

## NEC3 Professional Services

# Short Contract (PSSC3)

A contract between Eskom Rotek Industries SOC Ltd  
(Reg No. 1990/006897/30)

and

for Provision of valuation/independent assessment services  
of ERI Fixed Asset Register (FAR) residual values,  
useful lives and impairments for an estimated period of  
twelve months (12 months)

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Contract No: .....

Documentation prepared by:

# C1 Agreements & Contract Data

## C1.1 Form of Offer and Acceptance

### Offer

The Client, identified in the Acceptance page signature block on the next page, has solicited offers to enter into a contract for the procurement of: provision of valuation/independent assessment services of ERI Fixed Asset Register (FAR) residual values, useful lives and impairments for a period of twelve months (12 months).

The tenderer, identified in the signature block below, having examined the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, and by submitting this Offer has accepted the Conditions of Tender.

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the *Consultant* under the Contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the Contract Data.

|                                                     |   |
|-----------------------------------------------------|---|
| The offered total of the Prices exclusive of VAT is | R |
| Value Added Tax @ 15% is                            | R |
| The offered total of the Prices inclusive of VAT is | R |
| (in words)                                          |   |

This Offer may be accepted by the Client by signing the form of Acceptance overleaf and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Consultant* in the conditions of contract identified in the Contract Data.

Signature(s)

Name(s)

Capacity

**For the  
tenderer:**

Name &  
signature of  
witness

Date

## Acceptance

By signing this part of this Form of Offer and Acceptance, the Client identified below accepts the tenderer's Offer. In consideration thereof, the Client shall pay the Consultant the amount due in accordance with the conditions of contract identified in the Contract Data. Acceptance of the tenderer's Offer shall form an Agreement between the Client and the tenderer upon the terms and conditions contained in this Agreement and in the Contract that is the subject of this Agreement.

The terms of the Contract, are contained in:

Part 1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)

Part 2 Pricing Data

Part 3 Scope of Work: The Scope

and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Client during this process of Offer and Acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule, which must be signed by the duly authorised representative(s) for both parties.

The tenderer shall within one week of receiving a completed copy of this Agreement, including the Schedule of Deviations (if any), contact the Client (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the Contract Data at, or just after, the date this Agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this Agreement.

Notwithstanding anything contained herein, this Agreement comes into effect on the date when the tenderer receives one fully completed and signed copy of this document, including the Schedule of Deviations (if any) together with all the terms of the contract as listed above.

Unless the tenderer (now *Consultant*) within five working days of the date of such receipt notifies the *Client* in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

Signature(s)

Name(s)

Capacity

**for the  
Client**

**Eskom RoteK Industries SOC Ltd**  
Lower Germiston Road  
Rosherville  
Johannesburg, 2094

Name &  
signature of  
witness

Date

## Schedule of Deviations

| No. | Subject | Details |
|-----|---------|---------|
| 1   | N/A     | N/A     |

By the duly authorised representatives signing this Schedule of Deviations below, the Client and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Client during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

### For the *Consultant*

### For the *Client*

Signature

Name

Capacity

On behalf  
of

Name &  
signature  
of witness

Date

Mr Vivagan Naidoo

HOD: Financial and Management Reporting

**Eskom Rotek Industries SOC Ltd**  
Lower Germiston  
Road Rosherville  
Johannesburg,  
2094

## C1.2 Contract Data

### Data provided by the *Client*

Completion of the data in full is essential to create a complete contract.

