NEC3 Supply Contract (SC3)

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

and

for **Supply, Delivery and Offloading of Electrical and Mechanical Consumables for Microgrids/Solar PV project on an as and when required basis for a duration of 5 years.**

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Contract No:

Documentation prepared by:

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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 a contract for the procurement of:

Supply, Delivery and Offloading of Electrical and Mechanical Consumables for Microgrids/Solar PV project on an as and when required basis for a duration of 5 years.

The tenderer, identified in the Offer signature block, has.

either	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.
or	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 the obligations and liabilities of the *Supplier* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data.

	The offered total of the Prices exclusive of VAT is	**R**
	Value Added Tax @ 15% is	**R**
	The offered total of the amount due inclusive of VAT is[1] **( )**	**R**

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

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 ROTEK 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.

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		**ESKOM ROTEK INDUSTRIES SOC LIMITED**
Name & signature of witness		
Date		

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 *conditions of contract* 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** **X20: Key performance damages** **Z: *Additional conditions of contract***
	of the NEC3 Supply Contract (April 2013)	
10.1	The *Purchaser* 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 *Supply Manager* is (name):	**Promise Mashaba**
	Address	**3 Lower Germiston Road Rosherville Cleveland 2022**
	Tel	**072 875 2785**
	e-mail	**MashabPS@eskom.co.za**
11.2(13)	The *goods* are	**Mechanical Consumables for Microgrids/Solar PV project**
11.2(13)	The *services* are	**Supply, Delivery and Offloading of Electrical and Mechanical Consumables for Microgrids/Solar PV project on an as and when required basis for a duration of 5 years.**

11.2(14)	The following matters will be included in the Risk Register	• **Labour Unrest** • **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 *law of the contract* is the law of	**the Republic of South Africa**
13.1	The *language of this contract* is	**English**
13.3	The *period for reply* is	**5 working days**
2	**The *Supplier's* main responsibilities**	**Data required by this section of the core clauses is provided by the *Supplier* in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.**
3	**Time**	
30.1	The *starting date* is.	**To be confirmed**
30.1	The Supply Period is	**60 months (as and when required basis)**
30.1	The *delivery date* of the *goods* and *service*s is:	***Goods and services*** ***delivery date***
	As and when required	**As per drawdown Purchase Order (PO)** | **As per drawdown Purchase Order (PO)**
30.2	The *Supplier* does not bring the *goods* to the Delivery Place more than one week before the Delivery Date.	
31.1	The *Supplier* is to submit a first programme for acceptance within	**Receiving Draw down Purchase order**
32.2	The *Supplier* submits revised delivery schedule at intervals no longer than	**1 week(s)**
4	**Testing and defects**	
40.1	The *Supplier* submits the following tests and inspections	• **Material certificates** • **Test reports or factory acceptance tests** • **Certificates of approval**

40.2	The *Supplier* will provide; records, datasheets, materials, facilities and samples for all tests and inspections	• **Full product samples required 4 weeks before bulk delivery**
		• **Documentation Package:**
		  ○ **Material certificates**
		  ○ **Test reports (factory acceptance tests)**
		  ○ **NRCS certificates of approval**
		  ○ **ISO 9001 certification of manufacturer**

