

CONTRACT NO.

DESCRIPTION OF SUPPLY: THE SUPPLY, DELIVERY AND OFFLOADING OF LIGHTING MATERIALS AND ASSOCIATED CONSUMABLES AT THE VARIOUS POWER STATIONS IN THE ERI CONSTRUCTION SERVICES, BUSINESS UNIT ON A AS AND WHEN NEEDED BASIS FOR A PERIOD OF 3 YEARS.

NEC3 Supply Contract (SC3)

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

and
(Reg No.)

for The Supply, Delivery and Offloading of Lighting Materials and associated consumables at the Various Power Stations in the ERI Construction Services, business unit on a as and when needed basis for a period of 3 years

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Part C3 Scope of Work

Contract No:

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Part C1: Agreements & Contract Data

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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:

The Supply, Delivery and Offloading of Lighting Materials and associated consumables at the Various Power Stations in the ERI Construction Services, business unit on a as and when needed basis for a period of 3 years.

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 0-00
	Value Added Tax @ 15% is	R 0-00
	The offered total of the amount due inclusive of VAT is ¹ ()	R 0-00

This Offer 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:**

(Insert name and address of organisation)

Name &
signature of
witness

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, including the Schedule of Deviations (if any), 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 and signed original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)

Capacity

for the
Purchaser

ESKOM ROTTEK INDUSTRIES SOC LIMITED

(Insert name and address of organisation)

Name &
signature of
witness

Date

Note: If a tenderer wishes to submit alternative tenders, use another copy of this Form of Offer and Acceptance.

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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 _____

Name & signature of witness _____

Date _____

ESKOM ROTTEK INDUSTRIES SOC LIMITED

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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 and secondary Options	X1: Price Adjustment for inflation X2: Changes in the law X7: Delay damages Z: Additional conditions of contract
	of the NEC3 Supply Contract (April 2013)	
10.1	The <i>Purchaser</i> is (name):	Eskom Rotek Industries SOC Ltd (Reg no: 1990/006897/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Roshland Office Park Lower Germiston Road Rosherville
	Tel No.	011 629 8000
10.1	The <i>Supply Manager</i> is (name):	Joseph Ledwaba
	Address	Roshland Office Park Lower Germiston Road Rosherville
	Tel	011 629 8000
	e-mail	LedwabJR@eskom.co.za
11.2(13)	The <i>goods</i> are	Lighting Materials and associated consumables as per the attached specification
11.2(13)	The <i>services</i> are	The Supply, Delivery and Offloading of Lighting Materials and associated consumables at the Various Power Stations in the ERI Construction Services, business unit on a as and when needed basis

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11.2(14)	The following matters will be included in the Risk Register	<ul style="list-style-type: none">• Late Deliveries• Manufacturing of goods not to specifications• Manufacture and supply non-adherence to Inspection and Test Plan (ITP)						
11.2(15)	The Supply Requirements as part of the Goods Information is in	Annexure A to this Contract Data						
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa						
13.1	The <i>language of this contract</i> is	English						
13.3	The <i>period for reply</i> is	5 working days						
2	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.						
3	Time							
30.1	The <i>starting date</i> is.	tba						
30.1	The Supply Period is	36 months (as and when required basis)						
30.1	The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is:	<table><tr><td><i>Goods and services</i></td><td><i>delivery date</i></td></tr><tr><td>As and when required</td><td><table><tr><td>As per the draw down Purchase Order (PO)</td><td>As per the draw down Purchase Order (PO)</td></tr></table></td></tr></table>	<i>Goods and services</i>	<i>delivery date</i>	As and when required	<table><tr><td>As per the draw down Purchase Order (PO)</td><td>As per the draw down Purchase Order (PO)</td></tr></table>	As per the draw down Purchase Order (PO)	As per the draw down Purchase Order (PO)
<i>Goods and services</i>	<i>delivery date</i>							
As and when required	<table><tr><td>As per the draw down Purchase Order (PO)</td><td>As per the draw down Purchase Order (PO)</td></tr></table>	As per the draw down Purchase Order (PO)	As per the draw down Purchase Order (PO)					
As per the draw down Purchase Order (PO)	As per the draw down Purchase Order (PO)							
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.							
31.1	The <i>Supplier</i> is to submit a first programme for acceptance within	Receiving the draw down Purchase Order						
32.2	The <i>Supplier</i> submits revised delivery schedule at intervals no longer than	2 week(s)						
4	Testing and defects							
40.1	The <i>Supplier</i> submits the following tests and inspections	<ul style="list-style-type: none">• Not Applicable						
40.2	The <i>Supplier</i> will provide; records, datasheets, materials, facilities and samples for all tests and inspections	<ul style="list-style-type: none">• Manufacturing datasheet• Samples of all Light Fittings and Luminaires to be provided prior to start of manufacturing						
40.3	The notification period for test and inspections	<i>Supplier</i> will notify the <i>Supply Manager</i> five days after contract starting date						
40.4	Correction of a defect	Defects will be corrected by the <i>Supplier</i> and Clauses 40.1 and 40.2 will apply						

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40.6	The costs for the correction of defects will be	For the <i>Supplier's</i> account – inclusive of delivery and off-loading costs
41.1	The <i>Supplier</i> does not bring the goods to the Delivery Place	Before inspections and testing.
42	The <i>defects date</i> is	52 weeks after delivery of goods and services
43.2	The <i>defect correction period</i> is	2 weeks after delivery of goods and services
43.2	The <i>defects access period</i> is	1 Week
45.1	The costs for correcting defects not corrected by the <i>Supplier</i>	Will be for the <i>Supplier's</i> account – inclusive of delivery and off-loading costs
5	Payment	
50.1	The <i>assessment interval</i> is	Between the 25th day of each successive month
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	30 days from issue of invoice
51.4	The <i>interest rate</i> is	<p>the publicly quoted prime rate of interest (calculated on a 365-day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.</p>
6	Compensation events	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.