| Clause         | Statement                                                                                                                                   | Data                                                                                                                                                                             |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>General</b> |                                                                                                                                             |                                                                                                                                                                                  |
| 10.1           | The <i>Client</i> is (Name):                                                                                                                | <b>Eskom RoteK Industries SOC Ltd (Reg No. 1990/006897/30), a juristic person incorporated in terms of the company laws of the Republic of South Africa</b>                      |
|                | Address                                                                                                                                     | <b>Roshland Office Park<br/>Lower Germiston Road<br/>Rosherville</b>                                                                                                             |
|                | Tel No.                                                                                                                                     | 011 629 4000                                                                                                                                                                     |
|                | E-mail address                                                                                                                              | ERInfo@eskom.co.za                                                                                                                                                               |
| 11.2(6)        | The <i>services</i> are                                                                                                                     | Provision of valuation/independent assessment services of ERI Fixed Asset Register (FAR) residual values, useful lives and impairments for a period of twelve months (12 months) |
| 11.2(7)        | The Scope is in                                                                                                                             | <b>the document called 'C3.1 The Scope' in Part 3 of this contract.</b>                                                                                                          |
| 30.1           | The <i>starting date</i> is.                                                                                                                | TBA                                                                                                                                                                              |
| 11.2(2)        | The <i>completion date</i> is.                                                                                                              | TBA                                                                                                                                                                              |
| 12.2           | The <i>law of the contract</i> is                                                                                                           | <b>The Republic of South Africa</b>                                                                                                                                              |
| 13.3           | The <i>period for reply</i> is                                                                                                              | <b>1 (one) week</b>                                                                                                                                                              |
| 50.1           | The <i>assessment day</i> is the                                                                                                            | <b>25<sup>th</sup> day of each month.</b>                                                                                                                                        |
|                |                                                                                                                                             |                                                                                                                                                                                  |
| 81.1           | The <i>Consultant</i> provides the following insurance cover                                                                                |                                                                                                                                                                                  |
|                | <b>Insurance against</b>                                                                                                                    | <b>Minimum amount of cover</b>                                                                                                                                                   |
|                | Failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i> | <b>Whatever the consultant deems necessary in respect of each claim, without limit to the number of claims</b>                                                                   |
|                |                                                                                                                                             | <b>Period following Completion or earlier termination</b>                                                                                                                        |
|                |                                                                                                                                             | <b>As Client deems necessary</b>                                                                                                                                                 |

|      |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                         |                                      |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|
|      | Death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i> .                                 | Whatever the consultant deems necessary for any occurrence or series of occurrence arising out of one event without limit to the number of claims.                                                                                                                                                                                      | As Consultant deems necessary        |
|      | death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract                                                                            | As prescribed by the Compensation for Occupational Injuries and Diseases Act No of 1993 and the consultant's common law liability for people falling outside the scope of the act with limit of indemnity of not less than R500 000 in respect of each claim, without limit to the number of claims.                                    | As <i>Consultant</i> deems necessary |
| 81.1 | The <i>Client</i> provides the following insurance cover:<br><br>[Only enter details here if <i>Client</i> is to provide insurance]                                                                                              | N/A                                                                                                                                                                                                                                                                                                                                     | N/A                                  |
| 82.1 | The <i>Consultant's</i> total liability to the <i>Client</i> for matters for which insurance is provided is limited to<br><br>The <i>Consultant's</i> total liability to the <i>Client</i> for other matters is limited to       | N/A<br><br>N/A                                                                                                                                                                                                                                                                                                                          |                                      |
| 93.1 | The <i>tribunal</i> is:<br><br>The <i>arbitration procedure</i> is<br><br>The place where arbitration is to be held is<br><br>The person or organisation who will choose the arbitrator if the Parties cannot agree a choice is: | arbitration.<br><br>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.<br><br>Johannesburg, South Africa<br><br>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body. |                                      |

**The conditions of contract are the NEC3 Professional Services Short Contract (April 2013)<sup>1</sup> and the following additional conditions:**

## **Z1 Cession delegation and assignment**

Z1.1 The *Consultant* does not cede, delegate or assign any of its rights or obligations to any person

<sup>1</sup> Can be obtained from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009 (see



without the written consent of the *Employer*.

- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Consultant* 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 *Consultant* 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 *Employer* within two weeks of the Contract Date of the key person who has the authority to bind the *Consultant* on their behalf.
- Z2.3 The *Consultant* 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 *Consultant* in writing.

