

The supply and delivery of Gas on an “as and when required” basis to Eskom Rotek Industries SOC Limited for a period of five (5) years.



NEC3 Supply Contract (SC3)

Between **ESKOM ROTEK INDUSTRIES SOC LIMITED**
(Reg No. 1990/006897/30)

and [Insert at award stage]
(Reg No. _____)

for **THE SUPPLY AND DELIVERY OF GAS ON AN “AS AND WHEN REQUIRED” BASIS TO ESKOM ROTEK INDUSTRIES SOC LIMITED.**

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CONTRACT No.

The supply and delivery of Gas on an “as and when required” basis to Eskom Rotek Industries SOC Limited for a period of five (5) years.

PART C1: AGREEMENTS & CONTRACT DATA

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The supply and delivery of Gas on an "as and when required" basis to Eskom Rotek Industries SOC Limited for a period of five (5) years.

C1.1 Form of Offer & Acceptance

Offer

The Purchaser, identified in the Acceptance signature block, has solicited offers to enter into a contract for the procurement of: supply and delivery of Gas on an "as and when required" basis to Eskom Rotek Industries for a period of five (5) years period.

The tenderer, identified in the Offer signature block, has

| | |
|---------------|---|
| <i>either</i> | examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender. |
| <i>or</i> | examined the draft contract as listed in the Acceptance section and agreed to provide this Offer. |

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 *Supplier* 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 amount due inclusive of VAT is ¹ | R |
| | (in words) | |

This Offer/s may be accepted by the Purchaser by signing the Acceptance part of this Form of Offer and Acceptance 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 *Supplier* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s) _____

Capacity _____

**For the
tenderer:**

Name & signature of witness _____
(Insert name and address of organisation)

Date

¹ This total is required by the *Purchaser* for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*.

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Acceptance

By signing this part of this Form of Offer and Acceptance, the Purchaser identified below accepts the tenderer's Offer. In consideration thereof, the Purchaser shall pay the Supplier 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 Purchaser 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 C1 | Agreements and Contract Data, (which includes this Form of Offer and Acceptance) |
| Part C2 | Pricing Data |
| Part C3 | Scope of Work: Goods Information including Supply Requirements |

and drawings 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 Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Purchaser 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.

The tenderer shall within two weeks of receiving a completed copy of this agreement, contact the Purchaser's agent (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 original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)

Capacity

**for the
Purchaser**

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

*(Insert name and address of
organisation)*

Name &
signature of
witness

Date

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Schedule of Deviations to be completed by the *Purchaser* prior to contract award

Note:

1. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Purchaser prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
3. A tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.

| No. | Subject | Details |
|-----|---------|---------|
| 1 | [•] | [•] |
| 2 | [•] | [•] |
| 3 | [•] | [•] |
| 4 | [•] | [•] |

By the duly authorised representatives signing this Schedule of Deviations below, the Purchaser 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 Purchaser 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 tenderer:

For the Purchaser

Signature _____

Name _____

Capacity _____

On behalf of _____
(Insert name and address of organisation)

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

Name & signature of witness _____

Date _____

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C1.2 SC3 Contract Data

Part one - Data provided by the Purchaser

Completion of this 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 Options | |
| | | X1: Price adjustment for inflation |
| | | X2: Changes in the law |
| | | X7: Delay damages |
| | | Z: <i>Additional conditions of contract</i> including SDL&I obligations |
| | of the NEC3 Supply Contract (December 2009) ² | |
| 10.1 | The <i>Purchaser</i> is (name): | Eskom Rotek Industries SOC Limited (Reg No. 1990/006897/30), a juristic person incorporated in terms of the company laws of the Republic of South Africa |
| | Address | Eskom Rotek Industries SOC Ltd, Lower Germiston Road, Rosherville, Johannesburg, 2094 |
| | Tel No. | 011 629 8000 |
| 10.1 | The <i>Supply Manager</i> is (name): | Boitshoko Mokolobate (Representative) |
| | Address | Eskom Rotek Industries SOC Limited Lower Germiston Road Rosherville Johannesburg |
| | Tel | 011 629 4641 |
| | e-mail | MokoloBC@eskom.co.za |
| | The <i>goods</i> are | The supply and delivery of Gas on an “as and when required” basis to Eskom Rotek Industries SOC Limited. |

² Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009, www.ecs.co.za.

