

**SECTION 37(2) AGREEMENT**

between

**ESKOM SOC**

**(hereinafter referred to as the “Principal”)**

and

**ADD COMPANY NAME**

**(hereinafter referred to as the “The Contractor”)**

## TABLE OF CONTENTS

1	INTERPRETATION.....	1
2	INTRODUCTION .....	5
3	EMPLOYER.....	5
4	WARRANTY OF COMPLIANCE .....	6
5	TRAINING.....	7
6	SCOPE OF AUTHORITY.....	7
7	DUTIES OF EMPLOYEES .....	7
8	SUPERVISION, DISCIPLINE AND REPORTING .....	8
9	CO-OPERATION .....	8
10	WORK PROCEDURES .....	9
11	CONSTRUCTION REGULATIONS.....	10
12	AUDITING AND INSPECTION .....	11
13	HEALTH AND SAFETY REPRESENTATIVES.....	12
14	HEALTH AND SAFETY MEETINGS.....	13
15	COMPENSATION REGISTRATION.....	13
16	MEDICAL EXAMINATIONS .....	14
17	ALCOHOL AND OTHER INTOXICATING SUBSTANCES.....	14
18	INCIDENT REPORTING AND INVESTIGATION .....	14
19	SUBCONTRACTORS.....	15
20	FIRE PRECAUTIONS AND FACILITIES.....	16
21	NO NUISANCE .....	16
22	PERSONAL PROTECTIVE EQUIPMENT .....	17
23	PLANT, MACHINERY AND EQUIPMENT .....	17
24	NO USAGE OF PRINCIPAL'S EQUIPMENT .....	17
25	TRANSPORT .....	18
26	INDEMNITY BY CONTRACTOR.....	19
27	NOTICES AND DOMICILIA.....	20
28	GOVERNING LAW .....	21
29	DURATION OF CONTRACTOR UNDERTAKINGS.....	21
30	GENERAL.....	21
31	SIGNATURE .....	22

## 1 INTERPRETATION

1.1 In this Agreement -

1.1.1 clause headings are for convenience only and are not to be used in its interpretation;

1.1.2 an expression which denotes -

1.1.2.1 any gender includes the other genders;

1.1.2.2 a natural person includes a juristic person and *vice versa*; and

1.1.2.3 the singular includes the plural and *vice versa*.

1.2 In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings -

1.3 “**Agreement**” means this Agreement;

1.4 “**Chief Executive Officer**” in relation to a body corporate or an enterprise conducted by the State, means the person who is responsible for the overall management and control of the business of such body corporate or enterprise;

1.5 “**COID**” means the Compensation for Occupational Injuries and Diseases Act, 130 of 1993;

1.6 “**Compensation Commissioner**” means the Compensation Commissioner appointed under section 2 (1) (a) of COID;

1.7 “**Construction Regulations**” means the regulations, promulgated in terms of Section 43 of OHSA;

1.8 “**Contract Work**” means the work for which the Contractor was engaged by the

Principal and all related activities in particular and defined in Contract No.....;

- 1.9 “**Contractor**” means [●] with (Registration Number [●] duly registered and incorporated according to the laws of the Republic of South Africa, who is performing work for the Principal;
- 1.10 “**Employee/s**” means all persons who are employed by or work for the Contractor and who receive or are entitled to receive any remuneration or who work under the direct supervision of the Contractor or any other person;
- 1.11 “**Employer**” means any person who employs or provides work for any person or expressly or tacitly undertakes to remunerate him but excludes a labour broker as defined in Section 1(1) of the Labour Relations Act, 1995;
- 1.12 “**Health and Safety Representative**” means any person designated in terms of Section 17(1) of OHSA;
- 1.13 “**Incident**” means an undesired accidental event that results in injury, damage, or loss;
- 1.14 “**Investigation**” means the process of inquiring into a matter through research, follow up, study or a formal procedure of discovery;
- 1.15 “**LDV**” means a light delivery vehicle;
- 1.16 “**Machinery**” means any article or combination of articles assembled, arranged or connected and which are used or intended to be used for converting any form of energy to performing work, or which are used or intended to be used, whether incidental thereto or not, for developing, receiving, storing, containing, confining, transforming, transmitting, transferring or controlling any form of energy;
- 1.17 “**Main Agreement**” means the agreement concluded between the parties to which this agreement is annexed, which sets out the nature of the project and the project deliverables, Contract No.....;

