



## NEC3 Engineering & Construction Contract

Between **ESKOM HOLDINGS SOC Ltd**  
(Reg No. 1990/006897/30)

and

for **Vegetation Management and Servitude Road Repairs**  
for the period of four (4) years

---

<b>Contents:</b>	<b>No of pages</b>
<b>Part C1 Agreements &amp; Contract Data</b>	<b>2-16</b>
<b>Part C2 Pricing Data</b>	<b>17-20</b>
<b>Part C3 Scope of Work</b>	<b>21-22</b>
<b>Part C4 Site Information</b>	<b>23</b>

---

**CONTRACT No.**

---

**Documentation prepared by:**

## Part C1: Agreements & Contract Data

<b>Contents:</b>	<b>No of pages</b>
<b>C1.1 Form of Offer and Acceptance</b>	<b>2-5</b>
[to be inserted from Returnable Documents at award stage]	
<b>C1.2a Contract Data provided by the <i>Employer</i></b>	<b>6-14</b>
<b>C1.2b Contract Data provided by the <i>Contractor</i></b>	<b>16</b>
[to be inserted from Returnable Documents at award stage]	



## NEC3 Engineering & Construction Contract

Between **ESKOM HOLDINGS SOC Ltd**  
(Reg No. 1990/006897/30)

and

for **Vegetation Management and Servitude Road Repairs**  
for the period of four (4) years

---

<b>Contents:</b>	<b>No of pages</b>
<b>Part C1 Agreements &amp; Contract Data</b>	<b>2-16</b>
<b>Part C2 Pricing Data</b>	<b>17-20</b>
<b>Part C3 Scope of Work</b>	<b>21-22</b>
<b>Part C4 Site Information</b>	<b>23</b>

---

**CONTRACT No.**

---

**Documentation prepared by:**

## Part C1: Agreements & Contract Data

Contents:	No of pages
<b>C1.1 Form of Offer and Acceptance</b>	<b>2-5</b>
[to be inserted from Returnable Documents at award stage]	
<b>C1.2a Contract Data provided by the <i>Employer</i></b>	<b>6-14</b>
<b>C1.2b Contract Data provided by the <i>Contractor</i></b>	<b>16</b>
[to be inserted from Returnable Documents at award stage]	

**PART 2: PRICING DATA****ECC3 Option A**

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	
C2.2	The <i>activity schedule</i>	

## C2.1 Pricing assumptions: Option A

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

Clause 11 in NEC3 Engineering and Construction Contract, (ECC3) Option A states:

<b>Identified and defined terms</b>	11 11.2	(20) The Activity Schedule is the <i>activity schedule</i> unless later changed in accordance with this contract.
-------------------------------------	------------	---

(27) The Price for Work Done to Date is the total of the Prices for

- each group of completed activities and
- each completed activity which is not in a group.

A completed activity is one which is without Defects which would either delay or be covered by immediately following work.

(30) The Prices are the lump sum prices for each of the activities on the Activity Schedule unless later changed in accordance with this contract.

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

### 2. Function of the Activity Schedule

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

### 3. Link to the programme

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

### 4. Preparing the *activity schedule*

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

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

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

- Has taken account of the guidance given in the ECC3 Guidance Notes pages 19 and 20;
- Understands the function of the Activity Schedule and how work is priced and paid for;
- Is aware of the need to link the Activity Schedule to activities shown on his programme;
- Has listed and priced activities in the *activity schedule* which are inclusive of everything necessary and incidental to Providing the Works in accordance with the Works Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer's* risk;
- Has priced work he decides not to show as a separate activity within the Prices of other listed activities in order to fulfil the obligation to complete the *works* for the tendered total of the Prices.
- Understands there is no adjustment to the lump sum Activity Schedule price if the amount, or quantity, of work within that activity later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event.

An activity schedule could have the following format:

Item No.	Programme Reference	Activity description	Price

## C2.2 the *activity schedule*

Use this page as a cover page to the *Contractor's activity schedule*.

