



WILKEN DEVELOPMENT (PTY) LTD
SUPPLIER AGREEMENT

Made and entered into between

WILKEN DEVELOPMENT (PTY) LTD

Description and Registration Number	A Company duly registered as such in terms of the Laws of the Republic of South Africa, bearing registration number 2016/460099/07 and duly represented herein by Pieter Barendse Wilken as per the Resolution annexed hereto as Annexure "A" .
Registered Address	Unit 9, Inospace Wadeville Works 7 Crocker Rd, Wadeville Germiston 1428
Postal Address	PO Box 5911 Meyersdal 1447
Email	pieter@wilkendevlop.com

From hereinafter referred to as the **"the SUPPLIER"**

AND

Description	A Company/Close Corporation registered as such in terms of the contract Laws of the Republic of South Africa, bearing registration number _____ and having its registered address at _____ and represented by _____ (being the Customer's duly authorised representative as per the Resolution annexed hereto as Annexure "B" .
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From hereinafter referred to as the **"the CUSTOMER"**

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1. DEFINITIONS AND TERMINOLOGY

In this Agreement, unless the context otherwise indicates, the below words and expressions shall bear the following meanings and which meaning shall remain in effect even after the termination of this Agreement:

- 1.1. **"AFSA"** shall mean the Arbitration Foundation of South Africa or its successor in title;
- 1.2. **"Cancellation Date"** shall mean the date on which this Agreement is dissolved by the parties, either in terms of the Cancellation clause or by way of mutual agreement;
- 1.3. **"Confidential Information"** shall mean any information including technical, business or commercial information, information relating to creditors, debtors and clients, as well as its technical knowledge and trade secrets, specifications, drawings, sketches, models, samples, data, documentation, concepts, ideas, business plans, methods, methodologies, procedures, processes, know-how, techniques, templates; software (both source and object code), software tools, utilities and routines contained in written, electronic or any other format;
- 1.4. **"Contract Price"** shall mean, the price payable for the Product/s and Services rendered by the Supplier to the Customer as set out in

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Annexure "C" and described in clause 12 to this Agreement;

1.5. **"Delivery"**

shall mean the physical delivery of the Product/s by the Supplier to the Customer and as more fully defined in **Annexure "D"** hereto;

1.6. **"Effective Date"**

shall mean the date on which the last signature, by any party to this Agreement, is appended to this Agreement;

1.7. **"IFRS"**

shall mean the International Financial Reporting Standards;

1.8. **"Intellectual Property"**

shall mean all patents, registered and unregistered trademarks, copyrights, designs and applications for any of the foregoing in any part of the world, and any know-how, trade secrets and data associated with any of the foregoing owned by the Customer;

1.9. **"Interest"**

shall mean the Interest charged by the Supplier to the Customer on any and all late payments made by Customer alternatively on any amount due and owing to the Supplier (as emanating from this Agreement) and upon the payment of which amounts the Customer has defaulted. The rate of interest will be charged at Prime (as defined) plus 2% (two percent);

1.10. **"Obligations /
SUPPLIER obligations"**

shall mean the duties of the Supplier imposed by the operation of this

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Agreement;

1.11. **"Order"**

shall mean an official order, made in writing and recorded on the Customer's letterhead / official stationary and transmitted to the Supplier in writing and which order will set out the exact specifications of the Product/s required;

1.12. **"Order Confirmation"**

shall mean the written and duly signed document, recorded on the Supplier's letterhead and signed by an authorised representative of the Supplier and wherein the order is acknowledged and accepted;

1.13. **"Payment"**

shall mean the amounts as described in this Agreement, paid by the Customer to the Supplier for the Services rendered and on the terms and conditions contained in this Agreement as read with Annexure "D" hereto;

1.14. **"Parties"**

shall mean the Customer and the Supplier, collectively, as described herein and **"Party"** shall mean either the Customer or the Supplier as the context indicates;

1.15. **"Prime"**

shall mean the publicly quoted basic rate of interest per annum compounded monthly in arrears at which FNB, a division of First Rand Bank Limited, alternatively a similar reputable and registered Banking Institution within the Republic of South Africa, lends its most favoured corporate customers in the private sector on unsecured overdraft from

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time to time. In the event of a dispute, the rate shall be certified by any manager or assistant manager of any branch of the said bank, acting as an expert and not as an arbitrator, whose appointment need not be proved, and whose decision shall, save for any manifest error or bad faith, be final and binding upon the parties;

- 1.16. **"the Project"** shall mean [INSERT PROJECT DESCRIPTION IF NECESSARY] (Project Number _____);

Commented [B1]: This clause only needs to be included if the supply agreement is project specific. If for continued supply, then this clause can be deleted.

- 1.17. **"Product/s"** shall mean the items to be supplied and delivered by the Supplier to the Customer, as set out in Annexure "C" hereto;

- 1.18. **"SARS"** shall mean the South African Revenue Service;

- 1.19. **"Services"** shall mean any and all services relating and/or incidental to the Product/s (including, but not limited to, installation and/or maintenance and as provided for further in Annexure "C");

- 1.20. **"Signature Date"** shall mean the date on which the last party appends his signature to this Agreement;

- 1.21. **"Site"** shall mean the designated and properly identified area and at which area the the Supplier shall supply/deliver the Services;

- 1.22. **"Surety"** shall mean the Suretyship contained in **Annexure "E"** hereto, signed by the

Customer's representative as security for payment of the contract price, the terms of which are to be read as if specifically incorporated into this Agreement;

1.23. **"Surviving Clauses"**

shall mean the following Clauses, which shall survive the Cancellation Date of this Agreement, namely: 4.1 (Breach), 4.2 (Confidentiality and Intellectual Property), 4.3 (*Domicilium* and Notice), 20 (Labels and Trademarks), 21 (Negation of Partnership and Joint Venture), 22 (Intellectual Property Development), 26 (Disputes and Arbitration);

1.24. **"this Agreement"**

shall mean this Supplier Agreement, together with all annexures and addenda hereto and any amendment or supplements thereto;

1.25. **"VAT"**

shall mean Value Added Taxation levied in terms of the Value Added Tax Act No. 89 of 1991, as amended from time to time.

