



## **ELECTRICITY SUPPLY AGREEMENT**

### *SECTION A : GENERAL*

#### **1. PARTIES**

The parties to this Agreement are -

##### **ESKOM HOLDINGS LIMITED**

**(Reg No: 2002/015527/06)** a Company incorporated in terms of the Company Laws of the Republic of South Africa, with its registered office at Megawatt Park, Maxwell Drive, Sandton

(‘ESKOM’) herein represented by CORELIUS ANDRIES VISAGIE and DEON WILLEM CONRADIE in their respective capacities as GROUP SALES MANAGER and ELECTRICITY PRICING AND CONTRACTS MANAGER

- AND -

##### **MBOMBELA MUNICIPAL COUNCIL**

(‘the DISTRIBUTOR’, previously known as Nelspruit Town Council) herein represented by BRUNO SIMON VILANE in his capacity as MUNICIPAL MANAGER

#### **2. INTRODUCTION**

It is recorded that -

2.1 ESKOM is presently supplying the DISTRIBUTOR, at its Delta point of delivery, with electricity in bulk for municipal purposes and for the purpose of distribution to consumers within the DISTRIBUTOR’s licensed area of supply, in terms of an existing electricity supply agreement concluded between

ESKOM and Nelspruit Town Council dated 8 August 1975  
(Ref. No. ETR 23073).

2.2 The DISTRIBUTOR has, in addition to the supply referred to in subclause 2.1 above, applied to ESKOM for a supply of electricity in bulk for its Nelsrivier point of delivery and has also elected to be charged at the Megaflex prices as set out in Eskom's Schedule of Standard Prices for both its Deta and Nelsrivier points of delivery.

2.3 The DISTRIBUTOR and ESKOM have agreed that the said supply agreement dated as in subclause 2.1 above, shall be terminated and replaced by this Agreement on the date of signing hereof.

### **3. GENERAL AGREEMENT**

ESKOM agrees to supply to the DISTRIBUTOR and the DISTRIBUTOR agrees to take from ESKOM all the electricity required by the DISTRIBUTOR for its distribution system, on the terms and conditions set out in this Agreement; subject to the provisions of the Electricity Act, 1987 (Act No. 41 of 1987) and the Rules and Regulations issued thereunder, and of the parties' distribution licences and ESKOM's Schedule of Standard Prices, as amended or re-enacted from time to time and any other applicable laws.

### **4. INTERPRETATION AND DEFINITIONS**

Unless the context in this Agreement clearly indicates a contrary intention, expressions which denote:

4.1 a gender shall include the other gender;

4.2 a natural person shall include a juristic person, and vice versa;

4.3 the singular shall include the plural, and vice versa; and

4.4 'Parties' shall mean the Parties to this Agreement as described in Clause 1 and 'Party' shall be construed accordingly; and

4.5 words and expressions defined in the Electricity Act, the Eskom Distribution Licence, the Eskom Schedule of Standard Prices and the Rationalised User Specification for Quality of Supply ('NRS 048') issued by the South African Bureau of Standards shall bear the same meaning when used in this Agreement as revised from time to time or as replaced by a national standard.

## **5. ANNEXURES**

The following annexures referred to in this Agreement shall be deemed to be incorporated herein and to form an indivisible part hereof.

Annexure A – Megaflex Price List

Annexure B - Quality of Supply Specification

## **6. COMMENCEMENT OF SUPPLY FOR THE NELSRIVIER POINT OF DELIVERY**

The supply of electricity in bulk to the DISTRIBUTOR at its Nelsrivier point of delivery has been made available by ESKOM to the DISTRIBUTOR on 29 July 2001.

## **7. PERIOD OF AGREEMENT**

This Agreement shall come into force on the date of signing hereof and shall endure for an indefinite period, subject to the provisions of this Agreement and the right of either party to terminate this Agreement by giving the other party 3 (three) calendar months' notice in writing; provided that this provision shall not limit the parties' rights to terminate this Agreement in terms of Clause 23.

*SECTION B : FINANCIAL*

**8. PRICES FOR ELECTRICITY**

8.1 The prices payable by the DISTRIBUTOR for electricity supplied or made available under this Agreement, shall be the Megaflex prices as prescribed in the Eskom Schedule of Standard Prices, subject however to ESKOM's right to adjust the prices it charges for electricity supplied in accordance with the provisions of the Electricity Act and with the approval of the National Electricity Regulator.

Particulars of the Megaflex prices currently in force are set out in Annexure 'A'.

8.2 The DISTRIBUTOR may elect to be charged any applicable standard tariff as prescribed in the Eskom Schedule of Standard Prices, subject however to –

8.2.1 a new electricity supply agreement being concluded; and

8.2.2 such variation in tariff being restricted to 1 (one) change per 12 (twelve) month period.

