[•]
		3 [•]	[•]

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 and www.ecs.co.za

31.1	The <i>Consultant</i> is to submit a first programme for acceptance within	1 weeks of the Contract Date.	
32.2	The <i>Consultant</i> submits revised programmes at intervals no longer than	1 week.	
4	Quality		
40.2	The quality policy statement and quality plan are provided within	Contract placement.	
41.2	The <i>defects date</i> is	4 weeks after Completion of (task) the whole of the services.	
5	Payment		
50.1	The <i>assessment interval</i> is	between the 30th day of each successive month.	
50.3	The <i>expenses</i> stated by the <i>Employer</i> are	Item	Amount
	Travel where applicable for site visit travel outside of Gauteng	Travel per km	As per Eskom standards
51.1	The period within which payments are made is	4 weeks.	
51.2	The <i>currency of this contract</i> is the	South African Rand	
51.5	The <i>interest rate</i> is	the publicly quoted prime rate of interest charged by Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due,	
6	Compensation events	<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> <p><i>NEC PSC Contract clause 6 applies</i></p>	
7	Rights to material	<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> <p><i>NEC PSC Contract clause 7 applies</i></p>	
8	Indemnity, insurance and liability	<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> <p><i>NEC PSC Contract clause 8 applies</i></p>	

82.1	The <i>Consultant's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	The total of the Prices
9	Termination	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data. <i>NEC PSC Contract clause 9 applies</i>
10	Data for main Option clause	
G	Term contract	
21.4	The <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than	1 week.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
W1.2(3)	The <i>adjudicator nominating body</i> is:	the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See www.ice-sa.org.za).
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	South Africa
	The person or organisation who will choose an arbitrator <ul style="list-style-type: none"> if the Parties cannot agree a choice or if the <i>arbitration procedure</i> does not state who selects an arbitrator, is 	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
12	Data for secondary Option clauses	

X2	Changes in the law	
X2.1	The law of the project is	South African Law
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.
X7	Delay damages	
X7.3	(Applicable for Option G Only)	As per hours relevant to the delayed activity post mediation.
X9	Transfer of rights	
X9.1	The Employer owns the Consultant's rights over material prepared for this contract by the Consultant except as stated otherwise in the Scope. The Consultant obtains other rights for the Employer as stated in the Scope and obtains from a Subconsultant equivalent rights for the Employer over the material prepared by the Subconsultant. The Consultant provides to the Employer the documents which transfer these rights to the Employer.	
X10	The <i>Employer's Agent</i>	
X10.1	The <i>Employer's Agent</i> is	
	Name:	Mfanelo Magubane
	Address	MWP
	The authority of the <i>Employer's Agent</i> is	Management and Monitoring of Contract
X11	Termination by the <i>Employer</i>	
X11.1	The <i>Employer</i> may terminate the <i>Consultant's</i> obligation to Provide the Services for a reason not stated in this contract by notifying the <i>Consultant</i> .	
X11.2	If the Employer terminates for a reason not stated in this contract, an additional amount is due on termination which is 5% of the difference between <ul style="list-style-type: none"> the forecast of the final total of the Prices in the absence of termination and the total of the other amounts and costs included in the amount due on termination.	
X13	Performance bond	
X13.1	The amount of the performance bond is	10% Reviewed Annually

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	2 years after Completion of the whole of the services/task order.
Z	The <i>Additional conditions of contract</i> are	Z1 to Z16 always apply.

Z1 Cession delegation and assignment

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

Z2 Joint ventures

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

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

- Z3.1 Where a change in the *Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant's* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change.
- Z3.2 The *Consultant* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*.
- Z3.3 Where, as a result, the *Consultant's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Consultant's* obligation to Provide the Services.

Z3.4 Failure by the *Consultant* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

Z4 Confidentiality

Z4.1 The *Consultant* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the *Consultant* disclose information to Others in terms of clause 23.1, the *Consultant* ensures that the provisions of this clause are complied with by the recipient.

Z4.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer*.

Z4.3 In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer's* project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

Z5 Waiver and estoppel: Add to core clause 12.3:

Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z6 Provision of a Tax Invoice. Add to core clause 51

Z6.1 The *Consultant* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as

amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z7 Notifying compensation events

Z7.1 Delete from the last sentence in core clause 61.3, "unless the *Employer* should have notified the event to the *Consultant* but did not".

