

NEC3 Term Service Contract (TSC3)

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

and
(Reg No.)

for SUPPLY, DELIVERY AND APPLICATION OF ROAD
SURFACING FOR MATLA/KRIEL ROAD.

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**Documentation prepared
by:**

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PART C1: AGREEMENTS & CONTRACT DATA

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C1.1 Form of Offer & Acceptance

Offer

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

SUPPLY, DELIVERY AND APPLICATION OF ROAD SURFACING FOR MATLA/KRIEL ROAD.

The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto 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.

Options A	The offered total of the Prices exclusive of VAT is	R 0.00
	Value Added Tax @ 15% is	R 0.00
	The offered total of the amount due inclusive of VAT is ¹	R 0.00
In words		

This Offer may be accepted by the Employer 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 *Contractor* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s) _____

Capacity _____

For the tenderer: **tenderer**

Name & signature of witness

Date

Tenderer's CIDB registration number:

N/A

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 C1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
- Part C2 Pricing Data
- Part C3 Scope of Work: Service Information 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 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.

The tenderer shall within two weeks 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 original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s) _____

Capacity _____

for the Employer

**Eskom Rotek Industries SOC Ltd, Lower Germiston Road,
Rosherville, Cleveland, Johannesburg, 2001**

Name & signature of witness

Date

Schedule of Deviations to be completed by the *Employer* 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 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.

(i) For the tenderer:

(ii) For the *Employer*

Signature	_____	_____
Name	_____	_____
Capacity	_____	_____
On behalf of	tenderer	Eskom Rotek Industrial SOC Ltd
Name & signature of witness	_____	_____
Date	_____	_____

C1.2 TSC3 Contract Data

Part one - Data provided by the *Employer*.

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

Clause	Statement	Data
1	General	
	<p>The <i>conditions of contract</i> are the core clauses and the clauses for main Option:</p> <p>dispute resolution Option</p> <p>and secondary Options</p> <p>of the NEC3 Term Service Contract April 2013 (TSC3)</p>	<p>A: Priced contract with price list</p> <p>W1: Dispute resolution procedure</p> <p>X2: Changes in the law</p> <p>X17: Low service damages</p> <p>X18: Limitation of liability</p> <p>Z: <i>Additional conditions of contract</i></p>
10.1	<p>The <i>Employer</i> is (name):</p> <p>Address</p> <p>Tel No.</p>	<p>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</p> <p>Registered Address: 3 Lower Germiston Road Rosherville Cleveland\2022</p> <p>011 621 3000</p>
10.1	<p>The <i>Service Manager</i> is (name):</p> <p>Address</p> <p>Tel</p> <p>E-mail</p>	<p>Renias Murawo</p> <p>Rosherville, Johannesburg, 2022</p> <p>011 621 3000</p> <p>MurawoR@eskom.co.za</p>
11.2(2)	The Affected Property is	As specified in the Scope of Works.
11.2(13)	The <i>service</i> is	Supply, delivery and application of Road Surfacing for Matla/Kriel Road.
11.2(14)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> • Late Deliveries

- Supply of Works not to specifications.
- Force Majeure
- Labour strike and Community Unrest

11.2(15)	The Service Information is in	Part 3. C3.1 Scope of Works.
12.2	The <i>law of the contract</i> is the law of	The Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	Five (5) Working Days
2	The Contractor's main responsibilities	Data required by this section of the core clauses is also provided by the Contractor in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data
21.1	The <i>Contractor</i> submits a first plan for acceptance within	Seven (7) days of the contract date.
26.2	The <i>Contractor</i> does not appoint a proposed Subcontractor until the <i>Service Manager</i> has accepted him.	No access to site will be granted.
3	Time	
30.1	The <i>starting date</i> is.	01 August 2026
30.1	The <i>completion date</i> is.	31 July 2027
30.1	The <i>service period</i> is	12 months
4	Testing and defects	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
5	Payment	
50.1	The <i>assessment interval</i> is	Between the 20th and 25th day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	30 days from issue of invoice
51.4	The <i>interest rate</i> is	The publicly quoted prime rate of interest (calculated on a 365-day year) charged by 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 Rand.
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	Use of Equipment Plant and	There is no reference to Contract Data in this section of the core clauses and terms in italics

