

[Signature] (CHIEF WHIP)

Stellenbosch People's Alliance

P.O.Box 12445
Die Boord
7613



blatgan

E-posl : oakcity2010@yahoo.com

20 Februarie 2014

Per Hand:

Vir Aandag :Die Speaker : Rdl.C Jooste

Stellenbosch Munisipaliteit

MUNICIPALITY - MUNISIPALITEIT
STELLENBOSCH

20 FEB 2014

OFFICE OF THE SPEAKER
RECEIVED BY: *[Signature]*

MUNICIPALITY - MUNISIPAL.
STELLENBOSCH

2014 -02- 20

OFFICE OF THE MUNICIPAL MANAGER
KANTOOR VAN DIE MUNISIPALE BESTUUR

In sake: Kennisgewing vir n Mosie:

Hiermee dien ek in n mosie in terme van die Orde Reels van die Raad en versoek dat dit by die Maart 2014 Beplannings Staande kommittee moet dien.

NB: Indien die te laat is, versoek ek dat dit by die April Mosie: vergadering dien

Die kanselering van die huurkontrak, plaas 502 BL en die afskrywe van die uitstaande skulde;

Motivering:

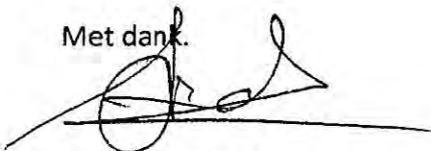
- Daar was op 5 Februarie 2008 in aansoek vir die sedering van die huurkontrak- Plaas 502BL, sowel die as 502 BFN. Die begunstigdes was nl. Mnr. Louis B Arendse, Mnr. Franklin Adams en Winelands Community Business Opportunity Forum (WCBOF)
- Die effektiewe datum van ondertekening van die Sessie ooreenkoms was, September 2009
- NB :Ten tye van die aansoek ,was Mnr. Arendse nog steed in diens van die Stellenbosch Munisipaliteit.
- Op 17 September 2010, was Medi-Prop se aansoek vir befondsing by die Dept. van Landbou goedgekeur en produksie het in Maart 2011 begin na intensiewe opleiding.
- Mnr. Arendse het ongeveer in September 2011, van die boerdery aktiwiteite op die plaas onttrek, en met n hout besigheid begin, wat deur my teengestaan was. Ek het ook n klag by die Departement, sowel Casidra aan hangend gemaak.
- Ek was vir byna twee jaar alleen besig op die grond, met die hulp van my eggenoot. Die department en Casidra was bewus van die situasie en sou Mnr. Arendse van die projek onttrek, wat nooit plaasgevind het.

- Ek moes alle kostes en uitgawes dra en Mr. Arendse het geweier om sy bydrae tot die uitgawes by te dra, bv. krag en maandelikse dienste gelde. Ons het na in onsuksesvolle poging vir afslag op die huur, agterstallig geraak.
- In Augustus 2012, het ek weer begin plant, nadat ek water van ongeveer 600 metre aangele het. Ek het ook in Oktober 2012, Mnr. Arendse versoek om afstand te doen van sy regte, maar hy het geweier.
- Ek moes toe noodgedwonge en onder protes myself van die proses en grond in Desember 2012 onttrek. Ek was ook in 2013 deur die Speaker in my persoonlike hoedanigheid aangekla vir die agterstallige skulde op die grond.
- NB : Ek kry nog steeds maandeliks ROOI BRIEWE na my persoonlike pos adres.
- NB : Ek verwys ook na die skrywe van Mnr. Piet Smit, gedateer 10 Oktober 2012, waar hy kennis gee van n finale aanmaning, nl. indien die rekening nie tenvolle vereffen word nie, voor of op 30 November 2012, die Huurkontrak met ingang van 1 Desember 2012 as gekanseleer beskou te word.
- NB: Na my onttrekking het Mnr. Arendse die boerdery as in besigheid op Gumtree bemark vir R175 000- 29/7/2013.

Aanbeveling:

1. Dat die huurkontrak van Plaas 502 BL summier (in ag geneem die kennisgewing op 30 nov. 2012, deur Mnr. P. Smit) gekanseleer word , om rede die uitstaande skulde en geen aktiwiteite op die grond deur Mnr. Arendse, alternatief:
2. Dat die kommittee oorweeg om die huurkontrak aan die die ander party, nl. Winelands Community Business Opportunity Forum (WCBOF) te sedgeer, met onderhandelinge vir in verlaagde tarief, soortgelyk aan Small Farmers Holding Trust.

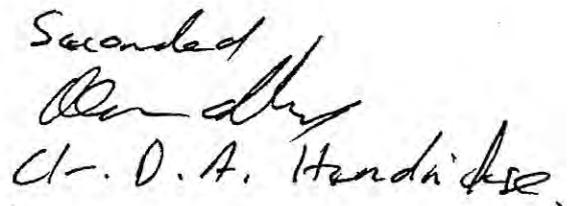
Met dank.



Rdl. Franklin Adams

CC: Die Voorsitter van Beplanning : Rdl. J. Serdyn

Die Voorsitter van Ekonomiese Ontwikkeling : Rdl. N. Jindela

Seconded

 C. D. A. Hendriks

"THE ROOTS OF ALL GOODNESS LIE IN THE SOIL OF APPRECIATION FOR GOODNESS" –Dalai Lama

"ALUTA CONTINUA"



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Our Reference. : 7/2/2/1/Farm 502BL

(Mnr.Piet Smit tel nr. 808 8189)

18 February 2015

Mr L Arendse
C/c Medi-Prop cc
PO Box 12445
Die Boord
Stellenbosch
7613

Dear Sir

LEASE AGREEMENT: PROPOSED CHANGES IN SHAREHOLDING: MEDI PROP CC:

My e-mail send to you on 13 October 2014, as well as my follow-up correspondence refers.

Thank you for your response and the information send to me on 17 February 2015. Unfortunately you have not dealt with all the matters set out in my letter dated 13 October 2014, i.e:

- a) *Whether the lease agreement was cancelled;*
- b) ***Whether the entity, Medi prop cc, still exists, or whether same was finally deregistered;***
- c) *that the applicant indicate **whether he intends to apply for the lease agreement to be entered into with a new company and not Mediprop cc;***
- d) *That the request for a discount in rental be substantiated by a detailed business plan to enable Council to consider the request; and*
- e) *That the report be submitted to this Committee for consideration and subsequent recommendation to Council”.*

Please provide me with answers to the question posed by Council, whereafter your application will be re-submitted to Council.

***Please note** that, should it indeed be the case that Mediprop cc was indeed deregistered, you will have to apply for the ceding of the agreement to the new legal entity (to be established?).

I also refer to my letter dated 2014/07/16 to which I had no feedback to date. I attached a copy of the said letter. Please note that the outstanding amount has subsequently raised to R153 880.64.

As previously mentioned to you, you must either take responsibility for this outstanding amount or you must ensure that it be paid before the agreement is to be ceded to the new entity.

I **URGENTLY** awaits your feedback.

Yours faithfully

A handwritten signature in black ink, appearing to be 'J. Smith', with a date '2014' written below it.

for **MANAGER: PROPERTY MANAGEMENT**



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Our Reference. : 7/2/2/1/Farm 502BL

(Mnr.Piet Smit tel nr. 808 8189)

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PO Box 12445
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Please provide me with answers to the question posed by Council, whereafter your application will be re-submitted to Council.

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for **MANAGER: PROPERTY MANAGEMENT**



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Our Reference. : 7/2/2/1/Farm 502BL

(Mnr.Piet Smit tel nr. 808 8189)

28 April 2015

Mr L Arendse
C/o Medi-Prop cc
PO Box 166
Lynedoch
7603

Dear Sir

LEASE AGREEMENT: PROPOSED CHANGES IN SHAREHOLDING: MEDI PROP CC:

My e-mails send to you on 13 October 2014 and 18 February 2015, as well as my follow-up correspondence refers. (**APPENDIX 1**)

Please indicate as a matter of **URGENCY**, when I can received the required information. Also note that you have not made any payments on the outstanding debt. This lack of progress may lead to you contract being terminated.

I **URGENTLY** awaits your feedback.

Yours faithfully

.....

PIET SMIT
MANAGER: PROPERTY MANAGEMENT



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Our Reference. : 7/2/2/1/Farm 502BL

(Mnr.Piet Smit tel nr. 808 8189)

2015-05-13

Mr L Arendse
C/o Medi-Prop cc
PO Box 166
Lynedoch
7603

Dear Sir

LEASE AGREEMENT: PROPOSED CHANGES IN SHAREHOLDING: MEDI PROP CC:

My letter dated 13 October 2014, 18 February 2015 as well as 29 April 2015, of which copies are attached, refers.

To date I have not received any of the requested information.

Unless the requested information as well as confirmation that all outstanding rentals have been paid by 31 May 2015, it will be assumed that you are not interested in going ahead with the proposed changes in shareholding, in which case your contract will be deemed cancelled.

I urgently await your feedback.

Yours faithfully

.....

PIET SMIT
MANAGER: PROPERTY MANAGEMENT

29 Tindall Street

Idas Valley

Stellenbosch

7600

08 August 2016

The Stellenbosch Municipality

PO Box 17

Stellenbosch

7599

For attention: The Property/Finance Committee

The Property Manager: Mr Piet Smit

Re: Change of Majority Shareholding & Lease Session – Farm 502 BL

Hereby receive application for the session of the above lease agreement with the following provisions, namely

1. That the said legal entity being Mediprop cc is not fully deregistered and that all rights are hereby ceded
2. That this application is for a ceding of the said lease agreement between Mediprop cc and Stellenbosch to

2.1 A3 Farms (PTY)Ltd

3. That as per my correspondence dated 16 January 2014, my application clearly reads that “The session be approved to and in favour of Mr Louis B Arendse and his dependants in a “*newco*”(“*newco*” to be *beneficiary of lease agreement*), now being **A3 Farms (PTY)Ltd**.
4. That **A3 Farms (PTY)Ltd** hereby accepts 100% responsibility for all rates and service charges owed by Mediprop cc to Stellenbosch Municipality to the date of transfer of the said lease agreement and the transfer of such debt to **A3 Farms (PTY)Ltd**.
5. That the application for discounted rates be finalised after the successful concluding of a session agreement as to allow A3 Farms (PTY)LTD to be liable for the rates concession as per the concession granted to the Small Black Farmers and that such application before/to council be the sole responsibility of the management of **A3 Farms (PTY)Ltd, and that this is not a condition to this session application.**

I await your urgent response herein.

Yours

Louis B Arendse

For/on behalf

Mediprop cc Reg no: : 2002/098971/23

**Certificate issued by the Commissioner of Companies & Intellectual
Property Commission on Sunday, August 14, 2016 at 16:05**



COR14.3: Registration Certificate

Registration Number: **2016 / 340767 / 07**
Enterprise Name: **A3 FARMS**

ENTERPRISE INFORMATION

Registration Number **2016 / 340767 / 07**
Enterprise Name **A3 FARMS**
Registration Date **14/08/2016**
Business Start Date **14/08/2016**
Enterprise Type **Private Company**
Enterprise Status **In Business**
Financial Year End **March**

Addresses	<u>POSTAL ADDRESS</u>	<u>ADDRESS OF REGISTERED OFFICE</u>
	15 MUSCADEL ROAD SHIRLEY PARK STIKLAND WESTERN CAPE 7530	FARM 502BL LYNEDOCH STELLENBOSCH WESTERN CAPE 7603

ACTIVE MEMBERS / DIRECTORS

Surname and First Names	Type	ID Number / Date of Birth	Appointment Date	Addresses
ARENDSE, LOUIS BERESFORD	Director	6803275128081	14/08/2016	Postal: 15 MUSCADEL ROAD, SHIRLEY PARK, STIKLAND, WESTERN CAPE, 7530 Residential: 15 MUSCADEL ROAD, SHIRLEY PARK, STIKLAND, WESTERN CAPE, 7530
ARENDSE, DILLAN	Director	9702055143087	14/08/2016	Postal: 15 MUSCADEL ROAD, SHIRLEY PARK, STIKLAND, WESTERN CAPE, 7530 Residential: 15 MUSCADEL ROAD, SHIRLEY PARK, STIKLAND, WESTERN CAPE, 7530



5.6	INFRASTRUCTURE: (PC: CLLR J DE VILLIERS)
5.6.1	AMENDMENT OF CONTRACT: DEMAND-SIDE MANAGEMENT PROJECT FOR A PERIOD OF 37 MONTHS

1. PURPOSE OF THE REPORT

To request approval from Council for the extension of the contract with Powertech System Integrators (PTSI) for a period of 37 months (01 January 2017 – 01 February 2020) as per Section 116(3) of the Municipal Finance Management Act (Act 56 of 2003) (Refer to **APPENDIX 1**).

2. BACKGROUND

Stellenbosch Municipality was approached by the National Energy Regulator of South Africa (NERSA) and Eskom (a joint initiative) with a proposal to implement a load reduction system whereby the electricity demand of the Municipality can be shifted from peak to off peak periods to reduce the pressure on the National Electricity grid when required. The project, as presented to the Municipal Council during 2010/11 offered benefits to the Municipality such as:

- The project was fully sponsored to the Municipality (approximately R22 000 000.00 in total)
- The Government Gazette, Electrification Regulation Act 2006, Item 2 b(i), dated 8 August 2008, amongst other stipulates that “the licensee shall install a facility to remotely control the supply of electricity to any electric geyser that does not incorporate a solar facility. It further stipulates that such a facility had to be in place by 01 January 2012 (**refer to APPENDIX 2**)
- The installed asset would eventually become the Municipality's property
- Once operational, the project would save the Municipality money by shifting the electrical load from peak to off peak periods.

