

NEC3 Engineering and Construction

Short Contract (ECSC3)

A contract between Eskom RoteK Industries SOC Ltd
(Reg No. 1990/006897/30)

and

for THE DESIGN FOR THE CONTROL ROOM UPGRADE AT
300TON BALANCING PLANT

| | | |
|--|--|-----------------|
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Documentation prepared by: Hawa Karodia

C1 Agreements & Contract Data

C1.1 Form of Offer and Acceptance

Offer

The Employer, identified in the Acceptance page signature block on the next page, has solicited offers to enter into a contract for the procurement of:

THE DESIGN FOR THE CONTROL ROOM UPGRADE AT 300 TON BALANCING PLANT

The tenderer, identified in the signature block below, having examined the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, and by submitting this Offer has accepted the Conditions of Tender.

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the Contractor 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.

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| The offered total of the Prices exclusive of VAT is | |
| Value Added Tax @ 15% is | |
| The offered total of the Prices inclusive of VAT is | |
| (in words) | |

This Offer may be accepted by the Employer by signing the form of Acceptance overleaf 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 Contractor 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

Tenderer's CIDB registration number:

Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor 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 Employer 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 1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)

Part 2 Pricing Data

Part 3 Scope of Work: Works Information

Part 4 Site Information

Part 5 Pricing / Technical Offer / Commercial Offer

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 Tender Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer 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, which must be signed by the duly authorised representative(s) for both parties.

The tenderer shall within one week of receiving a completed copy of this Agreement, including the Schedule of Deviations (if any), contact the Employer'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 copy of this document, including the Schedule of Deviations (if any) together with all the terms of the contract as listed above.

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| Signature(s) | _____ | _____ |
| Name(s) | _____ | _____ |
| Capacity | _____ | _____ |
| for the Employer | | Michael Ngobeni General Manager (Acting) Eskom RoteK Industries SOC Ltd Lower Germiston Road Cleveland 2022 |

| | | | |
|-----------------------------|-------|------|-------|
| Name & signature of witness | _____ | Date | _____ |
|-----------------------------|-------|------|-------|

Note: If a tenderer wishes to submit alternative tender offers, further copies of this document may be used for that purpose, duly endorsed, 'Alternative Tender No. _____'.



RoteK Industries

PROJECT AND CONTRACT TITLE

CONTRACT NUMBER _____

Schedule of Deviations

Note:

1. To be completed by the Employer prior to award of contract. 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 Employer 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 | [•] | [•] |
| 5 | [•] | [•] |
| 6 | [•] | [•] |
| 7 | [•] | [•] |

By the duly authorised representatives signing this Schedule of Deviations below, the Employer 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 Employer 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 Employer

Signature _____

Name _____

Capacity _____

On behalf
of _____

(Insert name and address of organisation)

Name &
signature
of witness _____

Date _____

Michael Ngobeni

General Manager (Acting)

Eskom RoteK Industries SOC Ltd
Lower Germiston Road
Cleveland
2022

Eskom RoteK Industries SOC Ltd

C1.2 Contract Data

Data provided by the *Employer*

Completion of the data in full is essential to create a complete contract.

| Clause | Statement | Data |
|-------------|--|--|
| | General | |
| 10.1 | The <i>Employer</i> is (Name): | Eskom RoteK Industries SOC Ltd (Reg no: 1990/006897/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa |
| | Address | Roshland Office Park Lower Germiston Road Rosherville |
| 10.1 & 14.4 | The <i>Employer's</i> representative to whom the <i>Employer</i> in terms of clause 14.4 delegates his actions ¹ is (Name): | Andiswa Minyi |
| | Address | Lower Germiston Road Cleveland 2022 |
| | Tel No. | 011 629 4982 |
| | E-mail address | minyian@eskom.co.za |
| 11.2(11) | The <i>works</i> are | The design for the control room upgrade at 300Ton Balancing Plant |
| 11.2(13) | The Works Information is in | the document called 'Works Information' in Part 3 of this contract. |
| 11.2(12) | The Site Information is in | the document called 'Site Information' in Part 4 of this contract. |
| 11.2(12) | The <i>site</i> is | Rosherville Workshop |
| 30.1 | The starting date is. | |
| 30.1 | The Delivery date is. | |
| 11.2(2) | The completion date is. (Installation & Commissioning Completion) | |
| 13.2 | The <i>period for email reply/email Acknowledgement</i> is | 2 days |
| 40 | The defects date is | |
| 40.1 | Defect Notification | Contractor corrects a defect when Employer notifies him of it. |
| 41.3 | The <i>defect correction period</i> is | To be discussed and agreed between the parties |
| 50.1 | The <i>assessment day</i> is the | 25th day of each month. |

¹ Except those actions which can only be done by the *Employer* as a Party to the contract.

