



## NEC3 Professional Services Contract (PSC3)

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

**and (Reg No. )**

**for Provision of Professional Services for Space  
Planning and Interior Design Consultants**

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**CONTRACT No. [Insert at award stage]**

## PART C1: AGREEMENTS & CONTRACT DATA

Document reference	Title	No of pages
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# C1.1 Form of Offer & Acceptance

## Offer

The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract for the procurement of:

### Provision of Professional Services Space Planning and Interior Design Consultants

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	<b>R</b>
Value Added Tax @ 14% is	<b>R</b>
The offered total of the Prices inclusive of VAT is	<b>R</b>
(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


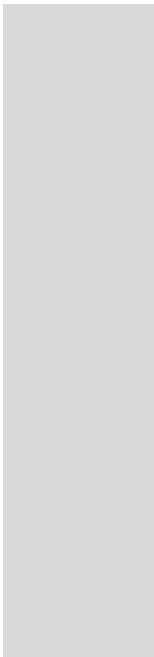
## C1.2 PSC3 Contract Data

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

[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.]

1. The PSC3 options are identified by shading in the left hand column. In the event that the option is not required select and delete the whole row.
2. Where the symbol “” is used data is required to be inserted relevant to the clause and statement which requires it.]

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		A: Priced contract with activity schedule
	dispute resolution Option	W1: Dispute resolution procedure
		X2: Changes in the law
		X7: Delay damages
		X9: Transfer of rights
		X10: <i>Employer's Agent</i>
		X11: Termination by the <i>Employer</i>
		X18: Limitation of liability
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Professional Services Contract (April 2013) <sup>1</sup>	

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

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		
	Tel No.	011 800 8000		
	Fax No.			
11.2(9)	The <i>services</i> are	Provision of Professional Services for Space Planning and Interior Design Consultants		
11.2(10)	The following matters will be included in the Risk Register	To be identified at initial project risk meeting		
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 weeks		
13.6	The <i>period for retention</i> is	None		
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	MWP, ERIC Building in Rosherville and EAL in Midrand	TBC
3	Time			
31.2	The <i>starting date</i> is.	TBC		
11.2(3)	The <i>completion date</i> for the whole of the <i>services</i> is.	TBC		
11.2(6)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	key date	
		1	Eskom safety induction	On appointment
		2	Safety: Baseline risk assessment & safety file	Within 1 week of appointment
		3		
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	2 weeks		
4	Quality			
40.2	The quality policy statement and quality plan are provided within	2 weeks of the Contract Date.		

42.2 The *defects date* is **52 weeks after Completion of the whole of the services.**

## **5 Payment**

50.1 The *assessment interval* is **On completion of each activity**

	The <i>expenses</i> stated by the <i>Employer</i> are	Item	Amount
50.3		None	0.00

51.1 The period within which payments are made is **30 days after approval of invoice**

51.2 The *currency of this contract* is the **South African Rand**

51.5 The *interest rate* 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,**

**and**

**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 *mutatis mutandis* 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**

## **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**

81.1 The amounts of insurance and the periods for which the *Consultant* maintains insurance are



	Event	Cover	Period following Completion of the whole of the <i>services</i> or earlier termination
	Liability for failure by the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	Whatever the <i>Consultant</i> deems necessary in respect of each claim, without limit to the number of claims	See Notes to Consultants in Annexure A
	death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property arising from or in connection with the <i>Consultant's</i> Providing the Services.	Whatever the <i>Consultant</i> deems necessary for any occurrence or series of occurrences arising out of one event without limit to the number of claims.	See Notes to Consultants in Annexure A
	death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Consultant's</i> common law liability for people falling outside the scope of the Act with a limit of indemnity of not less than R500 000-00 (five hundred thousand) in respect of each claim, without limit to the number of claims	As <i>Consultant</i> deems necessary
81.1	The <i>Employer</i> provides the following insurances	Refer to Annexure A for details of insurance provided by the <i>Employer</i> .	
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	
<b>9</b>	<b>Termination</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.	
<b>10</b>	<b>Data for main Option clause</b>		
A	Priced contract with activity schedule		
21.3	The Consultant prepares forecasts of the total of the expenses at intervals of no longer than	<b>2 weeks</b>	

