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 laws of the Republic of South Africa

('ESKOM') herein represented by

in his/her/their capacity/capacities as

- AND -

Midvaal Local Municipality

('the DISTRIBUTOR'), herein represented by

Albertus Stephanus Abraham de Klerk

in his/her/their capacity/capacities as

Municipal Manager

2. INTRODUCTION

It is recorded that the DISTRIBUTOR has applied to ESKOM for a supply of electricity in bulk for municipal purposes and for the purpose of distribution to consumers within the DISTRIBUTOR's licensed area of supply.

3. INTERPRETATION AND DEFINITIONS

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

3.1.1 a gender shall include the other gender;

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

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

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

3.1.5 words and expressions defined in the Electricity Regulation Act, the ESKOM Distribution Licence, ESKOM's Schedule of Standard Prices, NRS 048 and NRS 057 shall bear the same meaning when used in this Agreement as revised from time to time or as replaced by a national standard.

3.1.1 the rule of construction that this Agreement shall be interpreted against the party responsible for the drafting or preparation of this Agreement, shall not apply.

3.2 The words and expressions used in this Agreement shall have the meanings as assigned to them in Annexure 'A'.

4. GENERAL AGREEMENT

ESKOM agrees to supply to the DISTRIBUTOR and the DISTRIBUTOR agrees to take from ESKOM all 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 South African Grid Code, the Distribution Code, the Electricity Regulation Act, and the Rules and Regulations issued thereunder, the DISTRIBUTOR's Distribution Licence and ESKOM's Licences and Schedule of Standard Prices, as amended or re-enacted from time to time and any other applicable laws.

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	–	Definitions
Annexure B	–	Standard Conditions of Supply for Distributors
Annexure C	–	Megaflex Price List

6. SCHEDULED DATE FOR COMMENCEMENT OF SUPPLY

The supply of electricity in bulk to the DISTRIBUTOR was made available by ESKOM on 19 June 2009 (the 'Commencement Date').

7. PERIOD OF AGREEMENT

This Agreement shall be deemed to have come into force with retrospective effect from the Commencement Date 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. This provision shall not limit the Parties' rights to terminate this Agreement in terms of Clauses 9, 11, 16 and 24.

SECTION B: FINANCIAL

8. CHARGES FOR ELECTRICITY

The charges to be paid by the DISTRIBUTOR for the electricity supplied in bulk or made available to the DISTRIBUTOR's Point of Delivery shall comprise the sum of the following:

8.1 TARIFF

8.1.1 The applicable tariff shall be the Megaflex prices as prescribed in ESKOM's Schedule of Standard Prices, subject however to (i) ESKOM's right to adjust the prices it charges for electricity supplied in accordance with the provisions of the Electricity Regulation Act and with the approval of NERSA and (ii) the DISTRIBUTOR's obligation to pay any taxes and / or levies which may be imposed in terms of any existing and / or future legislation or as approved by NERSA.

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

8.1.2 The DISTRIBUTOR may elect to be charged any applicable standard tariff as prescribed in ESKOM's Schedule of Standard Prices, subject however to –

8.1.2.1 a new electricity supply agreement being concluded; and

8.1.2.2 such variation in tariff being restricted to 1 (one) change for each Point of Delivery in a period of 12 (twelve) calendar months.

8.1.2.3 the DISTRIBUTOR meeting the qualification criteria for such elected tariff.

8.2 UPFRONT STANDARD CONNECTION CHARGE

8.2.1 The DISTRIBUTOR has paid to ESKOM in respect of the capital expenditure and costs incurred and/or to be incurred by ESKOM in making this bulk supply of electricity available to the DISTRIBUTOR, the amount of R9 166 067,58 (nine million one hundred and sixty-six thousand and sixty-seven rands and fifty-eight cents) (+ VAT @ 14% = R10 449 317,04) (the Upfront Standard Connection Charge).

8.2.2 The Upfront Standard Connection Charge, as set out in subclauses 8.2.1, is based on capital expenditure and costs with a cost confidence level of 85% (eighty-five per cent). The total project cost in making this supply of electricity available to the DISTRIBUTOR may vary by the quoted cost x 100/85 or, alternatively, the quoted cost / 1,15, as set out in the quotation, duly accepted by the DISTRIBUTOR. The 85% confidence level is subject to material and labour costs not increasing at a rate greater than the Producer Price Index. These costs will be re-calculated once all the financial information is available to ESKOM and this Agreement will be amended accordingly.

