
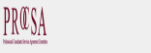














## A quick guide in choosing consulting engineering services agreements in South Africa and Africa.

Type of Contract	CESA	PROCSA	FIDIC	NEC	CIDB
<b>Versions/ Suite of Documents</b>	 <p>Model Professional Services Agreement and Specific Data August 2014</p>	 <p>Professional Consultants Services Agreement Committee (Procsa)</p>	 <p>Client/Consultant Model Services Agreement 5th Ed (2017 White Book)</p>	 <p>NEC4 Professional Services Contract (PSC) Publish Date: 22/06/2017 00:00:00 The NEC4 Professional Service Contract (PSC) is intended for use in the appointment of a supplier to provide professional services. It can be used for appointing project managers, supervisors, designers, consultants or other suppliers under NEC contracts and can also be used for appointing suppliers on non-NEC construction projects or for non-construction projects. This document contains the core clauses, the relevant main option clauses, the secondary option clauses and the contract data</p>	 <p>Standard Professional Services Contract July, 2009: Edition 3 of CIDB document 1015</p>
	 <p>Form of Agreement for Sub-Consultancy May 2011</p>	<p>PROCSA Edition 4.0 (Oct 2017) is now available The following Suite of Agreements are currently available:</p> <ul style="list-style-type: none"> <li>• Architect • Structural Engineer • Electrical Engineer • Fire Consultant</li> <li>• Landscape Architect • Civil Engineer • Quantity Surveyor</li> <li>• Project Manager • Mechanical Engineer • Wet Services Engineer</li> <li>• Construction Health &amp; Safety • Development Manager</li> <li>• Principal Agent (only) • Interior Designer • Blank</li> </ul>	 <p>Sub-Consultancy Agreement 2nd Edition (2017)</p>	 <p>NEC4: Professional Services Contract Bundle Publish Date: 22/06/2017 12:00:00 The NEC4 Professional Services Contract (PSC) bundle contains a number of Professional Services related documents, including the NEC4 Professional Services Short contract, guidance notes and flow charts.</p>	
	 <p>Procurement Guideline for Consulting Engineering Services April 2010</p>	<p>The 'Blank' agreement is available for those disciplines not published. Versions of the above Agreements at reduced cost for reference only are also available. These are termed Reference Documents. A combined Matrix of services by discipline and by stage is also available, together with a combined Suite of all the Reference Documents.</p>	 <p>Joint Venture (Consortium) Agreement (1st Ed, 1992).</p>	 <p>NEC4: Professional Services Short Contract (PSSC) Publish Date: 22/06/2017 00:00:00 The NEC4 Professional Services Short Contract (PSSC) is intended for use in the appointment of a supplier to provide professional services on smaller scale projects where sophisticated management techniques are not required. It can be used for appointing project managers, supervisors, designers, consultants or other suppliers under NEC contracts and can also be used for appointing suppliers on non-NEC construction projects or for non-construction projects.</p>	
	 <p>Short Form of Agreement for Consulting Engineering Services May 2011</p>	<p>These Professional Services Agreements comprise of the following:</p> <p><b>Agreement:</b> Terms and conditions <b>Annexure A:</b> Schedule (schedule of project variables) <b>Annexure B:</b> Services (Scope of Services specific to each discipline) <b>Further Annexures:</b> As required and identified in the schedule which may, inter alia, include the relevant tariff of professional fees and schedule of disbursement rates etc.</p>		 <p>NEC4: Professional Service Subcontract Publish Date: 22/06/2017 11:17:28 This contract should be used for the appointment of a subcontractor to provide a professional service to a contractor or consultant who has been appointed under an NEC4 main contract.</p>	
	 <p>Joint Venture Agreement between members November 2016</p>				
<b>Description</b>	<p>For consulting engineering services or a sub consultancy agreement in South Africa</p>	<p>This Client/Consultant Professional Services Agreement comprises a suite of documents prepared to regulate the terms of engagement between the client and the consultants. It was compiled in the interests of standardisation and good practice in the construction industry on a mandate from the constituent bodies. Project managers and quantity surveyors are very familiar with the Professional Consultants Services Agreement Committee (PROCSA) suite of documents and will tend to recommend one of the PROCSA Client/Consultant Professional Services Agreements.