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NEC3 Professional Services Contract (PSC3)

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| **Contract between** | **Eskom Holdings SOC Limited**  **(Reg No. 2002/015527/06)** | |
| **and** | **[Insert at award stage]**  **(Reg No. \_\_\_\_\_\_\_\_\_\_\_ )** | |
| **for** | **Procuring core, scarce, critical, and specialised skills/positions at Senior Management and Executive levels** | |
|  |  | |
| **Contents:** |  | **No of pages** |
| **Part C1** | **Agreements & Contract Data** | **[●]** |
| **Part C2** | **Pricing Data** | **[●]** |
| **Part C3** | **Scope of Work: The Scope** | **[●]** |
|  |  |  |
| **CONTRACT No.** | **[Insert at award stage]** | |
|  |  | |
|  |  | |
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**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 *Employer*** | **[●]** |
| **C1.2b** | **Contract Data provided by the *Consultant***  **[to be inserted from Returnable Documents at award stage]** | **[●]** |
| **C1.3** | **Securities proforma** | **[●]** |
|  |  |  |

C1.1 Form of Offer & Acceptance

## Offer

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

**Procuring core, scarce, critical, and specialised skills/positions at Senior Management and Executive levels.**

The tenderer, identified in the Offer signature block, has

|  |  |
| --- | --- |
| either | 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. |
| *or* | examined the draft contract as listed in the Acceptance section and agreed to provide this Offer. |

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

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

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

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signature(s) |  |  |  | |
| Name(s) |  |  |  | |
| Capacity |  |  |  | |
| **For the tenderer:** |  | | | |
| Name & signature of witness | *(Insert name and address of organisation)* |  | 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 original copy of this document, including the Schedule of Deviations (if any).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signature(s) |  |  |  | |
| Name(s) |  |  |  | |
| Capacity |  |  |  | |
| for the Employer |  | | | |
| Name & signature of witness | *(Insert name and address of organisation)* |  | Date |  |

## Schedule of Deviations

Note:

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

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

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

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

|  |  |  |  |
| --- | --- | --- | --- |
|  | For the tenderer: |  | For the Employer |
| Signature |  |  |  |
| Name |  |  |  |
| Capacity |  |  |  |
| On behalf of | *(Insert name and address of organisation)* |  | *(Insert name and address of organisation)* |
| Name & signature of witness |  |  |  |
| Date |  |  |  |

C1.2 PSC3 Contract Data

# Part one - Data provided by the *Employer*

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

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
2. Whenever a cell is shaded in the left hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row. Where the following symbol is used “**[●]” -** data is required to be inserted relevant to the specific option selected.]

