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NEC3 Professional Services Contract (PSC3)

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| **Contract between** | **Eskom Holdings SOC Ltd**  **(Reg No. 2002/015527/30)** | |
| **and** | **[Insert at award stage]**  **(Reg No. \_\_\_\_\_\_\_\_\_\_\_ )** | |
| **for** | **[●]** | |
|  |  | |
| **Contents:** |  | **No of pages** |
| **Part C1** | **Agreements & Contract Data** |  |
| **Part C2** | **Pricing Data** |  |
| **Part C3** | **Scope of Work: The Scope** |  |
|  |  |  |
| **CONTRACT No.** | **[46 ]** | |
|  |  | |
|  |  | |
| **Start Date:** |  | |

**End Date:**

PART C1: AGREEMENTS & CONTRACT DATA

|  |  |  |
| --- | --- | --- |
| Document reference | Title | No of pages |
| **C1.1** | **Form of Offer & Acceptance** |  |
| **C1.2a** | **Contract Data provided by the Employer** |  |
| **C1.2b** | **Contract Data provided by the Consultant** |  |
| **C1.3** | **Securities proforma** |  |
|  |  |  |

C1.1 Form of Offer & Acceptance

## Offer

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

**Title of the Contract**

The tenderer, identified in the Offer signature block, has

|  |  |
| --- | --- |
| either | examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender. |
| *or* | examined the draft contract as listed in the Acceptance section and agreed to provide this Offer. |

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

|  |  |
| --- | --- |
| The offered total of the Prices exclusive of VAT is | **R** |
| Value Added Tax @ 15% is | **R** |
| The offered total of the Prices inclusive of VAT is | **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 *Consultant* in the *conditions of contract* identified in the Contract Data.

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

## Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer’s Offer. In consideration thereof, the Employer shall pay the Consultant the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer’s Offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)

Part C2 Pricing Data

Part C3 Scope of Work: The Scope

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Employer’s agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed and signed original copy of this document, including the Schedule of Deviations (if any).

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

Name: Contract Advisor

Note: If a tenderer wishes to submit alternative tenders, use another copy of this Form of Offer and Acceptance.

## Schedule of Deviations

Note:

