

## C1.2 TSC3 Contract Data

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

| Clause | Statement                                                                               | Data                                                                                                                                             |
|--------|-----------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | <b>General</b>                                                                          |                                                                                                                                                  |
|        | The <i>conditions of contract</i> are the core clauses and the clauses for main Option: |                                                                                                                                                  |
|        |                                                                                         | A: Priced contract with price list                                                                                                               |
|        | dispute resolution Option                                                               | W1: Dispute resolution procedure                                                                                                                 |
|        | and secondary Options                                                                   |                                                                                                                                                  |
|        |                                                                                         | X1: Price adjustment for inflation                                                                                                               |
|        |                                                                                         | X2: Changes in the law                                                                                                                           |
|        |                                                                                         | X17: Low service damages                                                                                                                         |
|        |                                                                                         | X18: Limitation of liability                                                                                                                     |
|        |                                                                                         | X19: Task Order                                                                                                                                  |
|        |                                                                                         | Z: <i>Additional conditions of contract</i>                                                                                                      |
|        | of the NEC3 Term Service Contract April 2013 <sup>1</sup> (TSC3)                        |                                                                                                                                                  |
| 10.1   | The <i>Employer</i> is                                                                  | 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                                                                                 | Kendal Power Station<br>Kendal Balmoral Turn off N12<br>Johannesburg/eMalahleni<br>Private Bag X7272 eMalahleni 1035 SA                          |
|        | Tel No.                                                                                 | 013 647 9131                                                                                                                                     |
|        | Fax No.                                                                                 | 086 243 6515                                                                                                                                     |
| 10.1   | The <i>Service Manager</i> is                                                           | Thandeka Mantshintshi                                                                                                                            |
|        | Address                                                                                 | Kendal Power Station<br>Kendal Balmoral Turn off N12<br>Johannesburg/eMalahleni<br>Private Bag X7272 eMalahleni 1035 SA                          |

<sup>1</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902 [www.ecs.co.za](http://www.ecs.co.za)

## WTP Demineralised, Industrial and Potable Stream Water Recovery Project

|          |                                                                     |                                                                                                                                                                                                                                                                                                                                   |
|----------|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|          | Tel                                                                 | 013 647 9131                                                                                                                                                                                                                                                                                                                      |
|          | Fax                                                                 | +086 243 6515                                                                                                                                                                                                                                                                                                                     |
|          | e-mail                                                              | MantshMT@eskom.oc.za                                                                                                                                                                                                                                                                                                              |
| 11.2(2)  | The Affected Property is                                            | Kendal Power Station                                                                                                                                                                                                                                                                                                              |
| 11.2(13) | The <i>service</i> is                                               | The Recovery of the Water Treatment Plant<br>Demin, Industrial and Potable Stream<br>instrumentation                                                                                                                                                                                                                              |
| 11.2(14) | The following matters will be included in<br>the Risk Register      | Excessive dust<br>Plant unavailability due to operational plant<br>Long lead items                                                                                                                                                                                                                                                |
| 11.2(15) | The Service Information is in                                       | Part 3: Scope of Work and all documents and<br>drawings to which it makes reference.                                                                                                                                                                                                                                              |
| 12.2     | The <i>law of the contract</i> is the law of                        | the Republic of South Africa                                                                                                                                                                                                                                                                                                      |
| 13.1     | The <i>language of this contract</i> is                             | English                                                                                                                                                                                                                                                                                                                           |
| 13.3     | The <i>period for reply</i> is                                      | 2 weeks                                                                                                                                                                                                                                                                                                                           |
| 2        | <b>The Contractor's main<br/>responsibilities</b>                   | Data required by this section of the core<br>clauses is also provided by the <i>Contractor</i> in<br>Part 2 and terms in italics used in this section<br>are identified elsewhere in this Contract Data                                                                                                                           |
| 21.1     | The <i>Contractor</i> submits a first plan for<br>acceptance within | 1 weeks of the Contract Date                                                                                                                                                                                                                                                                                                      |
| 3        | <b>Time</b>                                                         |                                                                                                                                                                                                                                                                                                                                   |
| 30.1     | The <i>starting date</i> is.                                        | 1 February 2024                                                                                                                                                                                                                                                                                                                   |
| 30.1     | The <i>service period</i> is                                        | 1 year                                                                                                                                                                                                                                                                                                                            |
| 4        | <b>Testing and defects</b>                                          | There is no reference to Contract Data in this<br>section of the core clauses and terms in italics<br>used in this section are identified elsewhere in<br>this Contract Data                                                                                                                                                      |
| 5        | <b>Payment</b>                                                      |                                                                                                                                                                                                                                                                                                                                   |
| 50.1     | The <i>assessment interval</i> is                                   | between the 20 <sup>th</sup> to the 25 <sup>th</sup> day of each<br>successive month.                                                                                                                                                                                                                                             |
| 51.1     | The <i>currency of this contract</i> is the                         | South African Rand                                                                                                                                                                                                                                                                                                                |
| 51.2     | The period within which payments are<br>made is                     | 60(Sixty) days.                                                                                                                                                                                                                                                                                                                   |
| 51.4     | The <i>interest rate</i> is                                         | the publicly quoted prime rate of interest<br>(calculated on a 365 day year) charged by from<br>time to time by the Standard Bank of South<br>Africa Limited (as certified, in the event of any<br>dispute, by any manager of such bank, whose<br>appointment it shall not be necessary to prove)<br>for amounts due in Rands and |

