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|  |

# NEC4 Engineering & Construction Contract (ECC4)

|  |  |  |  |
| --- | --- | --- | --- |
| **Between** | **The Council for Scientific and Industrial Research** | | |
|  | Reg No. \_\_\_\_\_\_\_\_\_\_\_ | **(the *Client*)** | |
| **and** | **[Insert *Contractor*’s registered name at award stage]** | | |
| Reg No. \_\_\_\_\_\_\_\_\_\_\_ | **(the *Contractor*)** | |
| **for** | **Engineering and Construction of Facilities to house Pilot Plant Equipment for the Biorefinery Industry Development Facility (BIDF)** | | |
|  |  | **(the *works*)** | |
|  |  | | |
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|  |  | |  |
| **Contract No.** | **[Insert at award stage]** | | |
| **Prepared By:** | **Council for Scientific & Industrial Research** | | |

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# Part C1: Agreements and Contract Data

## C1.1 Form of Offer and Acceptance

### Offer

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

**Engineering and Construction of Facilities to House Pilot Plant Equipment for the Biorefinery Industry Development Facility (BIDF)**

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[[1]](#footnote-1).

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.

|  |  |  |
| --- | --- | --- |
| Option A, B, C, and D | 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[[2]](#footnote-2) | **R [●]** |
|  | (in words) **[●]** | |

This Offer may be accepted by the Client 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 Client identified below accepts the tenderer’s Offer. In consideration thereof, the Client 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 Client 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

Part C4 Site 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 Client 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 Client’s agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

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

Unless the tenderer (now *Contractor*) within five working days of the date of such receipt notifies the *Client* in writing of any reason why it cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

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

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

### Schedule of Deviations to be completed by the *Client* 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 *Client* 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. Insert particulars in place of this symbol **[●]** and delete rows not required.

|  |  |  |
| --- | --- | --- |
| No. | Subject | Details |
| 1 | **[●]** | **[●]** |
| 2 | **[●]** | **[●]** |
| 3 | **[●]** | **[●]** |
| 4 | **[●]** | **[●]** |
| 5 | **[●]** | **[●]** |
| 6 | **[●]** | **[●]** |
| 7 | **[●]** | **[●]** |
|  |  |  |

By the duly authorised representatives signing this Schedule of Deviations below, the Client 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 Client 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 *Client*** |
| 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 ECC4 Contract Data

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

**[Instructions to the contract compiler: (delete these three notes in the final draft of a tender / 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. This symbol **[●]** is used to denote where data is to be inserted. Delete the symbol when inserting data.
3. In the left-hand column where a note begins with the word, “If -----", either complete the data and delete the note if the option applies or delete the note and the rows of data relevant to that note if the option has not been selected.]

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

|  |  |  |  |
| --- | --- | --- | --- |
| **1 General** | | | |
| 11.1 | The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Engineering and Construction Contract, June 2017 with amendments January 2019. | | |
|  | Main Option | A: Priced contract with activity schedule. | |
|  | Option for resolving and avoiding disputes | | W1 |
|  | Secondary Options | X2: Changes in the law, X11: Termination by the *Client,* X18: Limitation of liability. | |
|  |  |  | |
| 11.2(15) | The *works* are | Engineering and Construction of Facilities to House Pilot Plant Equipment for Biorefinery | |
| 10.1 | The *Client* is |  | |
|  | Name |  | Council for Scientific & Industrial Research |
|  | Address for communications | | Meiring Naudé Road, Brummeria, Pretoria, 0001 |
|  | Address for electronic communications | | tender@csir.co.za |
| 10.1 | The *Project Manager* is | |  |
|  | Name | | Diaan Roode |
|  | Address for communications | | PO Box 11160, Zwartkop, Centurion, 0051 |
|  | Address for electronic communications | | diaanr@epcmholdings.com |
| 10.1 | The *Supervisor* is | |  |
|  | Name | | [●] |
|  | Address for communications | | [●] |
|  | Address for electronic communications | | [●] |
| 11.2(16) | The Scope is in | Sections S100 to 2700 in Volume 2 | |
| 11.2(18) | The Site Information is in | Sections SI 100 to 600 in Volume 3 | |
| 11.2(17) | The *boundaries of the site* are | | [●] |

|  |  |  |  |
| --- | --- | --- | --- |
| 13.1 | The *language of this contract* is | English | |
| 12.2 | The *law of the contract* is the law of | the Republic of South Africa | |
| 13.3 | The *period for reply* is | 7 Days | except that |
|  | * The period for reply for | [●] | is [●] |
|  | * The *period for reply* for | [●] | is [●] |
| 15.2 | The following matters will be included in the Early Warning Register | | |
|  | [●] | | |
| 15.2 | Early warning meetings are to be held at intervals no longer than | | 1 weeks |

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| --- |
| **2. The Contractor's main responsibilities** |

If the *Client* has identified work which is set to meet a stated *condition* by a *key date*

|  |  |  |
| --- | --- | --- |
| 25.3 | The *key date*s and *condition*s to be met are: |  |
|  | *condition* to be met | *key date* |
| (1) | [●] | [●] |
| (2) | [●] | [●] |
| (3) | [●] | [●] |