8.3 ESKOM agrees to grant the DISTRIBUTOR the benefit of diversity between the maximum demands measured by ESKOM at each of the points of delivery referred to in Clause 15 on condition that:

8.3.1 The DISTRIBUTOR complies with the provisions of ESKOM's policy document, titled 'Granting the Benefit of Diversity' (Ref No ESKADAATO), as amended with the approval of the National Electricity Regulator.

8.3.2 ESKOM shall notify the DISTRIBUTOR in the event of non-compliance with the criteria specified in ESKOM's policy document as referred to in subclause 8.3.1 above. Should the DISTRIBUTOR fail to comply with the said criteria within 14 (fourteen) days after receiving such notification, ESKOM shall withdraw the benefit of diversity until such time that ESKOM is satisfied that the DISTRIBUTOR complies with the said criteria.

- 8.4 The calculation of the maximum demand charge referred to in the Megaflex prices as set out in ESKOM's Schedule of Standard Prices shall accordingly, for as long as the benefit of diversity is granted to the DISTRIBUTOR, be based on the maximum simultaneous demand registered during peak and standard periods in the month at the said points of delivery subject to the proviso that the reactive energy charge referred to in the Megaflex prices as set out in the aforesaid Schedule, shall be calculated separately for each point of delivery.

For the purpose of this subclause, 'maximum simultaneous demand' shall mean the highest simultaneous load, measured in kilowatts (kW), supplied in any demand-integrating period of 30 (thirty) consecutive minutes in the month, arithmetically summated over the said points of delivery.

- 8.5 If additional points of delivery are made available by ESKOM to the DISTRIBUTOR in terms of this Agreement, such additional supplies shall be subject to the express condition that the demand charge for each additional point of delivery, shall be based on the maximum demand supplied at that particular point of delivery. The diversity between the monthly maximum demands at such additional points of delivery and the existing points of delivery shall accordingly not be taken into account in determining the DISTRIBUTOR's liability, unless otherwise agreed to by ESKOM.

## **9. CAPITAL EXPENDITURE: REBATABLE CONNECTION CHARGE AND PREMIUM CONNECTION CHARGE**

- 9.1 The DISTRIBUTOR shall pay to ESKOM in respect of the capital expenditure and costs incurred or to be incurred by ESKOM in making the bulk supply of electricity available to the DISTRIBUTOR at the point of delivery referred to in Clause 14, the following amounts :

### **9.1.2 REBATABLE CONNECTION CHARGES AND PREMIUM CONNECTION CHARGE**

A monthly amount (hereinafter collectively referred to as a 'rebatable connection charge' and a 'premium connection charge'. The type of charge, its expiry date and the amount payable in each case, are as follows:

POINTS OF DELIVERY	REBATABLE CONNECTION CHARGE	PREMIUM CONNECTION CHARGE	EXPIRY DATE
Delta	R1 288,00 (+ VAT @ 14% = R1 468,32)		1 May 2003
Nelsrivier	R5 482,00 (+ VAT @ 14% = R6 249,48)	R16 872,00 (+ VAT @ 14% = R19 234,08)	1 August 2026

The said rebatable connection charge is based on the notified maximum demand of the DISTRIBUTOR at the date of signing this Agreement and is subject to revision should the notified maximum demand as set out in subclause 14.2 be varied in terms of subclauses 14.3 and 14.5.

9.1.3 The rebatable connection charges (before the addition of VAT at the prescribed rate) shall be rebated, but not beyond extinction, in respect of each month during which electricity is taken, by R2,00 (two rands) for each kilowatt of the actual maximum demand recorded during peak or standard periods in that month.

9.2 The rebatable connection charge and the premium connection charge shall be payable :

9.2.1 for the duration of this Agreement, subject however to the provisos that (i) each charge shall be payable for a period not less than 3 (three) months, (ii) each charge shall cease to be payable on its expiry date as specified in subclause 9.1 and (iii) that if any one of the charges are increased at any time as is provided for in Clause 13, the amount by which the particular charge is increased shall be payable until such date as is agreed between the Parties, or until the supply is terminated, whichever date is the earlier; and

9.2.2 monthly, whether any electricity is taken in any month or not, at the same time as the prices payable under Clause 8.

- 9.3 The premium connection charge referred to in subclause 9.1.2 is payable in respect of the additional electrical circuits and/or equipment ('the additional equipment'), which ESKOM has had to provide in order to supply the DISTRIBUTOR at its request, with a more reliable and secure supply than is provided for in the standard Megaflex prices payable in terms of Clause 8. The additional equipment at the date of this Agreement is the 132kV (one hundred and thirty-two kilovolt), 20 MVA (twenty megavolt ampere) meterpoint.