40.3	The notification period for test and inspections	***Supplier* will notify the *Supply Manager* five**

		days after contract starting date
40.4	Correction of a defect	**Defects will be corrected by the *Supplier* and Clauses 40.1 and 40.2 will apply**
40.6	The costs for the correction of defects will be	**For the *Supplier*'s account – inclusive of delivery and off-loading costs**
41.1	The *Supplier* does not bring the goods to the Delivery Place	**Before inspections and testing.**
42	The *defects date* is	**52 weeks after delivery of goods and services**
43.2	The *defect correction period* is	**2 weeks after delivery of goods and services**
43.2	The *defects access period* is	**1 Week**
45.1	The costs for correcting defects not corrected by the *Supplier*	**Will be for the *Supplier*'s account – inclusive of delivery and off-loading costs**
5	**Payment**	
50.1	The *assessment interval* is	**Between the 25th 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**	**60 Days from the issued of invoice**
51.4	The *interest rate* 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 *mutatis mutandis* 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**	**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 *Purchaser's* risks	**Not Applicable**
84.1	The *Supplier* provides these insurances from the Insurance Table	**See notes about *Purchaser* provided insurance in Annexure B to this Contract Data**
	1. Insurance against	**Loss of or damage to the *goods*, plant, and materials.**
	2.The deductibles are	**See notes in data for clause 88.2 below and Annexure B**
84.1	The *Supplier* 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 *goods*, plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the *Supplier*) caused by activity in connection with this contract for any one event is:	**Whatever the *Supplier* deems necessary in addition to that provided by the *Purchaser* for any one event with cross liability so that the insurance applies to the Parties separately.** **However, if the *Supplier* is exposed to damage to the *Purchaser*'s 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 *Purchaser*'s property** **for any one occurrence or series of occurrences arising out of one event but unlimited during the period of insurance.**
84.2	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Supplier* 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 *Contractor's* 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 *Supplier's* liability to the *Purchaser* for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to	**(Zero Rand)**
88.2	For any one event, the *Supplier's* liability to the *Purchaser* for loss of or damage to the *Purchaser's* property is limited to	**(1) for the *Purchaser's* existing and surrounding property in the care, custody, and control of the *Supplier* 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** **(2) for all other existing *Purchaser's* 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.** • **R1 million (one million Rand) for Distribution Division and all other *Purchaser*'s property** **See notes in Annexure B**
9	**Termination and dispute resolution**	
94.1	The *Adjudicator* 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 *Adjudicator nominating body* 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 *tribunal* is:	**Arbitration**
94.4(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.**
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 - 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	To be confirmed	
	The proportions used to calculate the Price Adjustment Factor are: **Prices are fixed and firm for the first 12 months (Month prior to tender closing**		
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 Draw down Purchase order	**0.1% per day up to 10% of the contract PO value**
X20	Key Performance Indicators (KPIs)		
X20.1	KPIs is in	**Quarterly customer satisfactory surveys**	
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 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*.

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.

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 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, 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 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 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 *Supplier* provides the insurances stated in the Insurance Table A for events which are at the *Supplier*'s risk from the *starting date* until the last *defects date* or a termination certificate has been issued.

INSURANCE TABLE A

Insurance against	**Minimum amount of cover or minimum limit of indemnity**
Loss of or damage to the *goods*, plant, and materials	The replacement cost where not covered by the *Purchaser*'s insurance. The *Purchaser*'s policy deductible as at Contract Date, where covered by the *Purchaser*'s insurance.
Liability for loss of or damage to property (except the *goods*, plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the *Supplier*) caused by activity in connection with this contract	**Loss of or damage to property** *Purchaser*'s property The replacement cost where not covered by the *Purchaser*'s insurance. The *Purchaser*'s policy deductible as at Contract Date, where covered by the *Purchaser*'s insurance. Other property The replacement cost **Death of or bodily injury** The amount required by the applicable law.
Liability for death of or bodily injury to employees of the *Supplier* arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law

Z 13.2 **Replace core clause 87 with the following:**

Insurance by the *Purchaser* 87

87.1 The *Purchaser* provides the insurances stated in the Insurance Table B

INSURANCE TABLE B

Insurance against or name of policy	Minimum amount of cover or minimur 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 *Purchaser* 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 *Purchaser* is solely responsible for and indemnifies the *Supplier* or any other person against any and all liabilities which the *Supplier* 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 *Supplier* or any other person or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.

Z14.3 Subject to clause Z14.4 below, the *Purchaser* 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 *Supplier* or any other person, or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.

Z14.4 The *Purchaser* 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 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 ccompliance 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 ooccupational exposure limit.
Parallel Measurements	means mmeasurements 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 *Purchaser*'s Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
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 *Purchaser* ensures that the Ambient Air in the area where the *Supplier* 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 *Supplier*, the *Purchaser* 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 *Supplier* may perform Parallel Measurements and related control measures at the *Supplier*'s expense. For the purposes of compliance, 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 *Purchaser* 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 in order to declare the area safe.

Z15.5 The *Supplier*'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 *Supplier* 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.

Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Purchaser* at the *Purchaser*'s expense, and conducted in line with South African legislation.

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 2010[2] as follows:

Group	Category	Term	Delivery Place
D	arrival	DCI – Delivery Costs Included	Various Stations

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 *Supplier*'s obligations	B	The *Purchaser*'s 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

2.1 The Supply Requirements for this contract are as follows:

[Use these when INCOTERMS do not apply].