If neither of the above two options apply

|  |  |
| --- | --- |
|  | Data required by this section of the core clauses is provided by the *Contractor* in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data. |

|  |  |  |  |
| --- | --- | --- | --- |
| **3 Time** | | | |
| 31.2 | The *starting date* is |  | 10 January 2022 |
| 30.1 | The *access dates* are: |  |  |
|  | part of the Site | | date |
| (1) | [●] | | [●] |
| (2) | [●] | | [●] |
| (3) | [●] | | [●] |

|  |  |  |
| --- | --- | --- |
| 32.2 | The *Contractor* submits revised programmes at intervals no longer than |  |
| 2 weeks |

If the *Client* has decided the *completion date* for the whole of the *works*

|  |  |  |
| --- | --- | --- |
| 11.2(2) & 11.2(3) | The *completion date* for the whole of the *works* is | 30 April 2022 |

|  |  |  |
| --- | --- | --- |
| Taking over the *works* before the Completion Date | The *Client* **is/is not** willing to take over the *works* before the Completion Date. (Delete as applicable) |  |

If no programme is identified in part two of the Contract Data

|  |  |  |
| --- | --- | --- |
| 31.1 | The period after the Contract Date within which the *Contractor* is to submit a first programme for acceptance is |  |
| 2 weeks |

|  |  |  |  |
| --- | --- | --- | --- |
| **4 Quality management** | | | |
| 40.2 | The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is | |  |
| 2 Weeks |
| 43.1 | The period between Completion of the whole of the *works* and the *defects date* is | |  |
| 44.2 | The *defect correction period* is | 52 Weeks | except that |
|  | * The *defect correction period* for | [●] is | [●] |
|  | * The *defect correction period* for | [●] is | [●] |

|  |  |  |  |
| --- | --- | --- | --- |
| **5 Payment** | | | |
| 51.1 | The *currency of the contract* is the | | South African Rand (ZAR) |
| 50.1 | The *assessment interval* is | | Between the 20th of each month |
|  | The *interest rate* is | 2% per annum | (not less than 2) above the |
|  | Prime rate of the | | ABSA Bank |

If the period in which payments are made is not three weeks

|  |  |  |
| --- | --- | --- |
| 51.2 | The period within which payments are made is | 45 days |

|  |  |  |
| --- | --- | --- |
| **6 Compensation events** | | |
| 60.1(13) | The place where weather is to be recorded is | CSIR Durban Campus |

|  |  |  |
| --- | --- | --- |
| 60.1(13) | The *weather measurements* to be recorded for each calendar month are | |
|  | * the cumulative rainfall (mm) | |
|  | * the number of days with rainfall more than 10 mm | |
|  | * the number of days with minimum air temperature less than 0 degrees Celsius | |
|  | * the number of days with snow lying at 09:00 hours South African Time | |
|  | and these measurements | |
|  | * number of days with wind speed exceeding 25 knots for more than 3 hours | |
|  | The *weather measurements* are supplied by | South African Weather Bureau |

If recorded weather data are available:

|  |  |  |
| --- | --- | --- |
| 60.1(13) | The *weather data* are the records of past *weather measurements* for each calendar month | |
|  | which were recorded at | [●] |
|  | and which are available from: | the South African Weather Bureau and included in Annexure A to this Contract Data provided by the *Client* |

If no recorded data are available

|  |  |  |
| --- | --- | --- |
| Where no recorded data are available  60.1(13) | Assumed values for the ten-year return *weather data* for each *weather measurement* for each calendar month are: |  |
| Stated in Annexure A to this Contract Data provided by the *Client*. |

If Option A or B is used

|  |  |  |
| --- | --- | --- |
| 63.12 | The value engineering percentage is 50%, unless another percentage is stated here, in which case it is |  |
| [●] % |

If there are additional compensation events

|  |  |  |
| --- | --- | --- |
| 60.1(21) | These are additional compensation events |  |
|  | [●] | |

|  |  |
| --- | --- |
| **7 Title** | |
|  | There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data. |

|  |
| --- |
| **8 Liabilities and insurance** |

If there are additional *Client’s* liabilities

|  |  |  |
| --- | --- | --- |
| 80.1 | These are additional *Client*'s liabilities |  |
|  | (1) [●] | |
|  | (2) [●] | |

|  |  |
| --- | --- |
| 83.3 Insurance Table row 3 | The minimum amount of cover for insurance against loss of or damage to property (except the *works*, Plant, 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* Providing the Works for any one event is: |
|  | R 15 000 00-00 |
| 83.3 Insurance Table row 4 | The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is: |
|  | as prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the *Contractor’s* common law liability for people falling outside the scope of the Act with a limit of cover of not less than R [●] ([●] Rands). |

If the *Client* is to provide Plant and Materials and the *Contractor* is providing insurance against loss of or damage to the *works* Plant and Materials:

|  |  |  |
| --- | --- | --- |
| 83.3 Insurance Table row 1 | The insurance against loss of or damage to the *works*, Plant and Materials is to include | |
| cover for Plant and Materials provided by the *Client* for an amount of | R **[●]** |