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| | | |
|----------|--|---|
| 11.2(13) | The <i>goods</i> are | Gas |
| 11.2(13) | The following matters will be included in the Risk Register | Late deliveries |
| 11.2(14) | The Goods Information is in | Part 3: Scope of Work and all documents to which it makes reference. |
| 11.2(15) | The Supply Requirements as part of the Goods Information is in | Annexure A to this Contract Data |
| 11.2(15) | The <i>law of the contract</i> is the law of | the Republic of South Africa |
| 12.2 | The <i>language of this contract</i> is | English |
| 13.1 | The <i>period for reply</i> is | 5 working days after finalisation of negotiations |
| 13.3 | The <i>Supplier's</i> main responsibilities | Data required by this section of the core clauses is provided by the <i>Supplier</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data. |
| 2 | Time | |
| 3 | The <i>starting date</i> is. | |
| 30.1 | The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is: | <i>As stipulated in each release or purchase order</i> |
| 30.2 | | |
| | The <i>Supplier</i> does not bring the <i>goods</i> to the Delivery Place more than one week before the Delivery Date. | |
| 30.2 | The <i>Supplier</i> is to submit a first programme for acceptance within | Not applicable |
| 31.1 | The <i>Supplier</i> submits revised programmes at intervals no longer than | Not applicable |
| 32.2 | Testing and defects | |
| 4 | The <i>defects date</i> is | Two weeks after delivery |
| 42 | The <i>defect correction period</i> is | Two weeks |
| 43.2 | The <i>defects access period</i> is | 30 days after delivery of orders |
| 42.2 | Payment | |
| 5 | The <i>assessment interval</i> is | Between the 30th day of each successive month |
| 50.1 | The <i>currency of this contract</i> is the | South African Rand |

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| 51.1 | The period within which payments are made is | Dependent on the B-BBEE status of the Supplier |
| 51.2 | The <i>interest rate</i> is | <p>(i) zero percent above 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 (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.</p> |
| 51.4 | Compensation events | 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. |
| 6 | 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. |
| 7 | Risks, liabilities, indemnities and insurance | |
| 8 | These are additional <i>Purchaser's</i> risks | 1. Late deliveries |
| 80.1 | | 2. Changes in the Law 3. Additional risks may be managed by Parties as they arise. |
| | | 4. Non-conformance to specification |
| | The <i>Purchaser</i> provides these insurances from the Insurance Table | See notes about <i>Purchaser</i> provided insurance in Annexure B to this Contract |

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| | | Data |
| 84.1 | 1. Insurance against | Loss of or damage to the <i>goods</i>, plant and materials. |
| | Cover / indemnity is | Overseas shipment / transit insurance (only) to cover events at the <i>Supplier's</i> risk (if any) after the <i>goods</i> have left the <i>Supplier's</i> overseas premises. See notes in Annexure B |
| | The deductibles are | If this contract includes the supervision of installation, testing, commissioning or building work at the <i>Purchaser's</i> premises, the <i>Purchaser</i> also provides cover for physical loss of or damage to the <i>Purchaser's</i> surrounding property including any temporary work required to complete the Delivery. |
| | The <i>Supplier</i> provides these additional insurances | See notes in data for clause 88.2 below and Annexure B |
| 84.1 | The minimum amount of cover for loss of or damage to any plant and materials provided by the <i>Purchaser</i> is: | The total of the prices at the contact date |
| 84.2 | The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the <i>goods</i> , plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Supplier</i>) caused by activity in connection with this contract for any one event is: | <p>whatever the <i>Supplier</i> deems necessary in addition to that provided by the <i>Purchaser</i> for any one event with cross liability so that the insurance applies to the Parties separately.</p> <p>However if the <i>Supplier</i> is exposed to damage to the <i>Purchaser's</i> property the cover limit amount is not less than</p> <ul style="list-style-type: none"> • R15 million (fifteen million Rand) for exposure to Generation Division property; • R7.5 million (seven million five hundred thousand Rand) for exposure to Transmission Division property and; • R1 million (one million Rand) for exposure to Distribution Division and all other <i>Purchaser's</i> property <p>for any one occurrence or series of occurrences arising out of one event but unlimited during the period of insurance.</p> |
| 84.2 | The minimum limit of indemnity for insurance in respect of death of or bodily injury to | As prescribed by the Compensation for Occupational Injuries and Diseases Act |

