

	DISPOSAL AGREEMENT	INVESTMENT RECOVERY (ASSET DISPOSAL)
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Title: Agreement for extraction and beneficiation of Dumped Ash from at Eskom Grootvlei Power Station	Unique Identifier:	240-54424038
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Disposal Agreement No:
ASH2024XXXX

Signed at:

.....

Entered into by and between:

.....

**ESKOM HOLDINGS SOC
LIMITED**

Represented by:

.....

**General Manager (Acting) :
BMS**

Date:

And:

.....

Represented by:

.....

**Herein Referred to as:
“The Parties”**

Date:

	DISPOSAL AGREEMENT NUMBER ASH2024XXXX
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ENTERED INTO BY AND BETWEEN

ESKOM ROTEK INDUSTRIES SOC LTD

Represented by Matthew Ribisi, General Manager (Acting):

BMS, who is duly authorised to act hereto.

AND

.....

hereinafter referred to as ("The Contractor")

REGISTRATION NUMBER:

.....

Represented by

.....

(Duly authorised representative of The Contractor)

hereinafter referred to as "the Parties"

1. INTRODUCTION

- 1.1. Eskom Rotek Industries SOC LTD ("ERI") has been mandated to dispose of Coal Ash from coal fired power stations owned by Eskom Holdings SOC LTD ("Eskom")
- 1.2. The Contractor has expressed an interest in beneficiating Coal Ash from the Eskom Grootvlei coal-fired power station.
- 1.3. ERI has agreed to avail Coal Ash from Grootvlei Power Station (herein after referred to as the "the Power Station") to the Contractor, as and when it becomes available, on the terms and conditions set out in this Agreement.

2. DEFINITIONS

- 2.1. Words and expressions in this Agreement shall, unless this Agreement otherwise provide, have the following meaning:
 - a) "Agreement" means the agreement which has come into being between ERI and The Contractor,
 - b) "Dumped Ash" means conditioned ash and/or mixed ash and/or legacy ash, is the ash which over the years had been deposited and stored at the ash disposal site (landfill site or tailings dam) in the power station;
 - c) "Coal Ash" means the material produced from the burning of coal in coal-fired power plants, stored at or collected from the ash disposal facilities in the power station.
 - d) "Commencement Date" means 1 September 2024;
 - e) "Contractor" means, a company duly incorporated and registered in the Republic of South Africa with registration number 000/xxxxxx/00;

- f) "Employer's Representative" means the person nominated by ERI in writing as their representative;
- g) "ERI" means Eskom Rotek Industries SOC Ltd, registration number, 1990/006897/30, a juristic person incorporated in terms of the company law of the Republic of South Africa;
- h) "Eskom" means "Eskom Holdings SOC LTD registration number, 2002/015527/30, a juristic person incorporated in terms of the company law of the Republic of South Africa;
- i) "KPI" means, Key Performance Indicators set out in in clause 10 of this Agreement ;
- j) "Parties" means Eskom Rotek Industries and the Contractor and Party means either of them;
- k) "Power Station" means the Eskom power station property and facilities;
- l) "Project Manager" means the person identified by ERI as the project manager;
- m) "PPI" means the all commodities for South African Consumption Production Price Index as notified by Statistics South Africa from time to time.
- n) "Property" means the site and or portion of land allocated and leased to the Contractor for Coal Ash beneficiation at Grootvlei Power Station.
- o) "Rand" means the legal currency of the Republic of South Africa;
- p) "Receiver" means any party or parties that receive/s Coal Ash from the Contractor which Coal Ash the Contractor has obtained in terms of this Agreement;

- q) "Review Period" means the period within which ERI will review the performance of the Contractor;
- r) "Signature Date" means the date on which this contract has been signed by both Parties;
- s) "Site" means the locality designated by the Site Agent at Grootvlei Power Station for The Contractor to extract Coal Ash;
- t) "Site Agent" means the person appointed as site agent by the Power Station;
- u) "Termination Date" means 31 August 2034 unless this Agreement is terminated earlier in accordance with the provisions of this Agreement; and

2.2. Unless inconsistent with, or a contrary intention clearly appears from the context,

- a) the singular shall include the plural and vice versa;
- b) Any reference to gender includes the other gender, any reference to the singular includes the plural and vice versa;
- c) Any reference to natural persons includes the legal persons and vice versa.
- d) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or that other agreement, document or instrument as amended, varied, novated or substituted from time to time;
- e) no rule of construction shall be applied to the disadvantage of a Party to this Agreement because that Party was responsible for or participated in the preparation of this Agreement or any part of it; and

- f) unless otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day;

3. DURATION

- 3.1. Notwithstanding the Signature Date this Agreement shall take effect on the Commencement Date and shall remain in force until the Termination Date unless it is terminated earlier in accordance with its terms.