8.2.3 It is agreed that the aforesaid Upfront StandardConnection Charge has been paid by the DISTRIBUTOR and accepted by ESKOM on the express understanding that-

8.2.3.1 notwithstanding the payments made by the DISTRIBUTOR, the circuits, equipment and apparatus provided by ESKOM for the electricity supply in bulk to the DISTRIBUTOR shall remain the absolute property of ESKOM who shall be entitled to use the same for the purpose of supplying other customers of ESKOM;

8.2.3.2 the said payments or any portions thereof will not be refundable to the DISTRIBUTOR in the event of the circuits, equipment and apparatus supplying the DISTRIBUTOR being utilised by ESKOM to supply other customers of ESKOM; and

8.2.3.3 the said payments or any portions thereof will not be refundable to the DISTRIBUTOR in the event of this Agreement being terminated in accordance with Clauses 9, 11, 16 and 24.

9. PAYMENT OF ELECTRICITY ACCOUNTS

9.1 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 calculated in terms of subclause 23.2.

9.2 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 9.1, ESKOM may discontinue the bulk supply to the DISTRIBUTOR and/or terminate the electricity supply agreement after having given the DISTRIBUTOR 14 (fourteen) days written notice. 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).

9.3 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 9.2; 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 3 (three) consecutive Months. Should the preceding 3 (three) consecutive Months however be in a different Demand Season, the DISTRIBUTOR shall be entitled to pay in lieu of the amount in dispute the average of the accounts rendered for the preceding 3 (three) consecutive Months in the applicable Demand Season, taking into account any approved tariff increases.

9.4 Should the DISTRIBUTOR be incorrectly charged for any amount(s) payable in terms of the electricity supply agreement as a result of an 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 period during which the DISTRIBUTOR was 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.

9.5 A certificate under the signature of an 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.

10. SECURITY - ELECTRICITY ACCOUNTS

10.1 As security for the due payment of the electricity accounts to be rendered in terms of this Agreement, an amount of R800 000,00 (eight hundred thousand rand) shall be raised on the DISTRIBUTOR's first electricity account to be rendered in terms of Clause 9, which amount shall be refunded to the DISTRIBUTOR on receipt of a guarantee to the amount of R7 109 500,00 (seven million one hundred and nine thousand five hundred rands), which guarantee must be provided to ESKOM by not later than 30 September 2009.

10.2 ESKOM shall have the right to call upon the DISTRIBUTOR at any time to vary the said guarantee, so that the amount of the security shall be sufficient to cover the estimated amount payable by the DISTRIBUTOR for electricity during any period of 3 (three) consecutive Months, and the DISTRIBUTOR shall be obliged to furnish ESKOM with the required increased guarantee, within 30 (thirty) days of being called upon to do so.

10.3 The said guarantee shall be returned to the DISTRIBUTOR upon termination of this Agreement and final settlement of any amounts owing to ESKOM.

10.5 In the event of the final account not being settled, ESKOM shall be entitled to call up the said guarantee without any notice to the DISTRIBUTOR.

11. AMENDMENT OF TERMS – VARIATION OF NOTIFIED MAXIMUM DEMAND

As the amount set out in Clause 8 is based on the cost to ESKOM of furnishing the bulk supply to the DISTRIBUTOR along a specific route, it is agreed that in the event of ESKOM not being able to obtain the specific route or if the cost thereof is increased, ESKOM shall have the right in its discretion to modify the said charges to take account of the cost of supplying over an alternative route. ESKOM shall notify the DISTRIBUTOR of such modified charges and if such charges are not acceptable to the DISTRIBUTOR, either Party shall have the right to cancel this Agreement without prejudice to any rights that such Party may have in terms of this Agreement or at law.

SECTION C : TECHNICAL

12. DISTRIBUTOR'S NOTIFIED MAXIMUM DEMAND AND NOTIFICATION OF CHANGES OF DEMANDS

12.1 ESKOM's obligation shall be to make available and supply to the DISTRIBUTOR a bulk 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 in writing to and accepted by ESKOM in accordance with the provisions of subclause 12.3.

12.2 The Notified Maximum Demand of the DISTRIBUTOR at the date of this Agreement is 20 MVA (twenty megavolt amperes).

The parties agree that as the distributor has contributed for a 30 MVA (thirty megavolt amperes) supply the Notified Maximum Demand will ramp up to the said 30 MVA (thirty megavolt amperes) as and when required.