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7	Title	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
8	Risks, liabilities, indemnities and insurance	
80.1	These are additional <i>Purchaser's</i> risks	Not Applicable
84.1	The <i>Supplier</i> provides these insurances from the Insurance Table	See notes about <i>Purchaser</i> provided insurance in Annexure B to this Contract Data
	1. Insurance against	Loss of or damage to the <i>goods</i>, plant and materials.
	2.The deductibles are	See notes in data for clause 88.2 below and Annexure B
84.1	The <i>Supplier</i> provides these additional insurances	See notes in Annexure B
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 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:	As prescribed by the Compensation for Occupational Injuries and Diseases Act 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).
88.1	The <i>Supplier's</i> liability to the <i>Purchaser</i> for indirect or consequential loss, including loss of profit, revenue and	

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	goodwill is limited to	(Zero Rand)
88.2	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" / "Format B" / "Format Dx" insurance policy available on http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx and</p> <p>(2) for all other existing <i>Purchaser's</i> property, the highest applicable deductible (first amount payable) namely:</p> <ul style="list-style-type: none"> • R15 million (fifteen million Rand) for Generation Division property. • R7.5 million (seven million five hundred thousand Rand) for Transmission Division property and; • R1 million (one million Rand) for Distribution Division and all other <i>Purchaser's</i> property <p>See notes in Annexure B</p>
9	Termination and dispute resolution	
94.1	The <i>Adjudicator</i> is	The person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
94.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za)
94.4(2)	The <i>tribunal</i> is:	Arbitration
94.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
94.4(5)	The place where arbitration is to be held is	South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	the Chairman for the time being or his nominee
	- if the arbitration procedure does not	of the Association of Arbitrators (Southern

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state who selects an arbitrator, is **Africa) or its successor body.**

10 Data for Option clauses

X1	Price Adjustment for inflation	Prices are fixed and firm for the first 12 months (The month prior to tender closing is used as the base date.)	
X1.1	The base date for indices is	TBA	
X2	Changes in the Law		
X2.1	A Change in the law in	South Africa, this is a compensation event if the change happens after the Contract Date	
X7	Delay damages		
X7.1	Delay damages for Delivery are	Delivery of	amount per day
		Per Purchase Order (PO)	R 5,000-00 – up to a maximum of <u>10%</u> of the PO value, per Cable Type
Z	The additional conditions of contract are	Z1 to Z15 always apply for Eskom	

Z1 Cession delegation and assignment

- Z1.1 The *Supplier* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Purchaser*.
- Z1.2 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 because of the restructuring of the Electricity Supply Industry.

Z2 Joint ventures

- Z2.1 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.
- Z2.2 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.
- Z2.3 The *Supplier* does not 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.

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

- Z3.1 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

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status, the *Supplier* notifies the *Purchaser* within seven days of the change.

- Z3.2 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*.
- Z3.3 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.
- Z3.4 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.

Z4 Confidentiality

- Z4.1 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.
- Z4.2 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*.
- Z4.3 If 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. If 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.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *goods* or any portion thereof, while Providing the Goods and Services and after Delivery, requires the prior written consent of the *Supply Manager*. All rights in and to all such images vests exclusively in the *Purchaser*.
- Z4.5 The *Supplier* ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

- Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *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 Health, safety and the environment: Add to core clause 25.4

- Z6.1 The *Supplier* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the provision of the *goods* and execution of the *services*.

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Without limitation the *Supplier*:

- warrants that the total of the Prices as at the Contract Date includes enough for proper compliance with all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of supply and
- undertakes, in and about the execution of the supply, to comply with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Supplier's* direction and control, likewise observe and comply with the foregoing.

Z6.2 The *Supplier*, in and about the execution of the supply, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Supplier's* direction and control, likewise observe and comply with the foregoing.

Z7 Provision of a Tax Invoice and interest. Add to core clause 51

Z7.1 Within one week of receiving a payment certificate from the *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.

Z7.2 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.

Z7.3 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 Notifying compensation events

Z8.1 Delete from the last sentence in core clause 61.3 the words, "unless the event arises from the *Supply Manager* giving an instruction, changing an earlier decision or correcting an assumption".

Z9 Purchaser's limitation of liability

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

Z9.2 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 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z10.1 or had a business rescue order granted against it.

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Z11 Addition to secondary Option X7 Delay damages (if applicable in this contract)

- Z11.1 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 Ethics

For the purposes of this Z-clause, the following definitions apply:

Affected Party means, as the context requires, any party, irrespective of whether it is the Supplier or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,

Coercive Action means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,

Collusive Action means, where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,

Committing Party means, as the context requires, the Supplier, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,

Corrupt Action means, the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,

Fraudulent Action means, any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,

Obstructive Action means, a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action and

Prohibited Action means, any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

- Z 12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z 12.2 The Purchaser may terminate the Supplier's obligation to Provide the Goods and Services if a Committing Party has taken such Prohibited Action and the Supplier did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the Purchaser has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the Purchaser can terminate the Supplier's obligation to Provide the Goods and Services for this reason.
- Z 12.3 If the Purchaser terminates the Supplier's obligation to Provide the Goods and Services for this reason, the procedures and amounts due on termination are respectively P1, P2 and P3, and A1 and A3.
- Z 12.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited

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Action. Where the Purchaser does not have a contractual bond with the Committing Party, the Supplier ensures that the Committing Party co-operates fully with an investigation.

Z13 Insurance

Z 13.1 Replace core clause 84 with the following:

Insurance cover 84

- 84.1** When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
- 84.2** The *Contractor* provides the insurances stated in the Insurance Table A.
- 84.3** The insurances provide cover for events which are at the *Contractor's* risk from the *starting date* until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage to the works, Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance
Loss of or damage to Equipment	The replacement cost
Liability for loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) caused by activity in connection with this contract	<u>Loss of or damage to property</u> <u><i>Employer's</i> property</u> The replacement cost where not covered by the <i>Employer's</i> insurance The <i>Employer's</i> policy deductible, as at Contract Date, where covered by the <i>Employer's</i> insurance <u>Other property</u> The replacement cost <u>Bodily injury to or death of a person</u> The amount required by applicable law
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law

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Z 13.2

Replace core clause 87 with the following:

The *Employer* provides the insurances stated in the Insurance Table B.