Z8 *Employer's* limitation of liability

Z8.1 The *Employer's* liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z9 Termination: Add to core clause 90.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z9.1 or had a business rescue order granted against it.

Z10 Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)

Z10.1 If the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.

Z10.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

Z11 Ethics

For the purposes of this Z-clause, the following definitions apply:

Affected Party means, as the context requires, any party, irrespective of whether it is the *Consultant* or a third party, such party's employees, agents, or Subconsultants or Subconsultant's employees, or any one or more of all of these parties' relatives or friends,

Coercive Action means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,

Collusive Action means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,

Committing Party means, as the context requires, the *Consultant*, or any member thereof in the case of a joint venture, or its employees, agents, or Subconsultants or the Subconsultant's employees,

Corrupt means the offering, giving, taking, or soliciting, directly or indirectly, of a good

- Action** or service to unlawfully or illegally influence the actions of an Affected Party,
- Fraudulent Action** means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,
- Obstructive Action** means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and
- Prohibited Action** means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

- Z11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z11.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Consultant* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Consultant's* obligation to Provide the Services for this reason.
- Z11.3 If the *Employer* terminates the *Consultant's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.
- Z11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Consultant* ensures that the Committing Party co-operates fully with an investigation.

Z12 Insurance

- Z12.1 Replace core clause 81 with the following:
 - 81.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
 - 81.2 The *Consultant* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

Insurance against	Minimum amount of cover	For the period following Completion of the whole of the services or earlier termination
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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>	Total of the task order prices	End of task order services
Liability for death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	<p><u>Loss of or damage to property:</u> The replacement cost where not covered by the <i>Employer's</i> insurance The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance</p> <p><u>Bodily injury to or death of a person:</u> The amount required by the applicable law.</p>	End of task order services
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	End of task order services

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

INSURANCE TABLE B

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

Nuclear Material Damage Terrorism	Per the insurance policy document
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Z13 Nuclear Liability

- Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa and is the holder of a nuclear licence in respect of the KNPS.
- Z13.2 The *Employer* is solely responsible for and indemnifies the *Consultant* or any other person against any and all liabilities which the *Consultant* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Consultant* or any other person or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Consultant* or any other person, or the presence of the *Consultant* or that person or any property of the *Consultant* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z14 Asbestos

For the purposes of this Z-clause, the following definitions apply:

- AAIA** means approved asbestos inspection authority.
- ACM** means asbestos containing materials.
- AL** means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
- Ambient Air** means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
- Compliance Monitoring** means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
- OEL** means occupational exposure limit.
- Parallel Measurements** means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.

- Safe Levels** means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
- Standard** means the *Employer's* Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
- SANAS** means the South African National Accreditation System.
- TWA** means the average exposure, within a given workplace, to airborne asbestos fibres, normalized to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.
- Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Consultant* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
- Z14.2 Upon written request by the *Consultant*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Consultant* may perform Parallel Measurements and related control measures at the *Consultant's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z14.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z14.5 The *Consultant's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z14.6 The *Consultant* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

Z 15 Supplier Obligations

Supplier Development Localization and Industrialization Obligations

TBA

Z16 POPIA Clause

- 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 (“**POPIA**”).
- Z16.2 Each Party acknowledges that it is an independent Responsible Party in relation to the Personal Information processed in terms of this Agreement (“**Shared Personal Information**”) 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 (<https://www.eskom.co.za/about-eskom/website-terms-and-conditions/>) 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:
 - 16.4.2.1 lawful, fair and transparent Processing;
 - 16.4.2.2 specified, legitimate and explicit purposes of Processing; and
 - 16.4.2.3 adequate, relevant and not excessive Processing.
- Z16.5 If either Party receives any complaint, notice or communication from the Regulator which relates directly to:
- Z16.5.1 the other Party's Processing of the Shared Personal Data; or
 - Z16.5.2 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,

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.

- 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:
- Z16.6.1 promptly and without undue delay forward the request to the other Party; and
 - Z16.6.2 cooperate and provide reasonable assistance in relation to that request to enable the other Party to respond in accordance with POPIA.
- 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 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 *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 the protection of Personal Information and the security exercised by the *Consultant* 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 *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.