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| | employees of the <i>Supplier</i> arising out of and in the course of their employment in connection with this contract for any one event is: | No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (five hundred thousand Rand). |
| 84.2 | The <i>Supplier's</i> liability to the <i>Purchaser</i> for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to | Contract value |
| 88.1 | For any one event, the <i>Supplier's</i> liability to the <i>Purchaser</i> for loss of or damage to the <i>Purchaser's</i> property is limited to | <p>(1) for the <i>Purchaser's</i> existing and surrounding property in the care, custody and control of the <i>Supplier</i> the amount of the deductible (first amount payable) relevant to the event described in the "Format A" insurance policy available on http://www.eskom.co.za/live/content.php?Item_ID=9248</p> <p>and</p> <p>(2) for all other existing <i>Purchaser's</i> property, the highest applicable deductible (first amount payable) namely:</p> <ol style="list-style-type: none"> 4. R15 million (fifteen million Rand) for Generation Division property. 5. R7.5 million (seven million five hundred thousand Rand) for Transmission Division property and; 6. R1 million (one million Rand) for Distribution Division and all other <i>Purchaser's</i> property <p>See notes in Annexure B</p> |
| 88.2 | The <i>Supplier's</i> liability for Defects due to his design which are not notified before the last <i>defects date</i> is limited to: | The greater of the total of the prices at completion date |
| 88.3 | The <i>Supplier's</i> total liability to the <i>Purchaser</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | The value of the contract |
| 88.4 | The <i>end of liability date</i> is | 3 (three) years after delivery of the whole of the goods |
| 88.5 | Termination and dispute resolution | |
| 9 | The <i>Adjudicator</i> is (Name) | the person selected from the Panel of Adjudicators listed in Annexure C to this Contract Data by the Party intending to refer a dispute to him. |
| | The <i>Adjudicator nominating body</i> is: | the Chairman of ICE-SA, a Division of the South African Institution of Civil |

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| | | | | |
|-------------------------|---|--|---------------------|-------------------|
| | | Engineering, or its successor body (See www.ice-sa.org.za) | | |
| 94.2(3) | The <i>tribunal</i> is: | arbitration | | |
| 94.4(2) | 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. | | |
| 94.4(5) | The place where arbitration is to be held is | South Africa | | |
| 94.4(5) | The person or organisation who will choose an arbitrator - 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. | | |
| Data for Option clauses | | | | |
| 10 | Price adjustment for inflation | | | |
| X1 | The <i>base date</i> for indices is | A month before tender closing | | |
| X1.1 | The proportions used to calculate the Price Adjustment Factor are: | proportion | | |
| | | 0. | linked to index for | Index prepared by |
| | | 0. | [•] | [•] |
| | | 0. | [•] | [•] |
| | | 0. | [•] | [•] |
| | | 0. | [•] | [•] |
| | | [•] | [•] | [•] |
| | | 15.00 | Non-adjustable | |
| X2 | Changes in the law | | | |
| X2.1 | A change in the law of | is a compensation event if it occurs after the Contract Date | | |
| X7 | Delay damages | | | |
| | Delay damages for Delivery are | Supply and delivery of Gas | | |
| X7.1 | | amount per day | | |
| | | 1% per batch/purchase order value per day up to a maximum of 10% of that batch/purchase | | |

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| | | |
|------------|--|---------------------------------------|
| | | order value. |
| X20 | The <i>incentive schedule</i> for Key Performance Indicators is in | As agreed by both Parties |
| X20.1 | A report of performance against each Key Performance Indicator is provided at intervals of | As agreed by both Parties |
| X20.2 | The <i>additional conditions of contract</i> are | Z1 to Z12 always apply for ERI |

Z

Cession delegation and assignment

- Z1** The *Supplier* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Purchaser*.
- Z1.1 Notwithstanding the above, the *Purchaser* may on written notice to the *Supplier* 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 and the Electricity Distribution Industry.
- Z1.2

Joint ventures

- Z2** If the *Supplier* 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 *Purchaser* for the performance of this contract.
- Z2.1 Unless already notified to the *Purchaser*, the persons or organisations notify the *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Supplier* on their behalf.
- Z2.2 The *Supplier* does not substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Purchaser* having been given to the *Supplier* in writing.

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

- Z3** Where a change in the *Supplier's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Supplier's* B-BBEE status, the *Supplier* notifies the *Purchaser* within seven days of the change.
- Z3.1 The *Supplier* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Supply Manager* within thirty days of the notification or as otherwise instructed by the *Supply Manager*.
- Z3.2 Where, as a result, the *Supplier's* B-BBEE status has decreased since the Contract Date the *Purchaser* may either re-negotiate this contract or alternatively, terminate the *Supplier's* obligation to Provide the Goods and Services.
- Z3.3 Failure by the *Supplier* to notify the *Purchaser* of a change in its B-BBEE status may constitute a reason for termination. If the *Purchaser* 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.