1. The requirements for the supply are	*Supplier* adheres to QM58 specification attached	
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 Stations	
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 *goods*	Supplier
	Off-loading the *goods*	Supplier
5. Information to be provided by the *Supplier*	**Title of document**	
	Material certificates	
	Test reports (factory acceptance tests)	
	NRCS certificates of approval	
	ISO 9001 certification of manufacturer	

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 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 must 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

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 *Supplier* is (Name): Address Tel No. Fax No.	
11.2(8)	The Goods Information is in:	**Part C3.1: Purchaser's Goods Information**
11.2(11)	The tendered total of the Prices is	**R 0-00 exclusive of VAT**
11.2(12)	The *price schedule* is in:	
11.2(14)	The following matters will be included in the Risk Register	
25.2	The restrictions to access for the *Supply Manager* 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 *percentage for overheads and profit* 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

Part 2: Pricing Data

NEC3 Supply Contract

Document reference	Title	Pages
	This Cover Page	23 – 23
C2.1	Pricing assumptions	24 – 25
C2.2	The *price schedule*	26 - 29

C2.1 Pricing assumptions

How *goods* and *service*s 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 *price schedule* 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 *Supplier* has completed, • where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the *Supplier* has completed by the rate, • plus, other amounts to be paid to the *Supplier*, • Less amounts to be paid by or retained from the *Supplier*. Any tax which the law requires the *Purchaser* to pay to the *Supplier* 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 *service*s which can be priced as lump sums or as expected quantities of *goods* and *service*s 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

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 because 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 *service*s 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*

Item	Item Description	Unit	Quantity	Unit Rate (ZAR)	Total (ZAR)
1	**DB Enclosure's**				
1.1	Enclosure Steel 400mmx400mmx200mm with backplate and all backets and mounting accessories	sets	200.00		
1.2	Enclosure Steel 500mmx500mmx250mm with backplate and all backets and mounting accessories	sets	200.00		
1.3	Enclosure Steel 600mmx600mmx300mm with backplate and all backets and mounting accessories	sets	200.00		
1.4	Enclosure Steel 800mmx800mmx320mm with backplate and all backets and mounting accessories	sets	100.00		
1.5	Enclosure Steel 1000mmx1000mmx300mm with backplate and all backets and mounting accessories	sets	100.00		
1.6	Enclosure Steel 1200mmx1000mmx300mm with backplate and all backets and mounting accessories	sets	100.00		
1.7	PVC Enclosure 26-Ways with Dinrail	sets	100.00		
1.8	3m Din rail	Each	200.00		
2	**Changeover Switch**				
2.1	Changeover Switch 150A AUTO	Each	100.00		
2.2	Changeover Switch 250A AUTO	Each	200.00		
2.3	Changeover Switch 300A AUTO	Each	50.00		
2.4	Changeover Switch 500A AUTO	Each	50.00		
2.5	Changeover Switch 600A AUTO	Each	10.00		
2.6	Changeover Switch 700A AUTO	Each	10.00		
3	**DC Circuit Breakers**				
3.1	20A 2P Isolator (1000 Vdc)	Each	1 500.00		
3.2	20A 2P Circuit Breaker (1000 Vdc)	Each	1 500.00		

3.3	20A 2P Fuse holder (1000 Vdc)	Each	3 000.00		
3.4	2P DC SURGE ARRESTER (1000 Vdc)	Each	1 500.00		
3.5	160A 2P Fuse holder	Each	150.00		
3.6	250A 2P Fuse holder	Each	150.00		
3.7	160A DC Fuse	Each	300.00		
3.8	250A DC Fuse	Each	300.00		
4	**AC Circuit Breakers**				
4.1	20A 2P Circuit Breaker	Each	100.00		
4.2	30mA Earth Leakage CB	Each	50.00		
4.3	10A 1P Circuit Breaker	Each	50.00		
4.4	20A 1P Circuit Breaker	Each	50.00		
4.5	30A 2P Circuit Breaker	Each	400.00		
4.6	40A 3P Circuit Breaker	Each	200.00		
4.7	70A 3P Circuit Breaker	Each	600.00		
4.8	100A 3P Circuit Breaker	Each	400.00		
4.9	125A 3P Circuit Breaker	Each	400.00		
4.10	150A 3P Circuit Breaker	Each	300.00		
4.11	200A 3P Circuit Breaker	Each	400.00		
4.12	250A 3P Circuit Breaker	Each	400.00		
4.13	300A 3P Circuit Breaker	Each	100.00		
4.14	400A 3P Circuit Breaker	Each	100.00		
4.15	500A 3P Circuit Breaker	Each	70.00		
4.16	600A 3P Circuit Breaker	Each	50.00		
5	**Cables**				
5.1	2.5mm² suffix cable	Meter	6 000.00		
5.2	4mm² suffix cable	Meter	4 000.00		
5.3	6mm² surfix cable	Meter	1 000.00		
5.4	6mm² solar cable (Black/Red)	Meter	100 000.00		
5.5	10mm cable - red/black	Meter	6 000.00		
5.6	10mm² solar cable (Black/Red)	Meter	5 000.00		
5.7	35mm² Black flexible cable (Black/Red/Blue/White)	Meter	2 500.00		
5.8	50mm² flexible cable (Black/Red/Blue/White)	Meter	2 000.00		
5.9	70mm² Black flexible cable (Black/Red/Blue/White)	Meter	2 000.00		
5.10	95mm² (High load) Black flexible cable (Black/Red/Blue/White)	Meter	500.00		
5.11	Earth Cable 16mm² Green/Yellow	Meter	3 000.00		
5.13	Glands No 0	Each	500.00		
5.14	Glands No 1	Each	500.00		
5.15	Glands No 2	Each	500.00		
5.16	Glands No 3	Each	500.00		
5.17	Glands No 4	Each	500.00		