Commented [B2]: This has only been included for items constituting a VAT supply. If VAT is not applicable to the transaction, kindly remove this clause.

2. INTERPRETATION

2.1. In interpreting or construing this Agreement, unless the context indicates otherwise:

2.1.1. the singular shall include the plural and **vice versa**; and

2.1.2. a reference to any gender shall include a reference to the other genders; and

2.1.3. a reference to a natural person shall include a reference to a legal

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person, or juristic entity (whether incorporated or unincorporated) and **vice versa**; and

- 2.1.4. Paragraph headings shall be for reference purposes only and shall not modify or vary any provision of this Agreement, nor be taken into account in constraining or interpreting the tenor or import of this Agreement or any provision thereof.
- 2.2. Where any particular number of days is provided for the doing of any act or for any purpose, the reckoning shall include the first day, and shall include the last day, and should the last day not be a business day, the last day for such purposes shall be the next succeeding business day.
- 2.3. Unless the context indicates otherwise, any reference to a number of days shall be a reference to a continuous period of calendar days, and shall not be deemed to be a reference to business days, subject however to the provisions of the immediately preceding sub-paragraph.
- 2.4. A reference to a "month" shall be a calendar month, excluding the first day and including the last day, and similarly a reference to a "year" shall be to a calendar year, calculated **mutatis mutandis**; "monthly" and "yearly" shall have cognate meanings (for example, if a month is to be reckoned from 15 May, the period shall expire at midnight on 15 June).
- 2.5. Any reference to an enactment is to that enactment as at the effective date, unless specifically stated otherwise, and as amended or re-enacted from time to time.
- 2.6. In this Agreement and the annexures, the word "agreement" refers to this Agreement and the words "clause" or "clauses" and "annexure" or "annexures" refer to clauses of and annexures to this Agreement. This agreement includes all annexures thereto.

3. GENERAL

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- 3.1. This Agreement constitutes the sole and entire agreement between the parties and replaces any prior agreements whether written or oral and no other provisions, warranties or representations, express or implied, save as are herein expressly recorded shall be of any application.
- 3.2. The rule of interpretation that the Agreement must be interpreted against the party who drafted it shall not apply to the provisions, clauses or terms of this Agreement or the interpretation thereof.
- 3.3. This Agreement shall be binding upon the parties, their successors in title, heirs, administrators, Liquidators, Trustees and permitted assigns.

4. GENERAL PROVISIONS

4.1. BREACH

4.1.1. Should any Party:

4.1.1.1. Fail to make payment as required by this Agreement; or

4.1.1.2. Fail to observe any of the provisions of this Agreement; or

4.1.1.3. Fail to supply the Product/s and Services set out in **Annexure "C"** hereto; or

4.1.1.4. Fail to adhere to the content of any of the Surviving Provisions of this Agreement; or

4.1.1.5. Supply the Product/s and Services to any other entity other than the Customer without first obtaining written permission from the Customer to do so;

THEN such party shall be deemed to be in breach of this Agreement.

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4.1.2. In the event of a breach contemplated in this Clause and if the breaching Party fails to remedy such breach in a period of 7 (seven) days after delivery of notice to such breaching party requiring them to remedy such breach, or in the case of any other breach contemplated in this Clause 4.1, on the occurrence of the event in question, then the non-breaching Party shall have the right without prejudice to any other rights which might thereupon be available to the non-breaching party, to:

4.1.2.1. Enforce the relevant provisions of this Agreement; or

4.1.2.2. Cancel this Agreement; and

4.1.2.3. Proceed against the defaulting Party for the recovery of damages incurred by the non-defaulting party.

4.1.3. This Clause shall remain in effect even if this Agreement is terminated.

4.2. **CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

4.2.1. All Confidential Information (as defined) and Intellectual Property (as defined) provided by either Party to the other prior to entry into, and for the duration of, this Agreement:

4.2.1.1. shall remain the exclusive property of the Party providing such information;

4.2.1.2. shall be kept confidential and shall not be disclosed by either Party to any third party without the prior written consent of the other Party, save to the extent necessary to enable either Party to comply with its obligations under this Agreement. the Parties undertakes to take all reasonable precautions in a manner acceptable to each other to ensure that the Confidential Information

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and Intellectual Property are kept secret in accordance with the provisions of this Agreement;

4.2.1.3. may not, whether during the existence of this Agreement or after the Cancellation Date (as defined) be utilised by either Party for any purpose whatsoever.

4.2.2. This obligation of confidentiality does not apply if and to the extent that the either Party is able to prove that:

4.2.2.1. at the time of the receipt it previously was in possession or received the Confidential Information and Intellectual Property from a source other than the Party providing the Confidential Information to the other;

4.2.2.2. the Confidential Information and Intellectual Property has become generally available to the public through publication or otherwise through no violation of this Agreement; or

4.2.2.3. after the date of this Agreement the receiving Party has received the Confidential Information and Intellectual Property or any part thereof from a third party whose direct or indirect source is not a Party to this Agreement and further provided that the third party is not under any obligation of confidentiality.