Ethics

- Z4** Any offer, payment, consideration, or benefit of any kind made by the *Supplier*, 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 *Supplier's* obligation to Provide the Goods and Services or taking any other action as appropriate against the *Supplier* (including civil or criminal action).
- Z4.1 The *Purchaser* may terminate the *Supplier's* obligation to Provide the Goods and Services if the *Supplier* (or any member of the *Supplier* where the *Supplier* 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 *Purchaser* or other people or organisations and including in circumstances where the *Supplier* or any such member is removed from an approved vendor data base of the *Purchaser* as a consequence of such practice.
- Z4.2 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P3 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

Z4.3

Confidentiality

- Z5** The *Supplier* 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 *Supplier*, enters the public domain or to information which was already in the possession of the *Supplier* at the time of disclosure (evidenced by written records in existence at that time). Should the *Supplier* disclose information to Others in terms of clause 23.1, the *Supplier* ensures that the provisions of this clause are complied with by the recipient.
- Z5.1 If the *Supplier* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*.
- Z5.2 In the event that the *Supplier* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Supplier*, to the extent permitted by law prior to disclosure, notifies the *Purchaser* 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 *Supplier* 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.
- Z5.3 The *Supplier* ensures that all his subcontractors abide by the undertakings in this clause.

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Waiver and estoppel: Add to core clause 12.3:

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

Z6.1

Provision of a Tax Invoice and interest. Add to core clause 51

- Z8** Within one week of receiving a payment certificate from the *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser's* procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate.

Z8.1 If the *Supplier* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Purchaser* 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 *Purchaser* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z8.2 The *Supplier* (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 *Purchaser's* VAT number 4740101508 on each invoice he submits for payment.

Z8.3

Notifying compensation events

- Z9** Delete from the last sentence in core clause 61.3, "unless the *Supply Manager* should have notified the event to the *Supplier* but did not".

Z9.1

***Purchaser's* limitation of liability**

- Z10** The *Purchaser's* liability to the *Supplier* for the *Supplier's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z10.1 The *Supplier's* entitlement under the indemnity in 83.1 is provided for in 60.1(12) and the *Purchaser's* liability under the indemnity is limited.

Z10.2

Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

- Z11** or had a judicial management order granted against it.

Z11.1

Addition to secondary Option X7 Delay damages

- Z12** If the amount due for the *Supplier's* payment of delay damages reaches the limits stated in this Contract Data for Option X7, the *Purchaser* may terminate the *Supplier's* obligation to Provide the Goods and Services using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

Z12.1

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Annexure A: Supply Requirements

The Supply Requirements for this contract are based on the use of INCOTERMS:

The *Supplier* supplies the *goods* in accordance with INCOTERMS 2010³ as follows:

[Select the group and then term within the group which applies and state the applicable delivery place. Delete all the other groups and this note]

| Group | Category | Term | Delivery Place |
|-------|-------------------------|------|------------------------|
| | Delivery Costs Included | DCI | Eskom Rotek Industries |

The Parties obligations described in Incoterms for the category and term selected are now incorporated into this contract as part of the Supply Requirements and hence the Goods Information.

The obligations of seller and buyer for the selected Incoterm determine each Party's costs, risks and insurance requirements incidental to the supply and transport of the *goods* from *Supplier* to *Purchaser*.

For each of the thirteen terms, Incoterms set out obligations of the seller (the *Supplier*) in ten paragraphs identified as A1 to A10 and the corresponding obligations of the buyer (the *Purchaser*) in paragraphs B1 to B10. These obligations cover the following subjects:

| A | The <i>Supplier's</i> obligations | B | The <i>Purchaser's</i> obligations |
|-----|--|-----|--|
| A1 | Provision of goods in conformity with contract | B1 | Payment of the price |
| A2 | Licences, authorisations and formalities | B2 | Licences, authorisations and formalities |
| A3 | Contracts of carriage and insurance | B3 | Contracts of carriage and insurance |
| A4 | Delivery | B4 | Taking delivery |
| A5 | Transfer of risks | B5 | Transfer of risks |
| A6 | Division of costs | B6 | Division of costs |
| A7 | Notice to the buyer | B7 | Notice to the seller |
| A8 | Proof of delivery, transport document or equivalent electronic message | B8 | Proof of delivery, transport document or equivalent electronic message |
| A9 | Checking - packing - marking | B9 | Inspection of goods |
| A10 | Other obligations | B10 | Other obligations |

All other information NOT pertinent to the above is given in the balance of the Goods Information

The Supply Requirements for this contract are as follows:

³ International Chamber of Commerce, Incoterms 2010, Paris, January 2011

The supply and delivery of Gas on an “as and when required” basis to Eskom Rotek Industries SOC Limited for a period of five (5) years.