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| 50.5 | The delay damages are | |
| 50.6 | The retention is | Not applicable |
| 50.7 | The retention | Not applicable |
| 50.1 | Forward cover | Employer shall be responsible for currency exchange forward cover. |
| 50 | Progress Payments | |
| 51.2 | The interest rate on late payment is | (i) Zero (0%) percent above the average of the prime lending rates in force from time to time at South Africa's four largest commercial banks. |
| 60.1 (10) | Compensation Events | Not applicable |
| 63.2 | | Last Para not applicable |

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| 82.1 | <p>The <i>Contractor</i> provides the insurances stated in the Insurance Table.</p> <p>The insurances provide cover for events which are at the <i>Contractor's</i> risk from the <i>starting date</i> until the end of the <i>service period</i> or a termination certificate has been issued.</p> <p>INSURANCE TABLE</p> <table border="1"> <thead> <tr> <th data-bbox="220 562 598 618">Insurance against</th><th data-bbox="598 562 1072 618">Minimum amount of cover or minimum limit of indemnity</th></tr> </thead> <tbody> <tr> <td data-bbox="220 618 598 797">Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property</td><td data-bbox="598 618 1072 797"> <p>The <i>Employer's</i> policy deductible as at Contract Starting Date were covered by the <i>Employer's</i> insurance, <u>provided the <i>Contractor</i> has not in any way contributed through omission, negligence or wilful intent.</u></p> <p>The replacement cost</p> </td></tr> <tr> <td data-bbox="220 797 598 976">Loss of or damage to Plant and Materials</td><td data-bbox="598 797 1072 976"> <p>The replacement cost where not covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>.</p> <p>The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance.</p> </td></tr> <tr> <td data-bbox="220 976 598 1189">Loss of or damage to Equipment</td><td data-bbox="598 976 1072 1189"> <p>The replacement cost where not covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>.</p> <p>The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>.</p> </td></tr> <tr> <td data-bbox="220 1189 598 1379">The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service</td><td data-bbox="598 1189 1072 1379"> <p><u>Loss of or damage to property</u></p> <p>The replacement cost.</p> <p><u>Bodily injury to or death of a person</u></p> <p>The amount required by the applicable law.</p> </td></tr> <tr> <td data-bbox="220 1379 598 1469">Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract</td><td data-bbox="598 1379 1072 1469"> <p>The amount required by the applicable law.</p> </td></tr> </tbody> </table> <p>During the term of the Contract, the <i>Contractor</i> shall maintain only the following insurance coverage: (i) any insurance required by law with respect to work-related injuries or disease of employees of <i>Contractor</i> in such form) and amounts required by all applicable laws and (ii) Commercial General Liability insurance, providing coverage for liability assumed under contract, with an annual aggregate limit of One Million, Six Hundred & Seventy Thousand Dollar (\$1,670,000). The <i>Employer</i> will not be either additional named insured, additional insured or coinsured under such policies. The <i>Contractor</i> shall provide just certificates of insurance, showing that the foregoing insurance is in full force and effect, but not copy of the policies. <i>Contractor</i> shall be liable for deductible of Assets Portfolio of Generation Area only.</p> | Insurance against | Minimum amount of cover or minimum limit of indemnity | Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property | <p>The <i>Employer's</i> policy deductible as at Contract Starting Date were covered by the <i>Employer's</i> insurance, <u>provided the <i>Contractor</i> has not in any way contributed through omission, negligence or wilful intent.</u></p> <p>The replacement cost</p> | Loss of or damage to Plant and Materials | <p>The replacement cost where not covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>.</p> <p>The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance.</p> | Loss of or damage to Equipment | <p>The replacement cost where not covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>.</p> <p>The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>.</p> | The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service | <p><u>Loss of or damage to property</u></p> <p>The replacement cost.</p> <p><u>Bodily injury to or death of a person</u></p> <p>The amount required by the applicable law.</p> | Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract | <p>The amount required by the applicable law.</p> |
|---|---|-------------------|---|---|---|--|--|--------------------------------|---|---|--|---|---|
| Insurance against | Minimum amount of cover or minimum limit of indemnity | | | | | | | | | | | | |
| Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property | <p>The <i>Employer's</i> policy deductible as at Contract Starting Date were covered by the <i>Employer's</i> insurance, <u>provided the <i>Contractor</i> has not in any way contributed through omission, negligence or wilful intent.</u></p> <p>The replacement cost</p> | | | | | | | | | | | | |
| Loss of or damage to Plant and Materials | <p>The replacement cost where not covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>.</p> <p>The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance.</p> | | | | | | | | | | | | |
| Loss of or damage to Equipment | <p>The replacement cost where not covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>.</p> <p>The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>.</p> | | | | | | | | | | | | |
| The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service | <p><u>Loss of or damage to property</u></p> <p>The replacement cost.</p> <p><u>Bodily injury to or death of a person</u></p> <p>The amount required by the applicable law.</p> | | | | | | | | | | | | |
| Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract | <p>The amount required by the applicable law.</p> | | | | | | | | | | | | |

