

## C1.2 TSC3 Contract Data

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

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

| Clause | Statement                                                                               | Data                                                                                                                                                    |
|--------|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | <b>General</b>                                                                          |                                                                                                                                                         |
|        | The <i>conditions of contract</i> are the core clauses and the clauses for main Option: |                                                                                                                                                         |
|        |                                                                                         | <b>A: Priced contract with price list</b>                                                                                                               |
|        | dispute resolution Option                                                               | <b>W1: Dispute resolution procedure</b>                                                                                                                 |
|        | and secondary Options                                                                   |                                                                                                                                                         |
|        |                                                                                         | <b>X1: Price adjustment for inflation</b>                                                                                                               |
|        |                                                                                         | <b>X2: Changes in the law</b>                                                                                                                           |
|        |                                                                                         | <b>X17: Low service damages</b>                                                                                                                         |
|        |                                                                                         | <b>X18: Limitation of liability</b>                                                                                                                     |
|        |                                                                                         | <b>X19: Task Order</b>                                                                                                                                  |
|        |                                                                                         | <b>Z: Additional conditions of contract</b>                                                                                                             |
|        | of the NEC3 Term Service Contract April 2013 <sup>1</sup> (TSC3)                        |                                                                                                                                                         |
| 10.1   | The <i>Employer</i> is (name):                                                          | <b>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</b> |
|        | Address                                                                                 | <b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>                                                                         |
|        | Tel No.                                                                                 | <b>011 800 2111</b>                                                                                                                                     |
| 10.1   | The <i>Service Manager</i> is (name):                                                   |                                                                                                                                                         |
|        | Address                                                                                 | <b>Kendal Power Station<br/>Private Bag X7272<br/>Witbank<br/>1035</b>                                                                                  |
|        | Tel                                                                                     |                                                                                                                                                         |
|        | e-mail                                                                                  |                                                                                                                                                         |

<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)

|          |                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------|------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11.2(2)  | The Affected Property is                                         | Kendal Power Station                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 11.2(13) | The <i>service</i> is                                            | Refurbishment, repairs, maintenance and supply of new HVAC chillers and chiller components at the Kendal Power Station for a period of five (5) years                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 11.2(14) | The following matters will be included in the Risk Register      | <ol style="list-style-type: none"> <li>1. Access to site</li> <li>2. Illegal plant modifications. All plant modifications shall follow Generation Engineering Change Management (ECM) Procedure 240 – 53114002.</li> <li>3. Delays caused by Others onsite.</li> <li>4. Community unrest around Kendal Power Station blocking access to site.</li> <li>5. Non-compliance to the <i>Employer's</i> Life Saving Rules, OHRVS and Plant Safety Regulations (PSR).</li> <li>6. Spares availability.</li> <li>7. Health and Safety Risks e.g. (exposure to dust, working at heights, moving machinery etc).</li> <li>8. Environmental and Regulatory Risks i.e. (Non-compliance with Air Quality Regulations, environment contamination etc).</li> <li>9. Competency Issues.</li> </ol> |
| 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 <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                                   | <ul style="list-style-type: none"> <li>• Within 24 Hours for emergencies</li> <li>• Within 3 days for Production related matters</li> <li>• Within 5 days for other Contractual matters</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 2        | <b>The Contractor's main responsibilities</b>                    | Data required by this section of the core clauses is also provided by the <i>Contractor</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 21.1     | The <i>Contractor</i> submits a first plan for acceptance within | Two (2) weeks after the Task Order Date                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 3        | <b>Time</b>                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 30.1     | The <i>starting date</i> is.                                     | TBC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 30.1     | The <i>service period</i> is                                     | 60 months from Contract Date                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 4        | <b>Testing and defects</b>                                       | Testing and defect on suppliers' site before delivered to Kendal Power Station. Final quality inspection will be done at Kendal Power Station                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

