

NEC3 TERM SERVICE Contract (TSC3)

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

and

for Provision for the maintenance and repair of all
Komati Water Scheme Medium Voltage Motors for a
period of five years, on an as and when required
basis.

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CONTRACT No.

PART C1: AGREEMENTS & CONTRACT DATA

Contents:	No of pages
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[to be inserted from Returnable Documents at award stage]	
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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:

Provision for the maintenance and repair of all Komati Water Scheme Medium Voltage Motors for a period of five years, on an as and when required basis.

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 authorized, 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	
	Value Added Tax @ 15% is	
	The offered total of the amount due inclusive of VAT is ¹	

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:

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*.

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

Sizo Myeni

BMS General Manager

Eskom RoteK Industries SOC Limited
Lower Germiston Road
Rosherville
Johannesburg
2022

Name &
signature of
witness

Date

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

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	N/A	N/A

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:

Signature _____

Name _____

Capacity _____

On behalf of _____

Name & signature of witness _____

Date _____

For the Purchaser

Kefentse Letsoko
Bulk Water Handling Project Manager

Eskom RoteK Industries SOC Limited
Lower Germiston Road
Rosherville
Johannesburg
2022

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	
		A Priced contract with price list W1 Dispute resolution procedure X1: Price adjustment for inflation X2 Changes in the law X7 Delay Damages X17 Low performance damages X18 Limitation of liability X19 Task Order Z: <i>Additional conditions of contract</i>
	of the NEC3 Supply Contract (April 2013) ²	(If the December 2009 edition is to be used delete April 2013 and replace by December 2013)
10.1	The <i>Purchaser</i> is (name):	Kefentse Letsoko
	Address	Eskom RoteK Industries SOC Ltd Roshland Office Park Lower Germiston Road Rosherville
	Tel No.	013 297 1100
	Fax No.	086 668 6030
10.1	The <i>Service Manager</i> is (name):	<u>Name: Kefentse Letsoko</u> <u>Job: Project Manager</u> <u>Qualifications: National Diploma (Mechanical)</u> <u>Responsibilities: Operations & Maintenance</u> <u>Experience: 23 years in Water Scheme</u>

² Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902, www.ecs.co.za.

11.2(13)	The <i>goods</i> are	Medium Voltage Motors	
11.2(13)	The <i>services</i> are	Provision for the maintenance and repair of all Komati Water Scheme Medium Voltage Motors for a period of four years, on an as and when required basis.	
11.2(14)	The following matters will be included in the Risk Register	Any other matter posing a risk to the contract will be discussed amongst the Parties and agreed upon before inserted on the Risk Register.	
11.2(15)	The Goods Information is in	Part 3: Scope of Work and all documents	
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	- SHEQ related communication – Immediately - Any other general communication 2 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	01 September 2024	
30.2	The <i>End/Completion Date</i> :	31 August 2029	
30.3	The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is:	<i>goods and services</i>	<i>delivery date</i>
		As per task order	as stated in the task order
31.1	The <i>Supplier</i> is to submit a first program for acceptance within	5 Days for acceptance	
32.2	The <i>Supplier</i> submits revised programs at intervals no longer than	1 (One) Week	

4	Testing and defects	A supplier will be required to produce and submit a report stating the testing and defects. Employer will therefore do assessment on the motor and approve the tests and the defects identified before any work can commence on the motor.	
40.1	Tests and Inspections	Apply to tests and inspections required by the Service Information or the applicable law. Employer Representative to be present in the stated hold points and will be required to approve or sign off if satisfied with the results	
40.3		Hold Points	Notification time
		Tan delta test	3 days before the scheduled date of the test
		Factory Test for motor approval	3 days before the scheduled date of the test
40.4		If test or inspection shows that any work has a defect, the Contractor repeats the work if possible and the test or inspection is repeated	
41.1	Testing and Inspection before delivery	The Contractor does not deliver the Plant (Motor) which the service information states are to be tested or inspected before delivery until the Service Manager has notified the Contractor that they have passed the test or inspection.	
42	The defects completion date is:	12 weeks after defect acknowledgement	
42.2	The defect correction period is	Within 48 hours after notifying of such defect	
	except that the defect correction period for	N/A	
	and the defect correction period for	N/A	
42.3	The defects access period is	Immediately	
	except that the defect access period for	N/A	
	and the defect access period for	N/A	
5	Payment		
50.1	The assessment interval is	Between the 25 th day of each successive month.	
51.1	The currency of this contract is the	South African Rand	
51.2	The period within which payments are made is	As per Eskom's Standard Payment period.	