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| 80.2 | The <i>Employer</i> provides the insurances stated in the Insurance Table below. | |
| | INSURANCE TABLE | |
| | Insurance against | Minimum amount of cover or minimum limit indemnity as stated for "Format TSC3" available o |
| | Assets All Risk | Minimum amount of cover or minimum limit indemnity |
| | Project insurance | |
| | General and Public Liability | As per the insurance policy document. |
| | Environmental Liability | As per the insurance policy document. |
| | Transport (Marine) | As per the insurance policy document. |
| | Motor Fleet and Mobile Plant | As per the insurance policy document. |
| | Terrorism | As per the insurance policy document. |
| | Cyber Liability | As per the insurance policy document. |
| | Nuclear Public Liability | As per the insurance policy document. |
| | Nuclear Material Damage and Business Interruption | As per the insurance policy document. |
| | Nuclear Material Damage Terrorism | As per the insurance policy document. |
| 93.1 | Does the United Kingdom Housing Grants, Construction and Regeneration Act (1996) apply? | No |
| | The <i>Adjudicator</i> is | the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA). |
| | Address | [•] |
| | Tel No. | [•] |
| | Fax No. | [•] |
| | e-mail | [•] |
| 93.2(2) | The <i>Adjudicator nominating body</i> is: | the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the London Institution of Civil Engineers. (See www.ice-sa.org.za) or its successor body |
| 93.4 | The <i>tribunal</i> is: | arbitration. |
| | The <i>arbitration procedure</i> is | the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body. |
| | The place where arbitration is to be held is | [•] South Africa |

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| | <p>The person or organisation who will choose an arbitrator</p> <ul style="list-style-type: none"> - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is | <p>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</p> |
| | <p>The conditions of contract are the NEC3 Engineering and Construction Short Contract (April 2013)²³ and the following additional conditions Z1 to Z11 which always apply:</p> | |
| Z1 | Cession delegation and assignment | |
| Z1.1 | <p>The Parties will not cede, delegate or assign any of its rights or obligations to any person or its affiliates or subsidiary without the written consent of the other party. Such notified consent shall not be unreasonably withheld.</p> <p>However, with written notice to <i>Employer</i>, <i>Contractor</i> may cede and delegate its rights and obligations under this contract to any of its subsidiary or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of business for execution of services scope.</p> | |
| Z1.2 | <p>Notwithstanding the above, the <i>Employer</i> may on written notice to the <i>Contractor</i> 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.</p> | |
| Z2 | Change of Broad Based Black Economic Empowerment (B-BBEE) status | |
| Z2.1 | Deleted as not applicable. | |
| Z3 | Ethics | |
| Z3.1 | <p>Any offer, payment, consideration, or benefit of any kind made by the <i>Contractor</i>, 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 <i>Contractor's</i> obligation to Provide the Works or taking any other action as appropriate against the <i>Contractor</i> (including civil or criminal action).</p> | |
| Z3.2 | <p>The <i>Employer</i> may terminate the <i>Contractor's</i> obligation to Provide the Works if the <i>Contractor</i> is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.</p> <p>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 <i>Employer</i> or other people or organisations and including in circumstances where the <i>Contractor</i> or any such member is removed from the an approved vendor data base of the <i>Employer</i> as a consequence of such practice.</p> | |
| Z3.3 | <p>If the <i>Employer</i> terminates in terms of this clause, the procedures on termination are those stated in Clause 91.1 and the amount due on termination includes amounts listed in Clause 92.1.</p> | |
| Z4 | Confidentiality | |
| Z4.1 | <p>The <i>Contractor</i> does not disclose or make any information arising from or in connection with this contract available to others except where required by this contract. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the <i>Contractor</i>, enters the public domain or to information which was already in the possession of the <i>Contractor</i> at the time of disclosure (evidenced by written records in existence at that time). Should the <i>Contractor</i> disclose information to others where required by this contract the <i>Contractor</i> ensures that the provisions of this clause are complied with by the recipient.</p> | |

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| Z4.2 | If the <i>Contractor</i> is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the <i>Employer</i> . |
| Z4.3 | In the event that the <i>Contractor</i> is, at any time, required by law to disclose any such information which is required to be kept confidential, the <i>Contractor</i> , to the extent permitted by law prior to disclosure, notifies the <i>Employer</i> 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 <i>Contractor</i> 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 <i>works</i> or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the <i>Employer</i> . All rights in and to all such images vests exclusively in the <i>Employer</i> . |
| Z4.5 | The <i>Contractor</i> ensures that all his subcontractors abide by the undertakings in this clause. |
| Z5 | Waiver and estoppel: Add to clause 12.2: |
| Z5.1 | Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties or their delegates or the <i>Adjudicator</i> 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. Changes: Each party may, from time to time, propose changes in the scope of work to be performed by <i>Contractor</i> under this Contract, which changes will be subject to mutual agreement of the parties. Neither party shall be obligated to proceed with any change until the parties have agreed upon its effect and signed a written change order document. |
| Z6 | Health, safety and the environment |
| Z6.1 | The <i>Contractor</i> undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the <i>works</i> . Without limitation the <i>Contractor</i> : <ul style="list-style-type: none"> • accepts that the <i>Employer</i> may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Site; This Construction Regulations not applicable to this Contract: • warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, 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 <i>works</i>; and • undertakes, in and about the execution of the <i>works</i>, to comply with the Construction Regulations and 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 <i>Contractor's</i> direction and control, likewise observe and comply with the foregoing. • <u>Hazardous Materials</u>: Employer agrees to properly dispose of all Hazardous Materials encountered by Contractor at site and of those produced by the Contractor during the performance of the Contract. For the purpose of this section, Hazardous Materials means batteries, or toxic substances or hazardous substances as such terms are defined in any law, or regulations of the United States of America or of the country of the site. • <u>Safety</u>: If, in Contractor's reasonable opinion, security or safety of personnel or the safe execution of work is, or is apt to be, imperilled by security concerns, local conditions, terroristic acts or threats, Contractor may remove some or all of its personnel from the site and/or suspend performances of all or any part of its services and/or evacuate its personnel. In the event of an evacuation, Employer shall assist in said evacuation. Any of the foregoing shall be considered to be a force majeure event. |
| Z6.2 | The <i>Contractor</i> , in and about the execution of the <i>works</i> , complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for |