INSURANCE TABLE B

Insurance against or name of policy	Minimum amount of cover or minimum of indemnity
Assets All Risk	Per the insurance policy document
Contract Works insurance	Per the insurance policy document
Environmental Liability	Per the insurance policy document
General and Public Liability	Per the insurance policy document
Transportation (Marine)	Per the insurance policy document
Motor Fleet and Mobile Plant	Per the insurance policy document
Terrorism	Per the insurance policy document
Cyber Liability	Per the insurance policy document
Nuclear Material Damage and Business Interruption	Per the insurance policy document
Nuclear Material Damage Terrorism	Per the insurance policy document

Z14 Nuclear Liability

- Z14.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa and is the holder of a nuclear licence in respect of the KNPS.
- Z14.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z14.3 Subject to clause Z14.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z14.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z14.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is

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decommissioned.

Z15 Asbestos

For the purposes of this Z-clause, the following definitions apply:

AAIA	means approved asbestos inspection authority.
ACM	means asbestos containing materials.
AL	means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4-hour period. The value at which proactive actions is required to control asbestos exposure to prevent exceeding the OEL.
Ambient Air	means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
Compliance Monitoring	means compliance sampling used to assess whether the personal exposure of workers to regulated asbestos fibres follows the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
OEL	means occupational exposure limit.
Parallel Measurements	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
Safe Levels	means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
Standard	means the <i>Employer's Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.</i>
SANAS	means the South African National Accreditation System.
TWA	means the average exposure, within a given workplace, to airborne asbestos fibres, normalized to the baseline of a 4-hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

Z15.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short-term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.

Z15.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are affected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited, and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor's* expense. For the purposes of compliance,

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the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

- Z15.3 The *Employer* manages asbestos and ACM according to the Standard.
- Z15.4 If any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted to declare the area safe.
- Z15.5 The *Contractor's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z15.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

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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 2010² as follows:

Group	Category	Term	Delivery Place
D	arrival	DCI – Delivery Costs Included	Various Power Stations and ERI Construction Services Sites

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

² International Chamber of Commerce, Incoterms 2010, Paris, January 2011

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The Supply Requirements for this contract are as follows:

[Use these when INCOTERMS do not apply].

1. The requirements for the supply are	Supplier supplies, as SANS Specifications for the cable types and sizes as listed in the contract (Schedule C2.2), and Eskom Specification – <i>Requirements for control and power cables for Power Station Standard (240-56227443)</i>	
2. The requirements for transport are	The Supplier is responsible for transporting the goods to site. The Supplier takes responsibility of the goods while in transit i.e. insurances etc.	
3. The delivery place is	Various Power Stations and ERI Construction Services Sites	
4. Actions of the Parties during supply	Action	Party which does it
	Drafting of an Inspection Test Plan (ITP)	Supplier
	Acceptance of the ITP	Employer/ Purchaser
	Inspections to be followed and witnessed as per the ITP	Supplier/ Employer/ Purchaser
	Pre-Delivery Inspection	Supplier/ Employer/ Purchaser
	Pre-Release Inspection	Supplier/ Employer/ Purchaser
	Giving notice of Delivery	Supplier
	Checking packing and marking before dispatch	Supplier/ Employer/ Purchaser
	Contracting for transport	Supplier
	Pay costs of transport	Supplier
	Arrange access to delivery place	Purchaser
	Loading the <i>goods</i>	Supplier
	Off-loading the <i>goods</i>	Supplier
5. Information to be provided by the Supplier	Title of document	
	Packing lists for cases and their contents	
	Copy of invoice for the <i>goods</i>	
	Delivery Note	
	All test results and quality documentation and reports – Data Books	

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

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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. The Supplier must obtain its own advice.

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

To supply contracts, the only insurance provided by Eskom (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* (Eskom).

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 consider 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.

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_From_1_April_2014_To_31_March_2015.aspx

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C1.2 Contract Data

Part two - Data provided by the *Supplier*

Notes to a tendering Supplier:

1. Please read both the NEC3 Supply Contract (SC3)³ and the relevant parts of its Guidance Notes (SC3-GN)⁴ 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.

Clause	Statement	Data
10.1	The <i>Supplier</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The Goods Information is in:	
11.2(11)	The tendered total of the Prices is	
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	
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	

³ April 2013 Edition as stated by *Purchaser* in Contract Data part 1.

⁴ Available from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902, or www.ecs.co.za

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Part 2: Pricing Data

NEC3 Supply Contract

Document reference	Title	No of pages
	This Cover Page	
C2.1	Pricing assumptions	
C2.2	The <i>price schedule</i>	

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C2.1 Pricing assumptions

How goods and services are priced and assessed for payment

Clause 11 in NEC3 Supply Contract, (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>. <p>Any tax which the law requires the <i>Purchaser</i> to pay to the <i>Supplier</i> is included in the amount due.</p>

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*

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 this contract.

It will be assumed that the tendering Supplier has

- Read Pages 8, 11, 12 and Appendix 5 of the SC3 Guidance Notes before preparing the *price schedule*.
- Included in his Prices and rates for correction of Defects (core clause 43.1) as there is no

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- compensation event for this unless the Defect is due to a *Supplier's* risk.
- All inspections and testing are included in the prices
- Spread the cost of doing work he chooses not to list as separate items in the *price schedule* across other Prices and rates to fulfil the obligation to Provide the Goods and Services for the tendered total of the Prices.
- Understood that there is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item 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 per clause 60.1.
- Understood that the *Supplier* does not have to allow in his Prices and rates for matters that may arise because of a compensation event.

Format of the *price schedule*

Entries in the first four columns in the *price schedule* in section C2.2 are made either by the *Purchaser* or the tendering *Supplier*.

If the *Supplier* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tendering *Supplier* enters the amount in the Price column only, the Unit, Quantity and Rate columns being left blank.

If the *Supplier* is to be paid an amount for the item which is the rate for the item multiplied by the quantity completed, the tendering *Supplier* enters the rate which is then multiplied by the Quantity to produce the Price, which is also entered.