|          |                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------|----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|          |                                              | for acceptance of goods and services. If a test or inspection shows that any work has a defect, the supplier corrects the defect, and the test or inspection is repeated                                                                                                                                                                                                                                                                                  |
| 42.1     | Notifying and correction of defects          | The <b>Contractor</b> corrects a Defect whether or not the <b>Service Manager</b> notifies him of it.                                                                                                                                                                                                                                                                                                                                                     |
| 42.2     | Defects correction period is                 | Defect Correction Period is 52 weeks after the respective Task Order Completion Date                                                                                                                                                                                                                                                                                                                                                                      |
| 42.3     | Access to site to correct defects            | The <b>Service Manager</b> arranges for the <b>Employer</b> to allow the <b>Contractor</b> access if it is needed for correcting a Defect                                                                                                                                                                                                                                                                                                                 |
| <b>5</b> | <b>Payment</b>                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 50.1     | The <i>assessment interval</i> is            | Two (2) weeks after Task Order completion.                                                                                                                                                                                                                                                                                                                                                                                                                |
| 51.1     | The <i>currency of this contract</i> is the  | South African Rand                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 51.2     | The period within which payments are made is | <p>Payment will be made within 30 Calendar days after the signed assessment by Both Parties and a valid Tax Invoice days or within 60 days for contracts valued at 50 million and above</p> <p>ATTENTION: Eskom's standard policy on payment term for all contracts valued above R50 000 0000 (Fifty Million Rand), including VAT, is 60 days. Bidders are requested to bear this payment term in mind when submitting bids and concluding contracts.</p> |
| 51.4     | The <i>interest rate</i> is                  | 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                                                                                                                                               |
| <b>6</b> | <b>Compensation events</b>                   | All Compensation Events are to be managed as per core clause 6 of the NEC3 TSC                                                                                                                                                                                                                                                                                                                                                                            |
| <b>7</b> | <b>Use of Equipment Plant and Materials</b>  | To be managed ss per core clause 7 of the NEC3 TSC                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>8</b> | <b>Risks and insurance</b>                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 80.1     | These are additional <i>Employer's</i> risks | <p>1. Security delays or access restrictions</p> <p>2. Existing Plant Defects</p> <p>3. Force Majeure Events</p>                                                                                                                                                                                                                                                                                                                                          |
| <b>9</b> | <b>Termination</b>                           | To be managed as per core clause 9 of the NEC3 TSC                                                                                                                                                                                                                                                                                                                                                                                                        |

|         |                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                            |                     |
|---------|-----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 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 or as stated on the Task Order                                                                                                                                                                                                                                                                                                                                     |                     |
| 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 <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 ICE-SA Division |                     |
| 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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ) 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                                                                                | Johannesburg, South Africa                                                                                                                                                                                                                                                                                                                                                 |                     |
|         | The person or organisation who will choose an arbitrator                                                                    | the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.                                                                                                                                                                                                                                                  |                     |
|         | - if the Parties cannot agree a choice or                                                                                   |                                                                                                                                                                                                                                                                                                                                                                            |                     |
|         | - if the arbitration procedure does not state who selects an arbitrator, is                                                 |                                                                                                                                                                                                                                                                                                                                                                            |                     |
| 12      | Data for secondary Option clauses                                                                                           |                                                                                                                                                                                                                                                                                                                                                                            |                     |
| X1      | Price adjustment for inflation                                                                                              |                                                                                                                                                                                                                                                                                                                                                                            |                     |
| X1.1    | The base date for indices is                                                                                                | A month before the tender closing date                                                                                                                                                                                                                                                                                                                                     |                     |
|         | The proportions used to calculate the Price Adjustment Factor are:                                                          | proportion                                                                                                                                                                                                                                                                                                                                                                 | linked to index for |
|         |                                                                                                                             | 0.                                                                                                                                                                                                                                                                                                                                                                         | [•]                 |
|         |                                                                                                                             | 0.                                                                                                                                                                                                                                                                                                                                                                         | [•]                 |
|         |                                                                                                                             | 0.                                                                                                                                                                                                                                                                                                                                                                         | [•]                 |
|         |                                                                                                                             | 0.                                                                                                                                                                                                                                                                                                                                                                         | [•]                 |
|         |                                                                                                                             | 0.15                                                                                                                                                                                                                                                                                                                                                                       | non-adjustable      |
|         |                                                                                                                             | 1.00                                                                                                                                                                                                                                                                                                                                                                       | Fixed               |
| X2      | Changes in the law                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                            |                     |
|         |                                                                                                                             | Becomes a Compensation Event only if the                                                                                                                                                                                                                                                                                                                                   |                     |