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

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

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

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

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

C1.2a PSC3 Contract Data

# Part one - Data provided by the *Employer*

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Clause | | Statement | Data | | | | | | | | |
| 1 | | General |  | | | | | | | | |
|  | | The *conditions of contract* are the core clauses and the clauses for main Option |  | | | | | | | | |
|  | |  | **G:** **Term contract** | | | | | | | | |
|  | |  | **A: Priced contract with activity schedule** | | | | | | | | |
|  | | 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** | | | | | | | | |
|  | |  | **X7: Delay damages** | | | | | | | | |
|  | |  | **X9: Transfer of rights** | | | | | | | | |
|  | |  | **X10: *Employer*’s *Agent*** | | | | | | | | |
|  | |  | **X11: Termination by the *Employer*** | | | | | | | | |
|  | |  | **X13: Performance bond** | | | | | | | | |
|  | |  | X18: Limitation of liability | | | | | | | | |
|  | |  | X 20: Key performance indicators (if applicable) | | | | | | | | |
|  | |  | Z: *Additional conditions of contract* Z1-18 | | | | | | | | |
|  | | of the NEC3 Professional Services Contract (April 2013)[[1]](#footnote-2) |  | | | | | | | | |
| 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 | **Megawatt Park, Maxwell Drive, Sandton, Johannesburg** | | | | | | | | |
|  | | Tel No. | **[●]** | | | | | | | | |
|  | | Fax No. | **[●]** | | | | | | | | |
| 11.2(9) | | The *services* are | [●] | | | | | | | | |
| 11.2(10) | | The following matters will be included in the Risk Register | **As Risk arises** | | | | | | | | |
| 11.2(11) | | The Scope is in | **Part 3: Scope of Work** | | | | | | | | |
| 12.2 | | The *law of the contract* is the law of | **the Republic of South Africa** | | | | | | | | |
| 13.1 | | The *language of this contract* is | **English** | | | | | | | | |
| 13.3 | | The *period for reply* is | **[●] weeks** | | | | | | | | |
| 13.6 | | The *period for retention* is | **[●] years following Completion or earlier termination.** | | | | | | | | |
| 2 | | The Parties’ main responsibilities |  | | | | | | | | |
| 25.2 | | The *Employer* provides access to the following persons, places and things | **access to** | | | | | ***access date*** | | | |
|  | |  | **1** | **[●]** | | | | **[●]** | | | |
|  | |  | **2** | **[●]** | | | | **[●]** | | | |
|  | |  | **3** | **[●]** | | | | **[●]** | | | |
| 3 | | Time |  | | | | | | | | |
| 31.2 | | The *starting date* is. | **[●]** | | | | | | | | |
| 11.2(3) | | The *completion date* for the whole of the *services* is. | **[●].** | | | | | | | | |
| 11.2(6) | | The *key date*s and the *condition*s to be met are: | ***Condition* to be met** | | | | ***key date*** | | | | |
|  | | SDL&I Implementation plan submission | **1** | **[●]** | | | **[●]** | | | | |
|  | | *SDL&I Key Dates* | **2** | **[●]** | | | **[●]** | | | | |
|  | |  | **3** | **[●]** | | | **[●]** | | | | |
| 31.1 | | The *Consultant* is to submit a first programme for acceptance within | **[●] weeks of the Contract start Date.** | | | | | | | | |
| 32.2 | | The *Consultant* submits revised programmes at intervals no longer than | **[●] weeks.** | | | | | | | | |
| 4 | | Quality |  | | | | | | | | |
| 40.2 | | The quality policy statement and quality plan are provided within | **[●] weeks of the Contract Date.** | | | | | | | | |
| 41.2 | | The *defects date* is | **[●] weeks after Completion of (task)/ the whole of the *service*s.** | | | | | | | | |
| 5 | | Payment |  | | | | | | | | |
| 50.1 | | The *assessment interval* is | **between the 30th day of each successive month.** | | | | | | | | |
| 50.3 | | The *expenses* stated by the *Employer* are | **Item** | | | **Amount** | | | | | |
|  | |  | **[●]** | | | **[●]** | | | | | |
|  | |  | **[●]** | | | **[●]** | | | | | |
|  | |  | **[●]** | | | **[●]** | | | | | |
|  | |  | **[●]** | | | **[●]** | | | | | |
| 51.1 | | The period within which payments are made is | **30 days upon receipt of a valid tax invoice** | | | | | | | | |
| 51.2 | | The *currency of this contract* is the | **South African Rand** | | | | | | | | |
| 51.5 | | The *interest rate* is | **the publicly quoted prime rate of interest charged by [●] Standard Bank of South Africa Limited at the time an amount payable in SA Rand was due,**  **and**  **the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove** | | | | | | | | |
| 6 | | Compensation events | **There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.**  ***NEC PSC Contract clause 6 applies*** | | | | | | | | |
| 7 | | Rights to material | **There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.**  ***NEC PSC Contract clause 7 applies*** | | | | | | | | |
| 8 | | Indemnity, insurance and liability | **There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.**  ***NEC PSC Contract clause 8 applies*** | | | | | | | | |
| 82.1 | | The *Consultant*’s total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | The total of the Prices | | | | | | | | |
| 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.**  ***NEC PSC Contract clause 9 applies*** | | | | | | | | |
| **A** | | **Priced contract with activity schedule** |  | | | | | | | | |
| 21.3 | | The *Consultant* prepares forecasts of the total *expenses* at intervals of no longer than | **[●] weeks.** | | | | | | | | |
| **G** | | **Term contract** |  | | | | | | | | |
| 21.4 | | The *Consultant* prepares forecasts of the total Time Charge and *expenses* at intervals no longer than | **[●] weeks.** | | | | | | | | |
| 50.4 | | The *exchange rates* are those published in | **:** | | | | | | | | |
| 11 | | Data for Option W1 |  | | | | | | | | |
| W1.1 | | The *Adjudicator* is | **the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see** [**www.ice-sa.org.za**](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 Chairman of the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering. (See** [**www.ice-sa.org.za**](http://www.ice-sa.org.za)**)**. | | | | | | | | |