51.4	The <i>interest rate</i> is	the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and (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.
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.
7	Title	Provision for the maintenance and repair of all Komati Water Scheme Medium Voltage Motors for a period of four years, on an as and when required basis.

8 Risks, liabilities, indemnities, and insurance

80.1	These are additional <i>Purchaser's</i> risks	1. Site Access due to Industrial Action 2. Flooding of low-level bridges
84.	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 Data 1. Insurance against Cover / indemnity is Loss of or damage to the <i>goods</i>, plant and materials. 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 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.
84.1	The <i>Supplier</i> provides these additional insurances	See notes in Annexure B
84.2	The minimum amount of cover for loss of or damage to any plant and materials provided by the <i>Purchaser</i> is:	R 0.00
84.3	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:	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. 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 • 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 for any one occurrence or series of occurrences arising out of one event but

	unlimited during the period of insurance.
84.4 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) and for all other existing <i>Purchaser's</i> property the highest applicable deductible (first amount payable) namely: • 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 See notes in Annexure B

9 Termination

90.1 Contract Termination	If either party wishes to terminate the Contractor's obligation to provide the service, he notifies the Service Manager and the other party giving details of his reason for the termination. The Service manager will therefore issue a termination certificate to both parties promptly if the reasons comply with the contract.
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W1 Dispute Resolution

Any dispute arising under or in connection with this contract is referred to and decided by the **Adjudicator**.

W1.2 *Adjudicator*

Will act impartially and decides the dispute as an independent adjudicator and not an arbitrator

W1.2(3) The *Adjudicator nominating body*:

Chooses an Adjudicator if the Adjudicator was not identified in the Contract Data or if Adjudicator resigns or unable to act or if the Parties have not chosen an Adjudicator.

W1.4 (5) The *tribunal* is:

arbitration

W1.4(5) The *arbitration procedure* is

the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.

W1.4(5) The place where arbitration is to be held is

Johannesburg South Africa

The person or organization 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.

10 Data for Option clauses
X1 Price adjustment for inflation

X1.1 The *base date* for indices is

March 2023

The proportions used to calculate the Price Adjustment Factor are

Description	Contribution Portion	Applicable Table
Materials	85%	SEIFSA Electrical Engineering Table
Fixed Portion (non-adjustable)	15%	

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X2. A change in the law

X2.1 A change in law of the country (South Africa)

Is a compensation event if it occurs after the Contract Date

X 7 Delay Damages

X7.1 Delay damages for repairs and Delivery are

Delivery and motor repairs
Delivery of motor to site

amount per day
0.1% of the value of plant service amount or of the component per day,

X17	Low performance damages	Will be as stated on the table under Z11
X17.1	Rework, poor work quality	100% of the initially charged price
X18	Limitation of Liability	
X18.3	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:	100% of each spare/part price
X18.4	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	100% of each spare/part price
X18.5	The <i>end of liability date</i> is	12 months from the service/commissioning date
Z	The additional conditions of contract are	Z1 to Z12 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 as a result 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 organizations then these persons or organizations 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 organizations 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 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*.
The *Supplier* is required to submit its BBBEE status, valid tax clearance certificate (SARS) with supporting documentation yearly (every 12 months), notwithstanding changes to its BBBEE changes outside of the period
- 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.
- Z3.5 Failure by the *Supplier* to notify changes to its BBBEE status, valid Tax clearance certificate (SARS) and submit meticulous records (revised certificate, etc) the *Purchaser* may block the *Supplier* and no payment of invoices will be affected until such time as the supplier submits the amended BBBEE documentation to validate its status/standing

Z4 Ethics

- Z4.1 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).
- Z4.2 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 organizations) 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 organizations 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.
- Z4.3 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.

