

C1.2 ECC3 Contract Data

Part one - Data provided by the *Employer*

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

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
	dispute resolution Option	A: Priced contract with activity schedule
	and secondary Options	W1: Dispute resolution procedure
		X1: Price adjustment for Inflation
		X2: Changes in the law
		X5: Sectional Completion
		X7: Delay damages
		X13: Performance Bond
		X15: Limitation of <i>Contractor's</i> liability for design to reasonable skill and care
		X16: Retention
		X17: Low Performance damages
		X18: Limitation of liability
		Z: <i>Additional conditions of contract</i>
	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)	
	Address	Kendal Power Station Private Bag X7272 EMALAHLENI 1035
	Tel	
	Fax	N/A

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e-mail

10.1	The <i>Supervisor</i> is: (Name)	
	Address	Kendal Power Station Private Bag x7272 EMALAHLENI 1035
	Tel No.	
	Fax No.	N/A
	e-mail	
11.2(13)	The <i>works</i> are	NEW HYDROGEN PRODUCTION PLANT AT KENDAL POWER STATION.
11.2(14)	The following matters will be included in the Risk Register	• Working close approximately to live equipment and/or machines • Static electricity • Materials handling/heavy equipment handling • Working at heights • Dusty Conditions • Scope changes • Noisy Conditions • Ergonomic risks (body position, fatigue) • Non-Compliance to plant regulations • Falling objects • Damage to the Employers existing property • Non-Compliance to construction regulations • Access to site • Permit to Work availability • Civil unrest around the station premises • Non- compliance to the <i>Employer's</i> Life Saving Rules. • Labour Strike • Community Unrest
11.2(15)	The <i>boundaries of the site</i> are	H2 Plant at Kendal 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	3 (three) working days for all other contractual related matters. But 24 hrs for all emergencies
2	The <i>Contractor's</i> main	Data required by this section of the core clauses

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responsibilities

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 works is	2 Years after the contract date	
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	key date
	NEW HYDROGEN PRODUCTION PLANT AT KENDAL POWER STATION	1 Completion of H2, include the delivery, installation, commission, testing, training and handover of New H2 Plant as per Kendal accepted programme.	As per accepted programme (90 days duration).
30.1	The <i>access dates</i> are no access will be permitted if the following documents are not met.	Part of the Site	Date
	1. Safety file to be approved first. 2. Induction Training to be done (subject to the approval of Safety file). 3. Complete QCP's to be submitted to the System Engineer for verification and accepted, also to be registered at Quality Assurance Department. 4. Work Permit issue on Contractor to make arrangement with RP.	1 H2 plant at Kendal Power Station.	As per accepted programme (90days).
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	1 week after kick-off meeting	
31.2	The <i>starting date</i> is	TBC	
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	One (1) week	
35.1	The <i>Employer</i> is not willing to take over the works before the Completion Date.	The parties to agree, subject to a completion certificate provided.	

4 Testing and Defects

43.2	The <i>defect correction period</i> is	Fifty-two (52) weeks after the Completion of each sectional works. Should any defect raised during 52 weeks of defect period the contractor is required to report on duty within two hours after notification. If the
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contractor will not be able to report on duty within period mentioned above, he/she must inform the Eskom Project Manager on time.

5	Payment	
50.1	The <i>assessment interval</i> is	25 th of each month except if is on a weekend, and then the next working day will apply. The supplier is required to submit Forecast Rate of Invoicing (FRI) after the Purchase Order is received. Payment terms may change, subject to the contract value which will be discussed with a potential supplier. (Note: No advance payment will be made/ arranged. Payment certificate to be completed after the assessment is done and both parties agreed)
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 or 60 days after the submission of a valid invoice base on the agreed assessment ATTENTION: Eskom's standard policy on payment term for all contracts valued above R50 000 000 (Fifty Million Rand), including VAT, is 60 days. Bidders are requested to bear this payment term in mind when submitting bids and concluding contracts.
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.
6	Compensation events	
60.1(13)	The place where weather is to be recorded is:	Kendal Power Station
	The <i>weather measurements</i> to be recorded for each calendar month are,	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:
	The <i>weather measurements</i> are supplied by	South African weather services
	The <i>weather data</i> are the records of past	

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weather measurements for each calendar month which were recorded at:

South African weather services

and which are available from:

the South African Weather Bureau and included 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	
80.1	These are additional <i>Employer's</i> risks	1. Additional risks will be managed by the Parties as they rise 2. Delays and disruptions resulting from natural disaster, Community Unrests and riots
9	Termination	Refer to Core Clause 9 of the NEC3 ECC.
10	Data for main Option clause	
A	Priced contract with activity schedule	As per Data Price.
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).
	Address	To be provided on request
	Tel No.	To be provided on request
	Fax No.	To be provided on request
	e-mail	To be provided on request
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	Johannesburg South Africa
	The person or organisation who will choose an arbitrator	