The proposal was finally approved by Council on 24 November 2011 (5th Council meeting) and authority was granted to the Municipal Manager (Mr David Daniels) to enter into an agreement with Eskom regarding the implementation of all aspects of the Demand-side Management project, better understood as the Residential Hot Water Load Control project to all affected clients.

Subsequent to Council's approval, a contract between Eskom Holdings SOC Limited and Stellenbosch Local Municipality was agreed upon and signed by both parties on 30 November 2011 which amongst other stated in short that once the project was successfully completed and handed over to the Municipality of Stellenbosch, the Municipality would be held responsible to maintain the performance of the network by shifting an agreed upon average Megawatt (MW) demand during the week day evening peak period only for a period of five years or be subjected to penalties for non-compliance to the contract (**refer to APPENDIX 3**).

Following the implementation/installation, testing, commissioning, measurement and verification stages of the project, it was successfully handed over to the Municipality of Stellenbosch on Thursday, 25 February 2016. At this time, the project was already fully functional for twelve months prior to the hand-over date and Eskom therefor agreed in writing to commence the five year commitment period as from 01 February 2015 leaving the Municipality with a current remaining commitment period of three years and three months as from 01 November 2016 (**refer to APPENDIX 4**). The final agreed upon demand to be shifted was calculated (averaged after a 12 month monitoring period) to be 2.277MW on average per evening and must be successfully maintained by the Municipality until 01 February 2020.

The approved method to obtain this load reduction is achieved by switching off hot water cylinders in residential homes during the evening peak time only (18h00-20h00). An Appliance Control Device (ACD) is installed in each residential home or flat and remotely controlled by an Intelligent Device Manager (IDM) which is strategically installed in miniature substations or kiosks in various areas in Stellenbosch to form a communication cloud. A command signal generated by each IDM and relayed via this communication cloud switches each ACD when required. The IDM also monitors the statuses of each ACD to ensure correct operation, thus also preventing possible tampering by the public.

To date, a total of 8852 ACDs could be installed in most residential areas in Stellenbosch which are supplied with electricity by the Municipality due to the available timeframe under the initial phase of this project. In order to ensure equality throughout all residence, the Electricity department intends to continue to expand this project until all relevant residential homes received an ACD installation.

3. DISCUSSION

The Electricity department has since advertised the B/SM 75/16: Hot Water Load Control project (80/20) tender ending 30 June 2017 to award a successful bidder for the operation and maintenance services of the existing network as well as to expand the project to areas not reached during the first phase of the project. At closing stage of this tender, only Powertech System Integrators (PTSI) submitted an offer and was awarded the contract which will be suspended on 31 December 2016 as the tender has reached its maximum allowable expenditure amount of R 1 000 000.00 Vat Included.

PTSI was awarded by Eskom to implement the first phase of this project in four municipalities in the Western Cape namely: Overstrand, Mosselbay, Drakenstein and Stellenbosch. The company designed the software packages (ECWIN and ecCONTROL) which forms the operating system that currently successfully manages and supports the network infrastructure that ultimately controls each installed ACD device remotely from the control centre. The operating system communicates with all IDMs installed to verify the successful operation of each ACD on a daily basis, allowing the Municipality to confirm and calculate each evening demand that was successfully shifted. More importantly, it allows the Municipality to have a two way communication link with every ACD installed thus allowing the Municipality to effectively monitor the system for irregular operation and or unit tampering. It would be accurate to say that the system in its entirety is the backbone of this initiative, without it the project would not be able to operate.

Furthermore, PTSI also offered the IDMs and ACDs as part of their solution to Eskom as these instruments had to offer reliability from the field while interfacing with or connecting to the network and in turn act on each command generated from the operating system. Due to the limited departmental resources within the Municipality, PTSI has upon request from the Municipality offered a local support office to assist with maintenance issues such as replacement of faulty ACDs or IDMs in the network to achieve a same day response on client complaints when it is reported.

PTSI's extensive knowledge and invested expertise during the planning, implementation and operation of this project since it was approved in 2011 has been exemplary, thus making the company the best suited contractor to maintain the overall system for the Municipality of Stellenbosch.

Stellenbosch Municipality's contractual commitment to Eskom will reach its 22nd of 60 month period (5 years) when the current tender concludes on 31 December 2016. The Electricity department wishes to extend the contract with Powertech SI for the next 37 months starting 01 January 2017 until the five year term has concluded and the system becomes the Municipality's property.

It would be impractical to test the market for the following reasons:

- All hardware supplied under this project has been signed over to the Municipality for asset and insurance purposes, however the performance and operation of the system remains the property of Eskom until the full term of the contract has lapsed.
- A new operating system offered will require additional setup cost where the existing one was implemented free of charge
It would be wasteful expenditure to try and reinvent a system that has proven its worth to the Municipality
- The risk of interfacing two operating systems with each other.
A new operating system will need to tap into the existing database to establish communication with the existing infrastructure. No contractor will be able ensure a smooth and glitch free transition between the new and existing system
- The Electricity department does not have the luxury of time to implement a new system.
Any down time on the existing switching routine will result in a poor system performance compromising the contractual agreement between the Municipality and Eskom
- Risking the integrity of the current system and its operation with the public.
Initially, this project experienced implementation glitches and teething problems which frustrated the public and it took the Municipality months of communication and persuasion to finally get the buy-in and support of this project. We will lose the confidence of the public on this project should problems resurface.

Once the contractual period has lapsed, the end-user department intends to openly test the market for service providers who can offer an equal or better solution based on the asset that the Municipality will have.

It is crucial that the Municipality remains compliant to the contractual obligations with Eskom to avoid possible penalties should the system not perform as expected; for this reason it would be in the Municipality's best interest to continue this contract with currently recommended service provider Powertech SI.

Powertech SI has supplied the Municipality with a monthly monitoring and maintenance quotation indication fixed annual rates for the remaining term as required. Please note that rates as based on normal working hours unless specified otherwise. Quantities (annual and monthly) are based on numbers recorded over the past few months under the current B/SM 75/16 contract. Please note that quantities shall be ordered based on the availability of funds during each financial year **(refer to APPENDIX 5)**.

The financial implication breakdown is as follows:

4. FINANCIAL IMPLICATION

The project will be dependent on both Capital and Operational expenditure. Capital funds shall be sourced from Vote: DSM Geysers Control, vote number: 5/4400/4201 and the Operational funds shall be utilized from Vote: Agency Services, vote number: 1/4410/0419.

The Electricity department plans to install a total of 3000 ACDs during the remaining 37 month contractual period pending on available the availability of funds. Powertech SI offered rates for each service required on the project making it possible to adjust quantities to fall within the approved and available annual budget. It should be noted that the Operational (Maintenance) services requirements have been based on the past twelve months' behavior of the network but can increase should the need arises, should circumstances require the need for additional funds, the request will be tabled for consideration during the adjustment budget cycle.

Total Capital Expenditure will amount to R 2,461,391.78 VAT included.

Total Operational Expenditure will amount to R 3,809,856.39 VAT included.

A cost breakdown of the projected expenditure is offered as follows:

B/SM 75/16: HWLC PROJECT (PHASE 3): EXTENTION OF CONTRACT UNTIL 31 JANUARY 2020 NEW INSTALLATIONS AND MAINTENANCE ON NEW/EXISTING NETWORK AND SYSTEM INFRASTRUCTURE	
FINANCIAL INPLICATIONS BREAKDOWN SUMMARY	
Capital Expense Summary 2016/2017	R 326,150.00
Capital Expense Summary 2017/2018	R 684,917.50
Capital Expense Summary 2018/2019	R 753,407.80
Capital Expense Summary 2019/2020	R 394,640.30
Total Planned Capital Expense (excl. Vat)	R 2,159,115.60

VAT (14%)	R 302,276.18
Total Planned Capital Expense (incl. Vat)	R 2,461,391.78
Operational Expense Summary 2016/2017	R 499,041.66
Operational Expense Summary 2017/2018	R 1,038,160.68
Operational Expense Summary 2018/2019	R 1,126,208.16
Operational Expense Summary 2019/2020	R 678,568.79
Total Approximate Maintenance Expense	R 3,341,979.29
VAT (14%)	R 467,877.10
Total Planned Capital Expense (incl. Vat)	R 3,809,856.39

Projected Expenditure 2016/17: 01 January 2017 - 30 June 2017

Item No.	Description	Recommended Quantity	Tendered Unit Price	Price/ requirement	Expense type
1.1	Installation of new Relay	500	R 646.25	R 323,125.00	Capital
1.2	Call-out rate/fee including replacement of faulty relay	30	R 458.33	R 13,749.90	Maintenance
1.3	Call-out rate/fee including replacement of faulty relay (after hours/weekends)	6	R 595.83	R 3,574.98	Maintenance
1.4	Call-out rate/fee excluding replacement of faulty relay (audit)	60	R 389.58	R 23,374.80	Maintenance
1.5	Installation of Signal Extender	10	R 302.50	R 3,025.00	Capital
1.6	Audit of existing installations	600	R 320.83	R 192,498.00	Maintenance
1.7	Remote Operating System Control & Maintenance	6	R 44,307.33	R 265,843.98	Maintenance
Total Cost Excluding VAT				R 825,191.66	
VAT (14%)				R 115,526.83	
Total Cost including VAT				R 940,718.49	
Projected Expansion					
Capital Expense Summary 2016/2017			R 326,150.00		
Maintenance Expense Summary 2016/2017			R 499,041.66		

Projected Expenditure 2017/18: 01 July 2017 - 31 December 2017

Item No.	Description	Recommended Quantity	Tendered Unit Price	Price/ requirement	Expense type
1.1	Installation of new Relay	500	R 646.25	R 323,125.00	Capital
1.2	Call-out rate/fee including replacement of faulty relay	30	R 458.33	R 13,749.90	Maintenance
1.3	Call-out rate/fee including replacement of faulty relay (after hours/weekends)	6	R 595.83	R 3,574.98	Maintenance

1.4	Call-out rate/fee excluding replacement of faulty relay (audit)	60	R 389.58	R 23,374.80	Maintenance
1.5	Installation of Signal Extender	10	R 302.50	R 3,025.00	Capital
1.6	Audit of existing installations	600	R 320.83	R 192,498.00	Maintenance
1.7	Remote Operating System Control & Maintenance	6	R 44,307.33	R 265,843.98	Maintenance

Projected Expenditure 2017/18: 01 January 2018 - 30 June 2018

Item No.	Description	Recommended Quantity	Tendered Unit Price	Price/ requirement	Expense type
2.1	Installation of Relay	500	R 710.88	R 355,440.00	Capital
2.2	Call-out rate/fee including replacement of faulty relay	30	R 504.17	R 15,125.10	Maintenance
2.3	Call-out rate/fee including replacement of faulty relay (after hours/weekends)	6	R 655.42	R 3,932.52	Maintenance
2.4	Call-out rate/fee excluding replacement of faulty relay (audit)	60	R 428.54	R 25,712.40	Maintenance
2.5	Installation of Signal Extender	10	R 332.75	R 3,327.50	Capital
2.6	Audit of existing installations	600	R 352.92	R 211,752.00	Maintenance
2.7	Remote Operating System Control & Maintenance	6	R 47,099.50	R 282,597.00	Maintenance
Total Cost Excluding VAT				R 1,723,078.18	
VAT (14%)				R 241,230.95	
Total Cost including VAT				R 1,964,309.13	
Projected Expansion					
Capital Expense Summary 2017/2018			R 684,917.50		
Maintenance Expense Summary 2017/2018			R 1,038,160.68		

Projected Expenditure 2018/19: 01 July 2018 - 31 December 2018

Item No.	Description	Recommended Quantity	Tendered Unit Price	Price/ requirement	Expense type
1.1	Installation of new Relay	500	R 710.88	R 355,440.00	Capital
1.2	Call-out rate/fee including replacement of faulty relay	30	R 504.17	R 15,125.10	Maintenance
1.3	Call-out rate/fee including replacement of faulty relay (after hours/weekends)	6	R 655.42	R 3,932.52	Maintenance
1.4	Call-out rate/fee excluding replacement of faulty relay (audit)	60	R 428.54	R 25,712.40	Maintenance
1.5	Installation of Signal Extender	10	R 332.75	R 3,327.50	Capital
1.6	Audit of existing installations	600	R 352.92	R 211,752.00	Maintenance

1.7	Remote Operating System Control & Maintenance	6	R 47,099.50	R 282,597.00	Maintenance
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Projected Expenditure 2018/19: 01 January 2019 - 30 June 2019