If the *Client* is to provide any of the insurances stated in the Insurance Table

|  |  |  |
| --- | --- | --- |
| 83.1 | The *Client* provides these insurances from the Insurance Table | |
|  | (1) Insurance against | **[●]** |
|  | Minimum amount of cover is | **[●]** |
|  | The deductibles are | **[●]** |
|  | (2) Insurance against | **[●]** |
|  | Minimum amount of cover is | **[●]** |
|  | The deductibles are | **[●]** |
|  | (3) Insurance against | [●] |
|  | Minimum amount of cover is | [●] |
|  | The deductibles are | [●] |

If additional insurances are to be provided

|  |  |  |
| --- | --- | --- |
| 83.1 | The *Client* provides these additional insurances | |
|  | (1) Insurance against | **[●]** |
|  | Minimum amount of cover is | **[●]**. |
|  | The deductibles are | **[●]** |
|  | (2) Insurance against | **[●]** |
|  | Minimum amount of cover is | **[●]** |
|  | The deductibles are | **[●]** |

|  |  |  |
| --- | --- | --- |
| 83.2 | The *Contractor* provides these additional insurances | |
|  | (1) Insurance against | Professional indemnity insurance |
|  | Minimum amount of cover is | R 5 000 000-00 |
|  | The deductibles are | [●] |
|  | (2) Insurance against | All Risk Insurance |
|  | Minimum amount of cover is | R 15 000 000-00 |
|  | The deductibles are | [●] |
|  |  |  |

|  |  |
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| **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. |

|  |  |  |
| --- | --- | --- |
| **Resolving and avoiding disputes** | | |
| W1.4(1), W2.4(1) and W3.3(1) | The *tribunal* is | **arbitration** |
| W1.4(5), W2.4(4) and W3.3(4) | 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 | **Pretoria, 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.** | |

If Option W1 or W2 is used

|  |  |  |
| --- | --- | --- |
| W1.1(1) | The *Senior Representatives* of the *Client* are | |
|  | Name (1) | Enrico Antonio Harker |
|  | Address for communications | CSIR, Facilities Management & Security Services, Meiring Naudé Road, Brummeria, Pretoria, 0001 Tel 012 841 3666 |
|  | Address for electronic communications | eharker@csir.co.za |
|  | Name (2) | Delphia Skosana |
|  | Address for communications | CSIR, Facilities Management & Security Services, Meiring Naudé Road, Brummeria, Pretoria, 0001 Tel 012 841 2262 |
|  | Address for electronic communications | dskosana@csir.co.za |
| W1.2 | The *Adjudicator* is (Name)  **[It is always preferable to name the *Adjudicator* at time of award. If this can be done delete this data and insert the name and contact details below.]** | **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) |
|  | Address for communications | [●] |
|  | Address for electronic communications | [●] |
|  | The *Adjudicator nominating body* is: | **the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the London Institution of Civil Engineers. (See** [**www.ice-sa.org.za**](http://www.ice-sa.org.za) **) or its successor body.** |

If Option X1 is used

|  |  |  |  |
| --- | --- | --- | --- |
| **X1: Price adjustment for inflation (used only with Options A, B, C and D)** | | | |
| X1.1(c ) | The proportions used to calculate the Price Adjustment Factor are | | |
|  | 0.[●] | linked to the index for | [●] |
|  | 0.[●] | linked to the index for | [●] |
|  | 0.[●] | linked to the index for | [●] |
|  | 0.[●] | linked to the index for | [●] |
|  | 0.[●] | linked to the index for | [●] |
|  | 0.[●] | non-adjustable |  |
|  | 1.00 |  |  |
|  | The *base date* for indices is | **[●]** | |
|  | These indices are | **[●]** | |
|  |  |  |  |

If Option X2 is used

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **X2: Changes in the law** | | | | |
| X2.1 | The *law of the project* is | | The law of the Republic of South Africa |
|  | | |  | |

If Option X4 is used

|  |  |
| --- | --- |
| **X4: Ultimate holding 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. |

If Option X5 is used

|  |  |  |  |
| --- | --- | --- | --- |
| **X5: Sectional Completion** | | | |
| 11.2(3) | The *completion date* for each *section* of the *works* is | | |
|  | *section* | description | *completion date* |
|  | (1) | **[●]** | **[●]** |
|  | (2) | **[●]** | **[●]** |
|  | (3) | **[●]** | **[●]** |
|  | (4) | **[●]** | **[●]** |
|  |  |  |  |

If Option X6 is used without Option X5

|  |  |  |
| --- | --- | --- |
| **X6: Bonus for early Completion** | | |
| X6.1 | The bonus for the whole of the *works* is | [●] per day |

If Option X6 is used with Option X5

|  |  |  |  |
| --- | --- | --- | --- |
| **X6: Bonus for early Completion** | | | |
| X6.1 | The bonus for each *section* of the *works* is | |  |
|  | section | description | amount per day |
|  | (1) | [●] | R [●] |
|  | (2) | [●] | R [●] |
|  | (3) | [●] | R [●] |
|  | (4) | [●] | R [●] |
|  | The bonus for the remainder of the *works* is | | R [●] |

If Option X7 is used without Option X5

|  |  |  |
| --- | --- | --- |
| **X7: Delay damages** | | |
| X7.1 | Delay damages for Completion of the whole of the *works* are | R 6 000 per day |

