



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 Consulting Services for Specialist High
Voltage Conductor Bundle and Corona Testing**

| Contents: | No of pages |
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CONTRACT No. [Insert at award stage]

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] | [•] |

C1.1 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:

Professional Consulting Services for Specialist High Voltage Conductor Bundle and Corona Testing

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:**

(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*

| Claus e | Statement | Data |
|------------|--|---|
| 1 | General | |
| | The <i>conditions of contract</i> are the core clauses and the clauses for main Option | |
| | dispute resolution Option | E: Time based contract |
| | and secondary Options | W1: Dispute resolution procedure |
| | | X1: Price adjustment for inflation |
| | | X2: Changes in the law |
| | | X9: <i>Transfer of rights</i> |
| | | X10: <i>Employer's Agent</i> |
| | | X11: Termination by the <i>Employer</i> |
| | | X18: Limitation of liability |
| | | Z: <i>Additional conditions of contract</i> |
| | of the NEC3 Professional Services Contract (April 2013) ¹ | |
| 10.1 | The <i>Employer</i> is: | 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 |
| | Tel No. | [011 629 5311] |
| | Fax No. | [•] |
| 11.2(9) | The <i>services</i> are | Professional Consulting Services for Specialist High Voltage Conductor Bundle and Corona Testing |
| 11.2(10) | The following matters will be included in the Risk Register | [•] |
| 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 |

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

| | | |
|------|------------------------------------|---|
| 13.3 | The <i>period for reply</i> is | 1 week |
| 13.6 | The <i>period for retention</i> is | [•] years 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 Research Corona Cage Test Facility | When the Contract has been signed by both parties |
| | | 2 Matimba Mathebula: Project Manager | When the Contract has been signed by both parties |

3 Time

| | | | |
|---------|--|-------------------------------|-----------------|
| 31.2 | The <i>starting date</i> is. | [•] | |
| 11.2(3) | The <i>completion date</i> for the whole of the services is. | [•]. | |
| 11.2(6) | The <i>key dates</i> and the <i>conditions</i> to be met are: | <i>Condition to be met</i> | <i>key date</i> |
| | | 1 | [•] |
| | | 2 | [•] |
| | | 3 | [•] |
| 31.1 | The <i>Consultant</i> is to submit a first programme for acceptance within | 2 weeks of the Contract Date. | |
| 32.2 | The <i>Consultant</i> submits revised programmes at intervals no longer than | 1 weeks. | |

4 Quality

| | | |
|------|---|---|
| 40.2 | The quality policy statement and quality plan are provided within | [•] weeks of the Contract Date. |
| 42.2 | The <i>defects date</i> is | [•] weeks after Completion of the whole of the services. |

5 Payment

| | | | |
|------|---|---------------------------------------|---------------|
| 50.1 | The <i>assessment interval</i> is | 30 days each successive month. | |
| 50.3 | The <i>expenses</i> stated by the <i>Employer</i> are | Item | Amount |
| | | [•] | [•] |
| | | [•] | [•] |
| | | [•] | [•] |

| | | [●] | [●] |
|------|--|--|-----|
| 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 | <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> | |
| 6 | Compensation events | There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data. | |
| 7 | Rights to material | 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. | |
| 8 | Indemnity, insurance and liability | 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. | |
| 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. | |
| 10 | Data for main Option clause | | |

| | |
|----------|---|
| E | Time based contract |
| 21.4 | The <i>Consultant</i> prepares forecasts of the total Time Charge and <i>expenses</i> at intervals no longer than 4 weeks. |
| 50.4 | The <i>exchange rates</i> are those published in Note Applicable |

