

C1.2 ECC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
	dispute resolution Option and secondary Options	<p>A: Priced contract with activity schedule</p> <p>W1: Dispute resolution procedure</p> <p>X1: Price adjustment for inflation</p> <p>X2: Changes in the law</p> <p>X3: Multiple currencies</p> <p>X4: Parent company guarantee</p> <p>X5: Sectional Completion</p> <p>X7: Delay damages</p> <p>X13: Performance Bond</p> <p>X16: Retention</p> <p>X18: Limitation of liability</p> <p>Z: Additional conditions of contract</p>
	of the NEC3 Engineering and Construction Contract, April 2013 (ECC3)	
10.1	The <i>Employer</i> is (Name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
10.1	The <i>Project Manager</i> is: (Name)	TBC
	Address	Matimba Power Station Project, Nelson Mandela Dr, Lephalale,0555
	Tel	[•]
	e-mail	[•]

10.1	The <i>Supervisor</i> is: (Name)	TBC
	Address	Matimba Power Station Project, Nelson Mandela Dr, Lephhalale,0555
	Tel No.	[•]
	e-mail	[•]
11.2(13)	The <i>works</i> are	The design, manufacture, factory testing, supply, delivery, off-loading, erection, installation, site testing and commissioning of new Plant and Material forming part of the works at Matimba Power Station.
11.2(14)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> • Availability of interfaces with Others • Interface compatibility • Outage movements • Scope creep • Community protests • Safety incidents • Communicable disease outbreaks • Global political instability • Natural disaster
11.2(15)	The <i>boundaries of the site</i> are	Eskom Matimba Power Station
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	7 working days
2	The Contractor's main responsibilities	Data required by this section of the core clauses is provided by the Contractor 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	30 November 2031

11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<p>Condition to be met</p> <ol style="list-style-type: none"> 1 Basic Design Freeze 2 Detailed Design Freeze 3 Factory Acceptance Tests complete 	<p>key date</p> <p>6 months after contract award</p> <p>2 months prior to manufacture & Installation</p> <p>2 months prior to breaker open</p>									
30.1	The <i>access dates</i> are:	<ul style="list-style-type: none"> • the dates on or before the dates reflected on the Accepted Program for each Part of the Site • Access dates for Pre-Outage works are 6 months before outage start date of each Unit. • Access dates for Installation, Commissioning, testing works are the Breaker Open dates or as determined through the Employer’s integrated outage master schedule for each Unit. <table border="1" data-bbox="879 1330 1552 1984"> <thead> <tr> <th data-bbox="879 1330 1257 1397"></th> <th data-bbox="879 1397 1257 1464">Part of the Site</th> <th data-bbox="879 1464 1552 1532">Date</th> </tr> </thead> <tbody> <tr> <td data-bbox="879 1532 1257 1688">1</td> <td data-bbox="879 1532 1257 1688"> First Unit Pre-outage installations Breaker Open: Installation, Commissioning, testing </td> <td data-bbox="879 1688 1552 1756"> 6 months prior breaker open 11 Sep 2025 </td> </tr> <tr> <td data-bbox="879 1756 1257 1984">2</td> <td data-bbox="879 1756 1257 1984"> Second Unit Pre-outage installations Breaker Open: Installation, Commissioning, testing </td> <td data-bbox="879 1984 1552 2051"> 6 months prior breaker open 29 Oct 2026 </td> </tr> </tbody> </table>		Part of the Site	Date	1	First Unit Pre-outage installations Breaker Open: Installation, Commissioning, testing	6 months prior breaker open 11 Sep 2025	2	Second Unit Pre-outage installations Breaker Open: Installation, Commissioning, testing	6 months prior breaker open 29 Oct 2026	
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3	Third Unit	
	Pre-outage installations	6 months prior breaker open
	Breaker Open: Installation, Commissioning, testing	18 November 2027
4	Fourth Unit	
	Pre-outage installations	6 months prior breaker open
	Breaker Open: Installation, Commissioning, testing	07 August 2028
5	Fifth Unit	
	Pre-outage installations	6 months prior breaker open
	Breaker Open: Installation, Commissioning, testing	06 August 2029
6	Sixth Unit	
	Pre-outage installations	6 months prior breaker open
	Breaker Open: Installation, Commissioning, testing	05 August 2030