If the *Supplier* is to be paid an amount for an item proportional to the length of time for which the *goods* and *services* are provided, a unit of time is stated in the Unit column and the length of time (as a quantity of the stated units of time) is stated in the Quantity column.

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C2.2 the *price schedule*

Description	Unit of Measurement	Qty	Rate	Amount
Equal or Similar to Magnitech FLOODMASTER HP10 1000W/HPS Flood Light and lamp	no	6	R	R
Spigot for Bulkhead light Installation (Stanchion Mounted) Drawing Attached as Annexure A	no	1000	R	R
Spigot for Emergency Bulkhead light installation (Stanchion Mounted) drawing attached as Annexure B	no	500	R	R
Equal or similar to Manitech BAYMASTER range; 600W/HPS High Bay and lamp - Type HH	no	5	R	R
2400 mm x 76 x 2.5 mm Mild Steel Pipe for Bulkhead light installation including Base Plate(Stanchion Mounted) Drawing Attached Annexure C	no	60	R	R
Base Plate for Bulkhead light Instalation (Stanchion Mounted) Drawing Attached - Annexure D	no	2500	R	R
Equal or similar to magnitech CVP range 2X36W/F IP65 and lamps - Type AW	no	20	R	R
2X36W/F IP65 and lamps emergency fitting - Type EAW Zone 2 & 22	no	6	R	R
Equal or Similar to Magnitech FLOODMASTER HP10 150W/HPS, bracket mtd floodlight and lamp - Type FL (Black)	no	35	R	R
Equal or Similar to Magnitech FLOODMASTER HP10 400W/HPS, bracket mtd floodlight and lamp -Type FLA (Black)	no	30	R	R
Equal or similar to Beka Ex BAT 53 series 250W/HPS, floodlight and lamp, Zone 21 - Type FLEP (Black)	no	20	R	R
Equal or Similar to BEKANOVA / High Intensity Discharge (HID) Bulkhead Luminaire series - Emergency enclosed and gasketed, IP65, pendant mounted bulkhead with LED backup, non-maintained 3 hour ni-cad battery, charger,complete with Lamp, photocell, body painted red, 230vac, 50 hz- Type EDM Zone 2 & 22	no	5	R	R
Equal or Similar to Magnitech Maglite 22 - 100W/HPS, pendant mtd bulkhead and lamp - Type D	no	750	R	R

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Equal or Similar to Magnitech Maglite 40 - 100W/HPS, pendant mtd bulkhead and lamp, Zone 2 & 22 - Type DEP	no	6	R	R
Equal or Similar to Magnitech Maglite 22 - 150W/HPS, pendent mtd bulkhead and lamp - Type DV	no	8	R	R
Equal or Similar to Magnitech Maglite 40 - 100W/HPS, bracket mtd bulkhead and lamp - Type B (Wall Mounted Bracket)	no	800	R	R
Equal or Similar to Magnitech Maglite 40 - 150W/HPS, bracket mtd bulkhead and lamp - Type BV	no	60	R	R
Equal or Similar to Magnitech Maglite 40 - 100W/HPS, bracket mtd bulkhead and lamp, Zone 2 & 22 - Type BEP	no	10	R	R
Equal or Similar to Magnitech Maglite 40 - 100W/HPS, stanchion mtd bulkhead and lamp -Type F	no	600	R	R
Equal or Similar to Magnitech Maglite 40 - 100W/HPS, stanchion mtd bulkhead and lamp, Zone 2 & 22 - Type FEP	no	5	R	R
Equal or Similar to Magnitech Maglite 40 - 150W/HPS, stanchion mtd bulkhead and lamp - Type FV	no	30	R	R
Industrial type SSO 230 volt SS 16 A 2P + E Ver.Ind Socket IP 67 6H Equal or similar to (GW66204N) Picture attached as annexure e	no	450	R	R
100 watt high pressure sodium	no	2000	R	R
150 watt high pressure sodium	no	300	R	R
250 watt high pressure sodium	no	0	R	R
400 watt high pressure sodium	no	200	R	R
600 watt high pressure sodium	no	500	R	R
1000 watt high pressure sodium	no	10	R	R
18 watt compact fluorescent	no	50	R	R
36 watt fluorescent	no	200	R	R
20 mm Diameter (four meter lengths)	m	0	R	R
25 mm Diameter (Four meter lengths)	m	0	R	R
32 mm Diameter (Four meter lengths)	m	200	R	R
50 mm Diameter (Four meter lengths)	m	65148	R	R
Equal or Similar to BEKANOVA / High Intensity Discharge (HID) Bulkhead Luminaire series - - Battery packed emergency and lamps - Type EBD	no	500	R	R
Equal or Similar to BEKANOVA / High Intensity Discharge (HID) Bulkhead Luminaire series - Battery packed emergency and lamps - Type EBDEP	no	4	R	R

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Zone 2 & 22				
Equal or Similar to BEKANOVA / High Intensity Discharge (HID) Bulkhead Luminaire series - 100W/HPS Bulkhead bracket mounted emergency enclosed and Gasketed IP65, with Photocell E40 - EBM	no	6	R	R
Equal or Similar to BEKANOVA / High Intensity Discharge (HID) Bulkhead Luminaire series - Battery packed emergency and lamps - EDD	no	550	R	R
Equal or Similar to BEKANOVA / High Intensity Discharge (HID) Bulkhead Luminaire series - Battery packed emergency and lamps - EFD	no	400	R	R
Equal or Similar to Cosine Developments Product type CD-LED EXIT Battery packed Exit and lamps - EX (Exit Light)	no	110	R	R
Equal or Similar to BEKANOVA / High Intensity Discharge (HID) Bulkhead Luminaire series - 100W/HPS Bulkhead bracket mounted emergency enclosed and Gasketed IP65, with Photocell E40 - EFM	no	200	R	R
Galvanised Spring Nut - M10 Long	no	30000	R	R
Galvanised Spring Nut - M6 Long	no	10000	R	R
Galvanised Spring Nut - M8 Long	no	5000	R	R
M10 x 35 mm Galvanised Hex Bolt	no	30000	R	R
M6 x 40 mm Galvanised Hex Bolt	no	25000	R	R
M8 x 40 mm Galvanised Hex Bolt	no	5000	R	R
M10 Galvanised Flat Washer	no	30000	R	R
M6 Galvanised Flat Washer	no	10000	R	R
M8 Galvanised Flat Washer	no	5000	R	R
M10 Galvanised Spring Washer	no	30000	R	R
M6 Galvanised Spring Washer	no	10000	R	R
M8 Galvanised Spring Washer	no	5000	R	R