5.18	Glands No 5	Each	500.00		
5.19	Cat6 Cable	drum (500m)	10.00		
5.20	Flexible Conduit (UV-resistant)	Meter	10 000.00		
6	**Air conditioning**				
6.1	12000 btu inverter airconditioner	Each	150.00		
6.2	18000 btu inverter airconditioner	Each	100.00		
7	**Trunking**				
7.1	75 x 75mm trunking	Per/3 Meter	50.00		
7.2	100 x 100mm trunking	Meter	2 000.00		
7.3	16 x 25mm trunking	each	2 000.00		
7.4	100mm cable basket - cable tray 3m	Each	800.00		
7.5	150mm cable basket - cable tray 3m	Each	300.00		
8	**Containers**				
8.1	6m Container (Painted blue outside, Grey inside) - C-Grade	Each	120.00		
8.2	12m Container (Painted blue outside, Grey inside) - C-Grade	Each	40.00		
8.3	Transport of the container to various sites including loading and off-loading	per/km	20 000.00		
9	**Protection and Monitoring**				
9.1	Danger Labels (High Voltage)	Each	200.00		
9.2	Complete Fire Suppression System for Container	Each	300.00		
9.3	Monitoring Module (RS485 / Modbus / WiFi / Ethernet)	Each	200.00		
9.4	Presence sensor	Each	200.00		
9.5	Battery Room Temperature Sensor	Each	200.00		
9.6	Remote Monitoring System (Cloud-based)	Each	200.00		
9.7	IP Camera	Each	500.00		
9.8	Energy Meter - CT Based (Bi-directional)	Each	200.00		
9.9	Laptop - Ryzen 5 for Monitoring	each	200.00		
9.10	Fuse Holder and Fuses	each	200.00		
9.11	Wireless keyboard	each	200.00		
9.12	Wireless mouse	each	200.00		
9.13	PV Module Mounting Structure (adjustable, roof/ground)	Lot	200.00		

9.14	Alarm 8 Channel	Each	200.00		
9.15	Blaze Cut Fire Suppression System - Economy	each	10.00		
9.16	PLC/Automation Controller (optional SCADA)	Each	10.00		
9.17	CT Coil Set (100A - 500A) - one set (3CTs) per DB and 3CTs per phase	Set	100.00		
9.18	PV Fuse Holder + Fuse 1000VDC	Each	200.00		
9.19	System Schematic Drawing (A3 Laminated)	Each	200.00		
9.20	Warning Tape - Electrical	Roll (meter)	50.00		
9.21	24 LCD monitor	Each	20.00		
9.22	Residual Current Device (RCD) - 4P 63A 30mA	Each	200.00		
9.23	Optex sensor	Each	200.00		
9.24	2 pole battery fuse holder with indicator	each	800.00		
10	**Tool kit**				
10.1	Lightning Protection Kit	Each	200.00		
10.2	Signage Kit (Hazard, SLD, warning)	Lot	200.00		
10.3	Weather Sensor Kit (irradiance + temp)	Each	200.00		
10.4	PV System Labelling Kit (SANS compliant)	Lot	1.00		
10.5	Tool Kit for PV & Battery Maintenance	Set	1.00		
10.6	Earthing Kit (Copper rod, clamp, etc.)	Each	200.00		
10.7	Adjustable Tilt Frames (per string)	sets	200.00		
10.8	Cleaning Kit for Solar Panels	Set	50.00		
10.9	Commissioning Toolkit (test + logbook)	Lot	200.00		
10.10	PPE Kit (Gloves, Arc Shield, Earthing stick)	Set	10.00		
10.11	Maintenance Logbook and Checklist Set	Set	10.00		
11	**Communication**				
11.1	Industrial-grade Fire Alarm Panel	Each	200.00		
11.2	IP communicator optex it must be wired	Each	200.00		
11.3	Transmitter	Each	200.00		
11.4	Siren	Each	200.00		
11.5	Transciever	Each	200.00		
11.6	8 Channel NVR	Each	200.00		
11.7	MikroTik RB-LHG LTE 17dBi Outdoor CPE (antena)	Each	200.00		