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

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Clause | | Statement | Data | | | | | |
| 1 | | General |  | | | | | |
|  | | The *conditions of contract* are the core clauses and the clauses for main Option |  | | | | | |
|  | |  | **A: Priced contract with activityschedule** | | | | | |
|  | | dispute resolution Option | **W1: Dispute resolution procedure** | | | | | |
|  | | and secondary Options |  | | | | | |
|  | |  | **X1: Price adjustment for inflation** | | | | | |
|  | |  | **X2 Changes in the law** | | | | | |
|  | |  | **X7: Delay damages** | | | | | |
|  | |  | **X9: Transfer of rights** | | | | | |
|  | |  | **X10 *Employer*’s *Agent*** | | | | | |
|  | |  | **X11: Termination by the *Employer*** | | | | | |
|  | |  | X18: Limitation of liability | | | | | |
|  | |  | X20 Key Performance Indicators | | | | | |
|  | |  | Z: *Additional conditions of contract* | | | | | |
|  | | of the NEC3 Professional Services Contract (June 2005)[[1]](#footnote-1) with amendments June 2006 |  | | | | | |
| 10.1 | | The *Employer* is (Name): | **Eskom Holdings SOC Limited (reg no: 2002/015527/06), a juristic person 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. | **[●]** | | | | | |
|  | | Fax No. | **[●]** | | | | | |
| 11.2(9) | | The *services* are | **Procuring core, scarce, critical, and specialised skills/positions at Senior Management and Executive levels.** | | | | | |
| 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 *law of the contract* is the law of | **the Republic of South Africa** | | | | | |
| 13.1 | | The *language of this contract* is | **English** | | | | | |
| 13.3 | | The *period for reply* is | **[●] weeks** | | | | | |
| 13.6 | | The *period for retention* is | **[●] years following Completion or earlier termination.** | | | | | |
| 2 | | The Parties’ main responsibilities |  | | | | | |
| 25.2 | | The *Employer* provides access to the following persons, places and things | **access to** | | | | ***access date*** | |
|  | |  | **1** | **[●]** | | | **[●]** | |
|  | |  | **2** | **[●]** | | | **[●]** | |
|  | |  | **3** | **[●]** | | | **[●]** | |
| 3 | | Time |  | | | | | |
| 31.2 | | The *starting date* is. | **[●]** | | | | | |
| 11.2(3) | | The *completion date* for the whole of the *services* is. | **[●].** | | | | | |
| 11.2(6) | | The *key date*s and the *condition*s to be met are: | ***Condition* to be met** | | | ***key date*** | | |
|  | |  | **1** | **[●]** | | **[●]** | | |
|  | |  | **2** | **[●]** | | **[●]** | | |
|  | |  | **3** | **[●]** | | **[●]** | | |
| 31.1 | | The *Consultant* is to submit a first programme for acceptance within | **[●] weeks of the Contract Date.** | | | | | |
| 32.2 | | The *Consultant* submits revised programmes at intervals no longer than | **[●] weeks.** | | | | | |
| 4 | | Quality |  | | | | | |
| 40.2 | | The quality policy statement and quality plan are provided within | **[●] weeks of the Contract Date.** | | | | | |
| 42.2 | | The *defects date* is | **[●] weeks after Completion of the whole of the *service*s.** | | | | | |
| 5 | | Payment |  | | | | | |
| 50.1 | | The *assessment interval* is | **between the [●] day of each successive month.** | | | | | |
| 50.3 | | The *expenses* stated by the *Employer* are | **Item** | | **Amount** | | | |
|  | |  | **[●]** | | **[●]** | | | |
|  | |  | **[●]** | | **[●]** | | | |
|  | |  | **[●]** | | **[●]** | | | |
|  | |  | **[●]** | | **[●]** | | | |
| 51.1 | | The period within which payments are made is | **[●] weeks.** | | | | | |
| 51.2 | | The *currency of this contract* is the | **South African Rand** | | | | | |
| 51.5 | | The *interest rate* is | **(i) zero percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and**  **(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *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 *service*s or earlier termination** | | | |
|  | | Liability for failure by the *Consultant* to use the skill and care normally used by professionals providing services similar to the *service*s | **Whatever the *Consultant* 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 *Consultant*) or loss of or damage to property arising from or in connection with the *Consultant*’s Providing the Services. | **Whatever the *Consultant* 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 *Consultant* 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 *Consultant’s* 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 *Consultant* deems necessary** | | | |
| 81.1 | | The *Employer* provides the following insurances | **Refer to Annexure A for details of insurance provided by the *Employer*.** | | | | | |