12.3 Increase in NMD

Should the DISTRIBUTOR at any time require an increased Notified Maximum Demand, it shall give adequate notice in writing to ESKOM of its increased Notified Maximum Demand which it requires ESKOM to supply and the date at which such increased demand is required. Such increased Notified Maximum Demand shall be subject to such terms and conditions as are agreed between the Parties and confirmed in writing in accordance with subclause 24.2; failing such agreement, no increase in the Notified Maximum Demand shall be effected. The said terms and conditions, shall take account not only of the additional capital expenditure incurred or to be incurred by ESKOM in effecting a change in the DISTRIBUTOR's supply but also the additional capacity of ESKOM's transmission / distribution system made available and / or reserved to meet the DISTRIBUTOR's demand.

12.4 Reduction

Should the DISTRIBUTOR at any time require a reduction in the Notified Maximum Demand, it shall give 12 (twelve) Months notice in writing to ESKOM of its reduced Notified Maximum Demand which it requires ESKOM to supply and the date at which such reduced demand is required. The reduced Notified Maximum Demand shall be implemented from the meter-reading date following the meter-reading date that falls at the end of that 12 (twelve) Month period. The reduced Notified Maximum Demand shall be subject to such terms and conditions as are agreed between the Parties and confirmed in writing in accordance with subclause 24.2. The said terms and conditions, shall take account of the following:

(i) whether the equipment is removed;

(ii) if the upstream sharing charges were part of the original connection charges; and

(iii) whether an upfront capital allowance was provided based on a higher capacity.

12.5 Should the Notified Maximum Demand be exceeded in any Month in the 12 Months following the reduction of the Notified Maximum Demand, then the demand so recorded becomes the Annual Utilised Capacity applicable from the time of the reduction. This shall not apply to temporary increases in demand authorised by ESKOM in writing.

12.6 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 12.2 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.

13. POINT OF DELIVERY/SUPPLY/METERING

The electricity supplied by ESKOM shall be delivered to the DISTRIBUTOR as follows:

NAME OF SUBSTATION	POINT OF DELIVERY/SUPPLY/CONNECTION
Eyestone Substation	Customer side of 88kV bulk metering point

14. DECLARED VOLTAGE

The electricity shall be supplied at a declared voltage of 88kV (eighty eight thousand volts) between phases, subject to the provisions of subclause 1.5.2 of Annexure 'B'.

15. SITE FOR ESKOM'S EQUIPMENT

The DISTRIBUTOR shall provide and maintain in good order at its expense a suitable site to be mutually agreed upon for accommodating ESKOM's equipment.

The said site shall be 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 thereon.

SECTION D : LEGAL

16. FORCE MAJEURE

16.1 If a Party ('the Affected Party') is unable to perform all or part of its obligations in terms of this Agreement due to a Force Majeure Event, the Affected Party shall, as soon as reasonably practicable but no later than 48 (forty-eight) hours of it becoming aware of the Force Majeure Event, notify the other Party in writing (a 'Force Majeure Notice') setting out:

16.1.1 full particulars of the Force Majeure Event;

16.1.2 the impact of the Force Majeure Event on the Affected Party's obligations under this Agreement;

16.1.3 the Affected Party's reasonable estimate of the length of time which its performance has been and will be affected by such Force Majeure Event; and

16.1.4 the steps which it is taking or intends to take or will take to remove and mitigate the adverse consequences of the Force Majeure Event on its performance hereunder.

16.2 The Affected Party shall have the burden of proving both the existence of any Force Majeure Event and the effect (both as to nature and extent) which any such Force Majeure Event has on its performance.

16.3 If the Parties are, on the basis of the Force Majeure Notice and any supporting documentation, unable to agree as to the existence or as to the effect of a Force Majeure Event by the date falling 60 (sixty) days after the receipt by the non-Affected Party of the Force Majeure Notice, either Party shall be entitled to refer the matter to arbitration in accordance with Clause 17 of this Agreement.

16.4 If it is agreed or determined that a Force Majeure Event has occurred, the Affected Party shall, provided that it has complied with the requirements of this Clause 16, not be liable for any failure to perform an obligation under this Agreement to the extent that:

16.4.1 such performance is prevented, hindered or delayed by a Force Majeure Event; and

16.4.2 such failure could not have been mitigated by the Affected Party taking reasonable action.

16.5 The Affected Party shall use all reasonable efforts to mitigate, rectify and overcome the effects of any Force Majeure Event(s) and to minimise the effect on the other Party and shall give the other Party (i) regular reports on the progress of the mitigation measures and (ii) prompt notice on the cessation of the Force Majeure Event(s).