</p>	<p>FIDIC publishes the Client/Consultant Model Services Agreement together with the Sub-Consultancy Agreement and the Joint Venture Agreement. These services agreements are well suited for work outside South Africa and are often used on projects in Africa</p>	<p>The NEC4 Suite of Contracts builds upon the success of the NEC3 Contracts. The proven and unique processes for collaboration, fair dealing and good project management that are inherent in the NEC philosophy remain in this evolved edition. The NEC Contracts have been updated and streamlined following feedback from the industry, considering Government priorities and emerging best practice. The result is a contract suite with improved flexibility, clarity and which is easier to use. NEC4 enables you to deliver projects on time, on budget and to the highest standards. The NEC Professional Services Contracts are administratively intensive but, if properly administered, provides for a contractual environment that is well controlled and fair to all involved.</p>	<p>The Construction industry Development Board (CIDB) prepared the Standard Professional Services Contract for use by Employers when they engage firms or individuals (Service Providers) for the performance of knowledge-based expertise provided on the basis of trust.</p>
<b>Website</b>	<p><a href="http://www.cesa.co.za/node/20">http://www.cesa.co.za/node/20</a></p>	<p><a href="http://www.procsa.co.za">http://www.procsa.co.za</a></p>	<p><a href="http://fidic.org/bookshop">http://fidic.org/bookshop</a></p>	<p><a href="https://www.neccontract.com/Products/Contracts/Professional-Services-Contract/NEC3-Professional-Services-Contract-PSC">https://www.neccontract.com/Products/Contracts/Professional-Services-Contract/NEC3-Professional-Services-Contract-PSC</a></p>	<p><a href="http://www.cidb.org.za/publications/Documents/Standard%20Professional%20Services%20Contract.pdf">http://www.cidb.org.za/publications/Documents/Standard%20Professional%20Services%20Contract.pdf</a></p>
<b>Used By</b>	<p>Generally Private Clients</p>	<p>Private Clients (especially Developers). Recommended by CESA, AAQS, ACPM, ASAQs, SABTACO, SAIA, SAPOA.</p>	<p>International Clients are familiar and comfortable with FIDIC contracts</p>	<p>SA Organs of State. Generally used and recommended by parastatals like Transnet, Eskom, Telkom, SASOL, ACSA and, also DPW and Amplats.</p>	<p>SA Organs of State for public sector procurement.</p>
<b>Free / Purchased</b>	<ul style="list-style-type: none"> <li>• Purchase</li> </ul>	<ul style="list-style-type: none"> <li>• Purchase</li> </ul>	<ul style="list-style-type: none"> <li>• Purchase</li> </ul>	<ul style="list-style-type: none"> <li>• Purchase</li> </ul>	<ul style="list-style-type: none"> <li>• Purchase</li> </ul>

## A quick guide in choosing consulting engineering services agreements in South Africa and Africa.

Type of Contract	CESA	PROCSA	FIDIC	NEC	CIDB
<b>Advantages</b>	<ul style="list-style-type: none"> <li>Address all major risks that are generally found in appointments and no amendment of the agreements are necessary.</li> <li>User friendly</li> </ul>	<ul style="list-style-type: none"> <li>The benefit of this contract is that it makes provision for all disciplines (architects, QS, Engineers, HVAC etc).</li> <li>This is a well-edited and structured contract.</li> </ul>	<ul style="list-style-type: none"> <li>Generally address the majority of risks but also contain Particular Conditions that need to be fully completed to ensure risks are managed.</li> <li>Worldwide application accommodating a range of jurisdictions</li> </ul>	<ul style="list-style-type: none"> <li>A well-structured suite of contracts where risks are clearly defined and allocated at inception.</li> </ul>	<ul style="list-style-type: none"> <li>exercise of authority</li> <li>provide insurance</li> <li>need client's approval to appoint sub-consultants and key persons</li> <li>co-operation with others</li> <li>notice of changes</li> </ul>
<b>Disadvantages</b>	<ul style="list-style-type: none"> <li>Public entity Clients, do not agree to the use of these contracts (except in very limited cases).</li> </ul>	<ul style="list-style-type: none"> <li>The contract addresses the majority of risks but contains a rather substantial Annexure, which needs to be completed. The manner in which it is completed can create risk.</li> <li>PROCSA has no Joint Venture Agreement or Sub-Consultant Agreement pro-formas in addition to their Professional Services Agreements. A bridging definition map will be required if any of these are used in addition to the Professional Services Agreements.</li> </ul>	<ul style="list-style-type: none"> <li>Risk controls are not in place if Particular Conditions not completed, eg. Limitation of liability, jurisdiction selection etc</li> </ul>	<ul style="list-style-type: none"> <li>NEC gives more unilateral powers to the Client.</li> </ul>	<ul style="list-style-type: none"> <li>CIDB has no Joint Venture Agreement or Sub-Consultant Agreement pro-formas in addition to its Standard Professional Services Contract. A bridging definition map will be required if any of these are used in addition to the Standard Professional Services Contract.</li> <li>CIDB has some onerous clauses, penalties are included and the limitation of liability is not ideal.</li> </ul>