If Option X7 is used with Option X5

|  |  |  |  |
| --- | --- | --- | --- |
| **X7: Delay damages** | | | |
| X7.1 | Delay damages for each *section* of the *works* are | |  |
|  | section | description | amount per day |
|  | (1) | [●] | R [●] |
|  | (2) | [●] | R [●] |
|  | (3) | [●] | R [●] |
|  | (4) | [●] | R [●] |
|  | The delay damages for the remainder of the *works* are | | R [●] |

If Option X8 is used

|  |  |  |
| --- | --- | --- |
| **X8: Undertakings to the *Client* or Others** | | |
| X8.1 | The *undertakings to Others* are | |
|  | provided to: |  |
|  | [●] |  |
|  | [●] |  |
| X8.2 | The *Subcontractor undertaking to Others* are | |
|  | works | provided to |
|  | [●] | [●] |
|  | [●] | [●] |
| X8.3 | The *Subcontractor undertaking to the Client* are | |
|  | *works* |  |
|  | [●] |  |
|  | [●] |  |

If Option X9 is used

|  |  |
| --- | --- |
| **X9: Transfer of rights** | |
|  | There is no reference to Contract Data in this Option and terms in italics used in this Option are identified elsewhere in this Contract Data. |

If Option X10 is used

|  |  |  |
| --- | --- | --- |
| **X10: Information modelling** | | |
| X10.4(1) | If no *information execution plan* is identified in part two of the Contract Data, the period after the Contract Date within which the *Contractor* is to submit a first Information Execution Plan for acceptance is |  |
| **[●]** |
|  | The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use reasonable skill and care normally used by professionals providing information similar to the Project Information is, in respect of each claim | R [●] |
|  | The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is | [●] |

If Option X11 is used

|  |  |
| --- | --- |
| **X11: Termination by the *Client*** | |
|  | 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. |

If Option X13 is used

|  |  |  |
| --- | --- | --- |
| **X13: Performance bond** | | |
| X13.1 | The amount of the performance bond is | Value of the works |

If Option X14 is used

|  |  |  |
| --- | --- | --- |
| **X14: Advanced payment to the *Contractor*** | | |
| X14.1 | The amount of the advanced payment is | R [●] |
| X14.3 | The period after the Contract date from which the *Contractor* repays the instalments in assessments is | [●] weeks |
| X14.3 | The instalments are | [●] (either an amount or a percentage of the payment otherwise due) |
| Advanced payment bond | An advanced payment bond **is/is not** required. (delete as applicable) | |

If Option X15 is used

|  |
| --- |
| X15: The *Contractor*’s design |

|  |  |  |
| --- | --- | --- |
| X15.4 | The period for retention following Completion of the whole of the *works* or earlier termination is |  |
| 10 years |
| X15.5 | The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim |  |
|  |
| R 5 000 000-00 |
| X15.5 | The period following Completion of the whole of the *works* or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is |  |
|  |
| 10 years |

If Option X16 is used

|  |  |  |
| --- | --- | --- |
| **X16 Retention** | | |
| X16.1 | The *retention free amount* is | [●] |
| X16.1 | The *retention percentage* is | 10 % |
|  |  |  |
| X16.3 | The *Contractor* **may/~~may not~~** give the *Client* a retention bond. (Delete as applicable) | |

If Option X17 is used

|  |  |  |  |
| --- | --- | --- | --- |
| X17: Low performance damages | | | |
| X17.1 | The amounts for low performance damages are | | |
|  | amount |  | performance level |
|  | [●] | for | [●] |
|  | [●] | for | [●] |
|  | [●] | for | [●] |
|  | [●] | for | [●] |

If Option X18 is used

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| X18: Limitation of liability | | | | |
| X18.2 | The *Contractor*’s liability to the *Client* for indirect or consequential loss is limited to: | | |  |
| 5% of the total of the Prices at the Contract Date |
| X18.3 | For any one event, the *Contractor*’s liability to the *Client* for loss of or damage to the *Client*’s property is limited to: | | |  |
| R [●] |
| X18.4 | The *Contractor*’s liability for Defects due to his design which are not listed on the Defects Certificate is limited to | | |  |
| R [●] |
| X18.5 | The *Contractor*’s total liability to the *Client* for all matters arising under or in connection with this contract, other than excluded matters, is limited to: | | |  |
| R [●] |
| X18.6 | The *end of liability date* is | 5 | years after Completion of the whole of the *works* | |

If Option X20 is used

|  |  |  |
| --- | --- | --- |
| **X20: Key Performance Indicators (not used with Option C and D)** | | |
| X20.1 | The *incentive schedule* for Key Performance indicators is in | [●] |
| X20.2 | A report of performance against each Key Performance Indicator is provided at intervals of |  |
| [●] months |

If Option X21 is used

|  |  |
| --- | --- |
| **X21: Whole life cost** | |
|  | 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. |

If Option Z is used

|  |  |
| --- | --- |
| **Z: *Additional* *conditions of contract*** | |
|  | The *additional conditions of contract* are |
| Z1 **[●]** |  |
|  |  |
| Z2 **[●]** |  |
|  |  |
| Z3 **[●]** |  |
|  |  |
| Z4 **[●]** |  |