[Use these when INCOTERMS do not apply].

| | | |
|---|--|----------------------------|
| 1. The requirements for the supply are | [State the constraints on how the <i>Supplier</i> manufactures, prototypes, tests and stores the <i>goods</i> including order and timing] | |
| 2. The requirements for transport are | [State the extent to which the <i>Supplier</i> transports the <i>goods</i> and the mode of transport] | |
| 3. The delivery place is | [State the location where the <i>goods</i> are to be placed by the <i>Supplier</i> , such as whether it is a dispatch department at the <i>Supplier's</i> premises, the <i>Purchaser</i> is to collect or other location the <i>Purchaser</i> may require. If the delivery place for the <i>services</i> is different to the <i>goods</i> state it here] | |
| 4. Actions of the Parties during supply | Action | Party which does it |
| | Giving notice of Delivery | Supplier |
| | Checking packing and marking before dispatch | Supplier |
| | Contracting for transport | Supplier |
| | Pay costs of transport | Supplier |
| | Arrange access to delivery place | ERI |
| | Loading the <i>goods</i> | Supplier |
| | Unloading the <i>goods</i> | ERI and Supplier |
| For international procurement | Undertake export requirements | N/A |
| | Undertake import requirements | N/A |
| 5. Information to be provided by the <i>Supplier</i> | Title of document | |
| | Packing lists for cases and their contents | |
| | Copy of invoice for the <i>goods</i> | |
| | Delivery Note | |
| | Test results and maintenance manuals | |
| For international procurement | Licences, authorisations and other formalities associated with export of the <i>goods</i> | |
| | Air Waybill or Bill of Lading with associated landing, delivery and forwarding order | |
| | The Bill of Entry endorsed by the importation authority | |
| | Customs work sheets, showing tax, duties and surcharges which the law of the country into which the <i>goods</i> are being imported requires the importer to pay | |
| | Invoice from the importation clearing agent showing airline fees, landing charges, wharfage and dock dues as applicable | |
| | Specify other import documents required by authorised officials. | |

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All other information NOT pertinent to the above is given in the balance of the Goods Information

Annexure B: Insurance provided by the Purchaser

These notes are provided as guidance to tendering suppliers and the Supplier about the insurance provided by the Purchaser. These notes are not part of this contract.

Transit insurance of goods originating from outside the borders of the Republic of South Africa

For the purpose of supply contracts, the only insurance provided by ERI (the *Purchaser*) is transit shipment cover, commonly known as Marine Insurance for air, sea, rail and road freight (including local land arrangements) for conveyance of *goods* originating outside RSA. Please consult the website stated below to ascertain whether Format A, Format B or Format Dx is applicable to this contract and then the

- Marine Insurance Policy wording.
- Eskom Shipment Policies and Procedures – note a pre-shipment survey form has to be completed under certain circumstances;
- Marine Claims Handling Procedures – for important shipment actions and claims forms in event of damages to cargo freight via sea, barge, air, road or rail.

For EXW (Ex Works collections) this is of no concern to the *Supplier* but for any other Supply Requirement (such as CIF, DDU, or DDP) the *Supplier* need not provide such insurance even if the INCOTERM requires it and tendering suppliers should 'discount' their prices when tendering to allow for this provision by the *Purchaser* (ERI).

Supplier's liability for damage to the Purchaser's property

Whilst this is a liability the *Supplier* carries and should cover (if he is required to deliver the *goods* to the *Purchaser's* premises) his liability is limited to the amount of cover provided to the *Purchaser* within his assets policy. This amount varies depending on the Division within Eskom to which the *Supplier* is making the delivery. For any one occurrence or series of occurrences arising out of one event but unlimited during the period of insurance the *Supplier's* liability would be:

- R15million for Generation Division projects,
- R7.5million for Transmission Division projects or
- R1.0million for Distribution Division projects

All other insurance

As required by clause 84, the *Supplier* provides all other insurance for his risks. The *Supplier* should give further consideration to providing for these additional insurance concepts [for amounts and periods of insurance the *Supplier* deems fit and necessary].