As the said additional equipment will of necessity eventually need to be replaced or refurbished, it is accordingly agreed that when the said general replacement or refurbishment (ordinary maintenance and repairs being specifically excluded) becomes necessary in order for ESKOM to continue to provide the DISTRIBUTOR with a supply of above-standard reliability and continuity, ESKOM shall notify the DISTRIBUTOR in writing thereof giving details of the technical and financial implications (including details of the replacement and/or refurbishment work that has to be carried out, how the quality and continuity of supply will be affected if the necessary replacement and/or refurbishment is not effected and the estimated capital expenditure and costs involved). If the DISTRIBUTOR disputes in writing the need for the replacement and/or refurbishment work referred to within 90 (ninety) days of receipt by the DISTRIBUTOR of ESKOM's notice in this regard, the matter shall, finally, be determined by the National Electricity Regulator. ESKOM shall however, until such time as the dispute is adjudicated on, have the right to deviate from the quality of supply parameters and limits specified in the Quality of Supply Specification (Annexure 'B') and to disconnect and/or remove such additional equipment if in ESKOM's opinion it becomes necessary for safety or technical reasons.

## **10. PAYMENT OF ELECTRICITY ACCOUNTS**

- 10.1 Electricity accounts for all charges payable under this Agreement shall be sent to the DISTRIBUTOR as soon as possible after the end of each month, and each account shall be due and payable on the date the account is received by the DISTRIBUTOR, which date, for purposes of this Agreement, shall be as set out in subclause 28.2.

- 10.2 Should payment not be received within a period of 10 (ten) days from the date the account is deemed to have become due and payable in terms of subclause 10.1, ESKOM may discontinue the bulk supply to the DISTRIBUTOR and/or terminate the electricity supply agreement after having given the DISTRIBUTOR written notice as required in terms of Section 11 of the Electricity Act. The amount outstanding shall bear interest compounded monthly from the due date to date of payment, at a rate per annum equal to the prevailing prime overdraft rate charged by First National Bank of Southern Africa Limited plus 5% (five per centum).
- 10.3 Should the DISTRIBUTOR dispute an account, it shall not be entitled to reduce or set off its debt or defer payment thereof beyond the period allowed for in subclause 10.2; but the account shall be settled in full pending resolution of such dispute. If a manifest error is however evident, the DISTRIBUTOR shall be entitled to pay in lieu of the amount claimed an amount equal to the average of the accounts rendered for the preceding three consecutive months.
- 10.4 Should the DISTRIBUTOR be incorrectly charged for any amount(s) payable in terms of the electricity supply agreement as a result of human error, ESKOM shall inform the DISTRIBUTOR of the correct amount(s) payable and the reasons therefor.

In the case of the DISTRIBUTOR being overcharged and having paid such overcharged amount, ESKOM shall as soon as practicable at the DISTRIBUTOR's election either credit the DISTRIBUTOR's electricity account or reimburse the DISTRIBUTOR with the total amount overcharged. The said amount shall include interest, compounded monthly from the date the DISTRIBUTOR has paid the overcharged amount up to the date ESKOM has credited the DISTRIBUTOR's electricity account or has repaid the DISTRIBUTOR, as the case may be, at a rate per annum equal to the prevailing prime overdraft rate charged by First National Bank of Southern Africa Limited.

In the case of the DISTRIBUTOR being undercharged, ESKOM shall debit the DISTRIBUTOR's electricity account with the total amount undercharged and such amount shall be payable by the DISTRIBUTOR on such terms as



may be agreed to by ESKOM; subject to the proviso that the DISTRIBUTOR may pay the amount over a period commensurate with the amount undercharged, but such period shall be limited to a maximum period of 6 (six) months. The amount outstanding shall bear interest, compounded monthly, from the date the DISTRIBUTOR's account has been debited in terms of this Clause to date of payment, at a rate per annum equal to the prevailing prime overdraft rate charged by First National Bank of Southern Africa Limited.

- 10.5 A certificate under the signature of a duly authorised employee of ESKOM setting out the amount due and payable by the DISTRIBUTOR at any time in terms of this Agreement, shall be prima facie proof, subject to manifest error, of the DISTRIBUTOR's debt for the purpose of insolvency and legal proceedings and the obtaining of provisional sentence.

## **11. SECURITY - ELECTRICITY ACCOUNTS**

- 11.1 Should the DISTRIBUTOR at any time be in arrears with the payment of electricity accounts in respect of its Delta and Nelsrivier points of delivery, the DISTRIBUTOR shall be obliged to furnish ESKOM with security for the due payment of such accounts within 30 (thirty) days of being called upon by ESKOM to do so. The security shall be such as is acceptable to ESKOM and the convertible value shall be sufficient to cover the estimated amount payable by the DISTRIBUTOR for the bulk supply during any period of 3 (three) consecutive months.
- 11.2 As security for the due payment of the electricity accounts to be rendered for the Nelsrivier point of delivery, the DISTRIBUTOR shall deposit with ESKOM within 30 (thirty) days of being requested to do so, the amount of R5 189 500,00 (five million one hundred and eighty-nine thousand five hundred rands) or furnish ESKOM with a guarantee acceptable to ESKOM for the aforesaid amount.
- 11.3 The said deposit or guarantee, as the case may be, shall be returned to the DISTRIBUTOR upon termination of this Agreement and final settlement of any amounts owing to ESKOM.
- 11.4 The said deposit shall bear interest, capitalised annually, at the prevailing rate determined by ESKOM from time to time.