Item No.	Description	Recommended Quantity	Tendered Unit Price	Price/ requirement	Expense type
2.1	Installation of Relay	500	R 781.96	R 390,980.00	Capital
2.2	Call-out rate/fee including replacement of faulty relay	30	R 554.58	R 16,637.40	Maintenance
2.3	Call-out rate/fee including replacement of faulty relay (after hours/weekends)	6	R 720.96	R 4,325.76	Maintenance
2.4	Call-out rate/fee excluding replacement of faulty relay (audit)	60	R 471.40	R 28,284.00	Maintenance
2.5	Installation of Signal Extender	10	R 366.03	R 3,660.30	Capital
2.6	Audit of existing installations	600	R 388.21	R 232,926.00	Maintenance
2.7	Remote Operating System Control & Maintenance	6	R 50,819.33	R 304,915.98	Maintenance
Total Cost Excluding VAT				R 1,879,615.96	
VAT (14%)				R 263,146.23	
Total Cost including VAT				R 2,142,762.19	
Projected Expantion					
Capital Expense Summary 2018/2019			R 753,407.80		
Maintenance Expense Summery 2018/2019			R 1,126,208.16		

Projected Expenditure 2019/20: 01 July 2019 - 31 December 2019

Item No.	Description	Recommended Quantity	Tendered Unit Price	Price/ requirement	Expense type
1.1	Installation of new Relay	500	R 781.96	R 390,980.00	Capital
1.2	Call-out rate/fee including replacement of faulty relay	30	R 554.58	R 16,637.40	Maintenance
1.3	Call-out rate/fee including replacement of faulty relay (after hours/weekends)	6	R 720.96	R 4,325.76	Maintenance
1.4	Call-out rate/fee excluding replacement of faulty relay (audit)	60	R 471.40	R 28,284.00	Maintenance
1.5	Installation of Signal Extender	10	R 366.03	R 3,660.30	Capital
1.6	Audit of existing installations	600	R 388.21	R 232,926.00	Maintenance
1.7	Remote Operating System Control & Maintenance	6	R 50,819.33	R 304,915.98	Maintenance

Projected Expenditure 2019/20: 01 January 2020 - 31 January 2020

Item No.	Description	Recommended Quantity	Tendered Unit Price	Price/ requirement	Expense type
2.1	Installation of Relay	0	R 860.16	R 0.00	Capital
2.2	Call-out rate/fee including replacement of faulty relay	5	R 610.04	R 3,050.20	Maintenance
2.3	Call-out rate/fee including replacement of faulty relay (after hours/weekends)	1	R 793.05	R 793.05	Maintenance
2.4	Call-out rate/fee excluding replacement of faulty relay (audit)	10	R 518.54	R 5,185.40	Maintenance
2.5	Installation of Signal Extender	0	R 402.63	R 0.00	Capital
2.6	Audit of existing installations	100	R 427.03	R 42,703.00	Maintenance
2.7	Remote Operating System Control & Maintenance	1	R 39,748.00	R 39,748.00	Maintenance
Total Cost Excluding VAT				R 1,073,209.09	
VAT (14%)				R 150,249.27	
Total Cost including VAT				R 1,223,458.36	
Projected Expansion					
Capital Expense Summary 2018/2019			R 394,640.30		
Maintenance Expense Summary 2018/2019			R 678,568.79		

Lastly, it should also be noted that the project in its current state has been operating and performing optimally, creating an annual saving on the Municipality's electricity bill to Eskom of approximately R 882 000.00 during the 2015/16 (12 month period) financial year. The saving was generated by shifting 2.277MW from our peak tariff to our off-peak tariff. By expanding the project, it will greatly benefit the Municipality once its full potential is reached (**refer to APPENDIX 6**)

5. COMMENTS FROM RELEVANT DIRECTORATES**5.1 Directorate: Finance (Office of the CFO)**

Item is supported

5.2 Directorate: Strategic & Corporate Services Senior Legal Advisor (EA Rhoda)

The Demand –Side Management agreement with Eskom was concluded 30 November 2011. The Agreement explicitly provides that the municipality will be obliged to ensure that the facility is in good condition, thus the network must perform optimally for a period of *5 years subject to penalties for non-compliance*. Ideally, the department should have requested the council to go on a Section 33 of the MFMA process which makes provision for contracts having future budgetary implications, after the conclusion of the contract in 2011. Section 33 inter alia provides that any contract which will incur financial obligations beyond the relevant budget cycle requires a specific process to be followed.

A request is now submitted for the extension of the contract for the next 37 months starting 01 January 2017 until the five year term has concluded and the system becomes the municipality's property. It is important to note that the *extension of the contract B/SM 75/16* must comply with the Municipal Finance Management Act and the Municipal Systems Act. Section 116(3) of the Municipal Finance Management Act no. 56 of 2003 (MFMA) provides, a contract or agreement procured through the supply chain management policy of the municipality may be amended by the parties, but only after—

(a) The reasons for the proposed amendment have tabled in the council of the municipality; and

(b) The local community-

(i) has been given reasonable notice of the intention to amend the contract or agreement; and

(ii) has been invited to submit representations to the municipality.

The amendment of the tender B/SM 75/16 eight months (tender ending 30 June 2017) before it lapses is evident of good project planning as the Council is timeously informed. Cognizance must however be taken of the fact that Powertech SI is not the sole provider of the system and ideally the market should have been tested to ensure adherence to Section 217 of the Constitution.

Given the current circumstances the item requesting the Council's approval for the extension of the tender via section 116(3) process is supported as the item highlights the challenges which were first experienced with the roll out of the project and alludes to the fact that the council will lose the confidence of the public/community should the initial problems resurface

RECOMMENDED

(a) that Council note the reasons for the proposed extension of the contract/agreement for a period of 37 months; and

(b) That the local community be given reasonable notice of the intention to extend the contract/agreement and be invited to submit representations to the municipality.

(c) That Council is informed of representation received from the public.

FURTHER COMMENTS FROM THE DIRECTOR: ENGINEERING SERVICES

Council resolved at its meeting held on 26 October 2016:

3RD COUNCIL MEETING: 2016-10-26: ITEM 8.10

RESOLVED (*nem con*)

(a) *that Council notes the reasons for the proposed extension of the contract/agreement for a period of 37 months;*

(b) *that the local community be given reasonable notice of the intention to extend the contract/agreement and be invited to submit representations to the municipality; and*

(c) *that Council be informed of representation received from the public.*

A public participation process was followed by means of notices (**APPENDIX 7**) that were placed in Die Burger and Cape Argus on 03 November 2016 with closing date 18 November 2016. No representation from the public has been received (**APPENDIX 8**).

RECOMMENDED

that Council approves the extension of the contract agreement (BSM 75/16) for a period of 37 months in terms of the MFMA S116(3) (a).

Meeting: Ref No:	<i>Special Mayco: 2016-11-30 8/1Engineering</i>	Submitted by Directorate: Author: Referred from:	<i>Infrastructure W Pretorius</i>
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(2) No person may impose the accounting officer in fulfilling his responsibility.

[Date of commencement of s. 115: 1 December 2004.]

116 Contracts and contract management

(1) A contract or agreement procured through the supply chain management system of a municipality or municipal entity must—

- (a) be in writing;
- (b) stipulate the terms and conditions of the contract or agreement, which must include provisions providing for—

- (i) the termination of the contract or agreement in the case of non-order performance;
- (ii) dispute resolution mechanisms to settle disputes between the parties;
- (iii) a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years; and
- (iv) any other matters that may be prescribed.

(2) The accounting officer of a municipality or municipal entity must

- (a) take all reasonable steps to ensure that a contract or agreement procured through the supply chain management policy of the municipality or municipal entity is properly enforced;
- (b) monitor on a monthly basis the performance of the contractor under the contract or agreement;
- (c) establish capacity in the administration of the municipality or municipal entity—

- (i) to assist the accounting officer in carrying out the duties set out in paragraphs (a) and (b); and
- (ii) to oversee the day-to-day management of the contract or agreement; and

(iii) regularly report to the council of the municipality or the board of directors of the entity, as may be appropriate.

Section 116

on the management of the contract or agreement and the performance of the contractor

(3) A contract or agreement procured through the supply chain management policy of the municipality or municipal entity may be amended by the parties, but only after—

- (a) the reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality; and
- (b) the local community

(i) has been given reasonable notice of the intention to amend the contract or agreement; and

(ii) has been invited to submit representations to the municipality or municipal entity.

[Date of commencement of s. 116: 1 December 2004.]

117 Councillors barred from serving on municipal tender committees

No councillor of any municipality may be a member of a municipal bid committee or any other committee exercising approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer.

118 Interference

No person may—

- (a) interfere with the supply chain management system of a municipality or municipal entity; or
- (b) amend or tamper with any tenders, quotations, contracts or bids prior to their submission.

119 Competency levels of officials involved in municipal supply chain management

(1) The accounting officer and all other officials of a municipality or municipal entity involved in the implementation of the supply

Section 119

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No.**GOVERNMENT NOTICE****Minerals and Energy, Department of***Government Notice*

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GOVERNMENT NOTICE**DEPARTMENT OF MINERALS AND ENERGY****No. R. 842****8 August 2008****ELECTRICITY REGULATION ACT, 2006****ELECTRICITY REGULATIONS FOR COMPULSORY NORMS AND STANDARDS FOR
RETICULATION SERVICES**

I, Buyelwa Sonjica, Minister of Minerals and Energy hereby, under section 35(4) of the Electricity Regulation Act, 2006 (Act No 4 of 2006), after consultation with the Regulator, make the regulations in the Schedule.

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za

SCHEDULE

1. **Definitions.** – In these Regulations, any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned and, unless the context otherwise indicates –

“**building**” includes any other structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected for or in connection with–

- (a) the accommodation or convenience of human beings or animals;
- (b) the manufacture, processing, storage, display or sale of any goods;
- (c) the rendering of any service;
- (d) the destruction or treatment of refuse or waste materials; or
- (e) the cultivation or growth of any plant or crop.

“**time of use**” means measurement of energy consumption on a time interval basis,

“**integrated power system**” means the structures and other equipments that connect with the transmission power system, distribution power system and reticulation in South Africa;

“**the Act**” means the Electricity Regulation Act, 2006 (Act No. 4 of 2006),

“**smart metering system**” means an electricity meter that allows for –

- (a) measurement of energy consumed on a time interval basis,
- (b) two-way communication between the customer/end-user and the licensee,
- (c) storage of time interval data and transfer it remotely to the licensee, and
- (d) remote load management.

“**system operator**” means an entity responsible for directing the operation and maintaining the reliability of the integrated power system

2. In order to maintain good quality of supply, ensure stability of the electricity network, minimise electricity load shedding and avoid blackouts, the following norms and standards for reticulation services must be maintained in an area of jurisdiction–

(a) In respect of lighting–

- (i) energy efficient fittings must be used in all buildings except where a specific fitting is required for business purposes and the nature of the business does not allow an energy efficient fitting;
- (ii) street and highway lighting must be energy efficient and licensee

- (iii) Street lights must be fitted with energy efficient systems that allow for remote reduction of power during capacity constraints.
- (b) In respect of existing buildings, where an electric water heating facility is required-
 - (i) a licensee should install a facility to remotely control the supply of electricity to any electric geyser that does not incorporate a solar heating water facility;
 - (ii) sub-regulation (c)(i) must be in place not later than 01 January 2012;
- (c) In respect of space heating, ventilation or cooling in buildings, to be in place not later than 01 January 2012, a licensee must-
 - (i) install a facility to remotely control the supply of electricity to heating, ventilation and cooling system in its area of supply,
 - (ii) link a swimming pool drive and heating system to a facility that enables the licensee to remotely control its supply of electricity;
- (d) An end user or customer with a monthly consumption of 500kWh and above must have smart metering system and be on time of use tariff not later than 01 January 2012;
- (e) Sub-regulations (b) and (c) do not apply in an event where the licensee can remotely reduce or increase the supply of electricity to the building using a smart metering system.
- (f) The licensee may only reduce the supply of electricity to customers during capacity or network constraints. Where the interruption is planned, the licensee must inform affected customers at least a day before about the interruption of electricity supply.
- (g) In respect of sub-regulations (c) and (d) above, the licensee may remotely control the supply of electricity only during capacity or network constraints to avoid electricity blackouts. The System Operator must issue a notice to the licensee declaring the constraints in terms of network or capacity and requesting distributors to reduce demand.
- (h)



[Rev. Mar 2011]

LOAD SHIFTING

[Stellenbosch Local Municipality_2011031]

DEMAND-SIDE MANAGEMENT AGREEMENT**1. PARTIES**

The Parties to this Agreement are:

ESKOM HOLDINGS SOC LIMITED

(Reg. No. 2002/015527/06) a company incorporated in terms of the company laws of the Republic of South Africa ('Eskom') herein represented by Immanuel Katothi in his/~~her~~ capacity as DSM Manager,

and

STELLENBOSCH LOCAL MUNICIPALITY

a Municipality constituted in terms of the Local Government Municipal Structures Act (No. 117 of 1998 as amended) as read with the Local Government Municipal Systems Act 32 of 2000 as amended, ('the Customer'), and who is herein represented by DAVID DANIELS in his/~~her~~ capacity as Municipal Manager, duly authorised in terms of a resolution passed by its council on 24 NOVEMBER 2011.

2. AGREEMENT

- 2.1. It is Eskom's desire to install and implement its demand-side management initiatives ("DSM Programme") at the premises of the Customer at address _____ as well as in a control room.

1078
LAF
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substations and relay switches which are installed in residential households (the Facilities”).