- 1.18 “**Member of the Public**” means any person who is not regarded as an Eskom employee or a Contractor employee in any manner, including visitors and minors;
- 1.19 “**MHSA**” means the Mine Health and Safety Act, 29 of 1996, as amended from time to time;
- 1.20 “**Occupational health and safety**” includes occupational hygiene, occupational safety, occupational medicine, fire safety, and public safety and emergency preparedness;
- 1.21 “**OHSA**” means the Occupational Health and Safety Act, 85 of 1993, as amended from time to time;
- 1.22 “**Parties**” means the parties to this Agreement;
- 1.23 “**Plant**” means fixtures, fittings, implements, equipment, tools and appliances and anything which is used for any purposes in connection with such plant;
- 1.24 “**Principal**” means Eskom Holdings Limited (reg no: 2002/015527/06) a juristic person incorporated in terms of the Company Laws of the Republic of South Africa, with its registered office at Megawatt Park, Maxwell Drive, Sandton;
- 1.25 “**Project Deliverables**” has the meaning ascribed to it in the Main Agreement;
- 1.26 “**Project Site**” has the meaning ascribed to in the Main Agreement;
- 1.27 “**Risk**” means the probability that injury or damage will occur;
- 1.28 “**Safety**” means the management and control of associated risks to provide an environment that is safe for people to work in;
- 1.29 “**Subcontractor**” means the person/s or entity appointed by the Contractor to undertake the project deliverables on behalf of the Contractor as set out in the Main Agreement;

- 1.30 “**Vehicle**” means any vehicle propelled by petrol, diesel or an electric energy source, used for performing work and / or for transporting passengers on Eskom's business.
- 1.31 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 1.32 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 1.33 Defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.34 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 1.35 Reference to "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time. Any reference to "business hours" shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time.
- 1.36 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.37 Where figures are referred to in numerals and in words, and there is any conflict

between the two, the words shall prevail, unless the context indicates a contrary intention.

1.38 No provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.

1.39 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement that expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

1.40 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

## **2 INTRODUCTION**

2.1 The Principal and the Contractor have entered into the Main Agreement in terms of which the Contractor is required to inter alia perform the Project Deliverables on the terms and conditions set out therein.

2.2 In terms of the Main Agreement, the Contractor is entitled to subcontract its obligations in respect of the Contract Work to Subcontractors.

2.3 Pursuant to the provisions of OHSA and the Construction Regulations applicable to the Principal, the relevant Contractor provides the undertakings to the Principal as set out herein.

## **3 EMPLOYER**

3.1 The Contractor as an Employer in its own right shall ensure that the duties in

relation to Employers as contemplated in OHSA, are properly discharged by itself and/or its chief executive officer in accordance with Section 16(1) of OHSA.

3.2 In accordance with Section 16(2) of OHSA, the Contractor may appoint competent persons who shall be trained on any occupational health and safety matter, including any provisions in OHSA pertinent to the Project Deliverables. Copies of such appointments made by the Contractor shall immediately be provided to the Principal.

3.3 The Contractor and/or its designated person(s) appointed in terms of Section 16(2) of OHSA shall report to the health and safety representative designated by the Principal prior to commencing the Project Deliverables at the Project Site.

#### **4 WARRANTY OF COMPLIANCE**

4.1 The Contractor warrants that it has familiarised itself with the working environment at the Project Site, the health and safety policies of the Principal and the arrangements as provided for in terms of Section 37(2) of OHSA, for the purposes of compliance with OHSA.

4.2 The Contractor acknowledges that this Agreement constitutes an agreement in terms of Section 37(2) of OHSA, whereby all responsibility (both civil and criminal) for health and safety matters relating to the Project Deliverables to be performed by the Contractor at the Project Site shall be the obligation of the Contractor.

4.3 The Contractor warrants that it and/or its Employees undertake to maintain all necessary compliance with OHSA. Without derogating from the generality of the above, or from the provisions of this Agreement, the Contractor shall ensure that the provisions of this Agreement as set out hereunder are at all times adhered to by itself, its Employees and Sub Contractors.

