

## 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	
	dispute resolution Option	<b>A: Priced contract with activity schedule</b>
	and secondary Options	<b>W1: Dispute resolution procedure</b>
		<b>X1: Price adjustment for inflation</b>
		<b>X2: Changes in the law</b>
		<b>X3: Multiple currencies</b>
		<b>X4: Parent company guarantee</b>
		<b>X5: Sectional Completion</b>
		<b>X7: Delay damages</b>
		<b>X13: Performance Bond</b>
		<b>X16: Retention</b>
		<b>X18: Limitation of liability</b>
		<b>Z: Additional conditions of contract</b>
	of the NEC3 Engineering and Construction Contract, April 2013 (ECC3)	
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>
10.1	The <i>Project Manager</i> is: (Name)	<b>Garth van Heerden</b>
	Address	<b>TBA</b>
	Tel	<b>TBA</b>
	Fax	<b>TBA</b>
	e-mail	<b>TBA</b>

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10.1	The <i>Supervisor</i> is: (Name)	TBA																								
	Address	TBA																								
	Tel No.	TBA																								
	Fax No.	TBA																								
	e-mail	TBA																								
11.2(13)	The <i>works</i> are	The design, manufacturing and installation of a new 400kV GIS, commissioning and associated works.																								
11.2(14)	The following matters will be included in the Risk Register	COVID19 pandemic, non-availability of outages and commissioning resources, crime prevalence around the construction area, community unrests, low visibility, high winds.																								
11.2(15)	The <i>boundaries of the site</i> are	Philippi substation boundaries																								
11.2(16)	The Site Information is in	Part 4: Site Information																								
11.2(19)	The Works 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	Two (2) weeks																								
2	The <b>Contractor's main responsibilities</b>	Data required by this section of the core clauses is provided by the <i>Contractor</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.																								
3	Time																									
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	TBC																								
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<table><tr><th colspan="2"><i>Condition to be met</i></th><th><i>key date</i></th></tr><tr><td>1</td><td>Completion of GIS design</td><td>TBC</td></tr><tr><td>2</td><td>SHEQ file Approval</td><td>TBC</td></tr><tr><td>3</td><td>Site Establishment</td><td>TBC</td></tr><tr><td>4</td><td>GIS delivery</td><td>TBC</td></tr><tr><td>5</td><td>GIS equipment assembly &amp; installation</td><td>TBC</td></tr><tr><td>6</td><td>Control Plant cabling</td><td>TBC</td></tr><tr><td>7</td><td>Completion of Commissioning of GIS and control systems</td><td>TBC</td></tr></table>	<i>Condition to be met</i>		<i>key date</i>	1	Completion of GIS design	TBC	2	SHEQ file Approval	TBC	3	Site Establishment	TBC	4	GIS delivery	TBC	5	GIS equipment assembly & installation	TBC	6	Control Plant cabling	TBC	7	Completion of Commissioning of GIS and control systems	TBC
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30.1	The <i>access dates</i> are:	TBC																								

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The Contractor shall request access to the Employer's site, from the Project Manager, at least two weeks prior to access being required. Access to site shall be granted at any time during the Working Day of any Working Week. Access to site may be granted at other times, on request, at the Project Manager's sole discretion

31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	Two (2) weeks of the Contract Date.
31.2	The <i>starting date</i> is	TBC
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	Two (2) weeks.
35.1	The <i>Employer</i> is not willing to take over the <i>works</i> before the Completion Date.	
<b>4</b>	<b>Testing and Defects</b>	
42.2	The <i>defects date</i> is	Hundred and Fifty Six (156) weeks after Completion of the whole of the <i>works</i> .
43.2	The <i>defect correction period</i> is	Two (2) weeks
	except that the <i>defect correction period</i> for	Defects which the <i>Supervisor</i> notifies may jeopardise the performance of the works in use is the shortest possible time starting immediately after notification of the defect
		Defects which the Supervisor notifies require urgent attention is 48 (forty-eight) hours starting immediately after notification of the Defect, unless the parties, acting in good faith, agree otherwise.
<b>5</b>	<b>Payment</b>	
50.1	The <i>assessment interval</i> is	Between the 20 <sup>th</sup> and 25 <sup>th</sup> day of each successive month
		In order to facilitate payment for work done, the <i>Contractor</i> is to submit his Schedule of completed activities (verified by the <i>Supervisor</i> ) for payment to the <i>Project Manager</i> by the 20th day of each month, in a similar format to the <i>bill of quantities</i> . The <i>Project Manager</i> will determine the value of the work done in accordance with Core clause 5 and changes to Core clause Z (A) sub-clause 50.2
51.1	The <i>currency of this contract</i> is the	South African Rand.
51.2	The period within which payments are made is	Sixty (60) days
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