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M10 Galvanised Square Washer (40 mm x 40 mm x 6 mm)	no	7000	R	R
M12 Galvanised Square Washer (40 mm x 40 mm x 6 mm)	no	0	R	R
Galvanised 52 mm K Clamp	no	40000	R	R
50mm PVC end caps	no	50000	R	R
32mm PVC end caps	no	200	R	R
CCG Base Plate for Poles	no	750	R	R
350mm Steel Cutting disc for cut-off machine	no	500	R	R
pop rivets 4,8mm x 18mm	no	3000	R	R
Explosion actuate nail gun; equal or similar to Hilti DX76	no	8	R	R
Hilti Heads for above	no	12	R	R
Cordless baby grinder equal or similar to hilti	no	2	R	R
Cordless drilling machine equal or similar to hilti	no	4	R	R
20mm hole saws	no	200	R	R
Small gas blow torch	no	40	R	R
gas canister	no	500	R	R
Pole base plates	no	1000	R	R
IN-CAD Battery, Charger, Non-Maintained 3 Hour Rated, 230VAC, 50HZ to fit equal or similar to Equal or Similar to BEKANOVA / High Intensity Discharge (HID) Bulkhead Luminaire series fittings	no	1000	R	R
8mm thread cutting taps	no	50	R	R
drill bits 7.4mm hss steel	no	50	R	R
drill bits 6mm hss steel	no	50	R	R
drill bits 10mm hss steel	no	150	R	R
drill bits 5mm hss steel	no	150	R	R
Equal or similar to: Stanilite - Batten Led - PBLWAC46L_mainsLiTG class: A41CIE flux codes: 45 75 93 95 100Absolute PhotometrySystem power: 38 WLuminaire output: 128.7 lm/WSYSTEM Light flux: 4889 lmLength / Width / Height:1560 mm / 140 mm / 90 mm	no	300	R	R
Emergency Light Fitting Equal or similar to: Stanilite - Batten Led - SBLWEM45LM_emergency &LiTG class: A40CIE flux codes: 45 75 92 100 100Absolute PhotometrySystem power: 3 WLuminaire output: 115.3 lm/WSYSTEM Light flux: 346 lmLength / Width / Height:1260 mm / 140 mm / 90 mm	no	50	R	R

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Electrical Wire Round Surfix 2.5mm 2 Core & Earth	no	1500	R	R
Connector Block's Size 4mm	no	100	R	R
Florescent lights with bulbs	no	100	R	R
B40 light bulb 70W	no	100	R	R
B40 light bulb 100W	no	100	R	R
B40 light bulb 150W	no	50	R	R
25A Day/night switches	no	20	R	R
Earth leakage rating 5 to 63A, 30mA sensitivity (CBI)	no	20	R	R
2 - way switches, 2 x 4	no	10	R	R
2 lever swithes, 2 x 4	no	10	R	R
single lever swithes, 2 x 4	no	10	R	R
20A Ciriut breaker 230V 3KA (CBI)	no	20	R	R
40A Ciriut breaker 230A 3KA (CBI)	no	20	R	R
60W Iron cover portable lights with extension cord	no	20	R	R
50m cable length extension reel for 1000V	no	10	R	R
LED Bulkhead 50WATT MAG44	no	50	R	R
LED Bulkhead 100WATT MAGLED GEN11	no	20	R	R
TOTAL AMOUNT				R

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PART 3: SCOPE OF WORK

Document reference	Title	No of pages
C3.1	This cover page <i>Purchaser's Goods Information</i> Confidentiality Agreement	
	Total number of pages	

C3.1: Purchaser's Goods Information

1 Overview and purpose of the goods and services

1.1 Logistics and Delivery to Site

Pre inspections will be conducted during factory acceptance test. These inspections will be conducted by *Purchaser* quality officer as well as Eskom engineers and quality officers. All the test certificates and other supporting documents related to the cable specifications must be made available. *Supplier* must strictly adhere to Eskom quality management specification.

The *Supplier* must prior to the commencement of deliveries, must provide a safety file for the transport service provider, safety file must include inter alia; medical certificates, drivers licence of driver, competency certificates for the truck crane operator, crane driver, forklift driver and rigger.

- Vehicle roadworthy certificate
- Load test certificates for mobile and/or truck crane to be provided
- Competence certificate to be provided (for all drivers/operators)
- Crane truck and/or mobile crane for delivery to be supplied by the *Supplier* – the crane lifting capacity must be aligned with the goods being delivered.
- Spreader beams and certificate for offloading
- Load test certificates of all cable supplied

The Cable Drums will be Visually Inspected and will be reconciled to the delivery notes and price schedule.

2 Specification and description of the goods

The supply, delivery and offloading of lighting materials and associated consumables must comply with annexures attached to the BOQ and tender Invitation.

All material delivery shall be subject to samples being approved.

2.1 Procedure for submission and acceptance of *Supplier's* design

The Supplier must submit technical data sheets and samples per light fitting and luminaire type to the Purchaser, two weeks before manufacturing commences.

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2.2 Other requirements of the *Supplier's* design

The supply, delivery and offloading of lighting materials and associated consumables must comply with Eskom's specification annexures attached to the BOQ and tender invitation

All materiel delivery shall be subject to samples being approve

2.3 Use of *Supplier's* design

Use of supplier designs are not allowed unless otherwise instructed and approved by the purchaser

2.4 Manufacture & fabrication

The manufacturing must be aligned to the Purchasers technical specifications outlined in the Purchasers goods Information

Manufacturing must be aligned to the Purchasers delivery schedule.