4.4 The Contractor further warrants that it has made adequate financial provision for the

cost of health and safety measures in providing the Project Deliverables that it is contractually obliged to provide.

- 4.5 The Contractor hereby undertakes to ensure that the health and safety of any other person at the Project Site is not endangered by the conduct and/or activities of itself, its Employees or Subcontractors whilst they are performing the Project Deliverables at the Project Site.

## 5 **TRAINING**

- 5.1 The Contractor warrants that it has familiarised itself with the hazards associated with the Project Deliverables being carried out at the Project Site. The Contractor shall further ensure that it, its Employees and Subcontractors are trained on the health and safety aspects relating to the Project Deliverables and that they understand the hazards associated therewith. Without derogating from the foregoing, the Contractor shall, in particular, ensure that all its users or operators of any materials, machinery or equipment are properly trained in the use of such materials, machinery or equipment.

- 5.2 Notwithstanding the provisions of the above, the Contractor shall ensure that it, its appointed responsible persons and Employees are at all times familiar with the provisions of OHSA, and that they comply with it's provisions.

## 6 **SCOPE OF AUTHORITY**

- 6.1 In compliance with Section 37(1)(b) of OHSA, each Contractor shall ensure that its Employees are informed of the scope of their authority in the event that it becomes necessary to determine whether the act or omission of such Employee constitutes an offence in terms of OHSA.

## 7 **DUTIES OF EMPLOYEES**

- 7.1 The Contractor shall ensure that each of its Employees:

- 7.1.1 takes reasonable care for their own health and safety and of other persons who may be affected by the act or omissions of such Employee;
- 7.1.2 co-operates with it to ensure compliance of the duties of such Contractor as prescribed by OHSA;
- 7.1.3 obeys all health and safety rules and procedures laid down in the interest of health and safety, including the health and safety policy of Principal; and
- 7.1.4 reports any situation which comes to the Employee's attention which is unsafe or unhealthy, as soon as practicable, to the Contractor and/or its responsible persons who shall report such situation to the Principal.

## **8 SUPERVISION, DISCIPLINE AND REPORTING**

- 8.1 The Contractor shall ensure that the Project Deliverables provided at the Project Site are done under strict supervision, and that no unsafe or unhealthy work practices are permitted. Discipline regarding health and safety matters shall be strictly enforced against any of its Employees regarding non-compliance by such Employee with any health and safety matter including the application and adherence to Eskom's Cardinal Rules.
- 8.2 The Contractor shall comply with any instruction issued by the Principal Representative to stop the provision of the Project Deliverables, should the Principal be of the opinion that same is not in compliance with the health and safety policy of Principal or which poses a threat to the health and safety of persons on the Project Site.
- 8.3 The Contractor shall report any unsafe or unhealthy work situations immediately after they become aware of same to the Principal Representative in writing.

## **9 CO-OPERATION**

- 9.1 The Contractor, and/or its responsible persons (including its Subcontractors) and

Employees shall provide full cooperation and information if and when the Principal or its health and safety representative inquires into occupational health and safety issues concerning the Contractor and or it's Subcontractors. It is hereby recorded that the Principal and its health and safety representative shall at all times be entitled to make such inquiry.

9.2 Without derogating from the generality of the above, the Contractor, and its responsible persons (including it's Subcontractors) shall make available to the Principal and its health and safety representative, on request, all and any checklists and inspection registers required to be kept by the Contractor in respect of any of its materials, machinery or equipment.

## 10 **WORK PROCEDURES**

10.1 Without derogating from its obligations in respect of the Project Deliverables, the Contractor shall utilise the procedures, guidelines and other documentation as used by the Principal for the purposes of ensuring a healthy and safe working environment, including the health and safety policy of the Principal.

10.2 The Principal shall induct the Contractor's Employees with regard to any procedures, guidelines and other documentation as used by the Principal for the purposes of ensuring a healthy and safe working environment, including the health and safety policy of the Principal.

10.3 The Contractor shall furthermore ensure that its responsible persons, Sub contractors and Employees are familiar with and utilise such procedures, guidelines and other documentation.

10.4 The Contractor shall implement and enforce safe work practices as prescribed by the Principal from time to time, and shall ensure that its responsible persons and Employees are made conversant with the contents of these practices and that they adhere to such procedures.