	Material	used in this section are identified elsewhere in this Contract Data
8	Risks and insurance	
80.1	These are additional <i>Employer's</i> risks	<ul style="list-style-type: none"> • Inclement Weather (rain, wind, hailstorm, heatwave) • Heatstroke • Ash dust from the existing Ash dump • Labour strike and Community Unrest impacting access to Site • Environmental Legal Contraventions and non-compliance to Legal and Statutory requirements • Availability of construction materials • Fire • Animals around the Power Station • Access constraints and interfacing with Others • Localisation requirements for use of local labour and suppliers • Unforeseen disasters
83.1	The <i>Contractor</i> provides these insurances from the Insurance table:	<p>As stated for "Format TSC3" available on http://www.eskom.co.za/live/content.php?itemD=9248 (see Annexure A for basic guidance)</p>
83.1	The <i>Contractor</i> provides these additional insurances:	<p>As stated for "Format TSC3" available on http://www.eskom.co.za/live/content.php?itemD=9248 (see Annexure A for basic guidance)</p>
83.1	The minimum amount of cover for insurance against loss and damage caused by the <i>Contractor</i> to the <i>Employer's</i> property is	<p>The amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/live/content.php?itemD=9248 (see Annexure A for basic guidance)</p>
83.1	The minimum amount of cover for insurance in respect of 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 for any one event is:	<p>Whatever the <i>Contractor</i> deems necessary in addition to that provided by the <i>Employer</i>.</p>
83.1	The minimum limit of indemnity for insurance in respect of 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 for any one event is:	<p>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R 500 000 (Five Hundred Thousand Rands).</p>

9	Termination	
90.3	Default notification period	Four (4) weeks.
10	Data for main Option clause	
A	Priced contract with price list	
20.5	The <i>Contractor</i> prepares forecasts of the final total of the Prices for the whole of the <i>service</i> at intervals no longer than	Four (4) weeks.
11	Data for Option W1	
W1.1	The <i>Adjudicator</i>	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).
W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za)
W1.4(2)	The <i>tribunal</i> is:	arbitration
W1.4(5)	The <i>arbitration procedure</i> is	The latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
	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.
12	Data for secondary Option clauses	
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
X17	Low Performance Damages	
X17.1	The amount for low performance damages per day per section of planned works schedule:	<u>amount</u> <u>performance level</u>

	<ul style="list-style-type: none"> • Supply, delivery and spraying of prime • Supply, delivery and spraying of tack coat • Supply, delivery and placing of 35mm asphalt layer • Quality Inspection and Testing • Hand-over of the complete works 	<p>R750.00</p> <p>R750.00</p> <p>R750.00</p> <p>R1 250.00</p> <p>R1 250.00</p>	<p>Per day.</p> <p>Per day.</p> <p>Per day.</p> <p>Per day.</p> <p>Per day.</p>
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X18 Limitation of Liability

X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to	10% of the value of the contract.
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss or damage to the <i>Employer's</i> property is limited to	The Amount of the deductibles relevant to the event described in the "Format TSC3" insurance policy available on http://www.eskom.co.za/live/content.php?item ID=9248
X18.3	The <i>Contractor's</i> liability for Defects due to his design of an item of Equipment is limited to	Not Applicable
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	Not Applicable

Z The additional conditions of contract are Z1 to Z15 always apply.

Z1 Cession delegation and assignment

- Z1.1 The *Contractor* does not cede, delegate, or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Contractor* cede and delegate its rights and obligations under this contract to any of its present divisions or operations which may be converted into separate legal entities or to Eskom SOC Limited or any of Eskom SOC Limited's subsidiaries.

Z2 Joint ventures

- Z2.1 Not Applicable.

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

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

- Z3.4 Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are P1, P2 and P4 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

Z4 Ethics

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Contractor*, 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 *Contractor's* obligation to Provide the Service or taking any other action as appropriate against the *Contractor* (including civil or criminal action).
- Z4.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if the *Contractor* (or any member of the *Contractor* where the *Contractor* constitutes a joint venture, consortium, or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Contractor* or any such member is removed from an approved vendor data base of the *Employer* because of such practice.

- Z4.3 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P4 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

Z5 Confidentiality

- Z5.1 The *Contractor* 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 *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z5.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Service Manager*.
- Z5.3 If the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* 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 *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z5.4 The taking of images (whether photographs, video footage or otherwise) of the Affected Property or any portion thereof, while Providing the Service and after the end of the *service period*, requires the prior written consent of the *Service Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z5.5 The *Contractor* ensures that all his Contractors abide by the undertakings in this clause.