- 2.2. Eskom will procure, subject to the terms of this agreement, the services of an Energy Services Company (“ESCO”) for the installation of all the DSM Measures and equipment for the implementation of the DSM Programme at the Facilities as described in sub-clause 2.1 above.
- 2.3. The Customer desires to implement the DSM Programme at the Facilities and of procuring the services, know-how and expertise of Eskom for this purpose, on the terms and conditions as set out in this Agreement.
- 2.4. The ESCo has submitted a proposal and plan for the implementation of the aforementioned DSM programme, as set out in Annexure ‘A’, to both the Customer and Eskom, which proposal and plan were agreed to and accepted by both Parties. The Parties agree that the conditions of this main part of the agreement, forming part of the Agreement, will prevail over anything contained in Annexures “A”, “B” and “C” despite any potential interpretation of paragraph 4.1 to the contrary;
- 2.5. The ESCo’s proposal has been evaluated and selected for implementation by Eskom on the basis of prior acceptance of the ESCo’s proposal by the Customer through the Customer’s letter of intent;
- 2.6. Eskom shall ensure that the ESCo carries out its obligations for the installation and implementation of the project at the Facilities, once appointed, as outlined in the contract to be concluded between Eskom and the ESCo.
- 2.7. The Parties agree that this Agreement cancels and replaces the Demand-Side Management Agreement signed between them dated 30 April 2008.
- 2.8. The Customer will be responsible for the ongoing maintenance of the DSM Measures, either carrying out such maintenance itself, if Eskom approves, or in accordance with a maintenance contract entered into



between the Customer and an appropriate management entity, which contract has to be approved by Eskom before entering into such agreement and subject to the provisions of Annexure 'E', annexed to this Agreement.

3. INTERPRETATION

3.1. In this Agreement, unless a contrary intention clearly appears:

3.1.1. Words importing:

3.1.1.1. any one gender include the other gender;

3.1.1.2. the singular include the plural and vice versa;

3.1.1.3. natural persons include juristic persons and vice versa.

3.1.2. Expressions defined in this Agreement shall bear the same meanings in the schedules / annexures to this Agreement; unless specifically defined in those documents;

3.1.3. The word "day" denotes a business/work day, unless the context otherwise indicates;

3.1.4. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

3.1.5. Any reference to a Party, includes a reference to the Party's authorised representatives, employees, agents or contractors.

4. DEFINITIONS

Unless the context indicates otherwise, the terms hereafter shall have the following meanings assigned to them:

- 4.1. **"Agreement"** means this written Agreement together with all annexures and addenda referenced herein.
- 4.2. **"Assessment Period"** means the period (usually three (3) months, but may be longer in certain circumstances) from the signing of the Implementation Certificate, to conduct an assessment of the installation by the M&V Entity, to determine whether the DSM Savings are comparable to the Contracted DSM Savings. The period is concluded on the Measurement Acceptance Date.
- 4.3. **"Baseline"** means the actual energy consumption prior to installation of DSM Measures or any other measured data acquired for the purpose of creating a baseline amount of energy usage before installation of the DSM Measures.
- 4.4. **"Confidential Information"** means, *inter alia*, including without limitation, scientific, business or financial data, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, samples reports, Customer lists, price lists, studies, findings, computer software, inventions or ideas.
- 4.5. **"Contracted DSM Savings"** means the DSM Savings as agreed in the Measurement Acceptance Certificate, to be achieved during the DSM Savings Period, or as revised from time to time in accordance with the terms of the Agreement.
- 4.6. **"Contract Price"** means the price as set out in the NEC agreement.
- 4.7. **"DSM"** means the demand-side management function in the Demand Side Management Department of Eskom.
- 4.8. **"DSM Savings"** means energy savings expressed in Megawatts per hour (MWh) and/or demand shift expressed in Megawatts (MW) achieved pursuant to installation of DSM Measures.

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- 4.9. **"DSM Measures"** means all equipment and technologies procured and supplied by Eskom and installed by the ESCo at the Facilities including the load switches installed in residential households.
- 4.10. **"DSM Savings Period"** means the period within which the Contracted DSM Savings and/or demand shift are and is a period of 5 (five) years after the Measurement Acceptance Date.
- 4.11. **"Energy Efficiency Projects"** means a project in terms of which, if successfully operated, the Facilities or part thereof becomes more electricity efficient resulting in a reduction in electricity consumption.
- 4.12. **"ESCo"** means Energy Services Company, and is an entity registered with and to be contracted by Eskom to carry out the installation and implementation of the DSM Measures at the Facilities.
- 4.13. **"Force Majeure"** means circumstances reasonably unforeseen and beyond the control of the Party affected by it which prevents such affected party from executing its obligations in terms of this agreement. *Force majeure* does not include shortage of cash, any inability or failure to pay money, or any inability to raise funds.
- 4.14. **"Good Industry Practices"** means those practices, methods, standards and equipment commonly accepted in engineering as best practice and as prescribed by the Engineering Council of South Africa, the South African Bureau of Standards (SABS) and the Occupational Health and Safety Act (No 85 of 1993).
- 4.15. **"Implementation Certificate"** means the certificate signed by Eskom and the ESCo stating that the DSM Measures have been correctly installed.
- 4.16. **"Load Shifting or Load Clipping Projects"** means an intervention by Eskom whereby part of the Customer's electricity consumption during peak demand period, is shifted to off-peak periods (as specified in

Eskom's published Time-of-use tariffs, as amended from time to time) to reduce Eskom's peak load resulting in a reduction in electricity costs.

- 4.17. "**Measurement Acceptance Date**" means the date upon which the Parties hereto shall conduct a joint inspection of the installed DSM Measures, and through signature by both parties of a completion certificate, declare them fully operational. The completion certificate will record the Contracted DSM Savings and the date on the completion certificate will be the Measurement Acceptance Date.
- 4.18. "**Measured DSM Savings**" means the reduction in energy consumption and/or demand reduction by the Customer as measured and calculated by the M&V Entity at the end of each measurement period, during the DSM Savings Period.
- 4.19. "**M&E Control Centre**" means the measurement and evaluation centre, and is the building or centre where the monitoring, evaluation and analysis of the baseline indices are carried out to determine the impact of the DSM Measures on the Customer's electricity usage at the Facilities and the impact on Eskom's load curve, and the Measured DSM Savings verified and analysed.
- 4.20. "**M&V Activities**" means collating, measuring, analysing and verifying the Customer's energy indices and the impact of DSM Measures at the Facilities and on Eskom's load curve.
- 4.21. "**M&V DSM Savings Report**" means a document that shall be compiled and distributed by the M&V Entity to the Parties hereto reflecting the level of DSM Savings and/or demand reduction achieved monthly post DSM Measures intervention.
- 4.22. "**M&V Entity**" means the independent measuring and verification entity appointed by Eskom and whose scope of work includes, *inter alia*,

collating the baseline data received from the Customer, measuring and verifying monthly and annual DSM Savings achieved.

- 4.23. **“M&V Equipment”** means any equipment providing independent measuring and verification of the impact of the Customer’s operations on its energy consumption, after implementation of the DSM Measures.
- 4.24. **“M&V Plan”** means the document produced and distributed by the M&V Entity that comprises an overview of the project-specific M&V Activities and which sets out a detailed plan outlining activities to be undertaken to quantify DSM Savings.
- 4.25. **“M&V Post-Implementation Report”** means the document produced and distributed by the M&V Entity that records the electricity indices after implementation, whether the DSM Measures are operating in accordance with the M&V Plan and the DSM Savings achieved.
- 4.26. **“NEC”** means New Engineering Contract and is the contract to be concluded between Eskom and the ESCo to regulate their respective rights and obligations regarding the installation and implementation of the DSM Measures.
- 4.27. **“Parties”** means Eskom and the Customer.
- 4.28. **“Power Quality”** means the quality of electricity available for utilisation at the Facilities, which shall be of a nature and availability equivalent to that historically provided by ESKOM or a municipality to such premises and which shall be in accordance with standard NRS048, the Rationalised User Specification for Quality of Supply issued by the SABS, as revised from time to time or as replaced by a national standard.
- 4.29. **“Quality Installation Plan”** means the written plan as prepared by the ESCo setting out the DSM Measures, standards for installation, operation and maintenance of such DSM Measures in compliance with this

Agreement, Eskom's standards and the standards prescribed by the SABS and the Occupational Health and Safety Act (No 85 of 1993).

5. ANNEXURES AND ADDENDA

The annexures and addenda listed hereafter are incorporated herein and shall form an indivisible part of this Agreement:

ANNEXURE "A"	MAINTENANCE STANDARDS
ADDENDUM "A"	M&V PLAN – To follow after signature
ADDENDUM "B"	M&V BASELINE REPORT - To follow after signature
ADDENDUM "C"	M&V POST-IMPLEMENTATION REPORT - To follow before Measurement Acceptance Date
ADDENDUM "D"	M&V MONTHLY SAVINGS REPORT - To follow after Measurement Acceptance Date
ADDENDUM "E"	ANNUAL SAVINGS REPORT - To follow after Measurement Acceptance Date

6. SUSPENSIVE CONDITIONS AND APPOINTMENT OF ESCO

6.1. The commencement of this Agreement is conditional upon the happening of the following events, within 120 days of the signature of this Agreement by the last party thereto signing, failing which the Agreement will lapse and never become effective:

6.1.1. That approval is granted by all of Eskom's procurement, investment and any other governance committees, for Eskom to enter into this Agreement;

Handwritten signature and initials, possibly 'M. A. C.', located in the bottom right corner of the page.

6.1.2. That the Municipality provides proof in writing by way of submission of a resolution of its municipal council that it will be authorised to enter into this Agreement, and that it is authorised to pay any top-up funding to Eskom to successfully complete the Agreement, and enter into the management agreement referred to in paragraph 6.2.2.

6.2. Eskom will not be obliged to procure the services of the ESCo until:

6.2.1. The Municipality has paid an amount of R 0-00 (nil rand) to the ESCo as top-up funding; and

6.2.2. The Municipality has either satisfied Eskom that it is able to maintain the DSM Measures for the duration of the DSM Savings Period, or has entered into a maintenance agreement with an appropriate entity, which agreement and entity must be approved by Eskom before the agreement is entered into between the ESCo and the Municipality.

7. DURATION

7.1. This Agreement shall come into force on the date of signature hereof and shall endure until the end of the DSM Savings Period.

7.2. Either Party may, before commencement of the DSM Savings Period, terminate this Agreement on 90 (ninety) days' written notice to the other, provided that if the Customer so terminates the Agreement it will be obliged to pay to Eskom a termination amount calculated in accordance with clause 20.2, if the project is a Load-Shifting Project.

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8. OWNERSHIP OF PROPERTY

8.1. Ownership of DSM Measures:

8.1.1. Upon delivery of the DSM Measures by the ESCo to the Facilities, the Customer will be the owner of the DSM Measures and will carry the risk of loss or damage thereto.

8.1.2. The Customer shall compile an asset register which enables identification of the DSM Measures.

8.2. Ownership of M&V Equipment

8.2.1. Notwithstanding delivery, installation and implementation of the M&V Equipment it remains the property of Eskom for the duration of this Agreement and on termination of this Agreement, while the Customer carries the risk of loss or damage thereto since Eskom does not have control over the M&V Equipment while it is at the Facilities;

9. ACCEPTANCE OF ESCO'S PROPOSAL

The Customer acknowledges having received and accepted the proposal of the ESCo for the implementation of DSM Measures at the Facilities.

10. ESKOM'S OBLIGATIONS

10.1. During installation Eskom shall evaluate the appointed ESCo's performance at the Facilities on a regular basis notwithstanding that the installation of the DSM Measures at the Facilities is in accordance with the specifications detailed in such ESCo's accepted proposal and plan.

10.2. Eskom shall pay the ESCo all costs as agreed with the ESCo in the NEC.

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11. CUSTOMER'S OBLIGATIONS

- 11.1. The Customer shall provide sufficient space at the Facilities to the ESCo for the installation, operation and maintenance of the DSM Measures for the duration of this Agreement.
- 11.2. The Customer shall grant the ESCo and M&V Entity, their employees, authorised contractors, agents or representatives reasonable access to the Facilities to enable them to comply with their respective obligations for the purposes of this Agreement, provided that such persons adhere to all relevant health and safety procedures.
- 11.3. The Customer shall not unduly intervene or interfere with any installation and operation of the DSM Measures except where otherwise agreed to between the Customer and the ESCo or Eskom. Notwithstanding the above, the Customer undertakes to proactively co-operate in respect of the installation, by supporting the ESCo during such time, as required.
- 11.4. The Customer shall not remove, alter or change in any way the DSM Measures or any part thereof, without the prior written authorisation of Eskom, subject to clause 14.4.
- 11.5. Notwithstanding the provisions above, the Customer shall be entitled to make suitable additions, adjustments or modifications to its own equipment or machinery at the Facilities subject to the notification referred to in sub-clause 14.1 below.
- 11.6. The Customer shall ensure that systems are in place to immediately notify Eskom and the ESCo in writing in the event of an emergency or system malfunction.
- 11.7. The Customer shall maintain its Facility in good condition and in a state of good repair, protect and preserve the DSM Measures and ensure optimum operating conditions of all mechanical systems including, but not limited to, energy-related systems on the Facilities.



