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NEC3 Term Service Contract (TSC3)

|  |  |  |
| --- | --- | --- |
| **Between** | **ESKOM HOLDINGS SOC Ltd**  **(Reg No. 2002/015527/30)** | |
| **and** | **[Insert at award stage]**  **(Reg No. \_\_\_\_\_\_\_\_\_\_\_)** | |
| **for** | **Provision of Electronic Distribution of Eskom Customer Documents (Financial and Correspondence) for a period of 5 Years.** | |
|  |  | |
| **Contents:** |  | **No of pages** |
| **Part C1** | **Agreements & Contract Data** | **[●]** |
| **Part C2** | **Pricing Data** | **[●]** |
| **Part C3** | **Scope of Work** | **[●]** |
|  |  |  |
| **CONTRACT No.** | **46000** | |
|  |  | |
|  |  | |
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PART C1: ￼AGREEMENTS & CONTRACT DATA

|  |  |  |
| --- | --- | --- |
| **Contents:** |  | **Page Number** |
| **C1.1** | **Form of Offer and 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 *Contractor***  **[to be inserted from Returnable Documents at award stage]** | **[●]** |
| **C1.3** | **Proforma Guarantees** | **[●]** |

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 Electronic Distribution of Eskom Customer Documents (Financial and Correspondence) for a period of 5 Years.

The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto and by submitting this Offer has accepted the Conditions of Tender.

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 *Contractor* 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.

Delete the row for the Options which do not apply

|  |  |  |
| --- | --- | --- |
| Options A | The offered total of the Prices exclusive of VAT is | **R [●]** |
|  | Sub total | **R [●]** |
|  | Value Added Tax @ 15% is | **R [●]** |
|  | The offered total of the amount due inclusive of VAT is[[1]](#footnote-1) | **R [●]** |
|  | (in words) **[●]** | |

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 *Contractor* 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 Contractor 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: Service Information

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

## Schedule of Deviations to be completed by the *Employer* prior to contract award

Note:

1. 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 TSC3 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. Some TSC3 options are always selected by Eskom Holdings SOC Ltd. The remaining TSC3 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. Where the following symbol is used “**[●]” -** data is required to be inserted relevant to the specific option selected.]