## **Z3 Change of Broad Based Black Economic Empowerment (B-BBEE) status**

- Z3.1 Where a change in the *Consultant's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Consultant's* B-BBEE status, the *Consultant* notifies the *Employer* within seven days of the change.
- Z3.2 The *Consultant* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*.
- Z3.3 Where, as a result, the *Consultant's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Consultant's* obligation to Provide the Services.
- Z3.4 Failure by the *Consultant* 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 those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the services in addition to the amounts due in terms of core clause 92.1.

## **Z4 Ethics**

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Consultant* which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Consultant's* obligation to Provide the Services or taking any other action as appropriate against the *Consultant* (including civil or criminal action).
- Z4.2 The *Employer* may terminate the *Consultant's* obligation to Provide the Services if the *Consultant* (or any member of the *Consultant* where the *Consultant* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Consultant* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence



of such practice.

- Z4.3 If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

## **Z5 Confidentiality**

- Z5.1 The *Consultant* 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 *Consultant*, enters the public domain or to information which was already in the possession of the *Consultant* at the time of disclosure (evidenced by written records in existence at that time). Should the *Consultant* disclose information to Others in terms of clause 23.1, the *Consultant* ensures that the provisions of this clause are complied with by the recipient.
- Z5.2 If the *Consultant* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer*.
- Z5.3 In the event that the *Consultant* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Consultant*, 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 *Consultant* 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.
- Z5.4 The taking of images (whether photographs, video footage or otherwise) of the *Employer's* project works or any portion thereof, in the course of Providing the Services and after Completion, requires the prior written consent of the *Employer*. All rights in and to all such images vests exclusively in the *Employer*.

## **Z6 Waiver and estoppel: Add to core clause 12.3:**

- Z6.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, 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.

## **Z7 Provision of a Tax Invoice. Add to core clause 51**

- Z7.1 The *Consultant* (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 4330196330 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 *Employer* should have notified the event to the *Consultant* but did not".

## **Z9 Employer's limitation of liability**

- Z9.1 The *Employer's* liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to R0.00 (zero Rand)

**Z10**      **Termination: Add to core clause 90.1, 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**      **Delay damages: Addition to secondary Option X7 Delay damages (if applicable in this contract)**

Z11.1      If the *Consultant'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 *Consultant's* obligation to Provide the Services.

Z11.2      If the *Employer* terminates in terms of this clause, the procedures on termination are those stated in core clause 91. The payment on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* in addition to the amounts due in terms of core clause 92.1.

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## C1.2 Contract Data

### Part two - Data provided by the *Consultant*

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

| Clause   | Statement                                                                                                                                 | Data                                        |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| 10.1     | The <i>Consultant</i> is (Name):<br><br>Address<br><br>Tel No.<br><br>Fax No.                                                             |                                             |
| 22.1     | The <i>Consultant's</i> key persons are:<br><br>1    Name:<br><br>Job:<br><br>Responsibilities:<br><br>Qualifications:<br><br>Experience: |                                             |
| 11.2(3)  | The <i>completion date</i> for the whole of the <i>services</i> is                                                                        |                                             |
| 11.2(10) | The following matters will be included in the Risk Register                                                                               |                                             |
| 25.2     | The <i>Employer</i> provides access to the following persons, places and things                                                           | <b>access to</b><br><br>1<br><br>2<br><br>3 |
| 31.1     | The programme identified in the Contract Data is                                                                                          |                                             |