16.6 If the Force Majeure Event subsists for more than 90 (ninety) consecutive days, the non-Affected Party shall have the right to terminate this Agreement after having given the other Party 14 (fourteen) days written notice without prejudice to any claim either Party may have in terms of this Agreement.

17. DISPUTES AND DISPUTE RESOLUTION

17.1 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 be finally resolved in terms of the Rules of the Arbitration Foundation of Southern Africa by an arbitrator formally appointed by the Foundation.

17.2 The language of the arbitration shall be English and such arbitration shall be held in Johannesburg, unless the Parties agree otherwise.

17.3 The costs and expenses of the Arbitrator shall be paid by such Party or Parties and in such proportions as the Arbitrator determines to be appropriate and each Party shall bear its own costs and expenses incurred in any such proceedings.

17.4 While the resolution of the dispute is still pending, the Parties shall continue to perform their respective obligations under this Agreement until such dispute has been finally resolved by arbitration.

17.5 Notwithstanding the provisions of subclauses 17.1, 17.2, 17.3 and 17.4, any Party to this Agreement may seek urgent interim relief from a competent court.

17.6 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.

18. RIGHT(S)-OF-WAY

The DISTRIBUTOR hereby grants to ESKOM, its successors-in-title, assignees, and/or licensees, an irrevocable right-of-way in perpetuity, free of charge to transmit electricity over property owned by the DISTRIBUTOR and/or within the DISTRIBUTOR's licensed area of supply:

18.1 The right(s)-of-way shall be binding on the DISTRIBUTOR, its heirs, assignees and successors-in-title and shall include the following rights in favour of ESKOM:

18.1.1 the right to erect an overhead power line/underground cable(s) together with such structures, equipment, conductors and overhead cables ("works") on the property or to erect or lead such conductors or other equipment on, under or over the property, as may at any time be necessary or convenient in exercising the right of way for overhead power line(s) / underground cable(s) and the right to any extension(s) of such line(s) and/or cable(s) to other consumers of ESKOM; and the DISTRIBUTOR shall also grant to ESKOM the right to retain any existing line(s) and/or cable(s) on the property (hereinafter together with the restriction area referred to in 18.3, referred to as the 'Servitude Area').

The said rights shall be along a route mutually agreed to by the Parties.

18.1.2 the right to enter and be upon the property at all reasonable times in order to construct, erect, operate, use, maintain, repair, re-erect, remove, alter or inspect the works on the property, or in order to gain access to any adjacent properties in the exercise of similar rights.

18.1.3 the right to have access to and egress from the power lines and the right to use existing roads giving access to and egress from the property or roads running across the property and gates on the property and to erect in any fence such gates as may be necessary or convenient to gain access to and egress from any power line/underground cable or accessory equipment.

18.1.4 the right to remove any trees, bush, grass, material or structures within the restricted area defined in subclause 18.3 hereof and the right to cut or trim any trees in order to comply with the restrictions referred to in subclause 18.3 hereof, after consultation with the DISTRIBUTOR.

18.2 ESKOM shall exercise its rights subject to the following terms and conditions -

18.2.1 ESKOM shall ensure that any gates used by its personnel shall be kept closed.

18.2.2 ESKOM shall pay compensation:

18.2.2.1 where damage is caused intentionally to any property by ESKOM, its employees or contractors, to enable ESKOM to use or continue to use the servitude area for its intended purpose.

18.2.2.2 where damage or injury is caused by any negligent act or omission on the part of ESKOM, its employees or contractors. Such liability shall be limited to direct damages, excluding consequential damages.

18.3 The following special restrictions are placed on the use of the property (in the Servitude Area) namely -

18.3.1 The DISTRIBUTOR shall ensure that no building or structure may be erected or installed above or below the surface of the ground, neither may any material which might endanger the safety of this power line/underground cable be placed within the distance as set out in the table below of the centre line without the prior written permission of ESKOM.

Voltage	**Building restriction on each side of the centre line**
1. All voltages below 22kV	9 metres
2. 22kV	9 metres
3. 33kV	11 metres
4. 44kV	11metres
5. 66kV	11 metres
6. 88kV	11 metres
7. 132kV and Delta construction 275kV	18 metres (15.5 – 20metres) Confirm the right distance from Land Development

18.3.2 No mining activities or blasting operations shall be permitted within 500 (five hundred) metres of any power line/underground cable without the prior written permission of ESKOM.

18.3.3 The DISTRIBUTOR shall not plant or allow to grow any tree in the Servitude Area nor plant or allow to grow in the vicinity of a power line/underground cable any tree that could grow to a height in excess of the horizontal distance of that tree from the nearest conductor of such power line or allow it to grow in such a manner as to endanger that line should it fall or be cut down.