Completion of this 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 price list** | | | | |
|  | | | dispute resolution Option | | **W1: Dispute resolution procedure** | | | | |
|  | | | and secondary Options | |  | | | | |
|  | | |  | | **X1: ￼Price adjustment for inflation** | | | | |
|  | | |  | | **X2: ￼Changes in the law**  **X3: Multiple currencies** | | | | |
|  | | |  | | **X4: Parent company guarantee** | | | | |
|  | | |  | | **X13: ￼Performance Bond** | | | | |
|  | | |  | | **X14: Service Manager** | | | | |
|  | | |  | | **X16: Early Warning** | | | | |
|  | | |  | | **X17: ￼Low service damages** | | | | |
|  | | |  | | **X18: ￼Limitation of liability** | | | | |
|  | | |  | | **X19: ￼Task Order** | | | | |
|  | | |  | | Z: ￼ *Additional conditions of contract* | | | | |
|  | | | of the NEC3 Term Service Contract April 2013[[2]](#footnote-2) (TSC3) | | If 2005 Edition is to be used delete “April 2013” and replace with “June 2005 with amendments June 2006”. Always delete this note before finalising this Data | | | | |
| 10.1 | | | The *Employer* 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 8111** | | | | |
|  | | |  | |  | | | | |
| 10.1 | | | The *Service Manager* is (name): | | **Rebecca Shabalala** | | | | |
|  | | | Address | | **[●]** | | | | |
|  | | | Tel | | **[●]** | | | | |
|  | | | Fax | | **[●]** | | | | |
|  | | | e-mail | | **[●]** | | | | |
| 11.2(2) | | | The Affected Property is | | **[●]** | | | | |
| 11.2(13) | | | The *service* is | | Provision of Electronic Distribution of Eskom Customer Documents (Financial and Correspondence) for a period of 5 Years. | | | | |
| 11.2(14) | | | The following matters will be included in the Risk Register | | **[●]** | | | | |
| 11.2(15) | | | The Service Information is in | | **Part 3: Scope of Work ~~and all documents and drawings to which it~~** **~~makes reference.~~** | | | | |
| 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** | | | | |
| 2 | | | The *Contractor*’s main responsibilities | | **Data required by this section of the core clauses is also provided by the *Contractor* in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data** | | | | |
| 21.1 | | | The *Contractor* submits a first plan for acceptance within | | **[●] weeks of the Contract Date** | | | | |
| 3 | | | Time | |  | | | | |
| 30.1 | | | The *starting date* is. | | **[●]** | | | | |
| 30.1 | | | The *service period* is | | **[●]** | | | | |
| 4 | | | Testing and defects | | 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 Refer NEC3 TSC clause 4 | | | | |
| 5 | | | Payment | |  | | | | |
| 50.1 | | | The *assessment interval* is | | **Upon completion of tasks/monthly date?** | | | | |
| 51.1 | | | The *currency of this contract* is the | | **South African Rand/Foreign currency** | | | | |
| 51.2 | | | The period within which payments are made is | | **30/60 days on receipt of valid Tax Invoice** | | | | |
| 51.4 | | | The *interest rate* is | | **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 Limited (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** | | | | |
| 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**  **As per clause 6 of NEC3 TSC** | | | | |
| 7 | | | Use of Equipment Plant and Materials | | 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 **As per clause 7 of NEC3 TSC** | | | | |
| 8 | | | Risks and insurance | |  | | | | |
| 80.1 | | | These are additional *Employer*'s risks | | **1. [●]** | | | | |
|  | | |  | | **2. [●]** | | | | |
|  | | |  | | **3. [●]**  **As per clause 8 of NEC3 TSC** | | | | |
| 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.**  **As per clause 9 of NEC3 TSC** | | | | |
| 10 | | | Data for main Option clause | |  | | | | |
| **A** | | | **Priced contract with price list** | |  | | | | |
| 20.5 | | | The *Contractor* prepares forecasts of the final total of the Prices for the whole of the *service* at intervals no longer than | | **[●] weeks.** | | | | |
| **C** | | | **Target contract with price list** | |  | | | | |
| 11 | | | Data for Option W1 | |  | | | | |
| W1.1 | | | The *Adjudicator* | | **the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see** [**www.ice-sa.org.za**](http://www.ice-sa.org.za)**). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).** | | | |
| W1.2(3) | | | The *Adjudicator nominating body* is: | | **the Chairperson of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see** [**www.ice-sa.org.za**](http://www.ice-sa.org.za) **) or its successor body.** | | | | |
| 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 | | **Gauteng - 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 Chairperson 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 *base date* for indices is | | **30 days before** **tender close** | | | | |
|  | | | The proportions used to calculate the Price Adjustment Factor are: | | **proportion** | **linked to index for** | **Index prepared by** | | |
|  | | |  | | **0.85** | **StatsSA** | **StatsSA** | | |
|  | | |  | | **0.** | **[●]** | **[●]** | | |
|  | | |  | | **0.** | **[●]** | **[●]** | | |
|  | | |  | | **0.15** | **non-adjustable** |  | | |
|  | | |  | | **1.00** |  |  | | |
| **X2** | | | **Changes in the law** | | **There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.**  **Refer to NEC TSC Clause X2** | | | | |
| **X3** | | | **Multiple currencies**  **X3.1**  **X3.2** | | The *Contractor* is paid in currencies other than the *currency of this contract* for the items or activities listed in the Contract Data. The *exchange rates* are used to convert from the *currency* *of this contract* to other currencies.  Payments to the *Contractor* in currencies other than the *currency of this contract* do not exceed the maximum amounts stated in the Contract Data. Any excess is paid in the *currency* *of this contract*.  To be updated as per contract details – currency used, rate etc. | | | | |
| **X4** | | | **Parent Company Guarantee**  X4.1 | | If a parent company owns the *Contractor*, the *Contractor* gives to the *Employer* a guarantee by the parent company of the *Contractor*’s performance in the form set out in the Service Information. If the guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date.  If required | | | | |
| **X13** | | | **Performance bond** | |  | | | | |
| X13.1 | | | The amount of the performance bond is  The *Contractor* gives the *Employer* a performance bond, provided by a bank or insurer which the *Service Manager* has accepted, for the amount stated in the Contract Data and in the form set out in the Service Information. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date. | |  | | | | |
| **X17** | | | **Low service damages (**State penalties applicable for low service) | |  | | | | |
| X17.1 | | | The *service level table* is in  If a part of the *service* does not meet the service level stated in the *service level table*, the *Contractor* pays the amount of low service damages stated in the *service level table*. | | **Write into contract what and how low service damages will be recovered from supplier** | | | | |
| **X18** | | | **Limitation of liability** | |  | | | | |
| X18.1 | | | The *Contractor*’s liability to the *Employer* for indirect or consequential loss is limited to | | **R0.0 (zero Rand)** | | | | |
| X18.2 | | | For any one event, the *Contractor*’s liability to the *Employer* for loss of or damage to the *Employer*’s property is limited to | | **the amount of the deductibles relevant to the event** | | | | |
| X18.3 | | | The *Contractor*’s liability for Defects due to his design of an item of Equipment is limited to | | **The greater of**   * **the total of the Prices at the Contract Date**   **and**   * **the amounts excluded and unrecoverable from the *Employer*’s insurance (other than the resulting physical damage to the *Employer*’s property which is not excluded) plus the applicable deductibles** | | | | |
| X18.4 | | | The *Contractor*’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 other than for the additional excluded matters.**  **The *Contractor’s* total liability for the additional excluded matters is not limited.**  **The additional excluded matters are amounts for which the *Contractor* is liable under this contract for**   * **Defects due to his design,** **plan and specification,** * **Defects due to manufacture and fabrication outside the Affected Property,** * **loss of or damage to property (other than the *Employer*’s property, Plant and Materials),** * **death of or injury to a person and** * **infringement of an intellectual property right.** | | | | |
| X18.5 | | | The *end of liability date* is | | **[●] months after the end of the *service period*.**  **Refer Clause X18 NEC3 TSC** | | | | |
| **X19** | | | **Task Order** | |  | | | | |
| X19.1 | | | Identified and defined terms | | (1) A Task is work within the *service* which the *Service Manager* may instruct the *Contractor* to carry out within a stated period of time.  (2) A Task Order is the *Service Manager*’s instruction to carry out a Task.  (3) Task Completion is when the *Contractor* has done all the work in the Task and corrected Defects which would have prevented the *Employer* or Others from using the Affected Property and Others from doing their work.  (4) Task Completion Date is the date for completion stated in the Task Order unless later changed in accordance with this contract.  Refer NEC3 TSC Clause X19 | | | | |
| **Z** | | | **The *additional conditions of contract* are** | | **Z1 to Z14 always apply.** | | | | |
|  | | |  | | | | | | |
| **Z1** | | **Cession delegation and assignment** | | | | | | |
| Z1.1 | | The *Contractor* 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 *Contractor* 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 *Contractor* 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 *Service Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf. | | | | | | |
| Z2.3 | | The *Contractor* 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 *Contractor* in writing. | | | | | | |
|  | |  | | | | | | |
| **Z3** | | | **Change of Broad Based Black Economic Empowerment (B-BBEE) status** | | | | | |
| Z3.1 | | | Where a change in the *Contractor’s* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor*’s B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change. | | | | | |
| Z3.2 | | | The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Service Manager* within thirty days of the notification or as otherwise instructed by the *Service Manager*. | | | | | |
| Z3.3 | | | Where, as a result, the *Contractor’s* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor*’s obligation to Provide the Service. | | | | | |
| Z3.4 | | | Failure by the *Contractor* 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 P1, P2 and P4 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93. | | | | | |
|  | | |  | | | | | |
| **Z4** | | **Confidentiality** | | | | | | |
| Z4.1 | | The *Contractor* 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 *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient. | | | | | | |
| Z4.2 | | If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*. | | | | | | |
| Z4.3 | | In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, 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 *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed. | | | | | | |
| Z4.4 | | The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*. | | | | | | |
| Z4.5 | | The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause. | | | | | | |
|  | |  | | | | | | |
| **Z5** | | **Waiver and estoppel: Add to core clause 12.3:** | | | | | | |
| Z5.1 | | Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties*,* the *Service Manager* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing. | | | | | | |
|  | |  | | | | | | |
| **Z6** | | | **Health,** **safety and the environment: Add to core clause 27.4** | | | | | |
| Z6.1 | | | The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:   * accepts that the *Employer* may appoint him as the “Principal Contractor” (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) (“the Construction Regulations”) for the Affected Property; * warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and * undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor’s* direction and control, likewise observe and comply with the foregoing. | | | | | |
| Z6.2 | | | The *Contractor*, in and about the execution of the *service*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor’s* direction and control, likewise observe and comply with the foregoing. | | | | | |
|  | |  | | | | | | |
| **Z7** | | **Provision of a Tax Invoice and interest****. Add to core clause 51** | | | | | | |
| Z7.1 | | Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer*'s procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate. | | | | | | |
| Z7.2 | | If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made. | | | | | | |
| Z7.3 | | The *Contractor* (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 the last paragraph of core clause 61.3 and replace with:  If the *Contractor* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices. | | | | | | |
|  | |  | | | | | | |
| **Z9** | | ***Employer’s* limitation of liability** | | | | | | |
| Z9.1 | | The *Employer’s* liability to the *Contractor* for the *Contractor’s* indirect or consequential loss is limited to R0.00 (zero Rand) | | | | | | |
| Z9.2 | | The *Contractor*’s entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer*’s liability under the indemnity is limited to compensation as provided for in core clause 63 and X19.11 if Option X19 Task Order applies to this contract. | | | | | | |
|  | |  | | | | | | |
| **Z10** | | **Termination: Add to core clause 91.1, 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** | **Ethics** | | | | | | |
| For the purposes of this Z-clause, the following definitions apply: | | | | | | | |
| **Affected Party** | | | | means, as the context requires, any party, irrespective of whether it is the *Contractor* or a third party, such party’s employees, agents, or Subcontractors or Subcontractor’s employees, or any one or more of all of these parties’ relatives or friends, | | | |
| **Coercive Action** | | | | means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally, | | | |
| **Collusive Action** | | | | means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally, | | | |
| **Committing Party** | | | | means, as the context requires, the *Contractor*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor’s employees, | | | |
| **Corrupt Action** | | | | means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party, | | | |
| **Fraudulent Action** | | | | means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation, | | | |
| **Obstructive Action** | | | | means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and | | | |
| **Prohibited Action** | | | | means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action. | | | |
| Z11.1 | A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof. | | | | | | |
| Z11.2 | The *Employer* may terminate the *Contractor*’s obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor*’s obligation to Provide the Services for this reason. | | | | | | |
| Z11.3 | If the *Employer* terminates the *Contractor*’s obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2. | | | | | | |
| Z11.4 | A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation. | | | | | | |