### Annexure A: One-in-ten-year-return *weather data*

#### Obtained from SA Weather Bureau for [weather station]

If any one of these *weather measurements* recorded within a calendar month, before the Completion Date for the whole of the *works* and at the place stated in this Contract Data is shown to be more adverse than the amount stated below, then the *Contractor* may notify a compensation event.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | *Weather measurement* | | | | |
| Month | Cumulative rainfall (mm) | Number of days with rain more than 10mm | Number of days with min air temp **<** 0 deg.C | Number of days with snow lying at 08:00 CAT | [Other measurements if applicable] |
| January | **[●]** | **[●]** | **[●]** | **[●]** |  |
| February | **[●]** | **[●]** | **[●]** | **[●]** |  |
| March | **[●]** | **[●]** | **[●]** | **[●]** |  |
| April | **[●]** | **[●]** | **[●]** | **[●]** |  |
| May | **[●]** | **[●]** | **[●]** | **[●]** |  |
| June | **[●]** | **[●]** | **[●]** | **[●]** |  |
| July | **[●]** | **[●]** | **[●]** | **[●]** |  |
| August | **[●]** | **[●]** | **[●]** | **[●]** |  |
| September | **[●]** | **[●]** | **[●]** | **[●]** |  |
| October | **[●]** | **[●]** | **[●]** | **[●]** |  |
| November | **[●]** | **[●]** | **[●]** | **[●]** |  |
| December | **[●]** | **[●]** | **[●]** | **[●]** |  |

Only the difference between the more adverse recorded weather and the equivalent measurement given above is taken into account in assessing a compensation event.

### Part 2 – Data provided by the *Contractor*

**[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. In the left-hand column where a note begins, “If -----" either complete the data and delete the note if the option applies or delete the note and the rows of data relevant to that note if the option has not been selected.]

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

|  |  |  |  |
| --- | --- | --- | --- |
| **1 General** | | | |
| 10.1 | The *Contractor* is |  | |
|  | Name |  | [●] |
|  | Address for communications | | [●] |
|  | Address for electronic communications | | [●] |

|  |  |  |
| --- | --- | --- |
| 11.2(10) & 52.1 | The *fee percentage* is | [●]% |

|  |  |  |
| --- | --- | --- |
| 11.2(20) &16.3 | The *working areas* are the Site and | **[●]** |
|  |  |  |
| 24.1 | The *key persons* are |  |
|  | Name (1) | **[●]** |
|  | Job | **[●]** |
|  | Responsibilities | **[●]** |
|  | Qualifications | **[●]** |
|  | Experience | **[●]** |
|  |  |  |
|  | Name (2) | **[●]** |
|  | Job | **[●]** |
|  | Responsibilities | **[●]** |
|  | Qualifications | **[●]** |
|  | Experience | **[●]** |
|  |  |  |
| 11.2(8) | The following matters will be included in the Early Warning Register: | |
|  | [●] | |

|  |
| --- |
| **2 The *Contractor*’s main responsibilities** |

If the *Contractor* is to provide Scope for its design

|  |  |  |
| --- | --- | --- |
| 11.2(16) and 21.1 | The Scope provided by the *Contractor* for its design is in | **[●]** |

|  |
| --- |
| **3 Time** |

If a programme is to be identified in the Contract Data

|  |  |  |
| --- | --- | --- |
| 31.1 | The programme identified in Contract Data is | [●] |

If the *Contractor* is to decide the *completion date* for the whole of the *works*

|  |  |  |
| --- | --- | --- |
| 11.2(3) | The *completion date* for the whole of the *works* | [●] |

|  |
| --- |
| **5 Payment** |

If Option A or C is used

|  |  |  |
| --- | --- | --- |
| 11.2(21) | The *activity schedule* is in | Part 2 Pricing Data Section C2.2 |

If Option A, B C or D is used

|  |  |  |
| --- | --- | --- |
|  | The tendered total of the Prices excluding VAT is | R (ZAR) |

|  |
| --- |
| **Resolving and avoiding disputes** |

If Option W1 or W2 is used

|  |  |  |
| --- | --- | --- |
| W1.1(1) | The *Senior Representatives* of the *Contractor* are | |
|  | Name | [●] |
|  | Address for communications | [●] |
|  | Address for electronic communications | [●] |
|  |  |  |
|  | Name (2) | **[●]** |
|  | Address for communications | **[●]** |
|  | Address for electronic communications | **[●]** |

If Option X10 is used

|  |  |  |
| --- | --- | --- |
| **X10 Information modelling** | | |
| If an *information execution plan* is to be identified in the Contract Data | The *information execution plan* identified in the Contract Data is in | [●] |

|  |
| --- |
| **Data for Short Schedule of Cost Components (only used with Options A or B)** |

|  |  |  |  |
| --- | --- | --- | --- |
| 11.2(28) and SSCC 11 | The *people rates* are | | |
|  | Category of person | unit | rate |
|  | **[●]** | **[●]** | **[●]** |
|  | **[●]** | **[●]** | **[●]** |
|  | **[●]** | **[●]** | **[●]** |
|  | **[●]** | **[●]** | **[●]** |