4. SCOPE OF WORK

- 4.1. The objective of the project is to harvest ash from the ash disposal facility for commercial beneficiation such as brick and block making, manufacture of geopolymer products, etc.
- 4.2. The commercial beneficiation site is a piece of land at Eskom Grootvlei Power Station to be allocated by the Project Manager on a lease basis.
- 4.3. The price for leasing the land portion will be negotiated and agreed with the Contractor.
- 4.4. The Contractor shall perform all activities related to the harvesting and beneficiation of ash from the decommissioned ash dam ("the Site") located on the Eskom Grootvlei Power Station property. This includes, but is not limited to, site assessment, preparation, harvesting of ash, beneficiation processes, and any required site rehabilitation after completion of the works.

5. HARVESTING OF COAL ASH AT THE ASH DISPOSAL FACILITY

- 5.1. The Contractor shall conduct a comprehensive assessment of the Site to determine the methods and processes for safely harvesting ash, taking into consideration all relevant environmental and health aspects.
- 5.2. The Contractor shall engage, at its own expense, the following professionals and services, as necessary for the safe and effective execution of the work:
 - a) A qualified Land Surveyor to conduct a detailed survey of the Site.
 - b) Geotechnical Studies to assess the stability and suitability of the Site for harvesting operations.
 - c) An Approved Professional Person (APP) where necessary, as determined in consultation with Eskom, to oversee safety, environmental compliance, and structural integrity during the harvesting and beneficiation processes.
- 5.3. The Contractor shall thoroughly assess the land surveyor report and geotechnical reports.
- 5.4. Upon completion of the assessment, the Contractor shall finalise the appointment of an Approved Professional Person (APP), where such person is required as determined between the Contractor and Eskom.
- 5.5. The Contractor shall develop comprehensive plan and compile a specific procedure for ash harvesting, incorporating insights from the land surveyor and geotechnical reports, for acceptance by the Project Manager.
- 5.6. Notwithstanding the appointment of an APP, which shall only be made when necessitated by circumstances, the specific procedures for ash harvesting shall be compiled by a duly qualified professional engineer in all cases. The procedures shall ensure safe, efficient, and environmentally responsible ash harvesting activities.

- 5.7. The plan shall optimise resource utilization while minimising risks to personnel, equipment, and the surrounding ecosystem.
- 5.8. The Contractor shall ensure the project's compliance with regulatory requirements and industry standards.
- 5.9. The Contractor shall cooperate with the APP, where such is appointed, to ensure compliance.
- 5.10. The Contractor shall be responsible for executing the comprehensive plan and ensuring the safe and efficient harvesting of ash.
- 5.11. The APP, where appointed, shall be responsible for overseeing the project's compliance and providing expertise to ensure the successful execution of the project.

6. DETERMINATION OF THE NEED FOR AN APPROVED PROFESSIONAL PERSON

- 6.1. The necessity of appointing an APP shall be jointly determined by the Contractor and Eskom following a detailed assessment of the Site.
- 6.2. If it is determined that an APP is required, the Contractor shall bear all costs associated with engaging the APP and shall ensure that the APP is involved in all aspects of the project that require professional oversight.

7. ENVIRONMENTAL AND HEALTH COMPLIANCE

- 7.1. The Contractor shall implement all necessary measures to prevent environmental contamination and ensure the safety and health of workers and the public during the harvesting and beneficiation processes.

- 7.2. The Contractor shall develop and submit to the Owner an Environmental Management Plan (EMP) prior to the commencement of work. The EMP must include, but is not limited to, dust control measures, water management, waste management, and emergency response plans.
- 7.3. The Contractor shall be solely responsible for any environmental damage or health and safety incidents that arise from its activities and shall indemnify the Eskom against any claims, damages, or liabilities resulting from such incidents.

8. TEMPORARY RIGHT OF REMOVAL

ERI grants the Contractor a non-exclusive right to remove Coal Ash from the Power Station, and the Contractor accepts such right on the terms and conditions set out herein.