|                                                             | changes in the Law of the Republic of South Africa took place after the Contract Date.                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |          |         |                              |                      |         |                      |                                                             |                                                  |
|-------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------|------------------------------|----------------------|---------|----------------------|-------------------------------------------------------------|--------------------------------------------------|
| X17                                                         | Low service damages                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |          |         |                              |                      |         |                      |                                                             |                                                  |
| X17.1                                                       | The <i>service level table</i> is in                                                                                                                                               | <table><tr><th>Criteria</th><th>Penalty</th></tr><tr><td>Non-Compliance to hold point</td><td>2% of the Task Order</td></tr><tr><td>Re-Work</td><td>3% of the Task Order</td></tr><tr><td>Turnaround time for execution of works (Delays on schedule)</td><td>2% per day and limited to 5% of Task Order value</td></tr></table>                                                                                                                                                                                                                          | Criteria | Penalty | Non-Compliance to hold point | 2% of the Task Order | Re-Work | 3% of the Task Order | Turnaround time for execution of works (Delays on schedule) | 2% per day and limited to 5% of Task Order value |
| Criteria                                                    | Penalty                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |          |         |                              |                      |         |                      |                                                             |                                                  |
| Non-Compliance to hold point                                | 2% of the Task Order                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |          |         |                              |                      |         |                      |                                                             |                                                  |
| Re-Work                                                     | 3% of the Task Order                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |          |         |                              |                      |         |                      |                                                             |                                                  |
| Turnaround time for execution of works (Delays on schedule) | 2% per day and limited to 5% of Task Order value                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |          |         |                              |                      |         |                      |                                                             |                                                  |
| X18                                                         | Limitation of liability                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |          |         |                              |                      |         |                      |                                                             |                                                  |
| X18.1                                                       | The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to                                                                          | R0.0 (zero Rand)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |          |         |                              |                      |         |                      |                                                             |                                                  |
| 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                                  | the amount of the insurance deductibles relevant to the event                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |          |         |                              |                      |         |                      |                                                             |                                                  |
| X18.3                                                       | The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to                                                                              | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |          |         |                              |                      |         |                      |                                                             |                                                  |
| 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 | <p>the total of the Prices other than for the additional excluded matters.</p> <p>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</p> <p>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</p> <ul style="list-style-type: none"><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                                                                                                                                                | 12 months after the end of each Task Order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |          |         |                              |                      |         |                      |                                                             |                                                  |
| X19                                                         | Task Order                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |          |         |                              |                      |         |                      |                                                             |                                                  |
| X19.3                                                       | Delay Damages are                                                                                                                                                                  | Two percent (2%) of the Task Order Value per day from the day of delayed completion until the actual completion of the services, to be capped at the maximum of Ten percent (10%) of the Total Task Order Values                                                                                                                                                                                                                                                                                                                                          |          |         |                              |                      |         |                      |                                                             |                                                  |
| X19.5                                                       | The <i>Contractor</i> submits a Task Order programme to the <i>Service Manager</i> within                                                                                          | 5 days of receiving the Task Order or as agreed between the two Parties                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |          |         |                              |                      |         |                      |                                                             |                                                  |
| Z                                                           | The <i>additional conditions of contract</i> are                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |          |         |                              |                      |         |                      |                                                             |                                                  |
|                                                             | Z1 to Z16 always apply.                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |          |         |                              |                      |         |                      |                                                             |                                                  |

## **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 <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 | <u>Loss of or damage to property</u><br>The replacement cost<br><br><u>Bodily injury to or death of a person</u>                                                                                 |

|                                                                                                                                                                     |                                            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
| person (not an employee of the <i>Contractor</i> ) arising from or in connection with the <i>Contractor's</i> Providing the Service                                 | The amount required by the applicable law. |
| 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 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 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.

## **Z15 Security Clearance/ Criminal Checks**

These clauses are not only, but are especially, applicable for accessing critical infrastructure in terms of the Critical Infrastructure Protection Act, 2019 (previously referred to as National Key Points), but may include other sites, and/or where persons are rendering a service or have given notice of intention to render a service to an organ of state, which service may (1) give him or her access to classified information and intelligence in the possession of the organ of state; or (2) give him or her access to or information concerning areas designated as critical infrastructure.

- Z15.1 The *Contractor* and its subcontractors implement risk and security management processes and measures to mitigate any threats against any premises, installations or sites, systems, or information of the *Employer* with only persons with criminal verification record security clearance certificates being given access after verification of these and identifying documents by the *Employer's* security system.
- Z15.2 The *Contractor* provides, at the *Contractor's* cost, to the *Employer*, criminal verification record security clearance certificates for each person the *Contractor* or its subcontractors requires to access any premises, installations or sites, systems, or information of the *Employer*, with copies of their identifying documents, such as passports, before allowed such access by the *Employer*. The *Employer's* refusal to allow access to premises, installations or site/s, systems or information is at the *Employer's* sole discretion and is not a compensation event.
- Z15.3 The criminal verification record security clearance certificates provided are to have been issued by a service provider which is to be a reputable screening company accredited by the South African Police Services, are to be no older than four weeks since issue and valid for as long as

each person is required to access premises, installations or sites, systems or information. The *Employer* may require updated certificates and identifying documents every 26 to 52 weeks, subject to safety and security concerns and the risk rating of the works or services undertaken and/or premises, installations or sites, systems or information.