- 11.8. The Customer shall ensure that the site is manned by suitably qualified personnel in accordance with operational requirements. Eskom may, in the event that it is of the opinion that the Customer's personnel or its appointed agent is not adequately skilled or qualified as stipulated above, request the Customer to replace such personnel with suitably qualified personnel with immediate effect, to the satisfaction of Eskom and the Customer.
- 11.9. The Customer will comply, or in the event that a maintenance agreement is in place, ensure compliance of its contractor, with the maintenance standards contained in Annexure "E" to this Agreement.
- 11.10. The Customer may not exceed the approved Baseline between 06:00 and 18:00 every day, and if the Customer is able to do load-shifting during this time, the load at all times must be maintained below the approved Baseline.
- 11.11. The reduced load must average out to a 5.077MW reduction every day, calculated over an annual calendar period of 365 days
- 11.12. The Customer must reduce load during 18:00 and 20:00 every day

12. MEASUREMENT ACCEPTANCE DATE

- 12.1. The DSM Savings Period shall commence on the Measurement Acceptance Date.
- 12.2. In the event that the DSM Measures are not accepted, and the completion certificate necessary to signify the commencement of the DSM Savings Period, and determining the Measurement Acceptance Date, a defects-list shall be compiled by Eskom and the Customer jointly and submitted to the ESCo to effect all the necessary adjustments and/or repairs as the case may be.

- 12.3. Subject to the ESCo not being able to attain the Contracted DSM Savings level on a permanent basis, and subject to clause 13, 14 and 14.4 on the Measure and Acceptance Date, the baseline may be altered to a revised DSM Savings Baseline to the amount the M&V entity can prove to be to maximum achievable savings. From MAD onward the customer should meet future Contracted DSM Savings at the revised level subject to clauses 13 and 17.

13. DETERMINATION OF MEASURED DSM SAVINGS

- 13.1. The Customer and Eskom agree that the level of DSM Savings shall at all times during the DSM Saving Period and for the purposes of agreeing the Contracted DSM Savings on Measurement Acceptance Date, be determined by the M&V Entity, which shall be ratified by the Parties in accordance with the M&V Plan.
- 13.2. The Parties acknowledge that in order to determine the level of DSM Savings, the M&V Entity shall make such adjustments, as are necessary, to the Measured DSM Savings on an ongoing basis to reflect variations in the DSM Savings.
- 13.3. The Customer and Eskom may query the Measured DSM Savings as follows:
- 13.3.1. Within 5 (five) days of the receipt of the DSM Savings Report, the Party may in writing notify the M&V Entity, who shall notify all the other affected parties, of any dispute in respect of the measuring and/ or calculation of the Measured DSM Savings described in the M&V DSM Savings Report.
- 13.3.2. The M&V Entity shall, if necessary, re-calculate the Measured DSM Savings and advise all affected Parties in writing of the results of such verification within 5 (five) days, and

- 13.3.3. The verified Measured DSM Savings as above shall be final and binding on the Parties and determinative as to the amount of Measured DSM Savings achieved.
- 13.4. Adjustments to the Measured DSM Savings may only be made in circumstances agreed to in writing between the Parties.
- 13.5. The Contracted DSM Savings shall not include any savings realised by the Customer as a result of a non-Eskom related intervention.

14. CHANGE IN USE OF FACILITIES AND BASELINE DATA

- 14.1. The Customer must indicate in writing any proposed material changes in the use of and baseline data at the Facilities and the anticipated impact on energy use at least 30 (thirty) calendar days before the actual or proposed change occurs.
- 14.2. Material change in use shall include but not limited to, inter alia, the following:
 - 14.2.1. manner of use of the Facilities by the Customer which affects energy utilisation; or
 - 14.2.2. hours of operation of any equipment or energy systems contained in the Facilities affecting more than 72 (seventy-two) hours per calendar week; or
 - 14.2.3. occupancy of the Facilities which affects energy usage; or
 - 14.2.4. structure of the Facilities which affects energy usage; or
 - 14.2.5. types of equipment used in the Facilities which have a combined input of equal to or greater than 100kWh (one hundred kilowatt hours).



14.3. Modification of baseline:

14.3.1. The Customer shall, by prior written notice, notify Eskom and the M&V Entity of any modification in the Customer Baseline within 30 (thirty) calendar days after delivery of a notice of material change in use, or if no such notice or improper notice having been given, within 30 (thirty) calendar days after the date upon which the Customer becomes aware of a need for such modification at the Facilities.

14.3.2. Eskom agrees that upon receipt of the notification of modification of the Baseline, the M&V Entity may revise its baseline calculations on condition that the Customer and Eskom accept such revision.

14.4. Emergencies and System Malfunction

14.5. The Customer shall ensure that all necessary systems are in place for the Customer to notify Eskom immediately of any:

14.5.1. systems failure or malfunction in the operation of the DSM Measures or in any pre-existing energy-related equipment which could affect the baseline in the short term; or

14.5.2. interruption in or alteration to the energy supply to the Facilities leading to change in baseline in the short term; or

14.5.3. alteration or modification to the DSM Measures or their operation; or

14.5.4. alteration, modification or change in the Facilities or its use that could affect the baseline on the whole; or

14.5.5. changes in the operation, use, occupancy or physical structure of the Facilities which impacts on the electricity usage or level of DSM Savings; or



- 14.5.6. the existence of any emergency or dangerous conditions affecting the DSM Measures.
- 14.5.7. any tampering with the DSM Measures, M&V Equipment or any energy-related equipment.
- 14.5.8. Additions, modifications or replacements to the DSM Measures necessitated by an emergency, Government or Regulatory authority may be effected by the Customer without the prior consent of Eskom, provided that the Customer provides documentary proof of such additions, modifications or replacements to Eskom within a period of 5 (five) days of such requirement being necessitated.
- 14.5.9. Without prejudice to any of its rights in terms of this Agreement, Eskom or its authorised representative may order that any or all of the installation, operation or maintenance of the DSM Measures be suspended, whether temporarily or indefinitely, should Eskom or the Customer deem such installation, operation or maintenance unsafe.

15. STANDARDS OF SERVICE

The Customer shall ensure that it maintains the DSM Measures in a manner that complies with the maintenance standards as set out in Annexure "E" of this Agreement and shall ensure that any agent appointed by it to maintain the DSM Measures adhere to the said standards.

16. REMOVAL, CHANGE OR DISABILITY OF DSM MEASURES

- 16.1. The Customer shall not, without prior written authorisation from Eskom remove, alter and/or discontinue the use of any DSM Measures or part



thereof except to the extent dictated by Good Industry Practices, or which is adversely affecting Power Quality, or is in contravention of any Quality Installation Plan, or any other terms of this Agreement, subject to Clause 14.4.

- 16.2. Eskom shall not bear the risk of any financial loss associated with such removal, alteration or discontinuance, including, but not limited, to a reduction in the DSM Savings; if such removal, alteration, discontinuance occurs after the Measurement Acceptance Date.
- 16.3. The Customer must give a notice of any proposed additions, modifications, replacements or removal of the DSM Measures.
- 16.4. Upon receipt of such notice Eskom shall have 10 (ten) days within which to object to such proposed additions, modifications or replacements in writing to the Customer and may object only on reasonable grounds.
- 16.5. Eskom agrees that its failure to object as above shall entitle the Customer to consider the proposed additions, modifications, replacements or removal accepted by Eskom and to proceed to effect such additions, modifications or replacements to the DSM Measures at the Facilities.
- 16.6. Upon receipt of an objection to the proposed additions, modifications or replacements to the DSM Measures by the Customer, the Parties shall endeavour to negotiate, in good faith, amicable settlement of their dispute.
- 16.7. In the absence of consensus on the proposed additions, modifications or replacements either Party may declare a dispute in writing and invoke the dispute resolution provisions in terms of this Agreement.

17. CASUALTY OR CONDEMNATION OF FACILITY



Any construction on or restoration of the Facilities following or necessitated by fire, flood, or other casualty, or any condemnation affecting a portion of the Facilities, shall be deemed a material change and the provisions of Clause 13 above shall be applicable.

18. DAMAGE TO OR DESTRUCTION OF THE DSM MEASURES

18.1. If any item of the DSM Measures is damaged, destroyed or stolen, and if such damage, destruction or theft occurs during the term of this Agreement, the Customer shall be liable for making good such damage, destruction or theft and shall provide Eskom with proof of adequate and necessary insurance cover in this regard.

19. DSM SAVINGS WITH RESPECT TO LOAD SHIFTING PROJECTS

19.1. For Load Shifting, the Contracted DSM Savings shall amount to a reduction of 5.077MW (megawatts) in the Eskom time-of-use (TOU) evening peak, based on a monthly average. The Contracted DSM Savings shall be the lesser of:

19.1.1. The megawatts (MW) proposed in the ESCo proposal, or

19.1.2. The amount that M&V proves the project can deliver during the Measurement Acceptance Period.

19.2. In terms of a performance contract between Eskom Energy Audits and the M&V Entity, the M&V Entity submits to Eskom and the Customer, on an agreed upon basis, a DSM Savings report stating the level of DSM Savings and the credit payments, if any, for the preceding month.

19.3. The DSM Savings accruing from DSM Measurement Acceptance Date shall be quantified and reduced to monetary terms by the M&V Entity who submits, in terms of the performance contract between Eskom Energy Audits and the M&V Entity, a monthly DSM Savings report to the Parties

setting out the measurement and calculation of the DSM Savings and their monetary value.

- 19.4. Within 5 (five) days of the Parties' receipt of such report, the Parties shall communicate any disputed savings to one another and endeavor to resolve such dispute for billing purposes within a period of 14 (fourteen) days, from the date of notification of disputed savings.

20. PENALTIES

20.1. Performance Penalties

- 20.1.1. From the Measurement Acceptance Date and at regular intervals, an assessment shall be conducted by the M&V Entity to determine whether the DSM Savings are comparable to the Contracted DSM Savings (as revised if applicable) for the measured period ("Assessment Dates").
- 20.1.2. The M&V entity shall send written notice of the Measured DSM Savings to both the customer and Eskom within three (3) months of the Assessment Date.
- 20.1.3. For the Assessment Dates after the first Assessment Date, should the Measured DSM Savings correspond within an accuracy of at least 90% (ninety percent) of the Contracted DSM Savings (as amended, if applicable), the Customer shall not be liable for any penalties.
- 20.1.4. If any Measured DSM Savings are not within an accuracy of at least 90% (ninety percent) of the Contracted DSM Savings at the Assessment Date, the Customer shall provide written reasons to Eskom for the non-attainment. Eskom shall consider the reasons and reserves the right to impose penalties should it disagree with the reasons advanced.



20.1.5. Should the customer not respond with reasons for non-performance within one (1) month Eskom will impose penalties per the following formula:

$$P = T \times \frac{B}{5 \times 12} \times \frac{M 2}{M 1} \times F$$

Where:

P is the Penalty due from the customer for non-performance.

20.1.5.1. **T** shall be calculated using linear interpolation in

Table 1 of the verified performance being the ratio of actual DSM saving for the period to expected contracted DSM saving for the period multiplied by 100.

A is the total project cost less any recoveries from the ESCO and/or baseline penalties from the customer since date of this contracts signature excluding any previous performance penalties paid.

B is the period in months over which the penalty is for (usually the period between M&V performance tracking reports)

M1 is the Megaflex tariff at date of signature of the DSM agreement

M2 is the Megaflex tariff at M&V tracking performance report date

F is a factor determined by the type of project (Load Management is 1)

Performance %	Penalty %	Rm Penalty (T)
0.00	100.00	A
0.05	100.00	A
5.00	95.00	0.95 x A
10.00	90.00	0.90 x A

15.00	85.00	0.85 x A
20.00	80.00	0.80 x A
25.00	75.00	0.75 x A
30.00	70.00	0.70 x A
35.00	65.00	0.65 x A
40.00	60.00	0.60 x A
45.00	55.00	0.55 x A
50.00	50.00	0.50 x A
55.00	45.00	0.45 x A
60.00	40.00	0.40 x A
65.00	35.00	0.35 x A
70.00	30.00	0.30 x A
75.00	25.00	0.25 x A
80.00	20.00	0.20 x A
85.00	13.00	0.13 x A
89.50	5.00	0.05 x A
90.00	0.00	0.00
95.00	0.00	0.00
100.00	0.00	0.00

Table 1. Penalties for relative Performance of DSM Savings

- 20.1.6. Eskom shall send a written notice within six (6) months of receipt of the customer's reasons for non-performance, to the customer informing the customer of the decision to levy penalties, and in the event where the Customer does not provide such reasons, will send such notice at the time it decides to levy such penalties.

20.2. Early Termination Penalties

Penalties for early termination shall be an amount corresponding to the following formula:

$$P = A \times \frac{B}{5 \times 12} \times \frac{M 1}{M 2} \times F$$

Where:

P is the Penalty due for early termination

A is the total project cost less any recoveries from the ESCO and/or baseline adjustment penalties from the customer since date of this contracts signature excluding any previous performance penalties paid.

B is the period in months over which the penalty is for (the remaining period of the contract)

M1 is the Megaflex tariff at date of signature of the DSM agreement

M2 is the Megaflex tariff at M&V tracking performance report date

F is a factor determined by the type of project (Load Management is 1)

20.3. Should any type of penalties be imposed by Eskom, they shall be as follows:

20.3.1. The total cost to Eskom for the project will be calculated by deducting any recoveries from the ESCo before the Measurement Acceptance Date from the original total cost.

20.3.2. In order to allow for inflationary factors, the penalties shall be adjusted according to ratio of the Eskom Megaflex Tariff in use from time-to-time relative the Megaflex Tariff in use at the time of signature of this agreement.