## C1.2 ECC3 Contract Data

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		A: <b>Priced contract with price list</b>
	dispute resolution Option	W1:
	and secondary Options	
		X1: <b>Price adjustment for inflation</b>
		X2 <b>Changes in the law</b>
		X17: <b>Low performance damages</b>
	of the NEC3 Engineering and Construction Contract, April 2013 (ECC3)	
10.1	The <i>Employer</i> is (Name):	<b>Eskom Rotek Industries SOC Ltd (Reg no: 1990/006897/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa</b>
	Address	<b>Bulk Material Services Lower Germiston Road Cleveland 2022</b>



10.1	The <i>Project Manager</i> is: (Name)	<b>Kefentse Letsoko</b>
	Address	<b>Bulk Material Services Lower Germiston Road Cleveland 2022</b>
	Tel	<b>+27 13 693 2316</b>
	Fax	<b>+27 82 491 5718</b>
	e-mail	<b>LetsokKW@eskom.co.za</b>
10.1	The <i>Supervisor</i> is: (Name)	<b>Christoffel Visser</b>
	Address	<b>Bulk Material Services Lower Germiston Road Cleveland 2022</b>
	Tel No.	<b>+27 82 905 441</b>
	Fax No.	
	e-mail	<b>VisserCh@eskom.co.za</b>
11.2(13)	The <i>works</i> are	<b>Vegetation Management for a Period of 4 Years on an as and when required basis</b>
11.2(14)	The following matters will be included in the Risk Register	<b>Not applicable</b>
11.2(15)	The <i>boundaries of the site</i> are	<b>Not applicable</b>
11.2(16)	The Site Information is in	<b>Part 3: Scope of the Work and all documents and drawings to which it makes references.</b>
11.2(19)	The Works Information is in	<b>Part 3: Scope of Work and all documents and drawings to which it makes reference.</b>
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>2 days. However a 24 hour reply is required after any notification</b>
<b>2</b>	<b>The <i>Contractor's</i> main responsibilities</b>	<b>Data required by this section of the core clauses is provided by the <i>Contractor</i> in Part 2</b>

and terms in italics used in this section are identified elsewhere in this Contract Data.

<b>3</b>	<b>Time</b>		
11.2(3)	The <i>completion date</i> for the whole of the works is	4 years ( Starting on the ??????????)	
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<b>Condition to be met</b>	<b>key date</b>
		1	
		2	
		3	
30.1	The <i>access dates</i> are:	<b>Part of the Site</b>	<b>Date</b>
		1	[•]
		2	[•]
		3	[•]
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	[•] weeks of the Contract Date.	
31.2	The <i>starting date</i> is	[•]	
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	[•] weeks.	
35.1	The <i>Employer</i> is not willing to take over the works before the Completion Date.	[No data needed if this statement is included]	
<b>4</b>	<b>Testing and Defects</b>		
42.2	The <i>defects date</i> is	[•] weeks after Completion of the whole of the works.	
43.2	The <i>defect correction period</i> is	[•] weeks	
	except that the <i>defect correction period</i> for	[•] is [•] weeks	
	and the <i>defect correction period</i> for	[•] is [•] weeks	
<b>5</b>	<b>Payment</b>		
50.1	The <i>assessment interval</i> is	Upon completion of each individual service	
51.1	The <i>currency of this contract</i> is the	South African Rand.	
51.2	The period within which payments are made is	30 days after receipt of a tax compliant invoices.	
51.4	The <i>interest rate</i> is	the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and	

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

<b>6</b>	<b>Compensation events</b>	
60.1(13)	<p>The place where weather is to be recorded is:</p> <p>The <i>weather measurements</i> to be recorded for each calendar month are,</p> <p>The <i>weather measurements</i> are supplied by</p> <p>The <i>weather data</i> are the records of past <i>weather measurements</i> for each calendar month which were recorded at:</p> <p>and which are available from:</p>	<p>[•]</p> <p>the cumulative rainfall (mm)</p> <p>the number of days with rainfall more than 10 mm</p> <p>the number of days with minimum air temperature less than 0 degrees Celsius</p> <p>the number of days with snow lying at 09:00 hours South African Time</p> <p>and these measurements:</p> <p>[•]</p> <p>[•]</p> <p>the South African Weather Bureau and included in Annexure A to this Contract Data provided by the <i>Employer</i></p>
60.1(13)	Assumed values for the ten year return <i>weather data</i> for each <i>weather measurement</i> for each calendar month are:	<p>As stated in Annexure A to this Contract Data provided by the <i>Employer</i>.</p> <p>Note: If this arrangement is used, delete the rows above for 60.1(13) and delete this note.</p>
<b>7</b>	<b>Title</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
<b>8</b>	<b>Risks and insurance</b>	
80.1	These are additional <i>Employer's</i> risks	1. Not applicable