| W1.4(2) | | The *tribunal* is: | **arbitration** | | | | | | | | |
| W1.4(5) | | The *arbitration procedure* is | **the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.** | | | | | | | | |
|  | | The place where arbitration is to be held is | **[●] South Africa** | | | | | | | | |
|  | | The person or organisation who will choose an arbitrator   * if the Parties cannot agree a choice or * if the *arbitration procedure* does not state who selects an arbitrator, is | **the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.** | | | | | | | | |
| 12 | | Data for secondary Option clauses |  | | | | | | | | |
| **X1** | | **Price adjustment for inflation** |  | | | | | | | | |
| X1.1 | | The index is | **[●]** | | | | | | | | |
|  | | The staff rates are  {state whether “Fixed at the Contract Date and are not variable with changes in salary paid to individuals” or “Variable with changes in salary paid to individuals”} | [●] | | | | | | | | |
| **X2** | | **Changes in the law** |  | | | | | | | | |
| X2.1 | | The law of the project is | **South Africa** | | | | | | | | |
| **X3** | | **Multiple currencies** |  | | | | | | | | |
| X3.1 | | **Items & activities** | **Other currency** | |  | | | |  | | |
|  | | **[●]** | **[●]** | |  | | | |  | | |
|  | | **[●]** | **[●]** | |  | | | |  | | |
|  | | **[●]** | **[●]** | |  | | | |  | | |
|  | |  |  | |  | | | |  | | |
| X3.1 | | **[●]on [●] (date)**    **The items & activities will be paid in the other currency**  **- to a foreign Bank account nominated by the *Consultant***  **- to a valid SARB approved CFC account in South Africa**  **- in accordance with an alternative payment method agreed with the *Employer* before the Contract Date.**  **(select one of the three methods as agreed with successful tenderer and delete the others and this note)** |  | | | | | | | | |
| **X4** | | **Parent company guarantee** | **There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data.** | | | | | | | | |
| **X7** | | **Delay damages** |  | | | | | | | | |
| X7.1 | | Delay damages for late Completion of the whole of the *services* are  (Applicable for Option A,C&E) | **[●] per day** | | | | | | | | |
| **X9** | | **Transfer of rights** |  | | | | | | | | |
| **X9.1** | |  | The Employer owns the Consultant’s rights over material prepared for this contract by the Consultant except as stated otherwise in the Scope. The Consultant obtains other rights for the Employer as stated in the Scope and obtains from a Subconsultant equivalent rights for the Employer over the material prepared by the Subconsultant. The Consultant provides to the Employer the documents which transfer these rights to the Employer**.** | | | | | | | | |
| **X10** | | **The *Employer*’*s Agent*** |  | | | | | | | | |
| X10.1 | | The *Employer*’*s Agent* is |  | | | | | | | | |
|  | | Name: | **[●]** | | | | | | | | |
|  | | Address | **[●]** | | | | | | | | |
|  | | The authority of the *Employer*’*s Agent* is | **[●]** | | | | | | | | |
| **X11** | | **Termination by the *Employer*** |  | | | | | | | | |
| **X11.1** | |  | The *Employer* may terminate the *Consultant’*s obligation to Provide the Services for a reason not stated in this contract by notifying the *Consultant.* | | | | | | | | |
| **X11.2** | |  | If the Employer terminates for a reason not stated in this contract, an additional amount is due on termination which is 5% of the difference between   * the forecast of the final total of the Prices in the absence of termination and   the total of the other amounts and costs included in the amount due on termination. | | | | | | | | |
| **X13** | | **Performance bond** |  | | | | | | | | |
| X13.1 | | The amount of the performance bond is | **R[●]. Reviewed Annually** | | | | | | | | |
| **X18** | | **Limitation of liability** |  | | | | | | | | |
| X18.1 | | The *Consultant’s* liability to the *Employer* for indirect or consequential loss is limited to: | **R0.00 (Zero Rand)** | | | | | | | | |
| X18.2 | | The *Consultant’s* liability to the *Employer* for Defects that are not found until after the *defects date* is limited to: | **The total of the Prices** | | | | | | | | |
| X18.3 | | The *end of liability date* is | **five years after Completion of the whole of the *services/*task order.** | | | | | | | | |
| **Z** | | **The *Additional conditions of contract* are** | **Z1 to Z18 always apply.** | | | | | | | | |
|  | |  | | | | | | | | |
| **Z1** | | **Cession delegation and assignment** | | | | | | | | |
| Z1.1 | | The *Consultant* does notcede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer.* | | | | | | | | |
| Z1.2 | | Notwithstanding the above, the *Employer* may on written notice to the *Consultant* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry. | | | | | | | | |
|  | |  | | | | | | | | |
| **Z2** | | **Joint ventures** | | | | | | | | |
| Z2.1 | | If the *Consultant* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract. | | | | | | | | |
| Z2.2 | | Unless already notified to the *Employer*, the persons or organisations notify the *Employer* within two weeks of the Contract Date of the key person who has the authority to bind the *Consultant* on their behalf. | | | | | | | | |
| Z2.3 | | The *Consultant* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Consultant* in writing. | | | | | | | | |
|  | |  | | | | | | | | |
| **Z3** | | **Change of Broad Based Black Economic Empowerment (B-BBEE) status** | | | | | | | | |
| Z3.1 | | Where a change in the *Consultant’s* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant’s* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change. | | | | | | | | |
| Z3.2 | | The *Consultant* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*. | | | | | | | | |
| Z3.3 | | Where, as a result, the *Consultant’s* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Consultant’s* obligation to Provide the Services. | | | | | | | | |
| Z3.4 | | Failure by the *Consultant* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *service*s in addition to the amounts due in terms of core clause 92.1. | | | | | | | | |
|  | |  | | | | | | | | |