Z17 Security measures

Z17.1 The *Consultant* shall comply with the requirements set forth in the Security Standards and in all other *Employer's* policies provided. The *Employer* will advise the *Consultant* of any amendments to the Security Standards and any policies applicable to it;

Z17.2 The *Consultant* 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 –

Z17.2.1 having regard to:

Z17.2.1.1 any requirement set forth in law, stipulated in industry rules or in codes of conduct or by a professional body; and

Z17.2.1.2 generally accepted information security practices and procedures which apply to (i) the *Consultant's* business; and (ii) to the *Employer*.

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 *Employer* 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 *Employer*, the *Consultant* shall notify the *Employer* immediately and shall not wait for the final report to 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.

Z18 Notification of Security breach

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.

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*.

Part two - Data provided by the Consultant

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

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

Clause	Statement	Data
10.1	The <i>Consultant</i> is (Name): Address Tel No. Fax No.	
22.1	The <i>key people</i> are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities: Qualifications: Experience:	
Only if required		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled .

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

11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is		
11.2(10)	The following matters will be included in the Risk Register		
11.2(13)	The <i>staff rates</i> are:	name/designation	rate
	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 Employers Agents Name	Contract Start Date
		2	
		3	
31.1	The programme identified in the Contract Data is	Refer to project programme / plan / schedule / task order	
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	item	amount
	Either complete here or cross refer to a schedule in Part C2.2		
G	Term contract		
11.2(25)	The <i>task schedule</i> is in		

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 _____ on this _____ day of _____ 200_

Signature(s) _____

Name(s) (printed) _____

Position in parent company _____

Signature of Witness(s) _____

Name(s) (printed) _____

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

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

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

Date:

Dear Sirs

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

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

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

1. In this Guarantee the following words and expressions shall have the following meanings:-
 - 1.1 “Bank” - means [●], [●] Branch, (Registration No. [●]); *[Drafting Note: Name of Bank to be inserted]*
 - 1.2 “Bank’s Address” - means [●]; *[Drafting Note: Bank’s physical address to be inserted]*
 - 1.3 “Contract” – means the written agreement relating to the Services, entered into between Eskom and the Consultant, on or about the [●] day of [●] 200[●] (Contract Reference No. [.]as amended, varied, restated, novated or substituted from time to time; *[Drafting Note: Signature Date and Contract reference number to be inserted]*
 - 1.4 “Consultant” – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. *[Drafting Note: Name and details of Consultant to be inserted]*
 - 1.5 “Eskom” - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30].
 - 1.6 “Expiry Date” - means the earlier of
 - the date that the Bank receives a notice from Eskom stating that all amounts due from the Consultant as certified in terms of the contract have been received by Eskom and that the Consultant has fulfilled all his obligations under the Contract, or
 - the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by Eskom
 - 1.7 “Guaranteed Sum” - means the sum of R [●] ([●] Rand);
 - 1.8 “Services” - means [insert if applicable.].
2. At the instance of the Consultant, we the undersigned _____ and _____, in our respective capacities as _____ and _____ of the

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

3. A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:
 - 3.1 be signed on behalf of Eskom by a Group Executive, Divisional Executive, Senior General Manager, General Manager or its delegate;
 - 3.2 state the amount claimed ("the Demand Amount");
 - 3.3 state that the Demand Amount is payable to Eskom in the circumstances contemplated in the Contract.
4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:
 - 4.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
 - 4.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
5. The Bank's obligations in terms of this Guarantee:
 - 5.1 shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
 - 5.2 shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between Eskom and the Consultant.
6. Eskom shall be entitled to arrange its affairs with the Consultant in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the Consultant or any variation under or to the Contract.
7. Should Eskom cede its rights against the Consultant to a third party where such cession is permitted under the Contract, then Eskom shall be entitled to cede to such third party the rights of Eskom under this Guarantee on written notification to the Bank of such cession.
8. This Guarantee:
 - 8.1 shall expire on the Expiry Date until which time it is irrevocable;
 - 8.2 is, save as provided for in 7 above, personal to Eskom and is neither negotiable nor transferable;
 - 8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;

- 8.4 shall be regarded as a liquid document for the purpose of obtaining a court order;
and
- 8.5 shall be governed by and construed in accordance with the law of the Republic of
South Africa and shall be subject to the jurisdiction of the Courts of the Republic of
South Africa.
- 8.6 Any claim which arises or demand for payment received after expiry date will be
invalid and unenforceable.
9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this
Guarantee at the Bank's Address.