18.4 The DISTRIBUTOR shall ensure that the right-of-way hereby granted to ESKOM -

18.4.1 shall be brought to the attention of any purchaser or transferee of the property (or of any portion of the property) by the DISTRIBUTOR or the seller (at that time) of the property before the property (or any portion thereof) is sold and/or transferred to such purchaser or transferee.

18.4.2 shall, if ESKOM so requests and at ESKOM's costs and by Notary appointed by ESKOM for this purpose, be incorporated into a notarial deed of servitude and be registered against the title deed under which the property is held. The DISTRIBUTOR and/or its heirs, assignees and successors-in-title shall perform all necessary actions and sign all necessary documents to achieve the notarial execution and registration (in the office of the Registrar of Deeds) of a deed of servitude, as envisaged above.

18.5 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.

18.6 If any alteration is required by the DISTRIBUTOR to ESKOM's overhead line or service cable or the position of ESKOM's equipment or meters, or is required by reason of the modification of the DISTRIBUTOR's consent, the expenses to be incurred by ESKOM in effecting the alteration or removal shall be borne, and paid in advance, by the DISTRIBUTOR.

19. DAMAGES

19.1 ESKOM shall not be liable to the DISTRIBUTOR for any losses, damages, claims, liabilities, costs or expenses which are incurred by the DISTRIBUTOR (whether directly or indirectly) as a result of any action or omission related to the design, construction, operation or maintenance of ESKOM's transmission system, unless such loss or damage is due to the negligence of ESKOM.

19.2 In addition to the provisions of subclause 19.1, 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.

19.3 If ESKOM should be liable for damages caused to the DISTRIBUTOR in terms of subclause 19.2, such liability shall be limited to direct damages excluding consequential damages, provided that:

19.3.1 consequential damages shall include, but shall not be limited to, loss of production and loss of profit;

19.3.2 the maximum liability of ESKOM to the DISTRIBUTOR in respect of any single event shall not exceed 1/12 (one twelfth) of the preceeding 12 months' electricity accounts payable by the DISTRIBUTOR in terms of Clause 9 of this Agreement; and

19.3.3 the maximum aggregate liability of ESKOM to the DISTRIBUTOR in respect of any events occurring in any Year shall not exceed 1/12 (one twelfth) of the preceeding 12 months' electricity accounts payable by the DISTRIBUTOR in terms of Clause 9 of this Agreement.

19.4 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 Clauses 2 and 6 of Annexure 'B'.

19.5 Each Party specifically waives any claims other than those referred to in this Clause, whether they be statutory, pertaining to common law, explicit or implied.

20. RESTRICTION OF LIABILITY

Notwithstanding any provision of this Agreement, the DISTRIBUTOR shall indemnify ESKOM against any claim or action instituted by a third party supplied by the DISTRIBUTOR, whether emanating from contract, delict or any area of law, unless ESKOM has been proved negligent.

21. CESSION AND DELEGATION OF RIGHTS AND LIABILITIES

Either Party shall be entitled to cede and delegate its rights and obligations under this Agreement to any legal entity or as a result of the restructuring of ESKOM, and/or the Electricity Supply Industry (ESI) and the Electricity Distribution Industry (EDI).

22. CONFIDENTIALITY

22.1 The Parties agree that the terms of this Agreement, all information of the Parties that has been exchanged pursuant hereto, including but not limited to details concerning pricing will be received in strict confidence and not be divulged to any Person, save for employees directly involved with the execution of this Agreement and be used only for the purpose of this Agreement.

22.2 Each Party will use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of such information. No information referred to in this Agreement.

22.2.1 will be disclosed by the recipient Party, its agents, representatives or employees without the prior written consent of the other Party.

22.3 These provisions do not apply to information which is:

22.3.1 publicly known or becomes publicly known through no unauthorised act of the recipient Party;

22.3.2 rightfully received by the recipient Party from a third party;

22.3.3 independently developed by the recipient Party without use of the other Party's information;

22.3.4 disclosed by the other Party to a third party without similar restrictions;

22.3.5 required to be disclosed pursuant to a requirement of a governmental agency or any applicable law, so long as the Party required to disclose the information gives the other Party prior notice of such disclosure; or

22.3.6 publicly disclosed with other Party's written consent.