11.8	2TB HDD	Each	200.00		
12	**Electrical Accessories**				
12.1	MC4 connectors	pair	3 000.00		
12.2	MC4 Y connector	pair	3 000.00		
12.3	20mm sprague pipe roll	Meter	400.00		
12.4	20mm male adaptor	each	10 000.00		
12.5	300 Amp solid bus bar	Meter	400.00		
12.6	4 x 4 plug socket 16amps	Each	400.00		
12.7	Insulation tape rolls	Roll (meter)	400.00		
12.8	Neutral busbar 500mm x 200mm	Each	800.00		
13	**Transportation for Material Deliveries**				
13.1	Transportation	Rate/Km	100 000.00		
			Sub total		
			Vat @ 15%		

PART 3: SCOPE OF WORK

Document reference	Title	Pages
	This cover page	30 - 30
C3.1	*Purchaser*'s Goods Information	31 - 46
	Confidentiality Agreement	47 - 49

C3.1: Purchaser's Goods Information

1 Overview and purpose of the *goods* and *service*s

1.1 Project Overview:

This document serves as the definitive Terms of Reference for the supply, delivery, and offloading of electrical materials and renewable energy components to Eskom Rotek Industries (ERI) for Microgrids and Solar PV projects. The scope encompasses both Solar PV components and relevant Structures for specialized renewable energy equipment required for ERI's construction and maintenance operations.

1.2 Objectives

- Establish clear technical specifications and quality requirements
- Define logistical and project management protocols
- Outline commercial terms and compliance requirements

1.3 Compliance Framework

All supplied materials must conform to:

- **International Standards:** IEC, ISO, UL
- **South African Standards:** SABS, NRS
- **Eskom Specifications:** QM58 and other relevant technical specifications
- **Regulatory Requirements:** NRCS approvals where applicable

2 Detailed Scope of Supply

2.1 Electrical Distribution Components

The Contractor shall supply complete electrical distribution equipment for Solar PV and Battery Energy Storage System (BESS) installations. All equipment shall comply with the latest editions of IEC, SANS, NRS, and Eskom standards and shall be suitable for indoor and outdoor microgrid applications.

2.1.1. Distribution Board Enclosures

Distribution board enclosures shall be supplied complete with backplates, DIN rails, mounting brackets, gland plates and all fixing accessories Management Systems (BMS). Inverters shall comply with the latest editions of IEC 62109, IEC 61727, IEC 62116, IEC 61000, NRS 097-2-1, and other applicable South African standards

Steel Distribution Board Enclosures

- 400 × 400 × 200 mm
- 500 × 500 × 250 mm
- 600 × 600 × 300 mm
- 800 × 800 × 320 mm
- 1000 × 1000 × 300 mm
- 1200 × 1000 × 300 mm

PVC Distribution Enclosures

- 26-Way PVC Distribution Board with DIN Rail

DIN Rails

- 3 m galvanized steel DIN rails

General Requirements

- Powder-coated galvanized steel construction
- Removable gland plates
- Lockable doors
- Backplates included
- Suitable for indoor and outdoor applications
- Corrosion-resistant finish

2.1.2. Automatic Changeover Switches (ATS)

Automatic Changeover Switches shall be suitable for generator, utility and Microgrid applications.

Available ratings shall include:

- 150 A Automatic Changeover Switch
- 250 A Automatic Changeover Switch
- 300 A Automatic Changeover Switch
- 500 A Automatic Changeover Switch

- 600 A Automatic Changeover Switch
- 700 A Automatic Changeover Switch

Each ATS shall include:

- Mechanical interlocking
- Electrical interlocking
- Automatic and Manual operation
- Generator start interface
- Remote status indication
- Emergency override
- IEC-compliant switching mechanism

2.1.3 DC Protection Devices

All DC protection equipment shall be rated for photovoltaic applications and suitable for operation up to 1000 VDC or higher where specified.