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| | under this contract and ensures that his subcontractors, employees and others under the <i>Contractor's</i> direction and control, likewise observe and comply with the foregoing. |
| Z7 | Provision of a Tax Invoice and interest. Add to clause 50 |
| Z7.1 | The <i>Contractor</i> provides the <i>Employer</i> with a tax invoice in accordance with the <i>Employer's</i> procedures stated in the Works Information, showing the correctly assessed amount due for payment. |
| Z7.2 | If the <i>Contractor</i> does not provide a tax invoice in the form and by the time required by this contract, the time by when the <i>Employer</i> 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 <i>Employer</i> in terms of clause 51.2 is then calculated from the delayed date by when payment is to be made. |
| Z7.3 | The <i>Contractor</i> is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the <i>Employer's</i> VAT number 4330196330 on each invoice he submits for payment. If <i>Employer</i> pays to <i>Contractor</i> , then, Commercial invoice in EUR along with all supporting documentation to be submitted to the <i>Employer</i> to process payments. <i>Contractor</i> Offshore Bank account details must be provided along with Invoice. If <i>Contractor</i> pays to employer, then clause Z7.3 shall be applicable. |
| Z7.4 | <i>Contractor</i> shall be responsible for all corporate taxes measured by net income due to performance of or payment for work under this Contract (" <i>Contractor Taxes</i> "). <i>Employer</i> shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on <i>Employer</i> or <i>Contractor</i> or its subcontractors) in relation to the Contract or the performance of or payment for work under the Contract other than <i>Contractor Taxes</i> (" <i>Employer Taxes</i> "). The Contract Price does not include the amount of any <i>Employer Taxes</i> . If <i>Employer</i> deducts or withholds <i>Employer Taxes</i> , <i>Employer</i> shall pay additional amounts so that <i>Contractor</i> receives the full Contract Price without reduction for <i>Employer Taxes</i> . <i>Employer</i> shall provide to <i>Contractor</i> , within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes. |
| Z8 | Notifying compensation events |
| Z8.1 | Deleted. |
| Z9 | <i>Employer's</i> limitation of liability; Add to clause 80.1 |
| Z9.1 | The <i>Employer</i> liability to the <i>Contractor</i> for the <i>Contractor's</i> indirect or consequential loss is limited to R0.00 (zero Rand), only if <i>Contractor</i> is at fault otherwise Liability shall be equal to Contract Price. The <i>Contractor's</i> liability to the <i>Employer</i> for the <i>Employer's</i> indirect or consequential loss is limited to USD 0.00 (Zero USD). |
| Z10 | Termination: Add to clause 90.2, after the words "or its equivalent": |
| Z10.1 | or had a business rescue order granted against it. Termination and suspension: Either Party can terminate the Contract for material breach if the other Party does not cure in a reasonable period. <i>Contractor</i> can suspend the Contract performance if <i>Employer</i> fails to comply with any payment obligations under the Contract. The foregoing are the sole and exclusive suspension and termination rights of the Parties. If <i>Employer</i> Terminates that Contract, then <i>Employer</i> shall first provide <i>Contractor</i> with detailed written notice of the breach and of <i>Employer's</i> intention to terminate the Contract, and (b) <i>Contractor</i> shall have failed, within 30 days after receipt of the notice, to commence and diligently pursue cure of the breach. If <i>Employer</i> terminates the Contract pursuant to this clause, (i) <i>Employer</i> shall pay to <i>Contractor</i> (a) the portion of the Contract Price allocable to Products completed with evidence of Contract Price allocation, (b) lease fees incurred, and (c) amounts for Services performed before the |