- 10.5 Eskom's Cardinal Rules shall be communicated to all the Contractor's Employees, including the signing of an acknowledgment of receipt. In addition, if work is to be performed on an Eskom site the Contractor shall ensure that his/her Employees undergo the Eskom site induction.
- 10.6 It is specifically recorded that the Contractor shall communicate Eskom's cardinal rules to its Subcontractors, including the signing of an acknowledgment of receipt. It is the Contractor's responsibility to ensure that it monitors compliance of such Subcontractors to Eskom's Cardinal Rules.
- 10.7 Failure by the Contractor's, its Subcontractor and/or its Employee's to comply with Eskom's Cardinal Rules may result in termination of this Agreement and/or the Main Agreement.
- 10.8 The Contractor shall ensure that any permits necessary to perform any Project Deliverables are obtained from the Principal prior to the performance of such Project Deliverables for which a permit is required. Work for which the issuing of a permit is required shall not be performed prior to the obtaining of a duly completed and approved permit.

## 11 CONSTRUCTION REGULATIONS

- 11.1 The Contractor warrants that it and its Employees shall comply with the Construction Regulations whilst providing the Project Deliverables.
- 11.2 The Contractor acknowledges that its health and safety plan as required in terms of Section 5(1) of the Construction Regulations shall comply with the health and safety policy of the Principal and the Construction Regulations. The Contractor shall provide its health and safety plan to the Principal prior to the commencement of any work on the Project Site, and ensure that its health and safety plan is implemented and maintained on the Project Site by the Employees, and is readily available and accessible.

- 11.3 The Contractor shall ensure that it notifies the Principal of the identity of its full-time construction supervisor whose obligation it is to supervise construction work, prior to commencing any construction on the Project Site.
- 11.4 The Contractor shall ensure that its Employees adhere to the health and safety plan of the Contractor when performing the Contract Work (including any works to be performed during the Service Period) on the Project Site and shall stop its Employees from performing any works which are not in accordance with the health and safety plan of the Contractor.
- 11.5 Should there be a change to the design and construction methodology of the Contractor which results in a variation to the Project Deliverables, the provisions of paragraph 11.4 shall mutatis mutandis apply to such variations.
- 11.6 The Contractor shall ensure that it complies with Section 25 of the Construction Regulations in relation to housekeeping on the Project Site.
- 11.7 The Contractor shall as part of its risk assessment to be undertaken under Section 7 of the Construction Regulations, undertake a complete risk assessment of all Project Deliverables prior to undertaking any construction of the Contract Work, and identify any additional risks and hazards that persons may be exposed to, analyse and evaluate such risks and hazards identified and document a plan of safe work procedures to mitigate such risks and hazards as well as a monitoring plan and review plan in respect thereof, and comply with the requirements of Section 7 of the Construction Regulations in respect of such specifically identified risks.
- 11.8 The Contractor shall ensure that all its responsible persons, Subcontractors and its Employees are duly informed and trained in the safe execution of work in relation to the identified hazards and risks associated with the Contract Work.

## 12 **AUDITING AND INSPECTION**

- 12.1 The Contractor shall ensure that it provides access to the Project Site to the

Principal (or its nominee) to carry out periodic health and safety audits on a monthly basis.

12.2 The Contractor shall ensure that it has an updated copy of COID, OHSA, and the Construction Regulations at the Project Site at all times, and that this is accessible to its appointed responsible persons and Employees.

12.3 The Contractor shall keep a consolidated health and safety file which shall include, inter alia, a record of all drawings, designs, materials used and other similar information in respect of the Project Site ("Health and Safety File"). The Health and Safety File shall be made available to the Principal upon request and upon the termination or expiry (whichever occurs earlier) of the Main Agreement.

12.4 The Contractor shall ensure that on a monthly basis during the duration of its contract in respect of the Project Deliverables, the structures on the Project Site are inspected by a competent person and shall provide the Principal with a report of the findings, accordingly. The Contractor (if applicable) shall further ensure that the structures on the Project Site are maintained to a standard that is safe for continued use and for a period of 5 (five) years from the termination or expiry (whichever occurs earlier) of the Main Agreement without requiring further major maintenance.