<b>Obligations</b>	<ul style="list-style-type: none"> <li>Duty of Care: The Consulting Engineer shall exercise reasonable professional skill, care and diligence in the performance of the services.</li> </ul>	<ul style="list-style-type: none"> <li>execute services,</li> <li>Duty of Care - exercise reasonable skill, care and diligence;</li> <li>exercise quasi-arbitrator function if requested;</li> <li>only make alterations/additions if client consents;</li> <li>co-operate with other consultants</li> </ul>	<ul style="list-style-type: none"> <li>Duty of Care - exercise reasonable skill, care and diligence</li> <li>exercise of authority</li> </ul>	<ul style="list-style-type: none"> <li>Provide services in scope</li> <li>Duty of Care - exercise reasonable skill, care and diligence</li> </ul>	
<b>Limit of Liability</b>	<p><b>Duration of Liability</b></p> <p>Notwithstanding the terms of the Prescription Act No 68 of 1969 (as amended) or any other applicable statute of limitation neither the Client nor the Consulting Engineer shall be held liable for any loss or damage resulting from any occurrence unless a claim is made in terms of Clause 8 within the period stated in the Specific Data, or, where no such period is stated, within a period of three years from the date of termination or completion of this agreement.</p> <p><b>Limit of Compensation</b></p> <p>The maximum amount of compensation payable by the Consulting Engineer to the Client in respect of liability is limited to twice the amount of fees payable by the Client to the Consulting Engineer, unless a fixed amount is otherwise specified in the Specific Data.</p> <ul style="list-style-type: none"> <li>If either party makes a claim for compensation against the other party and this is not established, the claimant shall reimburse the other for his reasonable costs incurred as a result of the claim or if proceedings are initiated in terms of Clause 8 for such costs as may be awarded.</li> </ul>	<ul style="list-style-type: none"> <li>Limit of Compensation / Quantum - Select one of these options in the schedule: 1. limit of indemnity "proceeds of any claim against PI" (avoid this option) 2. fixed amount 3. twice fee If none selected, default is twice fee</li> <li>Duration of Liability - 5 years from the earlier of 90 days after practical completion of the works; completion of consultant's services; termination of the agreement .</li> </ul>	<ul style="list-style-type: none"> <li>Limit of Compensation / Quantum – Fixed amount, sum stated in Particular Conditions</li> <li>Duration of Liability – Determined by Parties and inserted into the Particular Conditions</li> </ul>	<ul style="list-style-type: none"> <li>Limit of Compensation / Quantum – Amount stated in the Contract Data (also in NEC2)</li> <li>Duration of Liability – Amount stated but only if selecting Secondary Option Clause X18 (not in NEC2)</li> </ul>	<ul style="list-style-type: none"> <li>Limit of Compensation / Quantum – Sum insured for insurable events; sum stated in contract data/twice fee if uninsurable event</li> <li>Duration of Liability – period stated in Contract Data, if no period stated 3 years from termination or completion of the Contract</li> </ul>
<b>Dispute Resolution</b>	<ul style="list-style-type: none"> <li>Negotiation, Mediation, Arbitration</li> </ul>	<ul style="list-style-type: none"> <li>Settlement, Mediation, Arbitration</li> </ul>	<ul style="list-style-type: none"> <li>Settlement, Mediation, Arbitration</li> </ul>	<ul style="list-style-type: none"> <li>Adjudication</li> </ul>	<ul style="list-style-type: none"> <li>Settlement, Mediation, Adjudication, Arbitration</li> </ul>
<b>Payment</b>	<p>Within thirty (30) days of the date of issue of any invoice. If the Consultant does not receive payment by the time stated then the Consultant shall be paid interest at the prevailing prime overdraft rate of the Consultant's bank plus 2 percentage points per annum compounded monthly calculated from the due date of payment. A certificate from a duly appointed official of the Consultant's bank shall be prima facie proof of the overdraft rate charged by such bank.</p>	<ul style="list-style-type: none"> <li>30 days from invoice - interest rate +2% - non-payment grounds for termination of contract – 30 days notice</li> </ul>	<ul style="list-style-type: none"> <li>28 days from invoice - define interest in Particular conditions compounded daily – non-payment grounds for termination of contract – 14 days to remedy, 42 days notice</li> </ul>	<ul style="list-style-type: none"> <li>3 weeks from invoice - interest rate +2% compounded annually - non-payment grounds for termination of contract – 45 days notice</li> </ul>	<ul style="list-style-type: none"> <li>30 days from invoice – prime interest rate +2% - non-payment grounds for termination of contract – 45 days notice</li> </ul>
<b>Penalties included</b>	<ul style="list-style-type: none"> <li>None</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>	<ul style="list-style-type: none"> <li>Client may add penalty clauses in X clauses and Z clauses.</li> <li>X clauses: See e.g. Delay Damages</li> <li>Z clauses – Additional Conditions of Contract</li> </ul>	<p>See 3.12 Penalty clause</p>