|  |  |  |  |
| --- | --- | --- | --- |
| SSCC 21 | The published list of Equipment is the edition current at the Contract Date of the list published by | **[●]** | |
|  | The percentage for adjustment for Equipment in the published list is | **[**●]% | (State plus or minus) |

|  |  |  |  |
| --- | --- | --- | --- |
| SSCC 22 | The rates for other Equipment are | | |
|  | Equipment | rate |  |
|  | **[●]** | **[●]** |  |
|  | **[●]** | **[●]** |  |
|  | **[●]** | **[●]** |  |
|  | **[●]** | **[●]** |  |

|  |  |  |  |
| --- | --- | --- | --- |
| SSCC 61 | The rates for Defined Cost of manufacture and fabrication outside the Working Areas by the *Contractor* are | | |
|  | Category of person | rate |  |
|  | **[●]** | **[●]** |  |
|  | **[●]** | **[●]** |  |
|  | **[●]** | **[●]** |  |
|  | **[●]** | **[●]** |  |

|  |  |  |  |
| --- | --- | --- | --- |
| SSCC 71 | The rates for Defined Cost of design outside the Working Areas are | | |
|  | Category of person | rate |  |
|  | **[●]** | **[●]** |  |
|  | **[●]** | **[●]** |  |
|  | **[●]** | **[●]** |  |
|  | **[●]** | **[●]** |  |

|  |  |
| --- | --- |
| SSCC 72 | The categories of design people whose travelling expenses to and from the Working Areas are included in Defined Cost are |
|  | **[●]** |

# Part C2 Pricing Data

If main Option A is chosen, delete the sections for each of the other Options and delete this note

## C2.1 Pricing assumptions Option A

#### How work is priced and assessed for payment

Clause 11 in NEC4 Engineering and Construction Contract, (ECC4) Option A states:

|  |  |  |
| --- | --- | --- |
| **Identified and defined terms** | 11  11.2 | (20) The Activity Schedule is the *activity schedule* unless later changed in accordance with this contract. |
|  |  | (27) The Price for Work Done to Date is the total of the Prices for   * each group of completed activities and * each completed activity which is not in a group.   A completed activity is one which is without Defects which would either delay or be covered by immediately following work. |
|  |  | (30) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract. |

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

#### Function of the Activity Schedule

Clause 54.1 in Option A states: “Information in the Activity Schedule is not Scope or Site Information”. This confirms that specifications and descriptions of the work or any constraints on how it is to be done are not included in the Activity Schedule but in the Scope. This is further confirmed by Clause 20.1 which states, “The *Contractor* Provides the Works in accordance with the Scope”. Hence the *Contractor* does **not** Provide the Works in accordance with the Activity Schedule. The Activity Schedule is only a pricing document.

#### Link to the programme

Clause 31.4 states that “The *Contractor* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance”. Ideally the tendering contractor will develop a high level programme first then resource each activity and thus arrive at the lump sum price for that activity both of which can be entered into the *activity schedule*.

#### Preparing the activity schedule

Generally it is the tendering contractor who prepares the *activity schedule* by breaking down the work described within the Scope into suitable activities which can be well defined, shown on a programme and priced as a lump sum.

The *Scope*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Contractor* to include in his *activity schedule* and be priced accordingly.

It is assumed that in preparing his *activity schedule* the *Contractor:*

* Has taken account of the guidance given in the “NEC4 User Guide Preparing an Engineering and Construction Contract Volume 2” page 84.
* Understands the function of the Activity Schedule and how work is priced and paid for;
* Is aware of the need to link the Activity Schedule to activities shown on his programme;
* Has listed and priced activities in the *activity schedule* which are inclusive of everything necessary and incidental to Providing the Works in accordance with the Scope, as it was at the time of tender, as well as correct any Defects not caused by a *Clients* risk;
* Has priced work he decides not to show as a separate activity within the Prices of other listed activities in order to fulfil the obligation to complete the *works* for the tendered total of the Prices.
* Understands there is no adjustment to the lump sum Activity Schedule price if the amount, or quantity, of work within that activity later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event.

## C2.2 The *activity schedule* – Option A

An activity schedule could have the following format:

|  |  |  |  |
| --- | --- | --- | --- |
| **Item**  **No.** | **Programme Reference** | **Activity description** | **Price** |
| 1 |  | Long Lead Items Order Placed |  |
| 2 |  | Site Established |  |
| 3 |  | Demolitions Completed |  |
| 4 |  | Structural Steel Work Completed |  |
| 5 |  | Profiled Metal Sheeting and Accessories Installed |  |
| 6 |  | Interior Fitment Completed |  |
| 7 |  | Equipment Commissioned |  |

If main Option B is chosen, delete the sections for the other main Options and delete this note.

If main Option D is chosen, delete the sections for the other main Options and delete this note

## Part C3 Scope of Work

## C3.1: The *Client’s* scope

**Note to draughts person**: The structure which follows in this template is taken from pages 59 to 75 of the User Guide, “Preparing an Engineering and Construction Contract.” Please refer to those pages for a check list of topics to help prepare a complete statement of the *Client*’s requirements. There are many ways to structure Scope. Most projects will not need all the items listed and some items not included may need to be inserted. This structure also permits various documents (such as specifications) to be included as appendices to make navigation of other Scope sections easier.