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| | <p>effective date of termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Contractor's then-current standard time and material rates.</p> <p>Contractor may suspend or terminate the Contract (or any affected portion thereof) immediately for cause if Employer (i) becomes Insolvent/Bankrupt, or (ii) materially breaches the Contract, including, but not limited to, failure or delay in Employer providing Payment Security, making any payment when due, or fulfilling any payment conditions.</p> |
| Z11 | Addition to Clause 50.5 |
| Z11.1 | If the amount due for the Contractor's payment of delay damages reaches the limits stated in this Contract Data (if any), the Employer may terminate the Contractor's obligation to Provide the Works after Contractor has failed to deliver Goods after 45 days of cure period from notice to Contractor from Employer for delay damages limit reached. |
| Z11.2 | If the Employer terminates in terms of this clause, the procedures on termination are those stated in Clause 91.1 and the amount due on termination includes amounts listed in Clause 92.1. |
| Z11.3 | <p>Under the Contract, should Contractor fail to deliver Goods by the Delivery Lead Time as agreed, for the reasons solely attributable to the Contractor's fault or negligence, Employer shall be entitled, with formal notice to the Contractor for payment of liquidated damages, for such failure in the amounts specified below, and such payment shall be construed as liquidated damages and not as a penalty.</p> <p>One Point Two Five percent (1.25%) of the Total Price per full week, up to a maximum of Five percent (5%) of the Total Price. However, Contractor shall have no liability to Employer under this Article if Contractor's delay causes no damages or losses to Employer. Should there be any losses or damages, then Contractor shall be liable under LD clause.</p> |
| Z12 | Addition: New Clauses |
| Definition | "Insolvent/Bankrupt" means that a party is insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for it or any of its assets, or files or has filed against it a proceeding under any bankruptcy, insolvency dissolution or liquidation laws. |
| Definition | Plant and materials mean the scope for works defined in Work information for which GE is responsible. |
| Clause | The Contractor's liability to the Employer for the Employer's indirect or consequential loss is limited to USD 0.00 (Zero USD). |
| Clause | Compliance with trade control laws: All transactions under the Contract shall at all times be subject to and conditioned upon Employer's compliance with the United States of America, the European Union and any other applicable trade control laws and regulations as well as stipulated by the law of South Africa. |
| Clause | No Nuclear Use: Parts and services sold under this Contract by Contractor are not intended for use in connection with any nuclear facility or activity. If, in breach of this, any such use occurs, Contractor disclaims all liability and Employer shall indemnify and hold Contractor (and its parent, affiliates, suppliers and subcontractors) harmless against all liability for any nuclear or other damage, injury or contamination. |
| Clause | Force Majeure: Force Majeure Event means an event which is neither foreseeable nor preventable and which is entirely outside the direct or indirect control of the Affected Party including but not limited to any one or more of the following: (a) acts of God, Earthquake, flood, fire, named cyclone/hurricane/typhoon, tidal wave, explosion and/or other natural physical disaster or (b) wars (declared or undeclared), revolutions, riots, armed conflict, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts or threats of terrorism, civil unrest, civil war, rebellion, revolution, insurrection of military or usurped power; or (c) Strikes at a national or regional level or industrial disputes at a national or regional level and other labor |

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| | <p>disturbances (d) Epidemics, Pandemics, delays in transportation, maritime or aviation disasters (e) Mandates or directive or request or laws of a governmental body having jurisdiction prohibiting and/or preventing performance of the Contract or Act (or failure to act) of governmental authorities including French authorities or person purporting to act there-for or under such authority, (f) Acts (or omissions) of the other Party including failure to timely perform its obligations under this Contract and other unlawful acts against public order. In no event shall financially distress or hardship be considered a Force Majeure Event. If such an event occurs, the schedule for <i>Contractor's</i> performance shall be extended by the amount of time lost by reason of the event plus such additional time as may be needed to overcome the effect of the event. If acts or omissions of the <i>Employer</i> or its contractors or sub-contractors cause the delay, <i>Contractor</i> shall also be entitled to an equitable price adjustment. Force Majeure does not include events such as insolvency of any Party. Neither Party shall be liable for breach the performance of its obligations to the extent that such performance is prevented by a Force Majeure Event. The Affected Party shall promptly notify the other Party of the occurrence of a Force Majeure Event and any impacted performance under the Contract shall be suspended.</p> |
| Clause | <p>Intellectual Property: Notwithstanding anything to the contrary, all know-how, patents, copyright, designs or other intellectual property made available by <i>Contractor</i> or developed during the execution of the Contract shall be only <i>Contractor's</i> property at all times. GE shall provide operational manual with equipment.</p> |
| Clause | <p>Indemnity: <i>Contractor</i> shall indemnify <i>Employer</i> for third parties claims in relation to personal injury (including death) and damage to the tangible property of third parties, to the extent such injury or damage is the direct result of <i>Contractor's</i> wilful or negligent act or omission or strict liability. To the extent applicable, third parties do not include the end-user of the parts and services supplied hereunder and the shipyard owner where the services hereunder shall be performed. To the extent applicable <i>Employer</i> shall indemnify <i>Contractor</i> for any claim made by the shipyard owner arising out the access to the shipyard for the performance and the performance at the shipyard of the services hereunder.</p> |
| Clause | <p>Limitation of Liability: The total liability of <i>Contractor</i> arising out of or related to the Contract, or its performance or breach, shall not exceed the Contract price. All liability of <i>Contractor</i> on all claims of any kind shall terminate upon expiration of the relevant warranty period. In no event, shall <i>Contractor</i> or its subcontractors or suppliers be liable for loss of profit or revenues, cost of capital, cost of substitute components or any associated equipment, or any special, consequential, indirect, punitive or exemplary damages, or claims of <i>Employer's</i> customers for any of the foregoing damages. <i>Employer</i> shall indemnify <i>Contractor</i> against any claim by its customer, reseller or end user for any damage arising from the performance or breach of this Contract. The limitation and exclusion above shall apply to all claims whether as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability, or otherwise. The provisions of this article shall prevail over any provisions contained in any of the documents comprising the Contract.</p> |
| Clause | <p>Deliveries; Title Transfer; Risk of Loss; Storage: <i>Contractor</i> shall deliver Products to <i>Employer</i> DDP- Site. Partial deliveries are permitted. <i>Contractor</i> may deliver Products in advance of the delivery schedule. The title shall pass to <i>Employer</i> upon delivery in accordance with Incoterms 2010 (DDP delivery). Risk of loss shall pass to <i>Employer</i> upon DDP delivery. If any Products to be delivered under this Contract cannot be shipped to or received by <i>Employer</i> when ready, due to any cause attributable to <i>Employer</i>, <i>Contractor</i> may ship the Products to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder. If <i>Contractor</i> places Products or equipment into storage, the following apply: (i) title and risk of loss immediately pass to <i>Employer</i>, if they have not already passed, and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to <i>Contractor</i> upon delivery or shipment shall be due; (iii) all expenses and charges incurred by <i>Contractor</i> related to the storage shall be payable by <i>Employer</i> upon submission of <i>Contractor's</i> invoices.</p> |