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). |
| | Address | [•] |
| | Tel No. | [•] |
| | Fax No. | [•] |
| | e-mail | [•] |
| 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

| | |
|-----------|--|
| X1 | Price adjustment for inflation |
| X1.1 | The index is [•]. |
| | The staff rates are [•] {state whether "Fixed at the Contract Date and are not variable with changes in salary paid to individuals" or "Variable with changes in salary paid to individuals"} |
| X2 | Changes in the law |

| | | |
|------------|--|--|
| X2.1 | The law of the project is | [●]. |
| X9 | Transfer of rights | It is required that raw data from tests, measurements, and technical research report to be send to Eskom and to remain Eskom's Intellectual Property. |
| X10 | The <i>Employer's Agent</i> | |
| X10.1 | The <i>Employer's Agent</i> is | |
| | Name: | [] |
| | Address | [] |
| | The authority of the <i>Employer's Agent</i> is | [●] |
| 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. |
| 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 services/task order. |
| Z | The <i>Additional conditions of contract</i> are | Z1 to Z14 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 <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, |
| 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 <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, |
| Corrupt Action | means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party, |
| Fraudulent Action | means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation, |
| Obstructive Action | means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an |

investigation into allegations of Prohibited Action, and

Prohibited Action means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

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

Z12 Insurance

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

INSURANCE TABLE A

| Insurance against | Minimum amount of cover | For the period following Completion of the whole of the services or earlier termination |
|--|---|---|
| Liability of the <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> | | |
| 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</p> <p>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></p> | |

| | | |
|---|--|--|
| | The amount required by the applicable law. | |
| 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 | |

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 |

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 <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. |
| SANAS | means the South African National Accreditation System. |
| TWA | means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA. |

Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Consultant* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.

Z14.2 Upon written request by the *Consultant*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Consultant* may perform Parallel Measurements and related control measures at the *Consultant's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African

statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

Z14.3 The *Employer* manages asbestos and ACM according to the Standard.

Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.

Z14.5 The *Consultant's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.

Z14.6 The *Consultant* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.

Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.



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)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 . |
| 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 | |

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

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

PART 2: PRICING DATA

PSC3 Option E

| Document reference | Title | No of pages |
|--------------------|---------------------------------|-------------|
| C2.1 | Pricing assumptions: Option E | 20 |
| C2.2 | <i>Staff rates and expenses</i> | 21 |

C2.1 Pricing assumptions: Option E

How work is priced and assessed for payment

From Option E:

| | | |
|------------------------------|------|--|
| Identified and defined terms | 11 | |
| | 11.2 | (16) The Price for Services Provided to Date is the Time Charge for the work which has been completed. |
| | | (19) The Prices are the Time Charge. |

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 | <p>The amount due is</p> <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 and other amounts to be paid to the <i>Consultant</i> less amounts to be paid by or retained from the <i>Consultant</i>. <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> |
|--------------------------|------|---|

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 C2.2 below.

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 are 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 Guidance Notes.

C2.2 Staff rates and expenses

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.

Remember to state whether the *staff rates* and *expenses* exclude or include VAT.

The *staff rates* are:

| No. | Designation (or category) or name of staff member | Rate per {hour, day, month} excluding VAT | Rate |
|-----|--|---|------|
| 1 | High Voltage Consultant/Engineer/Technologies/Technician | Rate/Hour | |
| | | | |

The *expenses* are:

| No. | Expense item | Amount / rate excluding VAT | Rate |
|-----|--|-----------------------------|------|
| 1 | Small Portable/Mobile Corona Cage | Rate/Hour | |
| 2 | Electromagnetic Interference (EMI) metre (CISPR) | Rate/Hour | |
| 3 | Portable/Mobile AC High Voltage Power Supply | Rate/Hour | |
| 4 | Audible Noise meter | Rate/Hour | |
| 5 | Travelling | Rate/KM | |
| 6 | Accommodation/Night/Person | Rate/Night | |
| 7 | SHEQ requirements (price to include the Safety file) | | |
| | | | |

PART 3: SCOPE OF WORK

C3 PSC3 COVER PAGE

C3.1: EMPLOYER'S SCOPE

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Description of the services

Executive overview

The Transmission Solutions Centre of Excellence (CoE) within the Power Delivery and Utilisation (PD&U) department of Eskom Research, Testing and Development (RT&D), is currently conducting research in Corona activity, especially on High Voltage Transmission lines. The research meant to measure the corona performance characteristics for the new range of IEC conductors (viz. IEC 315, 450, 560, 630 & 800) and obtain the corona excitation curves using the outdoor Corona Cage, to validate previous outdoor cage data against operational lines in order to improve the accuracy of the corona predictions, and to conduct investigations into corona altitude effects using a mobile corona cage for HVAC and HVDC applications. This will be used to predict precise corona performance at various altitudes.