4.2.3. In addition to the foregoing, the Parties expressly and irrevocably record that the content of this Agreement is extremely confidential, and shall, under no circumstances whatsoever, be divulged to any third party whatsoever.

4.2.4. The Confidentiality undertakings relating to Confidential Information and Intellectual Property and as described in this Agreement shall apply *mutatis mutandis* to the entire content of this Agreement.

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- 4.2.5. The original signed Agreement shall be held by the Customer and at its head office.
- 4.2.6. The confidentiality obligations imposed on the Parties, in terms of this Clause shall be valid and enforceable as from the Effective Date and for a period of 3 (three) years after the termination of this Agreement for whatever reason.
- 4.2.7. This Clause 4.2 (and its sub-clauses) shall remain in effect even if this Agreement is terminated (Surviving Clauses).

4.3. DOMICILIUM AND NOTICES

- 4.3.1. The Parties each choose as their *domicilium citandi et executandi* ("domicilium") for all purposes relating to this Agreement, including the giving of any notice, the payment of any sum and the serving of any process as is set out and recorded on the first (1st) page to this Agreement. The parties irrevocably agree that the *domicilium* addresses chosen in terms of this Agreement shall substitute those referred to in Annexure D hereto (if such Annexure "D" applies) and that the terms and conditions of Annexure D shall, from the signature date of this Agreement be enforceable using the *domicilium* addresses recorded in this Agreement.
- 4.3.2. Either Party shall be entitled from time to time, by giving written notice to the other, to vary its physical *domicilium* to any other physical address (not being a post office box or poste restante) within the Republic of South Africa and to vary its facsimile number and e-mail address to any other facsimile number or e-mail address.
- 4.3.3. Any notice given by either Party to the other ("addressee") which is delivered by hand between the hours of 09:00 and 17:00 on any business day to the addressee's physical *domicilium* for the time being shall be deemed to have been received by the addressee at

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the time of delivery.

4.3.4. Any notice given by either Party to the other which is successfully transmitted by facsimile to the addressee's facsimile *domicilium*, for the time being, or successfully sent to the addressee's e-mail *domicilium* shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof.

4.3.5. This Clause 4.3 (and its sub-clauses) shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to herein.

4.3.6. Any notice in terms of or in connection with this Agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

4.4. **FORCE MAJEURE**

4.4.1. Any delay or failure to comply with or breach of any of the terms and conditions of this Agreement if occasioned by or resulting from an act of God, *vis major*, public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, labour unrest, blockade, embargo, sanctions, epidemics, act of any Government or other Authority, compliance with Government orders, demands or regulations, or any circumstances of like or different nature beyond the reasonable control of the Party so failing, shall not be deemed to be a breach of this Agreement nor shall it subject either Party to any liability to the other.

4.4.2. Should either Party be prevented from carrying out its contractual obligations by force majeure lasting continuously for a period of 30

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(thirty) days, the Parties shall consult with each other regarding the future implementation of this Agreement. If no mutually acceptable arrangement is arrived at within a period of 7 (seven) days thereafter, either Party shall be entitled to terminate the Agreement forthwith on written notice.

SPECIFIC PROVISIONS

5. APPOINTMENT, DURATION, TERMINATION AND EXCLUSIVITY

- 5.1. The Customer hereby appoints the Supplier, who accepts such appointment, with effect from the Effective Date going forward to render the Services subject to the terms and conditions set out in this Agreement and in **Annexure "A"**, and in respect of the Project (as defined).
- 5.2. Notwithstanding the foregoing, the Customer and / or the Supplier may, at any stage and for any reason whatsoever, terminate this Agreement by giving the other Party 3 (three) calendar months prior written notice during the term of this Agreement without incurring any liabilities, except for obligations which may have accrued, such as outstanding monies payable for Services that were rendered prior to the date of termination and supply of Product/s and completion of Services for which payment has already been made.
- 5.3. The Customer hereby appoints the Supplier as its exclusive supplier of the Services and Product/s. The Customer shall not be entitled (unless specifically set out and recorded in this Agreement) to utilise any other supplier for the Services other than the Supplier referred to in this Agreement.

Commented [B3]: This part of the sentence only needs to be included if the supply agreement is project specific. If for continued supply, then this clause can be deleted.

6. PRODUCT/S AND SERVICES

- 6.1. The Supplier shall provide the Customer with the Product/s and Services directly described and set out in **Annexure "A"** to this Agreement and which Product/s and Services shall be provided in terms of the Delivery Clause contained in **Annexure "A"**.

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- 6.2. The Supplier shall furnish everything necessary, proper and incidental for the supply of the Product/s and performance and completion of the Services as part of its Service obligations in terms of this Agreement and in terms of the Tender/Schedule/Timeline/Letter of Engagement **[DELETE THAT WHICH IS NOT APPLICABLE OR AMEND ACCORDINGLY]**.
- 6.3. The Supplier warrants that the Supplier, its personnel and its agents, have the necessary experience, permits, licences and the capability to, at all times during the operation of this Agreement, provide the required Product/s and execute the required Services.
- 6.4. The Supplier further undertakes and warrants in favour of the Customer that the Supplier, its personnel and its agents, shall deliver the Product/s and execute the Services described and set forth in any **Order** (and in terms of that which is set out in **Annexure "C"** hereto) within two (2) calendar weeks of the Supplier delivering or transmitting the Order Confirmation to the Customer.