(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter (and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.

|      |                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                              |
|------|------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6    | <b>Compensation events</b>                                                                                                         | There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data                                                                                                                                                                                                                                          |
| 7    | <b>Use of Equipment Plant and Materials</b>                                                                                        | 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    | <b>Risks and insurance</b>                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                              |
| 80.1 | These are additional <i>Employer's</i> risks                                                                                       | 1. Plant unavailability due to production constrains                                                                                                                                                                                                                                                                                                                                                         |
| 9    | <b>Termination</b>                                                                                                                 | There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.                                                                                                                                                                                                                                         |
| 10   | <b>Data for main Option clause</b>                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                              |
| A    | <b>Priced contract with price list</b>                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                              |
| 20.5 | The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than | 2 weeks.                                                                                                                                                                                                                                                                                                                                                                                                     |
| 11   | <b>Data for Option W1</b>                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                              |
| W1.1 | The <i>Adjudicator</i>                                                                                                             | 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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA). |

## WTP Demineralised, Industrial and Potable Stream Water Recovery Project

Address [•]

Tel No. [•]

Fax No. [•]

e-mail [•]

|         |                                                                             |                                                                                                                                                                                                                                      |
|---------|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| W1.2(3) | The <i>Adjudicator nominating body</i> is:                                  | the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (London) (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ) or its successor body. |
| W1.4(2) | The <i>tribunal</i> is:                                                     | arbitration                                                                                                                                                                                                                          |
| W1.4(5) | The <i>arbitration procedure</i> 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                                | Johannesburg South Africa                                                                                                                                                                                                            |
|         | The person or organisation who will choose an arbitrator                    |                                                                                                                                                                                                                                      |
|         | - if the Parties cannot agree a choice or                                   | the Chairman for the time being or his nominee                                                                                                                                                                                       |
|         | - if the arbitration procedure does not state who selects an arbitrator, is | 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 <i>base date</i> for indices is                                | One Month prior to Tender Closing date                                                                                                                                                                                                                                                                                                                                                                                                            |            |                     |                   |    |     |     |    |     |     |    |     |     |    |     |     |    |     |     |     |                |  |      |  |  |
|            | The proportions used to calculate the Price Adjustment Factor are: | <table> <tr> <th>proportion</th><th>linked to index for</th><th>Index prepared by</th></tr> <tr> <td>0.</td><td>[•]</td><td>[•]</td></tr> <tr> <td>0.</td><td>[•]</td><td>[•]</td></tr> <tr> <td>0.</td><td>[•]</td><td>[•]</td></tr> <tr> <td>0.</td><td>[•]</td><td>[•]</td></tr> <tr> <td>0.</td><td>[•]</td><td>[•]</td></tr> <tr> <td>15%</td><td colspan="2">non-adjustable</td></tr> <tr> <td>1.00</td><td colspan="2"></td></tr> </table> | proportion | linked to index for | Index prepared by | 0. | [•] | [•] | 0. | [•] | [•] | 0. | [•] | [•] | 0. | [•] | [•] | 0. | [•] | [•] | 15% | non-adjustable |  | 1.00 |  |  |
| proportion | linked to index for                                                | Index prepared by                                                                                                                                                                                                                                                                                                                                                                                                                                 |            |                     |                   |    |     |     |    |     |     |    |     |     |    |     |     |    |     |     |     |                |  |      |  |  |
| 0.         | [•]                                                                | [•]                                                                                                                                                                                                                                                                                                                                                                                                                                               |            |                     |                   |    |     |     |    |     |     |    |     |     |    |     |     |    |     |     |     |                |  |      |  |  |
| 0.         | [•]                                                                | [•]                                                                                                                                                                                                                                                                                                                                                                                                                                               |            |                     |                   |    |     |     |    |     |     |    |     |     |    |     |     |    |     |     |     |                |  |      |  |  |
| 0.         | [•]                                                                | [•]                                                                                                                                                                                                                                                                                                                                                                                                                                               |            |                     |                   |    |     |     |    |     |     |    |     |     |    |     |     |    |     |     |     |                |  |      |  |  |
| 0.         | [•]                                                                | [•]                                                                                                                                                                                                                                                                                                                                                                                                                                               |            |                     |                   |    |     |     |    |     |     |    |     |     |    |     |     |    |     |     |     |                |  |      |  |  |
| 0.         | [•]                                                                | [•]                                                                                                                                                                                                                                                                                                                                                                                                                                               |            |                     |                   |    |     |     |    |     |     |    |     |     |    |     |     |    |     |     |     |                |  |      |  |  |
| 15%        | non-adjustable                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |            |                     |                   |    |     |     |    |     |     |    |     |     |    |     |     |    |     |     |     |                |  |      |  |  |
| 1.00       |                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |            |                     |                   |    |     |     |    |     |     |    |     |     |    |     |     |    |     |     |     |                |  |      |  |  |
| X2         | Changes in the law                                                 | There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.                                                                                                                                                                                                                                                                                                                        |            |                     |                   |    |     |     |    |     |     |    |     |     |    |     |     |    |     |     |     |                |  |      |  |  |
| X17        | Low service damages                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |            |                     |                   |    |     |     |    |     |     |    |     |     |    |     |     |    |     |     |     |                |  |      |  |  |
| X17.1      | The <i>service level table</i> is in                               | Annexure B                                                                                                                                                                                                                                                                                                                                                                                                                                        |            |                     |                   |    |     |     |    |     |     |    |     |     |    |     |     |    |     |     |     |                |  |      |  |  |
| X18        | Limitation of liability                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |            |                     |                   |    |     |     |    |     |     |    |     |     |    |     |     |    |     |     |     |                |  |      |  |  |