## Part 2: Price List

| Item no.        | Description                                                                                                                                                                                             | Unit   | Expected quantity | Rate   | Price |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-------------------|--------|-------|
| 1               | Engineering (Pr.Eng) – Mechanical and Electrical Engineers                                                                                                                                              | each   | At least one      |        |       |
| 2               | CA(SA)                                                                                                                                                                                                  | each   | At least one      |        |       |
| 3               | Project management                                                                                                                                                                                      | each   |                   |        |       |
| 4               | Tangible asset valuer                                                                                                                                                                                   | each   |                   |        |       |
| 5               | Plant and equipment valuer                                                                                                                                                                              | each   |                   |        |       |
|                 |                                                                                                                                                                                                         |        |                   |        |       |
|                 |                                                                                                                                                                                                         |        |                   |        |       |
|                 |                                                                                                                                                                                                         |        |                   |        |       |
|                 |                                                                                                                                                                                                         |        |                   |        |       |
|                 |                                                                                                                                                                                                         |        |                   |        |       |
|                 |                                                                                                                                                                                                         |        |                   |        |       |
|                 |                                                                                                                                                                                                         |        |                   |        |       |
| <b>Expenses</b> |                                                                                                                                                                                                         |        |                   |        |       |
|                 | Travel                                                                                                                                                                                                  | Per Km |                   | R4.95  |       |
|                 | Accommodation (Maximum 3 star, bed and breakfast establishment or hotel may be utilised for duration up to 6 months. Only breakfast and supper may be included in the quotation)                        | Room   |                   | TBC    |       |
|                 | Flights (Economy class reimbursable at cost)                                                                                                                                                            |        |                   |        |       |
|                 | Cost of Meals (Travelling on Eskom business: the actual cost of a meal, not exceeding R96, 00 (VAT plus gratuity included) per meal. No alcoholic beverages can be claimed for                          |        |                   | R96.00 |       |
|                 | Travel bookings (To be made and paid for by the Consultant. This must then be claimed back once a month together with all other T&S expenses on a VAT invoice, and include all relevant documentation ) |        |                   |        |       |
|                 | Toll gates (eTolls excluded)                                                                                                                                                                            |        |                   |        |       |
|                 | <b>The total of the Prices is (excluding VAT):</b>                                                                                                                                                      |        |                   |        |       |

## Part 3: Scope of Work

### C3.1 The Scope

The supply of valuation/independent assessment services of ERI's FAR residual values, useful lives and impairment(s). The valuation/independent assessment services will cover the following asset classes:

| Asset Class                         |
|-------------------------------------|
| Assets under construction           |
| Buildings and facilities            |
| Land                                |
| Transport fleet equipment           |
| Transport fleet equipment low value |
| Workshop equipment                  |
| Workshop equipment Low Value Asset  |

#### Product Group asset details and locations

This exercise will cover all assets at the various ERI locations:

| Location/Site    | Province   |
|------------------|------------|
| Drankensberg     | Free State |
| Gariep           | Free State |
| Ingula           | Free State |
| Vanderkloof      | Free State |
| Lethabo          | Gauteng    |
| Rosherville      | Gauteng    |
| Craighall Lepini | Gauteng    |
| Vaal             | Gauteng    |
| Durban           | KZN        |
| Kilbarchan       | KZN        |
| Matimba          | Limpopo    |
| Medupi           | Limpopo    |
| Arnot            | Mpumalanga |
| Camden           | Mpumalanga |
| Duvha            | Mpumalanga |
| Grootvlei        | Mpumalanga |
| Hendrina         | Mpumalanga |
| Kendal           | Mpumalanga |
| Komati           | Mpumalanga |
| Kriel            | Mpumalanga |
| Kusile           | Mpumalanga |
| Majuba           | Mpumalanga |

|            |              |
|------------|--------------|
| Matla      | Mpumalanga   |
| Tutuka     | Mpumalanga   |
| Witbank    | Mpumalanga   |
| Middelburg | Mpumalanga   |
| Acacia     | Western Cape |
| Koeberg    | Western Cape |
| Palmiet    | Western Cape |
| Cape Town  | Western Cape |

## Independent Assessor's Assessment

The Fixed Assets assessments must be completed in a comprehensive report by Product Groups and Support areas; supported by all assumptions, evidence & calculations.

## 1. Constraints on how the *Consultant* is to Provide the Services

### 1.1 Quality management

### 1.2 Meetings

Meetings will be held as when and required by the consultant and client.