Commented [B4]: I have kept in references to Order in case the supply to a Customer is not tender specific or there is a circumstances where additional orders need to be placed during a tender or additional Bills of Quantities (in construction deals etc)

7. VARIATIONS TO SERVICES / SERVICES OUTSIDE OF THE SCOPE OF WORKS / CHANGE ORDERS

- 7.1. If at any time during the performance of the Supplier's obligations; the Supplier is of the opinion that a change in the delivery of the Product/s and/or in the execution of the Services is necessary:
- 7.1.1. to correct any defect which has occurred or would otherwise occur; or
 - 7.1.2. would be beneficial to the Customer; or
 - 7.1.3. such Product/s and Services outside of the original Scope of Works becomes necessary;

then the Supplier shall submit to the Customer a written proposal setting out the reasons for such a proposed change.

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- 7.2. The Customer shall, at its sole discretion, either accept or reject the proposal in writing and within 24 (twenty-four) hours of delivery thereof. The proposed change will not be considered to have been accepted prior to the written confirmation having been received by the Supplier from the Customer
- 7.3. If at any time during the existence of this Agreement the Customer is of the opinion that a change in the execution of the Services or the actual Services is required, the Customer shall:
- 7.3.1. submit to the Supplier a written Order setting out the additional Product/s and/or Services required; and
- 7.3.2. a proposal for the price for the additional Product/s and/or Services.
- 7.4. The Supplier shall, at its sole discretion, either accept or reject the Order referred to in writing. Should the Supplier reject the Order wholly on consideration of Price for the Product/s and/or Services, the Supplier shall inform the Customer of this consideration as well as an alternative price for the Product/s and/or Services and within 24 (twenty four) hours of delivery of the Order.
- 7.5. The Customer shall, at its sole discretion, either accept or reject the suggested price for the Product/s and/or Services in writing and within 24 (twenty four) hours of delivery of the revised pricing document.
- 7.6. Should the Customer reject the suggested pricing of the amended Product/s and/or Services; the Customer and the Supplier shall negotiate a mutually beneficial pricing structure for the amended Product/s and/or Services. Should negotiations fail, for any reason whatsoever, the Customer shall be entitled to source an alternative supplier of the amended Product/s and/or Services.

8. INSTRUCTIONS FOR THE PRODUCT/S AND/OR SERVICES

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- 8.1. The Supplier shall perform the Services in accordance with this Agreement as read with the Scope of Works set out in the Tender/Order/Timeline/Letter of Engagement **[DELETE THAT WHICH IS NOT APPLICABLE OR AMEND ACCORDINGLY]**.
- 8.2. The Supplier shall provide the Product/s and, where necessary, perform the Services in accordance with **Annexure "C"** and in accordance with any subsequent Order and which Order has been confirmed by means of an Order Confirmation.
- 8.3. The Supplier shall deliver the Product/s and/or execute the Services recorded in any Order and shall:
- 8.3.1. commence with delivery of the Product/s and/or the rendering of the Services, upon the Customer's instruction to do so and in accordance with the dates as set out in **Annexure "A"**; and
 - 8.3.2. deliver the Product/s and/or execute the Services in such order and sequence in terms of the Tender and as is required by the Customer to ensure the sufficient, expeditious and timeous delivery of the Product/s and/or performance of the Services and bearing in mind that all transactions undertaken in terms of this Agreement are time sensitive and where time is of the essence.
- 8.4. The Customer shall indicate to the Supplier the relevant Site/s at which the Product/s shall be delivered and/or at which the Services shall be performed, should the Product/s be required to be delivered and/or the Services required to be rendered at any site owned and / or operated by the Customer alternatively as is required by the Project.
- 8.5. Should the Supplier at any stage be unable to deliver the Product/s and/or to execute the Services recorded in any Order; then the Customer shall be entitled, but not obliged, to procure the Product/s and/or Services from any other supplier and to recover the difference in cost (if any) from the Supplier (as captioned on page 1 of this Agreement) and which difference shall be

due and payable upon demand.

- 8.6. The Customer may, at its sole discretion cancel any portion of the Product/s and/or Services in the event that such Product/s and/or Services are late or would appear to be late, or where the Supplier would appear to be unable to execute the Services. This clause shall not apply in the event of the delay in Product/s and/or in Service delivery are occasioned by circumstances beyond the Supplier's control.
- 8.7. In the event of delays occasioned by circumstances which are as a result of the Customer's conduct and/or fall within the control of the Customer, such delays shall be charged for in the form of delay damages at the rate of 1% of the full Contract Price per week, until the delay has been resolved, and to a maximum of 5% of the full Contract Price.

9. MODIFICATION OF PRODUCTS AND/OR SERVICES

- 9.1. The Customer may from time to time, by written notice by way of an Order, require the Supplier to alter, amend, omit, add to, suspend, postpone or vary the order of delivery of the Product/s and/or the execution of the Services, or any part thereof, as in its opinion may be necessary, and may further reasonably vary any portion of the Product/s and/or Services.
- 9.2. Furthermore, the Customer may, at its discretion, provide the Supplier with further Orders to attend to additional Product/s and/or Services.
- 9.3. The Supplier shall carry out such modifications and be bound by the same conditions, as far as applicable, as though the said modifications occurred in this Agreement.
- 9.4. If such modifications would, in the opinion of the Supplier and if carried out, involve a claim for additional payment or extension of time or prevent it from fulfilling any of its obligations or guarantees or otherwise fall outside of the Supplier's expertise, it shall, before proceeding therewith, notify the Customer of the quantified effect thereof in writing within 24 (twenty four) hours after

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receiving the notice and which quantified effect shall include:

- 9.4.1. the prices to be charged by the Supplier for such modifications and to be decided on the same basis as described elsewhere in this Agreement; and
 - 9.4.2. any delays alternatively extended timeframes necessary for the Supplier to complete the modified Product/s and/or Services.
- 9.5. The Customer shall then decide whether or not the modification shall be carried out and, if the Customer confirms its instructions in writing, the Supplier's obligations shall be modified to such an extent as agreed upon between the Customer and the Supplier.
- 9.6. All the risk and expense of proceeding with any modifications without a written notification signed by both Parties to this Agreement shall be for the Supplier's account, unless in the case of necessity and/or emergency and in the event of the Customer's signature being unreasonably withheld and such withholding by the Customer may result in an impossibility of fulfilment of obligations by the Supplier, in which case such modifications will be for the Customer's account.