Where there is a cross reference to the Scope from the *conditions of contract*, the clause number in ECC4 is stated under the paragraph title in bold font. Read the clause together with the Scope to ensure they read logically together and do not conflict or give rise to ambiguity.

PLEASE DELETE THE ABOVE NOTES FROM THE FINAL DRAFT OF THE CONTRACT.

#### S 100 Description of the *works*

|  |  |
| --- | --- |
| S 105 Project objectives | Engineering and Construction of Facilities to House Pilot Plant Equipment for the Biorefinery Industry Development Facility (BIDF) |
| S 110 Description of the *works* (general only) | CSIR require a Contractor to provide the Engineering, construction, procurement, installation and commissioning of a facility to accommodate additional equipment at the Biorefinery Industry Development Facility (BIDF) in Durban (eThekwini). This additional equipment will be supplied by the Employer unless expressly stated in the Works |

#### S 200 Constraints on how the *Contractor* Provides the Works

|  |  |
| --- | --- |
| S 201 General constraints | Provide text (as applicable) about restriction on   * Use of the Site * Access to the Site * Deliveries * Noise and vibrations * Working hours * Parking * Use of cranes * Use (or non-use) of explosives * Restrictions on use of hazardous materials * Storage of fuel and chemicals * Pollution, ecological or environmental impacts * Archaeological requirements * Interfaces between the *works* and existing things * Occupied premises and users * *Client* specific policies and procedures * Constraints imposed to meet requirements of Others (for example funders) |
| S 210 Confidentiality |  |
| S 215 Security and protection of the Site |  |
| S 220 Security & identification of people |  |
| S 225 Protection of existing structures and services |  |
| S 230 Protection of the *works* |  |
| S 235 Cleanliness of roads |  |
| S 240 Traffic management |  |
| S 245 Condition survey |  |
| S 250 Consideration of Others |  |
| S 255 Industrial relations |  |
| S 260 Control of works |  |
| S 265 Site cleanliness |  |
| S 270 Waste materials |  |
| S 280 BBB-EE requirements |  |
| S285 Use of local labour |  |
| S 290 Skills development |  |

#### S 300 *Contractor*’s design

|  |  |
| --- | --- |
| S 305 Design responsibility  **See clause ECC4 21.1** |  |
| S 310 Design submission procedures and acceptance criteria  **See clauses:**  **ECC 21.2**  **ECC X22.3(1)**  **ECC X22.3(3)** |  |
| S 315 Design approvals from Others |  |
| S 320 Client’s requirements  **ECC 21.2**  **ECC X22.3(3)** |  |
| S 325 Design co-ordination |  |
| S 330 Requirements of Others |  |
| S 325 Using the *Contractor*’s design  **See clause ECC4 22.1** |  |
| S 340 *Client’s* requirements for design of Equipment  **ECC 23.1** |  |

#### S 400 Completion

|  |  |
| --- | --- |
| S 405 Completion definition  **ECC 11.2(2)** |  |
| S 410 Sectional Completion definition  **ECC 11.2(2)**  **ECC X5.1** |  |
| S 415 Training |  |
| S 420 Final clean |  |
| S 425 Security |  |
| S 430 Correcting Defects |  |
| S 435 Pre-Completion arrangements |  |
| S 440 Use of the *works*  **ECC 35.2** |  |

#### S 500 Programme

|  |  |
| --- | --- |
| S 505 Programme requirements  **ECC 31.2**  **ECC 31.3** |  |
| S 510 Methodology statement |  |
| S 515 Work of the *Client* and Others  **ECC 25.1**  **ECC 60.1(5)** |  |
| S 520 Information required |  |
| S 525 Revised programme |  |

#### S 600 Quality management

|  |  |
| --- | --- |
| S 605 Quality management system  **ECC 40.1** |  |
| S 610 Quality policy statement and quality plan |  |
| S 615 Samples |  |

#### S 700 Tests and inspections

|  |  |
| --- | --- |
| S 705 Tests and inspections  **ECC 41.1**  **ECC 41.2**  **ECC 42.1**  **ECC 60.1(16)** |  |
| S 710 Samples |  |
| S 715 Management of tests & inspections and provision of samples |  |
| S 720 Covering up completed work |  |
| S 725 *Supervisor*’s procedure for inspections and watching tests |  |
|  |  |

#### S 800 Management of the *works*

|  |  |
| --- | --- |
| S 805 Project team – Others | *Recommended text*  The *Contractor* and the *Project Manager* use the requirements of the early warning processes described in core clause 15, to in addition manage the progress of the *works* inclusive of   * reviewing the progress of the *Contractor* in achieving the objectives of the project, * allowing the *Contractor* to demonstrate from the current Accepted Programme its progress and planned activities for the coming 4 weeks, * acting as a combined management team by discussing reviewing and making decisions required in terms of the contract, and in doing so * cultivate a spirit of co-operation and mutual trust for the benefit of both Parties and all who attend and * attending to any other issues considered relevant by either Party and the *Project Manager*.     Early warning meetings may be convened at either Party’s premises on an alternating basis as agreed between the *Contractor* and the *Project Manager* or otherwise all meetings are held at the Site.  The *Project Manager* chairs the meeting and prepares the Minutes which are distributed to the *Project Manager* and the *Contractor* within 5 days of the meeting.  Informal reviews or meetings may be held at the premises of either Party throughout the duration of the contract on a non-interference basis. These informal reviews require no additional preparation and are intended to support communication between the *Project Manager* and the *Contractor*.  All attendees at early warning meetings and any other meeting carry their own expenses incurred in connection with such attendance. |
| S810 Communication system  **ECC 13.2** |  |
| S 815 Management procedures |  |
| S 820 *Contractor*’s application for payment  **ECC 50.2** |  |