11.5 In the event of the final account not being settled, ESKOM shall be entitled to apply the deposit to any outstanding amounts owing to ESKOM, or if ESKOM holds a guarantee, to call up the said guarantee without any notice to the DISTRIBUTOR.

**12. IRRECOVERABLE EXPENDITURE AND COSTS:  
GUARANTEED CONTRIBUTION**

The DISTRIBUTOR acknowledges that ESKOM will, in making a bulk supply of electricity available to the distribution system and also if it should become necessary to dismantle its equipment on termination of the supply, be put to certain expenditure and costs in excess of the value of the recoverable assets. To compensate ESKOM for such expenditure and costs it is agreed as follows:

12.1 In the event of the supply to the distribution system being discontinued the DISTRIBUTOR shall pay to ESKOM a contribution towards the said irrecoverable expenditure and costs which ESKOM would incur.

12.2 The DISTRIBUTOR's contingent liability shall not exceed the amount of R2 307 700,00 (two million three hundred and seven thousand seven hundred rands) (hereinafter referred to as 'the Guaranteed Contribution').

12.3 Subject to the DISTRIBUTOR meeting its obligations under this Agreement, the Guaranteed Contribution shall be reduced for and in respect of each completed year during which this Agreement remains in force from and including the fourth year until and including the thirteenth year, calculated from the date electricity is first supplied to the DISTRIBUTOR in terms hereof, by 1/10th (one-tenth) of the Guaranteed Contribution.

12.4 If within the period of 13 (thirteen) years referred to in subclause 12.3, this Agreement is terminated by ESKOM for breach of contract by the DISTRIBUTOR or is terminated by the DISTRIBUTOR for any reason, the amount of the Guaranteed Contribution or the reduced amount thereof shall be due and payable by the DISTRIBUTOR to ESKOM on demand.

**13. AMENDMENT OF TERMS - ADDITIONAL CAPITAL EXPENDITURE**

In the event of the DISTRIBUTOR requiring ESKOM to provide an increased bulk supply in accordance with the provisions of Clause 14, such variation in the bulk supply shall be subject to such terms and conditions as are agreed between the parties and confirmed in writing in accordance with subclause 23.2; failing such agreement, no increased bulk supply shall be provided by ESKOM. Any resultant adjustment of the amount(s) referred to in Clause 9, shall take account not only of the additional capital expenditure incurred or to be incurred by ESKOM in increasing the DISTRIBUTOR's bulk supply but also the additional capacity of ESKOM's distribution system made available and/or reserved to meet the DISTRIBUTOR's increased demand.

*SECTION C : TECHNICAL*

**14. NOTIFIED MAXIMUM DEMANDS AND NOTIFICATION OF ADDITIONAL DEMANDS**

14.1 ESKOM's obligation shall be to make available and supply to the DISTRIBUTOR a supply of electricity up to the maximum capacity represented by the notified maximum demand of the DISTRIBUTOR, as increased from time to time by the additional demands of the DISTRIBUTOR, notified to and accepted by ESKOM in accordance with the provisions of subclause 14.3.

14.2 The notified maximum demands of the DISTRIBUTOR at date of this Agreement is as follows:

<b>Point of Delivery</b>	<b>Notified Maximum Demand</b>
Delta	45 MVA (forty-five megavolt ampere)
Nelsrivier	20 MVA (twenty megavolt ampere)

- 14.3 The DISTRIBUTOR undertakes to notify ESKOM in writing each year of the notified maximum demand (in both peak and standard periods) for each of three succeeding years. Should the DISTRIBUTOR however at any time require an increased bulk supply from ESKOM (over and above the notified maximum demand in force from time to time), it shall give adequate notice in writing to ESKOM of the increased demand, which it requires ESKOM to supply and the date(s) at which such increased demand(s) is/are required.
- 14.4 Any variation in the DISTRIBUTOR's notified maximum demand shall be dealt with in accordance with the provisions of Clause 13.
- 14.5 Any increase in the maximum demand (i.e. utilised capacity) taken by and supplied to the DISTRIBUTOR above the notified maximum demand referred to in subclause 14.2 shall replace the said notified maximum demand, provided that in each instance where notice of the increase in the notified maximum demand is not given and ESKOM notifies the DISTRIBUTOR that such increase or any portion thereof cannot be regarded as available to the DISTRIBUTOR on demand until a future date, such increase or portion shall not, until such future date, form part of the notified maximum demand.