DC Isolators

- 20 A 2-Pole DC Isolator (1000 VDC)

DC Circuit Breakers

- 20 A 2-Pole DC Circuit Breaker (1000 VDC)

DC Fuse Holders

- 20 A PV Fuse Holder (1000 VDC)
- 160 A DC Fuse Holder
- 250 A DC Fuse Holder
- 2-Pole Battery Fuse Holder with Indicator

DC Fuses

- 160 A DC Fuse
- 250 A DC Fuse
- PV Fuse 1000 VDC

Surge Protection

- 2-Pole DC Surge Protection Device (1000 VDC)
- Type I+II Surge Protection for Main Distribution Boards
- Type II Surge Protection for Sub-Distribution Boards

2.1.4 AC Protection Devices

The Contractor shall supply AC circuit protection equipment suitable for residential, commercial and industrial installations.

Miniature Circuit Breakers (MCBs)

- 10 A Single Pole
- 20 A Single Pole
- 20 A Double Pole
- 30 A Double Pole
- 40 A Three Pole
- 70 A Three Pole
- 100 A Three Pole
- 125 A Three Pole

Moulded Case Circuit Breakers (MCCBs)

- 150 A Three Pole
- 200 A Three Pole
- 250 A Three Pole
- 300 A Three Pole
- 400 A Three Pole
- 500 A Three Pole
- 600 A Three Pole

Minimum breaking capacity shall comply with IEC 60947 and be suitable for the intended fault level.

Residual Current Protection

- 30 mA Earth Leakage Circuit Breakers
- 4-Pole 63 A Residual Current Devices (RCDs)

2.1.5 Electrical Cables and Accessories

The Contractor shall supply all power, control and communication cables required for complete installations.

Power Cables

- 2.5 mm² Flexible Cable
- 4 mm² Flexible Cable
- 6 mm² Flexible Cable
- 6 mm² Solar Cable (Red/Black)
- 10 mm² Cable
- 10 mm² Solar Cable
- 35 mm² Flexible Cable
- 50 mm² Flexible Cable
- 70 mm² Flexible Cable
- 95 mm² Flexible Cable
- 16 mm² Green/Yellow Earth Cable

Cable Accessories

- Brass Cable Glands (Sizes 0–5)
- UV-Resistant Flexible Conduit
- CAT6 Communication Cable

2.1.6 Cable Management System

Cable management systems shall include:

- 75 × 75 mm PVC Trunking
- 100 × 100 mm PVC Trunking
- 16 × 25 mm PVC Trunking

- 100 mm Cable Basket / Cable Tray
- 150 mm Cable Basket / Cable Tray

All cable support systems shall be corrosion resistant and suitable for outdoor environments.

2.1.7 Protection, Monitoring and Metering Equipment

The Contractor shall supply all monitoring and protection equipment necessary for safe operation of the Microgrid.

Equipment shall include:

- Energy Meter (CT-Based, Bi-Directional)
- CT Coil Sets
- Monitoring Modules (RS485, Modbus, Ethernet and Wi-Fi)
- Remote Cloud Monitoring System
- PLC / Automation Controller
- Battery Room Temperature Sensors
- Presence Sensors
- IP Cameras
- Fire Detection Systems
- Container Fire Suppression Systems
- BlazeCut Fire Suppression Systems
- Alarm Systems
- High Voltage Warning Labels
- Electrical Warning Tape
- Laminated System Schematic Drawings
- PV Fuse Holders and Fuses

2.1.8 Earthing and Lightning Protection

The Contractor shall supply complete earthing and lightning protection systems comprising:

- Copper Earth Rods

- Earth Clamps
- Earthing Conductors
- Earthing Kits
- Lightning Protection Kits

The installation shall comply with **SANS 10142, IEC 62305**, and Eskom earthing requirements.

2.1.9 General Requirements

All electrical distribution equipment supplied under this contract shall:

- Comply with **IEC 60947, IEC 61439, IEC 61643, IEC 60269, SANS 10142, NRS 097**, and applicable Eskom specifications.
- Be suitable for operation on **230 VAC, 400 VAC, 1000 VDC, and 1500 VDC** systems where applicable.
- Be supplied complete with all mounting hardware, terminations, labels, cable glands, accessories and fixing materials.
- Be factory tested and supplied with Factory Acceptance Test (FAT) reports, certificates of conformity and manufacturer's warranty documentation.
- Carry a **minimum 12-month warranty** against defects in materials and workmanship, with longer manufacturer warranties where applicable.
- Indoor: IP54 minimum

3 Quality Assurance and Testing Protocol

3.1 Pre-Delivery Requirements

- **Sample Submission: Full product samples required 4 weeks before bulk delivery**
- **Documentation Package:**
  - Material certificates
  - Test reports (factory acceptance tests)
  - NRCS certificates of approval
  - ISO 9001 certification of manufacturer