Z6 Waiver and estoppel: Add to core clause 12.3:

- Z6.1 Any extension, concession, waiver, or relaxation of any action stated in this contract by the
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Parties, the *Service Manager* or the *Adjudicator* does not constitute a waiver of rights and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z7 Health, safety, and the environment: Add to core clause 27.4

- Z7.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *service*. Without limitation the *Contractor*:
- Accepts that the *Employer* 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 Affected Property.
 - warrants that the total of the Prices as at the Contract Date includes enough 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 the *service*; and
 - Undertakes, in and about the execution of the *service*, 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 *Contractors*, employees and others under the *Contractor’s* direction and control, likewise observe and comply with the foregoing.
- Z7.2 The *Contractor*, in and about the execution of the *service*, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his *Contractors*, *employees* and others under the *Contractor’s* direction and control, likewise observe and comply with the foregoing.

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

- Z8.1 Within one week of receiving a payment certificate from the *Service Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer’s* procedures stated in the Service Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z8.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
- Z8.3 The *Contractor* (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 *Employer’s* VAT number 4330196330 on each invoice he submits for payment.

Z9 Notifying compensation events

- Z9.1 Delete the last paragraph of core clause 61.3 and replace with:

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices.

Z10 Employer’s limitation of liability

- Z10.1 The *Employer’s* liability to the *Contractor* for the *Contractor’s* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z10.2 The *Contractor’s* entitlement under the indemnity in 82.1 is provided for in 60.1(14) and the *Employer’s* liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract

Z11 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet

point, after the words "against it":

- Z11.1 Or had a business rescue order granted against it.
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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 Contractor 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 Contractor, 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 influence the actions of an Affected Party unlawfully or illegally,

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 Contractor's obligation to Provide the Goods and Services if a Committing Party has taken such Prohibited Action and the Contractor 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 Contractor's obligation to Provide the Goods and Services for this reason.
- Z 12.3 If the Purchaser terminates the Contractor'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 Contractor ensures that the Committing Party co-operates fully with an investigation.
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Z13 Insurance

- Z 13.1 Replace core clause 84 with the following:**

Insurance cover 84

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

(b) INSURANCE TABLE A

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

Z 13.2

Replace core clause 87 with the following:

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

INSURANCE TABLE B

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

Z14 Nuclear Liability

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

Z15 Asbestos

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

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

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

Z15.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are affected by an independent, competent, and certified occupational hygiene inspection body, i.e., a SANAS accredited, and Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor's* expense. For the purposes of compliance, the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

Z15.3 The *Employer* manages asbestos and ACM according to the Standard.

Z15.4 If any asbestos is identified while Providing the Services, a risk assessment is conducted and

if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented, and relevant air monitoring conducted to declare the area safe.

- Z15.5 The *Contractor's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z15.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.
- Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

Annexure A: Insurance provided by the *Employer*.

These notes are provided as guidance to tendering contractors and the Contractor about the insurance provided by the Employer. The Contractor must obtain its own advice. Details of the insurance itself are available from the internet web link given below.

1. Services provided in a TSC3 contract could include some element of construction or refurbishment as well as a continuous maintenance or operational service activity. If an event occurs which causes loss or damage, a claim could be made either against the *Employer's* "works" type policy which may be in place for the *Employer's* portion of the Affected Property concerned or against the *Employer's* assets policy which may be in place for the *Employer's* portion of the Affected Property concerned, or both.
2. The cover provided and the deductibles under the works policy are different to those under the assets policy. Each policy has a range of applicable deductibles depending on the location of the Affected Property and the nature of the insurable event.
3. The *Contractor* is required in terms of Contract Data for clause 83 to provide cover for the deductibles in the insurance provided by the *Employer*. This can be provided from his own resources on a 'self-insured' basis or obtained by him from his own insurers. To assess the extent of this cover, tendering contractors and their brokers should consult the internet web link given below and scroll to '**Format TSC3**' to establish both the cover and the deductibles in relation to the *service* provided in terms of this contract.
4. Tendering contractors should note that cover provided by the *Employer* is only per the policies available on the internet web link listed below and may not be the cover required by the tendering contractor or as intended by each of the listed insurances in the left-hand column of the Insurance Table in clause 83.2. In terms of clause 83.1 "the *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Employer* is to provide". Hence the *Contractor* provides insurance which the *Employer* does not provide and in cases where the *Employer* does provide insurance the *Contractor* insures for the difference between what the Insurance Table requires and what the *Employer* provides.
5. If Marine Insurance is required, the *Contractor* needs to obtain a copy of the latest edition of Eskom's Marine Policies Procedures found at internet website given below.
6. Further information and full details of all Eskom provided policies and procedures may be obtained from:

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

C1.2 Contract Data

Part two - Data provided by the Contractor.