## **15. POINTS OF DELIVERY**

The electricity supplied by ESKOM shall be delivered to the DISTRIBUTOR at the following points of delivery and at such additional points of delivery as may from time to time be mutually agreed between the parties:

- (i) Delta - POD: the 33kV busbar isolators at the Delta substation;
- (ii) Nelsrivier - POD: the 132kV line isolators at the Nelsrivier substation.

## **16. FORM AND QUALITY OF ELECTRICITY TO BE SUPPLIED**

- 16.1 Electricity shall be supplied as three-phase alternating current at a nominal frequency of 50Hz (fifty hertz), subject to Regulation 9(3) of the Electricity Act, and at the following declared voltages :

<b>Point of Delivery</b>	<b>Declared voltage</b>
Delta - POD	33kV (thirty-three kilovolts)
Nelsrivier - POD	132kV (one hundred and thirty-two kilovolts)

16.2 ESKOM will furnish the DISTRIBUTOR with a reliable and continuous supply of electricity. However, it is not practicable for ESKOM to guarantee that the continuity and voltage quality of the supply will always be maintained under all contingencies. It is therefore incumbent on the DISTRIBUTOR to take adequate measures to protect its business and electrical installation against any losses and/or damage arising from supply interruptions, voltage variations (including voltage dips), voltage distortions, voltage unbalance, surges, undervoltages and overvoltages in the supply to its electrical installation.

#### 16.3 Unforced Interruptions

- (a) ESKOM shall have the right, for purposes of the efficient operation and extension of ESKOM's transmission and distribution systems and also in emergencies, to temporarily interrupt the supply to the DISTRIBUTOR.
- (b) ESKOM shall give the DISTRIBUTOR not less than 14 (fourteen) days' written notice of any planned interruptions.
- (c) ESKOM and the DISTRIBUTOR shall collaborate in determining the portion of the DISTRIBUTOR's load which it will reduce through ESKOM's Load Curtailment and/or Manual Load-shedding and/or Under-frequency Load-shedding schemes, or by other agreed means, if ESKOM should experience a shortage of generating and/or transmission capacity.

#### 16.4 Power Quality

Details of the parties' obligations in respect of the power quality aspects of the supply, are specified in Sections B.1.1, C.1.2, C.1.3, C.1.4 and C.1.5 of Annexure 'B'.

16.5 Subject to the provisions of this Agreement, ESKOM shall not be liable for damages, expenses or costs caused to the DISTRIBUTOR from any reduction of or interruption in the supply, or any variation of voltage or frequency, or any failure to supply electricity, unless the said reduction, interruption, variation or failure is due to the negligence of ESKOM. In the event that ESKOM should be liable for damage caused to the DISTRIBUTOR as a result of any such reduction in load or any interruption in the supply, or any variation of voltage or frequency or any failure to supply electricity, such liability shall be limited to direct damages excluding consequential damages. Consequential damages includes, but is not limited to, loss of production and loss of profit.

## **17. POWER FACTOR**

The power factor at each point of delivery shall under all loading conditions not be leading, unless otherwise agreed to by ESKOM.

The power factor of the load at each point of delivery shall not be less than 0,85 (nought comma eight five) lagging. Should the power factor be less than 0,85 (nought comma eight five), the DISTRIBUTOR shall be required to install at its own expense suitable apparatus to ensure that this requirement is complied with.

For purposes hereof 'power factor' is defined as the kWh divided by the kVAh (where the kVAh equals the square root of the sum of the kWh squared and the kvarh squared) measured over the same demand-integrating period.

## **18. ACCOMMODATION FOR ESKOM'S EQUIPMENT**

18.1 The DISTRIBUTOR has provided and shall continue for the duration of this Agreement to provide and maintain in good order at its expense a site to be mutually agreed upon and such accommodation, including structures, as ESKOM may reasonably require for accommodating its equipment.

The said accommodation shall be designed, situated and provided with suitable access thereto to the reasonable satisfaction of ESKOM for the purpose of erecting and/or connecting up, inspecting, operating and maintaining the equipment of ESKOM therein.

18.2 ESKOM shall have the right, after having given the DISTRIBUTOR prior written notice, to use the said accommodation in which its equipment is installed for the purpose of supplying other consumers and, if necessary, to call upon the DISTRIBUTOR to extend the same for such purpose; but the cost of any extension of the said accommodation which is required solely for the purpose of supplying other consumers shall be for the account of ESKOM.

**19. EQUIPMENT TO BE SUPPLIED BY ESKOM**

19.1 All equipment up to the points of supply at the points of delivery referred to in Clause 15 shall be provided, installed, operated and maintained by ESKOM.

19.2 The DISTRIBUTOR shall not, except in cases of emergency or at the request of or in terms of an authorisation from ESKOM, operate or interfere with the equipment of ESKOM.

19.3 Notwithstanding any payments made by the DISTRIBUTOR to ESKOM in respect of the capital expenditure and costs incurred by ESKOM in making a bulk supply of electricity available to the DISTRIBUTOR, all material and equipment erected or installed by ESKOM in pursuance of the electricity supply agreement shall be and remain the property of ESKOM.