2.5 Factory acceptance testing (FAT)

Not Applicable

2.6 Other tests and inspections and commissioning in place of use

Purchaser will perform visual inspection of the light fittings and luminaires Including consumables for any damages which might have been caused during loading, transportation and off-loading

2.7 Operating manuals and maintenance schedules

- Technical data sheets
- AIA certificates as and when required by the purchaser

3 Supply Requirements

The Supply requirements for this contract are in Annexure A to the Contract Data provided by the *Purchaser*.

4 Specification of the *services* to be provided

As per clause 40.3 the Supplier must submit an Inspection and Test Plan (ITP), five days after the contract starting date, for the Purchaser's approval

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5 Constraints on how the *Supplier* Provides the Goods

5.1 Programming constraints

Supplier must deliver as per the agreed final delivery schedule which will be negotiated on an as and when required basis

5.2 Work to be done by the Delivery Date

All the Samples of Light fittings and Luminaires must be approved by the Purchaser prior to delivery

As per clause 41.1 the *Supplier* must notify the *Purchaser* that all tests and inspections have been done prior to delivery

5.3 Marking the goods

All marking of light fittings and luminaires must be done prior to delivery, this includes but are not limited to

- Area Classification (Hazardous/ Non-Hazardous zoning)

5.4 Constraints at the delivery place and place of use

Supplier must notify the *Purchaser* a week prior to delivery to site, for the *Purchaser* to arrange permits and access to the project site.

The *Supplier* must provide a safety file for the transport service provider, including details of the Driver and the Vehicle registration number, competencies of the truck and/or mobile cranes, forklifts and riggers, to the *Purchaser*.

5.5 Cooperating with Others

The *Supplier* must fully co-operate with the *Purchaser's* team during off-loading at the project site.

The *Supplier* must fully co-operate with the *Purchaser's* team during testing and inspection, the *Purchaser's* team will comprise of the following.

- ERI/ESKOM Engineers
- ERI/ESKOM Quality Inspectors
- ERI Technical Manager
- ERI Project Manager

5.6 Services & other things to be provided by the *Purchaser* or *Supplier*

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The Supplier must provide, truck and/or mobile cranes, forklifts and riggers for the loading of the Light Fitting and luminaires including consumables at the Supplier's premises.

The Supplier must provide, truck and/or mobile cranes, forklifts and riggers for the off-loading of the Light Fitting and luminaires including consumables at the Purchasers stores yard at the project site.

5.7 Management meetings

Meetings of a general nature will be convened and chaired by the *Supply Manager* as follows:

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	Bi-Weekly	<i>Purchaser's</i> Offices at the Kusile Power Station	<i>Purchaser, Supplier</i>
Overall contract progress and feedback	Weekly	<i>Purchaser's</i> Offices at the Kusile Power Station	<i>Purchaser, Supplier</i>

Meetings of a specialist nature may be convened as specified elsewhere in this Goods Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the manufacture of the *goods*. Records of these meetings shall be submitted to the *Supply Manager* by the person convening the meeting within five days of the meeting.

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

5.8 Documentation control

All documentation from the *Supplier* must be provided in hard copy and must also be emailed to the *Service Manager*, as per the communication process agreed after contract award:

5.9 Health and safety risk management

The Supplier shall comply with the health and safety requirements contained in the ESKOM Form 74 specification

5.10 Environmental constraints and management

The Supplier shall comply with the health and safety requirements contained in the ESKOM Form 74 specification

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5.11 Quality

Supplier must comply with QM58.

5.12 Invoicing and payment

It is the responsibility of the *Supplier* to ensure that the invoices are sent electronically to Accounts Payable at invoiceserilocal85@eskom.co.za, and a copy must also be sent to the *Purchaser's* Commercial Department at the Kusile Power Station

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 4330196330
- 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.
- (add other as required)
- Kindly ensure that the following appear on all invoices:
 - a) Eskom Rotek Industries SOC Ltd
 - b) Registration No. 1990/006897/30
 - c) VAT number: 4330196330
 - d) Purchase order number – tax invoices without the correct purchase order number will be rejected
 - e) Physical address: per Power Station
 - f) Postal address: PO Box 40698
Cleveland
2022
Lower Germiston Road
Rosherville
Johannesburg
 - g) Telephone number – 011 629 4000

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5.13 Insurance provided by the *Purchaser*

Refer to Annexure B – Insurance to be provided by the *Purchaser*

5.14 Contract change management

Clause 6 – Compensation Events of the NEC3 Supply Contract will apply to all changes in this contract.

5.15 Provision of bonds and guarantees

Not applicable

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

All records and quality documentation must be provided in hard copy and must be electronically emailed to the *Supply manager*

6 Procurement

6.1 Subcontracting

6.1.1 Preferred subcontractors

Not applicable

6.1.2 Limitations on subcontracting

- The *Supplier* must align to sub-clause 24.2 of the Supply Contract.
- Declaration certificate for local production and content

6.1.3 Spares and consumables

Not applicable

6.1.4 Other requirements related to procurement

Supplier must obtain a Letter of Authority (LOA) from the National Regulator for Compulsory Specifications (NRCS) for the supply, deliver and off-loading of all Light Fittings and Luminaires including consumables manufacturer the Supplier will be use

7 List of drawings

7.1 Drawings issued by the *Purchaser*

- Type BE
- Type EBD & EFD
- Type DEP Zone 2

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- Type DEP Zone 22
- Type EBDEP Zone 2
- Type EBDEP zone 22
- Type EBM
- Type EDD
- Type EDM
- Type EFM
- Type AW
- Type EAW
- Type FLEP
- Type B _ F _ FD _ G _ BEP _ FEP
- Type B & D & F
- Type BV _ FV _ GV _ BVEP _ FVEP
- Type D
- Type BDDEP
- Type DV
- Type EBD
- Type EX
- Type FL
- Type FLA
- Type FLB
- Type H
- Type HH
- Type SL

7.2 Specifications applicable to Light Fittings and Consumables

- 203-335 Rev 2 Lighting and Small Power Installation
- SANS 475
- SANS 890-1
- SANS 10114-2 2020 ED 2
- SANS 10142-1 2021 ED 3 AM 1

SUPPLIER DEVELOPMENT, LOCALISATION AND INDUSTRIALISATION TARGETS**1. OBJECTIVE CRITERIA - Local Content and Local-to-site beneficiation**

ERI is using this procurement opportunity to promote socio-economic transformation, empowerment of small enterprises, rural and township enterprises, designated groups and promotion of local industrial development. It is against this background, therefore that ERI reserves the right to award the contract to a supplier that commits to Transformation B-BBEE Improvement or Retention Plan, Enterprise and Supplier Development, Skills Development, Job Creation and Socio-Economic Development in favour of beneficiaries residing within the Local Municipalities where the service will be consumed.