12.5 The Contractor shall ensure that all maintenance records pursuant to the Project Deliverables are readily available for inspection by Principal, which records shall be handed to Principal upon the termination or expiry (whichever occurs earlier) of the Main Agreement.

### 13 HEALTH AND SAFETY REPRESENTATIVES

13.1 In compliance with Section 17 of OHSA, if the Contractor has more than 20 (twenty) Employees in its employment, the Contractor shall designate health and safety representatives.

13.2 The Contractor shall ensure that the health and safety representatives perform the functions assigned to them as contemplated in Section 18 of OHSA.

#### 14 HEALTH AND SAFETY MEETINGS

14.1 The Contractor shall establish its own health and safety committee(s), and ensure that its health and safety representatives and Employees, being the committee members, hold health and safety meetings as often as may be required, and at least once every 3 (three) months. The Contractor shall ensure that the health and safety committees perform the functions assigned to them as contemplated in Section 20 of OHSA.

14.2 The Principal may elect to permit the Contractor's health and safety representatives to attend the Principal's health and safety committee meetings.

#### 15 COMPENSATION REGISTRATION

15.1 The Contractor shall ensure that it has a valid registration with the Compensation Commissioner, as required in terms of COID, and that all payments owing to the Compensation Commissioner are discharged.

15.2 The Contractor warrants that all its Employees are covered in terms of COID. The Contractor shall further ensure that the cover shall remain in force whilst any such Employee is present at the Project Site.

15.3 The Contractor shall be required to furnish proof of such valid registration when requested to do so by the Principal from time to time. In the event that such request is made, the Contractor shall deliver such proof of registration within 14 (fourteen) days of such request.

15.4 Notwithstanding the provisions of paragraph 15.3 above, the Contractor shall deliver to the Principal a valid certificate of good standing with the Compensation Fund, or similar proof acceptable by the Principal, by no later than the end of April every year

for the duration of the Contract Work.

**16 MEDICAL EXAMINATIONS**

16.1 The Contractor shall ensure that all workmen employed by it or its Employees undergo routine medical examinations where these are necessary in terms of the working environment and that they are medically fit for the purposes of providing the Project Deliverables at the Project Site.

16.2 The Contractor shall ensure that any disease which in the belief of a medical practitioner, arose out of the employment of an Employee, shall be reported in accordance with Section 25 of OHSA.

**17 ALCOHOL AND OTHER INTOXICATING SUBSTANCES**

17.1 No alcohol or other intoxicating substances shall be allowed on the Principal's premises. Anyone suspected to be under the influence of alcohol or other intoxicating substance shall not be allowed on the Principal's premises. For the purpose of this provision, the Principal hereby acquires the right to test the Contractor and it's Employees by means of a breath analyzer at any time, and the Contractor and it's Employee hereby consent to such tests being conducted and shall submit to this testing.

**18 INCIDENT REPORTING AND INVESTIGATION**

18.1 All incidents referred to in Section 24 of OHSA, Section 30 of the National Environmental Management Act,107 of 1998, Section 20 of the National Water Act,36 of 1998 and the Mine health and Safety Act, shall be reported by the Contractor to the Department of Labour and to the Principal. The Principal shall further be provided with copies of any written documentation relating to any incident.

18.2 All incidents arising out of and in the course of the Contract Work on the Principal's

premises in relation to the Contractor's Employees or members of the public shall be investigated by the Contractor. All such incidents shall be recorded against the Contractor's Incident Management Statistics.

- 18.3 The Principal retains the right to require that such investigations be conducted in conjunction with it with the aim of determining the underlying factors, critical path or root causes of the incident and determine workable recommendations that will prevent the repeat of such an incident and to learn from them.
- 18.4 In the case where the Contractor refuses to cooperate in conducting the investigation in conjunction with the Principal, the Principal reserves the right to conduct it's own investigation into the incident to ensure that the underlying factors, critical path or root causes of the incident have been identified and that workable recommendations are identified, implemented and that actions have been implemented that will prevent the repeat of such an incident.
- 18.5 The Principal retains an interest in the notification of any incident as described above, as well as in any investigation contemplated under Section 31 of OHSA and Section 11(5) of MHSA as well as any formal inquiry conducted in terms of Section 32 of OHSA and Section 60 of MHSA into such incident.