## 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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
W1.2(3)	The <i>adjudicator nominating body</i> is:	the Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ).
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	Johannesburg, South Africa
	The person or organisation who will choose an arbitrator	
	<ul style="list-style-type: none"> <li>if the Parties cannot agree a choice or</li> <li>if the <i>arbitration procedure</i> does not state who selects an arbitrator, is</li> </ul>	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.

## 12 Data for secondary Option clauses

<b>X2</b>	<b>Changes in the law</b>	
X2.1	The law of the project is	South African
<b>X7</b>	<b>Delay damages</b>	
X7.1	Delay damages for late Completion of the whole of the <i>services</i> are	R1000.00 per day to a maximum of 10% of the contract value.
<b>X9</b>	<b>Transfer of rights</b>	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.
<b>X10</b>	<b>The <i>Employer's Agent</i></b>	
X10.1	The <i>Employer's Agent</i> is	
	Name:	To be provided on Contract award
	Address	Eskom, Megawatt Park Complex, Sunninghill
	The authority of the <i>Employer's Agent</i> is	Project Manager
<b>X11</b>	<b>Termination by the <i>Employer</i></b>	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.
<b>X18</b>	<b>Limitation of liability</b>	

X18.1	The <i>Consultant's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	<b>R0.00 (Zero Rand)</b>
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:	<b>The total of the Prices</b>
X18.3	The <i>end of liability date</i> is	<b>five years after Completion of the whole of the services/task order.</b>
<b>Z</b>	<b>The Additional conditions of contract are</b> <b>Z1 to Z11 always apply.</b>	

## **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 Ethics**

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Consultant* which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Consultant's* obligation to Provide the Services or taking any other action as appropriate against the *Consultant* (including civil or criminal action).
- Z4.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services if the *Consultant* (or any member of the *Consultant* where the *Consultant* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Consultant* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.

- Z4.3 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

## **Z5 Confidentiality**

- Z5.1 The *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.
- Z5.2 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*.
- Z5.3 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.
- Z5.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer's* project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

## **Z6 Waiver and estoppel: Add to core clause 12.3:**

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

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

- Z7.1 The *Consultant* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

**Z8 Notifying compensation events**

- Z8.1 Delete from the last sentence in core clause 61.3, "unless the *Employer* should have notified the event to the *Consultant* but did not".

**Z9 *Employer's* limitation of liability**

- Z9.1 The *Employer's* liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to R0.00 (zero Rand)

**Z10 Termination: Add to core clause 90.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":**

- Z10.1 or had a business rescue order granted against it.

**Z11 Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)**

- Z11.1 If the *Consultant's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant's* obligation to Provide the Services.
- Z11.2 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.
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## Annexure A: Notes to Consultants

*This is guidance to Consultants to assist their decision making about what cover to arrange in the insurance to be provided by the Consultant. The guidance is not part of the contract and the Employer carries no liability for it. The Consultant must obtain its own advice.*

1. For the purpose of works contracts, insurance provided by Eskom (the *Employer*) has been arranged on the basis of “project” or “contract” value, where the value is the total of the Prices at Completion of the whole of the works including VAT.

A “project” is a collection of contracts or work packages to be undertaken as part of a single identified capital expansion or refurbishment of a particular asset or facility.

A “contract” is a single contract not linked to or being part of a “project”.