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| **Z4** | **Confidentiality** | | |
| Z4.1 | The *Consultant* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the *Consultant* disclose information to Others in terms of clause 23.1, the *Consultant* ensures that the provisions of this clause are complied with by the recipient. | | |
| Z4.2 | If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer.* | | |
| Z4.3 | In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Consultant* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed. | | |
| Z4.4 | The taking of images (whether photographs, video footage or otherwise) of the *Employer*’s project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*. | | |
|  |  | | |
| **Z5** | **Waiver and estoppel: Add to core clause 12.3:** | | |
| Z5.1 | Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties*,* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing. | | |
|  |  | | |
| **Z6** | **Provision of a Tax Invoice. Add to core clause 51** | | |
| Z6.1 | The *Consultant* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer*’s VAT number 4740101508 on each invoice he submits for payment. | | |
|  |  | | |
| **Z7** | **Notifying compensation events** | | |
| Z7.1 | Delete from the last sentence in core clause 61.3, “unless the *Employer* should have notified the event to the *Consultant* but did not”. | | |
|  |  | | |
| **Z8** | ***Employer’s* limitation of liability** | | |
| Z8.1 | The *Employer’s* liability to the *Consultant* for the *Consultant’s* indirect or consequential loss is limited to R0.00 (zero Rand) | | |
|  |  | | |
| **Z9** | **Termination: Add to core clause 90.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":** | | |
| Z9.1 | or had a business rescue order granted against it. | | |
|  |  | | |
| **Z10** | **Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)** | | |
| Z10.1 | If the *Consultant’s* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Consultant’s* obligation to Provide the Services. | | |
| Z10.2 | If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *service*s in addition to the amounts due in terms of core clause 92.1. | | |
|  |  | | |
| **Z11** | **Ethics** | |
| For the purposes of this Z-clause, the following definitions apply: | | |
| **Affected Party** | | means, as the context requires, any party, irrespective of whether it is the *Consultant* or a third party, such party’s employees, agents, or Subconsultants or Subconsultant’s employees, or any one or more of all of these parties’ relatives or friends, |
| **Coercive Action** | | means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally, |
| **Collusive Action** | | means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally, |
| **Committing Party** | | means, as the context requires, the *Consultant*, or any member thereof in the case of a joint venture, or its employees, agents, or Subconsultants or the Subconsultant’s employees, |
| **Corrupt Action** | | means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party, |
| **Fraudulent Action** | | means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation, |
| **Obstructive Action** | | means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and |
| **Prohibited Action** | | means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action. |
| Z11.1 | A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof. | |
| Z11.2 | The *Employer* may terminate the *Consultant*’s obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Consultant* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Consultant*’s obligation to Provide the Services for this reason. | |
| Z11.3 | If the *Employer* terminates the *Consultant*’s obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2. | |
| Z11.4 | A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Consultant* ensures that the Committing Party co-operates fully with an investigation. | |
|  |  | |
| **Z12** | **Insurance** | |
| Z12.1 | Replace core clause 81 with the following: | | |
| 12.1 | 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. | | |
| 12.2 | The *Consultant* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate. | | |
|  | **INSURANCE TABLE A** | | |
|  | |  |  |  | | --- | --- | --- | | **Insurance against** | **Minimum amount of cover** | **For the period following Completion of the whole of the *services* or earlier termination** | | Liability of the *Consultant* for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the *services* | Commercial and business to determine. [Delete this note after inserting] | Commercial and business to determine [Delete this note after inserting] | | Liability for death of or bodily injury to a person (not an employee of the *Consultant*) or loss of or damage to property resulting from an action or failure to take action by the *Consultant* | **Loss of or damage to 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  **Bodily injury to or death of a person:**  The amount required by the applicable law. | Commercial and business to determine [Delete this note after inserting] | | Liability for death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with this contract | The amount required by the applicable law | Commercial and business to determine [Delete this note after inserting] | | | |
| 12.3 | The *Employer* provides the insurances stated in the Insurance Table B. | | |
|  | **INSURANCE TABLE B** | | |
|  | |  |  | | --- | --- | | **Insurance against or name of policy** | **Minimum amount of cover or minimum limit of indemnity** | | Assets All Risk | Per the insurance policy document | | Contract Works insurance | Per the insurance policy document | | Environmental Liability | Per the insurance policy document | | General and Public Liability | Per the insurance policy document | | Transportation (Marine) | Per the insurance policy document | | Motor Fleet and Mobile Plant | Per the insurance policy document | | Terrorism | Per the insurance policy document | | Cyber Liability | Per the insurance policy document | | Nuclear Material Damage and Business Interruption | Per the insurance policy document | | Nuclear Material Damage Terrorism | Per the insurance policy document | | | |