10. EXCLUSIONS

- 10.1. Any item not included under the scope of works, or listed in the bill of quantities, is excluded.
- 10.2. The specific exclusions shall be as listed in the Tender Tender/Order/Timeline/Letter of Engagement **[DELETE THAT WHICH IS NOT APPLICABLE OR AMEND ACCORDINGLY]**.

11. PARAMETERS FOR ORDERS PLACED

- 11.1. The Supplier hereby undertakes and warrants in favour of the Customer that it shall not, during the existence and operation of this Agreement, do any of the

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following (save in the case of an emergency):

- 11.1.1. Deviate, in any way, from the prescribed Order without having first obtained written permission and confirmation from the Customer to do so; and
- 11.1.2. Deviate, amend or replace, in any way, the Product/s ordered by the Customer; and
- 11.1.3. Deviate, amend or alter, in any way, the components or constituent parts of any Product/s ordered by the Customer.

12. MODIFICATIONS TO INDIVIDUAL ORDERS

- 12.1. Should the Customer request the Supplier to amend any order *alternatively* add any accessory to a particular Product/s *alternatively* request a material deviation in either materials or Product/s on any particular Order, such a request must be recorded in writing and transmitted to the Supplier for acceptance.
- 12.2. Any such material deviation or amendment to the Order may only be made prior to the signature of the Order Confirmation by the Supplier. Should the Supplier already have signed the Order Confirmation and should expenses for the delivery of the Product/s and/or performance of the Services already have been expended, *alternatively* should the Supplier have already commenced executing the delivery of the Product/s and/or specific Services set out in the particular Order; the Supplier shall not be obliged to acquiesce to the deviation or amendment.
- 12.3. Upon cancellation of any order by the Customer, the following cancellation penalties will apply:
 - 12.3.1. Within the first quarter of the delivery period: 50% of the full Contract Price

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12.3.2. Within the first half of the delivery period: 75% of the full Contract Price

12.3.3. Thereafter: 100% of the full Contract Price.

13. SITE VISITS, CONSTRUCTION MONITORING AND COMMISSIONING

- 13.1. The Suppliers warrants that they are aware of the specific Site conditions, required by, and relating and/or incidental to the Project, or in the case of continued supply, to the Customer, as inspected during the site visit by the Supplier at the time. The Supplier assumes exclusive responsibility for having obtained sufficient and adequate knowledge of the different conditions that may affect the carrying out of the Services, such as and without being limited to: transport, access, nature and traffic ability of the terrain, general character, availability and quality of local labour, working conditions, surface conditions, utilities, roads, uncertainties of seasonal weather, environmental risks and conditions, magnitude of the Services, storage facilities, storage, location of distribution points for utilities, legal provisions, relevant Law(s), and applicable regulations in the place of work, existence and registration requirements of the local organisations and trade unions, requirements regarding obtainment of working licences, availability of materials and equipment, all other physical, topographical, geographical and meteorological conditions.
- 13.2. The Supplier cannot, however, be held liable for any unforeseen changes to the Site that may have occurred between the site visit and the effective date of the Project.
- 13.3. The Supplier warrants that it has made itself, its employees, agents and assigns aware of, and that they fully comply with the provisions of all Health and Safety procedures relating and/or incidental to each of these parties working on Site and for the duration of the Project.
- 13.4. Site visits shall be governed by those provisions of clause 16 of the Tender/Order/Timeline/Letter of Engagement **[DELETE THAT WHICH IS NOT APPLICABLE OR AMEND ACCORDINGLY]**.

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14. APPOINTMENT OF SUB-CONTRACTORS

- 14.1. The Parties hereby irrevocably agree that the Supplier may appoint Sub-Contracting Agents, specifically contracted to the Supplier for any specialist activity associated with the delivery of Product/s and execution of the Services;
- 14.2. The Parties agree that any cost of any sub-contractor shall be recoverable from the Customer and in the same manner as fees are invoiced to the Customer as recorded in this Agreement.

15. PRICE / PRICE BASE & PAYMENT TERMS

- 15.1. In consideration for the rendering of the Services, the Customer shall pay the Supplier the Contract Price as set out in, and on the basis of the terms and conditions of, the Tender/Order/Timeline/Letter of Engagement **[DELETE THAT WHICH IS NOT APPLICABLE OR AMEND ACCORDINGLY]**.
- 15.2. Alternatively, and in the absence of terms and conditions referred to in 15.1 above, the Customer shall pay the Supplier the Contract Price as agreed to in terms of Annexure "C" hereto and in terms of the payment method as specified in Annexure "C" hereto.

16. SECURITY FOR PAYMENT OF CONTRACT PRICE

The parties record, and irrevocably agree that, the Customer shall provide the following securities for payment of the Contract Price to the Supplier and as from the Effective Date of this Agreement:

16.1. PLEDGE

- 16.1.1. The Purchaser shall, simultaneously with the signature of this Agreement, _____ immediately at Effective Date of this Agreement and which _____ shall be retained by the

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Auditors as Trustees on behalf of the Parties; so as to constitute a pledge in *securitatem debiti* by the Customer in favour of the Supplier or his nominee.