Notes to a tendering contractor:

1. Please read both the both the NEC3 Term Service Contract April 2013 and the relevant parts of its Guidance Notes (TSC3-GN)² 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.

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

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is	N/A
	The <i>subcontracted fee percentage</i> is	N/A
11.2(15)	The Service Information for the <i>Contractor's</i> plan is in:	C3.1 Scope of Works. Plan to be agreed in the production meetings.
21.1	The plan identified in the Contract Data is contained in:	To be agreed in the production meetings and to be submitted One (1) week of the Contract Date.
A	Priced contract with price list	
11.2(12)	The <i>price list</i> is in	C2.2
11.2(19)	The tendered total of the Prices is	R 0.00

² Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 5391902 or www.ecs.co.za

PART 2: PRICING DATA

TSC3 Option A

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	[1]
C2.2	The <i>price list</i>	[1]

C2.1 Pricing assumptions: Option A

1.1 How work is priced and assessed for payment.

Clause 11 in NEC3 Term Service Contract (TSC3) core clauses and Option A states:

Identified and defined terms	11	
	11.2	(12) The Price List is the <i>price list</i> unless later changed in accordance with this contract.
		(17) The Price for Services Provided to Date is the total of <ul style="list-style-type: none">• The Price for each lump sum item in the Price List which the <i>Contractor</i> has completed and• Where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the <i>Contractor</i> has completed by the rate.
		(19) The Prices are the amounts stated in the Price column of the Price List. Where a quantity is stated for an item in the Price List, the Price is calculated by multiplying the quantity by the rate.

This confirms that Option A is a priced contract where the Prices are derived from a list of items of service which can be priced as lump sums or as expected quantities of service multiplied by a rate or a mix of both.

1.2 Measurement and Payment

- 1.2.1 The Price List provides the basis for all valuations of the Price for Services provided to Date, payments in multiple currencies and general monitoring.
- 1.2.2 The amount due at each assessment date is based on activities and/or milestones completed as indicated on the Price List.
- 1.2.3 The Price List work breakdown structure provided by the *Contractor* is based on the activity/milestone provided by the *Employer*. The activities listed by the *Employer* are the minimum activities acceptable and identify the specific activities which are required to achieve Completion. The Price List work breakdown structure is compiled to the satisfaction of the *Employer* with any additions and/or amendments deemed necessary.
- 1.2.4 The *Contractor's* detailed Price List summates back to the activity/milestone provided by the *Employer* and is sufficient detail to monitor completion of activities related to operations on the Accepted Plan for payment of completed activities may be assessed.
- 12.5 The prices are obtained from the Price List. The Prices includes for all direct and indirect cost, overheads, profits, risks, liabilities, obligations, etc. relative to the contract.

C2.2 the price list

BILL OF QUANTITIES							
ITEM	PAYMENT DESCRIPTION	UNIT	QTY	RATE	AMOUNT		
SECTION 1300							
	13.00	CONTRACTOR'S ESTABLISHMENT ON SITE AND GENERAL OBLIGATIONS					
	13.01	Contractor's general obligations					
		(a) Fixed obligations 3000033293	L/sum	1			
		(c) Time-related obligations	Sum	1			
	13.2	SHEQ 3000037468	each	1			
	13.3	Safety File 3000022730	each	1			
	13.4	Induction 3000022754	each	1			
	13.5	Safety	each	1			
SECTION 4100							
	41.00	PRIME COAT 3000057719					
	41.01	Prime coat:					
		(c) MC-30 cut-back bitumen @ 1 l/m ²	litre	73 410			
	41.03	Extra over item 41.01 for applying the prime coat in areas accessible only to hand held equipment	litre	500			
SECTION 4200							
	42.00	ASPHALT BASE AND SURFACING 3000057712					
	42.02	Asphalt surfacing (35mm with A-E2 Binder)					
		(a) Continuously graded					
		(2) Medium graded					
		(i) 35 mm thick	m ²	71 445			
	42.04	Tack coat of 30% stable-grade emulsion @ 0.75 l/m ²	litre	53 890			
	42.07	Trial sections					
		(a) 35 mm surfacing	m ²	740			
	42.13	Placing and compacting asphalt in restricted areas:					
		(a) Extra over items 42.01, 42.02 and 42.10	m ²	500			
	42.14	Extra over item 42.04 for applying tack coat in restricted areas	litre	500			
						R -	