22.4 This Clause 22 shall survive the termination of this Agreement.

23. NOTICES / ADDRESSES

23.1 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 :

Municipal Manager
Midvaal Local Municipality
Po Box 9, Meyerton, 1960
[redacted]

Executive Director: Engineering Services

[redacted]

marked for the attention of the

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.

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

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

23.2.2 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;

23.2.3 if transmitted by facsimile or any other electronic medium acceptable to both Parties, on the first business day following the date of dispatch.

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

Municipal Offices
C/o Mitchell & Junius Streets
Meyerton
1960

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

Megawatt Park
Maxwell Drive
Sunninghill Ext. 3
2199 SANDTON

Either Party may, by written notice to the other, change its above mentioned *domicilium*.

24. ENTIRE AGREEMENT AND VARIATION / BREACH OF TERMS AND CONDITIONS

24.1 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.

24.2 Save as provided for in subclause 8.1 and Clause 10, 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 act or omission as stated above shall be effective only in a specific instance and for the purpose and to the extent for which it was made or given.

24.3 Should the DISTRIBUTOR fail to comply with any of the provisions of this Agreement, 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 bulk 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 bulk supply to the DISTRIBUTOR, ESKOM may discontinue the bulk supply without the prior notification aforesaid. ESKOM shall however forthwith inform the DISTRIBUTOR of its reasons for discontinuing the bulk supply. The bulk supply shall be restored as soon as practicable after the DISTRIBUTOR has remedied the default and paid the requisite reconnection fee.

24.4 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.

SIGNED for and on behalf of the **DISTRIBUTOR** by the signatory below who warrants that he/she is duly authorised.

Date: ___20/10/2011______

____

Name: Albertus Stephanus Abraham de Klerk

Title: Municipal Manager

As Witnesses :

1. _________________________ 2. _________________________

SIGNED for and on behalf of **ESKOM HOLDINGS LIMITED** by the signatory below who warrants that he/she is duly authorised.

Date: _________________________

____

Name:

Title

As Witnesses :

1. _________________________ 2. _________________________

ANNEXURE 'A'

DEFINITIONS FOR STANDARD CONTRACT FOR DISTRIBUTORS

1. The following terms shall have the meanings as assigned to them and cognate expressions shall have corresponding meanings:

   1.1 **'Active Energy Charge'**
   means a charge linked to each kWh (unit of energy) consumed.

   1.2 **'Actual Demand'**
   means the highest demand in kilovolt-ampere recorded during any demand-integrating period in the Month, regardless of whether the tariff has a Demand Charge or not.

   1.3 **'Administration Charge'**
   means a fixed R/day charge payable per Point of Delivery for the Month whether electricity is consumed or not, and based on the Monthly Utilised Capacity of the Point of Delivery. It is a contribution towards fixed costs such as meter reading, billing and the metering installation.

   1.4 **'Affected Party'**
   has the meaning referred to in subclause 16.1 of the Agreement.

   1.5 **'Agreement' or 'this Agreement'**
   means the electricity supply agreement including all its Annexures.

   1.6 **'Annual Utilised Capacity'**
   means the higher of a customers Notified Maximum Demand or Maximum Demand, measured in kVA, during a rolling 12-Month period.

1.7 **'Chargeable Demand'**

means the highest average demand, in kVA, measured over any demand-integrating period of thirty consecutive minutes (30-minute integrating periods) recorded during the chargeable time periods in a Month.

1.8 **'Connection Fee'**

means a standard minimum upfront fee payable by a Distributor towards the cost of a new connection.

1.9 **'Demand Season'**

means the high Demand Season (June – August) or low Demand Season (September – May) as mentioned in ESKOM's Schedule of Standard Prices.

1.10 **'DISTRIBUTOR'**

has the meaning given to it in Clause 1 of the Agreement.

1.11 **'Electricity Regulation Act'**

means the Electricity Regulation Act (Act 4 of 2006), as amended or re-enacted from time to time.

1.12 **'ESKOM'**

has the meaning as defined in Clause 1 of the Agreement.

1.13 **'Force Majeure Event'**

means any act, event or circumstance or any combination of acts, events or circumstances which:

(a) is beyond the reasonable control of either Party (the 'Affected Party');

(b) is without fault or negligence on the part of the Affected Party and is not the direct or indirect result of a breach by the Affected Party to perform any of its obligations under the Agreement;

(c) was not foreseeable or, if foreseeable, could not have been (including by reasonable anticipation) avoided or over come by the Affected Party, taking reasonable action;

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(d) prevents, hinders or delays the Affected Party in its performance of all (or part) of its obligations under the Agreement.