#### S 900 Working with the *Client* and Others

|  |  |
| --- | --- |
| S 905 Sharing the Working Areas with Others  **ECC 25.1**  **ECC 60.1(5)** |  |
| S 910 Co-operation  **ECC 25.1**  **ECC 60.1(5)** |  |
| S 915 Co-ordination |  |
| S 920 Authorities and utilities providers |  |

#### S 1000 Services and other things to be provided

|  |  |
| --- | --- |
| S 1005 Services and other things provided by the *Contractor* for the use by the *Client*, *Project Manager*, *Supervisor* or Others  **ECC 25.2** |  |
| S 1010 Services and other things to be provided by the *Client.*  **ECC 25.2** |  |

#### S 1100 Health and safety

|  |  |
| --- | --- |
| S 1105 Health and safety requirements  **ECC 27.4** |  |
| S 1110 Method statements |  |
| S 1115 Legal requirements |  |
| S 1120 Inspections |  |
| S 1125 Deleterious and hazardous materials |  |
| S 1130 Pre-Construction Information |  |

#### S 1200 Subcontracting

|  |  |
| --- | --- |
| S 1205 Restrictions or requirements for subcontracting |  |
| S 1210 Acceptance procedures  **ECC4 C, D, E 11.2(26)**  **ECC4 F 11.2(27)** |  |

#### S 1300 Title

|  |  |
| --- | --- |
| S 1305 Marking  **ECC4 71.1** |  |
| S 1310 Materials from excavation and demolition  **ECC4 73.2** |  |

#### S 1600 Ultimate holding company guarantee (Option X4)

|  |  |
| --- | --- |
| S 1605 Form of ultimate holding company guarantee.  **ECC4 X4.1** |  |

#### S 1700 Undertakings to the Client or Others (Option X8)

|  |  |
| --- | --- |
| S 1705 *Undertakings to Others*  **ECC X8.4** |  |
| S 1710 *Subcontractor undertakings to Others*  **ECC4 X8.4** |  |
| S 1715 *Subcontractor undertakings to the Client*  **ECC4 X8.4** |  |

#### S 1800 Transfer of rights (Option X9)

|  |  |
| --- | --- |
| S 1805 *Contractor*’s rights over material prepared for the design of the *works.*  **ECC4 X9.1** |  |
| S 1810 Other rights to be obtained by the *Contractor.*  **ECC4 X9.1** |  |

#### S 1900 Information modelling (Option X10)

|  |  |
| --- | --- |
| S 1905 Information Model Requirements  **ECC4 X10.1(4)** |  |

#### S 2000 Performance bond (Option X13)

|  |  |
| --- | --- |
| S 2005 Form of the performance bond  **ECC4 X13.1** |  |

#### S 2100 Advanced payment to the *Contractor*

|  |  |
| --- | --- |
| S 2105 Form of the advanced payment bond  **ECC4 X14.2** |  |

#### S 2200 The *Contractor*’s design (Option X15)

|  |  |
| --- | --- |
| S 2205 Constraints on use of material  **ECC4 X15.3** |  |
| S 2210 Form of documents to be retained.  **ECC4 X15.4** |  |

#### S 2300 Retention (Option X16) (not used with Option F)

|  |  |
| --- | --- |
| S 2305 Form of retention bond  **ECC4 X16.3** |  |

#### S 2400 Low performance damages (Option X17)

|  |  |
| --- | --- |
| S 2405 Performance requirements |  |

#### S 2700 *Client’s* work specifications and drawings

|  |  |
| --- | --- |
| S 2705 Client’s work specifications | Contents list or documents or both |
| S 2710 Drawings | Drawings list or drawings or both |

## C3.2: Scope provided by the *Contractor* for its design

# Part C4 Site Information

#### SI 100 Site location

|  |  |
| --- | --- |
| SI 105 Site location |  |

#### SI 200 Reports and surveys

|  |  |
| --- | --- |
| SI 205 Reports and surveys |  |

#### SI 300 Public information

|  |  |
| --- | --- |
| SI 305 Public information |  |

#### SI 400 Buried pipes, services and other objects

|  |  |
| --- | --- |
| SI 405 Buried pipes, services and other objects |  |

#### SI 500 Buildings, structures and other things adjacent to the Site

|  |  |
| --- | --- |
| SI 505 Buildings, structures and other things adjacent to the Site |  |

#### SI 600 Health and safety information

|  |  |
| --- | --- |
|  |  |
|  |  |
|  |  |

1. Conditions of Tender are those included in SANS 10845-3 2015 available from <https://store.sabs.co.za> [↑](#footnote-ref-1)
2. This total is required by the *Client* for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*. [↑](#footnote-ref-2)