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| Clause | <p>Warranty: <i>Contractor</i> warrants to <i>Employer</i> that (i) the Products shall be free from defects in material, workmanship and title and (ii) the services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications.</p> <p><i>Contractor</i> shall warrant: (i) the parts for eighteen (18) months following installation in the <i>Employer's</i> equipment or twenty-four (24) months from delivery, whichever occurs first; (ii) the repair services for Twelve (12) months after the completion, and (iii) the services other than repair services for twelve (12) months after completion. If the parts delivered or services performed hereunder do not meet the above warranties during the applicable warranty period, <i>Employer</i> shall promptly notify <i>Contractor</i> in writing and make the parts available promptly for correction. <i>Contractor</i> shall thereupon correct any defect by, at its option, (i) re-performing the defective services, (ii) repairing/replacing the defective parts or (iii) by making available necessary replacement parts per DDP delivery terms. The foregoing warranties and remedies are exclusive and are in lieu of all other warranties, guarantees and remedies whether written, oral, implied or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.</p> <p>Overall warranty duration to be 24 months from equipment delivery or 18 months from completion whichever is earlier and repair to be warranted for 12 months. Overall cap on Warranty shall be 24 months from delivery date.</p> |
| Clause | <p><i>Employer</i> shall pay <i>Contractor</i> for the Products and Services by paying all invoiced amounts in EURO (in the selected <i>Contractor</i> offshore bank account), without set-off for any payment from <i>Contractor</i> not due under this Contract, within thirty (30) days from the invoice issuance date. Progress payments shall be invoiced as defined in C1.2 Contract Data.</p> <p>Upon completion of Services, <i>Contractor</i> shall submit the billing sheet to <i>Employer</i>. If the final value of Services performed as per the billing sheet exceeds that of the Services Contract Price in Onshore Purchase Order, <i>Contractor</i> will submit an initial invoice and <i>Employer</i> will issue another PO for the additional costs incurred within 7 days. All payments are to be via bank transfer made within thirty (30) days from the invoice issuance.</p> |

Data provided by the *Contractor* (the *Contractor's Offer*)

The tendering contractor is advised to read both the NEC3 Engineering and Construction Short Contract (April 2013) and the relevant parts of its Guidance Notes (ECSC3-GN)⁴ in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on page 31 of the ECSC3 April 2013 Guidance Notes.

Completion of the data in full is essential to create a complete contract.

| | | |
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| 10.1 | The <i>Contractor</i> is (Name): Address Tel No. Fax No. E-mail address | |
| 63.2 | The percentage for overheads and profit added to the Defined Cost for people is | Deemed to be included |
| 63.2 | The percentage for overheads and profit added to other Defined Cost is | Deemed to be included |
| 11.2(9) | The Price List is in | the document called 'Price List' in Part 2 of this contract. |
| 11.2(10) | The offered total of the Prices is [Enter the total of the Prices from the Price List]: | |

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

C2 Pricing Data

C2.1 Pricing assumptions

Entries in the first four columns in the Price List are made either by the *Employer* or the tendering contractor

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

If the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.

All Prices are to be shown excluding VAT unless instructed otherwise by the *Employer* in Tender Data or in an instruction the *Employer* has given before the tenderer enters his Prices.

If there is insufficient space in the Price List which follows, state in which document the Price List is contained.

C2.2 Price List

CONTRACT PRICE

| Item # | Description | Qty. | Total Price |
|-------------|-------------|------|-------------|
| 1 | | | |
| Total Price | | | |

DRAFT

C3: Scope of Work

C3.1 Works Information

Notes to the document compiler are provided in boxes like this one. They are not part of the contract and may be deleted before printing the final draft.

The Works Information should be a complete and precise statement of the *Employer's* requirements. If it is incomplete or imprecise there is a risk that the *Contractor* will interpret it differently from the *Employer's* intention. Information provided by the *Contractor* should be listed in the Works Information only if the *Employer* is satisfied that it is required, it is part of a complete statement of the *Employer's* requirements and is consistent with the other parts of the Works Information.