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

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

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

In the case of contracts / packages within a project:

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

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

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

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

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

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

**[http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS\\_Policies\\_From\\_1\\_April\\_2014\\_To\\_31\\_March\\_2015.aspx](http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx)**

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

## C1.2 Contract Data

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

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

Clause	Statement	Data
10.1	The <i>Consultant</i> is (Name): Address Tel No. Fax No.	
22.1	The <i>key people</i> are: 1 Name: Job: Responsibilities: Qualifications: Experience: 2 Name: Job Responsibilities: Qualifications: Experience:	
Only if required		CV's (and further <i>key persons</i> data including CVs) are appended to Tender Schedule entitled .
11.2(3)	The <i>completion date</i> for the whole of the services is	
11.2(10)	The following matters will be included in the Risk Register	

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

11.2(13)	The <i>staff rates</i> are:	<b>name/designation</b>	<b>rate</b>
	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	<b>access to</b>	<b>access date</b>
		1	
		2	
		3	
31.1	The programme identified in the Contract Data is		
50.3	The <i>expenses</i> stated by the <i>Consultant</i> are	<b>item</b>	<b>amount</b>



## C1.3 Forms of Securities

### Pro formas for Bonds & Guarantees

For use with the NEC3 Professional Services Contract

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

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.

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 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]

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

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

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

Date \_\_\_\_\_

For and behalf of the Bank

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

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

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

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

Bank's seal or stamp

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

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	[•]
C2.2	The <i>activity schedule</i>	[•]

## C2.1 Pricing assumptions: Option A

### How work is priced and assessed for payment

Clause 11 in NEC3 Professional Services Contract, June 2005 (PSC3) Option A states:

<b>Identified and defined terms</b>	11	(18) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract.
	11.2	

This confirms that Option A is a lump sum form of contract where the work is broken down into activities, each of which is priced by the tendering consultant as a lump sum. Only completed activities are assessed for payment at each assessment date; no part payment is made if the activity is not completed by the assessment date.

### Function of the Activity Schedule

Clause 53.1 in Option A states: "Information in the Activity Schedule is not Scope." This confirms that instructions to do work or how it is to be done are not included in the Activity Schedule but in the Scope. This is further confirmed by Clause 21.1 which states, "The *Consultant* Provides the Services in accordance with the Scope". Hence the *Consultant* does **not** Provide the Services in accordance with the Activity Schedule. The Activity Schedule is only a pricing document.

### Link to the programme

Clause 31.4 states that "The *Consultant* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance". Hence when compiling the *activity schedule*, the tendering consultant needs to show each activity on the programme he submits with his tender.

**NB: The project schedule should be resource loaded as per phase within the activity schedule.**

### Preparing the activity schedule

The tendering consultant prepares the *activity schedule* and should study the PSC3 Guidance Notes pages 2 and 24 before doing so. The *Employer* may have instructed the tendering consultant to include particular activities which he has specified and requires the *Consultant* to identify them in his *activity schedule*.

1 Generally it is the *Consultant* who prepares the Activity Schedule as part of his tender by breaking down the work described within the Scope into suitable activities which can be well defined, priced as a lump sum and shown on the programme. The *Employer*, in his Conditions of Tender or in a Tender Schedule, may have listed some items that he requires the *Consultant* to include in his *activity schedule* and be priced accordingly.

2 The Prices are defined in clause 11.2(18) as the lump sum for each activity in the activity schedule and the Price for Services Provided to Date (PSPD) (the amount due to the *Consultant*) is defined in clause 11.2(15) as the total of the Prices for each activity that has been completed. Hence activities in the activity schedule should be structured so as to provide an acceptable monthly cash flow as they are only assessed for payment on the assessment date if they have been completed.

3 As the *Consultant* has an obligation to correct Defects (core clause 41) the lump sum Prices must also include for the correction of Defects except if the Defect is one for which the *Consultant* is not liable which is compensation event 60.1(12).

4 If the *Consultant* has decided not to identify a particular activity, the cost to the *Consultant* of doing the work must be included in, or spread across, the other Prices in order to fulfil the obligation to complete the services for the tendered total of the Prices.