Without limiting the generality of the foregoing, a Force Majeure Event may include any of the following acts, events or circumstances, but only to the extent that it satisfies the requirements set out in paragraphs (a) – (d) above:

(i) war, hostilities, belligerence, blockade, acts or terrorism, sabotage, civil commotion, riot, revolution or insurrection occurring in South Africa;

(ii) any laws, decrees, regulations of Governmental authorities;

(iii) strikes that are widespread, nation-wide or political in nature (but excluding strikes, lockouts and other industrial disturbances of the Affected Party's employees which are not part of a wider industrial dispute materially affecting other employees within South Africa);

(iv) an Act of God, including, drought, fire, earthquake, volcanic eruption, landslide, flood, storm, cyclone, tornado, typhoon or other natural disasters;

(v) epidemic or plague;

(vi) fire, explosion or radioactive or chemical contamination;

(vii) air crash, shipwreck or train crash; and

(viii) any act, event or circumstance of a nature analogous to any of the foregoing.

A Force Majeure Event does not include shortage of cash, any inability or failure to pay money, any inability to raise finance or any changes in price and market conditions.

1.14 **'Force Majeure Notice'**

has the meaning set forth in subclause 16.1 of the Agreement.

1.15 **'Maximum Demand'**

means the highest demand recorded during all time periods in a Month.

1.16 **'Month'**

means a calendar month and 'Monthly' has a corresponding meaning.

1.17 **'Monthly Connection Charge'**

means a Monthly repayment of the required capital contribution where ESKOM provides a Distributor with financing. A Monthly Connection Charge may be a Standard Connection Charge or a Premium Connection Charge.

1.18 **'Monthly Utilised Capacity'**

means the higher of a Distributor's Notified Maximum Demand or Maximum Demand, measured in kVA, registered during the Month.

1.19 **'NERSA'**

means the National Energy Regulator of South Africa, or its successor-in-title, established in terms of the National Energy Regulator Act, Act 40 of 2004.

1.20 **'Network Charge'**

means a fixed charge payable per Point of Delivery every Month, whether electricity is consumed or not. The purpose of the Network Charge is to recover part of the fixed network costs (including capital, operations, maintenance and refurbishment) associated with the provision of network capacity required and reserved by a customer. The Network Charge is unbundled into a Network Demand Charge (NDC) and/or a Network Access Charge (NAC).

- **'Network Access Charge'**

  means a charge that is fixed on an annual basis and is charged as a R/kVA on the annual utilised (reserved) capacity.

- **'Network Demand Charge'**
  means a charge that is variable on a monthly basis and is charged on the actual demand measured in all peak and standard periods of the billing period.

1.21 **'Notified Maximum Demand'**
means the Maximum Demand notified in writing by a Distributor and accepted by ESKOM, that the Distributor requires ESKOM to be in a position to supply on demand during all time periods. It is normally the capacity that ESKOM will reserve for a Distributor for the short term, i.e. the following Year.

1.22 **'NRS 048'** means the Rationalised User Specification for Quality of Supply issued by the South African Bureau of Standards, as revised from time to time or as replaced by a national standard;

1.23 **'NRS 057'** means the Code of Practice For Electricity Metering issued by the South African Bureau of Standards, as revised from time to time or as replaced by a national standard;

1.24 **'Peak Hours', 'Standard Hours'** and **'Off-Peak Hours'**
mean the hours, as defined by ESKOM, which coincide with the periods of Peak, Standard and Off-Peak demand on the ESKOM system.

1.25 **'Peak Periods', 'Standard Periods'** and **'Off-Peak Periods'**
mean the time periods during which different rates for energy and demand charges are applicable, as specified in the Megaflex, Miniflex and Ruraflex tariffs.

1.26 **'Point(s) of Delivery'**
means either a single Point of Supply or a specific group of Points of Supply located within a single substation, at which electricity is supplied to the Distributor at the same declared voltage and tariff, and can be a metering or summation point.

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1.27 **'Point(s) of Supply'**

means the point(s) at which a Distributor's distribution system is connected to ESKOM's distribution / transmission system. This may or may not be the metering point.

1.28 **'Rate Component(s)'**

means a different charge(s) associated with a tariff, for example energy charge.

1.29 **'Rate Re-balancing Levy'** (now known as **Electrification and Rural Subsidy)**

means a separate rate component shown on the Distributor's bills, transparently indicating explicit levies.