ESKOM shall have the right to use such electrical equipment for purposes of supplying other consumers, and also upon termination of the electricity supply agreement to enter upon the premises/property of the DISTRIBUTOR and remove therefrom all such material and equipment.

**20. EQUIPMENT TO BE PROVIDED BY DISTRIBUTOR**

20.1 The DISTRIBUTOR shall, at its own expense, provide, erect, connect up, operate and maintain all circuits required to connect its electricity distribution system with the points of supply and all equipment necessary for controlling such circuits to the reasonable satisfaction of ESKOM for the protection of the equipment of ESKOM against overload, faults and lightning on the DISTRIBUTOR's distribution system. The settings of the DISTRIBUTOR's

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protection relays shall be agreed with ESKOM to ensure appropriate protection grading.

ESKOM shall be entitled to recover from the DISTRIBUTOR any direct loss or expenses incurred by ESKOM by reason of damage to ESKOM's plant and equipment or otherwise by reason of failure of the DISTRIBUTOR to comply with the provisions of this Clause.

20.2 The apparatus of the DISTRIBUTOR shall be of good design and construction, properly installed and maintained by the DISTRIBUTOR.

20.3 The DISTRIBUTOR shall not at any time load in excess of its rated capacity the transmission lines and equipment provided by ESKOM, and ESKOM shall be entitled in the event of an overload occurring to interrupt the bulk supply.

## **21. MEASUREMENT OF SUPPLY**

21.1 Metering equipment for measuring the electricity supplied by ESKOM to the DISTRIBUTOR shall be provided, installed and kept in repair by ESKOM.

21.2 The quantities of electrical energy and power supplied shall be measured and recorded by ESKOM and electricity accounts shall be rendered monthly on the basis of such measurements. The records of such measurements shall at all reasonable times be open for inspection by the DISTRIBUTOR or its authorised representative.

21.3 During any period when a meter/recorder has not registered or ESKOM's records show that the reading is unreliable due to the meter or any associated equipment being defective, a reasonable estimate shall be made by ESKOM of the correct quantity for each of the months in question and the account(s) for such period shall be based on such estimate; provided that where the DISTRIBUTOR has its own meter(s) installed, ESKOM shall take account of the evidence provided by such meter(s) in estimating the correct quantity/quantities.



21.4 As duplicate meters/recorders have been installed the average of the readings of the main and check meters/recorders shall be used for purposes of calculating the account. If the readings at any time differ by more than 2% (two per centum) from the average of the two readings, then for the purposes of rendering accounts, if ESKOM's records show that the discrepancy is attributable to one meter/recorder only, the reading of the other meter/recorder shall be taken but if the discrepancy may be due to the inaccuracy of both meters/recorders a reasonable estimate shall be made by ESKOM of the correct quantity. Such meters/recorders shall as soon as possible be tested and the account adjusted in accordance with the provisions of Clause 22 after the inaccuracy has been ascertained.

## **22. TESTING OF METERS / METERING INSTALLATIONS**

22.1 ESKOM shall have the right to test the metering installation at any time and if any such test shows a meter/recorder inaccuracy exceeding 2% (two per centum) fast or slow or an overall metering installation inaccuracy exceeding 5% (five per centum), the same shall in the absence of evidence to the contrary be deemed to have existed since the second-last meter-reading date prior to the date of testing, and the account(s) shall be adjusted accordingly as soon as practicable after the inaccuracy has been ascertained.

22.2 If within 30 (thirty) days of the rendering of any monthly electricity account the DISTRIBUTOR requests ESKOM in writing to test the meter(s)/recorder(s) and/or the metering installation(s), ESKOM shall do so on payment by the DISTRIBUTOR of the appropriate meter test fee(s) and/or the estimated cost that ESKOM would incur in testing the metering installation(s), and if such test shows a meter/recorder inaccuracy exceeding 2% (two per centum) or an overall metering installation inaccuracy exceeding 5% (five per centum), the same shall in the absence of evidence to the contrary be deemed to have existed since the commencement date of the month for which such account was rendered, and the account(s) shall be adjusted accordingly as soon as practicable after the inaccuracy has been ascertained, and the aforesaid fee(s) and/or costs paid in advance shall be refunded to the DISTRIBUTOR.

If the test shows the inaccuracy to be less than 2% (two per centum) and/or 5% (five per centum) respectively, the account(s) shall stand as rendered and the aforesaid fee(s) and/or costs paid by the DISTRIBUTOR shall be forfeited to ESKOM.