9. CONTRACTOR'S GENERAL OBLIGATIONS

- 9.1. The Contractor shall ensure that it, and where applicable its employees, agents, Contractors, Sub-Contractors, and any Receiver, complies with all applicable legislation, regulatory requirements, provincial, local and municipality by-laws including but not limited to environmental legislation, registration on the South African Waste Information System (SAWIS) database as a waste recyclers and legislation and regulations relating to, including but not limited to, the transportation, handling, storage and processing of Cola Ash.
- 9.2. The Contractor shall prior to the removal of Coal Ash submit a safety file to the Site Agent, which shall contain as a minimum the information recorded in Annexure A.

- 9.3. The Contractor shall ensure that the safety file is approved by a duly authorised Eskom representative prior to the removal of Coal Ash from the Power Station.
- 9.4. The Contractor shall prior to the removal of any Coal Ash, conduct environmental awareness training ("training") for all its employees and agents, Contractors and Sub-Contractors, and provide proof thereof to ERI. The Contractor shall ensure that retraining is conducted as and when necessary. This training shall include but not be limited to training on the handling of Coal Ash, the environmental impacts of Coal Ash and the management thereof.
- 9.5. The Contractor shall ensure that any Receiver is registered as a recycler on the SAWIS data base and is in possession of a valid waste management license or has been exempted from such license.
- 9.6. The Contractor shall allow Eskom, ERI and any legislated or oversight body, per the terms of governing legislation, and ensure that in its contracts with any Receiver such a right is included in favour of Eskom, ERI and any legislated or oversight body, to conduct audits on the Receiver as and when required to confirm whether the Contractor and/or the Receiver is in compliance with all relevant legislation in respect of, including but not limited to, the transportation, handling, storage and processing of Coal Ash.
- 9.7. The Contractor shall maintain, for a period of five (5) years from the date of production of the record, records of all training, removal, transportation, storage, handling and sale of Coal Ash.
- 9.8. The Contractor, using the template attached hereto as Annexure B, shall complete on a monthly basis, a monthly volumes report and submit same to the Project Manager no later than the 1st working day of the succeeding month.

- 9.9. In the event that there are no authorised landfills sites within a reasonable distance of the Receiver's operations the Contractor shall return the unused Coal Ash to a designated area in the Power Station.
- 9.10. The Contractor shall ensure that its employees, Contractors, agents and sub-Contractors have the required Personal Protective Equipment (PPE) including but not limited to dust masks and eye protection for their respective operations.
- 9.11. The Contractor shall ensure that any spillages or contaminations are recorded, contained, cleaned up, investigated, and reported to the Project Manager together with the preventative measures implemented, within 48 (forty eight) hours of such spill or contamination having occurred.
- 9.12. The Contractor shall ensure that contamination caused by the exercise of its rights and compliance with its obligations in terms of this Agreement is rehabilitated by it as soon as reasonably possible in accordance with applicable environmental legislation.
- 9.13. The Contractor shall ensure that Coal Ash is stored on a covered concrete surface which is surrounded by a bund wall with bricked cement which is high enough to contain all the Coal Ash.
- 9.14. The Contractor shall ensure that dust suppression is carried out continuously at the point of loading and offloading.
- 9.15. The Contractor shall take out all insurances required in terms of this Agreement, in accordance with Annexure C hereto. The Contractor is liable for the payment of all deductibles in respect thereof. Such insurance will include insurance for damage to the property of Eskom, who is owner of the Power Station and the Site. The Contractor must pay any deductible due in respect of damage to the property of Eskom, directly to Eskom, immediately on confirmation that an insurance claim in respect of such damages has been accepted by the relevant insurance company.

- 9.16. The Contractor understands and accepts that there is no partnership, joint venture or any such similar relationship between Eskom and the Contractor. The Contractor does not have the right to make representations on behalf of or bind Eskom or take out insurance on Eskom's behalf without Eskom's prior written consent.
- 9.17. The Contractor shall immediately report any damage done to Eskom's property to the Site Agent.
- 9.18. The Contractor shall be responsible for the safety and security of all persons and items it requires for the purposes of this Agreement.
- 9.19. The Contractor shall provide, at its own cost, all equipment and infrastructure it requires for the purposes of this Agreement including but not limited to electricity, water, transport and toilet facilities. ERI will not provide connection points for any equipment and or infrastructure. The Contractor shall obtain the Project Manager's prior written approval before installing and/or erecting and/or placing any infrastructure and/or equipment on the Site, the Power Station or any of Eskom's property.
- 9.20. The Contractor shall adhere to the conditions as laid down by the Site Agent, Project Manager and security at the Power Station relating to access to, exit from and operating within the Power Station and the Site.
- 9.21. The Contractor shall ensure that it has the requisite facilities available at the Site for the collection of disposable waste material.
- 9.22. The Contractor shall comply with Eskom's Safety, Health, Environment and Quality (SHEQ) requirements including but not limited to those contained in Annexure A.
- 9.23. The Contractor shall use all reasonable efforts to ensure that the exercise of its rights and obligations in terms of this Agreement does not cause any obstruction at the Site and the Power Station.