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**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.**

## **6 Compensation events**

60.1(13) The place where weather is to be

recorded is:

The *weather measurements* to be recorded for each calendar month are,

**Philippi Substation**

**the cumulative rainfall (mm)**

**the number of days with rainfall more than 10 mm**

**the number of days with minimum air temperature less than 0 degrees Celsius**

**the number of days with snow lying at 09:00 hours South African Time**

**and these measurements:**

- 1. The minimum and maximum daily temperature in °C (degrees Celsius)**
- 2. The Wind speed in km/h**

The *weather measurements* are supplied by

The *weather data* are the records of past *weather measurements* for each calendar

month which were recorded at:

and which are available from:

**South African Weather Services**

**Kenilworth racecourse**

**the South African Weather Bureau and included in Annexure A to this Contract Data provided by the *Employer***

60.1(13) Assumed values for the ten years return *weather data* for each *weather measurement* for each calendar month are:

**As stated in Annexure A to this Contract Data provided by the *Employer*.**

**Note: If this arrangement is used, delete the rows above**

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		for 60.1(13) and delete this note.
<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	None
<b>9</b>	<b>Termination</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
<b>10</b>	<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with activity schedule</b>	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.
<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i> is	the person selected by agreement of the parties from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators (see <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> ). The party referring the dispute shall propose the name of the Adjudicator to the other party. If the Parties do not agree on an Adjudicator the Adjudicator will be appointed, then the Adjudicator shall be appointed in terms of clause W1.2(3) below. The failure to identify or appoint a specific person to act as an Adjudicator shall not operate as preventing a time bar defence.
	Address	[TBA]
	Tel No.	[TBA]
	Fax No.	[TBA]
	e-mail	[TBA]
W1.2(3)	The <i>Adjudicator nominating body</i> is:	Subject to the provisions of clause W1.1 above, 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.

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	The place where arbitration is to be held is <b>Johannesburg South Africa</b>		
	The person or organisation who will choose an arbitrator		
	<ul style="list-style-type: none"> <li>- if the Parties cannot agree a choice or</li> <li>- if the arbitration procedure does not state who selects an arbitrator, is</li> </ul>		
	<b>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</b>		
<b>12</b>	<b>Data for secondary Option clauses</b>		
<b>X1</b>	<b>Price adjustment for inflation</b>		
X1.1(a)	The <i>base date</i> for indices is <b>One (1) month before tender closing.</b>		
	CPA will kick in after (15) months from the base date for commodities with prices that are less volatile.		
X1.1(c)	The proportions used to calculate the		
	Price Adjustment Factor are:	<b>Proportion</b>	<b>linked to index for</b>
	<u>Local Portion:</u>		<b>Index prepared by</b>
	Preliminary & General items	<b>0.85</b>	<b>Table D-3 (CPI)</b>
			<b>Seifsa Index</b>
	Transport/Delivery	<b>0.85</b>	<b>Table L-2(A): Road Freight Costs</b>
			<b>Seifsa Index</b>
	GIS Equipment Installation	<b>0.85</b>	<b>Table D-3 (CPI)</b>
			<b>Seifsa Index</b>