*SECTION D : LEGAL*

**23. ENTIRE AGREEMENT AND VARIATION /  
BREACH OF TERMS AND CONDITIONS**

- 23.1 This Agreement constitutes the sole and entire agreement between the parties and supersedes all previous negotiations, arrangements or agreements in respect of the subject-matter of this Agreement, other than separate agreements or documents relating to rights-of-way and/or servitudes.
- 23.2 Save as provided for in Clauses 8 and 11, no variation, modification, waiver, failure, delay, relaxation or indulgence of any provision of this Agreement, or consent to any departure therefrom, shall in any way be of any force or effect unless confirmed in writing and signed by the parties and then such variation, modification, waiver or consent shall be effective only in a specific instance and for the purpose and to the extent for which it was made or given.
- 23.3 Should the DISTRIBUTOR fail to comply with any of the provisions of this Agreement, other than the failure to pay any account in accordance with the provisions of Clause 10, ESKOM shall be entitled to give the DISTRIBUTOR notice of such default and if the DISTRIBUTOR fails to remedy the default within 14 (fourteen) days after receiving such notification, or if circumstances justify it such other period as may be agreed between the parties, ESKOM may forthwith discontinue the supply to the DISTRIBUTOR and/or terminate this Agreement, without prejudice to any claim ESKOM may have for electricity supplied or for damages suffered as a result of a default on the part of the DISTRIBUTOR; provided however that if the default is such that in the opinion of ESKOM it would be dangerous to continue the supply to the DISTRIBUTOR, ESKOM may discontinue the supply without the prior notification aforesaid. ESKOM shall however forthwith inform the DISTRIBUTOR of its reasons for discontinuing the supply. The supply shall

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be restored as soon as practicable after the DISTRIBUTOR has remedied the default and paid the requisite reconnection fee.

23.4 Should ESKOM fail to comply with any of the provisions of this Agreement, the DISTRIBUTOR shall be entitled to give ESKOM notice of such default and if ESKOM fails to remedy the default within 14 (fourteen) days after receiving such notification, or if circumstances justify it such other period as may be agreed between the parties, the DISTRIBUTOR may terminate this Agreement, without prejudice to any claim the DISTRIBUTOR may have for damages suffered as a result of a default on the part of ESKOM.

23.5 Events of *force majeure* as set out in Clause 26 are specifically excluded from the conditions set out in this Clause.

## **24. CESSION OF AGREEMENT**

Either party shall be entitled to cede its rights or assign its obligations and liabilities in terms of this Agreement to any entity that is created as a result of the restructuring of either ESKOM, the Electricity Distribution Industry (EDI) and/or the Electricity Supply Industry (ESI) in South Africa.

## **25. RIGHT(S)-OF-WAY**

25.1 The DISTRIBUTOR shall grant to ESKOM free of charge right(s)-of-way in perpetuity over property owned by the DISTRIBUTOR, along a route or routes to be agreed, for (a) the overhead electric power line(s) and/or underground electric cable(s) which ESKOM requires to erect, lay or install in connection with the bulk supply of electricity to the DISTRIBUTOR and (b) any extension(s) of such line(s) and/or cable(s) to other consumers of ESKOM. The right(s)-of-way under (a) may be used by ESKOM to supply other consumers of ESKOM, as long as it does not disadvantage the DISTRIBUTOR.

Furthermore, the DISTRIBUTOR shall undertake to assist ESKOM in acquiring right(s)-of-way over any ground or immovable property within the DISTRIBUTOR's licensed area of supply as may be required by ESKOM in connection with the bulk supply of electricity to the DISTRIBUTOR.

- 25.2 Should ESKOM so desire the said rights may be registered as notarial servitudes against the title deeds of the DISTRIBUTOR's property. The DISTRIBUTOR undertakes that after the granting of any such rights to ESKOM, any sale or alienation of the said property by the DISTRIBUTOR before the registration of the said rights shall be made subject to ESKOM's right to secure registration of such servitudes. The DISTRIBUTOR shall give written notice, receipt acknowledged, to any person who wishes to acquire the said property, of the said rights in perpetuity referred to in subclause 25.1 and it shall provide ESKOM with the original notice and acknowledgement of receipt. If the DISTRIBUTOR fails to comply with the provisions of this subclause, it shall be liable to ESKOM for all costs that ESKOM may incur if the person acquiring the property instructs ESKOM to move the overhead lines or underground cables as set out in subclause 25.3. The costs shall be paid within 7 (seven) days of written demand from ESKOM, failing which interest will be payable on the outstanding amount in terms of subclause 10.2.
- 25.3 The said rights shall include provisions for access at all reasonable times to enable ESKOM to operate, maintain, repair, remove or replace any or all of the equipment of ESKOM.
- 25.4 All legal expenses in connection with the execution and registration of the said rights shall be borne by ESKOM.
- 25.5 If the DISTRIBUTOR should require ESKOM to change the route of any overhead electric power lines and/or underground electric cables across its property or the position of ESKOM's equipment or meters, the cost to be incurred by ESKOM in effecting the change or removal shall be borne, and paid in advance, by the DISTRIBUTOR.