## 19 **SUBCONTRACTORS**

- 19.1 The Contractor shall notify the Principal in writing of any Subcontractor it may wish to engage to provide the Project Deliverables at the Project Site, who shall in itself constitute a Contractor. Without derogating from the generality of this paragraph, the Contractor shall:
  - 19.1.1 ensure that training as discussed in paragraph 5 (*Training*), is provided, prior to the Subcontractor commencing with the provision of the Project Deliverables at the Project Site;
  - 19.1.2 ensure that the Project Deliverables provided by the Subcontractor are done

under strict supervision and discipline, as described in paragraph 8 (Supervision, Discipline and Reporting);

- 19.1.3 demonstrate that the Subcontractor has the necessary competencies and resources to carry out the Project Deliverables safely;
  - 19.1.4 inform the Principal of any health and safety hazard and/or issue that the Subcontractor may have brought to his attention; and
  - 19.1.5 inform the Principal of any difficulty encountered with regard to compliance by the Subcontractor to any health and safety instruction, procedure and/or legal provision applicable to the Project Deliverables the Subcontractor provides at the Project Site.
- 19.2 Each Subcontractor shall be required to sign a declaration of acceptance of this Agreement, prior to the commencement of any Project Deliverables.
- 19.3 The Contractor shall ensure that it keeps a comprehensive and updated list of all the Subcontractors providing the Project Deliverables on the Project Site detailing the nature of work to be provided and any agreements entered into with such Subcontractors, which shall be tabled at all progress meetings with the Principal.

## **20 FIRE PRECAUTIONS AND FACILITIES**

- 20.1 The Contractor shall ensure that an adequate supply of fire protection and first aid facilities are provided at the Project Site.
- 20.2 The Contractor shall ensure that the Employees are familiar with the emergency procedures and fire precautions at the Project Site which include fire alarm signals and emergency exits and that such precautions are adhered to.

## **21 NO NUISANCE**

- 21.1 The Contractor shall ensure that neither it nor its Employees undertake any

activities which may cause environmental impairment, intentionally or recklessly interfere with, damage or misuse anything which is provided in the interest of health and safety, nor constitute any form of nuisance to the Principal and/or its surroundings.

## **22 PERSONAL PROTECTIVE EQUIPMENT**

22.1 The Contractor shall ensure that it shall take such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of persons on the Project Site, before resorting to personal protective equipment ("PPE").

22.2 The Contractor shall ensure that its responsible persons and the Employees are provided with adequate PPE for the Project Deliverables they may provide, and in accordance with the requirements of General Safety Regulation 2(1) of OHSA. The Contractor shall further ensure that its responsible persons and the Employees wear the PPE issued to them at all relevant times.

## **23 PLANT, MACHINERY AND EQUIPMENT**

23.1 The Contractor shall ensure that all the plant, machinery, equipment and/or vehicles it may wish to utilise at the Project Site is/are at all times of sound order and fit for the purpose for which it is intended, and that it complies with the requirements of Section 10 of OHSA.

23.2 In accordance with the provisions of Section 10(4) of OHSA, the Contractor hereby assumes the liability, for taking the necessary steps to ensure that any article or substance that is erected or installed at the Project Site, or manufactured, sold or supplied to or for the Principal, and which the Contractor uses complies with all the prescribed requirements and will be safe and without risks to health when properly used.

## **24 NO USAGE OF PRINCIPAL'S EQUIPMENT**

24.1 The Contractor hereby acknowledges that its Employees shall not be permitted to use any materials, machinery or equipment of the Principal unless the prior written consent of the Principal has been obtained, in which case, the Contractor shall ensure that only those persons authorised to make use of the same, have access thereto.

## 25 **TRANSPORT**

25.1 The Contractor shall ensure that all road vehicles used at the Project Site and for any purposes for the purpose of conducting the Contract Work are in a roadworthy condition, are licensed, insured and comply with Eskom's standard vehicle specifications.