| 82.1 | | The *Consultant*’s total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | **The total of the Prices** | | | | | |
|  | | The *Consultant* provides these additional insurances. |  | | | | | |
|  | | 1 Insurance against: | **Whatever the *Consultant* deems necessary including cover provided for payment of deductibles** | | | | | |
| 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 |  | | | | | |
| **A** | | **Priced contract with activity schedule** |  | | | | | |
| 21.3 | | The *Consultant* prepares forecasts of the total of the *expenses* at intervals of no longer than | **[●] weeks.** | | | | | |
| 50.4 | | The *exchange rates* are those published in | **[●] on [●] (date).** | | | | | |
| 11 | | Data for Option W1 |  | | | | | |
| W1.1 | | The *Adjudicator* is (Name) | **Either state the name of the person selected & complete the contact details below, or include the following statement as an alternative:**  **the person selected from the Eskom Panel of Adjudicators listed in Annexure C to this Contract Data by the Party intending to refer a dispute to him.** | | | | | |
|  | | Address | **[●]** | | | | | |
|  | | Tel No. | **[●]** | | | | | |
|  | | Fax No. | **[●]** | | | | | |
|  | | e-mail | **[●]** | | | | | |
| W1.2(3) | | The *adjudicator nominating body* is: | **the Chairman of the Joint Civils Division of the South African Institution of Civil Engineering or its successor body. (See** [**www.jointcivils.co.za**](http://www.jointcivils.co.za)**)**. | | | | | |
| W1.4(2) | | The *tribunal* is: | **arbitration** | | | | | |
| W1.4(5) | | The *arbitration procedure* 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   * if the Parties cannot agree a choice or * if the *arbitration procedure* 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** | **There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.** | | | | | |
| **X10** | | **The *Employer*’*s Agent*** |  | | | | | |
| X10.1 | | The *Employer*’*s Agent* is |  | | | | | |
|  | | Name: | **[●]** | | | | | |
|  | | Address | **[●]** | | | | | |
|  | | The authority of the *Employer*’*s Agent* is | **[●]** | | | | | |
| **X11** | | **Termination by the *Employer*** | **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 *Consultant’s* liability to the *Employer* for indirect or consequential loss is limited to: | **R0.00 (Zero Rand)** | | | | | |
| X18.2 | | The *Consultant’s* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to: | **The total of the Prices** | | | | | |
| X18.3 | | The *end of liability date* is | **five years after Completion of the whole of the *services*.** | | | | | |
| **X20** | | **Key Performance Indicators (not used when Option X12 also applies)** |  | | | | | |
| X20.1 | | The *incentive schedule* for Key Performance Indicators is in | **[●]** | | | | | |
| X20.2 | | A report of performance against each Key Performance Indicator is provided at intervals of | **[●] months** | | | | | |
| **Z** | | **The *Additional conditions of contract* are** | **Z1 to Z11 always apply.** | | | | | |
|  |  | | | | | | |
| **Z1** | **Cession delegation and assignment** | | | | | | |
| Z1.1 | The *Consultant* does notcede, 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 and the Electricity Distribution 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 substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Consultant* in writing. | | | | | |
|  | |  | | | | | |
| **Z3** | | **Change of Broad Based Black Economic Empowerment (B-BBEE) status** | | | | | |
| Z3.1 | | Where a change in the *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 *service*s 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 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 *service*s 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 judicial management order granted against it. | | | | | |
|  | |  | | | | | |
| **Z11** | | **Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)** | | | | | |
| Z11.1 | | If the *Consultant’s* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant’s* obligation to Provide the Services. | | | | | |
| Z11.2  Z12  Z12.1 | | 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.  **Non Solicitation clause**  Both Parties agrees not to utilize, engage, solicit for hire, or hire any individual who provided Services to Customer under this Agreement for a period of six (6) months after the termination of this Agreement under which the individual performed the Services.  However, should a position be advertised in the press, and the individual gets appointed as a result of his/her response to said advert, Eskom will not be held liable for any placement fees | | | | | |
|  | |  | | | | | |