	The <i>Contractor</i> is to submit a first programme for acceptance within	2 weeks of the Contract award Date.
		Access dates, key dates, sectional completion dates are the dates reflected on the last Accepted Program
31.2	The <i>starting date</i> is	31 Mar 2025
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	weekly during outage activities Bi-weekly during other activities.
35.1	The <i>Employer</i> is not willing to take over the <i>works</i> before the Completion Date.	

4 Testing and Defects

42.2	The <i>defects date</i> is	52 weeks after Completion of each section of the works.
43.2	The <i>defect correction period</i> is	1 week for no risk defects
	except that the <i>defect correction period</i> for	risk of safety or load loss is 1 day
	and the <i>defect correction period</i> for	low risk defects are 3 days

5 Payment

50.1	The <i>assessment interval</i> is	between the 20th day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand.
51.2	The period within which payments are made is	60 days from receipt of valid tax invoice(s).
51.4	The <i>interest rate</i> is	<p>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</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.</p>

6 Compensation events

60.1(13)	The place where weather is to be recorded is:	Matimba Power Station
	The <i>weather measurements</i> to be recorded for each calendar month are,	<p>the cumulative rainfall (mm)</p> <p>the number of days with rainfall more than 10 mm</p>

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:

The *weather measurements* are supplied by

the South African Weather Services

The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at:

Matimba Power Station

and which are available from:

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-year return <i>weather data</i> for each <i>weather measurement</i> for each calendar month are:	As stated in Annexure A to this Contract Data provided by the Employer.
7	Title	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
8	Risks and insurance	
84	Insurance Cover	Refer to additional clause Z13.1
87		Refer to additional clause Z13.2
9	Termination	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
10	Data for main Option clause	
A	Priced contract with activity schedule	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.
11	Data for Option W1	
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 www.ice-sa.org.za). If the Parties do not agree on an

		Adjudicator, the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
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 www.ice-sa.org.za) 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	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 of the Association of Arbitrators (Southern Africa) or its successor body.
	- 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(a)	The <i>base date</i> for indices is	The month before the month in which the Enquiry closes. The prices will be fixed for first year and subject to escalation at the end of the first year.	
X1.1(c)	The proportions used to calculate the Price Adjustment Factor are:	Proportion	Linked to index for
	Refer to the Activity Schedule for detailed CPA formulae and indices.		
X2	Changes in the law		
		There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.	
X3	Multiple currencies		
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
		[•]	[•]
		[•]	[•]
		[•]	[•]
		[•]	[•]