16.1.2. The pledge by the Customer of the _____ in favour of the Seller shall endure as a continuing covering security for the Customer's payment/s of the Contract Price to the Supplier in terms of this Agreement and for the discharge of the Customer's obligations to the Supplier under this Agreement.

16.1.3. Against discharge by the Customer of its Obligations and performance under this Agreement, the pledge aforementioned shall lapse, and the Auditors shall destroy the _____ completed by the Customer as Pledgor.

16.2. **CONTINUOUS COVERING MORTGAGE/NOTARIAL BOND**

16.1.1. Upon signature of this Agreement, the Customer shall register, over its assets and inasmuch as to the value of the Contract Price, a continuous covering mortgage bond, *alternatively* a Notarial Bond, and which continuous covering mortgage bond/notarial bond shall be registered in favour of the Supplier.

16.1.2. The Bond registered in terms of this clause shall be deemed to be dated as at the Effective Date of this Agreement and shall be made so as to constitute a continuing covering security for the performance by the Customer of its Obligations in favour of the Supplier or his nominee.

16.1.3. The Bond shall be registered for the entire Contract Price as at the date on which the Bond is to be realised by the Supplier and pursuant to a breach of this Agreement by the Customer and after the Supplier having afforded the Customer the required 14 day notice period to rectify its breach.

16.1.4. Against discharge by the Customer of its Obligations and payment

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under this Agreement, the Bond aforementioned shall be deregistered.

16.2. **PERSONAL SURETY**

The Customer shall be required to provide the Supplier with a signed personal surety, signed by its duly authorised representative and which representative shall stand as personal surety for the Customer. The signed surety is annexed to this Agreement as Annexure "E" and is read as if specifically incorporated into this Agreement.

17. **CLAIMS**

- 17.1. In cases where circumstances exist that entitle the Supplier to make a claim for additional compensation not provided for in this Agreement, then the Supplier shall, within 24 (twenty four) hours of becoming aware of the event giving rise to the claim, give notice to the Customer setting out its claim and setting out the reasons giving rise to the claim.
- 17.2. Any and all such claims will be billed to the Customer on the terms and conditions of the Credit Agreement (as defined)

18. **LIAISON AND CHANGE CONTROL MANAGEMENT**

- 18.1. Events may occur which require a change to the scope of the Project or, in the case of continued supply, the scope of the Product/s and/or Services provided, and in terms of this Agreement and which cooperation shall not, for the purposes of this clause, include any modification or alteration to the Product/s and/or Services as stipulated in any Order, unless the Parties comply with the provisions of this clause 18 (and its sub-paragraphs).
- 18.2. If either party proposes or requires a change (be it to the scope of the Project or to the Product/s and/or Services provided), it shall do so by written notice to the other party, specifying the reasons for the change, the resources required to implement the change and the effect that the change, if implemented, shall have on the relevant dates for performance and on the

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costs. If such is not done, it will constitute a breach of this Agreement.

- 18.3. Neither party shall be entitled to proceed with the implementation of any change to this Agreement pursuant to this clause until such time as all matters relating to such change (including but not exclusive to, any additional resources required to implement the change, the effects of the change and the effect the change shall have on the implementation of this Agreement and the cost) have been agreed to in writing between the Parties.
- 18.4. Pending written agreement as aforesaid, the Parties shall continue to perform their obligations as agreed in respect of the initial Project specifications without taking account of the proposed changes. Neither party shall be obliged to agree to any change proposed by the other party, but the Parties shall not unreasonably delay or withhold their consent to a proposed change.

19. HARDSHIP CLAUSE

- 19.1. Should the ongoing fulfilment of this Agreement between the Parties become impossible due to any one or more of the following:

- 19.1.1. the price of the Product/s; or
- 19.1.2. availability of the Product/s; or
- 19.1.3. international market trends making supply of the Product/s; impossible or
- 19.1.4. for any other circumstance deemed appropriate by either party;

then one of the Parties may request contract negotiations in writing from the other party on one or all of the terms and conditions as contained within this Agreement and which contract negotiations shall ensue within one (1) calendar month of receipt of the notice requesting such negotiations.

- 19.2. Should no Agreement be reached upon the conclusion of the negotiations as

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contemplated in clause 16.1 above, the matter shall then be referred to arbitration in terms this Agreement.

20. LABELS AND TRADEMARKS

20.1. All Labels and Trademarks used by, employed by and registered to each Party at the time of entering into this Agreement shall remain vested in that Party and nothing herein shall be construed as passing of rights, ownership or control in any such label or Trademark to any other Party to this Agreement who does not already have such right, ownership or control at time of signature of this Agreement.

20.2. This Clause 20 shall remain in effect even if this Agreement is terminated (Surviving Clauses).

21. NEGATION OF PARTNERSHIP AND JOINT VENTURE

The Parties agree that this Agreement does not form a partnership, agency or employment agreement between them. There are no joint and several liabilities on the part of either Party; and each Party shall be liable for those obligations provided for in this Agreement individually. Neither Party shall act on behalf of or bind the other Party or represent that their relationship is a partnership or other legal entity.

22. INTELLECTUAL PROPERTY DEVELOPMENT

22.1. Ownership in all intellectual property which may come into existence during the course of this Agreement and which relates specifically to the Products or the Services; whether developed by the Customer or the Supplier in the execution of the Services, shall vest in the Supplier and the Customer shall keep the intellectual property in the strictest confidence and upon termination of this Agreement shall have no rights in or to such intellectual property.