4 Testing Regime

4.1 Incoming Inspection:

- Visual examination
- Dimensional verification
- Material verification (XRF testing for metals)

4.2 Performance Testing:

- PV modules: Flash testing
- Batteries: Capacity verification
- Inverters: Full load testing

5 Compliance Verification

- Independent third-party testing may be required at supplier's cost
- Eskom reserves right to witness factory tests

6 Compliance Framework

All materials, equipment and services supplied under this Contract shall comply with the latest editions of the applicable International Standards, South African National Standards, Eskom Specifications and Regulatory Requirements, including but not limited to:

- **International Standards**: IEC, ISO, UL and IEEE (where applicable).
- **South African Standards**: SANS, NRS and NRCS requirements.
- **Eskom Specifications**: QM58 and all other relevant Eskom technical specifications.
- **Regulatory Requirements**: National Regulator for Compulsory Specifications (NRCS) approvals, where applicable.
- **Occupational Health and Safety Act (Act 85 of 1993)** and all applicable Regulations.
- **Environmental legislation** and applicable environmental management requirements.

Applicable Contract Annexures

The Contractor shall comply with the following Contract Annexures forming part of this Scope of Work:

- **Annexure L – QM58: Supplier Contract Quality Requirements Specification**
    - The Contractor shall implement and maintain a Quality Management System that complies with Eskom's QM58 Supplier Contract Quality Requirements Specification.

- Quality plans, Inspection and Test Plans (ITPs), Factory Acceptance Tests (FAT), material traceability, non-conformance reporting, corrective actions and quality records shall be developed and maintained in accordance with QM58 requirements.

- **Annexure M – SANS 121: Hot Dip Galvanized Coatings on Fabricated Iron and Steel Articles – Specifications and Test Methods**
  - All fabricated steel structures, mounting systems, support frames, cable support systems, brackets, and associated steelwork intended for outdoor installation shall be **hot-dip galvanized in accordance with SANS 121** (or the current equivalent standard).
  - Galvanizing shall be performed after fabrication unless otherwise specified.
  - Coating thickness, surface finish, adhesion, and testing shall comply with the requirements of **SANS 121.**
  - The Contractor shall submit galvanizing certificates and test reports for all galvanized steel components prior to delivery.

Quality Documentation

The Contractor shall provide, as a minimum:

- Manufacturer's Certificates of Conformance.
- Factory Acceptance Test (FAT) Reports.
- Material Test Certificates.
- Galvanizing Certificates in accordance with **SANS 121.**
- Quality Control Records in accordance with **QM58.**
- Inspection and Test Plans (ITPs).
- Warranty Certificates.
- As-built documentation and commissioning records.

7 Logistics and Supply Chain Management

7.1 Delivery Protocol

- **Lead Times:** Minimum 5 weeks' notice for standard items
- **Delivery Windows:** Strict adherence to agreed schedules
- **Transport Requirements:**
  - Flatbed trucks for containers

- Climate-controlled vehicles for batteries
- Specialized handling for fragile components

8 Site Access and Offloading

- **Prior Notification:** 7 working days' notice required
- **Site Requirements:**
  - Offloading equipment to be provided by supplier
  - All lifting gear to have current certification
  - Rigging plans for heavy items (>500kg)

9 Packaging and Labelling

- **Packaging Standards:**
  - Wooden crates for fragile items
  - Waterproof wrapping for electrical components
- **Labelling Requirements:**
  - Eskom project number
  - Storage requirements
  - Handling instructions

10 Communication

10.1 Primary Contacts

- **Technical queries**: *Purchaser's* Engineering Manager
- **Logistics**: *Purchaser's* Supply Chain Manager

10.2 Reporting Requirements

- Weekly progress reports
- Monthly performance dashboards

10.3 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:

Kick-off Meeting	Within 1 week of contract award	*Purchaser's* Offices at Komati Power Station	*Purchaser*, *Supplier*
Progress Meetings	Weekly	*Purchaser's* Offices at Komati Power Station	Purchaser, Supplier
Risk register and compensation events	Bi-Weekly	*Purchaser's* Offices at Komati Power Station	*Purchaser, Supplier*
Quality Review Meetings	Monthly	*Purchaser's* Offices at Komati Power Station	*Purchaser, Supplier*

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.