20.4. Penalties shall be payable by the Customer to Eskom within a period of ten (10) working days after receipt of an invoice from Eskom indicating the penalties due.

21. **FORCE MAJEURE**

- 21.1. Notwithstanding any other provision contained in this Agreement, should a Party be unable to perform any of its obligations under this Agreement due to a Force Majeure, then such obligations shall be suspended for the duration of such Force Majeure and neither Party shall be liable to the other for any loss or damage suffered by reason of its failure to perform its obligation; provided however that, the occurrence of a Force Majeure shall not excuse the Party relying on a Force Majeure, from any other obligation.
- 21.2. Where a Party has been prevented from performing an obligation under this Agreement due to a Force Majeure, such Party shall:
- 21.2.1. within 48 (forty eight) hours of it becoming aware of the Force Majeure, advise the other Party by way of written notice of the nature, cause and likely duration of the Force Majeure (to the extent that same can be determined at the time of such notice) and when such information can be updated;
 - 21.2.2. take such steps as are reasonably available to such Party, to overcome such Force Majeure and to mitigate its effect on that Party's ability to meet its obligations under this Agreement; and
 - 21.2.3. promptly provide written notice to the other Party of:
 - 21.2.3.1. the cessation of the relevant Force Majeure; and
 - 21.2.3.2. its ability to recommence performance of its obligations under this Agreement by reason of the cessation of the relevant Force Majeure.
- 21.3. If the relevant Force Majeure persists for more than 60 (sixty) consecutive calendar days, either Party shall have the right to terminate this Agreement without prejudice to any claim either Party may have in terms of this Agreement or at law.



22. BREACH PROCEDURE

22.1. Each of the following events shall constitute breach of this Agreement:

- 22.1.1. Failure by either the Customer or Eskom to comply with any of the material provisions or terms of this Agreement and provided such failure continues for a period of 7 (seven) days after receipt by the defaulting Party of a notice ("the default notice") calling upon the defaulting Party to remedy the breach;
- 22.1.2. A Party effects or attempts to effect a compromise or composition with its creditors, or is liquidated or placed under judicial management or curatorship, whether provisionally or finally;
- 22.1.3. A Party fails to take steps to enforce any security over all or any part of the assets of a Party or in the event that execution is effected against any assets of a Party and such Party fails to discharge the debt within 14 (fourteen) days of the date of execution;
- 22.1.4. A Party fails to perform any of its duties in terms of this Agreement and to take the necessary steps to ensure its capability to perform its obligations in terms hereof.
- 22.1.5. There is a partial or complete shutdown of the Facilities, and the Customer abandons or otherwise fails to return the DSM Measures to normal commercial operation within a reasonable time after the re-opening of the Facilities affected by such shutdown;
- 22.1.6. The unauthorised assignment, cession or sub-contracting by the Customer of any of its respective rights, duties or obligations, without prior written authorisation by Eskom.

- 22.2. Should the defaulting Party not rectify the breach within the notice period, the aggrieved Party may, without prejudice to any rights or remedies it may have in law, terminate this Agreement in terms of the termination clause herein, without any notice to the defaulting Party.
- 22.3. In addition to termination of this Agreement, the aggrieved Party shall be entitled at its discretion, to claim from the defaulting Party, compensation for any damage or financial prejudice or loss that the aggrieved Party may have suffered as a result of the breach.

23. TERMINATION FOR BREACH

- 23.1. Either Party may, on written notice to the other without prejudice to any rights in law which it may have, terminate this Agreement on the ground of breach by the other and in the event that the defaulting Party fails to remedy such breach within the requisite notice period of 7 (seven) days after receipt of the default notice.
- 23.2. Eskom shall be entitled at its own discretion, on written notice to the Customer, to terminate or suspend the operation of the DSM Measures with immediate effect and claim any damages that it may have suffered as a result of the breach by the Customer and subsequent termination or suspension by Eskom.

24. DISPUTE RESOLUTION

- 24.1. Any disputes between the Parties hereto relating to any matter arising out of this Agreement shall be referred to arbitration by any of the Parties hereto, by way of notice to the other Party setting out the full particulars and grounds of the dispute;
- 24.2. Such proceedings shall be held in Johannesburg in Gauteng Province, South Africa.



24.11. The proceedings of the arbitration shall be kept confidential, unless it is revealed as a result of a commission in terms of subclause 24.8.

24.12. The provisions of this clause shall survive termination of this Agreement.

25. RECORD KEEPING

25.1. The Customer and Eskom agree that the independent entity undertaking the M&V function shall keep and maintain accurate and detailed records relating to the attained DSM Savings for a period of not less than 6 (six) years after the date of expiry of the term of this Agreement or early termination of this Agreement.

25.2. Such records shall be made available for inspection or photocopying by either Party or any regulatory or governmental agency having the appropriate authority with respect thereto during normal business hours and upon reasonable notice.

26. AUDITS

26.1. Eskom reserves the right to designate its own employee's representatives or its contracted representatives who shall have the right to audit and examine any cost, payment, settlement, or supporting documentation resulting from any items set forth in or payments required by this Agreement.

26.2. Eskom shall undertake any such audit at reasonable times and in accordance with generally accepted audit standards.

26.3. The Customer agrees to fully co-operate with any such audit.

26.4. This right to audit shall apply only during the term of this Agreement and shall survive for a period of five (5) years following the expiry or termination of this Agreement.

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26.5. The Parties shall retain all necessary records for the aforesaid duration.

27. ENVIRONMENTAL ISSUES

27.1. Project Site Housekeeping or Waste Disposal

27.1.1. The Customer shall at all times keep the facilities free from accumulation of waste material or rubbish caused by the performance of the project in terms of this Agreement.

27.1.2. At the completion of the project, the Customer, in co-operation with the ESCo, shall remove all temporary structures, utilities and services. The Customer shall also remove all rubbish, tools, equipment, surplus material and supplies, and shall leave the Facilities free and clear of any debris or obstructions.

27.1.3. The Parties shall ensure proper, safe and lawful disposal of all items used or removed in the performance of the project, including without limitation, any substances considered hazardous and/or toxic under regional, national, local law or regulations.

27.1.4. The Customer shall advise Eskom of its practices for the use, handling and disposal of hazardous and/ or toxic materials, and other materials and equipment removed from the Facilities in the course of the project, and also provide any requested documentation including manifests evidencing proper transportation, handling and disposal of such materials and equipment.

27.2. Indoor Air Pollution



27.2.1. The Customer shall develop policies and procedures acceptable to Eskom for identifying the presence of indoor air pollutants at project sites, and policies and procedures for addressing such conditions.

27.2.2. The Customer, its employees or agents (and any approved contractors) shall strictly adhere to such guidelines for the duration of this Agreement.

28. INDEMNITY

The Parties each indemnify the other with respect to any and all claims, suits, actions, costs, expenses, damages, liabilities, fines, penalties and assessments, including reimbursement of attorney's fees, which arise from, or relate to any act, misconduct or omission on the part of the ESCo, its agents, employees or contractors whether or not such act or misconduct was wilful.

29. INSURANCE

29.1. The Customer shall procure and maintain in effect for the term of this Agreement, comprehensive cover in respect of the DSM Measures. Such insurance will specifically exclude cover in respect of switches, which are installed in the residential households (distributed risk).

29.2. From the date of delivery to the Facilities, the Customer shall bear all risks in and of the DSM Measures and the Customer must comprehensively insure this risk.

29.3. The Customer shall procure and maintain in effect for the term of this Agreement, comprehensive public liability insurance, workmen's compensation insurance (in compliance with the Compensation for



Occupational Injuries & Diseases Act, COID Act No 130 of 1993) in respect of the Facilities upon which the DSM Measures are installed.

29.4. The provisions of this Clause shall survive the termination of this Agreement.

29.5. The Customer must take out and maintain public liability insurance. At a minimum such insurance must provide that the insurers will indemnify the insured against all sums for which the insured shall become legally liable to pay for and in consequence of:

29.5.1. accidental death of or bodily injury to or illness or disease contracted by any person and

29.5.2. accidental loss of or damage to property occurring during the period of the insured contract(s) and arising out of or in connection with the performance of the insured contract(s) at the contract site(s) within the territorial limits.

30. WARRANTIES AND REPRESENTATIONS

30.1. The Customer shall not construe any act or omission by Eskom as an admission, warranty, representation or endorsement unless expressly stipulated as such herein.

30.2. No list, report or documentation provided by Eskom shall be construed as a warranty, representation or guarantee of market potentials and/or Customer participation or willingness to participate in the DSM programme.

30.3. The benefits of any and all guarantees and warranties for the installation of the DSM Measures by ESCo pursuant to this Agreement shall accrue to the Customer during the term and upon termination of this Agreement subject to the provisions of Clause 9 herein.



- 30.4. Each of the Parties hereto warrants and represents to the other that:
- 30.4.1. it has all the requisite power, authority, licenses, permits and franchise whether corporate or otherwise to execute and deliver this Agreement and perform the obligations set out herein; and
 - 30.4.2. the execution, delivery and performance in terms of this Agreement has been duly authorized, or is in accordance with its legal purposes; and
 - 30.4.3. this Agreement has been duly executed by the signatories so authorized and constitutes a legal, valid and binding document on them respectively; and
 - 30.4.4. the execution, delivery and performance in terms of this Agreement shall not result in a breach, violation or default under any other Agreement or instrument to which they are party to or which affects or binds their respective properties; and
 - 30.4.5. it has not received any notice, nor to the best of its knowledge, is there pending or threatened notice of its violation of any applicable law, ordinances, regulations, rules, awards, permits or orders which would materially and adversely affect its ability to perform in terms of this Agreement.

31. CONFIDENTIALITY

- 31.1. The Parties hereto acknowledge that during the course of carrying out their respective obligations in terms of this Agreement, they will have access to and will be entrusted with detailed confidential information and trade secrets pertaining to each other's businesses, the disclosure of which to competitors of the respective Parties or to the general public would be detrimental to their respective business interests.



- 31.2. The Parties further acknowledge, agree and confirm that the right to maintain such confidential information and trade secrets constitutes proprietary rights vested in them respectively, which they each have a right to protect and which rights are protectable in terms of the laws of the Republic of South Africa.
- 31.3. Having regard to the foregoing, the Parties hereby undertake to ensure that all of their respective employees are bound by this Agreement and the Parties, by their signature hereto, warrant and confirm in favour of one another as follows:
- 31.3.1. Neither Party nor their employees will during the period of this Agreement or following its termination for any reason whatsoever disclose, divulge or make available any of such detailed "Confidential Information" and trade secrets to any third party whatsoever nor shall they use same for any purposes other than purposes intended in this Agreement and they shall at all times maintain complete secrecy concerning all of the "Confidential Information" entrusted to them and shall not use or attempt to use such information in a manner which might injure, or cause loss to, or prejudice directly or indirectly one another; and
- 31.3.2. No public announcement or press release in connection with the subject matter of this Agreement will be made or issued by or on behalf of the Parties without their prior written approval. This does not apply, if the law or any government authority or regulation requires the announcement or press release.
- 31.4. In the event of request for access to confidential information of the disclosing Party in the possession of the receiving Party in accordance with the Promotion of Access to Information Act (No 2 of 2000), the receiving Party shall notify the disclosing Party in accordance with the same Act.



31.5. It is acknowledged and agreed that the covenant to maintain the confidentiality of all confidential information shall not apply to any portion of such information that:

31.5.1. is already lawfully possessed by the receiving Party prior to the commencement of this Agreement;

31.5.2. is now or later becomes generally available to the public other than as a result of a breach of this Agreement;

31.5.3. is information which independently and in good faith has been received by the receiving Party from a third Party who has a legal right to disclose such information to the receiving Party;

31.5.4. is disclosed by the receiving Party to satisfy a demand by law, by any court of competent jurisdiction, by any competent governmental or regulatory body, provided however, that in such case the receiving Party shall advise the disclosing Party of the proposed disclosure prior to disclosure and allow the disclosing Party the opportunity to challenge such demand.

31.6. This clause on confidentiality shall survive the termination of this Agreement.

32. GOVERNING LAW

The laws of the Republic of South Africa shall govern any disputes that either Party may have arising out of the provisions of this Agreement.

33. VALIDITY

Should any clause, term or condition of this Agreement be found fully or partially invalid, void or unenforceable by any court of competent jurisdiction, the validity and enforceability of the remaining clauses, terms and conditions of this Agreement shall not be affected.



34. WHOLE AGREEMENT

34.1. This Agreement together with all the annexures and addenda hereto constitutes the whole Agreement between the Parties and no prior representations or warranties shall constitute part of this Agreement unless agreed to in writing and signed by the Parties hereto.

34.2. No variations, modifications, alterations, amendments or additions to this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties hereto.

34.3. No relaxation or indulgence which either Party may grant to the other at any time during the term of this Agreement in regard to the carrying out of their respective obligations herein shall:

34.3.1. prejudice either Party's rights under this Agreement in any manner whatsoever;

34.3.2. be regarded as a waiver of any of the rights of the grantor of such relaxation or indulgence; and

34.3.3. be deemed to be a novation of any of the terms and conditions of this Agreement.