**Z12 Insurance**

**Z \_12\_.1 Replace core clause 83 with the following:**

|  |  |  |
| --- | --- | --- |
| **Insurance cover** | 83 |  |
|  | 83.1 | When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force. |
|  | 83.2 | The *Contractor* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.   |  |  |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | | **INSURANCE TABLE A**   |  |  | | --- | --- | | **Insurance against** | **Minimum amount of cover or minimum limit of indemnity** | | Loss of or damage caused by the *Contractor* to the *Employer*’s property | The replacement cost where not covered by the *Employer*’s insurance.  The *Employer*’s policy deductible as at Contract Date, where covered by the *Employer*’s insurance. | | Loss of or damage to Plant and Materials | The replacement cost where not covered by the *Employer*’s insurance.  The *Employer*’s policy deductible as at Contract Date, where covered by the *Employer*’s insurance. | | Loss of or damage to Equipment | The replacement cost where not covered by the *Employer*’s insurance.  The *Employer*’s policy deductible as at Contract Date, where covered by the *Employer*’s insurance. | | The *Contractor*’s liability for loss of or damage to property (except the *Employer*’s property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor*’s Providing the Service | **Loss of or damage to property**  The replacement cost  **Bodily injury to or death of a person**  The amount required by the applicable law. | | Liability for death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract | The amount required by the applicable law | | |
|  |  |  |
|  |  |  |

**Z \_\_12.2 Replace core clause 86 with the following:**

|  |  |  |
| --- | --- | --- |
| **Insurance by the *Employer*** | 86 |  |
|  | 86.1 | The *Employer* provides the insurances stated in the Insurance Table B |
|  |  |  |
|  |  | **INSURANCE TABLE B**   |  |  | | --- | --- | | **Insurance against or name of policy** | **Minimum amount of cover or minimum limit of indemnity** | | Assets All Risk | Per the insurance policy document | | Contract Works insurance | Per the insurance policy document | | Environmental Liability | Per the insurance policy document | | General and Public Liability | Per the insurance policy document | | Transportation (Marine) | Per the insurance policy document | | Motor Fleet and Mobile Plant | Per the insurance policy document | | Terrorism | Per the insurance policy document | | Cyber Liability | Per the insurance policy document | | Nuclear Material Damage and Business Interruption | Per the insurance policy document | | Nuclear Material Damage Terrorism | Per the insurance policy document | |

|  |  |  |
| --- | --- | --- |
| **Z13** | **Nuclear Liability** | |
| Z13.1 | The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa and is the holder of a nuclear licence in respect of the KNPS. | |
| Z13.2 | The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*. | |
| Z13.3 | Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*. | |
| Z13.4 | The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter. | |
| Z13.5 | The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned. | |
|  |  | |
| **Z14** | **Asbestos** | |
| For the purposes of this Z-clause, the following definitions apply: | | |
| **AAIA** | | means approved asbestos inspection authority. |
| **ACM** | | means asbestos containing materials. |
| **AL** | | means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL. |
| **Ambient Air** | | means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet. |
| **Compliance Monitoring** | | means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard’s requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles. |
| **OEL** | | means occupational exposure limit. |
| **Parallel Measurements** | | means measurements performed in parallel, yet separately, to existing measurements to verify validity of results. |
| **Safe Levels** | | means airborne asbestos exposure levels conforming to the Standard’s requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles. |
| **Standard** | | means the *Employer*’s Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles. |
| **SANAS** | | means the South African National Accreditation System. |
| **TWA** | | means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e., 10-minute TWA. |
| Z14.1 | The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) (“Asbestos Regulations”). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM. | |
| Z14.2 | Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor*’s expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan. | |
| Z14.3 | The *Employer* manages asbestos and ACM according to the Standard. | |
| Z14.4 | In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe. | |
| Z14.5 | The *Contractor*’s personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable. | |
| Z14.6 | The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001. | |
| Z14.7 | Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer*’s expense, and conducted in line with South African legislation. | |
| **Z15** | **Supplier Obligations**  **Supplier Development Localization and Industrialization Obligations as per Rojane** | |

**Z16 POPIA**

Z16.1 For the purposes of this clause 1, the terms “Data Subject”, “Personal Information” and “Regulator” and “Responsible Party” have the meanings given to them in the Protection of Personal Information Act, 2013 (“**POPIA**”).

Z16.2 Each Party acknowledges that it is an independent Responsible Party in relation to the Personal Information processed in terms of this Agreement (“**Shared Personal Information**”) and that it determines the purposes for which and the manner in which the Shared Personal Information is, or is to be, processed.

Z16.3 Each Party shall comply at all times with POPIA when performing its obligations under this Agreement and shall not perform any of their respective obligations under this Agreement in such a way as to cause the other Party to breach any of that other Party's obligations under POPIA.

Z16.4 Each Party shall ensure that, in respect of all Shared Personal Information provided to the other Party and in respect of the use of that Shared Personal Information under this Agreement: -

Z16.4.1 all necessary fair processing notices have been provided to and consents obtained from Data Subjects by that Party, where required, in terms of POPIA, including to specify that the other Party is also a Responsible Party in respect of the Data Subject’s Personal Information and to provide a link (https://www.eskom.co.za/about-eskom/website-terms-and-conditions/) to the other Party’s Privacy Statement or to include a statement that the other Party’s Privacy Statement can be found on the other Party’s corporate website; and

Z16.4.2 all necessary steps have been taken to ensure that Shared Personal Information has been collected and processed in accordance with the principles set out in POPIA, including in particular those relating to:

* + - 1. lawful, fair and transparent Processing;
      2. specified, legitimate and explicit purposes of Processing; and
      3. adequate, relevant and not excessive Processing.

Z16.5 If either Party receives any complaint, notice or communication from the Regulator which relates directly to:

Z16.5.1 the other Party’s Processing of the Shared Personal Data; or

Z16.5.2 a potential failure by the other Party to comply with POPIA in respect of the activities of the Parties under or in connection with this Agreement,

it shall, to the extent permitted by law, promptly notify the other Party and provide such information as it shall reasonably request in that regard.

Z16.6 If a Data Subject makes a written request to either Party to exercise any of their rights under POPIA, the receiving Party shall respond to that request in accordance with POPIA. To the extent the request concerns processing of Shared Personal Information undertaken by the other Party, the receiving Party shall:

Z16.6.1 promptly and without undue delay forward the request to the other Party; and

Z16.6.2 cooperate and provide reasonable assistance in relation to that request to enable the other Party to respond in accordance with POPIA.

Z16.7 Each Party acknowledges that the other Party may disclose Shared Personal Information to any Regulator or law enforcement authority with jurisdiction to request access to the Shared Personal Information.

Z16.8 Neither Party discloses or otherwise makes available the Personal Information to any third Party (including sub-contractors, but excluding its authorised employees who require access to such Personal Information strictly in order for the parties to carry out their obligations pursuant to this contract), unless a Party has provided, to a requesting Party, its prior written consent to do so, and the requesting Party has submitted to the other Party (consenting Party), to its satisfaction, a copy of a written contract or undertaking that the requesting Party has entered into with a third Party for the protection of Personal Information of the Data Subjects or unless there is an applicable exemption in terms of the law to process or further process the personal information.

Z16.9 The requesting Party indemnifies and holds harmless the consenting Party and its staff, successors, cessionaries, delegates, and assigns, from any and all losses, costs, expenses and damage, as well as penalties and fines arising from the requesting Party’s non-compliance with the provision of any relevant legislation applicable to Personal Information/data protection, as well as damage to the consenting Party’s reputation and costs of compliance as directed by the Regulator, including but not limited to publication of the data breach.

Z16.10 No Party may transfer Personal Information about a data subject to a third Party who is in a foreign country unless they have obtained the relevant written consent of the other Party and there is full compliance with section 72 of POPIA and any foreign applicable legislation.