## **26. FORCE MAJEURE**

- 26.1 Notwithstanding any other provisions as contained herein, should a party be unable to perform any of its obligations in terms of this Agreement due to a *force majeure* event, then such obligations shall be suspended for the duration of such *force majeure* event and neither party shall be liable to the other for any loss or damage suffered by reason of its failure to perform its

obligations, provided however, that the occurrence of a *force majeure* event shall not excuse the party citing *force majeure* from any other obligation.

- 26.2 A *force majeure* event means any event or circumstance (or a combination of events or circumstances) beyond the reasonable control of the party invoking *force majeure* (including a *force majeure* declared by a third party) that makes such party's performance under this Agreement impossible or unreasonably difficult, including but not limited to any one of the following; events recognised as *casus fortuitus*, acts of God, any laws, decrees, regulations of Governmental authorities, wars (whether declared or undeclared), riots, commotion, disorders, industrial action (but excluding industrial action resulting from a breakdown in employer/ employee relationship at ESKOM or the DISTRIBUTOR), epidemics, floods, earthquakes or similar natural disasters, strikes, lock-outs or other labour disputes and embargoes, or by reason of *force majeure* invoked by a third party.

*Force majeure* events do not include shortage of cash or anything reasonably attributable to, or preventable by a party's own actions, including the expenditure of sums of money which sums are reasonable in the light of the likelihood of such event occurring or the probable effect if such event were to occur.

- 26.3 Where a party has been prevented by the occurrence of any one or more of the events, as set out in subclause 26.2, and wishes to cite a *force majeure* event as being the cause of it being unable to meet any of its obligations hereunder, such party shall:

26.3.1 Within 48 (forty-eight) hours of it becoming aware of the *force majeure* event advise the other party of the nature, cause or likely duration of the *force majeure* event (to the extent the same can be reasonably determined at the time of such notice) and when such information can be updated;

26.3.2 Take such steps as are reasonably available, to overcome such *force majeure* event and to mitigate its effect on its ability to meet its obligations under this Agreement including, but not limited to the payment of reasonable sums of money, which sums are reasonable in light of the adversity of the impact of the *force majeure* event; and

26.3.3 Promptly provide written notice to the other party of (a) the cessation of the *force majeure* event; and (b) its ability to recommence performance of its obligations under this Agreement by reason of the cessation of the *force majeure* event.

26.4 If the *force majeure* event subsists for more than 90 (ninety) consecutive days, either party shall have the right to terminate this Agreement in terms of Section 11 of the Electricity Act, without prejudice to any claim either party may have in terms of this Agreement.

## **27. DISPUTES AND DISPUTE RESOLUTION**

27.1 The DISTRIBUTOR and ESKOM shall endeavour to resolve by informal negotiation any dispute between them in connection with or arising from the construction, interpretation, performance or non-performance or termination of this Agreement and any related or subsequent agreement or amendments thereto, but if agreement cannot be reached within 30 (thirty) days of the dispute arising, such dispute shall, finally, be determined by the National Electricity Regulator.

27.2 This Clause is severable from the rest of the Agreement and will remain in effect even if this Agreement is terminated, lapses or is declared invalid for any reason.

## **28. NOTICES / ADDRESSES**

28.1 Any notice, notification, request, demand or other communication for any purpose under this Agreement shall be in writing addressed -

in the case of the DISTRIBUTOR as follows :

P O Box 45  
NELSPRUIT  
1200

marked for the attention of the Acting Municipal Manager;

and in the case of ESKOM as follows :

P O Box 223  
WITBANK  
1035

marked for the attention of the Regional Customer Executive;

or to such other addresses, or for the attention of such other persons or department, as ESKOM and the DISTRIBUTOR may from time to time notify to each other.

28.2 All notices, notifications, requests, demands or other communications including accounts, shall be deemed to have reached the other party -

28.2.1 if delivered by hand, on the date of delivery;

28.2.2 if posted by ordinary mail or registered post, on the fifth calendar day following the date of such posting, and in the case of an account on the fifth calendar day following the date of the account;

28.2.3 if transmitted by facsimile or any other electronic medium acceptable to both Parties, on the first business day following the date of transmission / publication / delivery.

28.3 For the purpose of this Agreement the DISTRIBUTOR's *domicilium citandi et executandi* shall be:

Civic Centre  
1 Nel Street  
NELSPRUIT  
1200

and ESKOM's *domicilium citandi et executandi* shall be:

Megawatt Park  
Maxwell Drive  
Sunninghill Ext. 3  
2199 SANDTON

**Draft 9 October 2002**

Either party may, by written notice to the other, change its abovementioned *domicilium*.

SIGNED for and on behalf of the **DISTRIBUTOR** on \_\_\_\_\_ 2002

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As Witnesses :

1. \_\_\_\_\_

2. \_\_\_\_\_

SIGNED for and on behalf of **ESKOM** on \_\_\_\_\_ 2002

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C A Visagie

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D W Conradie

As Witnesses :

1. \_\_\_\_\_

2. \_\_\_\_\_