Confidentiality

Z5

- Z5.1 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.

- Z5.2 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*.
- Z5.3 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.
- Z5.4 The taking of images (whether photographs, video footage or otherwise) of the *goods* or any portion thereof, in the course of 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*.
- Z5.5 The *Supplier* ensures that all his subcontractors abide by the undertakings in this clause.

Z6 Waiver and estoppel: Add to core clause 12.3:

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

Z7 Health, safety and the environment: Add to core clause 25.4

- Z7.1 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*.

Without limitation the *Supplier*:

- Warrants that the total of the Prices as at the Contract Date includes a sufficient amount 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.
- 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.

- Z7.2 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.

Z8 Provision of a Tax Invoice and interest. Add to core clause 51

- Z8.1 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.

Z8.2 If the Contractor does not provide a tax invoice in the form and by the time required by this contract, the time by when the Employer is to make a payment is extended to the following invoicing month without attracting any interest to the Employer nor. The Contractor will ensure that operations are not impacted nor effected its failure to submit valid and correct tax invoices on time.

Z8.3 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 4330196330 on each invoice he submits for payment.

Z9 Notifying compensation events

Z9.1 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".

Z10 Purchaser's limitation of liability

Z10.1 The *Purchaser's* liability to the *Supplier* for the *Supplier's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z10.2 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.

Z11 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z11.1 or had a business rescue order granted against it.

Z11.2 The contract amount is depleted before the term of the contract is completed.

Z11.3 Should the Contractor be unable to repair/service the motor within the 12 weeks as stipulated in the Low Services Damage Table below, The Employer may exercise its right to terminate the contract without notice.

LOW SERVICES DAMAGE TABLE X17.1

DESCRIPTION	EMPLOYER'S REQUIREMENTS	PENALTY
After the Purchase Order for the repair or repair of a motor has been submitted, the Contractor shall submit a program committing to the delivery of the motor.	Supplier to submit letter within 5 days.	1% of the month assessment will be deducted from day 6 up to a maximum of 10%
Failure to deliver the motor within the stipulated time without notifying of the delays.	Meeting Deadline	1% of the month assessment will be deducted from day after the approved delivery date up to a maximum of 10%

Z12 Addition to secondary Option X7 Delay damages (if applicable in this contract)

- Z12.1 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.
-

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
E	departure	EXW	
F	main carriage unpaid	FCA, FAS, FOB	
C	main carriage paid	CFR, CIF, CPT, CIP	
D	arrival	DAT, DAP, DDP	

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 services in conformity with contract	B1	Payment of the price
A2	Licenses, authorizations, and formalities	B2	Licenses, authorizations, 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

[Should there be a need to amplify any of the published obligations listed above for the chosen INCOTERM, add them here.]

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

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:

[Use these when INCOTERMS do not apply].

1. The requirements for the supply are	Provision for the maintenance and repair of all Komati Water Scheme Medium Voltage Motors for a period of five years, on an as and when required basis.	
2. The requirements for transport are	Transport is to be provided by service provider for the collection and the delivery of a motor.	
3. The delivery place is	Komati Water Scheme Pump Stations where all MV Motors are installed (Vygeboom Pump Station situated in Badplaas, Bosloop Pump Station, situated between Badplaas & Machadodorp, Wintershoek & Nooitgedaght Pump Stations, situated in Carolina)	
4. Actions of the Parties during supply	Action	Party which does it
	Giving notice of Delivery	Supplier
	Checking and marking before dispatch	Supplier
	Contracting for transport	Supplier
	Pay costs of transport	Supplier
	Arrange access to delivery place	Purchaser
	Accommodation Requirements	Supplier
	PPE Requirements	Supplier
For international procurement	Undertake export requirements	Supplier
	Undertake import requirements	Supplier
5. Information to be provided by the Supplier	Title of documents	
	Motor Data Pack (Report)	
	Copy of invoice for the <i>motor repairs</i>	
	Delivery Note	
For international procurement	Licenses, authorizations 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 authorized officials.	