Z16.11 The *Employer* or its agent shall have the right to audit the *Consultant* at any time, with reasonable notice, in order to determine whether the *Consultant* complies with the terms and conditions of this Agreement with regard to the protection of Personal Information and the security exercised by the *Consultant* relating thereto. Such audit rights shall include, but not be limited to, the right of access to systems, procedures and software, and inspection of the physical security of the *Consultants* premises. The *Consultant* shall offer reasonable assistance and co-operation to the *Employer* or its agent and/or its auditors or inspectors in the carrying out of such auditing exercise.

**Z17 Security measures**

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

Z17.2 The *Consultant* will take appropriate, reasonable technical and organisational measures to ensure that the integrity of the data including personal information in its possession or under its control is secure and that such data is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access by –

Z17.2.1 having regard to:

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

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

Z17.2.2 identifying all reasonably foreseeable internal and external risks and, at least once in every 12 (twelve) month period take all necessary steps at its own cost to –

Z17.2.2.1 identify all reasonably foreseeable internal and external risks relating to data in its possession or under its control and provide the *Employer* with a detailed written report using generally accepted auditing methodologies, within 30 (thirty) days of having completed its investigations, regardless as to whether the frequency of such investigations is 12 (twelve) monthly or more frequently. In the event that a significant finding is identified during the investigation which has a material impact on the *Employer*, the *Consultant* shall notify the *Employer* immediately and shall not wait for the final report to be completed;

Z17.2.2.2 with the *Employer* prior written approval, implement and maintain appropriate safeguards against the risks identified by the *Consultant*.

Z17.2.2.3 regularly verify that the safeguards which the *Consultant* have in place have been effectively implemented and provide the *Employer* with a written report within 30 (thirty) days of having completed each such verification exercise. In the event that a significant finding is identified during the investigation which has a material impact on the *Employer*, the *Consultant* shall notify the *Employer* immediately and shall not wait for the final report to be completed as well as with the *Employer’s* prior written approval, implement and maintain appropriate remedial steps to rectify the safeguards implemented within 72 (seventy two) hours The employer reserves the right to audit the effectiveness of such remedial actions.

Z17.2.2.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards, with all upgrades, which may have an impact on any data within the possession of the *Consultant* as a result of the Agreement, to be reported to the *Employer* in writing.

Z17.3 The *Employer* or its agent shall have the right to audit the *Consultant* at any time, with reasonable notice, in order to determine whether the *Consultant* complies with the terms and conditions of this Agreement with regard to complying with the requirements set forth in the Security Standards and in all other *Employer’s* policies provided. Such audit rights shall include, but not be limited to, the right of access to systems, procedures and software, and inspection of the physical security of the *Consultants* premises. The *Consultant* shall offer reasonable assistance and co-operation to the *Employer* or its agent and/or its auditors or inspectors in the carrying out of such auditing exercise.

**Z18 Notification of Security breach**

Z18.1 In the event of a security compromise or breach, the *Consultant* shall-

Z18.1.1 notify the *Employer* in writing, at [infosecurity@eskom.co.za](mailto:infosecurity@eskom.co.za) immediately, if possible, but no later than 24 hours of the *Consultant* becoming aware of or suspecting any unauthorized or unlawful activity:

Z18.1.1.1 at its own cost, take all necessary steps to mitigate the extent of the loss or risks of the data and to resolve the integrity of the affected information systems as quickly as possible.

Z18.1.1.2 furnish the *Employer* with details of the Data Subjects affected by the compromise and the nature and extent of the compromise, and if known, include details of the identity of the unauthorized person who may have accessed or acquired the Personal Information.

Z18.1.1.3 provide the *Employer* with a report on its progress in resolving the compromise but at least once per business day following the initial notification to the *Employer*, until such time as the compromise is resolved to the *Employer’s* satisfaction.

Z18.1.1.4 In consultation with the *Employer* and where required by law notify the South African Police Service; and/or the National Intelligence Agency; and any other regulatory bodies for example State Security Agency; and

Z18.1.1.5. only upon request by the *Employer*, or otherwise if required by law, notify the Regulator and/or the affected Data Subjects. Any such notification shall be in a form prescribed by the *Employer* or the Regulator, as the case may be, if applicable, and contain such information as is specified by the *Employer* and or the Regulator. Notwithstanding the foregoing, a notification to a Data Subject shall always include sufficient information to allow the Data Subject to take protective measures against the potential consequences of the compromise.

Z18.1.2 assist the *Employer* to comply with any requests for access to Personal Information received by the *Employer* from Data Subjects and, at the request of the *Employer*, the *Consultant* shall promptly provide the *Employer*  with a copy of any Personal Information held by the *Consultant in* relation to a specified Data Subject. The *Consultant* agrees that notwithstanding the confidentiality provisions of this Agreement, the *Employer* may disclose to a Data Subject that the *Consultant* has been or is involved in Processing such Data Subject's Personal Information.

Z18.1.3 provide reasonable evidence of the *Consultant’s* compliance with its obligations under this clause to the *Employer* on reasonable notice and request.

Z18.1.4 under instruction and authority of the *Employer*, and at no extra cost to the *Employer*, provide it with all assistance require d for the *Employer* to discharge its duties as Responsible Party relating to a requirement by the Regulator (a) for the *Employer* as Responsible Party to submit an independent auditor’s report or other information relating to interference by the Responsible Party with the Personal Information of a Data Subject, (b) that the *Employer* is processing Personal Information in accordance with legislation, or (c) that the Employer is otherwise compliant with any other relevant legislation;

Z18.1.5 at the request and option of the Employer, and to its satisfaction, promptly return or destroy all Personal Information in the possession or control of the Consultant, including in accordance with any specific retention, destruction and purging requirements as may be prescribed by the Employer.

C1.2 Contract Data

# Part two - Data provided by the *Contractor*

**[Instructions to the contract compiler: (delete this note before issue to tenderers with an enquiry)**

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.]

**Notes to a tendering contractor:**

1. Please read both the both the NEC3 Term Service Contract April 2013 and the relevant parts of its Guidance Notes (TSC3-GN)[[3]](#footnote-3) in order to understand the implications of this Data which the tenderer is required to complete.
2. 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.
3. Where a form field like this [     ] appears, data is required to be inserted relevant to the option selected. Click on the form field ***once*** and type in the data. Otherwise complete by hand and in ink.

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

|  |  |  |
| --- | --- | --- |
| Clause | Statement | Data |
| 10.1 | The *Contractor* is (Name): |  |
|  | Address |  |
|  | Tel No. |  |
|  | Fax No. |  |
| ~~11.2(8)~~ | ~~The~~ *~~direct fee percentage~~* ~~is~~ | **~~%~~** |
|  | ~~The~~ *~~subcontracted fee percentage~~* ~~is~~ | **~~%~~** |
| 11.2(14) | The following matters will be included in the Risk Register |  |
| 11.2(15) | The Service Information for the *Contractor*’s plan is in: | **As per SOW Part 3** |
| 21.1 | The plan identified in the Contract Data is contained in: | **As per approved task order** |
| 24.1 | The key people are: |  |
|  | 1 Name: |  |
|  | Job: |  |
|  | Responsibilities: |  |
|  | Qualifications: |  |
|  | Experience: |  |
|  | 2 Name: |  |
|  | Job |  |
|  | Responsibilities: |  |
|  | Qualifications: |  |
|  | Experience: |  |
|  |  |  |
|  |  | **CV's (and further key person's data including CVs) are in** **.** |
| **A** | **Priced contract with price list** |  |
| 11.2(12) | The *price list* is in |  |
| 11.2(19) | The tendered total of the Prices is | **R** |
| **C** | **Target contract with price list** |  |
| 11.2(12) | The *price list* is in |  |
| 11.2(20) | The tendered total of the Prices is | **R** |