5 There is no adjustment to the lump sum activity schedule price if the amount, or quantity, of work within that activity later turns out to be different to that which the *Consultant* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event. See Clause 60.1.

6 Hence the Prices tendered by the *Consultant* in the *activity schedule* are inclusive of everything necessary and incidental to Providing the Services in accordance with the Scope, as it was at the time of tender, as well as correct any Defects except those for which he is not liable.

7 However, the *Consultant* does not have to allow in his Prices for matters that may arise as a result of a compensation event.

## **Expenses**

*Expenses* are not included in the activity schedule items and are assessed separately at each assessment date.

*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 activity schedule or *staff rates*.

Rate adjustment for inflation of *expenses* is explained on page 13 of the Guidance Notes.

## **Staff rates**

When a compensation event occurs changes to the affected Activity Schedule item or new priced items in the Activity Schedule are assessed as the actual Time Charge for work already done and the forecast Time Charge for work not yet done. (See clause 63.1 and 63.14 in Option A)

The Time Charge is the sum of the products of each of the *staff rates* multiplied by the total staff time appropriate to that rate properly spent on work in this contract. (Clause 11.2(13))

Tendering consultants are advised to consult the NEC3 Professional Services Contract (June 2005) Guidance Notes and Flow Charts page 28 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, 14 and 28 of the Guidance Notes.

Use this page as a cover page to the *Consultant's activity schedule* or include here in this format:

Item No.	Programme Reference	Activity description	Price (excl VAT)
1			
2			
3			
4			
5			
6			
		Total of the Prices	

Consultant to provide a breakdown of rates, travel and all overheads supporting the summary herewith.

Consultant to provide rates for all resources used in the table below.

**The *staff rates* are:**

No.	Designation (or category) or name of staff member	Rate per {hour, day, month} excluding VAT
1		

**The *expenses* are:**

No.	Expense item	Amount / rate excluding VAT
	Disbursements	



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

## **C3.1: EMPLOYER'S SCOPE**

**Measurements for the buildings include phases**

## Description of the services

### Executive overview -

In 2017, EXCO approved the Eskom Real Estate (ERE) Masterplan. The objective of this initiative was to align with the Eskom wide cost reduction strategic objective, aimed at reducing workspace associated operating costs through implementation of the following:

- Optimization of workspace within owned offices
- Exiting of leases and consolidation into owned offices within same regions.

The initiative is an ongoing exercise, which requires services of Space Planners in order to analyse space requirements and optimize available offices for this goal to be achieved.

In November 2021, EXCO approved the implementation of the hybrid workforce, which allows employees to work remotely. The initiative is intended to increase productivity, whilst also reducing workspace-operating costs. The approval therefore allows for further reduction of workspaces and adoption of workspace designs suitable to support the hybrid work environment, requiring that services of space planners be in-sourced for successful implementation of this initiative.

### Interpretation and terminology

The following abbreviations are used in this Scope:

Abbreviation	Meaning given to the abbreviation
IOPSA	Institute of Plumbing South Africa
ISO	International Organization for Standardization

## Specification and description of the services

Provision of Space Planning and Interior Design Services as below:

Phase 1:

Review the Eskom Needs analysis and address the gaps for fit out, furnishing and special equipment

Phase 2:

Design – establish client brief

Prepare design concept for approval

Phase 3

Produce detail drawings

Issue of all relevant CAD drawings to client

Prepare programme (inclusive of the move and change management)

Prepare approved work for implementation.

Phase 4:

Project Implementation:

Attend to appointment of suppliers/contractors together with client

Brief contractors regarding implementation phase

Finalise and issue project programme

Monitor progress regularly against programme deliver completed project on time, within budget and agreed standards

Refer to the Stages below for detailed description of services required.

Collect available data from the municipality, consult and assess. Provide a report detailing activities required for achieving compliance.