35. CESSION

At any stage during the currency of this Agreement, Eskom may, upon giving written notice to the Customer:

35.1. cede, assign or delegate all or any part of its rights and obligations under this Agreement

35.2. pledge its rights hereunder to its creditors

35.3. delegate part of its duties or performance hereunder by the utilization of contractors or sub-contractors.

35.4. cede and delegate its rights and obligations under this Agreement to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry (ESI) and the Electricity Distribution Industry (EDI).

36. DOMICILIA AND NOTICES

36.1. Any notice required hereunder shall be in writing and shall be hand-delivered, sent by facsimile or sent by registered post, return receipt to be provided upon request.

36.2. Notices shall be deemed to have been received on the day of normal business following the date of submission if delivered by hand; or within 7 (seven) days in the case of registered post.

36.3. For the purposes of this Agreement the Parties choose their respective domicilia shall be addressed as follows:

36.3.1. Eskom:

36.3.1.1. **Physical:**

Maxwell Drive, Megawatt Park, Sunninghill Extension 3,
Sandton, Gauteng Province.

36.3.1.2. **Postal:**

P.O. Box 1091, Johannesburg, 2000

Telephone: (011) 800-4504

Telefax: 0866637276

Contact: Morne Begemann



36.3.2. The Customer:

36.3.2.1 **Head Office Physical:**

Plein Street, Stellenbosch

36.3.2.2. **Postal:**

P.O. Box 17, Stellenbosch, 7599.

Telephone: (021) 808-8331

Telefax: 0866935916

Contact: josephH@stellenbosch.org

36.4. In the event of a change in any of the Parties' domicilia set out herein; written notice in accordance with the provisions hereof shall be given immediately to the other Party of such change.

Handwritten signatures and initials in the bottom right corner, including a large stylized signature and several smaller initials.

SIGNED for and on behalf of the Customer by the signatory below who warrants that he is duly authorised.

DAVID DANIELS

30 NOVEMBER 2011

Name

Date

MUNICIPAL MANAGER

Sign: _____

Title

As Witnesses:

1. [Signature]

2. [Signature]

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

Lawrence Kokoche

06/12/11

Name

Date

DSM Manager

Sign: [Signature]

Title

As Witnesses:

1. [Signature]

2. _____

[Handwritten marks]

SIGNED for and on behalf of the Customer by the signatory below who warrants that he is duly authorised.

DAVID DANIELS

31 NOVEMBER 2011

Name

Date

FINANCIALS MANAGER

Sign DP Daniels

Title

As Witnesses:

1. [Signature] 2. [Signature]

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

Lorraine Kabin

06/12/11

Name

Date

[Signature]

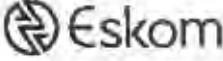
Sign [Signature]

Title

As Witnesses:

1. [Signature] 2. [Signature]

[Handwritten marks]

	MAD CERTIFICATE FOR: STELLENBOSCH RLM PERMONT GLOBAL HEAT PUMP -ENERGY EFFICIENT- Project number: 2011017	Template Identifier	240-43921804	Rev	3
		Document Identifier	240-60985791	Rev	1
		Authorisation Date	22 November 2012		
		Review Date	November 2015		

NEC Contract Number	4600041977 51B <i>gdm</i>
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DSM Project Title:	Stellenbosch RLM		
DSM Project Number:	2011031		
Short Description of DSM Project:	The Implementation of Hot Water Load Control		
ESCo for DSM Project:	Powertech System Integrators		
M&V Team for DSM Project:	Cape Town University		
Contracted MWs (as per NEC):	4.2844 MW	Per month / Year / Seasonal *	
Actual MWs achieved as per assessment:	2.277 MW	Per month / Year / Seasonal *	
% of original contracted (MW) value	53.15%		

Date of M&V Completion:	30 November 2015
Duration of M&V assessment:	Dec 2014 – Nov 2015 (12 Months)

It is hereby certified that the M&V Performance Assessment period for the abovementioned DSM project has been completed and that the performance is as given in the attachment to this certificate.

- The new target for the customer is **2.277 MW**.
- The customer officially takes over the system from **01 February 2015** for the next 5 years

Signed at Stellenbosch on 25 February 2016

Who accepts the MW performance of the project as given above and in this report			
ESCO	Powertech System Integrators	CLIENT	MUNICIPALITY OF STELLENBOSCH
Name (Print)	Gerard van Merwe	Name (Print)	A. S. D. WEDHUIZEN
Sign	<i>[Signature]</i>	Sign	<i>[Signature]</i>

Who accepts the MW performance of the project as given above and in this report			
ESKOM DSM (Project Manager)	25/2/2016	ESKOM DSM (Sector Manager)	
Name (Print)	Morne Begeerman	Name (Print)	Sibusiso M. MABALALA
Sign	<i>[Signature]</i>	Sign	<i>[Signature]</i>

* Delete if not applicable
 Annexure "A" – Signed Implementation Completion Certificate
 Annexure "B" – M&V Performance Assessment Certificate

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APPENDIX 5

Quote Number: 20094076
Date: 10 October 2016

ATTENTION: ADRIAN VAN DER WESTHUIZEN
Stellenbosch Municipality

Email(s): adrian.vanderwesthuizen@stellenbosch.gov.za

Dear Adrian,

QUOTATION: STELLENBOSCH MUNICIPALITY HWLC SUPPORT FOR JANUARY 2017 TILL JANUARY 2020.

Thank you for the request to Powertech System Integrators to provide Stellenbosch Municipality with a quotation

Support Cost Summary for 2017

PART	MONTHLY SERVICE	MONTHLY COST	YEARLY COST
1	Remote Monitoring	R 7 148	R 85 776
2	Telephonic Support and Helpdesk	R 4 765	R 57 180
3	Month End Support	R 5 870	R 70 440
4	Upkeeping and Expansion of DB	R 5 783	R 69 396
5	Administration	R 5 783	R 69 396
6	M&V Performance Reports	R 5 455	R 65 460

PART	ANNUAL SERVICE	MONTHLY COST	YEARLY COST
7	Quarterly Meetings	R 9 503.33	R 114 040

TOTAL ANNUAL S&M PRICE (excl VAT)	R 531 688
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TOTAL MONTHLY S&M PRICE (excl VAT)	R 44 307.33
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Powertech

System Integrators

Powertech System Integrators (Pty) Ltd. Reg. No. 2007/0164807/07, Summit Ridge/Wine Trail Building 10/11, Vrededorp Road, Midway, Pretoria, Private Bag 9820, Waterfall, 0081 (South Africa)
Tel: +27 (0)12 425 7200 Fax: +27 (0)12 240 5512
Director: Mr. Kevin J. van der Merwe | HR and Finance Office: Linné +021 9541 4014 | IT & H. de Groot | Stellenbosch: EM. Pretorius, SW. Venter, DM. Rombold
E: Sales@powertech.co.za | RE. Venter@powertech.co.za
*Registered




Support Cost Summary for 2018

PART	MONTHLY SERVICE	MONTHLY COST	YEARLY COST
1	Remote Monitoring	R 7 476	R 89 712
2	Telephonic Support and Helpdesk	R 5 051	R 60 612
3	Month End Support	R 6 222	R 74 664
4	Upkeeping and Expansion of DB	R 6 159	R 73 908
5	Administration	R 6 159	R 73 908
6	M&V Performance Reports	R 5 782	R 69 384

PART	ANNUAL SERVICE	MONTHLY COST	YEARLY COST
7	Quarterly Meetings	R 10 250.50	R 123 006

TOTAL ANNUAL S&M PRICE (excl VAT)		R 565 194
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TOTAL MONTHLY S&M PRICE (excl VAT)		R 47 099.50
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Support Cost Summary for 2019

PART	MONTHLY SERVICE	MONTHLY COST	YEARLY COST
1	Remote Monitoring	R 7 948	R 95 376
2	Telephonic Support and Helpdesk	R 5 464	R 65 568
3	Month End Support	R 6 730	R 80 760
4	Upkeeping and Expansion of DB	R 6 676	R 80 112
5	Administration	R 6 676	R 80 112
6	M&V Performance Reports	R 6 254	R 75 048

PART	ANNUAL SERVICE	MONTHLY COST	YEARLY COST
7	Quarterly Meetings	R 11 071.33	R 132 856

TOTAL ANNUAL S&M PRICE (excl VAT)		R 609 832
--	--	------------------

TOTAL MONTHLY S&M PRICE (excl VAT)		R 50 819.33
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Support Cost Summary for January 2020

PART	MONTHLY SERVICE	MONTHLY COST	YEARLY COST
1	Remote Monitoring	R 7 948	R 7 948
2	Telephonic Support and Helpdesk	R 5 464	R 5 464
3	Month End Support	R 6 730	R 6 730
4	Upkeeping and Expansion of DB	R 6 676	R 6 676
5	Administration	R 6 676	R 6 676
6	M&V Performance Reports	R 6 254	R 6 254

TOTAL ANNUAL S&M PRICE (excl VAT)	R 39 748
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TOTAL MONTHLY S&M PRICE (excl VAT)	R 39 748.00
---	--------------------

The Total fixed cost for the 37 month period will be R1 746 462 and includes annual price increases. As such the price shall be fixed during the contractual agreement with Powertech System Integrators.

Scope of Work

The service option offered as part of this agreement is as follows:

- 1.1 Remote Monitoring
 - Check system operation daily (email from AMR system)
 - Check that system is operational
 - Check data availability of the meters are complete
 - Check data integrity of the meters
 - Check execution of all schedules as per control settings
 - Check ACD Availability and event log
 - Check system operation hourly (email from ecControl system)
 - Check that IDM's are online and functioning
 - Correct and solve System faults and problems
 - If any system faults are noticed they will be corrected remotely if possible so the system can function optimally again.
 - Report on any problem areas which can't be resolved
 - The supplier must advise the customer on potential problem areas which cannot be resolved remotely which is the responsibility of the customer as this hardware doesn't form part of the Hardware Support.



1.2 Telephonic Support to the customer

- o Support to the customer during Business Hours
- o Telephonic or email support

Helpdesk Support to the customer

- o The main function of the Help Desk is to provide a single point of entry for fault reporting, as well as early identification of problems with regard to the automated metering and control systems.
- o A designated person will be on call at the Help Desk between 08:00 and 17:00 (weekdays) for logging of calls from the Customer.
- o Whenever Powertech System Integrators personnel on site notices faults while doing routine maintenance, they also log calls on the Help Desk.

1.3 Hardware and Software Support

Hardware Maintenance and Support

- The Contractor shall maintain all the Load Management Hardware equipment as supplied in an efficient operating condition. This hardware includes only the ACD's and IDM's.
- Hardware replacement of Load Management Hardware equipment installed by the Contractor as supplied comprises the on-site removal of faulty hardware and replacement with a spare module.
- The original equipment is then either repaired by the Contractor or at a third party supplier.
- There are no costs involved for the customer as far as these repairs are concerned.
- Where items are uneconomical to repair or irreparable the client will be quoted to replace the item.
- The Contractor will have a working pool of Load Management Hardware equipment available that can be swapped for faulty hardware if requested.
- The Contractor shall be responsible for the following:
 - o On request – checking and re-establishment of the normal working condition of the Load Management Hardware equipment.
 - o Preventive maintenance to the Load Management Hardware.
 - o Configuration and setup of Load Management Hardware equipment where necessary.

The Client shall be responsible for maintaining all the other hardware equipment, such as meters, modems, fibre optic cable, network, concentrators and transducer inputs, as well as all other parts of the AMR System.

Software Maintenance and Support

- Includes ecWIN™ software and maintenance upgrades such as bug fixes and minor updates to the current version of ecWIN™.
- Advice to latest trends and technology will be offered. New gateway/router software upgrades are also included.
- The ecWIN™ software maintenance includes regular checks on the software to optimise functionality, as well as re-commissioning in the event of server malfunction/breakdown.



- Additional configuration changes are treated on an ad hoc basis and will be separately invoiced and paid for based on an additional quote supplied and order placed.

1.4 Month end Support

- Remote month-end reconciliation services with consumption tracking, billing, cost reports and internal tariff structure setup – internal auditing/reconciliation with Eskom account.
- A System Specialist will be available at month-end to assist the Customer with Energy Information Services, such as month-end verification and to also make back-ups of the database.
- Generate shedding report and verify it against the M&V reports when issued.
- This service will be performed remotely from PTSI's offices.

1.5 Time & Material Quotations

- For any problems identified through either level of support requiring on site work or additional remote labour time from the supplier, the customer will be notified, followed by a time and material quotation supplied to the customer.
- Related work will commence after placement of order by the customer.

Notes, Exclusions and Assumptions

- The services as set out in the scope of work above will be handled by the PTSI subcontractor whom is situated in Paarl.
- As such there is not much labour included in this proposal from PTSI's side.
- There is also no costs included in this proposal for PTSI to travel to site and all services will be rendered remotely.
- There is costs included for the PTSI subcontractor as mentioned above to do some site visits to Stellenbosch if there is hardware problems.