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

**Z 15** **Supplier Development Localisation and Industrialisation Obligations**

Z15.1 SDL&I Undertaking

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 1. **Local Procurement Content**   “Local Procurement Content” refers to value added in South Africa by South African resources. Where a single contract involves a combination of local and imported goods and/or services, the tender response must be separated into its components as per the Price Schedule included with the tender documents. Local procurement content is total spending minus the imported component.   |  |  |  | | --- | --- | --- | | **Local Procurement Content** | **Eskom target** | **Tenderer Proposal** | |  |  |  1. **Jobs**   Type and number of jobs that will be created and retained in South Africa as a direct result of being awarded this contract.   |  |  | | --- | --- | | **Type of Jobs to be retained** | **Number of Jobs to be retained** | |  |  |  1. **Skills development**   Tenderers are required to develop the skills of unemployed candidates in the country. Skills development is intended to address Eskom’s core, scarce and critical skills and the Mict SETA scarce and critical skills. These skills are also included in a 2024 list of occupations in high demand as stipulated in the Government Gazette 50510. Candidates shall be from all provinces in the country, and their composition shall be representative of the population demographics of South Africa.   |  |  |  | | --- | --- | --- | | **Skill type/Occupation** | **Eskom Target** | **Tenderer’s proposed Number of Candidates** | |  |  |  | |  |  |  | |  |  |  |   The process of developing these skills shall involve the participation by tenderers directly and through their supply network. In certain cases, the SETA’s accredited training providers can be approached to participate in developing critical and scarce skills.  Note: Consultant is required to take full responsibility for the total cost of developing the requisite skills, and the *Employer* shall not make any financial contribution towards the fulfilment of this obligation. The Consultant is advised to approach their relevant SETAs to access grants and subsidies as well as South African Revenue Services for tax incentives that are earmarked for skills development initiatives. |

Z15.2 SDL&I Retention and Performance Security

|  |
| --- |
| The *Employer* will apply a retention of 5% on every invoice amount for failure to meet SDL&I obligations. |
| As security for the fulfilment of all SDL&I obligations, Eskom will apply a retention of 5% on every invoice amount (excluding VAT) for failure to submit SDL&I performance reports every quarter; **or** failure to meet the SDL&I obligations in the contract. |