Consultant to accompany Municipality Building Inspector during inspections of the buildings; to note all issues raised and action so as to obtain Occupancy Certification.

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***

The Consultant to provide an organogram showing his team and lines of reporting.

### **Provision of bonds and guarantees**

Bonds and guarantees not required, however, Consultant to provide a copy of their Professional Indemnity insurance

### **Documentation control and retention**

#### **Identification and communication**

Employer to advise on the drawings numbering system to be used. Formal communication will be in the form of email, formal instructions will only be in written format.

#### **Retention of documents**

The Consultant to retain copies of drawings, specifications, reports and other documents which record the services for a duration of five (5) years.

### **Records and forecasting of expenses**

Consultant to provide a payment schedule based on the activity schedule for the duration of the contract.

### **Invoicing and payment**

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

[List them]

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;

- (add other as required)

[Add procedures for invoice submission and payment (e. g. electronic payment instructions)]

### **Contract change management**

Any changes to the contract scope will be dealt with in accordance to the requirements of the compensation event clause. Any changes to the Consultant's team, Employer's Agent must be informed in writing.

## Inclusions in the programme

Consultant to provide a schedule detailing sequence of activities and timelines for the works to be carried out.

## Quality management

### System requirements

Consultant to provide a Quality Management Policy and Plan, together with the applicable ISO certification, specific to this contract.

The *Consultant* shall comply with the quality requirements contained in Annexure A (The Employer's Quality Specifications) to this Scope.

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

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

Employer to retain information provided by the *Consultant* for use as and when required.

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

Consultant to not use information for projects other than this one.

### Transfer of rights if Option X 9 applies

The *Consultant* to transfer the rights of all material produced in this project to the Employer upon completion. *Consultant* shall not challenge or assist any other party challenging at any time the validity or ownership of any of the intellectual property rights relating to the material created and developed for this contract.

## Health and safety

The *Consultant* shall at all times comply with the health and safety requirements prescribed by law as they may apply to the *services*. *Consultant* to provide a Health and Safety Policy and Plan specific to this contract. *Consultant* to further carry out a risk assessment for this contract.

The *Consultant* shall comply with the health and safety requirements contained in Annexure B (The Employer's SHE Specification) to this Scope.

## Procurement

### BBBEE and preferencing scheme

### Other constraints

Delete if not required or state any other constraints that may be applicable to people employed by the <i>Consultant</i> and change the heading to suit the subject matter.
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### Preferred sub consultants

No preferred sub consultants.

### **Limitations on subcontracting**

Consultant shall not subcontract more than 30% of the work.

### **Attendance on Sub consultants**

The Consultant shall manage their sub consultants at their own cost and attendance shall not be applicable.

### **Correction of Defects**

Following review by Employer, all corrections shall be communicated in writing and the Consultant will be required to attend to these within 7 working days.

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

This part of the Scope addresses constraints, facilities, services and rules applicable to the *Consultant* whilst he is doing work on the *Employer's* property. Delete this section if not applicable.

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

Simmerpan complex has perimeter security and access control at all entrances, for 24hours. All persons and vehicles entering or exiting Simmerpan site may be subjected to searches and the Employer reserves the right to refuse access to the site, to any person not meeting security or access requirements. Employer will provide access permit as and when required.

The Contractor's Personnel and any visitors on the Site must be in possession of a valid identification card.

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

Consultant will be expected to carry out inspections within normal working hours (08:00 till 16:30, Monday to Friday). Consultant would not be expected to work during weekends unless instructed by the Employer. Records of all inspections and site visits to be kept by Consultant and available for assessment by the Employer at any time.

### **Cooperating with and obtaining acceptance of Others**

The Consultant shall cooperate with Eskom Land Surveyors and Engineers during the execution of their work. The Consultant will also have to liaise with Ekurhuleni Municipality for inspections and approvals.

### **Things provided by the *Employer***

The Employer will provide meeting facilities during inspection.



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
		Land survey scan and report