83.1	The employer provides these insurance from the insurance Table	<b>2. As stated for "Format TSC3" available on <a href="http://www.eskom.co.za/Tenders/insurancepolicies/procedures/pages/EIMS_Policies_">http://www.eskom.co.za/Tenders/insurancepolicies/procedures/pages/EIMS_Policies_</a></b>
83.1	The Contractor provides these additional insurance	<b>3. Whatever the Contractor deems necessary to protect his assets.</b>
83.1	The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is	<b>The amount of the deductibles relevant to the event described in the 'Format TSC3' insurance policy available on <a href="http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From1April2014To31March2015.aspx">http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From 1 April 2014 To 31 March 2015.aspx</a></b>
83.1	The insurance against loss of or damages to the <i>works</i> , Plant and Material is to include cover for Plant and Materials provided by the <i>Employer</i> for an amount of	<b>The amount of the deductible relevant to the event described in the "Format TSC3" insurance policy available on <a href="http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From1April2014To31March2015.aspx">http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From 1 April 2014 To 31 March 2015.aspx</a></b>
83.1	The minimum amount of cover for insurance in respect of loss of or damage to property ( <i>except the Employer's</i> property, Plant and Materials and equipment) and liability for bodily injury to or death of a person (not an employee of a contractor ) arising from or in connection with the <i>Contractor's</i> Providing the Service for any one event is:	<b>Whatever the <i>Contractor</i> deems necessary, but to the minimum, as to what is required by Law.</b>
83.1	The minimum limit of indemnity for insurance in respect of 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 for any one event is:	<b>As prescribed by the Compensation for Occupational Injuries and Diseases Act No.130 of 1993 and the <i>Contractor's</i> common Law liability for people falling outside the scope of the Act with a limit of indemnity of not less than R500 000 (Five Hundred Thousand Rand)</b>

**9 Termination**

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

**10 Data for main Option clause**

<b>A</b>	<b>Priced contract with activity schedule</b>	<b>There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.</b>
<b>B</b>	<b>Priced contract with bill of quantities</b>	
60.6	The <i>method of measurement</i> is	<b>[•] published by [•] and amended as stated in Part C2.1, Pricing Assumptions.</b>
<b>C</b>	<b>Target contract with activity schedule</b>	
20.4	The <i>Contractor</i> prepares forecasts of Defined Cost for the <i>works</i> at intervals no longer than	<b>[•]weeks.</b>

50.6	The <i>exchange rates</i> are those published in [•] on [•] (date).		
53.1	The <i>Contractor's share percentages</i> and the <i>share ranges</i> are	<i>share range</i>  less than [•] % from [•]% to [•]% from [•] to [•]% greater than [•]%	<i>Contractor's share percentage</i>  [•]% [•]% [•]% [•]%
<b>D</b>	<b>Target contract with bill of quantities</b>		
20.4	The <i>Contractor</i> prepares forecasts of Defined Cost for the <i>works</i> at intervals no longer than [•] weeks.		
50.6	The <i>exchange rates</i> are those published in [•] on [•] (date).		
53.1	The <i>Contractor's share percentages</i> and the <i>share ranges</i> are	<i>share range</i>  less than [•]% from [•]% to [•]% from [•]% to [•]% greater than [•]%	<i>Contractor's share percentage</i>  [•]% [•]% [•]% [•]%
60.6	The <i>method of measurement</i> is [•] published by [•] and amended as stated in Part C2.1 Pricing Assumptions.		
<b>E</b>	<b>Cost reimbursable contract</b>		
20.4	The <i>Contractor</i> prepares forecasts of Defined Cost for the <i>works</i> at intervals no longer than [•] weeks.		
50.7	The <i>exchange rates</i> are those published in [•] on [•] (date).		
<b>F</b>	<b>Management contract</b>		
20.4	The <i>Contractor</i> prepares forecasts of Defined Cost for the <i>works</i> at intervals no longer than [•] weeks.		
50.7	The <i>exchange rates</i> are those published in [•] on [•] (date).		
<b>11</b>	<b>Data for Option W1</b>		
W1.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).	

Address [•]

Tel No. [•]

Fax No. [•]

e-mail [•]

W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the London Institution of Civil Engineers. (See <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ) or its successor body.
W1.4(2)	The <i>tribunal</i> is:	arbitration.
W1.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	The place where arbitration is to be held is	Johannesburg, South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	the Chairman for the time being or his nominee
	- if the arbitration procedure does not state who selects an arbitrator, is	of the Association of Arbitrators (Southern Africa) or its successor body.