10.4 Documentation control

All documentation form the Supplier must be provided in

- Electronic copies in PDF format
- Hard copies with original signatures
- Revision control for all documents

11 Health and safety risk management

The *Supplier* shall comply with the health and safety requirements contained in the SHE Specification

11.1 SHE Management Plan

- Site-specific risk assessments
- Method statements for all high-risk activities
- Emergency response procedures

12 Environmental constraints and management

The *Supplier* shall comply with the health and safety requirements contained in the SHE Specification

12.1 Environmental Compliance

- Material declarations (RoHS, REACH)
- Battery recycling program
- Packaging recycling requirements

13 Quality

Supplier must comply with QM58 – Annexure L Data Provided by the *Supplier*.

13.1 Warranty Provisions

- Standard Warranty Periods:
    - PV Modules: 12 years product, 25 years performance
    - Batteries: 10 years
    - Inverters: 10 years

14 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 *service*s 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

15 Insurance provided by the Purchaser.

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

16 Contract change management.

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

17 Provision of bonds and guarantees.

Not applicable

18 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.*

19 Procurement

19.1 Subcontracting

19.1.1 Preferred subcontractors

Not applicable

19.2 Limitations on subcontracting

- The *Supplier* must align to sub-clause 24.2 of the Supply Contract.

- Declaration certificate for local production and content

19.3 Spares and consumables

Not applicable

19.4 Other requirements related to procurement.

Supplier must obtain a Letter of Authority (LOA) from the National Regulator for Compulsory Specifications (NRCS) for the electrical consumables manufacturer the *Supplier* will be use.

20 List of drawings

20.1 Drawings issued by the Purchaser.

Not applicable

21 Supplier Development and Localisation (SD&L)

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, Skills Development, Job Creation and Socio-Economic Development.

1.1. Supplier Development & Localisation Matrix

The SDL&I Matrix is not an evaluation criterion, however the successful supplier 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).

TABLE 1: SUPPLIER DEVELOPMENT AND LOCALISATION COMPLIANCE MATRIX FOR SUPPLIERS AND CONTRACTORS				
Criteria	**Weight (%)**	**Total Target (%)**	**Proposed Target (%)**	**Total Overall Weighted Score**
Local Content to South Africa	50.00%	100.00%		
Skills Development	50.00%			
Total Score	**100.00%**			
	Total Supplier Development and Localisation Score			

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 by at least one B-BBEE Level higher of each year from the second year of the contract onwards.

1.3. Skills Development

Considering the overall budget, duration of the contract, opportunities for growth in this industry and the industries annual contribution to skills development levies, the successful supplier is obliged to develop skills through a twelve months bursary valued at R80 000.00 per ERI assigned beneficiary at a registered and accredited South African university, for every R4.8 million invoiced of the cumulative contract amount.

The skills development commitment shall be carried out within one month of reaching or exceeding the R4.8 million threshold. The skills development commitment (i.e., a bursary valued at R80 000 for every R4.8 million invoiced will be ceded to a designated bank account as prescribed by ERI for future transfer to the relevant university as identified by ERI).

1.4. Job Creation

To be completed by the tenderer

Number of jobs to be **created** as a direct result of this contract	
Number of jobs to be **retained** as a direct result of this contract	

- The successful supplier 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 the successful supplier 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

1.5 Socio Economic Development

The successful supplier shall spend 1% of the contract amount to fund the Corporate Social Investment initiative(s) aimed at empowering relevant communities. The socio-economic development commitment (i.e., one percent (1%) of every invoiced amount will be ceded to a designated account as prescribed by ERI for future transfer to the relevant initiative as identified by ERI).

2. Monitoring and reporting of SDL&I commitments

a. The successful supplier shall on a quarterly basis submit a report to ERI in accordance wi the SDL&I Data Collection Template on its compliance with the SDL&I obligations.
b. ERI shall review the quarterly report submitted by the successful supplier within 30 (thirt days of receipt of the reports and notify the successful supplier in writing if its SDL obligations have not been met.
c. Upon notification by ERI that the successful supplier has not met its SDL&I obligations, th successful supplier shall be required to implement corrective measures to meet those SDL obligations within 7 (seven) days of receiving ERI feedback, failing which the SDL&I penal clause shall be invoked.

3. SDL&I Penalty

a. At the end of each quarter, ERI will apply a penalty of 2.5% of the invoiced amount excluding VAT for the successful supplier's 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 the successful supplier and returned to the SDL&I representative for acceptance before contract award. This will be used as a reference document for monitoring and reporting on the supplier's progress in delivering the agreed SDL&I commitments.

Signed _____ **Date** _____

Name _____ **Position** _____

Company Name _____

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ('Agreement') is entered into between the P*urchaser* 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, 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.