- Z15.4 If any such criminal verification record security clearance certificates is cancelled, withdrawn, invalidated, amended, or expires, or a criminal conviction is noted against any person requiring access, even if an appeal against the criminal conviction has been noted, the *Project Manager* may instruct the *Contractor* to ensure that such person leaves the premises, installations or site/s and is blocked from systems and information and the giving of this instruction is not a compensation event.
- Z16.1 For the purposes of this clause, the terms "Data Subject", "Personal Information", "Processing" and "Regulator" and "Responsible Party" have the meanings given to them in the Protection of Personal Information Act, 2013 ("POPIA").
- Z16.2 Each Party acknowledges that it is an independent Responsible Party in relation to the Personal Information processed in terms of this contract ("Shared Personal Information") and that it determines the purposes for which and the manner in which the Shared Personal Information is, or is to be, processed.
- Z16.3 Each Party shall always comply with POPIA when performing its obligations under this contract and shall not perform any of their respective obligations under this contract in such a way as to cause the other Party to breach any of that other Party's obligations under POPIA.
- Z16.4 Each Party shall ensure that, in respect of all Shared Personal Information provided to the other Party and in respect of the use of that Shared Personal Information under this contract:-
- Z16.4.1 all necessary fair Processing notices have been provided to and consents obtained from Data Subjects by that Party, where required, in terms of POPIA, including to specify that the other Party is also a Responsible Party in respect of the Data Subject's Personal Information and to provide a link (for example, <https://www.eskom.co.za/about-eskom/website-terms-and-conditions/> ) to the other Party's Privacy Statement or to include a statement that the other Party's Privacy Statement can be found on the other Party's corporate website; and
- Z16.4.2 all necessary steps have been taken to ensure that Shared Personal Information has been collected and processed in accordance with the principles set out in POPIA, including in particular those relating to:
- lawful, fair and transparent Processing;
  - specified, legitimate and explicit purposes of Processing; and
  - adequate, relevant and not excessive Processing.
- Z16.5 If either Party receives any complaint, notice or communication from the Regulator which relates directly to:
- Z16.5.1 the other Party's Processing of the Shared Personal Data; or
- Z16.5.2 a potential failure by the other Party to comply with POPIA in respect of the activities of the Parties under or in connection with this contract,
- it shall, to the extent permitted by law, promptly notify the other Party and provide such information as it shall reasonably request in that regard.
- Z16.6 If a Data Subject makes a written request to either Party to exercise any of their rights under POPIA, the receiving Party shall respond to that request in accordance with POPIA. To the extent the request concerns Processing of Shared Personal Information undertaken by the other Party, the receiving Party shall:
- Z16.6.1 promptly and without undue delay forward the request to the other Party; and
- Z16.6.2 cooperate and provide reasonable assistance in relation to that request to enable the other Party to respond in accordance with POPIA.
- Z16.7 Each Party acknowledges that the other Party may disclose Shared Personal Information to any Regulator or law enforcement authority with jurisdiction to request access to the Shared Personal Information.

- Z16.8 Neither Party discloses or otherwise makes available the Personal Information to any third party (including sub-contractors, but excluding its authorised employees who require access to such Personal Information strictly in order for the Parties to carry out their obligations pursuant to this contract), unless a Party has provided, to a requesting Party, its prior written consent to do so, and the requesting Party has submitted to the other Party (consenting Party), to its satisfaction, a copy of a written contract or undertaking that the requesting Party has entered into with a third party for the protection of Personal Information of the Data Subjects or unless there is an applicable exemption in terms of the law to process or further process the personal information.
- Z16.9 The requesting Party indemnifies and holds harmless the consenting Party and its staff, successors, cessionaries, delegates, and assigns, from any and all losses, costs, expenses and damage, as well as penalties and fines arising from the requesting Party's non-compliance with the provision of any relevant legislation applicable to Personal Information or data protection, as well as damage to the consenting Party's reputation and costs of compliance as directed by the Regulator, including but not limited to publication of the data breach.
- Z16.10 No Party may transfer Personal Information about a data subject to a third party who is in a foreign country unless they have obtained the relevant written consent of the other Party and there is full compliance with section 72 of POPIA and any foreign applicable legislation.