Signed at _____ Date _____

For and behalf of the Bank

Bank Signatory: _____

Bank Signatory: _____

Witness: _____

Witness: _____

Bank's seal or stamp

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 7 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

1. How work is priced and assessed for payment

From Option G: Term contract

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

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

and

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

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

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

2. Staff rates

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.

3. 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.

Item Number	Category	Description	Unit charge	CURRENCY			Professional Services		
							Month Rates (Over a period of 12-months)		
							Total Estimated Quantity	Unit Price in ZAR	Total in ZAR
1	Professional Data analytics services	Senior Data Scientist	Hourly	Local	ZAR	1.00	2080	-	-
		Senior Data Scientist	Hourly	Local	ZAR	1.00	2080	-	-
		Senior Data Scientist	Hourly	Local	ZAR	1.00	2080	-	-

Total

-

GRAND TOTAL (Ex VAT)

-

Framework		
Activities	Estimated duration	Output of the deliverables
Integrate the market model with the master data source file (database) for seamless data synchronization and analysis.	Duration of the contract	Working tool and solution
Cleansing of data as per the prioritised list of commodities by business.	On going	Weekly report
Upload commodity market prices to expand the catalogue list, ensuring comprehensive coverage of available commodities. This involves acquiring market prices from reputable sources, formatting data, adding to the existing catalogue, conducting quality assurance checks, documenting the process, and establishing procedures for continuous updates.	Duration of the contract	Weekly report
Take an active role in designing, developing, and conducting unit testing for the solutions.	On going	Weekly activity report
Integrate UNSPSC codes for efficient commodity price search functionality.	On going	
Calculate the median based on a unit of measure, first, group the dataset by the unit of measure associated with each data point. Then, compute the median for each group, considering the middle value of the arranged data points.	On going	Ad hoc report
Establish a scalable environment capable of supporting the processing of multiple bot runs efficiently.	Duration of the contract	
Integrate an image generation AI to enrich material master data.	Duration of the contract	Demo
Collaborate with respective business units to comprehend analytics requirements and formulate potential solutions, facilitated by the Data Analytics team.	On going	Weekly report
Implement anti-bot detection techniques efficiently.	On going	Defined methodology
Developing a robust process to manage all outliers in market prices	On going	Defined methodology
Contribute to defining a cloud analytics strategy for the data analytics environment and design databases and data models to ensure interoperability for processing data in the commodity market price solution.	On going	Put into cloud strategy and database des
Conduct an assessment and review of the current Data Analytics environment to identify potential changes and fine-tuning opportunities aimed at enhancing system performance.	On going	Weekly report
Collaborate with the Data Analytics team to enhance the solution development process continuously.	Duration of the contract	
Support the development of internal data science skills and ensure staff have opportunities to apply the acquired skills effectively.	Duration of the contract	
Establishing and implementing role level security measures.	Duration of the contract	
Develop both supervised and unsupervised machine learning models	Duration of the contract	Working model
Create dashboards or reports for the envisioned commodity market price solution.	Duration of the contract	Report and or Dashboard
Configure bots to scan supplier websites for product lists that include prices	Duration of the contract	Working Dashboard
Continuously monitor model performance against specifications, conduct hyperparameter optimization, address deviations, and retrain models as needed. Additionally, document technical specifications for all created models or dashboards.	Duration of the contract	Documented specifications and working models and dashboards
Facilitate knowledge transfer to the Data Analytics team on tools utilized for market price identification and data cleansing processes.	Duration of the contract	

PART 3: SCOPE OF WORK

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

C3.1: EMPLOYER'S SCOPE

Specification and description of the services

High level background

The Data Analytics team successfully developed and piloted a solution utilizing Robotic Process Automation and web scraping tools to collect market prices of commodities available online. The ongoing phase entails advancing this initiative by sourcing these commodity market prices from suppliers with an online presence, employing supplementary tools and methodologies.