- 9.24. The Contractor shall compile and submit for acceptance by the Project Manager, extraction and loading procedure annexed hereto as Annexure D.
- 9.25. The Contractor shall comply with the ash extracting and loading process and procedure which they shall review and update from time to time as and when necessary.
- 9.26. The Contractor shall comply with all the Supplier Development and Localisation requirements annexed hereto as Annexure E.
- 9.27. The Contractor shall ensure that the transportation of Coal Ash is carried out in accordance with the National Environmental Management Waste Act, Act No Act 59 of 2008 and other applicable legislation.
- 9.28. The Contractor shall ensure that all vehicles transporting Coal Ash comply with all applicable legislation relating to the transportation of hazardous material including but not limited to hazardous waste, hazardous goods and hazardous substances.
- 9.29. The Contractor shall ensure that all vehicles transporting Coal Ash keep a copy of the Material Safety Data Sheet (MSDS) and delivery/dispatch note in such vehicles at all times.
- 9.30. The Contractor must develop a Coal Ash dispatch/delivery note procedure. The procedure must align with Eskom's Ash and Gypsum Commercialisation Standard (as amended from time to time), Eskom's waste management procedure (as amended from time to time) and Eskom's environmental incident reporting procedure for incident reporting purposes (as amended from time to time).

10. ERI's OBLIGATIONS

- 10.1. ERI shall throughout the Term provide the Contractor with such access to the Site as the Contractor may reasonably require in order to carry out its

obligations under this Agreement, subject to the Contractor's compliance at all times with the requirements for access to the Site.

- 10.2. If at any time ERI fails to provide access to the Contractor in accordance with the provisions of this Agreement, unless such failure is due to the fault or negligence of the Contractor, the Contractor shall be relieved of its affected obligations under this Agreement to the extent such obligations are prevented or impeded by the lack of access.

11. PROJECT MANAGER

- 11.1. ERI shall appoint a Project Manager to manage the Agreement on its behalf.
- 11.2. The responsibilities of the Project Manager include but is not limited to the following:
 - a) Allocating the extraction and beneficiation location at the Site;
 - b) Monitoring the Contractor's progress and performance and ensuring that the removal of Coal Ash conforms to the requirements of the Agreement.; and
 - c) the day-to-day management of the Agreement.
- 11.3. The Project Manager has no authority to amend the Agreement and has no authority to relieve the Contractor of any duties, obligations or responsibilities.

12. SUPPLY OF COAL ASH

- 12.1. It is expressly recorded that ERI does not guarantee a continuous or minimum supply of Coal Ash to the Contractor from the Power Station.
- 12.2. ERI does not guarantee the quality or suitability of Coal Ash for any purpose whatsoever.

13. LEASE OF THE BENEFICIATION PROPERTY

- 13.1. Eskom hereby lets to the Contractor, which hereby hires the land on which the contractor shall build its Coal Ash beneficiation plant, at a price to be determined between the parties.
- 13.2. Notwithstanding the date on which the Contractor has occupied the property, this lease shall commence on the Commencement Date and shall continue until Termination Date.
- 13.3. Notwithstanding the period of lease as contemplated in clause 13.2 above, Eskom shall be entitled to sell or dispose of any property at any time prior to the expiry of the lease as contemplated in clause 13.2. For so long as (during the currency of the lease) Eskom remains a state-owned enterprise, the disposal or sale of the properties in terms hereof shall be in accordance with the applicable government procurement policies and the State Owned Enterprises framework of sale of State assets in place from time to time. Eskom shall give the Contractor reasonable notice of such intended sale or disposal, but shall not be required to provide the Contractor with any information or terms and conditions of such sale or disposal
- 13.4. If Eskom (during the currency of the lease) ceases to be a State owned enterprise, the sale or disposal of such portions of the property shall be subject to Eskom giving written notice to the Contractor of its intention to sell or dispose of the leased property, which notice shall include the terms and conditions of such sale or disposal and the purchase price of such property (depending on the method of disposal in accordance with Government procurement policies).
- 13.5. The sale or disposal of the property shall not affect or prejudice the Contractor in terms of this agreement, which shall remain of full force and effect notwithstanding such sale or disposal.