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| <ul style="list-style-type: none"> - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is | the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body. |
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12 Data for secondary Option clauses

X1	Price adjustment for inflation			
X1.1	The <i>base date</i> for indices is	TBC - Base date (One month before ITT/RFQ closing or to be agreed upon)		
	The proportions used to calculate the Price Adjustment Factor are:	proportion	linked to index for	Index prepared by
		0.	[•]	[•]
		0.	[•]	[•]
		0.	[•]	[•]
		0.	[•]	[•]
		0.	[•]	[•]
		0.15	non-adjustable	
	1.00			
X2	Changes in the law	Becomes a Compensation Event only if the changes in the Law of the Republic of South Africa took place after the Contract Date.		
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
		Kendal Power station	H2 Plant	Concept design submission and approval
	Detail design submission and approval			As per accepted programme
	Fabrication and Factory Acceptance Test (FAT)			As per accepted programme
	Installation and Site Acceptance Test (SAT)			As per accepted programme
	Commissioning of the Plant			As per accepted programme
		Training, Certification and Handover of Plant	As per accepted programme	

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	Note: Contractor programme does not align with Eskom Kendal duration will not be accepted.			
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
	Kendal Power Station:	H2 Plant	Concept design submission and approval	0.25% per day
			Detail design submission and approval	0.25% per day
			Fabrication and FAT	2% per day
			Installation and SAT	2% per day
			Commissioning of the Plant	2% per day
			Training, Certification and Handover of Plant	0.25% per day
	The total delay damages payable by the Contractor does not exceed:		10% of the contract value to be concluded after both parties assess the delays.	
	Penalties to be deducted in interim payment certificates, from money due to the Contractor.		Penalties are like a fine payable to the Employer in the event that the construction works are not Completed on time.	
X13	Performance bond			
X13.1	The amount of the performance bond is	10% of the Total contract value		
X15	Limitation of the Contractor's liability for his design to reasonable skill & care	The scope of works is like to like delivery and installation.		
X16	Retention			
X16.1	The retention free amount is	R0.0		
	The retention percentage is	10%. Retention monies will be deducted from Payment Certificates up to last payment. The amount of retention to be deducted in each Interim Payment Certificate up to the limit as stated in the Contract Data.		
	Retention is money which has been earned by the Contractor for work done,	Half of the retention money is paid to the Contractor when the Project Manager issues the Certificate of Completion and when the contractor		

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	but which is not paid out at the time the Interim Payment Certificate is issued. Retention money is held by the Employer to ensure that the Contractor does his work properly.	has completed the works. The other half is paid within 52 days after the end of the Defects Liability Period.
X17	Low performance damages	
X17.1	The amounts for low performance damages are:	See Annexure B
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 • 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. The <i>Contractor's</i> total liability for the additional excluded matters is not limited. The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for • 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 <i>end of liability date</i> is	(i) 6 years after the <i>defects date</i> 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 Z17 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

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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

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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

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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 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 <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>Loss of or damage to property</u> <u>Employer's property</u> 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 <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 limit 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

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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.

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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 <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.
SANAS	means the South African National Accreditation System.
TWA	means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

- 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 Security Clearance/ Criminal Checks

These clauses are not only, but are especially, applicable for accessing critical infrastructure in

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terms of the Critical Infrastructure Protection Act, 2019 (previously referred to as National Key Points), but may include other sites, and/or where persons are rendering a service or have given notice of intention to render a service to an organ of state, which service may (1) give him or her access to classified information and intelligence in the possession of the organ of state; or (2) give him or her access to or information concerning areas designated as critical infrastructure.

- Z16.1 The *Contractor* and its subcontractors implement risk and security management processes and measures to mitigate any threats against any premises, installations or sites, systems, or information of the *Employer* with only persons with criminal verification record security clearance certificates being given access after verification of these and identifying documents by the *Employer's* security system.
- Z16.2 The *Contractor* provides, at the *Contractor's* cost, to the *Employer*, criminal verification record security clearance certificates for each person the *Contractor* or its subcontractors requires to access any premises, installations or sites, systems, or information of the *Employer*, with copies of their identifying documents, such as passports, before allowed such access by the *Employer*. The *Employer's* refusal to allow access to premises, installations or site/s, systems or information is at the *Employer's* sole discretion and is not a compensation event.
- Z16.3 The criminal verification record security clearance certificates provided are to have been issued by a service provider which is to be a reputable screening company accredited by the South African Police Services, are to be no older than four weeks since issue and valid for as long as each person is required to access premises, installations or sites, systems or information. The *Employer* may require updated certificates and identifying documents every 26 to 52 weeks, subject to safety and security concerns and the risk rating of the works or services undertaken and/or premises, installations or sites, systems or information.
- Z16.4 If any such criminal verification record security clearance certificates is cancelled, withdrawn, invalidated, amended, or expires, or a criminal conviction is noted against any person requiring access, even if an appeal against the criminal conviction has been noted, the *Project Manager* may instruct the *Contractor* to ensure that such person leaves the premises, installations or site/s and is blocked from systems and information and the giving of this instruction is not a compensation event.