As part of our strategic goals for Fiscal Year 2025, Group-IT has committed to an agreement with our Shareholders to enhance Procurement Spend (Cost Optimization KPI) by implementing and refining the Commodity Market Price solution to broaden material coverage.

The project aims to enhance and develop a solution for sourcing commodity market prices from suppliers with an online presence, utilizing existing technology and tools available to the organization. This initiative requires the provision of three knowledgeable resources proficient in Robotic Process Automation (RPA) and machine learning, who will work on building and enhancing the current solution. These resources must possess expertise in search engine services, web scraping, data modeling (including ChatGPT4, Gemini, Davinci, etc.), Microsoft SQL, PowerBI, and Azure Machine Learning.

The envisioned solution is designed to seamlessly integrate with PowerBI for efficient data visualization and analysis, while ensuring database construction using Microsoft SQL on-premise for data security and accessibility. Daily updates of new prices will be provisioned to ensure the timeliness and accuracy of information. Additionally, the solution will be capable of utilizing UNSPSC codes for enhanced search functionality, narrowing down search results and retrieving more relevant pricing information for specific commodities.

Throughout the duration of the contract period, the resources are expected to demonstrate adaptability to evolving technological advancements. This includes ensuring solution flexibility, timely updates and upgrades, maintaining a clear technology roadmap, implementing a robust change management process, and committing to continuous improvement to uphold the solution's relevance and effectiveness.

By fulfilling these requirements, the solution aims to streamline the procurement process, facilitate informed decision-making, and optimize cost management for the organization.

2.2. Training/Transfer of skills:

Resources are required to facilitate skills transfer as part of the implementation process for the Commodity Market Price solution. This includes but not limited to the development of functional specification document, user guides, facilitation of workshop sessions, provision of coaching shadowed by Eskom resources, and documentation of technology skills transfer to the relevant support team/s. The successful tenderer will exhibit expertise in fostering practical learning experiences, facilitating knowledge sharing among participants, and ensuring the seamless transfer of skills to enhance organizational capabilities and maximize the benefits of the solution implementation.

2.3. Safety: The third-party resources will be required to visit an Eskom site during the execution of the project and consultation with the Occupational Health and Safety Practitioner for applicable, SHE requirements is mandatory (travel will not be paid separately as resources would be seen as traveling to work).

Service Level Agreement requirements

Framework			
Activities	Estimated duration	Output of the deliverables	Comments
Integrate the market model with the master data source file (database) for seamless data synchronization and analysis.	Duration of the contract	Working tool and solution	
Cleansing of data as per the prioritised list of commodities by business	On going	Weekly report	
Upload commodity market prices to expand the catalogue list, ensuring comprehensive coverage of available commodities. This involves acquiring market prices from reputable sources, formatting data, adding to the existing catalogue, conducting quality assurance checks, documenting the process, and establishing procedures for continuous updates.	Duration of the contract	Weekly report	
Take an active role in designing, developing, and conducting unit testing for the solutions.	On going	Weekly activity report	
Integrate UNSPSC codes for efficient commodity price search functionality.	On going		
Calculate the median based on a unit of measure, first, group the dataset by the unit of measure associated with each data point. Then, compute the median for each group, considering the middle value of the arranged data points.	On going	Ad hoc report	
Establish a scalable environment capable of supporting the processing of multiple bot runs efficiently.	Duration of the contract		
Integrate an image generation AI to enrich material master data.	Duration of the contract	Demo	
Collaborate with respective business units to comprehend analytics requirements and formulate potential solutions, facilitated by the Data Analytics team.	On going	Weekly report	
Implement anti-bot detection techniques efficiently.	On going	Defined methodology	
Developing a robust process to manage all outliers in market prices	On going	Defined methodology	
Contribute to defining a cloud analytics strategy for the data analytics environment and design databases and data models to ensure interoperability for processing data in the commodity market price solution.	On going	Input into cloud strategy and database design	
Conduct an assessment and review of the current Data Analytics environment to identify potential changes and fine-tuning opportunities aimed at enhancing system performance.	On going	Weekly report	
Collaborate with the Data Analytics team to enhance the solution development process continuously.	Duration of the contract		
Support the development of internal data science skills and ensure staff have opportunities to apply the acquired skills effectively.	Duration of the contract		
Establishing and implementing role-level security measures.	Duration of the contract		
Develop both supervised and unsupervised machine learning models	Duration of the contract	Working model	