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	Test & Commissioning	0.85	Table D-3 (CPI)	Seifsa Index
		0.15	non-adjustable	
		<b>Total</b>	<b>1.00</b>	
<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	<b>Items &amp; activities</b>	<b>Other currency</b>	<b>Maximum payment in other currency</b>
		[•]	[•]	[•]
		[•]	[•]	[•]
		[•]	[•]	[•]
		[•]	[•]	[•]
X3.1	The <i>exchange rates</i> are those published in	South African Reserve Bank website ( <a href="http://www.resbank.co.za">www.resbank.co.za</a> )	on the date the tender was published.	
<b>X4</b>	<b>Parent company guarantee</b>	There may be a requirement for the <i>Contractor</i> to furnish security reasonably acceptable to the <i>Employer</i> , which security may take the form of a Parent Company Guarantee, which security/ies shall be finalized at the time of contracting.		
<b>X5</b>	<b>Sectional Completion</b>			
X5.1	The <i>completion date</i> for each <i>section</i> of the <i>works</i> is:	<b>Section</b>	<b>Description</b>	<b>Completion date</b>
		1	Completion of GIS design	TBC
		2	SHEQ file Approval	TBC
		3	Site Establishment	TBC
		4	GIS delivery	TBC
		5	GIS equipment assembly & installation	TBC
		6	Control Plant cabling	TBC



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		7	Completion of Commissioning of GIS and control systems	TBC
X5 & X7	Sectional Completion and delay damages used together			
X7.1 X5.1	Delay damages for late Completion of the sections of the works are:	section	Description	Amount per day
		1	Completion of GIS design	TBC
		2	SHEQ file Approval	TBC
		3	Site Establishment	TBC
		4	GIS delivery	TBC
		5	GIS equipment assembly & installation	TBC
		6	Control Plant cabling	TBC
		7	Completion of Commissioning of GIS and control systems	TBC
	Remainder of the works			
	The total delay damages payable by the Contractor does not exceed:		10% of contract value	
X13	Performance bond			
X13.1	The amount of the performance bond is	10% of the contract value		
X15	Limitation of the Contractor’s 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.		
X16	Retention (not used with Option F)			
X16.1	The retention free amount is	0%		
	The retention percentage is	5% of contract value 50% of the retention is payable when the whole of the works is taken over on Completion and the remainder is paid on the expiry of the defects period which is 156 weeks after the works has been taken over		
	The SDL&I and Stability and CSI retention percentage is	2% of the total of the Prices (refer to C3 Works Information).		
X18	Limitation of liability			
X18.1	The Contractor’s liability to the Employer for indirect or consequential loss is limited to:	R0.0 (zero Rand)		

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X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to:	<b>the amount of the deductibles relevant to the event</b>
X18.3	The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to	<b>The greater of</b> <ul style="list-style-type: none"> <li>• the total of the Prices at the Contract Date of</li> <li>• the amounts excluded and unrecoverable from the <i>Employer's</i> assets policy for correcting the Defect (other than the resulting physical damage which is not excluded) plus the applicable deductible as at contract date.</li> </ul>
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than excluded matters, is limited to:	<b>the total of the Prices other than for the additional excluded matters.</b>  <b>The <i>Contractor's</i> total liability for the additional excluded matters is not limited.</b>  <b>The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for</b> <ul style="list-style-type: none"> <li>• Defects due to his design which arise before the Defects Certificate is issued,</li> <li>• Defects due to manufacture and fabrication outside the Site,</li> <li>• loss of or damage to property (other than the <i>works</i>, Plant and Materials),</li> <li>• death of or injury to a person and</li> <li>• infringement of an intellectual property right.</li> </ul>
X18.5	The <i>end of liability date</i> is	<b>(i) Seven (7) years after the <i>defects date</i> for latent Defects and</b>  <b>(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.</b>  <b>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 <i>defects date</i>, without requiring any inspection not ordinarily carried out by the <i>Employer</i> or the <i>Supervisor</i> during that period. If the <i>Employer</i> or the <i>Supervisor</i> do undertake any inspection over and above the reasonable inspection, this does not place a greater responsibility on the <i>Employer</i> or the <i>Supervisor</i> to have discovered the Defect.</b>
<b>Z</b>	<b>The Additional conditions of contract</b>	
	<b>are</b>	<b>Z1 to Z15 always apply.</b>

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## **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

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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

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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 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 83.1 is provided for in 60.1(14) and the *Employer's* liability under the indemnity is limited.