C1.3 Forms of Securities

**Pro formas for Bonds & Guarantees if applicable**

For use with the NEC3 Term Service Contract (TSC3)

***[Note to contract compiler:***

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

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

Option X4: Parent company guarantee

Option X13: ￼Performance Bond

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

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

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

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

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

*(to be reproduced exactly as shown below on the letterhead of the Contractor’s Parent Company)*

|  |  |  |
| --- | --- | --- |
| **Eskom Holdings SOC Ltd**  **Megawatt Park**  **Maxwell Drive**  **Sandton**  **Johannesburg** | Date: |  |

Dear Sirs,

## Parent Company Guarantee for Contract No

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

|  |  |
| --- | --- |
| **Eskom Holdings SOC Ltd** | (the *Employer*) and |
| **{Insert registered name and address of the *Contractor*}** | (the *Contractor*), for |
| **{Insert details of the *works* from the Contract Data}** | (the *works*). |

|  |  |
| --- | --- |
| I/We the undersigned |  |
| on behalf of the *Contractor*’s parent company |  |
| of physical address |  |

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

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

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

|  |  |  |
| --- | --- | --- |
| Signature(s) |  |  |
| Name(s) (printed) |  |  |
| Position in parent company |  |  |
| Signature of Witness(s) |  |  |
| Name(s) (printed) |  |  |

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

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

Dear Sirs

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

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

1. In this Guarantee the following words and expressions shall have the following meanings:-
   1. “Bank” - means [●], [●] Branch, (Registration No. [●]); [Drafting Note: Name of Bank to be inserted]
   2. “Bank’s Address” - means [●]; [Drafting Note: Bank’s physical address to be inserted]
   3. “Contract” – means the written agreement relating to the Services, entered into between Eskom and the Contractor, 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]
   4. “Contractor” – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of Contractor to be inserted]
   5. “Eskom” - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30].
   6. “Expiry Date” - means the earlier of

* the date that the Bank receives a notice from Eskom stating that all amounts due from the Contractor as certified in terms of the contract have been received by Eskom and that the Contractor has fulfilled all his obligations under the Contract, or
* the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by Eskom
  1. “Guaranteed Sum” - means the sum of R [●] ([●] Rand);
  2. “Services” - means [insert as applicable.].

1. At the instance of the Contractor, we the undersigned \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_, in our respective capacities as \_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of Eskom, as security for the proper performance by the Contractor of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to Eskom, on written demand from Eskom received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.
2. A demand for payment under this guarantee shall be made in writing at the Bank’s address and shall:
   1. be signed on behalf of Eskom by a Group Executive, Divisional Executive, Senior General Manager or its delegate;
   2. state the amount claimed (“the Demand Amount’);
   3. state that the Demand Amount is payable to Eskom in the circumstances contemplated in the Contract.
3. 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:
   1. is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
   2. is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
4. The Bank’s obligations in terms of this Guarantee:
   1. shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
   2. shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between Eskom and the Contractor.
5. Eskom shall be entitled to arrange its affairs with the Contractor 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 Contractor or any variation under or to the Contract.
6. Should Eskom cede its rights against the Contractor to a third party where such cession is permitted under the Contract, then Eskom shall be entitled to cede to such third party the rights of Eskom under this Guarantee on written notification to the Bank of such cession.
7. This Guarantee:
   1. shall expire on the Expiry Date until which time it is irrevocable;
   2. is, save as provided for in 7 above, personal to Eskom and is neither negotiable nor transferable;
   3. shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
   4. shall be regarded as a liquid document for the purpose of obtaining a court order; and
   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.
   6. Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.
8. 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

**TSC3 Option A**

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

C2.1 Pricing assumptions: Option A

# How work is priced and assessed for payment

Clause 11 in NEC3 Term Service Contract (TSC3) core clauses and Option A states:

|  |  |  |
| --- | --- | --- |
| **Identified and defined terms** | 11  11.2 | (12) The Price List is the *price list* unless later changed in accordance with this contract. |
|  |  | (17) The Price for Services Provided to Date is the total of   * the Price for each lump sum item in the Price List which the *Contractor* has completed and * where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Contractor* has completed by the rate. |
|  |  | (19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate. |

This confirms that Option A is a priced contract where the Prices are derived from a list of items of service which can be priced as lump sums or as expected quantities of service multiplied by a rate or a mix of both.

# Function of the Price List

Clause 54.1 in Option A states: “Information in the Price List is not Service Information.” This confirms that instructions to do work or how it is to be done are not included in the Price List but in the Service Information. This is further confirmed by Clause 20.1 which states, “The *Contractor* Provides the Service in accordance with the Service Information.” Hence the *Contractor* does **not** Provide the Service in accordance with the Price List. The Price List is only a pricing document.

# Link to the *Contractor*’s plan

Clause 21.4 states “The *Contractor* provides information which shows how each item description on the Price List relates to the operations on each plan which he submits for acceptance.” Hence when compiling the *price list*, the tendering contractor needs to develop his first clause 21.2 plan in such a way that operations shown on it can be priced in the *price* *list* and result in a satisfactory cash flow in terms of clause 11.2(17).

# Preparing the *price list*

Before preparing the *price list*, both the *Employer* and tendering contractors should read the TSC3 Guidance Notes pages 14 and 15. In an Option A contract, either Party may have entered items into the *price list* either as a process of offer and acceptance (tendering) or by negotiation depending on the nature of the *service* to be provided. Alternatively the *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Contractor* to include in the *price list* to be prepared and priced by him.

It is assumed that in preparing or finalising the *price list* the *Contractor:*

* Has taken account of the guidance given in the TSC3 Guidance Notes relevant to Option A;
* Understands the function of the Price List and how work is priced and paid for;
* Is aware of the need to link operations shown in his plan to items shown in the Price List;
* Has listed and priced items in the *price list* which are inclusive of everything necessary and incidental to Providing the Service in accordance with the Service Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer’s* risk;
* Has priced work he decides not to show as a separate item within the Prices or rates of other listed items in order to fulfil the obligation to complete the *service* for the tendered total of the Prices.
* Understands there is no adjustment to items priced as lump sums if the amount, or quantity, of work within that item later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the (lump sum) Prices is as a result of a compensation event.

## Format of the *price list*

(From the example given in an Appendix within the TSC3 Guidance Notes)

Entries in the first four columns in the *price list* in section C2.2 are made either by the *Employer* or the tendering contractor.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tendering contractor enters the amount in the Price column only, the Unit, Expected Quantity and Rate columns being left blank.

If the *Contractor* is to be paid an amount for an item of work which is the rate for the work multiplied by the quantity completed, the tendering contractor enters the rate which is then multiplied by the Expected Quantity to produce the Price, which is also entered.

If the *Contractor* is to be paid a Price for an item proportional to the length of time for which a service is provided, a unit of time is stated in the Unit column and the expected length of time (as a quantity of the stated units of time) is stated in the Expected Quantity column.