22.2. This Clause 22 shall remain in effect even if this Agreement is terminated

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(Surviving Clauses).

23. RISK, TITLE AND INSURANCE

23.1. In the event of the Supplier bringing any of its own material, Vehicles, Equipment or property onto the premises of the Customer *alternatively* any place or premises where the Product/s will be delivered and/or Services will be rendered; the Customer will be liable to have all such materials, Vehicles, Equipment or property adequately insured for all risks, including for theft and fire damage.

23.2. The provisions of this clause 23 shall apply mutatis mutandis to the Customer as well.

24. PROVISIONAL ACCEPTANCE

24.1. The provisional acceptance of the Product/s and/or Services by the Supplier shall be confirmed by the Customer confirming its provisional acceptance of the Product/s and/or Services in writing to the Supplier.

24.2. The Customer shall further provide written confirmation that the Project has been completed. Any such written confirmation by the Customer shall in no way relieve the Supplier in respect of any defects or non-compliance discovered subsequently, or any defects that are not evident or hidden at the time of the confirmation as the service warranty period shall apply for these defects.

25. WARRANTY AND FINAL ACCEPTANCE

The Final Acceptance by the Customer of the completion of the Project shall occur 14 (fourteen) days prior to the expiry of the service warranty period as defined in the Tender/Order/Timeline/Letter of Engagement **[DELETE THAT WHICH IS NOT APPLICABLE OR AMEND ACCORDINGLY]**, and subject to the Supplier having duly fulfilled all its contractual obligations created in terms of this Agreement. Within 14 (fourteen) DAYS after the expiry of such warranty

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period, it is the obligation of the Customer to duly check whether the Supplier has all of its contractual obligations in terms of this Agreement and in terms of the Tender/Order/Timeline/Letter of Engagement **[DELETE THAT WHICH IS NOT APPLICABLE OR AMEND ACCORDINGLY]** and, if this is the case, the Customer will issue the written confirmation of acceptance and the completion of works shall then accordingly be considered to be finally accepted and the Supplier obligations to have been fulfilled.

26. DISPUTES AND ARBITRATION

- 26.1. Should any dispute arise between the Parties, that dispute shall be decided by arbitration before a single arbitrator, being an advocate with no less than 10 years' experience in the manner set out in this Clause.
- 26.2. The arbitration shall be held at Sandton, Gauteng.
- 26.3. The arbitration shall be held in accordance with the Rules of AFSA, or if AFSA shall not be in existence, in accordance with the formalities and procedures settled by the arbitrator.
- 26.4. The arbitrator shall be entitled to:
- 26.4.1. investigate or cause to be investigated any matter, fact or thing which he considers necessary or desirable in connection with any matter referred to him for decision; and
 - 26.4.2. make such award, including an award for specific performance, an interdict, damages or a penalty or the costs of arbitration or otherwise as he in his discretion may deem fit and appropriate.
- 26.5. The arbitration shall be held as quickly as possible after it is demanded, with a view to it being completed within 30 (thirty) days after it has been so demanded.
- 26.6. The arbitration shall be held in camera and the Parties shall maintain the

utmost confidentiality with regard to all matters in issue in the arbitration.

26.7. The law governing this Agreement shall be South African law, and the Court having jurisdiction to enforce any award made under this Clause shall be the appropriate division of the High Court of South Africa, which has jurisdiction over the Party against whom the award is being enforced.

26.8. This Clause 26 shall remain in effect even if this Agreement is terminated (Surviving Clauses).

27. CESSION

The Customer expressly agrees that it shall not be entitled to cede, assign, sublet nor make over this Agreement or any part thereof or any of its rights, benefits, duties or obligations hereunder to any other person without the written consent of the Supplier, including the appointment of Sub-Contracting Agents.

28. SEVERABILITY

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

29. SIGNATURE

29.1. This Agreement is signed by the Parties on the dates and at the places indicated below.

29.2. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts. For the purpose of transmission of the Counterparts; the parties record that they shall make use of electronic mail (email) and renounce any interpretive laws that may affect the validity of this Agreement

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if signed in counterparts.

29.3. The persons signing this Agreement in a representative capacity warrant their authority to do so.

Signed at		Date	
Signature:			
For and on behalf of		THE CUSTOMER	
Name			
Designation	DULY AUTHORISED REPRESENTATIVE		

Signed at		Date	
Signature:			
For and on behalf of		WILKEN DEVELOPMENT (PTY) LTD	
Name	PIETER BARENDSE WILKEN		
Designation	DIRECTOR		

THE REMAINDER OF THIS PAGE DELIBERATELY LEFT BLANK BY THE PARTIES HERETO

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ANNEXURE "A"**EXTRACT OF THE MINUTES OF A MEETING OF THE DIRECTORS AND SHAREHOLDERS OF
WILKEN DEVELOPMENT HELD AT JOHANNESBURG ON _____****RESOLVED:**

That the Company shall engage with **[THE CUSTOMER]** in order to procure and supply certain products for and to **[THE CUSTOMER]**; and

IT IS FURTHER RESOLVED:

That the exact Products as well as the terms and conditions of the engagement between the Company and **[THE CUSTOMER]** shall be comprehensively recorded in an Agreement to be drafted; and

ITS IS FURTHER RESOLVED:

That **Pieter Barendse Wilken**, in his capacity as a Director of the Company, be and is hereby authorised and empowered at his sole discretion, to sign all documents, contracts, affidavits, Powers of Attorney with or without power of substitution, or authorizations necessary to give effect to the Resolution herein contained.