Professional Indemnity: The insurance provided shall indemnify the *Supplier* (and/or his professional consultant) for those sums which the *Supplier* or his consultant shall become legally liable to pay as damages arising from any claim first made against the *Supplier* / consultant and reported to their insurers during the Period of Insurance, directly arising out of any negligent act, error or omission committed or alleged to have been committed by the *Supplier* / consultant in the conduct of **professional services** (for example, design) in connection with this contract.

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Products Liability: A special General Liability extension for liability arising out of the *Supplier's defective*:

- production and manufacturing process (workmanship or material), or
- product design, or
- warnings, instructions, usage and maintenance manuals and specifications.

For any further explanation of insurance requirements tendering suppliers are advised to consult their brokers or insurers who may in turn contact Eskom Insurance Management Services per contact details provided on the following website:

[http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_](http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx)

[From_1_April_2014_To_31_March_2015.aspx](http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx)

http://www.eskom.co.za/live/content.php?Item_ID=924

The supply and delivery of Gas on an “as and when required” basis to Eskom Rotek Industries SOC Limited for a period of five (5) years.

C1.2b Contract Data

Part two - Data provided by the *Supplier*

Notes to a tendering supplier:

1. Please read both the NEC3 Supply Contract (December 2009) and the relevant parts of its Guidance Notes (SC3-GN)⁴ in order to understand the implications of this Data which the tenderer is required to complete.
2. The number of the clause which requires the data is shown in the left-hand column for each statement however other clauses may also use the same data
3. Where a form field like this [] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise, complete by hand and in ink.

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

⁴ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 www.ecs.co.za

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| Clause | Statement | Data | | | | | | | | | | | | |
|----------|--|--|--|---------------------------|----------------------|---|-----|-----|---|-----|-----|---|-----|-----|
| 10.1 | The <i>Supplier</i> is (Name): Address Tel No. Fax No. | | | | | | | | | | | | | |
| 11.2(8) | The Goods Information for the <i>Supplier's</i> design is in: | | | | | | | | | | | | | |
| 11.2(11) | The tendered total of the Prices is | R , (in words) | | | | | | | | | | | | |
| 11.2(12) | The <i>price schedule</i> is in: | | | | | | | | | | | | | |
| 11.2(14) | The following matters will be included in the Risk Register | | | | | | | | | | | | | |
| 25.2 | The restrictions to access for the <i>Supply Manager</i> and Others to work being done for this contract are | | | | | | | | | | | | | |
| 30.1 | The <i>delivery date</i> of the <i>goods and services</i> is: | <table> <thead> <tr> <th></th><th><i>goods and services</i></th><th><i>delivery date</i></th></tr> </thead> <tbody> <tr> <td>1</td><td>[•]</td><td>[•]</td></tr> <tr> <td>2</td><td>[•]</td><td>[•]</td></tr> <tr> <td>3</td><td>[•]</td><td>[•]</td></tr> </tbody> </table> | | <i>goods and services</i> | <i>delivery date</i> | 1 | [•] | [•] | 2 | [•] | [•] | 3 | [•] | [•] |
| | <i>goods and services</i> | <i>delivery date</i> | | | | | | | | | | | | |
| 1 | [•] | [•] | | | | | | | | | | | | |
| 2 | [•] | [•] | | | | | | | | | | | | |
| 3 | [•] | [•] | | | | | | | | | | | | |
| 31.1 | The programme identified in the Contract Data is contained in: | | | | | | | | | | | | | |
| 63.2 | The <i>percentage for overheads and profit</i> added to the Defined Cost is | % | | | | | | | | | | | | |

PART 2: PRICING DATA

NEC3 Supply Contract

| Document reference | Title | No of pages |
|--------------------|---------------------------|-------------|
| C2.1 | Pricing assumptions | |
| C2.2 | The <i>price schedule</i> | [•] |

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C2.1 Pricing assumptions

The conditions of contract

How goods and services are priced and assessed for payment

Clause 11 in NEC3 Supply Contract, December 2009 (SC3) core clauses states:

| | | |
|-------------------------------------|------|---|
| Identified and defined terms | 11 | |
| | 11.2 | (11) The Prices are the amounts stated in the price column of the Price Schedule. Where a quantity is stated for an item in the Price Schedule, the Price is calculated by multiplying the quantity by the rate. |
| | | (12) The Price Schedule is the <i>price schedule</i> unless later changed in accordance with this contract. |
| Assessing the amount due | 50.2 | The amount due is |
| | | <ul style="list-style-type: none"> the Price for each lump sum item in the Price Schedule which the <i>Supplier</i> has completed, where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the <i>Supplier</i> has completed by the rate, plus other amounts to be paid to the <i>Supplier</i>, less amounts to be paid by or retained from the <i>Supplier</i>. |
| | | Any tax which the law requires the <i>Purchaser</i> to pay to the <i>Supplier</i> is included in the amount due. |

This confirms that the Supply Contract is a priced contract where the Prices are derived from a list of items of *goods* and *services* which can be priced as lump sums or as expected quantities of *goods* and *services* multiplied by a rate, or a mix of both.