Create dashboards or reports for the envisioned commodity market price solution.	Duration of the contract	Report and or Dashboard	
Configure bots to scan supplier websites for product lists that include prices	Duration of the contract	Working Dashboard	
Continuously monitor model performance against specifications, conduct hyperparameter optimization, address deviations, and retrain models as needed. Additionally, document technical specifications for all created models or dashboards.	Duration of the contract	Documented specifications and working models and dashboards	
Facilitate knowledge transfer to the Data Analytics team on tools utilized for market price identification and data cleansing processes.	Duration of the contract		

OTHER CONTRACTUAL SCOPE REQUIREMENTS

Constraints on how the *Consultant* Provides the Services.

Resource Contractual Obligations

Eskom limits its obligations solely to the *Consultants* and not the resources placed through task order process. All HR and IT matters to handle by the *Consultant*.

Management meetings

The *Consultant* is not entitled to bill a time charge for management meetings and meetings of a specialist nature as specified elsewhere in the scope unless specified and agreed by both parties prior to the meeting.

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

Title and purpose	Approximate time & interval	Attendance by:
Risk register and compensation events	To be Confirmed	To be confirmed
Overall contract progress and feedback	As and when required	<i>Employer's Agent</i> , Agent, <i>Consultant</i> and Contracts Management
Quarterly Contracts Management Meetings	Annually	<i>Employer's Agent</i> , Agent, <i>Consultant</i> and Contracts Management
SLA Meetings	As when required by Task Order Agent	<i>Employer's Agent</i> , Agent, <i>Consultant</i> and Contracts Management

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

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

Consultant's key persons

To be confirmed at Task Order level

DOCUMENTATION CONTROL AND RETENTION

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.

INVOICING AND PAYMENT

To ensure efficient handling and payment of your invoices, it is essential that you refer to the mandatory legal and Eskom Holdings SOC Ltd requirements to be added to every invoice or credit note.

Eskom may withhold payment if a vendor's invoice is inaccurate, without supporting documentation or does not meet Eskom's invoice, legal or tax requirements.

Consultant Information – What You Need to Know

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.

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 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
- Your Bank details.
- Matches our purchase order (line by line)
- Contains the proper units of measure
- Aligns with the purchase order price; and
- the 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.

Eskom 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.

Where to and how to send invoices

Invoice should be submitted using the Email address below:

- **Local invoices:** 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.

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 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 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 is a system generated email with no-reply settings. DO NOT REPLY to it instead send correspondence to vendormdm@eskom.co.za

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

Tel: 011 800 5060

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)

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.

Quality management

System requirements

Quality Management systems as per Clause 40.1, and as per Task Order

Information in the quality plan

Provide as per Task Order requirements

The Parties use of material provided by the *Consultant*

***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.

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*.

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*.

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*.

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 adhere to Eskom Site Safety requirements.

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

Other constraints

NIPP may apply, *Consultant* to comply to Regulations

Correction of Defects

Defects to be corrected as per clause 41.2

Working on the *Employer's* property

All Eskom property MWP and Site rules, policies and regulation should be adhered to.

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

All Eskom property, MWP and Site rules, policies and regulation should be adhered to.

People restrictions, hours of work, conduct and records

- All resources should have access to laptop, MS Teams and Projects online
- Hourly rates and per km rates are fixed for contract period.
- All resources should have access to laptop tools Teams and or other tools as specified at task order.
- All resource leave to be pre-approved by Eskom and should be managed to the minimum.
- Timesheet so be kept and signed off by Eskom on a monthly basis. Only actual hours worked can be claimed. All leave will be non-billable hours.
- All travel to be pre-approved.
- NDA's to be signed by all resources.
- In case resource does not perform to the expected standards, Eskom will notify *Consultant* and request replacement with resource on better standard.
- All resources to attend the monthly departmental meeting as required on site of virtually.
- Afterhours and weekend work will need to be approved up front before commencing with it, Overtime may not apply.
- All documents will be stored on SharePoint (or OpenText when go-live). All documents must be handed over to Eskom before contract expire / replacement of resource.
- Hybrid working policy will apply, subject to change when communicated by Eskom EXCO, In the event that working policy is changed no additional costs will be accepted.