1. Description of the works

Give a detailed description of what the *Contractor* is required to do and of any work which the *Contractor* is to design.

SCOPE OF WORK (SOW)

Phase 1 – Technical Investigation, Detailed Design and Enabling Plans

Commented [LA1]: Awaiting word document for Scope of work

To achieve the transformation to digital data format, the following concept design plus sequence of activities is proposed:

- 1) A PLC or group of PLC's with I/O per switchgear cabinet or group of cabinets must be installed. Time stamping is required as part of the digital data.
- 2) Install network equipment to collate the data into a redundant SCADA Server.
- 3) Install a redundant SCADA Server and related Operator Workstation Clients as per fig. 1.
- 4) Consider backed up Power Supply for both PLC system and the SCADA system.
 - a) The SCADA system power supply must cater for a 72 hour back up power.
 - b) The PLC system power supply must cater for a 4 hour back up power supply.
 - c) The 2 systems (PLC and SCADA) can share the power supply as well.
- 5) The SCADA Application software must have the functionality:
 - a) To view live mimics of the controlled plant and the changing state of plant / parameters.
 - b) To present a Sequence of Events report, that can be filtered based on Plant Code (plus colour coding) and Time.
 - c) To present a special report on the balancing activity of the serviced rotor. This will require information from the integrated Balancing Panel system.
- 6) The redundant SCADA Servers and Operator Workstation machines can be located behind the back panel in a properly ventilated and dust proof enclosure. The Environmental conditions of the enclosure location must be considered.
- 7) A KVM system can be used to link the mouse, screens and keyboards of the Operator Workstations. Not less than 3 Operator stations should be implemented in the new computerised control centre, with one Operator Station dedicated to the big screens mounted in front of the back panel. A minimum of 2 big screens (min 65 inch) is considered in the design.
- 8) Update times on the SCADA Operator Stations should be less than 2 seconds for status changes and operator commands.
- 9) **Training of Operators/Electricians to navigate the new SCADA:** this is to be planned during the Phase 2 period prior to the downtime period, so as to enable smooth plant operation after the downtime period. A location for training room will be identified by the Client.
- 10) The Training platform must be quoted as a separate delivery as an option for the client to purchase at the end of the project to train future operators.
- 11) For cabling and field design work, the following activities are proposed:
 - a) Investigate cable routes that will be used.
 - b) Investigate the existing switchgear panel interfaces to the control room, as well as those from the field junction boxes to the control room.
 - c) Investigate the existing Power Supplies and their adequacy to meet the required back up times.

2. Drawings

List the drawings that apply to this contract.

| Drawing number | Revision | Title |
|----------------|----------|-------|
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3. Specifications

List the specifications that apply to this contract. Some typical headings have been provided as a minimum; delete if not required or expand and include correct titles as applicable.

| Title | Date or revision | Tick if publicly available |
|-------------------------------------|------------------|----------------------------|
| General Specifications: | | |
| Health and Safety requirements | | |
| Environmental requirements | | |
| Site regulations and access control | | |
| | | |
| | | |
| Technical specifications: | | |
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4. Constraints on how the Contractor Provides the Works

PROJECT AND CONTRACT TITLE _____

State any constraints on the sequence and timing of work and on the methods and conduct of work including the requirements for any work by the *Employer*.
Also include any management related constraints, invoicing and payment procedures some of which have been inserted below as a minimum guide.

4.1 Meetings

Provide information about regular meetings to be held such as early warning and compensation event meetings (suggest weekly), safety and planning meetings.

4.2 Use of standard forms

Provide details of standard forms to be used by the *Contractor* in the administration of the contract, for example early warning and compensation event notifications.

4.3 Invoicing and payment

The Z clauses make reference to invoicing procedures stated here in this Works Information. Also include a list of information which is to be shown on an invoice. The following text is provided as a guide; revise to suit actual requirements.

In terms of core clause 50 the *Contractor* assesses the amount due and applies to the *Employer* for payment. The *Contractor* applies for payment with a tax invoice addressed to the *Employer* as follows:

The *Contractor* includes the following information on each tax invoice:

- Name and address of the *Contractor*
- The contract number and title;
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number 4330196330;
- The total Price for Work Done to Date which the *Contractor* has completed;
- Other amounts to be paid to the *Contractor*;
- The change in the amount due since the previous payment being the invoiced amount - excluding VAT, the VAT and including VAT;
- (add other as required)

The *Contractor* attaches the detail assessment of the amount due to each tax invoice showing the Price for Work Done to Date for each item in the Price List for work which he has completed.

Add procedures for invoice submission and payment (e. g. electronic payment instructions)

4.4 Records of Defined Cost

Deleted as not applicable.

4.6 BBBEE and preferencing scheme

Deleted as not applicable.

4.7 Facilities to be provided by the *Contractor*

PROJECT AND CONTRACT TITLE

State any requirements such as offices on site for the *Employer*.
Facilities to be provided by the Employer shall have internet connection, one air-conditioned office with seating place with desk and toilet facilities for max of 3 Contractor's Personnel.