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|            |                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| X18.1      | The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to                                                                          | <b>R0.0 (zero Rand)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| X18.2      | For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to                                  | <b>the amount of the deductibles relevant to the event</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| X18.3      | The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to                                                                              | <b>The greater of</b> <ul style="list-style-type: none"> <li>the total of the Prices at the Contract Date and</li> <li>the amounts excluded and unrecoverable from the <i>Employer's</i> insurance (other than the resulting physical damage to the <i>Employer's</i> property which is not excluded) plus the applicable deductibles</li> </ul>                                                                                                                                                                                                                                                                                                                                                                           |
| X18.4      | The <i>Contractor's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | <b>the total of the Prices other than for the additional excluded matters.</b><br><br><b>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</b><br><br><b>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</b> <ul style="list-style-type: none"> <li>Defects due to his design, plan and specification,</li> <li>Defects due to manufacture and fabrication outside the Affected Property,</li> <li>loss of or damage to property (other than the <i>Employer's</i> property, Plant and Materials),</li> <li>death of or injury to a person and</li> <li>infringement of an intellectual property right.</li> </ul> |
| X18.5      | The <i>end of liability date</i> is                                                                                                                                                | <b>24 months after the end of the <i>service period</i>.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>X19</b> | <b>Task Order</b>                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| X19.5      | The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within                                                                                          | <b>5 days of receiving the Task Order</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|            |                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|            |                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Z</b>   | <b>The <i>additional conditions of contract</i> are</b>                                                                                                                            | <b>Z1 to Z14 always apply.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

**Z1 Cession delegation and assignment**

- Z1.1 The *Contractor* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.

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- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Contractor* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

**Z2 Joint ventures**

- Z2.1 If the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract.
- Z2.2 Unless already notified to the *Employer*, the persons or organisations notify the *Service Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf.
- Z2.3 The *Contractor* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Contractor* in writing.

**Z3 Change of Broad Based Black Economic Empowerment (B-BBEE) status**

- Z3.1 Where a change in the *Contractor's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor's* B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change.
- Z3.2 The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Service Manager* within thirty days of the notification or as otherwise instructed by the *Service Manager*.
- Z3.3 Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor's* obligation to Provide the Service.
- Z3.4 Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are P1, P2 and P4 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

**Z4 Confidentiality**

- Z4.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.
- Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that

confidential treatment will be afforded to the information so disclosed.

Z4.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.

Z4.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.

**Z5 Waiver and estoppel: Add to core clause 12.3:**

Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Service Manager* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

**Z6 Health, safety and the environment: Add to core clause 27.4**

Z6.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:

- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Affected Property;
- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the *service*; and
- undertakes, in and about the execution of the *service*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

Z6.2 The *Contractor*, in and about the execution of the *service*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

**Z7 Provision of a Tax Invoice and interest. Add to core clause 51**

Z7.1 Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.