Add pricing schedule

C2.2 the *price list*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item nr** | **Description** | **Unit** | **Expected Quantity** | **Rate** | **Price** |
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| --- | --- |
| The total of the Prices |  |

Part 3: Scope of Work

|  |  |  |
| --- | --- | --- |
| **Document reference** | **Title** | **No of pages** |
|  | This cover page | 1 |
| C3.1 | *Employer*’s Service Information |  |
| C3.2 | *~~Contractor~~*~~’s Service Information~~  ~~(insert at award stage or delete if not applicable)~~ |  |
|  |  |  |
|  |  |  |
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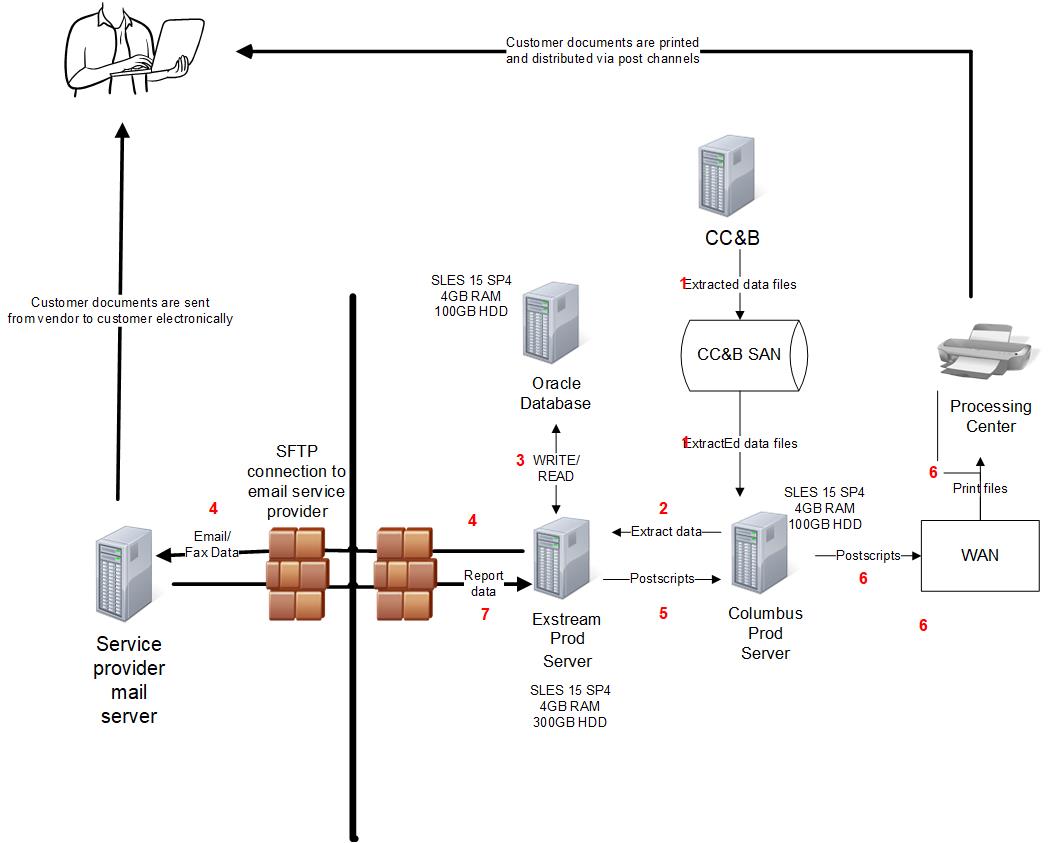
C3.1: Employer’s service Information

High level background

The Eskom Group Customer Service has implemented a facility whereby they can e-mail bills to their customers, both Large and Small Power Users. The facility is utilised by Billing personnel, Key Customer Executives, Processing Centre staff and Call Centre staff.

The information for bills, IT3B tax certificates and Correspondences resides in Customer Care and Billing (CC&B) system. The Multi-channel Bill Delivery (MCBD) solution receives the information from CC&B and produces a PDF file for Bills, IT3B tax certificates and Letters.

The third party is required to provide an Electronic Documents Distribution Services (EDDS) solution. The solution should allow Eskom to deliver customer’s documents and correspondence via email channel. The solution should be able to provide delivery status feedback for reconciliation. Integration is also required to the Multi-Channel Bill Delivery (MCBD) solution – the solution that is sending documents.

The Diagram below depicts the information flow: 

The average number of bills, statements, and letters:

Statements – 1000 per month.

Bills – SPU 220 000 per month / LPU 24000 per month

Disconnection Letters – 3200 per month

# Description of the *service*

As per scope

* 1. **The EDDS solution is required from the supplier to provide the following:**

1. **Email bills to customers where customers have requested an emailed bill.**

The software should automatically email an original bill image with 128-bit encryption as an attachment to a customer where the customer has specified that they require their bill to be emailed to them with no other hard copy produced.

Re-send functionality must be available for failed emails.

1. **Ad hoc Campaigns**

Business requires ad hoc email campaigns to be send out on request. The solution should be flexible to assist Eskom with ad hoc email campaigns as and when required.

1. Ability to re-send an original invoice if the initial email was sent to the wrong (incorrect) recipient:

The resend functionality exists in MCBD system, so the EDDS solution should have the capability also to re-send email that was sent to the wrong (incorrect) recipient.

1. Process documents destined for the same address / destination into one ‘package.’

The solution should allow for many documents addressed to the same recipient to be bundled together for transference in one email.

1. Provides integration of the delivery status report to MCBD solution.

The solution should provide a delivery status report back via the integration to the MCBD solution. Information will be used to do detail investigation or root cause analysis for all failed email. It will also be used to do analysis and management reporting.

1. Provides a Daily and Monthly reports of the emails.

The solution should provide daily and monthly reports for Delivery Feedback Report that will display delivery date, bills, emails, status and accounts that were delivered to the customers. The reports should be made available to Eskom as soon as the emails have been distributed to the customers.

The Failure Feedback report is also required daily, and it should display failure date, bills, emails, status, accounts and failure reason. The reports should be made available to Eskom as soon as the emails have not been delivered successfully.

1. Provide a diagnosis capability in case of failure of emails.

The solutions should have a capability to analyse failures which can be resolved by the supplier or advice Eskom to rectify the root cause of the failures. The failure description should be concise to expedite the resolution of email failures impacting Eskom customers.

1. Provide capability to receive emails via manual solution in the event of connection failure.

There is a requirement from the business to allow manual upload of emails to the EDDS solution if the automated solution is not working. The manual solution should have capability to receive data stored in any storage media and process emails. Turnaround times to manually process emails should be the same as the automated process.

1. In the event of a disaster to receive emails from Eskom Disaster Recovery site.

Eskom has an MCBD Disaster recovery environment which resides in Eskom Disaster recovery site. The EDDS solution is required to have a capability to receive email from the Disaster Recovery Site. This will only be applicable when Eskom declares a disaster and the EDDS solution team will be informed when such event occurs.

There is also a requirement to test the Disaster Recovery site which is done twice a year. EDDS solution Disaster recovery environment is also required to do this test as part of the coordinated Disaster Recovery test.

1. Adhere to the Eskom Service Level Agreements of sending out bills electronically.

Service level agreement (SLA) is required between Eskom and EDDS service provider to distribute emails within the agreed turnaround times. The SLA document will assist to manage Eskom, customer and service provider expectation. It should include but not limited to Service Description, Hours of operation, Key performance indicators, Penalty clause, Performance Reporting, exclusions and additional support.

The EDDS solution should distribute emails within the following timelines per customer segment.

|  |  |  |
| --- | --- | --- |
| **KPI** | **Target Hours** | **Target %** |
| Emails Delays –SPU | 24 Hours | 98% |
| Emails Delays –LPU | 24 Hours | 98% |
| Emails Delays –Top Customers | 4 Hours | 98% |

1. Provide web user interface to allow Eskom to view status of emails - historical documents for 12 months.

Eskom business requires an ability to view details including status of all emails from the EDDS solution. The web interface will be managed by the EDDS service provider. This will assist with accelerating the resolution of failures for emails that were not distributed successfully to customers.

1. Pro-active monitoring of the EDDS solution.

It is imperative that the EDDS solution is up and running to distribute emails to customers within the agreed timeframe. Proactive monitoring is required to identify possible risk and impact to the EDDS solution. Service provider should explain how the monitoring will be implemented and monthly report on monitoring feedback should be provided to Eskom.