Commercial Conditions

- Quote valid for 90 days
- Price quoted excludes 14% VAT.
- Payment of Invoice 30 days net after date of invoice.
- Delivery times 2 weeks from the date of order or subject to availability
- The standard Powertech System Integrators conditions of sale, as attached, apply unless stated otherwise.
- As acceptance of quotation, please fax a signed copy of this quotation to (012) 365 1467.
- Work will only commence on receipt of an official Purchase Order



Regards,

Michael Viljoen

Contact person for quotation	Position	Telephone	Email
Michael Viljoen	GM Energy Management Software Services	012 426 7529	Michael.viljoen@ptsi.co.za

QUOTE ACCEPTED: _____

PRINT NAME: _____

DATE: _____

YOUR PO NO: _____



APPENDIX 6

Quote Number: 20094077
Date: 10 October 2016

ATTENTION: ADRIAN VAN DER WESTHUIZEN
Stellenbosch Municipality

Email(s): adrian.vanderwesthuizen@stellenbosch.gov.za

Dear Adrian,

QUOTATION: STELLENBOSCH MUNICIPALITY HWLC HARDWARE INSTALLATIONS AND CALL OUTS FOR JANUARY 2017 TILL JANUARY 2020.

Thank you for the request to Powertech System Integrators to provide Stellenbosch Municipality with a quotation

Hardware Installations

The HWLC Hardware Installations will have the same scope of work as was previously specified in BSM 75-16 Tender document of 2015 paragraph 2.3 under the Specifications section.

Installation Cost for 2017 till 2020

Item	Part	Description	Qty	2017	2018	2019	2020
				Total Value	Total Value	Total Value	Total Value
1	Relay	Installation of Relay/Switching device	1	R 646.25	R 710.88	R 781.96	R 860.16
2	Kiosk	Installation of Kiosk Signal Extender	1	R 302.50	R 332.75	R 366.03	R 402.63
3	Solar	Installation of Solar Signal Extender on street light pole	1	R 302.50	R 332.75	R 366.03	R 402.63
TOTAL PROJECT COSTS (excl VAT):				R 1 251.25	R 1 376.38	R 1 514.01	R 1 665.41

Powertech
System Integrators

Powertech System Integrators (Pty) Ltd., Reg. No. 2009/01265027, Private Place Office Park, 14001, E 22, Breda Street, Stellenbosch, Western Cape, South Africa.
Tel: +27 (0)21 796 1200 Fax: +27 (0)21 445 9472
Incorporated in South Africa, Registration Number: 2009/01265027, 46 Joubert Avenue, Stellenbosch, Western Cape, South Africa.
EC Taxpin (01) 42 71 0000 (01) 42 71 0000, RE: (01) 42 71 0000, 14001, E 22, Breda Street, Stellenbosch, Western Cape, South Africa.
Municipality





Hardware Audits and Call Outs

The HWLC Hardware Audits and Call Outs will have the same scope of work as was previously specified in BSM 75-16 Tender document of 2015 paragraph 2.4 and 2.5 under the Specifications section.

Cost for 2017 till 2020

Item	Part	Description	Qty	2017	2018	2019	2020
				Total Value	Total Value	Total Value	Total Value
1	Audit	Audit of existing installations	1	R 320.83	R 352.92	R 388.21	R 427.03
2	Call Out N	Call-out fee including replacement of faulty relay (normal hours)	1	R 458.33	R 504.17	R 554.58	R 610.04
3	Call Out A	Call-out fee including replacement of faulty relay (after hours/weekends)	1	R 595.83	R 655.42	R 720.96	R 793.05
4	Callout (Audit)	Call-out fee but does not replace a relay (normal hours)	1	R 389.58	R 428.54	R 471.40	R 518.54
TOTAL PROJECT COSTS (excl VAT):				R 1 764.58	R 1 941.04	R 2 135.15	R 2 348.66

The prices as specified in the tables above shall be fixed during the contractual agreement with Powertech System Integrators.

Notes, Exclusions and Assumptions

- The services as set out in the scope of work above will be handled by the PTSI subcontractor whom is situated in Paarl.
- As such there is not much labour included in this proposal from PTSI's side.
- There is also no costs included in this proposal for PTSI to travel to site and all services will be rendered remotely.
- There is costs included for the PTSI subcontractor as mentioned above to do some site visits to Stellenbosch if there is hardware problems.

Commercial Conditions

- Quote valid for 90 days
- Price quoted excludes 14% VAT.
- Payment of Invoice 30 days net after date of invoice.
- Delivery times 2 weeks from the date of order or subject to availability
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- As acceptance of quotation, please fax a signed copy of this quotation to (012) 365 1467.
- Work will only commence on receipt of an official Purchase Order



Regards,

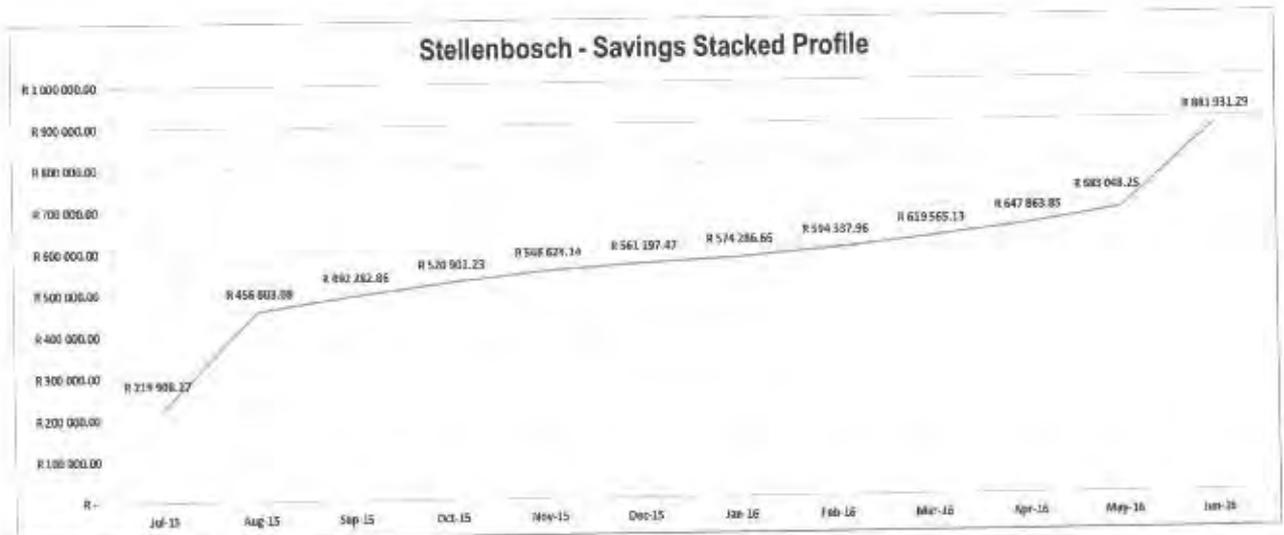
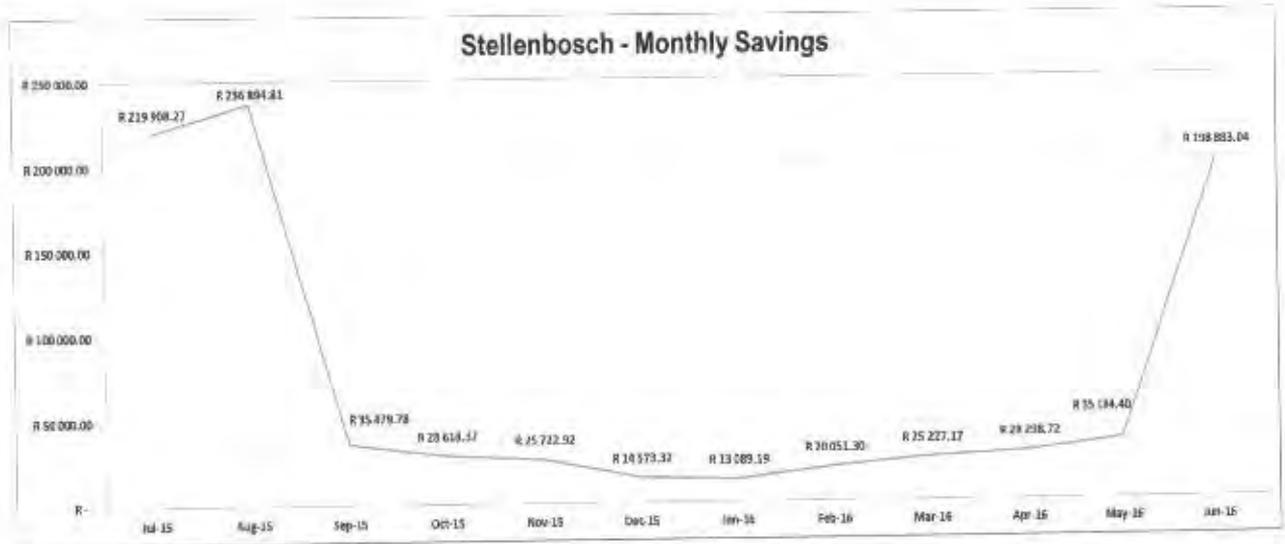
Michael Viljoen

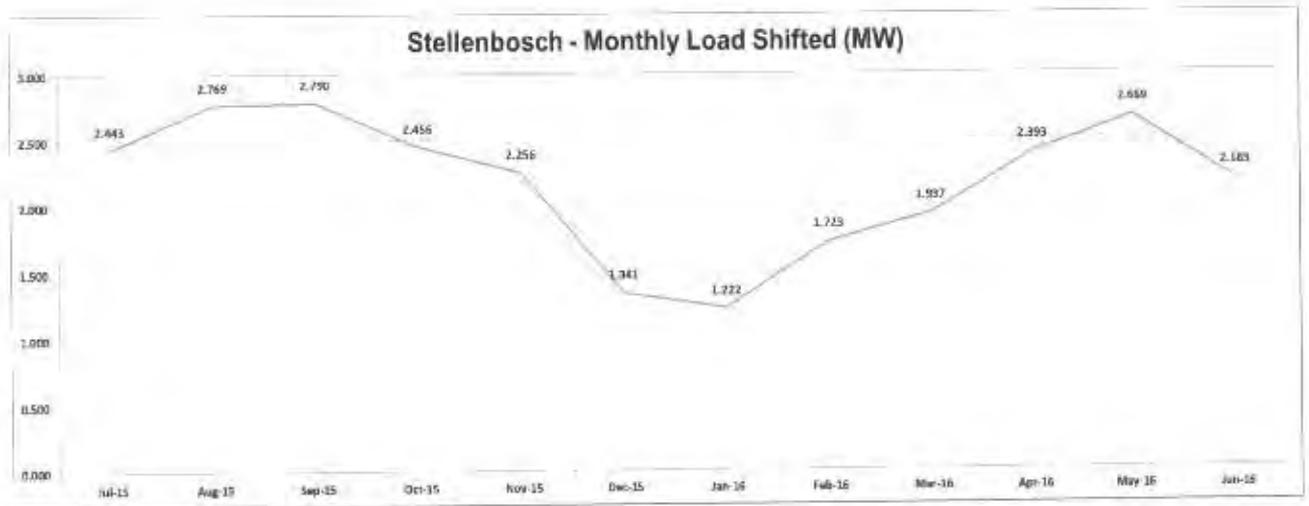
Contact person for quotation	Position	Telephone	Email
Michael Viljoen	GM Energy Management- Software Services	012 426 7529	Michael.viljoen@ptsi.co.za

QUOTE ACCEPTED:	_____
PRINT NAME:	_____
DATE:	_____
YOUR PO NO:	_____



4. Profiles





Silvia Pretorius

From: Adrian van der Westhuizen
Sent: 18 November 2016 01:02 PM
To: Silvia Pretorius
Cc: Johannes Coetzee
Subject: FW: BSM 75/16 MFMA S116(3) ADVERT

Hi Silvia

Please see below mentioned confirmation from SCM for our records. Thank you.

Kind regards,

Adrian van der Westhuizen
Technician: Electrical Services
Engineering Services

T: +27 21 808 8345 • C: +27 82 534 1571 • F: +27 21 883 3242
71 Plein Street, Stellenbosch, 7600 • PO Box 17, Stellenbosch, 7599
www.stellenbosch.gov.za



STELLENBOSCH
STELLENBOSCH MUNISIPALITEIT • STADSRAAT
MUNICIPALITY OF STELLENBOSCH • STADSRAAT



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From: Scm Epwp
Sent: Friday, November 18, 2016 1:00 PM
To: Adrian van der Westhuizen
Cc: Blake Doliviera; Paula Ribeiro; Israel Saunders
Subject: BSM 75/16 MFMA S116(3) ADVERT

Good day All

Please be advise that no comments / objections were received before or after 12h00 today 18 November 2016.

Kind regards,

Levita Pool
Supply Chain Management
Financial Services

T: +27 21 808 8120 • F: +27 86 583 7207 / +27 21 886 6903
De Witt huis building, Plein Street, Stellenbosch, 7600 • PO Box 17, Stellenbosch, 7599
www.stellenbosch.gov.za

5.7	PROTECTION SERVICES: (PC: CLLR Q SMIT)
-----	--

NONE

5.8	YOUTH, SPORTS AND CULTURE: (PC: XL MDEMKA (MS))
-----	---

NONE

6.	REPORTS SUBMITTED BY THE MUNICIPAL MANAGER
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NONE

7.	REPORTS SUBMITTED BY THE EXECUTIVE MAYOR
----	--

NONE

8.	MOTIONS AND QUESTIONS RECEIVED BY THE MUNICIPAL MANAGER
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NONE

9.	ITEMS OF EXIGENCY
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NONE

10.	MATTER/S TO BE CONSIDERED IN-COMMITTEE
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NONE