## **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            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:

- 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 and shall include any Politically Exposed Person (PEP) as contemplated in the Regulation 4(3) of the Money Laundering Control Regulations promulgated in terms of the Financial Intelligence Centre Act (Act 38 of 2001).
- 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 Subcontractor 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,

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**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.

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.

### 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

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Liability for loss of or damage to property (except the <i>works</i> , 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	<u><b>Loss of or damage to property</b></u> <u><b>Employer's property</b></u> The replacement cost where not covered by the <i>Employer's</i> insurance  The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance  <u><b>Other property</b></u> The replacement cost  <u><b>Bodily injury to or death of a person</b></u> 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,

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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:

<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.



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**TWA** means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the base line 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.

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## Annexure A: One-in-ten-year-return weather data obtained from SA Weather Bureau for Kenilworth Race Course

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.



### LEGEND

'AVE' represents the average rainfall for the month

'ST DEV' represents the standard deviation from the normal

$s = \text{SQRT}(\text{SUM}(X^2)/n - (\text{AVE}(x) * \text{AVE}(x)))$

'N DAY RAIN' represents the average number of rain days per month

'NUM MON' represents the number of months used in the calculation

'r1 r2' represents the average number of raindays in range r1 to r2 inclusive

'MAX R DAY' represents the maximum rainfall that occurred over a 24-hour period. (08:00-08:00)

'MAX RAIN DATE' represents the date on which the maximum 24 hour rainfall occurred

### DATA FOR THE AVERAGE CALCULATION ARE NOT USED IF :

1. There are more than 5 consecutive days of accumulation
2. The data for certain days in the month unavailable
3. The accumulation period occurred at the end of a month

### DATA FOR THE FREQUENCY CALCULATION ARE NOT USED IF :

1. Accumulation occurred in the month
2. The data for certain days in the month are unavailable

2012-2020

0020839A2 KENILWORTH RACE

COURSE ARS

Lat:33°59'53"S

Lon:18°28'48"E

Height:29 m

MON	AVE	ST	N DAY	NUM	1	5,1	10,1	20,1	50	100,1	MAX R	MAX RAIN
MON		DEV	RAIN	MON	5	10	20	50	100	900	DAY	DATE
JAN	16	10	3,7	7	1,3	0,6	0,1	0,3	0	0	24	2019/01/11
FEB	6,8	7,5	4	7	1,6	0	0,1	0	0	0	12,8	2013/02/09
MAR	21,2	21,3	5,7	7	1,9	0,9	0,4	0,1	0	0	47,4	2016/03/26
APR	37,6	19,6	7,3	4	2,5	0,5	0,5	0,5	0	0	88,4	2013/04/16
MAY	81,9	52,1	10,3	6	3,5	1,2	0,8	1,2	0,2	0	71	2019/05/19
JUN	204,2	27,6	13	4	3,5	2	2	2	1,5	0	86,2	2012/06/07
JUL	182,8	61,4	14	3	4,7	2	3	2,3	0,7	0	108,6	2015/07/17