1. EDDS Solution Testing and compliance to Eskom Governance processes.
2. Legislative Compliance.

The solution must comply fully to all the relevant South African Acts and Regulations:

|  |  |
| --- | --- |
| 1 | Establish and maintain a backup and restoration plan for all records and document each backup. |
| 2 | Test system backups on a regular basis to ensure media and information integrity. |
| 3 | Actions required by or request made in terms of laws and regulations must be logged, tracked, prioritised and addressed promptly |
| 4 | Comply with information privacy legislation, including Consumer Protection Act, Electronic Communication and Transactions Act |
| 5 | Identify and document the external laws, regulations, and rules with which the company must comply regarding its information systems, information technology, and the industry / sector in which it operates. |
| 6 | Ensure that the company maintains a compliance monitoring and audit policy. |
| 7 | Comply with Promotion of access to information legislation. |
| 8 | Establish and maintain procedures for managing the records of the system including preservation and disposition procedures. |
| 9 | Provide authorization controls on all transactions |
| 10 | Establish and maintain a security and internal control framework policy. |
| 11 | Establish and maintain an encryption management and cryptographic controls policy. |
| 12 | Log the usage of identification and authentication mechanisms. |
| 13 | Ensure the audit logs contain a timestamp. |
| 14 | Establish and maintain a data retention policy and determine how long to retain records. |
| 15 | Ensure the nonrepudiation of transactions. |
| 16 | Ensure user identifications are logged. |

**The objective of this section is to describe the functionality required for the proposed solution.**

* Email bills to customers where customers have requested the bill to be emailed.
* Process documents destined for the same address / destination into one ‘package’.
* Ability to re-send an original invoice if the initial email was sent to the wrong or incorrect recipient.
* Legislative Compliance.
* Provides integration of the delivery status report to MCBD solution.
* Provides Daily and Monthly reports of the email’s delivery status.
* Provide a diagnosis and reporting capability in case of failure of emails.
* Provide capability to receive emails via manual solution in the event of connection failure.
* In the event of a disaster to receive emails from Eskom Disaster Recovery site.
* Adhere to the Eskom Service Level Agreements of sending out documents electronically.
* Provide web user interface to allow Eskom to view status of emails delivery status; and

• Proactive monitoring of the solution.

* The Web User Interface should allow Eskom users to retrieve the historical documents for 12 months.

• Branding and Tracking

• Web User Interface - Reporting and Audit Trail

• EDDS Solution Testing and compliance to Eskom Governance processes

* Ad hoc email campaigns.
* Training on the web user interface tool for all users
  1. **Licence Management for Maintenance and Support:**

This should be a service.

* 1. **Training/Transfer of skills:**

No training required.

1. **Service Level Agreement requirements**

Service Level Agreement

|  |  |  |
| --- | --- | --- |
| **KPI** | **Target Hours** | **Target %** |
| Emails Delays –SPU | 24 Hours | 98% |
| Emails Delays –LPU | 24 Hours | 98% |
| Emails Delays –Top Customers | 4 Hours | 98% |

Incident Priority Matrix

|  |  |  |  |
| --- | --- | --- | --- |
| **Urgency** | **Impact** | | |
|  | High | Medium | Low |
| High | 1 | 2 | 3 |
| Medium | 2 | 3 | 4 |
| Low | 3 | 4 | 5 |

|  |  |  |  |
| --- | --- | --- | --- |
| **Priority Code** | **Description** | **Target Response Time** | **Target Resolution** |
| 1 | Critical | Immediate | 1 Hour |
| 2 | High | 30 Minutes | 4 Hours |
| 3 | Medium | 1 Hour | 8 Hours |
| 4 | Low | 4 Hours | 24 Hours |
| 5 | Very Low (RFS) | 1 Day | 1 Week |

The following abbreviations are used in this Service Information:

|  |  |
| --- | --- |
| **Abbreviation** | **Meaning given to the abbreviation** |
| OBL | Outside battery limits |
|  |  |

# Management strategy and start up.

## The *Contractor*’s plan for the *service*

In the TSC3 the *Contractor*’s plan is his “design” for performing the *service* throughout the *service period*. Section 2 of the *conditions of contract* describes what the *Contractor* is to show in his plan both in the core clauses and some additional requirements in each of the main Options.

The extent of the *Contractor*’s plan will depend on whether the *Contractor* is required to develop a plan in accordance with the *Employer*’s broad outline of the *service* or whether the *Employer* has provided a plan for the *Contractor* to follow. Read the TSC3 Guidance Notes pages 21 and 22 for more information on the *Contractor*’s plan.

Use this section to describe any particulars which must be taken into account by the *Contractor* in developing his plan as required by clause 21.2. For example information about the order and timing or method of carrying out particular items of work.

List technical reporting and scheduling requirements which are to be incorporated into the *Contractor*’s plan.

## Management meetings

The *conditions of contract* (e.g. Clause 16.2) and other sections of the Service Information (e.g. safety risk management) may require that a meeting shall 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 *service*, it is probably beneficial for the *Service Manager* to hold a weekly risk register meeting (Clause 16.2). This could be used to discuss safety, compensation events, subcontracting, overall co-ordination and other matters of a general nature. Separate meetings for specialist activities such as planning 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 *Supply Manager* as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Title and purpose | Approximate time & interval | Location | Attendance by: |
| Risk register and compensation events | Weekly on \_\_\_\_\_\_\_\_ at \_\_\_ | **[●]** | *Service Manager, Consultant* and Contracts Management |
| Overall contract progress and feedback | Monthly on \_\_\_\_\_ at \_\_\_ | **[●]** | *Service Manager,* *Consultant* and **[****●]**\_\_ |
| Quarterly Contracts Management Meetings | Quarterly on \_\_\_\_\_ at \_\_\_ | **[●]** | *Service Manager Agent*, *Consultant* and Contracts Management |
| SLA Meetings | Monthly on \_\_\_\_\_ at \_\_\_ | **[●]** | *Service Manager*, *Consultant* and Contracts Management |

Meetings of a specialist nature may be convened as specified elsewhere in this Service Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the *service*. Records of these meetings shall be submitted to the *Service Manager* 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.

## *Contractor*’s management, supervision and key people *Consultant to complete full team details if necessary*

State any additional constraining requirements on *Contractor*’s supervision and key people that are not already stated in other sections such as for Health and Safety. This section could be used to solicit an organogramme from the *Contractor* showing his people and their lines of authority / communication. This would be essential if the *Contractor* is a Joint Venture.

## Provision of bonds and guarantees

The form in which a bond or guarantee required by the *conditions of contract* (if any) is to be provided by the *Contractor* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

The *Employer* may withhold payment of amounts due to the *Contractor* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Contractor* by the *Service Manager* to receive and accept such bond or guarantee. Such withholding of payment due to the *Contractor* does not affect the *Employer*’s right to termination stated in this contract.

## Documentation control

### Retention of documents

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

## Insurance provided by the *Employer*

First read TSC3 Core Clause 86.1 and then add anything necessary for the management of insurance related issues such as a cross reference to where procedures for making claims can be found. Also provide contact details for persons capable of being able to answer any insurance related queries the *Contractor* may have, as well as to whom the information required by Marine Insurance (if any) may be addressed.

## Training workshops and technology transfer

Describe type and frequency of any on job training workshops, as well as any obligation for technology transfer being included as part of the *service* or at the end of the *service period*.

If applicable as per contract

## Design and supply of Equipment

On some complex services (e. g. nuclear) it could be in the Parties best interests that some details of the design of Equipment are shared with the *Service Manager*, not necessarily for his acceptance but as an assurance that the Equipment will be able to allow the *Contractor* to Provide the Service efficiently and without delay. For example specialised handling Equipment for a particular maintenance operation. Clause 23.1 is always available to the *Service Manager* if this paragraph is not used.