1.30 **'Reactive Energy Charge'**

means a charge payable for reactive energy consumed. It is levied on every kvarh (reactive energy) which is registered in excess of 30% of the kWh (active energy) supplied during the specified periods of the Month. There is no Reactive Energy Charge for a Distributor operating with a lagging power factor of 0,96 or better.

1.31 **'Service Charge'**

means a fixed R/day charge payable per electricity account for the Month, whether electricity is consumed or not. Where applicable, this charge will be based on the sum of the Monthly Utilised Capacity of all Points of Delivery linked to an electricity account. It is a contribution towards fixed costs such as customer service costs.

1.32 **'Transmission Surcharge'**

means a percentage surcharge to partly recover the costs associated with the transmission of energy over long distances. The Energy Demand Charge (where applicable), Active Energy Charge, Reactive Energy Charge (where applicable) and Network Charge are subject to a Transmission Surcharge after the Voltage Surcharge has been levied. The percentage surcharge depends on the distance from Johannesburg, as follows:

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Distance	Transmission percentage surcharge
≤300 km	0%
>300 km and ≤ 600 km	1%
>600 km and ≤ 900 km	2%
>900 km	3%

1.33 **'Upfront Standard Connection Charge'**
means the upfront payment of the charges payable for costs associated with a standard connection.

1.34 **'VAT'**
means value added tax as contemplated in the Value Added Tax Act (Act No 89 of 1991), as amended or re-enacted from time to time;

1.35 **'Voltage Surcharge'**
means a percentage surcharge levied to Distributor with lower supply voltages as a contribution to the cost to transform electricity from 400kV to lower voltages. The Voltage Surcharge is calculated as a percentage of the Active Energy Charge, the Energy Demand Charge (where applicable) and the Network Charge to reflect the higher cost of supply at a lower voltage. The percentage surcharge depends on the supply voltage, as follows:

Supply Voltage	Surcharge
> 132 kV	0,00%
≥ 66 kV and ≤132 kV	7,63%
≥ 500 V and < 66 kV	10,07%
< 500 V	17,30%

1.36 **'Year'**
means ESKOM's financial year which is a period of 12 calendar months commencing on 1 April in a calendar year and ending on 31 March in the subsequent calendar year.

ANNEXURE 'B'

ACCEPTANCE LETTER

Mr Albert de Klerk
Acting Municipal
Manager
P O Box 9
MEYERTON
1960

Date: 2007 - 0

dings Limited (Reg No: 2002/015527/06)
oo
Executive
ber: 082 944 5807
mber: 011 692 4000
6368
FONTEIN

Mr Vosloo

UDGET QUOTATION FOR AN NEW 88kV BULK SUPPLY AT A NEW UBSTATION CALLED EYSTONE.

e herewith irrevocably accept the terms and conditions as set out in your quotation letter, ef No **WJ7DSFC** dated 11 June 2007.

We further irrevocably accept the estimated figures for the items below as follows:

CHARGE	ESTIMATED VALUE	TICK with X
Distribution Connection fee	R 421 067.58 + VAT = R 480 017.04	X
Upfront Distribution standard connection charge	R 8 745 000.00 + VAT = R 9 969 300.00	X
Security	R 7 109 500.00 (VAT Inclusive)	
Or		
Distribution Connection fee	R 421 067.58 + VAT = R 480 017.04	
Monthly Distribution standard connection charge (over 25 yrs)	R 103 282.00 + VAT = R 117 741.48	
ICG	R 13 083 700.00 (VAT Inclusive)	
Security	R 7 462 700.00 (VAT Inclusive)	

X
X

ICK with X to select over which period the monthly charges are to be paid

Years	(SCC + VAT) Distribution	TICK with X
25 years	R103 282.00 + VAT = R117 741.48	
20 years	R106 885.00 + VAT = R121 848.90	
15 years	R114 796.00 + VAT = R130 867.44	
10 years	R134 486.00 + VAT = R153 314.04	
5 years	R202 783.00+ VAT = R231 172.62	

~~…ched, please find the payment for the connection, as well as the security and …coverable cost guarantee.~~

With regard to the security required for 3 months electricity account we kindly request that Eskom should waive the security due to the fact that Midvaal is an Eskom customer with an outstanding track record of payment for many years.

My monthly accounts and future correspondence must be addressed as follows:

Acting Municipal Manager
P.O. Box 9
Meyerton
......................code 1960..

SIGNED for and on behalf of the **CUSTOMER** on ...24...July............ 2007

.... in my capacity as ..Act MM...............
(who confirms that s/he is duly authorised to sign for and on behalf of the Customer).

As Witnesses :

1. .... 2. ....