4.8 Title to material from excavation and demolition

Deleted as not applicable.

4.9 Design by the Contractor

Paragraph 1 above will have outlined what work is to be designed by the *Contractor* (if any). State here what procedures are required for the submission and acceptance of that design.

5. Requirements for the programme

State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

State what the use of the *works* is intended to be at their Completion as defined in Clause 11.2(1).

6. Services and other things provided by the *Employer*

Describe what the *Employer* will provide such as services (including water and electricity) and “free issue” Plant and Materials and equipment.

[illegible]

C4: Site Information

Site Information is information about the *site* at the time of tender which the tendering contractor needs to allow for in his rates and Prices. The information does not change after contract award, nor does it describe or specify anything which the Parties do during the contract. It is only referred to during administration of the contract if the *Contractor* encounters conditions which are different to those described here. The *Contractor* will then make a comparison between actual conditions encountered and those described here in his assessment of any additional cost or time he may need to be compensated for in order to complete the works. Disputes about the difference between the effects of conditions encountered and those which the *Contractor* allowed for in his Prices will be minimised if the information given here is complete and relevant. If no information is given the tendering contractor will need to guess what he may encounter thus tendering higher Prices to allow for conditions that may not even exist.

C4.1: Information about the *site* at time of tender which may affect the work in this contract

1. Access limitations

State if there is any physical, time or other "third party" constraint associated with gaining access to and doing work on the *site* that may not be immediately apparent from an inspection of the *site*.

2. Ground conditions in areas affected by work in this contract

If earthworks are included in the Scope of Work, provide details of the ground conditions the *Contractor* is likely to encounter when doing the work. This could vary from indicating where a test pit has been opened up for the *Contractor* to make his own observations to providing full borehole logs and associated geotechnical report.

3. Hidden and other services within the *site*

Provide details of underground or other hidden services which the *Contractor* may encounter whilst doing the work. Instructions about how to deal with them if encountered should be included in the Works Information.

4. Details of existing buildings / facilities which *Contractor* is required to work on

If work is to be carried out on existing buildings or facilities Site Information would be the 'as-built drawings' of those buildings or facilities. If these are not a correct statement or not available other means of describing the existing buildings or facilities would have to be used, such as providing photographs

CONFIDENTIALITY AGREEMENT

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

WHEREAS, the Employer and the Contractor (the Parties) desire to exchange certain confidential information; and consider further business dealings with each other.

WHEREAS, the parties desire to evidence their agreements governing the exchange of certain confidential information as set forth below.

Now therefore, for good and valuable consideration, including the mutual agreements hereinafter recited, the parties hereby agree as follows:

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the 'Subject Information') may include but not be limited to the parties' inventions, trade secrets, know-how, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.
2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other. Any project specific information that may help understand the purpose/context of the exchange of information.
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 and its Affiliates (as defined below) (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 if provided in writing or by email or other tangible electronic storage medium and is clearly marked "Confidential" or "Proprietary", or if orally or visually if it is identified as confidential at the time of disclosure and is confirmed as confidential by a written summary within ten (10) working days thereafter.
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 or if the Receiving Party can document was independently developed without use of any Subject Information of the Proprietor. If either party or any of their respective Affiliates or Authorized Parties is requested or required, by interrogatories, subpoena, or similar legal process, to disclose any Subject Information or notes, such party agrees to provide the Proprietor with prompt written notice of each such request, to the extent practicable, so that the Proprietor may seek an appropriate protective order, waive compliance by the Receiving Party with the provisions of this Agreement, or both. If, absent the entry of a protective order or receipt of a waiver, the Receiving Party is, in the opinion of its counsel, legally compelled to disclose such Subject Information or notes, the Receiving Party may disclose such Subject Information or notes to the persons and to the extent required without liability.

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. Nothing in this Section 6 shall require either party or any of their respective Affiliates and/or Authorized Parties to return, destroy, or delete copies of any computer records and/or files containing the Subject Information that have been created pursuant to automated processes such as document retention/archiving and/or back-up policies/procedures, provided that each and any such copies: (a) are kept confidential and cannot be accessed in the regular course of business; (b) are maintained and archived in compliance with reasonable information security standards; and (c) are properly deleted as required by the Receiving Party's document retention/archiving and/or back-up policies/procedures.
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, affiliates and its affiliates' employees, officers, directors and agents (including attorneys) that need to know ("Authorized Parties"), 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. An affiliate is considered a representative only if it actually receives Subject Information.
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. This Agreement automatically terminates two years from the Effective Date, however, the obligations of the party receiving Subject Information pursuant to this Agreement and all other obligations set forth hereunder shall survive the expiration or termination of this 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. As used in this Agreement, an "Affiliate" with respect to a party means any entity (including without limitation any individual, corporation, company, partnership, limited liability company or group) that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such party and is not a Contractor's competitor.
12. Each party acknowledges that money damages would not be a sufficient remedy for any breach of this Agreement. Accordingly, in the event of any such breach, in addition to any other remedies at law or in equity that a party may have, it shall be entitled to exercise all appropriate relief, including injunctive relief by any competent court, to obtain enforcement of the provisions of this Agreement.
13. 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.
14. 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.
15. 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.