Function of the Price Schedule

Clause 53.1 states: “Information in the Price Schedule is not Goods Information”. This confirms that instructions to do work or how it is to be done are not included in the Price Schedule but in the Goods Information. This is further confirmed by Clause 20.1 which states, “The *Supplier* Provides the Goods and Services in accordance with the Goods Information”. Hence the *Supplier* does **not** Provide the Goods and Services in accordance with the Price Schedule. The Price Schedule is only a pricing document.

Preparing the *price schedule*

It will be assumed that the tendering supplier has read Pages 11 and 12 and Appendix 5 of the SC3 Guidance Notes before preparing the *price schedule*. Items in the *price schedule* may have been inserted by the *Purchaser* and the tendering supplier should insert any additional items which he considers necessary. Whichever party provides the items in the *price schedule* the total of the Prices is assumed to be fully inclusive of everything necessary to provide the Goods and Services as described at the time of entering into this contract.

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- 1** As the *Supplier* has an obligation to correct Defects (core clause 43.1) and there is no compensation event for this unless the Defect was due to a *Supplier's* risk, the lump sum Prices and rates must also include for the correction of Defects.
- 2** If the *Supplier* has decided not to identify a particular item in the *price schedule* at the time of tender the cost to the *Supplier* of doing the work is assumed to be included in, or spread across, the other Prices and rates in the *price schedule* in order to fulfil the obligation to Provide the Goods and Services for the tendered total of the Prices.
- 3** There is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item of *goods* or *services* later turns out to be different to that which the *Supplier* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event. See Clause 60.1.
- 4** Hence the Prices and rates tendered by the *Supplier* in the *price schedule* are inclusive of everything necessary and incidental to Providing the Goods and Services in accordance with the Goods Information, as it was at the time of tender, as well as correct any Defects not caused by a *Purchaser's* risk.
- 5** The *Supplier* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event. It should be noted that the list of compensation events includes those arising as a result of a *Purchaser's* risk event listed in core clause 80.1.

C2.2 the *price schedule*

Refer to Appendix A for Price List of Pricing Schedule.

The supply and delivery of Gas on an "as and when required" basis to Eskom Rotek Industries SOC Limited for a period of five (5) years

PART 3: SCOPE OF WORK

The supply and delivery of Gas on an "as and when required" basis to Eskom Rotek Industries for a period of five (5) years period

| Document reference | Title | No of pages |
|--------------------|--------------------------------------|-------------|
| | This cover page | |
| C3.1 | <i>Purchaser's</i> Goods Information | |
| C3.2 | <i>Supplier's</i> Goods Information | |
| | Total number of pages | |

The supply and delivery of Gas on an "as and when required" basis to Eskom Rotek Industries SOC Limited for a period of five (5) years

C3.1: PURCHASER'S GOODS INFORMATION

Contents

This enquiry calls for the supply and delivery of Gas on an "as and when required" basis to Eskom Rotek Industries for a period of five (5) years period. Requirements will be done as and when required and individual release orders will be done per period. The specification, SHE, Quality and SDL&I requirements are attached to this contract and the 80/20 PPPFA criteria will be used for evaluation purposes.

Overview of the *goods* and *services*

Executive overview

The contract covers the supply and delivery of Gas on an "as" and when required basis to ERI for a period of five (5) years period.

Specifications of the goods and services

Documentation control

The contract documents and tenders shall be stored in the cabinets at Tactical Sourcing Department

Health and safety risk management

The *Supplier* shall comply with the health and safety requirements stated in Annexure A of the Invitation to Tender document.

Environmental constraints and management

The *Supplier* shall comply with the environmental criteria and constraints stated in Eskom document 32-245-Eskom Waste Management Standard and in Annexure A of the Invitation to Tender document.