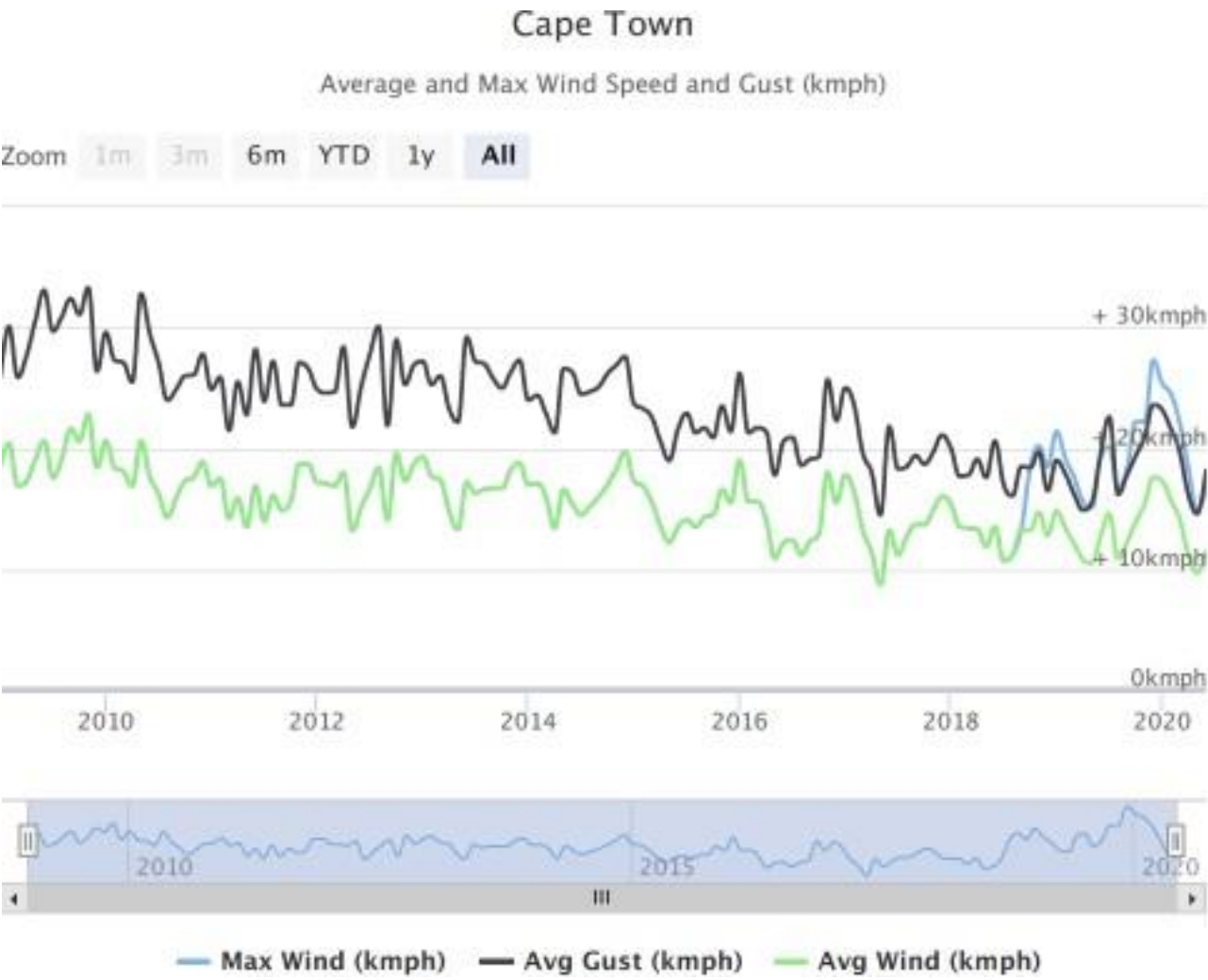
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AUG	172,6	131,3	13	5	4	2,2	1,2	2,6	0,6	0	86,2	2013/08/28
SEP	74,6	49,6	11,9	7	3,7	1	2,1	0,7	0,1	0	52,2	2013/09/13
OCT	36,4	45,5	6,1	7	2,9	0,6	0,3	0,3	0,1	0	92,8	2019/10/24
NOV	14,3	12,5	5,2	5	2,4	0,4	0	0,2	0	0	20,6	2015/11/01
DEC	20,8	18,4	4,3	7	1,7	0,4	0,4	0,1	0	0	36,6	2018/12/06
YR	869,2		98,5		33,6	11,7	11,1	10,4	3,2	0		

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



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