## 12 Data for secondary Option clauses

<b>X1</b>	<b>Price adjustment for inflation</b>		
X1.1(a)	The <i>base date</i> for indices is	Will be at the current CPIX, on the anniversary date, of this contract, as declared by the National Treasure.	
X1.1(c)	The proportions used to calculate the Price Adjustment Factor are:	proportion	linked to index for
			Index prepared by
			non-adjustable
	Total	1.00	
<b>X2</b>	<b>Changes in the law</b>		
	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.		
<b>X3</b>	<b>Multiple currencies</b>		

X3.1	The <i>Employer</i> will pay for these items or activities in the currencies stated	Items & activities	Other currency	Maximum payment in other currency
		[•]	[•]	[•]
		[•]	[•]	[•]
		[•]	[•]	[•]
		[•]	[•]	[•]
X3.1	The <i>exchange rates</i> are those published in [•] on [•] (date)	<p>The items &amp; activities will be paid in the other currency</p> <p>- to a foreign Bank account nominated by the <i>Contractor</i></p> <p>- to a valid SARB approved CFC account in South Africa</p> <p>- in accordance with an alternative payment method agreed with the <i>Employer</i> before the Contract Date.</p> <p>(select one of the three methods as agreed with successful tenderer and delete the others and this note)</p>		
X4	Parent company guarantee	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.		
X5	Sectional Completion			
X5.1	The <i>completion date</i> for each <i>section</i> of the <i>works</i> is:	Section	Description	Completion date
		1	[•]	[•]
		2	[•]	[•]
		3	[•]	[•]
X5 & X6	Sectional Completion and bonus for early Completion used together			
X6.1 X5.1	The bonuses for early Completion of the <i>sections</i> of the <i>works</i> are:	section	Description	Amount per day
		1	[•]	R[•]
		2	[•]	R[•]
		3	[•]	R[•]
	Remainder of the <i>works</i>			R[•]
X5 & X7	Sectional Completion and delay damages used together			
X7.1 X5.1	Delay damages for late Completion of the <i>sections</i> of the <i>works</i> are:	section	Description	Amount per day
		1	[•]	R[•]

		2	[•]	R[•]
		3	[•]	R[•]
	Remainder of the <i>works</i>			R[•]
	The total delay damages payable by the <i>Contractor</i> does not exceed:	R [•]		
X6	Bonus for early Completion (but not if Option X5 is also used)			
X6.1	The bonus for early Completion of the whole of the <i>works</i> is	[•] per day		
X7	Delay damages (but not if Option X5 is also used)			
X7.1	Delay damages for Completion of the whole of the <i>works</i> are	R[•] per day up to a limit of R[•]		
X12	Partnering			
X12.1(1)	The <i>Client</i> is (Name)	[•]		
	Address	[•]		
	Tel	[•]		
	Fax	[•]		
X12.2(1)	The <i>Client's</i> objective is.	[•]		
X12.1(4)	The Partnering Information is in	[•]		
X13	Performance bond			
X13.1	The amount of the performance bond is	R[•].		
X14	Advanced payment to the <i>Contractor</i>			
X14.1	The amount of the advanced payment is	R[•].		
X14.2	An advanced payment bond	is required.		
X14.3	The <i>Contractor</i> repays the instalments in assessments starting not less than	[•] weeks after the Contract Date.		
X14.3	The instalments are	R[•] (either an amount or a percentage of the payment otherwise due)		
	Limitation of the <i>Contractor's</i> liability for his design to reasonable skill & care	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.		
	Retention (not used with Option F)			
X16.1	The <i>retention free amount</i> is	R[•].		
	The <i>retention percentage</i> is	[•]%		
X17	Low performance damages			

X17.1	The amounts for low performance damages are	Part 3, Scope of , of this Contract.
<b>X18</b>	<b>Limitation of liability</b>	
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	<b>R0.0 (zero Rand)</b>
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to:	the amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on <a href="http://www.eskom.co.za/Tenders/Insurance/Polices/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/Insurance/Polices/Procedures/Pages/EIMS_Policies_From 1 April 2014 To 31 March 2015.aspx</a>
X18.3	The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to	<b>Not applicable</b>
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 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 end of liability date is	<p>(i) 52 months after the completion of each individual and or repair Refer to clause Z9</p> <p>(ii) the date on which the liability in question prescribes in accordance with the Prescription Act No. 68 of 1969 (as amended or in terms of any replacement legislation) for any other matter.</p> <p>A latent Defect is a Defect which would not have been discovered on reasonable inspection by the <i>Employer</i> or the <i>Supervisor</i> before the defects date, without requiring any inspection not ordinarily carried out by the <i>Employer</i> or the <i>Supervisor</i> during that period.</p>

If the *Employer* or the *Supervisor* do undertake any inspection over and above the reasonable inspection, this does not place a greater responsibility on the *Employer* or the *Supervisor* to have discovered the Defect.