Interpretation and terminology

If required include here definitions additional to those used in the *conditions of contract* which are required only for the purpose of making the Scope easier to draft and read. Also list abbreviations used and provide a full interpretation of each one, for example:

The following abbreviations are used in this Scope:

| Abbreviation | Meaning given to the abbreviation |
|--------------|---|
| ECSA | Engineering Council of South Africa |
| SACPCMP | South African Council for Project and Construction Management Professionals |
| IEC | International Electrotechnical Commission |

Specification and description of the services

Specialised professional consulting services are required in the area of High Voltage conductor testing, corona investigations, corona cage testing, audible noise measurements, radio interference measurements and altitude investigation using mobile corona cage. These services will be required for the period of 3 years from date of contract, on as and when required basis.

An enabling professional services contract is required. The following tasks/scope of work will be done as part of the research project:

- Measure and determine the corona excitation functions for new IEC conductors (viz. IEC 450, 560, 630 & 800) in the outdoor Corona Cage.
- Conduct a small-scale investigation into the altitude effects using a small portable corona cage.
- Prepare IEC conductors (IEC 450, 560, 630 & 800) and install them into the outdoor Corona Cage for testing and measurements, on an as and when required basis (the preparation includes the following: cutting of the conductors, applying the dead ends for both ends of the conductors and crimp)
- Measure the onset and aged audible noise performance of an old and new lines and compare with the predictions generated in the outdoor corona cage. Refine prediction formulae, if necessary.
- Provide theoretical and practical on-job training to Eskom staff
- Compile a research report

Stage 1 Preparation

The objective of this project is to engage specialized professional consulting services in the area of high voltage conductor testing and investigation. The project aims to achieve the following objectives:

- Measure and determine the corona excitation functions for new IEC conductors (IEC 450, 560, 630 & 800) in the outdoor Corona Cage.
- Conduct a small-scale investigation into the altitude effects using a small portable corona cage.
- Prepare IEC conductors (IEC 450, 560, 630 & 800) and install them into the outdoor Corona Cage for testing and measurements, on an as and when required basis.
- Measure the onset and aged audible noise performance of old and new lines and compare with predictions generated in the outdoor corona cage. Refine prediction formulae, if necessary.
- Provide theoretical and practical on-job training to Eskom staff.
- Compile a comprehensive research report.

Business Need:

- Ensure the reliability, cost saving, and safety of high voltage conductors used in Eskom's infrastructure.
- The research and investigations will help in enhancing the understanding of corona phenomena, audible noise, and altitude effects on the conductors.
- Gain a better understanding of the corona excitation functions and altitude correction effects on conductors to optimize their performance.
- Validate and refine prediction formulae for audible noise performance to improve performance, planning and maintenance activities.
- Enhance the technical knowledge and skills of Eskom staff through on-job training.
- Generate a comprehensive research report to contribute to the knowledge base in the field of high voltage conductor testing and investigation.

Acceptance Criteria:

- The high voltage conductor testing and investigation services must be conducted according to the defined scope of work within the specified time frame of 3 years from the date of the contract.
- The corona excitation functions for the specified IEC conductors must be accurately measured and determined in the outdoor Corona Cage.
- The small-scale investigation into altitude effects using the portable corona cage must provide reliable data and insights.
- The onset and aged audible noise performance of old and new lines must be measured and compared with predictions generated in the outdoor corona cage, with any necessary refinement of prediction formulae.
- The theoretical and practical on-job training provided to Eskom staff must effectively enhance their knowledge and skills in the area of high voltage conductor testing and investigation.
- The research report must be comprehensive, well-documented, and clearly present the findings, methodologies, and recommendations derived from the project.