<p>X3.1</p>	<p>The <i>exchange rates</i> are those published in [•] on [•] (date)</p> <p>The items & activities will be paid in the other currency</p> <ul style="list-style-type: none"> - to a foreign Bank account nominated by the <i>Contractor</i> - to a valid SARB approved CFC account in South Africa - in accordance with an alternative payment method agreed with the <i>Employer</i> before the Contract Date. <p>(select one of the three methods as agreed with successful tenderer and delete the others and this note)</p>																					
<p>X4</p>	<p>Parent company guarantee</p> <p>There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.</p>																					
<p>X5</p>	<p>Sectional Completion</p>																					
<p>X5.1</p>	<p>The <i>completion date</i> for each <i>section</i> of the <i>works</i> is:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;"><i>Section</i></th> <th style="text-align: center;"><i>Description</i></th> <th style="text-align: center;"><i>Completion date</i></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">First Unit</td> <td>Breaker Close: Installation, Commissioning, and testing complete.</td> <td style="text-align: center;">07 Feb 2026</td> </tr> <tr> <td></td> <td>As built packages</td> <td style="text-align: center;">07 May 2026</td> </tr> <tr> <td style="text-align: center;">Second Unit</td> <td>Breaker Close: Installation, Commissioning, and testing complete.</td> <td style="text-align: center;">24 February 2027</td> </tr> <tr> <td></td> <td>As built packages</td> <td style="text-align: center;">24 May 2027</td> </tr> <tr> <td style="text-align: center;">Third Unit</td> <td>Breaker Close: Installation, Commissioning, and testing complete.</td> <td style="text-align: center;">15 March 2028</td> </tr> <tr> <td></td> <td>As built packages</td> <td style="text-align: center;">15 June 2028</td> </tr> </tbody> </table>	<i>Section</i>	<i>Description</i>	<i>Completion date</i>	First Unit	Breaker Close: Installation, Commissioning, and testing complete.	07 Feb 2026		As built packages	07 May 2026	Second Unit	Breaker Close: Installation, Commissioning, and testing complete.	24 February 2027		As built packages	24 May 2027	Third Unit	Breaker Close: Installation, Commissioning, and testing complete.	15 March 2028		As built packages	15 June 2028
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		Fourth Unit	Breaker Close: Installation, Commissioning, and test complete.	04 December 2028
			As built packages	04 March 2029
		Fifth Unit	Breaker Close: Installation, Commissioning, and test complete.	03 December 2029
			As built packages	03 March 2030
		Sixth Unit	Breaker Close: Installation, Commissioning, and test complete.	02 December 2030
			As built packages	02 March 2030
5 & 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	
	First Unit – Sixth Unit	All Outage Works completed at Breaker Close	0.5% capped at 10% of the total Price for the Unit	
	First Unit – Sixth Unit	All pre-outage work must be completed before Breaker Open	0.5% capped at 10% of the total Price for the Unit	
	First Unit – Sixth Unit	All activities that prevent interfacing work or access by	0.5% capped at 10% of the total Price for the Unit	

	Remainder of the <i>works</i>	others from taking place	
	The total delay damages payable by the <i>Contractor</i> does not exceed:	Late Submission of As built packages	0.5% capped at 10% of the total Price for the “as built” packages.
			10% of the total of the Prices
X13	Performance bond		
X13.1	The amount of the performance bond is		10% of the total of the Prices
X16	Retention		
X16.1	The <i>retention free amount</i> is		R0.
	The <i>retention percentage</i> is		10% of each invoice.
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 deductibles relevant to the event
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	The greater of	<ul style="list-style-type: none"> • the total of the Prices at the Contract Date and • 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.
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:	the total of the Prices other than for the additional excluded matters.	<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"> • Defects due to his design which arise before the Defects Certificate is issued,

- Defects due to manufacture and fabrication outside the Site,
- loss of or damage to property (other than the works, Plant and Materials),
 - death of or injury to a person and
 - infringement of an intellectual property right.

X18.5 The *end of liability date* is

(i) 10 years after the *defects date* for latent Defects and

(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.

A latent Defect is a Defect which would not have been discovered on reasonable inspection by the *Employer* or the *Supervisor* before the *defects date*, without requiring any inspection not ordinarily carried out by the *Employer* or the *Supervisor* during that period.

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.

Z The *Additional conditions of contract* 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 *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 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,

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,

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 <i>works</i> , Plant and Materials	The replacement cost where covered by the <i>Employer's</i> insurance The <i>Employer's</i> policy deductible, as of Contract Date, where covered by <i>Employer's</i> insurance
Loss of or damage to Equipment	The replacement cost
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	Loss of or damage to property <u><i>Employer's</i> property</u> The replacement cost where covered by the <i>Employer's</i> insurance The <i>Employer's</i> policy deductible, as of Contract Date, where covered by <i>Employer's</i> insurance

	<u>Other property</u> The replacement cost <u>Bodily injury to or death of a person</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

Insurance against or name of policy	Minimum amount of cover or minimum of indemnity
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.

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

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

Compliance Monitoring means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.

OEL means occupational exposure limit.