Also the *Employer* may wish to exercise constraints or include witness and hold points during manufacture, assembly or delivery of such Equipment. Include these constraints here.

Draft in such a way that there is no doubt that the liability for such design supply and use of the Equipment remains with the *Contractor*.

Contract specific

## Things provided at the end of the *service period* for the *Employer*’s use

### Equipment

The *Employer* may wish to use some of the Equipment used by the *Contractor* after the end of the *service period*. Clause 70.2 requires that details of such requirement be stated in the Service Information. Complete here or if not applicable retain the heading and state ‘None.’

### Information and other things

Clause 70.2 requires that information and other things which the *Contractor* is to provide at the end of the *service period* be stated in the Service Information.

## Management of work done by Task Order

Procedures for management of Task orders:

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

## Health and safety risk management – If applicable

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

*Consultant* to adhere to Eskom Site Safety requirements and ensure that a Safety File is available at every site where scope of works is being executed.

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

## Quality assurance requirements –

Specify minimum requirements for the *Contractor*’s Quality Plan and Work Procedures or provide the *Employer*’s Quality Plan if that is to be used. Make sure witness and hold points are identified generally and describe any particular requirements for QA outside the Affected Property. Indicate how the *Contractor*’s QA documentation is to be submitted for acceptance and any conditions that need to be imposed relating to acceptance. State whether ISO compliance is a condition and if so which ISO standard shall apply.

Clause 40.1 requires that the *Contractor* operate a quality management system. Clause 40.2 requires that the *Contractor* provide a quality policy statement and quality plan. These submissions have been reviewed by the *Employer*, they comply with the scope and have been accepted. The *Contractor* must ensure the quality management system, quality policy and quality plan are maintained through the duration of this contract.

# Procurement

~~There is a cross reference from the core clause 11.2(6) definition of Disallowed Cost to the Service Information regarding procurement procedures. This part of the Service Information MUST include any such procedures to be able to administer Disallowed Cost.~~

## People

### Minimum requirements of people employed

Specify any constraints relating to people employed to Provide the Service; for example permits for foreigners, training (other than H & S), use of labour from designated areas and industrial relations.

### BBBEE and preferencing scheme

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

As per BBBEE requirements on SDL+I report, retain, maintain, update before expiry

# Working on the Affected Property

This part of the Service Information addresses constraints, facilities, services and rules applicable to the *Contractor* whilst he is doing work on the Affected Property.

Specific to site

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

Sites such as Koeberg Nuclear Power Station have very strict entrance requirements which tendering contractors need to allow for in their prices, and the *Contractor* has to comply with. State these or similar requirements here.

In addition to the above there may be other restrictions once on the site, plus rules relating to roads, walkways and the provision of barricades

Onboarding – access cards

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

Restrictions and hours of work may apply on some sites. It is very important that the *Contractor* keeps records of his people working on the Affected Property, including those of his Subcontractors. State that the *Service Manager* shall have access to them at any time. These records may be needed when assessing compensation events.

## Health and safety facilities on the Affected Property – If applicable

Section 3 deals with contractual H & S requirements in addition to those of the OHSA Act. This section allows the *Employer* to state what measures are to be taken on the Affected Property by describing where First Aid facilities provided by the *Employer* are located and any other emergency arrangements. Do not use if already addressed in 2.3.

## Cooperating with and obtaining acceptance of Others -– if there is s dependency between consultants, include information below)

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

1) The cross reference from core clause 25.1 about cooperation generally as well as details about Others with whom the *Contractor* may be required to share the Affected Property. See clause 11.2(9) for the definition of Others.

2) Requirements for liaison with and acceptance from statutory authorities or inspection agencies.

## Records of *Contractor*’s Equipment – If applicable

This sub-paragraph is intended to address how records are to be kept of Equipment on Site including whether it is owned or hired. Include any constraints about scaffolding, rigs, heavy lifts and cranes, including removal from the Affected Property.

## Equipment provided by the *Employer – If applicable*

Provide details of equipment (e.g. overhead cranes) made available for use by the employer and set out conditions relating thereto.

## Site services and facilities

### Provided by the *Employer - If applicable*

This is a mandatory cross reference form clause 25.2 in TSC3. State what the *Employer* will provide in the way of power, water, waste disposal, telecomms, ablutions, fire protection and lighting (etc) on the Affected Property. Give hook up locations and any constraints on how the hook up is to be done. Always conclude by stating that the *Contractor* shall provide everything else necessary for Providing the Service.

### Provided by the *Contractor - If applicable*

Describe what the *Contractor* is to provide in the way of accommodation, laboratories, storage, vehicles and office equipment for the *Service Manager* and any restrictions or minimum requirements concerning the *Contractor*’s own facilities. Also state what happens to these facilities upon completion of the contract.

## Control of noise, dust, water and waste

State requirements, if any.

## Hook ups to existing works

State any constraints

## Tests and inspections

### Description of tests and inspections *If applicable*

Describe the tests and inspections to be carried out by the *Contractor* and the *Service Manager* and others [40.1].

### Materials facilities and samples for tests and inspections *If applicable*

**Not applicable**

## Drawings issued by the *Employer If applicable*

This is the list of drawings issued by the *Employer* at or before the Contract Date and which apply to this contract. **Not applicable**

## Invoicing and payment

## Invoicing and payment

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

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

**Vendor Highlights – What You Need to Know**

1. Payment terms
2. Ordering and payment
3. Where to and how to send invoices
4. Other requirements
5. Who to contact for payment queries

**1.     Payment terms**

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

**2.     Ordering and payment**

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

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

* Reflects the purchase order number. No invoice will be paid if the correct purchase order number is not referenced on the invoice
* Reflects your VAT registration number
* Reflects Eskom’s VAT registration number 4740101508
* Reflects the total amount invoiced excluding VAT, the VAT amount and the invoiced amount including VAT
* Supplier Bank details
* Matches our purchase order (line by line)
* Contains the proper units of measure
* Aligns with the purchase order price; and
* that the agreed payment terms on the invoice agrees with the payment terms on the order.

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

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

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

**3.     Where to and how to send invoices**

o   Invoice should be submitted using the Email address below:

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

o   Details on how to submit invoices and additional information:

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

**4.     Other requirements**

* The following documents are returnable every year and should be submitted to Eskom Vendor Management at the following email address: [VendorMDM@eskom.co.za](mailto:VendorMDM@eskom.co.za) before the expiry date:
  + Valid B-BBEE certificate / Affidavit
  + Letter of good standing with the Department of Labour (COIDA)
  + Tax clearance certificate
* Any changes of directorship of the company during the period of any contract held with Eskom, you need to submit the changes together with supporting documents as issued by CIPC.
* You also need to ensure that the National Treasury Central Supplier Database (CSD) is updated with all relevant information. Please visit [www.csd.gov.za](http://www.csd.gov.za) for the details.

Note:

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

**5. Who to contact for payment queries:**

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

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

Tel: 011 800 5060

## Inclusions in the programme -

**Required Vendor Registration documents**

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

**Vendor Management Change Process**

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

# BBBEE certificates

# Letter of good standing with the Department of Labour

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

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

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

Onboarding process

* VPN access
* User LAN registration
* NDA
* DOI
* ID Copies
* Certified qualified
* Third party VPN
* Non permanent employee sign on
* Temporary access control sheet
* Laptop permit
* Access card to site
* Unique number

1. [↑](#footnote-ref-1)
2. Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902 [www.ecs.co.za](http://www.ecs.co.za) [↑](#footnote-ref-2)
3. Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 5391902 or [www.ecs.co.za](http://www.ecs.co.za) [↑](#footnote-ref-3)