Z7.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z7.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

**Z8 Notifying compensation events**

Z8.1 Delete the last paragraph of core clause 61.3 and replace with:

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices.

**Z9 Employer's limitation of liability**

Z9.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z9.2 The *Contractor's* entitlement under the indemnity in 82.1 is provided for in 60.1(12) and the *Employer's* liability under the indemnity is limited to compensation as provided for in core clause 63 and X19.11 if Option X19 Task Order applies to this contract.

**Z10 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":**

Z10.1 or had a business rescue order granted against it.

**Z11 Ethics**

For the purposes of this Z-clause, the following definitions apply:

**Affected Party** means, as the context requires, any party, irrespective of whether it is the *Contractor* or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,

**Coercive Action** means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,

**Collusive Action** means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,

**Committing Party** means, as the context requires, the *Contractor*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,

**Corrupt Action** means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,

**Fraudulent Action** means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,

**Obstructive Action** means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and

**Prohibited Action** means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

Z11.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z11.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and

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appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Employer* can terminate the *Contractor's* obligation to Provide the Services for this reason.

Z11.3 If the *Employer* terminates the *Contractor's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.

Z11.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

**Z12 Insurance****Z 12 .1 Replace core clause 83 with the following:****Insurance cover 83**

- 83.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
- 83.2 The *Contractor* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

**INSURANCE TABLE A**

| <b>Insurance against</b>                                                                                                                                                                                                                                                                                                    | <b>Minimum amount of cover or minimum limit of indemnity</b>                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property                                                                                                                                                                                                                                         | The replacement cost where not covered by the <i>Employer's</i> insurance.<br><br>The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance. |
| Loss of or damage to Plant and Materials                                                                                                                                                                                                                                                                                    | The replacement cost where not covered by the <i>Employer's</i> insurance.<br><br>The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance. |
| Loss of or damage to Equipment                                                                                                                                                                                                                                                                                              | The replacement cost where not covered by the <i>Employer's</i> insurance.<br><br>The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance. |
| The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the | <b><u>Loss of or damage to property</u></b><br>The replacement cost<br><br><b><u>Bodily injury to or death of a person</u></b><br>The amount required by the applicable law.                     |

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|                                                                                                                                                                     |                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| Service                                                                                                                                                             |                                           |
| Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract | The amount required by the applicable law |

**Z 12.2 Replace core clause 86 with the following:****Insurance  
by the  
Employer**

86

86.1 The *Employer* provides the insurances stated in the Insurance Table B**INSURANCE TABLE B**

| <b>Insurance against or name of policy</b>        | <b>Minimum amount of cover or minimum limit of indemnity</b> |
|---------------------------------------------------|--------------------------------------------------------------|
| Assets All Risk                                   | Per the insurance policy document                            |
| Contract Works insurance                          | Per the insurance policy document                            |
| Environmental Liability                           | Per the insurance policy document                            |
| General and Public Liability                      | Per the insurance policy document                            |
| Transportation (Marine)                           | Per the insurance policy document                            |
| Motor Fleet and Mobile Plant                      | Per the insurance policy document                            |
| Terrorism                                         | Per the insurance policy document                            |
| Cyber Liability                                   | Per the insurance policy document                            |
| Nuclear Material Damage and Business Interruption | Per the insurance policy document                            |
| Nuclear Material Damage Terrorism                 | Per the insurance policy document                            |

**Z13 Nuclear Liability**

Z13.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.

Z13.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS

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site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

Z13.3 Subject to clause Z13.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

Z13.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.

Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

## Z14 Asbestos

For the purposes of this Z-clause, the following definitions apply:

|                              |                                                                                                                                                                                                                                                                                                              |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>AAIA</b>                  | means approved asbestos inspection authority.                                                                                                                                                                                                                                                                |
| <b>ACM</b>                   | means asbestos containing materials.                                                                                                                                                                                                                                                                         |
| <b>AL</b>                    | 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.                                                     |
| <b>Ambient Air</b>           | 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.                                                                                                                             |
| <b>Compliance Monitoring</b> | 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. |
| <b>OEL</b>                   | means occupational exposure limit.                                                                                                                                                                                                                                                                           |
| <b>Parallel Measurements</b> | means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.                                                                                                                                                                                            |
| <b>Safe Levels</b>           | 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.                                                                                       |
| <b>Standard</b>              | means the <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.                                                                                                      |
| <b>SANAS</b>                 | means the South African National Accreditation System.                                                                                                                                                                                                                                                       |
| <b>TWA</b>                   | means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.                                                                                                    |

Z14.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four

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hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.

- Z14.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z14.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z14.5 The *Contractor's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z14.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.