Z15.3 Reporting and Monitoring

|  |
| --- |
| * The *Consultant* shall on a quarterly basis submit a report to Eskom in accordance with Data Collection Template on their compliance with the SDL&I obligations described above. * The *Employer* shall review the SDL&I reports submitted by the *Consultant* within 60 (sixty) days of receipt of the reports and notify the Consultant in writing if their SDL&I obligations have not been met. * Upon notification by the *Employer* that the *Consultant* has not met their SDL&I obligations, the *Consultant* shall be required to implement corrective measures to meet those SDL&I obligations before the commencement of the following report, failing which Retention clauses shall be invoked. |

Z15.4 General Information on Validity of Sworn Affidavits

|  |
| --- |
| The following must be considered when it comes to validity of Affidavits; |
| **Tenderers submitting B-BBEE Sworn Affidavits must ensure that the affidavits meet the following key pointers to ensure their validity:**   * Name/s of deponent as they appear in the identity document and the identity number. * Designation of the deponent as the **director**, **owner** or **member** must be indicated in order to know that person is duly authorised to depose of an affidavit. **(Mark the applicable option).** * Name of enterprise as per enterprise registration documents issued by the CIPC, where applicable, and enterprise business address. * Percentage of black ownership, black female ownership and designated group. In the case of specialised enterprises as per Statement 004, the percentage of black beneficiaries must be reflected. (**No blank spaces to be left**). * Indicate total revenue for the year under review and whether it is based on **audited financial statements** or **management account**. **(Mark the applicable option).** * Financial year end as per the **enterprise’s registration documents**, which was used to determine the total revenue. **(Financial year end to be stipulated by** **day/month/year).** * B-BBEE Status level. An enterprise can only have one status level. **(Tick applicable level)** * Empowering Consultant status must be indicated. For QSEs, the deponent must select the basis for the empowering Consultant status. * Date deponent signed and date of Commissioner of Oath must be the same. **(The sworn affidavit must be signed in the presence of the Commissioner of Oath. Furthermore, the Commissioner must also sign and stamp)** * Commissioner of Oath cannot be an employee or ex officio of the enterprise because, a person cannot by law, commission a sworn affidavit in which they have an interest. |

**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.

C1.2b Contract Data

# Part two - Data provided by the *Consultant*

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

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Clause | Statement | Data | | | |
| 10.1 | The *Consultant* is (Name): |  | | | |
|  | Address |  | | | |
|  | Tel No. |  | | | |
|  | Fax No. |  | | | |
| 22.1 | The *key people* are: |  | | | |
|  | 1 Name: |  | | | |
|  | Job: |  | | | |
|  | Responsibilities: |  | | | |
|  | Qualifications: |  | | | |
|  | Experience: |  | | | |
|  | 2 Name: |  | | | |
|  | Job |  | | | |
|  | Responsibilities: |  | | | |
|  | Qualifications: |  | | | |
|  | Experience: |  | | | |
| Only if required |  | **CV's (and further *key persons* data including CVs) are appended to Tender Schedule entitled****.** | | | |
| 11.2(3) | The *completion date* for the whole of the *services* is |  | | | |
| 11.2(10) | The following matters will be included in the Risk Register |  | | | |
| 11.2(13) | The *staff rates* are: | **name/designation** | | **rate** | |
|  | **Either complete here or cross refer to a schedule in Part C2.2** |  | |  | |
|  |  |  | |  | |
|  |  |  | |  | |
| 25.2 | The *Employer* provides access to the following persons, places and things | **access to** | | | ***access date*** |
|  |  | **1** | **Employers Agents Name** | | **Contract Start Date** |
|  |  | **2** |  | |  |
|  |  | **3** |  | |  |
| 31.1 | The programme identified in the Contract Data is | **Refer to project programme / plan / schedule / task order** | | | |
| 50.3 | The *expenses* stated by the *Consultant* are  **Either complete here or cross refer to a schedule in Part C2.2** | **item** | | **amount** | |
|  |  |  | |  | |
|  |  |  | |  | |
|  |  |  | |  | |
|  |  |  | |  | |
| **G** | **Term contract** |  | | | |
| 11.2(25) | The *task schedule* is in |  | | | |