Part 3: Scope of Work

Document reference	Title	No of pages
C3.1	This cover page <i>Employer's Service Information</i>	[1] [8]
	Total number of pages	9

C3.1: EMPLOYER'S SERVICE INFORMATION

1. INTRODUCTION

Eskom Rotek Industries (ERI), a wholly owned subsidiary of Eskom Holdings, provides construction, maintenance, and transportation services across various Eskom power stations to support electricity generation. Within ERI, the Construction Services division delivers both civil and electrical construction solutions for projects linked to power generation.

The Civils Portfolio, a key unit within Construction Services, has recently been awarded the contract to rehabilitate the Matla–Kriel Road, a critical route used by coal trucks transporting coal from Matla Mine to Kriel Power Station. Due to the traffic loading will be carried by this road, bituminous concrete has been selected as a surfacing type to be applied. This document details a scope of work for the supply, delivery, applying prime and laying asphalt on Matla-Kriel Road.

2.0 SUPPORTING CLAUSES

2.1 SCOPE

The scope of work encompasses the supply, delivery applying the three coats surfacing which is prime, tack and asphalt. The selected prime is MC30 while the tack is stable 30 emulsion and asphalt are continuously graded bituminous concrete to be laid to a thickness of 35mm.

The scope of work is as follows:

- Supply, delivery and spraying of prime
- Supply, delivery and spraying of tack coat
- Supply, delivery and placing of 35mm asphalt layer
- Quality Inspection and Testing
- Hand-over of the complete works

The figure below indicates the road route to be surfaced. Indicating how the two Power stations are linked. The Kriel coal access road which branches from the road is highlighted in red and it is part of the scope.



Figure 1: Link Rd & Coal Access Rd

2.2 PURPOSE OF THE SCOPE OF WORK

This scope of work covers the construction of the 35mm asphalt for the rehabilitation of Matla-Kriel Road to provide coal transportation o Kriel Power Station. The document outlines the general technical requirements for the rehabilitation of the road between two power stations.

The design definitions and guidelines, quality management, minimum codes and standards are also detailed in this document.

2.3 APPLICABILITY

This document is applicable to all phases of the Matla–Kriel Road rehabilitation project and shall govern the activities and responsibilities of Eskom Rotek Industries, client representatives, and appointed professional consultants.

2.4 NORMATIVE/INFORMATIVE REFERENCES

2.4.1 Normative

The following reference documents, in their latest revisions, form an integral part of this specification to the extent indicated herein. In the event of any conflict between the provisions of this specification and the applicable sections of the Eskom documents listed below, the requirements of this specification shall take precedence. This specification does not override applicable laws and regulations (including SANS standards), except where a formal exemption has been granted by the relevant authorities.

1. **240-53665024** – Engineering Quality Manual
2. **ISO 9001** – Quality Management Systems
3. ERI SHE Specification
4. Occupational Health and Safety Act and Regulations (**Act 85 of 1993**)
5. **240-62196227** – Eskom Life Saving Rules

Informative

1. QM58 – Eskom Quality Specification
2. Matla-Kriel Bill of Quantities

2.5 DEFINITIONS

Definition	Description
Employer	Eskom Rotek Industries SOC Limited
Supplier	Tenderer contracted by the Employer to perform the duties and responsibilities as supplier in accordance with terms and conditions of the contract.
Employer’s Representative	An Employee with delegation of authority issued by the Employer to perform duties on behalf of the Employer in accordance with terms and conditions of the contract.
Lifesaving rules	(240-62196227) a rule that if not adhered to, has the potential to cause serious harm to people
Contractor	Means an employer as defined in section 1 of the Act who performs contract work and includes principal contractors
Mobile Plant	Any plant that is provided with some form of self-propulsion that is ordinarily under direct control of an operator.