CERTIFIED A TRUE EXTRACT:

.....
DIRECTOR

.....
DIRECTOR

.....
DIRECTOR

.....
DIRECTOR

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ANNEXURE "B"**EXTRACT OF THE MINUTES OF A MEETING OF THE MEMBERS OF [THE CUSTOMER] HELD AT****ON** _____**RESOLVED:**

That **[THE CUSTOMER]** shall appoint **WILKEN DEVELOPMENT (PTY) LTD** to attend to the procurement and supply of certain Products and / or items and to execute certain Services to **[THE CUSTOMER]**; and

IT IS FURTHER RESOLVED:

That the exact Products and/or Services as well as the terms and conditions of the engagement between **[THE CUSTOMER]** and **WILKEN DEVELOPMENT (PTY) LTD** shall be comprehensively recorded in an Agreement to be drafted; and

ITS IS FURTHER RESOLVED:

That _____, in his/her capacity as a Director of **[THE CUSTOMER]**, be and is hereby authorised and empowered at his/her sole discretion, to sign all documents, contracts, affidavits, Powers of Attorney with or without power of substitution, or authorizations necessary to give effect to the Resolution herein contained.

CERTIFIED A TRUE EXTRACT:

.....
DIRECTOR/MEMBER

.....
DIRECTOR/MEMBER

.....
DIRECTOR/MEMBER

.....
DIRECTOR/MEMBER

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ANNEXURE “C”**LIST OF PRODUCT/S, DELIVERY OF PRODUCT/S AND CONTRACT PRICE DESCRIPTION****1. LIST OF PRODUCT/S TO BE SUPPLIED**

LIST PRODUCTS

Commented [B5]: Please insert

Commented [B6]: Please insert

2. DELIVERY

METHOD OF DELIVERY (WHEN, WHERE, HOW)

Commented [B7]: Please insert

3. CONTRACT PRICE DESCRIPTION & METHOD OF PAYMENT THEREOF

The contract price is as per the Purchase Order attached hereto.

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ANNEXURE “D”

TENDER DOCUMENT/LETTER OF ENGAGEMENT/BASIS FOR SUPPLIER AGREEMENT/QUOTE



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ANNEXURE "E"**PERSONAL SURETY**

I/we _____ [Print name/s]

hereinafter referred to as "**the Surety/Sureties**", hereby bind myself/ourselves, jointly and severally, to the Supplier (as referred to on page 1 of the Supplier Agreement to which this Annexure is annexed) as surety for and co-principal debtors with the Customer (also as referred to on page 1 of the Supplier Agreement to which this Annexure is annexed):

1. For the due and punctual payment and performance by the Customer of any and all debts and obligations of whatsoever nature and howsoever arising which the Customer may now, or in the future owe to, the Supplier, as the Creditor (all of which debts and obligations are hereinafter referred to as "the obligations"). As part of my/our liability in terms hereof, I/we bind myself/ourselves jointly and severally as aforesaid to pay the amount of all costs, charges and expenses and indebtedness of whatsoever nature, including, but not limited to, legal costs on the attorney and client scale and collection commission incurred by the Supplier in securing (or attempting to secure) fulfilment of the Customer's obligations in and to the Supplier.
2. The Supplier, as the Creditor, shall be entitled without reference or notification to me/us, and without affecting its rights hereunder, and without releasing any surety hereunder, to grant the Customer extensions of time for payment and to compound or to make any other arrangements with the Customer for the discharge of the Customer's indebtedness. The Supplier shall further be entitled, without reference or notification to me/us, to release any one or more of us from our obligations hereunder in whole or part without affecting the rights of the Supplier against the remainder of us, and without reducing the liability of the remainder of us in terms hereof.
3. For the purpose of any action against me/us for provisional sentence, a certificate under the signature of the Supplier as to the amount owing by the Customer to the Supplier and of the fact that the due date for the discharge of the obligations and/or myself/ourselves obligations hereunder has arrived

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shall be sufficient and satisfactory proof of the facts therein stated until the contrary shall have been proved.

4. I/we hereby consent to the jurisdiction of the Magistrate's Court in respect of any action to be instituted against me/us by the Supplier in terms hereof. It shall nevertheless be entirely within the discretion of the Supplier as to whether to proceed against me/us in such Magistrate's Court or any other Court having jurisdiction.
5. I/we acknowledge and understand that as sureties and co-principal debtors, I/we waive and renounce the benefits to which I / we may be entitled to arising from the legal exceptions of, including but not limited to:
 - 5.1 Excussion: The right to require the Supplier to proceed first against the Customer for payment of any debt owing to the Supplier before proceeding against the Surety/Sureties;
 - 5.2 Cession of Action: The right to require the Supplier to give cession of the action for payment of debts to the Surety/Sureties before the action against the Surety/Sureties may be taken;
 - 5.3 The benefit of Simultaneous Citation and Division of Debt: The right of a Co-surety/sureties to be liable only for his *pro-rata* share of the indebtedness;
 - 5.4 The Right to an Accounting from the Supplier.
6. For the purpose of this Suretyship and any proceedings which may be instituted by virtue hereof, I/we hereby choose as an address for the serving of any court process, notices, the payment of any amount and communication of whatsoever nature (*domicilium citandi et executandi*) to be:

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Signed at _____ on ____ of _____ 2018

As witness:

Signed: Witness

Signed: Surety (1)

Print Name: Witness

Print Name: Surety (1)

ID: Surety (1)

Signed: Surety (2)

Print Name: Surety (2)

ID: Surety (2)

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