# Annexure A: Notes to Consultants

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

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

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

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

1. 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.

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

[**http://www.eskom.co.za/live/content.php?Item\_ID=9248**](http://www.eskom.co.za/live/content.php?Item_ID=9248)

1. 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 sometime after Completion of the whole of the *service*s. 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.

# Annexure B: The *Employer*’s Panel of Adjudicators

The following persons listed in alphabetical order of their surname have indicated their willingness to be included in the Eskom Panel of Adjudicators. Their CV’s may be obtained by using the contact details provided.

|  |  |  |
| --- | --- | --- |
| Name | Location | Contact details (phone & e mail) |
| Nigel ANDREWS | Gauteng | +27 11 836-6760  nigela@quoin.net |
| Andrew BAIRD | Gauteng | +27 11 803 3008  [andrewbaird@ecsconsult.co.za](mailto:andrewbaird@ecsconsult.co.za) |
| Christopher BINNINGTON | Gauteng | +27 11 888-6141  [cdb@bca.co.za](mailto:cdb@bca.co.za) |
| Peter HIGGINS | UK | +44 1293 873 868  peterhiggins@pdconsult.co.uk |
| Bruce LEECH | Gauteng | +27 11 290 4000  leech@counsel.co.za |
| Nigel NILEN | Gauteng | +27 11 465 3601; nilences@global.co.za |
| Peter THURLOW | Gauteng | +27 11 787 6226  [info@thurlowassoc.com](mailto:info@thurlowassoc.com) |

**Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management, by contacting Leighton Itholeng 011 800 4031 or [Leighton.Itholeng@eskom.co.za]**

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 (June 2005) and the relevant parts of its Guidance Notes (PSC3-GN)[[2]](#footnote-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 146 to 150 of the PSC3 Guidance Notes. 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.
2. Whenever a cell is shaded in the left hand column it denotes this data is optional 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 *Consultant* is (Name): |  | | | |
|  | Address |  | | | |
|  | Tel No. |  | | | |
|  | Fax No. |  | | | |
| 22.1 | The *Consultant’s* *key person*s are: |  | | | |
|  | 1 Name: |  | | | |
|  | Job: |  | | | |
|  | Responsibilities: |  | | | |
|  | Qualifications: |  | | | |
|  | Experience: |  | | | |
|  | 2 Name: |  | | | |
|  | Job |  | | | |
|  | Responsibilities: |  | | | |
|  | Qualifications: |  | | | |
|  | Experience: |  | | | |
| Info. |  | **CV's (and further *key persons* data including CVs) are appended to Tender Schedule entitled****.** | | | |
| 11.2(3) | The *completion date* for the whole of the *services* is |  | | | |
| 11.2(10) | The following matters will be included in the Risk Register |  | | | |
| 11.2(13) | The *staff rates* are: | **name/designation** | | **rate** | |
|  | **Either complete here or cross refer to a schedule in Part C2.2** |  | |  | |
|  |  |  | |  | |
|  |  |  | |  | |
| 25.2 | The *Employer* provides access to the following persons, places and things | **access to** | | | ***access date*** |
|  |  | **1** |  | |  |
|  |  | **2** |  | |  |
|  |  | **3** |  | |  |
| 31.1 | The programme identified in the Contract Data is |  | | | |
| 50.3 | The *expenses* stated by the *Consultant* are | **item** | | **amount** | |
|  |  |  | |  | |
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|  |  |  | |  | |
| **A** | **Priced contract with activity schedule** |  | | | |
| 11.2(14) | The *activity schedule* is in |  | | | |
| 11.2(18) | The tendered total of the Prices is | **(in figures)**  **(in words), excluding VAT** | | | |

Part 2: Pricing Data

**PSC3 Option A**

|  |  |  |
| --- | --- | --- |
| **Document reference** | **Title** | **No of pages** |
| C2.1 | Pricing assumptions: Option A | **[●]** |
| C2.2 | The *activity schedule* | **[●]** |

**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:

|  |  |  |
| --- | --- | --- |
| **Identified and defined terms** | 11  11.2 | (14) The Activity Schedule is the *activity schedule* unless later changed in accordance with this contract. |
|  |  | (15) The Price for Services Provided to Date is the total of the Prices for the activities which have been completed. A completed activity is one which is without Defects which would delay immediately following work. |
|  |  | (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. |

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.