### 1.3 Invoicing and payment

In terms of core clause 50.1 the *Consultant* assesses the amount due and applies to the *Client* for payment. The *Consultant* applies for payment with a tax invoice addressed to the *Client* as follows:

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The *Consultant* includes the following information on each tax invoice:

- Name and address of the *Consultant*

- The contract number and title;
- *Consultant's* VAT registration number;
- The *Client's* VAT registration number 4330196330;
- The total Price for *services* provided to date which the *Consultant* has completed;
- Other amounts to be paid to the *Consultant*;
- Less amounts to be paid by or retained from the *Consultant*;
- The change in the amount due since the previous payment being the invoiced amount - excluding VAT, the VAT and including VAT;
- (add other as required)

The *Consultant* attaches the detail assessment of the amount due to each tax invoice showing the Price for *services* provided to date for each item in the Price List for work which he has completed.

#### **1.4 BBBEE and preferencing scheme**

#### **1.5 Facilities to be provided by the *Consultant***

The consultant will provide all facilities to enable them to perform assessment at all sites.

## C: Confidentiality Agreement

This Confidentiality Agreement ('Agreement') is entered into between the Employer and the Consultant.

WHEREAS, the Employer and the Consultant (the Parties) desire to exchange certain confidential information; and consider further business dealings with each other.

WHEREAS, the parties desire to evidence their agreements governing the exchange of certain confidential information as set forth below.

Now therefore, for good and valuable consideration, including the mutual agreements hereinafter recited, the parties hereby agree as follows:

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the 'Subject Information') may include but not be limited to the parties' inventions, trade secrets, know-how, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.
2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other.
3. The parties each agree that they shall maintain in secrecy in accordance with the terms of this Agreement all of the Subject Information each party receives (the 'Receiving Party') from the other party (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.
4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.
5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.
6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes and other writings prepared by the parties, or their advisors, based on the Subject Information of each other, shall be destroyed, and such destruction shall be certified in writing by an authorised officer supervising such destruction.



7. If a party, with the written consent of the Proprietor of Subject Information, discloses any Subject Information received from its Proprietor to any third party, it shall do so only under a secrecy agreement having a scope similar to and which is consistent with this Agreement, and the disclosing party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party
8. Each party agrees that it shall not, while and for so long as it is obligated to maintain Subject Information in secrecy, use for its own benefit, or for the benefit of others or exploit, commercialise, develop, test promote, sell, lease, market or otherwise dispose of any products or services using, incorporating or relying on Subject Information received from its Proprietor without the written consent of the Proprietor.
9. The obligations of the party receiving Subject Information pursuant to this Agreement shall be effective with respect of each item of Subject Information for a term of five (5) years from the date of submission of the Subject Information to the Receiving Party by its Proprietor, unless the Proprietor agrees otherwise in writing.
10. For purposes of this Agreement, each party shall include (to the extent applicable) the officers, directors, employees, agents, representatives, attorneys, joint ventures, partnerships, affiliates, subsidiaries, and divisions of the party, and any other entity or entities which such party controls or which controls it, and, further, shall include any transferee, successor and assign of the assets of the party.
11. This Agreement shall be construed (both as to validity and performance) and enforced in accordance with, and governed by, the laws of Republic of South Africa.
12. Neither this Agreement nor the exchange of Subject Information between the parties shall create or be relied on by either party as a basis for creating any license between the parties under any patent, or other industrial or intellectual property rights of the Proprietor of the Subject Information, or any other license between the parties in the absence of any express written license agreement between them
13. The parties agree that no contract or agreement providing for a transaction shall be deemed to exist between them unless and until a definitive agreement has been executed and delivered, the parties hereby waive, in advance, any claim (including, without limitation, breach of contract) in connection with a possible transaction with each other unless and until they shall have entered into a definitive agreement. The parties also agree that unless and until a definitive agreement between them has been executed and delivered, neither party has any legal obligation of any kind whatsoever with respect to any such transaction by virtue of this Agreement or any other written or oral expression with respect to such transaction, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this paragraph, the term 'definitive agreement'; does not include an executed letter of intent, memorandum of understanding.

IN WITNESS WHEREOF, and intending to be legally bound, this Agreement has been executed by the parties as of and effective from the date first written above.