- 13.6. The rental paid by the Contractor in respect of the property shall be calculated at R..... per square metre (excluding VAT) as determined by the parties, on the portion of the property occupied by the Contractor.
- 13.7. The rental in terms of the Property shall be paid monthly by the Contractor monthly in advance on the first day of each and every month free of exchange and without any deductions whatsoever to Eskom by way of an electronic funds transfer into the banking account of Eskom or such other banking account as nominated by Eskom. The rental shall increase at each anniversary of the Commencement Date in accordance with the STATSSA PPI. Any dispute between the parties in regard to the calculation of the increase of the rental as contemplated herein, such dispute shall be referred to an independent auditor appointed by Eskom and the Contractor, failing agreement, by the President for the time being of the South African Institute for Chartered Accountants for determination, who shall act as an expert not an arbitrator whose decision shall be final and binding and the cost of which shall be borne by the Contractor and Eskom in equal proportions.

14. USE OF THE PROPERTY

- 14.1. The Property shall be used by the Contractor for manufacturing of bricks and blocks and related ash based products, offices, accommodation and storage. The Contractor shall not use the Property for any other purpose whatsoever without the prior written consent of Eskom, which consent shall not be unreasonably withheld.

15. KEY PERFORMANCE INDICATORS (KPI)

- 15.1. The Parties have agreed upon KPIs, annexed hereto as Annexure G, that will be tracked on a monthly basis and reviewed every six months.
- 15.2. The Contractor shall provide the Project Manager on a monthly basis with a written report setting out the performance of the Contractor against the KPIs.

- 15.3. Failure to achieve the KPIs for three consecutive months will constitute a breach of this Agreement.
- 15.4. If ERI is not reasonably satisfied with the Contractor's performance against the agreed KPIs, it may at its discretion issue a notice in writing to the Contractor detailing failures to achieve KPIs ("KPI Notice"). As soon as practicable, following issue of the KPI Notice, the Parties' representatives will meet to discuss the issues raised in the KPI Notice, steps to be taken by the Contractor and a timeframe to remedy the issues. The Contractor's failure to adequately remedy the issues raised within a KPI Notice within the timeframes agreed will constitute a breach of this Agreement.
- 15.5. Failure of the Parties to reach agreement on the KPIs and/or the Contractor's performance against the KPIs is a ground for termination of this Agreement.

16. UNDERTAKINGS AND INDEMNITIES

- 16.1. The Contractor undertakes to ERI that in exercising its rights under this Agreement it will not do anything, or permit anything to be done, which would be a breach by ERI and/or Eskom of any obligation it has or might have to in respect of the Coal Ash.
- 16.2. The Contractor agrees to indemnify ERI and/or Eskom and hold them harmless against any liability ERI and/Eskom may incur or any claim that may be made against ERI and/Eskom, by any person, which arises out of or is attributable to any act or omission of the Contractor in exercising its right to remove Coal Ash in terms of this Agreement, and against all legal costs (at an attorney and own client scale) and related reasonable expenses incurred by EE and/Eskom in defending, resisting or opposing any such claim.

17. LIMITATION OF LIABILITY

Neither ERI nor Eskom shall not be liable for any loss or damage suffered by the Contractor, its agents, Contractors, sub-Contractors, employees or any Receiver.

18. FORCE MAJEURE

- 18.1. If a Party (the 'Affected Party') is unable to perform all or a material part of its obligations in terms of this Agreement due to a Force Majeure Event, then the Affected Party shall, as soon as reasonably practicable, notify the other Party in writing (a '**Force Majeure Notice**') setting out:
- a) full particulars of the Force Majeure Event;
 - b) the impact of the Force Majeure Event on the Affected Party's obligations under this Agreement;
 - c) the Affected Party's reasonable estimate of the length of time which its performance has been and will be affected by such Force Majeure Event, and;
 - d) the steps which it is taking or intends to take to remove and mitigate the adverse consequences of the Force Majeure Event on its performance hereunder.
- 18.2. The Affected Party shall have the burden of proving both the existence of the Force Majeure Event and the effect (both as to nature and extent) which such Force Majeure Event has on its performance.
- 18.3. If the Parties are, on the basis of the Force Majeure Notice and any supporting documentation, unable to agree as to the existence or as to the effect of a Force Majeure Event by the date falling 60 (SIXTY) days after the receipt by the non-Affected Party of the Force Majeure Notice, then either Party shall be entitled to refer the matter to arbitration in accordance with Clause 16.