Quality assurance requirements

The supplier shall adhere to the Supplier Contract Quality Requirements Specification QM 58 during the contract execution and as stated in Annexure A of the Invitation to Tender document. The supplier shall also comply to the following:

- The Supplier shall perform an inspection of an off-loading event in the presence of ERI staff at least once a year and shall issue a report to the Contract Manager.
- The Supplier shall provide evidence of the Logistics Management / Quality Management System of the Transporter, providing assurance of on-time delivery of the product of the required quality

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Invoicing and payment

Within one week of receiving a payment certificate from the *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice showing the amount due for payment equal to that stated in the *Supply Manager's* certificate.

The *Supplier* shall address the tax invoice to *Purchaser* and include on each invoice the following information:

- Name and address of the *Supplier* and the *Supply Manager*.
- The contract number and title.
- *Supplier's* VAT registration number;
- The *Purchaser's* VAT registration number.
- Description of *goods* and *services* provided for each item invoiced based on the Price Schedule.
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;

The *method* is Electronic payment in full to supplier's nominated South African Bank Account *and conditions of payment* are: depended on the B-BBEE status of the Supplier after the receipt of an acceptable tax invoice.

The invoices must contain the following additional information:

- Employer's name should be stated Eskom Rotek Industries SOC Limited
- The registered name of the Supplier.
- The VAT registration number of the Supplier.
- The address of the Supplier.
- Invoice number
- Date of invoice
- Supplier's Banking Details
- Copy of Delivery note attached to invoice
- The Purchaser's contract/order number
- Accurate description of the goods, as per the purchase order
- VAT must be shown separately at the bottom of the invoice
- The Purchaser's VAT registration number 4740101508 and company registration number 1990/006897/30.

Contract change management

Any verbal communication must be backed up with a written instruction

Provision of bonds and guarantees

The form in which a bond or guarantee required by the *conditions of contract* (if any) is to be provided by the *Supplier* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

The *Purchaser* may withhold payment of amounts due to the *Supplier* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Supplier* by the *Supply Manager* to receive and accept such bond or guarantee.

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Such withholding of payment due to the *Supplier* does not affect the *Purchaser's* right to termination stated in this contract.

Records of Defined Cost, payments & assessments of compensation events to be kept by the *Supplier*

Original documents must be kept by the Supplier

Procurement

Subcontracting

Preferred sub-Suppliers

All sub-Suppliers need to be approved by ERI. The Supplier shall notify the Contract Manager in writing of any request to change the Transporter or Supplier of the product

Plant and Materials

Plant & Materials provided “free issue” by the *Purchaser*

- The Supplier shall provide evidence of the Logistics Management / Quality Management System of the Transporter, providing assurance of on-time delivery of the product of the required quality.
- The Supplier shall notify the Contract Manager in writing of any request to change the Transporter of the product. This shall be assessed after a technical evaluation.

Temporary works, Site services & construction constraints

Purchaser's Site entry and security control, permits, and Site regulations

Eskom's Cardinal Rules shall apply to all Eskom employees, agents, consultants and contractors.

- Rule 1: Open, Isolate, Test, Earth, Bond, and/or Insulate before touch - that is any plant operating above 1 000 V.
- Rule 2: Hook up at heights - no person may work at a height where there is a risk of falling.
- Rule 3: Buckle up - no person may drive any vehicle on Eskom business and/or on Eskom premises unless the driver and all passengers are wearing seat belts.
- Rule 4: Be sober (no person is allowed to work under the influence of drugs and alcohol.
- Rule 5: Use a permit to work - where an authorization limitation exists, no person shall work without the required permit to work.
- Rule 6: Wear correct PPE
- Rule 7: Report all accidents

The supplier will be subjected to a site induction prior to entering site.

Restrictions to access on Site, roads, walkways and barricades

In addition to the above there may be other Site restrictions and or rules relating to roads, walkways and the provision of barricades.

The supply and delivery of Gas on an “as and when required” basis to Eskom Rotek Industries SOC Limited for a period of five (5) years

C3.2 SUPPLIER'S WORKS INFORMATION

This section of the Goods Information will always be contract specific depending on the nature of the *goods*.

It is most likely to be required for design and construct contracts where the tendering Supplier will have proposed specifications and schedules for items of Plant and Materials and workmanship, which once accepted by the *Purchaser* prior to award of contract now become obligations of the *Supplier* per core clause 20.1.

Typical subheadings could be

- a) *Supplier's* design
- b) Plant and Materials specifications and schedules
- c) Other

This section could also be compiled as a separate file.

CONFIDENTIALITY AGREEMENT

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

WHEREAS, the Employer and the Contractor (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

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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 authorized 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, commercialize, 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.