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Z17 Protection of Personal Information Act Compliance

Z17.8 Neither Party discloses or otherwise makes available the Personal Information to any third party for the purposes of this contract, including "Data Subject", "Personal Information", "Accessing" and "Personal Information Responsible Party" to have Parties set out in the Protection of Personal Information Act, 2013 (POPIA), a requesting Party, its prior written consent to do so, and the requesting Party has submitted to the other Party (consenting Party), to its satisfaction, a copy of the request. Each Party acknowledges that the requesting Party has entered into a third Party for the processing of Personal Information of the Data Subject's Personal Information and applicable exemptions in the purposes of law which does not further process the Personal Information is, or is to be, processed.

Z17.9 The requesting Party indemnifies and holds harmless the consenting Party and its staff, each Party, subsidiaries, delegates and assigns from any and all obligations, costs, expenses and damages, as well as penalties and fines, arising from obligations required by the Party's compliance with the provisions of the POPIA, as well as damage to the consenting Party's reputation and costs of compliance as directed by the Regulator, including but not limited to publication of the Personal Information provided to the other Party and in respect of the use of that Shared Personal Information under this contract:-

Z17.10 No Party may transfer Personal Information about a data subject to a third party who is in a foreign country unless they have obtained the relevant written consent of the other Party and there is full compliance with the requirements of POPIA and any foreign applicable law including to specify that the other Party is also a Responsible Party in respect of the Data Subject's Personal Information and to provide a link (for example, <https://www.eskom.co.za/about-eskom/website-terms-and-conditions/>) to the other Party's Privacy Statement or to include a statement that the other Party's Privacy Statement can be found on the other Party's corporate website; and

Z17.4.2 all necessary steps have been taken to ensure that Shared Personal Information has been collected and processed in accordance with the principles set out in POPIA, including in particular those relating to:

- lawful, fair and transparent Processing;
- specified, legitimate and explicit purposes of Processing; and
- adequate, relevant and not excessive Processing.

If either Party receives any complaint, notice or communication from the Regulator which relates directly to:

Z17.5.1 the other Party's Processing of the Shared Personal Data; or

Z17.5.2 a potential failure by the other Party to comply with POPIA in respect of the activities of the Parties under or in connection with this contract,

it shall, to the extent permitted by law, promptly notify the other Party and provide such information as it shall reasonably request in that regard.

If a Data Subject makes a written request to either Party to exercise any of their rights under POPIA, the receiving Party shall respond to that request in accordance with POPIA. To the extent the request concerns Processing of Shared Personal Information undertaken by the other Party, the receiving Party shall:

Z17.6.1 promptly and without undue delay forward the request to the other Party; and

Z17.6.2 cooperate and provide reasonable assistance in relation to that request to enable the other Party to respond in accordance with POPIA.

Each Party acknowledges that the other Party may disclose Shared Personal Information to any Regulator or law enforcement authority with jurisdiction to request access to the Shared Personal Information.

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Annexure A: One-in-ten-year-return weather data obtained from SA Weather Bureau

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	129	5	0	0	
February	85	3	0	0	
March	80	2	0	0	
April	34	1	1	0	
May	13	1	5	1	
June	5	0	16	1	
July	1	0	16	1	
August	3	0	7	1	
September	12	1	2	0	
October	47	2	0	0	
November	68	2	0	0	
December	76	3	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.

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Annexure B: Low Performance Damages Table

The following Low Performance Damages shall apply, providing a structured approach to managing non-performance issues. Each instance includes a description, the value of the damages, and the limit on total liability.

Low Performance Damage Description	Value of Low Service Damages	Limit of Low Service Damage
Non-Compliance with Safety and Environmental Standards: The <i>Contractor</i> fails to install necessary safety barriers and warning signage around the New H2 Hydrogen production plant within 48 hours of site possession.	R2 500.00 per day until compliance is achieved	Capped at R25 000.00
Non-Compliance with Quality Standards: Failure to complete a quality control plan and ITP(s) for review and acceptance by Eskom prior to the commencement of any work.	R2 500.00 per day until compliance is achieved	Capped at R25 000.00
Late Submission of Completion Documentation: <i>Contractor</i> fails to provide final documentation within agreed milestone period	R2 000.00 per day of delay	Capped at R20 000.00