- 18.4. If it is agreed or determined that a Force Majeure Event has occurred, the Affected Party shall, provided that it has complied with the requirements of this Clause 13, not be liable for any failure to perform any obligation under this Agreement, but only to the extent that:
- a) such performance is prevented, hindered or delayed by a Force Majeure Event; and
 - b) such failure could not have been removed, mitigated, rectified or overcome by the Affected Party acting as a reasonable and prudent person.
- 18.5. The Affected Party shall use all reasonable efforts to remove, mitigate, rectify and overcome the effects of any Force Majeure Event(s) and to minimise the effect thereof on the other Party and shall give the other Party (i) regular reports on the progress of such measures and (ii) prompt notice of the cessation of the Force Majeure Event(s).
- 18.6. If the Force Majeure Event subsists for more than 6 (SIX) months, the non-Affected Party shall have the right to terminate this Agreement after having given the other Party no less than 30 (THIRTY) days' written notice without prejudice to any right either Party may have in terms of this Agreement provided that the Force Majeure Event is still continuing.

19. VARIATION, CANCELLATION AND WAIVER

- 19.1. No variation, modification or waiver of any provision of this Agreement nor consent to any departure by either party therefrom, shall in any event be of force or effect unless the same shall be confirmed in writing signed by or on behalf of the other party, and such variation, modification, waiver or consent shall be effected only in the specific instance, and for the purpose and to the extent for which made or given.

- 19.2. No latitude, extension of time or other indulgence which may be given or allowed by any party to the other parties in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any party arising from this agreement, and no single or partial exercise of any right by any party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of or arising from this Agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
- 19.3. Where written and/or signed notice is required in terms of this Agreement, the terms "writing" and "signed" or their analogous forms, will for the purposes of notices of breach, variation, termination or cancellation of this contract be construed as excluding sections 12 and 13 of the Electronic Communication and Transaction Act 25 of 2002 or any replacement or amendment thereof, save that such a notice may be scanned after manual signature and then sent electronically.

20. TERMINATION

20.1. Termination By ERI

- 20.1.1 On the occurrence of any one of the following events ERI shall be entitled to terminate this Agreement forthwith on 30 days written notice to the Contractor (describing the event):
- a) failure by the Contractor to achieve KPIs for three consecutive months;
 - b) the Contractor being liquidated, placed under judicial management (whether provisional or finally) or placed under business rescue;
 - c) failure by the Contractor to remove the Coal Ash allocated to it for a period of consecutive period of three months;

- d) failure by Contractor to pay for Coal Ash removed for a period of three months;
- e) failure by the Parties to agree on KPIs;
- f) failure of the Parties to agree on the Contractor's performance against the KPIs;
- g) a final judgement awarded by a court or arbitrator/s against the Contractor that is not satisfied within a period of seven (7) days; and
- h) Force majeure.

20.1.2 If the Contractor is in breach of any provision of this Agreement (other than a breach of any of its payment obligations under this Agreement) and such breach causes, or can reasonably be expected to cause:

- a) ESKOM and/ERI to be in immediate breach of any of its legislative obligations;
- b) failure by the Contractor to comply with any of its environmental obligations in terms of this Agreement;
- c) death or personal injury to ESKOM and/ERI or Contractor staff or members of the public, or
- d) Any damage to the Power Station

then ERI shall be entitled to terminate this Agreement immediately and without giving notice to avoid causing such consequences of the breach.

20.1.3 Notwithstanding anything to the contrary contained herein ERI shall be entitled to terminate this Agreement on not less than 90 (ninety) days written notice to the Contractor.