Employer's Priorities and Aspirations:

- **Safety:** Ensure the safe operation of high voltage conductors and mitigate any potential risks associated with corona discharge, audible noise, and altitude effects.
- **Reliability:** Improve the reliability of high voltage conductors by accurately assessing their performance characteristics and optimizing their design and maintenance.
- **Efficiency:** Enhance planning and maintenance activities by validating and refining prediction formulae for audible noise performance and gaining a better understanding of altitude effects on conductors.
- **Knowledge Transfer:** Facilitate the transfer of knowledge and skills to Eskom staff through theoretical and practical on-job training, enabling them to independently perform high voltage conductor testing and investigation tasks.

- **Research Contribution:** Generate a comprehensive research report that adds value to the field of high voltage conductor testing and investigation, contributing to the industry's knowledge base and best practices.

Constraints on how the *Consultant* Provides the Services.

Management meetings

The *conditions of contract* (e.g. Clause 15.2) and other sections of this Scope may require that a meeting be held. However the intention of all NEC contracts is that the Parties and their agents use the techniques of partnering to manage the contract by holding meetings designed to pro actively and jointly manage the administration of the contract with the objective of minimising the adverse effects of risks and surprises for both Parties.

Depending on the size and complexity of the *services*, it is probably beneficial for the *Employer's Agent* to hold a weekly risk register meeting (Clause 15.2). This could be used to discuss compensation events, subconsulting, overall co-ordination and other matters of a general nature. Separate meetings for specialist activities such as programming and activities of a technical nature may also be warranted.

Describe here the general meetings and their purpose. Provide particulars of approximate times, days, location, and attendance requirements, stipulating that attendees shall have the necessary delegated authority to make decisions in respect of matters discussed at such meetings. The following text could be used as a model for this section:

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

| Title and purpose | Approximate time & interval | Location | Attendance by: |
|--|-----------------------------|----------|--|
| Risk register and compensation events | Weekly on _____ at _____ | [•] | [•] |
| Overall contract progress and feedback | Monthly on _____ at _____ | [•] | <i>Employer's Agent</i> , <i>Consultant</i> and [•]__ |
| | | | |
| | | | |

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

State any additional constraining requirements on *Consultant's key persons* over and above those already stated in clause 22.1 or in the Contract Data. Such as need to notify contact details, leave and mentoring requirements where applicable. This section could be used to solicit an organogramme from the *Consultant* showing his people and their lines of authority / communication. This would be essential if the *Consultant* is a Joint Venture.

Documentation control and retention

Identification and communication

Specify how documentation will be identified with an alpha numeric which indicates source, recipient, communication number etc. Provide details of any particular format or other constraints; for example that all contractual communications will be in the form of properly compiled letters or forms attached to e mails and not as a message in the e mail itself. State any particular routing requirements but note from PSC3 who issues what to whom.

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. State here what that form is. Note the time period for which the *Consultant* is to retain such documents is the *period for retention* stated in the Contract Data.

Invoicing and payment

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

The *Consultant* shall address the tax invoice to _____ and include on it the following information:

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

The contract number and title;

Consultant's VAT registration number;

The *Employer's* VAT registration number 4740101508;

Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;

Scope of Work: A brief description of the services provided, referencing the tasks outlined in the research project's scope of work.

Time Period: The duration for which the services were provided, specifying the start and end dates of the work covered by the invoice.

Hourly Rates: The agreed-upon rates for professional consulting services.

Hours Worked: The total number of hours spent on each task or activity, along with the respective rates.

Procedures for invoice submission and payment:

The invoice to be submitted to the employer's agent via the email.

The employer's agent will then issue the payment certificate to the Consultant

The employer's agent will then issue the GR to the Consultant and instruct the Consultant to send the Tax invoice to Invoiceseskomlocal@eskom.co.za for payment processes

Contract change management

This section is intended to deal with any additional requirements to the compensation event clauses in section 6 of the core clauses; such as the use of standard forms. Not the same thing as documentation control.

Inclusions in the programme

First read clause 31.2 and then include here any matters regarding the order and timing of the work of the *Employer* and Others which the *Consultant* is take account of in his programme. Also describe any information other than that already requested in clause 31.2 which the *Consultant* is to show on each programme he submits for acceptance.