2.5.1 Disclosure Classification

Controlled Disclosure: Controlled Disclosure to external parties (either enforced by law, or discretionary)

2.6 ABBREVIATIONS

Abbreviation	Description
ERI	Eskom Rotek Industries
CS	Construction Services
RA	Risk Assessment
SANAS	South African National Accreditation System
RP	Responsible Person
QMS	Quality Management System

PPE	Personal Protective Equipment
FEL	Front End Loader
DMR	Driven Machinery Regulations
TLB	Tractor Loader Back actor
PTW	Permit To Work
RoD	Run of Dump
QCP	Quality Control Plan
COLTO	Committee of Land Transport Officials
OMC	Optimum Moisture Content
SOW	Scope of Work
CoE	Centre of Excellence
PI	Plasticity Index
TRH	Technical Recommendations for Highways
QA	Quality Assurance

2.7 ROLES AND RESPONSIBILITIES

2.7.1 Eskom Rotek Industries – Responsibilities

- Ensure that the supplier has the relevant standard specifications governing the supply of required material and the works.
- Ensure that delivery of equipment is as per tender specifications
- Verify that delivery vehicles are inspected and meet all regulatory and site-specific requirements prior to arrival.
- Ensure that delivery vehicles are operated exclusively by qualified and competent personnel.

2.7.2 Eskom Rotek Industries – Site Supervisor / Quality Controller Responsibilities

- Verify that all deliveries are checked and that accurate records are maintained.
- Ensure that laying and spraying equipment is operated strictly within its designated parameters and capacities.
- Confirm that equipment is operated solely by competent, formally appointed personnel.
- Ensure that delivery documentation clearly specifies both the quantity and the bituminous binder type.

2.7.3 Supplier

- Ensure that the supply and quality of the works meet the relevant standards
- Ensure timely delivery and execution of the works
- Ensure that work is delivered within time and complying with the relevant standards
- Conform with requirements of the employer

2.8 PROCESS FOR MONITORING

Upon receipt of a Purchase Order with fixed and firm dates, the supplier shall provide Eskom Rotek Industries with the schedule and target delivery date of the works.

2.9 RELATED/SUPPORTING DOCUMENTS

The contractor shall supply the materials that comply with specifications and apply them as per design application rates.

3.0 WORKS INFORMATION

3.1 PRIME COAT

The prime coat will be MC30 cut back bitumen and applied at a rate of 1.0 l/m²

3.2 TACK COAT

Tack coat will be 30% stable grade emulsion to be applied at a rate of 0.75 l/m²

3.3 SEAL

Asphalt to be used will be a continuously graded asphalt medium grade with a thickness of 35mm

3.4 REQUIRED INFORMATION

- COLTO Standard Specification for Roads and Bridges Works for State Authorities
- Essential Construction Chemicals

3.5 CONFORMANCE

- Manual 39 – Laboratory Testing Protocols for Binders and Asphalt
- TRH1- Prime Coats and Bituminous Curing Membranes
- TRH3 – Surfacing Seals for Rural and Urban Roads
- TRH7 – The Use of Bitumen Emulsions in the Construction and Maintenance of Roads
- TRH8 – Design and Use of Hot – Mix Asphalt in Pavements
- TRH21 – Hot Mix Recycled Asphalt

4.0 AUTHORIZATION

This document has been seen and accepted by:

Name and surname	Designation
Thandi Mokoko	Senior Project Manager
Thabo Nhleko	HOD - Civils

5.0 REVISIONS

Date	Rev.	Compiler	Remarks
03/02/2026	0	Renias Murawo	First Draft

6.0 DEVELOPMENT TEAM

- Renias Murawo

7.0 ACKNOWLEDGEMENT

None

CONFIDENTIALITY AGREEMENT

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

WHEREAS the *Purchaser* and the *Supplier* (the *Parties*) desire to exchange certain confidential information; and consider further business dealings with each other.

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

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

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the 'Subject Information') may include but not be limited to the parties' inventions, trade secrets, know-how, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.
2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other.
3. The parties each agree that they shall maintain in secrecy in accordance with the terms of this Agreement all of the Subject Information each party receives (the 'Receiving Party') from the other party (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.
4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.
5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can

demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.

6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes and other writings prepared by the parties, or their advisors, based on the Subject Information of each other, shall be destroyed, and such destruction shall be certified in writing by an 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 similar to and which is consistent with this Agreement, and the disclosing party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party.
8. Each party agrees that it shall not, while and for so long as it is obligated to maintain Subject Information in secrecy, use for its own benefit, or for the benefit of others or exploit, 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.