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. The Supplier must obtain its own advice.

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 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 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.

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](#)

C1.2 Contract Data

Part two - Data provided by the Supplier

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: Mobile: Fax No:	
11.2(8)	<i>Direct fee percentage</i>	
	<i>Subcontracted fee percentage added to the Defined Cost is</i>	
11.2(11)	The tendered total of the Prices is	
11.2(12)	The <i>price schedule</i> is in:	The document called 'Price Schedule' in Part 2 of this contract.
11.2(14)	The following matters will be included in the Risk Register	Any other matter posing a risk to the contract will be discussed amongst the Parties and agreed upon before inserted on the Risk Register
		Lifting of equipment Crane driver must have a valid crane license. Stay away from suspended load & use of inspected Slings and lifting shackles.
24.1	The key people are: Name: Job: Responsibilities: Qualifications: Experience: Email: Contract number:	

25.2	The restrictions to access for the <i>Supply Manager</i> and Others to work being done for this contract are	Supplier to produce police clearance before gaining access in the Supply Manager's premises as this an National Key Point requirement, that every person visiting the pump station must submit the police clearance certificate. Supplier not to work alone, must always have someone to work with who is provided by the Supply Manager & wear required PPE on site
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30.1	The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is:	<i>goods and services</i>	<i>delivery date</i>
		Motor repairs	As per task order

⁴ Either April 2013 or December 2009 Edition as stated by *Purchaser* in Contract Data part 1.

⁵ Available from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902, or www.ecs.co.za

PART 2: PRICING DATA

NEC3 Term Service Contract

Document reference	Title	No of pages
C2.1	Pricing assumptions	2
C2.2	The <i>price schedule</i>	4

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
		- 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*

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.

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

- compensation event for this unless the Defect is due to a *Supplier's* risk;
- Spread the cost of doing work he chooses not to list as separate items in the *price schedule* across other Prices and rates in order 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 as a result 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.

C2.2 the *price schedule*

DETAILED SUMMARY OF PRICES

MOTOR REPAIRS CONTRACT

MOTOR	UNIT PRICE	QUANTITY	TOTAL
Wintershoek GEC, 2.49MW 3.3KV		2	
Wintershoek ACTOM, 3MW 3.3KV		4	
Vygeboom ACTOM, 3MW 3.3KV		4	
Bosloop HL ACTOM, 4.2MW 3.3KV		2	
Bosloop HL ACTOM, 3.991MW 3.3KV		2	
Nooitgedaght ALSTOM, 0.83MW 6.6KV		4	
TOTAL			

BILL OF QUANTITIES

Description	WT 2.98MW Motors	WT 3MW Motors	VG 3MW Motors	BL HL 4.2MW Motors	BL HL 3.991MW Motors	NT 0.83MW Motors
Transport						
Collection from site						
Strip & Quote						
Clean motor externally, dismantle and mark all components						
Clean all components and remove all debris from motor, ventilation paths, star point and cable terminal internal boxes						
Conduct Mechanical assessment by inspecting motor frame and noting all defects						
Conduct Electrical assessment by inspecting the stator core, Windings, and stator winding wedges. By inspecting the rotor core for looseness, overheating, loose/cracked rotor & short circuit bars and clamping fingers.						
Perform Stator Winding insulation test						
Perform Stator watt loss test						
Complete Assessment Report						

MOTOR TERMINAL BOXES/LEADS						
Inspect motor terminal bushings for cracks, signs of excessive damage and replace when necessary						
Inspect motor leads for cracks, frays, signs of brittleness and swelling from oil contamination and replace when necessary						
Replace terminal box gaskets/seals. Use cork packing						

