





C1.2 TSC3 Contract Data

Part one - Data provided by the Employer

Clause	Statement	Data
1	General	
	The conditions of contract are the core clauses and the clauses for main Option:	
		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
		X7: Delay damages
		X19: Task Order
		Z: Additional conditions of contract
	of the NEC3 Term Service Contract April 2013 ¹ (TSC3)	
10.1	The Employer is (name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	
	Fax No.	

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902 www.ecs.co.za

10.1	The Service Manager is (name):	Gugulethu Xhanti
	Address	Kendal Power Station, Private Bag X7272, Witbank, 1035
	Tel	013 647 6371
	e-mail	MngadiGN@eskom.co.za
11.2(2)	The Affected Property is	Kendal Power Station
11.2(13)	The service is	Supply, Installation, Termination, and decommissioning of cables. Rigging, Installation, decommissioning, of battery chargers, battery cabinets, Load DB and Chop-Over panels.
11.2(14)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> - Delayed access to site - Delayed site establishment - Non-compliance to health, safety and environmental regulations and legislations - Non-compliance to cardinal rules - Unforeseeable weather conditions - Site and working conditions - Delays and disruptions caused by outage dates changes - Delays and disruptions caused by community unrests and strikes - Poor security - Insufficient or inappropriate materials - Quantities discrepancies between materials procured by the Employer and materials needed for the services - Changes to schedule or accepted programme due to unforeseeable events or decisions - Unavailability of assembly or construction drawings - Storage and preservation - Warranties and guaranties Decisions made by the Employer resulting from national unavoidable requirements
11.2(15)	The Service Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.
12.2	The law of the contract is the law of	the Republic of South Africa
13.1	The language of this contract is	English
13.3	The period for reply is	One (1) week technical Two (2) Weeks Contractual
2	The Contractor's main responsibilities	Data required by this section of the core clauses is also provided by the Contractor in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data
21.1	The Contractor submits a first plan for	1 (One) week of the Contract Date

	acceptance within	weeks of the Contract Date
3	Time	
30.1	The starting date is.	29 September 2023
30.1	The service period is	24 Months
4	Testing and defects	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
5	Payment	
50.1	The assessment interval is	the 25th day of each successive month,
51.1	The currency of this contract is the	South African Rand
51.2	The period within which payments are made is	4 weeks, depending on BEE status of contractor
51.4	The interest rate is	<p>the publicly quoted prime rate of interest (calculated on a 365 day year) charged by from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</p> <p>(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.</p>
6	Compensation events	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
7	Use of Equipment Plant and Materials	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data
8	Risks and insurance	
80.1	These are additional Employer's risks	1. Loss of or damage to the works, Plant

		<p>and Materials due to war, civil war, rebellion, revolution, insurrection, military, or usurped power, strikes, riots and civil commotion not confined to the Contractor's employees or radioactive contamination</p> <ol style="list-style-type: none"> Delays in delivery of Equipment Equipment damages during rigging Delays in commissioning Poor quality material used for the project
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.
10	Data for main Option clause	
A	Priced contract with price list	
20.5	The Contractor prepares forecasts of the final total of the Prices for the whole of the service at intervals no longer than	4 weeks.
11	Data for Option W1	
W1.1	The Adjudicator	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
	Address	
	Tel No.	
	Fax No.	
	e-mail	
W1.2(3)	The Adjudicator nominating body 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 www.ice-sa.org.za) or its successor body.
W1.4(2)	The tribunal is:	arbitration
W1.4(5)	The arbitration procedure is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	South Africa
	The person or organisation who will choose an arbitrator	

	<ul style="list-style-type: none">- if the Parties cannot agree a choice or- if the arbitration procedure does not state who selects an arbitrator, is	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.			
12	Data for secondary Option clauses				
X1	Price adjustment for inflation				
X1.1	<p>The base date for indices is</p> <p>The proportions used to calculate the Price Adjustment Factor are:</p>	[•].	proportion	linked to index for	Index prepared by
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.		
X7	Delay damages				
X7	The service level tables is in				
X19	Task Order				
X19.5	The Contractor submits a Task Order programme to the Service Manager within		48 hours of receiving the Task Order		

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

Z2 Joint ventures

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

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

- Z3.1 Where a change in the Contractor's legal status, ownership or any other change to his business composition or business dealings results in a change to the Contractor's B-BBEE status, the Contractor notifies the Employer within seven days of the change.

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

Z4 Confidentiality

- Z4.1 The Contractor does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the Contractor, enters the public domain or to information which was already in the possession of the Contractor at the time of disclosure (evidenced by written records in existence at that time). Should the Contractor disclose information to Others in terms of clause 25.1, the Contractor ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the Contractor is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the Service Manager.
- Z4.3 In the event that the Contractor is, at any time, required by law to disclose any such information which is required to be kept confidential, the Contractor, to the extent permitted by law prior to disclosure, notifies the Employer so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the Contractor may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, in the course of Providing the Service and after the end of the service period, requires the prior written consent of the Service Manager. All rights in and to all such images vests exclusively in the Employer.
- Z4.5 The Contractor ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

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

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

- Z6.1 The Contractor undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the service. Without limitation the Contractor:
- accepts that the Employer may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Affected Property;
 - warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws

and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of the service; and

- undertakes, in and about the execution of the service, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the Contractor's direction and control, likewise observe and comply with the foregoing.

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

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

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

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

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

Z8 Notifying compensation events

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

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

Z9 Employer's limitation of liability

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

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

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

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

Z11 Ethics

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

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

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

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

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

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

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

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

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

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

Z11.2 The Employer may terminate the Contractor's obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the Contractor did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the Employer has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the Employer can terminate the Contractor's obligation to Provide the Services for this reason.

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

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

Z12 Insurance

Z 12 .1 Replace core clause 83 with the following:

Insurance cover 83

83.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.

83.2 The Contractor provides the insurances stated in the Insurance Table A from the starting date until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

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

Z 12.2 Replace core clause 86 with the following:

Insurance by the Employer

86

86.1 The Employer provides the insurances stated in the Insurance Table B

INSURANCE TABLE B

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

Z13 Nuclear Liability

- Z13.1 The Employer is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z13.2 The Employer is solely responsible for and indemnifies the Contractor or any other person against any and all liabilities which the Contractor or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the Contractor or any other person or the presence of the Contractor or that person or any property of the Contractor or such person at or in the KNPS or on the KNPS site, without the permission of the Employer or of a person acting on behalf of the Employer.
- Z13.3 Subject to clause Z13.4 below, the Employer waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the Contractor or any other person, or the presence of the Contractor or that person or any property of the Contractor or such person at or in the KNPS or on the KNPS site, without the permission of the Employer or of a person acting on behalf of the Employer.
- Z13.4 The Employer does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z13.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z14 Asbestos

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

AAIA means approved asbestos inspection authority.

ACM means asbestos containing materials.

AL means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.

Ambient Air means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose

inlet.

Compliance Monitoring	means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
OEL	means occupational exposure limit.
Parallel Measurements	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
Safe Levels	means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
Standard	means the Employer's Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
SANAS	means the South African National Accreditation System.
TWA	means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

- Z14.1 The Employer ensures that the Ambient Air in the area where the Contractor will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
- Z14.2 Upon written request by the Contractor, the Employer certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The Contractor may perform Parallel Measurements and related control measures at the Contractor's expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z14.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z14.3 The Employer manages asbestos and ACM according to the Standard.
- Z14.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z14.5 The Contractor's personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z14.6 The Contractor continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z14.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a

registered asbestos contractor, instructed by the Employer at the Employer's expense, and conducted in line with South African legislation.