25.2 Without derogating from clause 25.1, the Contractor shall ensure that all road vehicles used at the Project Site and for any purposes for the purpose of conducting the Contract Work have the following minimum basic requirements:

25.2.1 Factory-fitted antilock brake system (ABS);

25.2.2 Factory-fitted driver and passenger airbags;

25.2.3 Tyres as per manufacturer's specifications;

25.2.4 Emergency warning triangles;

25.2.5 Factory-fitted safety belts; and

25.2.6 First aid kits/boxes.

25.3 The Contractor shall ensure that all drivers have valid driving licences and no vehicle shall carry passengers unless it is specifically designed to do so by the vehicle manufacturer. All drivers shall adhere to the speed limits and road signs at the Project Site, if any.

25.4 The Contractor shall ensure that all its drivers, passengers and pedestrians obey all

vehicle safety requirements in terms of the National Road Traffic Act, Act No. 93 of 1996, as amended, including other relevant provincial or local requirements

25.5 The Contractor shall ensure that none of its Employees are transported on the back of a bakkie or LDV.

25.6 In the event that any hazardous substances are to be transported to and on the Project Site, the Contractor shall ensure that the requirements of the Regulations for Hazardous Biological Agents are complied with at all times.

## 26 INDEMNITY BY CONTRACTOR

26.1 Notwithstanding the provisions of this Agreement, or any other contractual relationship as between the Principal and the Contractor:

26.1.1 The Principal shall not be responsible for any loss, damage, injury or death, howsoever caused, to the Contractor, its Employees or Sub Contractors, and the Contractor hereby indemnifies the Principal and holds the Principal harmless against all and any claims, losses, damages, liability, costs and expenses of whatsoever nature, which the Contractor, its Employees or Subcontractors may, at any time sustain or incur arising out of the circumstances referred to herein provided that such loss, damage, injury or death is not caused by the wilful action or omission or gross negligence of the Principal;

26.1.2 the Contractor hereby assumes liability for any loss or damage which is caused by the Contractor's negligence, or through the negligence of any of its Employees or Subcontractors, and the Contractor hereby indemnifies the Principal for such loss or damage, whether caused by the Contractor's breach of any of the terms of this Agreement or by delict; and

26.1.3 the Contractor in pursuance of this paragraph undertakes to ensure that it carries the appropriate insurance cover, including third party public liability cover, the details of which shall be furnished to the Principal on demand by the Principal.

## 27 NOTICES AND DOMICILIA

27.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following telefax numbers -

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
Eskom Holdings Limited	[•]	[•]
	[•]	
	[•]	
	[•]	

Marked for the attention of:

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
[•]	[•]	[•]
	[•]	
	[•]	

Marked for the attention of: [•]

provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address or telefax number by written notice to the other Party to that effect. Such change of address will be effective 5 (five) business days after receipt of the notice of the change.

27.2 All notices to be given in terms of this Agreement will be given in writing, in English, and will -

27.2.1 be delivered by hand or sent by telefax;

27.2.2 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and

27.2.3 if sent by telefax during business hours, be presumed to have been received on

the date of successful transmission of the telefax. Any telefax sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.

27.3 Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.

27.4 The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment of or variation to this Agreement may be given or concluded via email.

## 28 **GOVERNING LAW**

28.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

## 29 **DURATION OF CONTRACTOR UNDERTAKINGS**

29.1 This Agreement shall remain in force for the duration of the Main Agreement and/or whilst the relevant Contractor is present at the Project Site.

## 30 **GENERAL**

30.1 This Agreement does not regulate, or replace, any existing agreements between the Parties relating to any other aspect of the arrangement between the Parties that does not relate to SHE risks, responsibilities and liabilities. However this Agreement shall be read intandem, as far as possible, with any other agreement entered into between the Parties on the Contract Work.

30.2 This Agreement takes preference over any other contract or clause in any contract between the Parties that relates to any aspect covered in this Agreement.

- 30.3 This Agreement constitutes the whole of the Agreement between the Parties relating to the matters dealt with therein and save to the extent otherwise provided no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated herein shall be binding on either of the Parties.
- 30.4 No addition to or variation, deletion, or agreed cancellation of any and all clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.
- 30.5 No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless in writing and signed by the Party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party in exercising any right, power or privilege under this Agreement will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

31 **SIGNATURE**

Signed on behalf of the Parties, each signatory hereto warranting that he has due authority to do so.

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2009.

For and on behalf of  
**ESKOM SOC**

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2009.

For and on behalf of  
**[ADD COMPANY NAME]**