# 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.

C2.2 the *activity schedule*

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 (excluding VAT)** |
|  |  |  |  |
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|  |  |  |  |
|  |  | **Total of the Prices** |  |

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** |
|  |  |  |
|  |  |  |
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# The *expenses* are:

|  |  |  |
| --- | --- | --- |
| **No.** | **Expense item** | **Amount / rate excluding VAT** |
|  |  |  |
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Part 3: Scope of Work

|  |  |
| --- | --- |
| **Document reference** | **Title** |
|  | This cover page |
| C3.1 | *Employer*’s Scope |
| C3.2 | *Consultant’s* Scope  (insert at award stage or delete if not applicable) |
|  |  |
|  |  |
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C3.1: Employer’s scope

**Contents**

When the document is complete, insert a ‘Table of Contents’. To do this go to: Insert, → Reference, → Index and tables → Table of Contents. Three levels and the title (but not the subtitle) may be shown if the formats used in this template are retained.

Otherwise insert list of contents manually.

**The scope of work includes but is not limited to:**

* Attend and obtain a briefing from Eskom.
* Prepare the talent sourcing strategy for approval by Eskom.
* Source suitably qualified candidates (nationally and or internationally, subject to briefing instruction from the client) with the potential to be considered for executive level (F and E band levels) positions.
* Conduct background screening inclusive of print and social media analysis , pre-employment checks, verifications and validation of ID's, driver license, qualifications, criminal checks, business interest and board memberships etc. as well as provide proof to Eskom in a form of formal reports from reputable agencies.
* Provide CVs of pre-screened candidates in line with the job profile and briefing by Eskom.
* Arrange and set up interviews including invitation management.
* Form part of the interview panel (where required by the Client).
* Provide the candidate’s remuneration package to Eskom.
* Facilitate the release of the candidate from current employer (where necessary).
* Keep the candidate informed of the recruitment process and outcomes.
* Advertise jobs on appropriate platforms or publications on behalf of Eskom as a standalone service as an when required
* Response handling and preliminary shortlisting as a standalone service when required
* Conduct psychometric assessments as a standalone service on behalf of Eskom when required

# 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, sub consulting, 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 \_\_\_ | **[●]** | *Employer’s Agent* , *Consultant* 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.

## 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

Clause 70.1 states that the *Employer* has the right to use the material provided by the *Consultant* for the purpose stated in the Scope. State here what your intended purpose is.

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

Read clause 70.4 first and if you want to restrict the *Consultant*’s use of material provided by him for this contract on other work state these here.

### Transfer of rights if Option X 9 applies

Only use this heading if Option X9 is included in the *conditions of contract*.

Read the first sentence of Option X9 and then state whether there is any exception to the ownership rights as may have been agreed with the *Consultant* prior to contract award. For example, ownership of some of the material may not be required or is excluded, or the ownership may be the subject of a separate licence agreement. If there are no exceptions, state there is no exception.

If other rights - per the second sentence of X9.1 - are required state these here.

The third sentence of X9.1 requires that the *Consultant* provide to the *Employer* the documents which transfer these rights to the *Employer*. It would be sensible to specify here exactly what documents the *Employer* is expecting the *Consultant* to provide and may be even in what form they are to be provided.

State any other constraints on the *Consultant* relating to the transfer of rights. For example that the *Consultant* shall not challenge or assist any other party challenging at any time the validity or ownership of any of the intellectual property rights relating to the material created and developed for this contract.

## 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 *service*s. 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 *service*s 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 *service*s.

[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

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

Sites such as Koeberg Nuclear Power Station have very strict entrance requirements which tendering consultants need to allow for in their prices, and the *Consultant* has to comply with. State these or similar requirements here. In addition to the above there may be other restrictions once on the site.

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

Restrictions and hours of work may apply on some sites. It is very important that the *Consultant* keeps records of his people working on the *Employer*’s property, including those of his Subconsultants. State that the *Employer’s Agent* shall have access to these records at any time. These records may be needed when assessing compensation events.

## 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*

Provide details of any facilities and equipment made available by the *Employer* for the *Consultant*’s use during performance of the *service*s. State any conditions relating thereto.

# 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** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

1. Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 [↑](#footnote-ref-1)
2. Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 [↑](#footnote-ref-2)