C1.3 Forms of Securities

**Pro formas for Bonds & Guarantees**

For use with the NEC3 Professional Services Contract

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

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

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

Option X4: Parent company guarantee

Option X13: Performance Bond

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

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

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

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

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

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

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

Dear Sirs,

## Parent Company Guarantee for Contract No

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

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

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

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

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

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Signed 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)

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

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

Dear Sirs

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

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

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

1. In this Guarantee the following words and expressions shall have the following meanings:-
   1. “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 Consultant, on or about the [●] day of [●] 200[●] (Contract Reference No. [.]as amended, varied, restated, novated or substituted from time to time; [Drafting Note: Signature Date and Contract reference number to be inserted]
   4. ”Consultant” – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of Consultant to be inserted]
   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 Consultant as certified in terms of the contract have been received by Eskom and that the Consultant has fulfilled all his obligations under the Contract, or
* the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by Eskom
  1. “Guaranteed Sum” - means the sum of R [●] ([●] Rand);
  2. “Services” - means [insert if applicable.].

1. At the instance of the Consultant, we the undersigned \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_, in our respective capacities as \_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of Eskom, as security for the proper performance by the Consultant of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to Eskom, on written demand from Eskom received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.
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, 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 Consultant.
5. Eskom shall be entitled to arrange its affairs with the Consultant in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the Consultant or any variation under or to the Contract.
6. Should Eskom cede its rights against the Consultant to a third party where such cession is permitted under the Contract, then Eskom shall be entitled to cede to such third party the rights of Eskom under this Guarantee on written notification to the Bank of such cession.
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

**PSC3 Option G**

|  |  |  |
| --- | --- | --- |
| **Document reference** | **Title** | **No of pages** |
| C2.1 | Pricing assumptions: Option G  Pricing assumptions: Option | **[●]** |
| C2.2 | *Staff rates, expenses* and the *task schedule*. | **[●]** |

C2.1 Pricing assumptions: Option G

# How work is priced and assessed for payment

From Option G: Term contract

|  |  |  |
| --- | --- | --- |
| Identified and defined terms | 11  11.2 | (17) The Price for Services Provided to Date is, for each Task, the total of   * the Time Charge for work which has been completed on time based items on the Task Schedule and * a proportion of the lump sum price for each other item on the Task Schedule which is the proportion of work completed on that item. |
|  |  | (20) The Prices are   * the Time Charge for items described as time based on the Task Schedule and * the lump sum price in the Task Schedule for each other item. |

From the Core Clauses:

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

and

|  |  |  |
| --- | --- | --- |
| Assessing the amount due | 50.3 | The amount due is   * the Price for Services Provided to Date, * the amount of the *expenses* properly spent by the *Consultant* in Providing the Services and * other amounts to be paid to the *Consultant* less amounts to be paid by or retained from the *Consultant*.   Any tax which the law requires the *Employer* to pay to the *Consultant* is included in the amount due. |

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

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

# Staff rates

Tendering consultants are advised to consult the NEC3 Professional Services Contract Guidance Notes before entering *staff rates* into Contract Data, or in section C2.2 which follows.

This is because *staff rates* can be established in one of three ways:

* rates for named staff,
* rates for categories of staff, or
* rates related to salaries paid to staff.

Rate adjustment for inflation, if necessary, can be based either on actual salary adjustments or by using Option X1: Price adjustment for inflation. See pages 13 and 14 of the PSC3 Guidance Notes.

*Expenses* associated with employing a staff member in Providing the Services can be listed separately either by the *Employer* in Contract Data provided by the *Employer* or by the *Consultant* in Contract Data provided by the *Consultant*.

As only the *expenses* listed may be claimed by the *Consultant*, all other cost to the *Consultant* associated with Providing the Services must be included within the *staff rates*.

Rate adjustment for inflation of *expenses* is explained on page 15 of the PSC3 Guidance Notes.

# The function of the Task Schedule

The Task Schedule may include items of work to be paid for on a rate (Time Charge) or on a lump sum price for the item. Any work ordered during the term of the contract – i. e. before the Completion Date – for which there is no priced item in the Task Schedule is priced using the compensation event procedure and the resulting Price is added into the Price List.