Quality management**System requirements**

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

Information in the quality plan

Clause 40.2 requires that the *Consultant* provide a quality policy statement and quality plan which complies with requirements stated in the Scope. Include your requirements here

The Parties use of material provided by the *Consultant****Employer's* purpose for the material**

- Research and Analysis: The material provided by the Consultant, such as measurement data, test results, and research findings, may be used by the Employer for conducting further analysis, studying corona excitation functions, altitude effects, audible noise performance, and refining prediction formulae.
- Training and Knowledge Transfer: The material may be utilized by the Employer to facilitate theoretical and practical on-job training for their staff. This could involve sharing training materials, documentation, and relevant information to enhance the knowledge and skills of the Eskom staff.
- Reporting and Documentation: The material may be incorporated into reports and research documentation prepared by the Employer. The research report, compiled by the Consultant, could be used by the Employer for internal reference, knowledge management, and potential dissemination to relevant stakeholders.

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

Restriction on Use of Materials: The Consultant shall not use any materials, including drawings, specifications, reports, or other documents provided by them for this contract, for any other work or purpose without obtaining prior written consent from the Client. The Consultant shall treat all materials as confidential and proprietary and shall not disclose or share them with any third party without the Client's explicit authorization. Any unauthorized use or disclosure of materials shall constitute a breach of contract and may result in legal action.

Transfer of rights if Option X 9 applies

It is required that raw data from tests, measurements, and technical research report to be send to Eskom and to remain Eskom's Intellectual Property.

Health and safety

Clause 25.4 states that the *Consultant* acts in accordance with the health and safety requirements stated in the Scope. It is suggested that this part of the Scope address how the *Consultant* acts when doing his services. These requirements may be no more than just complying with the law. However if the *Consultant* is required to work on Eskom premises, then whatever requirements which personnel working in those premises need to comply with should be included here or referred to in an Annexure.

If when doing his services the *Consultant* is required to carry out a design which needs to take account of certain health and safety criteria, then this should be included in the specification of that design service stated elsewhere in the Scope. A draft for this section could start as follows:

The *Consultant* shall at all times comply with the health and safety requirements prescribed by law as they may apply to the services.

[If the *Consultant* may be required to work on Eskom premises, such as a power station, where health and safety requirements additional to those prescribed by law apply, specify these here or state, The *Consultant* shall comply with the health and safety requirements contained in Annexure _____ to this Scope.]

Procurement

BBBEE and preferencing scheme

Specify constraints which *Consultant* must comply with after contract award in regard to any Broad Based Black Economic Empowerment (B-BBEE) or preferencing scheme measures.

Working on the *Employer's* property

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

- Employer's Entry and Security Control: Adhere to the employer's entry and security control protocols when accessing the work site.
- Permits: Obtain any necessary permits or permissions required to carry out the work.
- Site Regulations: Comply with all relevant site regulations and ensure that the work is conducted in accordance with safety and operational guidelines.

Cooperating with and obtaining acceptance of Others

This sub-paragraph could be used to deal with two issues.

- 1) The cross reference from core clause 23.1 about cooperation generally as well as details about Others with whom the *Consultant* may be required to work. See clause 11.2(7) for the definition of Others.
- 2) Requirements for liaison with and acceptance from statutory authorities or inspection agencies.

Things provided by the *Employer*

Outdoor Corona Cage: The Employer will provide access to an outdoor Corona Cage for conducting research, testing and measurements on IEC conductors. The Consultant will be able to install and test the IEC conductors (IEC 450, 560, 630 & 800) in this facility.

IEC Conductors (IEC 450, 560, 630 & 800): The Employer will provide the required IEC conductors. The Consultant will be able to prepare and install them to the outdoor Corona Cage.

Cataloguing requirements by the *Consultant*

State whether cataloguing is applicable, if it is, reference the requirements for cataloguing that need to be satisfied by the *Consultant* (consult Procurement Instruction Number 1 of 2018 – Incorporating Cataloguing into the Procurement Environment, Unique Identifier 240-1289988974).

List of drawings**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 |
|----------------|----------|-------|
| | | |
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