Mark motor leads for phasing

SPACE HEATERS						
Inspect and test motor space heaters						
Replace defective heaters						
Replace Space heater terminal box gaskets/seals. Use cork packing						
PT100 MOTOR WINDING TEMPERATURE						
Test PT100 motor winding temperature to design specification						
Replace defective PT100 and wire to winding temperature terminal box						
Replace defective PT100 and wire to winding temperature terminal box						
WHITE METAL BEARINGS DRIVE END & NON-DRIVE END						
Re-metal the bearing,						
Replace all labyrinth seals as per attached drawing, rubber seals and gaskets.						
Shot blast, clean and paint bearing housings						
Fit new oil site glasses with steel cover plate						
Fit new oil scoop bushes						
Fit new breathers						
Fit new locating pins						
Polish bearing journals						
STATOR HOUSING, WINDINGS AND CORE LAMINATIONS						
Inspect, clean and dry stator housing and ensure that the air paths are clean and not contaminated by any foreign						

objects						
Overhaul canopy						
Re-tap all mounting holes on motor and fit new Jacking bolts						
Inspect and repair Drive End and Non- Drive End landings of the end shields						
Shot blast motor covers and paint						
Do full concentricity check, Skim feet, clean and polish spigot						
Inspect and repair stator core laminations for signs of arching, damaged lamination, and insulation failure						
Steam clean and bake Stator then spray with insulating varnish						
If stator winding has failed, burnt, or completely damaged, remove old windings, clean slots, and rewind stator completely						
Conduct IR and PI tests on stator winding						
Conduct stator core flux to determine hot spots on the motor stator core laminations						
MOTOR ROTOR						
Replace rotor bars and rotor short circuit rings						
Rotor bar to bar test						
Spectrum test on Rotor (ELCID)						
NDT Rotor shaft						
Balance rotor						
ASSEMBLE MOTOR						
Assemble motor completely before any mechanical tests, checks and routine testing can						
Measure air gap between stator and rotor						
Mark magnetic centre and add motor weight on the name plate						
ROUTINE TESTS AND REQUIRED TESTS						
Carry out Tan – Delta test on stator						
Ultrasonic testing on white metal bearings						
Conduct no load test at full voltage- full bearing run (65 degrees Max) with temperature, winding temperatures and vibration						



CONTRACT NO. _____

reading (Max 1.5mm/s)						
Factory acceptance test (No oil leaks to be present) and data pack review						
PAINTING OF MOTOR						
Clean and paint the motor						
DELIVER TO SITE						
Deliver motor back to site with new shaft locking device						
TOTAL						

PART 3: SCOPE OF WORK

OBJECTIVES:

The services required are for Provision for the maintenance and repair of all Komati Water Scheme Medium Voltage Motors for a period of four years, on an as and when required basis.

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Service Information</i>	
C3.2	<i>Contractor's Service Information</i>	
	Total number of pages	

Section 1: Description of the works

1.1 BACKGROUND

Komati Water Scheme has four pump stations that supply water to four power station (Arnot, Hendrina, Komati, Duvha) and third parties. This supply of the water is made possible by the infrastructure which involves the MV Motors, pumps, switchgear and pipeline installed in all the pump stations and the servitudes. The MV motors are normally maintained by doing strip & wash services to clean any dust & oil that has accumulated in the windings to prevent them from insulation failure, as well as being rewind when an insulation failure happens. This service is done every 5 years according to the Eskom Standard (document 240 – 56358854) on refurbishment and repair of Power Station motors.

Section 2: Scope

The Supplier shall:

- 2.1.1** The services required are for Provision for the maintenance and repair of all Komati Water Scheme Medium Voltage Motors for a period of four years, on an as and when required basis.
- 2.1.2** Maintain, Repair, deliver that motor to site and provide a copy of a motor data pack (report).

2.2 PERFORMANCE SPECIFICATION

The service provider shall:

- 2.2.1** Ensure 12 weeks turn-around time for the repair or service of motors. The contractor shall perform work as per instructions issued under the Contract containing the scope as per the tender process.
- 2.2.2** The contractor shall ensure adequate supervision and supply suitably qualified and experienced workforce to deliver the service successfully to ERI.
- 2.2.3** Relevant qualifications and training certificates of the Technicians/Engineer and crew members must be accredited and will be required to submit proof thereof.