The *task schedule* is prepared by the *Employer* for the *Consultant* to price, or may be prepared jointly with the *Consultant*. It is typically priced in two parts as items of work to be carried out on a time basis and lump sum prices for other items of work. The task schedule must be as complete as possible and fully representative of all the work and *services* which the *Employer* may require the *Consultant* to carry out. The only unknown is when the work is to be carried out; the Task Order will be used to instruct when work to be done.

C2.2 Staff rates & the task schedule

This section can be used when the *staff rates* and *expenses* are considerable in number and more conveniently located here than in the Contract Data. Entries in the Contract Data should refer to this section of Part 2.

State whether the *staff rates* and *expenses* exclude or include VAT.

# The *staff rates* are:

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

# The task schedule

The following format could be used:

|  |  |
| --- | --- |
| **No.** | **Items of work to be carried out on a time basis** |
|  |  |
|  |  |
|  |  |

|  |  |  |
| --- | --- | --- |
| **No.** | **Items of work priced on a lump sum basis** | **Price (excluding VAT)** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

Part 3: Scope of Work

|  |  |  |
| --- | --- | --- |
| **Document reference** | **Title** | **No of pages** |
|  | This cover page | 1 |
| C3.1 | *Employer*’s Scope |  |
| C3.2 | *Consultant’s* Scope  (insert at award stage or delete if not applicable) |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  | Total number of pages |  |

C3.1: Employer’s scope

# Specification and description of the *service*s

The content of this section is the meat of the scope of work and will depend on the nature of the *service*s required. The *Consultant* may be appointed for a wide range of duties. The range is almost limitless but would typically include:

Provide services of an advisory or specialist nature.

Conduct training on an ad hoc basis.

Manage a service or facility on behalf of the *Employer.*

Develop a software application and then implement it throughout the *Employer*’s organisation.

Act as the architect for the design and supervision of a new building.

Act as the engineer for the design of a new project or structure.

Act as a cost engineer or quantity surveyor on a project.

Act as the *Project Manager* in terms of an ECC contract or as a project manager for a total project.

Act as the *Supervisor* in terms of an ECC contract.

Professional services contracts are by nature specialised and it would be impractical to prescribe formats here to cover such a wide range of duties as those listed above.

For engineering and construction services, document compilers are advised to consult a paper issued by CIDB entitled, *“A generic scope of work for services relating to construction works. 18 October 2006”*. This paper identifies a generic format as well as giving guideline scope of services for the appointment of members of the various statutory councils operating in South Africa such as ECSA, SACQSP, SACAP and SACPCMP.

The Construction Industry Council (UK) has developed a generic approach suitable for the appointment of most professional disciplines in the engineering and construction sector. This requires the Scope to be compiled for stages of the services associated with a project and is described on pages 1 and 3 of the above referenced paper. If this approach were to be followed, this section could be developed as follows:

## 

### Transfer of rights if Option X 9 applies

Option X9 states: The *Employer* owns the *Consultant*’s rights over material prepared for this contract by the *Consultant, there is no exception to this clause.*

If a subconsultant is brought in to assist in the execution of the works, the *Consultant* obtains rights over material prepared by the subconsultant on behalf of the *Employer.*

### 

## Management of work done by Task Order

Procedures for management of Task orders:

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

## Health and safety

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

*Consultant* to adhere to Eskom Site Safety requirements 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.

## Procurement

### BBBEE and preferencing scheme

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

### Other constraints

Delete if not required or state any other constraints that may be applicable to people employed by the *Consultant* and change the heading to suit the subject matter.

## Correction of Defects

First read clause 41.2 and if any particular additional constraints are required when correcting Defects, state them here. Otherwise delete this heading.

## Working on the *Employer*’s property

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

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

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

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

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

## Cooperating with and obtaining acceptance of Others

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

1) The cross reference from core clause 23.1 about cooperation generally as well as details about Others with whom the *Consultant* may be required to work. See clause 11.2(7) for the definition of Others.

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

## Things provided by the *Employer*

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

## Cataloguing requirements by the *Consultant*

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

1. [↑](#footnote-ref-2)