Parallel Measurements means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.

Safe Levels means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.

Standard means the *Employer's* Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.

SANAS means the South African National Accreditation System.

TWA means the average exposure, within a given workplace, to airborne asbestos fibres, normalized 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.

Z16 Supplier Development, Industrialisation and Localisation (SDL&I)

Z16.1 The Contractor achieves in the performance of the contract the Contract Skills Development Goal (CSDG) established in the Standard for Developing Skills through Infrastructure Contracts (published in Gazette Notice No.43495 of July 2020 version 2).

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- Z16.2 In the event that the Contractor fails to achieve its CSDG, Eskom will be entitled to claim against the SDL&I Performance bond, the difference between the contracted CSDG and CSDG achieved in the performance of the contract.
- Z16.3 The Contractor will receive a CSDG completion certificate if the Employer is satisfied that it has complied with its CSDG obligations and submitted all reports required by the Employer.
- Z16.4 Where the contract is part of a Strategic Integrated Project (SIP) the Contractor will be required to report to the Presidential Infrastructure Coordinating Commission (PICC) through the respective SIPs Skills Co-ordinators linked to the office of the SIP Co-ordinators, using the approved PICC reporting template.
- Z16.5 The Contractor provides the Employer with a Performance bond for the fulfilment of its Supplier Development, Localisation, and Industrialisation obligations equivalent to 2.5% of the total of the Prices as at starting date.
- Z16.6 The SDL&I Performance bond is released on the Contractor's fulfilment of all its SDL&I obligations.
- The weightings allocated to each of the SDL&I obligations are as follows:
1. Subcontracting weighting of 30% of the SDL&I performance bond,
 2. Local Production and Content weighting of 40% of the SDL&I performance bond,
 3. Skills Development CSDG (Contractor Skills Development Goal) weighting of 30% SDL&I performance bond.

In the event that the Contractor fails to achieve its SDL&I obligations, the Employer will be entitled to claim against the SDL&I Performance bond.

Z17 X3 Multiple currencies: additional clause X3.3

- Z17.1 Where the Employer has contracted to pay the Contractor for imported goods/services in currencies other than the currency of this contract and the Employer has hedged the foreign currency exposure, the Contractor is liable for all the Employer costs arising out of a request to modify or cancel forward cover made by the Contractor.

Z18 Criminal record clearance certificates

- Z18.1 The Contractor provides, at the Contractor's cost, to the Project Manager criminal record clearance certificates for each employee of the Contractor before the Project Manager allows such employee on Site or any Employer premises.
- Z18.2 The Contractor ensures that its Subcontractors or any of those Subcontractors' subcontractors provide to it criminal record clearance certificates for each employee of the Subcontractor or relevant other subcontractor before the Project Manager allows such employee on Site or any Employer premises.
- Z18.3 The criminal record certificates are issued by a service provider accredited by the South African Police Services, are no older than four weeks and is valid until the completion date. If the completion date is extended through the operation of this contract, valid criminal record certificates are provided before their expiry.

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- Z18.4 If any such criminal record certificate is cancelled, withdrawn, invalidated, amended, or expires, or a criminal conviction is noted against any employee, the Contractor, the Project Manager may instruct the Contractor to ensure that such employee leaves the site and the giving of this instruction is not a compensation event.
- Z18.5 If the Contractor is unable to Provide the Works or a part thereof due only to the inability to provide the criminal record certificates, the Employer may terminate the Contractor's obligation to Provide the Works (R 22) and the consequences then will be the same as if the Employer is terminating for R1 – R15 and R18.

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.

Month	<i>Weather measurement</i>				
	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	928.5	17	0	0	
February	995.5	28	0	0	
March	596.6	18	0	0	
April	245.6	11	0	0	
May	21	0	0	0	
June	10	0	0	0	
July	18.5	1	0	0	
August	0	0	0	0	
September	23.5	1	0	0	
October	291.5	12	0	0	
November	589.4	18	0	0	
December	1143	13	0	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.