2.3 PURPOSE

The services required are for the maintenance and repair of all Komati Water Scheme Medium Voltage Motors so that the supply of water to the Power Stations can be made possible without any challenges.

2.4 SD & L

Attached document is the signed copy from the supplier confirming that they will comply with the SD & L requirement as stipulated on Annexure K.

2.5 NORMATIVE/INFORMATIVE REFERENCES

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs and additional site-specific ones.

2.5.1 NORMATIVE

ISO 9001 Quality Management Systems

OSHAS 1800 Safety Management Systems

Occupational Health and Safety Act and Regulations (85 of 1993)

240-62196227_Eskom Life Saving Rules

32-95_Environmental, Occupational Health and safety Incident Management Procedure

2.5.2 INFORMATIVE

Criminal Procedures Act 51 of 1977

National Road Traffic Act 93 of 1996

Labour Relations Act 66 of 1995

Basic Conditions of Employment Act 75 of 1997

2.6 DEFINITIONS

Description	Definition
Appointed Contractor	Means a contractor appointed by the principal contractor.
Baseline Risk Assessment	(32-520) baseline operational risks refer to the health and safety risks associated with all standard processes and routine activities in the business
Contractor (includes appointed contractor)	means an employer as defined in section 1 of the Act who performs contract work and includes principal contractors
Competent Person	(OHS Act) means any person having knowledge, training, experience, and qualifications, specific to work or task being performed, provided that, where appropriate, qualifications and training are registered in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).

Danger/Dangerous	Means a condition/substance that constitutes a risk of personal injury, impairment of health, or death
Employee	(OHS Act) means, subject to the provisions of subsection (2), any person who is employed by or works for an employer and who receives remuneration or who works under the direction or supervision of an employer or any other person.
Employer	(OHS Act) means, subject to the provisions of subsection (2), any person who employs or provides work for any person and remunerates that person or expressly or tacitly undertakes to remunerate him/her, but excludes TES (ex. labour broker) as defined in section 1(1) of the Labour Relations Act.
Lifesaving Rules	(240-62196227) a rule that, if not adhered to, has the potential to cause serious harm to people.
Permit To Work	Means the printed form containing sections entitled application, permits to work, suspension, suspension revocation, clearance and revocation, and used for the authorization of all work to be carried out in terms of these regulations.
Plant	Means structure, machinery, low voltage electrical equipment or equipment which does not fall within the scope of the Operating Regulations for High-voltage Systems, and excludes, mobile, portable lifting equipment, domestic circuits, appliances and tools.
Responsible Person	Means a person who has been authorised in terms of these regulations to be responsible for ensuring that the work is covered by a permit to work can be carried out and executed taking health and safety precautions into account and within the terms of 36-681_Generation Plant Safety Regulation
Safe/Safely/Safety	Means a condition not posing any danger, an activity that can be carried out without danger, or protection against danger.
Shall and Should	The word "shall" is to be understood as mandatory and "should" as recommended.
Skilled Person	Means a person who has been trained, has adequate knowledge for the task at hand and declared competent in writing.
Supervision/Supervise	Means to oversee the actions of a person(s) to such an extent as to prevent any dangerous act, as far as reasonably practicable. Such a supervisor must be trained in risk assessment techniques and be able to understand the dangers / hazards associated with the task and who has the authority to ensure that precautionary measures taken are

	implemented.
Visitor	Any person visiting a workplace with the knowledge of, or under the supervision of, an employer.

Accepted by (or to the satisfaction of) the Project accepted by the Project Manager or Manager, Engineer, or the Architect the Employer

a duty, procedure, decision, or action of an action of the Project Manager or Engineer or the Architect and or the Employer depending on the Superintendent, Eskom's Representative, Site context. Clause 14 of the Core Employer or Clerk of Works Clauses determine what the actions of each are. Either may delegate in terms of Clause 14.2

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 of the Subject Information each party receives (the 'Receiving Party') from the other party (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.
4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.
5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.
6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes and other writings prepared by the parties, or their advisors, based on the Subject

Information of each other, shall be destroyed, and such destruction shall be certified in writing by an 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.