<b>X20</b>	<b>Key Performance Indicators (not used when Option X12 applies)</b>	
X20.1	The <i>incentive schedule</i> for Key Performance Indicators is in	<b>Annexure [●] to this Contract Data</b>
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	<b>[●] months</b>
<b>Z</b>	<b>The <i>Additional conditions of contract</i> are</b>	<b>Z1 to Z15 always apply.</b>

### **Z1 Cession delegation and assignment**

- Z1.1 The *Contractor* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- 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 *Project 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 *Project Manager* within thirty days of the notification or as otherwise instructed by the *Project 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 Works.

- 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 P3 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 *Project 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 *works* or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the *Project 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 *Project Manager*, the *Supervisor*, 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 *works*. 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 Site;  
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 *works*; and  
undertakes, in and about the execution of the *works*, 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 *works*, 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 *Project 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 Works 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 from the last sentence in core clause 61.3, "unless the *Project Manager* should have notified the event to the *Contractor* but did not".

**Z9 Employer's limitation of liability**

- Z9.1.1 The *Employer's* liability to the *Contractor* for the *Contractor's* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z9.1.2 The *Contractor's* entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the *Employer's* liability under the indemnity is limited.

**Z9.2 End of Liability date**

For each individual services and or repair will be 52 weeks after the date of the signed and accepted taking over certificate, for that unit.

**Z9.3 Termination**

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

**Z10 Legal Binding**

- Z10.1 This Contract will only become legally binding on both parties upon receipt and acceptance of the *Employer's* purchase order by the *Contractor*.

**Z11 Addition to secondary Option X7 Delay damages (if applicable in this contract)**

- Z11.1 If the amount due for the *Contractor's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Contractor's* obligation to Provide the Works using the same procedures and

payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

## Z12 Ethics

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

<b>Affected Party</b>	means, as the context requires, any party, irrespective of whether it is the <i>Contractor</i> 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,
<b>Coercive Action</b>	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,
<b>Collusive Action</b>	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,
<b>Committing Party</b>	means, as the context requires, the <i>Contractor</i> , or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractor or the Subcontractor's employees,
<b>Corrupt Action</b>	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,
<b>Fraudulent Action</b>	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,
<b>Obstructive Action</b>	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
<b>Prohibited Action</b>	means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

Z12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z12.2 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.

Z12.3 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.

Z12.4 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.

Z12.5 Notwithstanding the provision of the core clause 90.2, the procedure on termination in terms of this clause are P1, P2 and P3 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93

## Z13 Insurance

**Z 13.1 Replace core clause 84 with the following:****Insurance cover 84**

- 84.1** 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.
- 84.2** The *Contractor* provides the insurances stated in the Insurance Table A.
- 84.3** The insurances provide cover for events which are at the *Contractor's* risk 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 to the works, Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance  The <i>Employer's</i> policy deductible, as Contract Date, where covered by the <i>Employer's</i> insurance
Loss of or damage to Equipment	The replacement cost
Liability for loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) caused by activity in connection with this contract	<b><u>Loss of or damage to property</u></b> <b><u>Employer's property</u></b> The replacement cost where not covered by the <i>Employer's</i> insurance  The <i>Employer's</i> policy deductible, as Contract Date, where covered by the <i>Employer's</i> insurance  <b><u>Other property</u></b> The replacement cost  <b><u>Bodily injury to or death of a person</u></b> The amount required by 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 13.2****Replace core clause 87 with the following:**

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 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

**Z14 Nuclear Liability**

- Z14.1 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.
- Z14.2 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*.
- Z14.3 Subject to clause Z14.4 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*.
- Z14.4 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.
- Z14.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

**Z15 Asbestos**

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

- AAIA** means approved asbestos inspection authority.
- ACM** 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 Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.</i>
<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.

- Z15.1 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.
- Z15.2 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 Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z15.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z15.4 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.
- Z15.5 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.

- Z15.6 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.
- Z15.7 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.

# **Annexure A: One-in-ten-year-return *weather data* obtained from SA Weather Bureau for [weather station]**

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

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

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