20.2. **Termination by the Contractor**

20.2.1 The Contractor shall be entitled to terminate this Agreement forthwith on 30 (thirty) days written notice to ERI if,

- a) ERI is in breach of any provision of this Agreement, and ERI has failed to remedy such breach within 30 (thirty) days of the Contractor's notice to

ERI specifying in reasonable detail the nature of the breach and requiring ERI to remedy such breach;

- b) Failure by the Parties to agree on KPIs;
- c) Failure of the Parties to agree on the Contractor's performance against the KPIs; and
- d) force majeure

20.2.2 Notwithstanding anything to the contrary contained herein the Contractor shall be entitled to terminate this Agreement on not less than 90 (ninety) days written notice to ERI.

20.3. **Consequences of Termination**

20.3.1 The Contractor shall, for its own cost and risk remove all its equipment and/infrastructure from the Site , and shall restore, the Site to its condition prior to the commencement of its removal of Coal Ash in accordance with this Agreement and applicable law.

20.3.2 If the Contractor fails to remove all its equipment and/infrastructure from the Site within 10 (ten) days after the termination of the agreement, ERI shall be entitled, at the Contractor's cost to remove all its equipment and/infrastructure from the Site, and shall restore, the Site to its condition prior to the commencement of its removal of Coal Ash in accordance with this Agreement, applicable law.

20.3.3 The termination of this Agreement shall not affect the continued operation of those of its provisions that expressly provide for their continued operation after such expiry or termination or which of necessity must continue to operate after such expiry or termination.

21. DISPUTE RESOLUTION

21.1 Dispute

For the purposes of this clause 16, the term “dispute” shall be interpreted in its widest sense and shall include any dispute or difference in connection with or in respect of the conclusion or existence of this agreement, the carrying into effect of this agreement, the interpretation or application of the provisions of this agreement, the Parties respective rights and obligations in terms of and arising out of this agreement or the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of this agreement.

21.2 Submission to Arbitration

Save as otherwise expressly provided for in this agreement, any dispute between the Parties arising in connection with this agreement or its subject matter shall be submitted to and determined by arbitration in accordance with this clause 16.

21.3 Arbitration Notice

Any Party (“the Referring Party”) shall be entitled to refer a dispute to arbitration in terms of this clause 16 by notifying the other Parties in writing of its intention to do so (“the Arbitration Notice”). The Arbitration Notice shall include the names of not less than 3 (three) natural persons whom the Referring Party proposes for appointment as arbitrator.

21.4 Appointment of Arbitrator

Should the Parties fail to agree on an arbitrator within 5 (five) Business Days of the Arbitration Notice, the arbitrator shall be appointed, at the written request of either Party (which request shall be copied to the other Party), by the Chairman for the

time being of the Johannesburg Bar Council (or its successor); subject to the proviso that the arbitrator so appointed by the said Chairman shall be a practicing Senior Counsel of not less than 7 (seven) years standing or a retired judge of the High Court or the Supreme Court of Appeal.

21.5 Arbitration Proceedings

Unless otherwise expressly agreed by the Parties in writing:

- e) The arbitration proceedings shall be held at Sandton, South Africa and shall be conducted under the Standard Rules of the Association of Arbitrators ("the Arbitration Rules").
- f) The arbitrator shall be entitled, on the written application of any Party at any time (provided only that such Party is then a party to the proceedings), to be made in a manner acceptable to the arbitrator, to amend the Arbitration Rules including any time period provided for in them or to supplement them in the interests of resolving the dispute effectively, efficiently and economically (but provided that no such amendment or supplemental rule shall operate retrospectively);
- g) The arbitration proceedings shall be conducted as expeditiously as possible, and the time periods provided for in Section 23(a) of the Arbitration Act, 1965 (as amended) ("the Arbitration Act") shall not apply to them;
- h) The decision of the arbitrator shall be final and binding and there shall be no right of appeal (notwithstanding the provisions of the Arbitration Rules); and
- i) The arbitrator shall be entitled to determine his own jurisdiction and shall be entitled, mero motu, to raise matters mutatis mutandis as if the dispute was being heard before a Judge in the High Court of South Africa (South Gauteng).

21.6 Conflict with Arbitration Rules

The provisions of this clause 16 shall prevail to the extent of there being any conflict between the Arbitration Rules and this clause 16.

21.7 Arbitration Act

Subject to the other provisions of this clause 16, the arbitration proceedings contemplated herein shall be held in accordance with the provisions of the Arbitration Act.