1.1. Supplier Development & Localisation Matrix

The SDL&I Matrix is not an evaluation criterion, however Imperial Cable & Lighting (Pty) Ltd is under obligation to submit proposals before it is eligible for award in accordance with Section 2 (1) (f) of the Preferential Procurement Policy Framework Act (PPPFA).

1.2. Transformation — BBBEE Retention or Improvement Plan

Transformation remains an area of focus, where ERI continuously strives to align itself with national transformation imperatives to unlock growth, drive industrialisation, create employment and contribute to skills development.

ERI encourages its suppliers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard, ERI also requests that Respondents submit B-BBEE improvement plan.

Respondents are therefore requested to indicate the extent to which they will maintain (only if the Respondent is a Level 1) or improve their B-BBEE status over the contract period. Respondents are requested to submit their B-BBEE Improvement Plan as an essential document with their bid.

Respondents with a B-BBEE recognition status of Level 5 to Level 8 or non-compliant, shall migrate and achieve as a non-negotiable a milestone of Level 4 by the end of the first year of the contract and thereafter improve at least one B-BBEE Level higher of each year from the second year of the contract.

1.3. Enterprise and Supplier Development (ESD)

In order to increase the number of designated groups in this sector, Imperial Cable & Lighting (Pty) Ltd shall sub-contract 30% of the contract an Exempted Micro Enterprise (EME) which is

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wholly owned, managed and controlled by black people living in rural or underdeveloped areas or townships. Every subcontracting shall be accompanied by the Enterprise and Supplier Development (ESD) plan aligned to the relevant code of the Department of Trade Industry and Competition's Codes of Good Practice as amended and must answer the following two key questions:

- i. What is being done to enhance the financial capacity of beneficiary? and
- ii. What is being done to improve the operational capacity of beneficiary

Subcontracting will be limited to designated groups located within the local municipality where the service will be consumed. Local to site areas are defined per Table 2, Priority will be given to beneficiaries under Level 1 per Business Unit below.

Table 2: Local to site classification

Business Unit	Level 1	Level 2	Level 3
Kusile GCD	Nkangala DM and BHS	Nkangala DM and BHS	Mpumalanga and BHS
Kusile Gx	Balmoral, Ogies, Phola and BHS	Emalahleni LM and Victor Khanye LM	Mpumalanga
Kendal	Ogies, Phola, Wilge and Delmas	Emalahleni LM and Victor Khanye LM	Mpumalanga
Kriel	Kriel Rietspruit and Leandra	Emalahleni LM, Bethal, Leandra	Mpumalanga
Matla	Kriel and Leandra	Emalahleni LM, Bethel, Leandra	Mpumalanga
Tutuka	Lekwa LM	Gert Sibande DM	Mpumalanga
Grootvlei	Dipaleseng LC, Villiers	Gert Sibande DM, Villiers	Mpumalanga and Villiers
Duvha	eMalahleni	Nkangala DM	Mpumalanga
Komati	Middelburg, Koornfontein, Blinkpan, Bank Colliery, Brey farm	Emalahleni, Middelburg	Mpumalanga
Hendrina	Pullenshope, Hendrina, Kwazamokuhle, Middelburg	Nkangala DM	Mpumalanga
Arnot	Kwazamokuhle, Belfast, Middelburg, Rietkuil, Machadadorp	Nkangala DM	Mpumalanga
Camden	Msukaligwa LM	Gert Sibande DM	Mpumalanga
Majuba	Dr Pixley Ka Isika Seme LM	Gert Sibande DM	Mpumalanga
Dx MOU Emalahleni	Sector areas	Nkangala DM	Mpumalanga

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Zone			
Dx MOU Ermelo Zone	Sector areas	Gert Sibande DM	Mpumalanga
Dx MOU - Mbombela Zone	Sector areas	Ehlanzeni DM	Mpumalanga
Lethabo	Sector areas	Sedibeng DM and Fezile Dabi DM	Gauteng and Free State
Medupi/ Matimba	Sector areas	Waterberg DM	Limpopo
Rosherville	City of Johannesburg	Johannesburg Metro	Gauteng

3.3.1. Pre-requisites for an Enterprise Development Plan:

Eskom concluded Enterprise Development (ED) agreements with various designated groups interested in accessing procurement opportunities within the related supply of lighting and consumables sector at various sites. Imperial Cable & Lighting (Pty) Ltd shall develop assigned ED beneficiaries on behalf of Eskom. Imperial Cable & Lighting (Pty) Ltd may not own a stake or shares (strictly 0% shareholding) in the assigned Eskom ED beneficiary, either directly or through a flow through or modified principles calculation. The Eskom assigned ED beneficiary that qualifies for development shall:

- i. Be a legal entity registered with National Treasury's Central Supplier Database.
- ii. Reside or located within Eskom's areas of operation classified as Local to Site; and
- iii. Wholly Black Owned, controlled and managed, classified as an Exempted Micro-Enterprise (EME)

3.3.2. Requirements for the ED program:

Imperial Cable & Lighting (Pty) Ltd will conduct a needs analysis on the assigned Eskom ED beneficiary to identify developmental areas. This will be followed by the formulation of a development program with milestones aimed at eliminating identified gaps. Imperial Cable & Lighting (Pty) Ltd will then develop a schedule of activities to address the identified developmental areas.