21.8 Prescription

Without detracting from the effect (if any) of any other act taken by either Party which may affect the issue of prescription, the Parties irrevocably agree and acknowledge that the Arbitration Notice shall interrupt prescription and shall be deemed to constitute the service of a process for the purpose of interrupting prescription in terms of Section 13 of the Prescription Act, 1969 (or, as the case may be, the corresponding provision in any amendment thereto or in any replacement legislation).

21.9 Consent to Arbitration

The provisions of this clause 16:

- a) Constitute an irrevocable consent by the Parties to the arbitration proceedings provided for herein and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause or such proceedings;
- b) Are severable from the rest of this Agreement and shall remain in effect despite the termination, cancellation, invalidity or alleged invalidity of this Agreement for any reason whatsoever.

21.10 Interim Relief in Court

Nothing in this clause 16 shall preclude either Party from seeking interim and/or urgent relief from a Court of competent jurisdiction.

22. WHOLE AGREEMENT

This Agreement contains all the provisions agreed to by the parties relating to the subject matter of this Agreement and the parties waive the right to rely on any alleged provision or representation not contained in this agreement.

23. GENERAL

- 23.1 This Agreement shall be governed by and interpreted in accordance with the law of the Republic of South Africa (both in respect of substantive and procedural law and notwithstanding any conflict of law principles that may apply).
- 23.2 Neither party shall be liable to the other for indirect or consequential damages.
- 23.3 The Contractor shall not assign the whole or any part of the Agreement or cede or delegate any right or obligation in or under this Agreement. Any purported assignment, cession or delegation by the Contractor without ERI's prior written consent (which ERI may grant in its sole and absolute discretion) shall be null and void.
- 23.4 ERI may on written notice to the Contractor cede and delegate all of its rights and all of its obligations (past, present and future) under this Agreement to any affiliate which is a corporatised entity comprising one or more of its present divisions and/or operations resulting from the legislated restructuring of the South African electricity industry.
- 23.5 The Parties hereto agree that each shall treat confidentially the terms and conditions of this Agreement and all information provided by each party to the other regarding its business and operations. All confidential information provided by a party hereto shall be used by any other party hereto solely for the purpose of rendering or obtaining services pursuant to this Agreement and, except as may be required in carrying out this Agreement, shall not be disclosed

to any third party without the prior consent of such providing party. The foregoing shall not be applicable to any information that is publicly available when provided or thereafter becomes publicly available other than through a breach of this Agreement, or that is required to be disclosed in terms of this Agreement or in terms of the laws of the Republic of South Africa.

- 23.6 Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated pro non scripto and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
- 23.7 Any offer, consideration, payment or benefit of any kind made by the Contractor which constitutes or could be construed either directly or indirectly as an illegal or corrupt practise, as an inducement or reward for the award or execution of this Agreement constitutes grounds for termination of this Agreement or taking any other action against the Contractor (including civil and criminal action).
- 23.8 ERI may terminate this Agreement if the Contractor is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practises.
- 23.9 Neither Party is an agent of the other or has any authority to represent the other as to any matters, except as expressly authorised in this Agreement.
- 23.10 Nothing contained in this Agreement shall be construed as creating a company, close corporation, joint venture, partnership or association of any kind, the any of the Parties; nor is anything contained in this Agreement to be construed as creating or requiring any continuing relationship or commitment.
- 23.11 Neither of the Parties (nor their respective agents) shall have the authority or right, nor shall any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party.

23.12 The Contractor represents and warrants that as of the Signature Date, the Contractor will remain compliant with all applicable laws relating to taxation in South Africa.

24. DOMICILIUM

24.1 The parties choose as their domicilium citandi et executandi the following address:

Eskom Rotek Industries SOC LTD
Rosherville Office Park
Lower Germiston Road
Cleveland, Johannesburg

Attention: Khomotso Kekana

The Contractor
Tel 013 007 1367
xxxxxxxx@gmail.com
Suite 41
Wilge
2226

Attention: CEO Chairman

24.2 Either party shall be entitled to change its aforesaid address within the Republic of South Africa to another physical address after having given the other party 7 (seven) days written notice of such change of address.

25. COSTS

The costs of and incidental to this Agreement incurred by either party shall be borne by that party.

SIGNED AT _____ ON _____

AS WITNESSES:

for:

ESKOM ROTTEK INDUSTRIES SOC LTD

duly authorized hereto

Capacity: General Manager (Acting)

Bulk Materials Services

SIGNED AT _____ ON _____

AS WITNESSES:

for:

The Contractor

Capacity: Chief Executive Officer