Imperial Cable & Lighting (Pty) Ltd will also allocate resources for development of the Eskom ED beneficiary and assign an ED champion. The ED champion will be suitably qualified and experienced to monitor progress and complete portfolio of proof for activities for submission to Eskom within agreed timelines. Imperial Cable & Lighting (Pty) Ltd shall comply with at least five requirements from the list below:

1. Management and labour skills transfer.

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2. Shorter payment terms less than 14 days.
3. Guarantee(s) provided on behalf of a beneficiary entity.
4. Interest-free loan with no security requirements.
5. Establishment of administrative systems.
6. Establishment of cost controls systems.
7. Planning, tendering and programming skills transfer.
8. Business skills transfer with emphasis on entrepreneurial and negotiation skills.
9. Technical skills transfer with emphasis on innovation.
10. Legal compliance.
11. Procurement skills transfer.
12. Establish credit rating/ history.
13. Establish financial loan capacity/ history.
14. Contractual knowledge transfer

3.3.3. Process of monitoring and reporting related to the ESD program:

The Eskom assigned representative shall:

- Ensure that all the pre-requisites for an ED relationship have been met over the agreed timelines of the contract to recognize the ED Program.
- Ensure that the ED Program complies with the requirements; and
- Interview and inspect any relevant documentation including premises for the ED beneficiary and selected staff to verify ED Program compliance to contractual SDL&I commitments.

1.4 Skills Development

Considering the overall budget, duration of the contract, opportunities for growth in this industry and the industry's annual contribution to skills development levies, Imperial Cable & Lighting (Pty) Ltd is obliged to develop skills through a bursary offer valued at R80 000.00 per ERI assigned student at a registered and accredited South African university.

The skills development initiative will not be part of the weighting criteria however as a condition for contract award, Imperial Cable & Lighting (Pty) Ltd shall offer a bursary valued at R80 000 to an ERI assigned beneficiary at a registered and accredited South African university, for every R4.8 million invoiced of the cumulative contract amount

Training of candidates

Imperial Cable & Lighting (Pty) Ltd shall offer a university bursary in favour of an ERI assigned student for every R4.8 million invoiced of the cumulative contract amount. The skills development

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commitment shall be carried out within one month of reaching or exceeding the R4.8 million threshold.

Reporting

At task order stage imperial Cable & Lighting (Pty) Ltd will be required to submit a plan to ERI for approval as part of the implementation schedule, which sets out the following in detail:

- Details of South African university including year of study and full-time programme.

1.5. Job Creation

To be completed by the tenderer

Number of jobs to be <u>created</u> as a direct result of this contract	4
Number of jobs to be <u>retained</u> as a direct result of this contract	5

- Imperial Cable & Lighting (Pty) Ltd must indicate in the table above the number of jobs to be created and/or retained as a direct result of this contract.
- The expectation will be that Imperial Cable & Lighting (Pty) Ltd has a core team. which will be made up of specialised skills that may not be sourced in the areas surrounding the site. It will be required that at least 50% of all semi-skilled and 100% of all unskilled labour that will be utilised in executing the works, will be within Local Municipality where the service will be consumed

1.6. Socio Economic Development

Imperial Cable & Lighting (Pty) Ltd shall spend 1% of the contract amount to fund the Corporate Social Investment initiative(s) aimed at empowering black communities as identified or assigned by ERI.

2. Monitoring and reporting of SDL&I commitments

- Imperial Cable & Lighting (Pty) Ltd shall on a quarterly basis submit a report to ERI in accordance with the SDL&I Data Collection Template on its compliance with the SDL&I obligations.
- ERI shall review the quarterly report submitted by Imperial Cable & Lighting (Pty) Ltd within 60 (sixty) days of receipt of the reports and notify Imperial Cable & Lighting (Pty) Ltd in writing if its SDL&I obligations have not been met.
- upon notification by ERI that Imperial Cable & Lighting (Pty) Ltd has not met its SDL&I obligations, Imperial Cable & Lighting (Pty) Ltd shall be required to implement corrective measures to meet

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those SDL&I obligations before the commencement of the following quarter, failing which the SDL&I penalty clause shall be invoked.

3. SDL&I Penalty

At the end of each quarter, ERI will apply a penalty of 2.5% of the invoiced amount excluding VAT for Imperial Cable & Lighting (Pty) Ltd failure to meet SDL&I obligations during that period.

Every contract shall be accompanied by the SDL&I implementation schedule which must be completed by Imperial Cable & Lighting (Pty) Ltd and returned to the SDL&I representative for acceptance **before** contract award. This will be used as a reference document for monitoring, measuring and reporting on Imperial Cable & Lighting (Pty) Ltd progress in delivering on their stated SDL&I commitments.

Signed

Date

Name

Position

Company

Name

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ('Agreement') is entered into between the *Purchaser* and the *Supplier*.

WHEREAS the *Purchaser* and the *Supplier* (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 the Subject Information each party receives (the 'Receiving Party') from the other party (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.
4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.

5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.
6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes and other writings prepared by the parties, or their advisors, based on the Subject Information of each other, shall be destroyed, and such destruction shall be certified in writing by an authorised officer supervising such destruction.
7. If a party, with the written consent of the Proprietor of Subject Information, discloses any Subject Information received from its Proprietor to any third party, it shall do so only under a secrecy agreement having a scope like and which is consistent with this Agreement, and the disclosing party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party
8. Each party agrees that it shall not, while and for so long as it is obligated to maintain Subject Information in secrecy, use for its own benefit, or for the benefit of others or exploit, commercialise, develop, test promote, sell, lease, market or otherwise dispose of any products or services using, incorporating or relying on Subject Information received from its Proprietor without the written consent of the Proprietor.
9. The obligations of the party receiving Subject Information pursuant to this Agreement shall be effective with respect of each item of Subject Information for a term of five (5) years from the date of submission of the Subject Information to the Receiving Party by its Proprietor, unless the Proprietor agrees otherwise in writing.
10. For purposes of this Agreement, each party shall include (to the extent applicable) the officers, directors, employees, agents, representatives, attorneys, joint ventures, partnerships, affiliates,

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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.