
SECTION 37(2) HEALTH & SAFETY AGREEMENT

between

NOTSI PV PROPRIETARY LIMITED

("the Employer")

And

THE UNINCORPORATED JOINT VENTURE COMPRISING OF:

CNWE ENERGY PROPRIETARY LIMITED

AND

NORTHWEST ELECTRIC POWER DESIGN INSTITUTE CO., LTD. OF CHINA POWER
ENGINEERING CONSULTING GROUP

("the Contractor")

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PARTIES:

This Agreement is made between:

- (1) **Notsi PV Proprietary Limited**, a company registered in accordance with the laws of South Africa under registration number 2022/692102/07, with its registered office at Great Westerford, 2nd Floor, 240 Main Road, Rondebosch, Cape Town, 7700, South Africa (the "**Employer**"); and
- (2) The unincorporated joint venture comprising of:

CNWE Energy Proprietary Limited, a company registered in accordance with the laws of South Africa under registration number 2025/828008/07, with its registered office at 18 Bougain Villas, Monet Avenue, Century City, Cape Town, Western Cape, 7441, South Africa; and

Northwest Electric Power Design Institute Co., Ltd. of China Power Engineering Consulting Group, a company incorporated in the People's Republic of China under registration number 91610000435231692P, with its registered office at 22 South Tuanjie Road Hi-Tech Industrial Development Zone Xi'an, the Peoples Republic of China,

(the "**Contractor**").

WHEREAS:

- A. The Employer has appointed the Contractor on a joint and several liability basis to perform the Works in accordance with the terms of the Contract.
- B. Notwithstanding the performance of Works by the Contractor for and on behalf of the Employer, the Parties intend that the provisions of Section 37(1) of the Act should not apply to the relationship between the Contractor and the Employer. Accordingly, the parties have agreed to the arrangements and procedures contained in this Agreement to ensure compliance by the Contractor with the provisions of the Act, the regulations made thereunder including Construction Regulations and any other binding regulations in terms of the Act that are relevant to the Works, as amended from time to time.
- C. This Agreement is intended to comply with and constitutes the Agreement contemplated in Section 37(2) of the Act.
- D. As between the Parties, the rights and obligations of each Party under this Agreement constitute rights and obligations under the Contract and shall be regarded, construed and interpreted as rights and obligations under Clause 6.7 (*Health and Safety*) of the Contract. Accordingly, and without limitation, the terms of the Contract apply to this Agreement and govern the Parties' respective rights, liabilities and remedies hereunder.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

In this Agreement, unless the context requires otherwise:

- 1.1 words and expressions defined in the Contract shall, unless otherwise defined in this Agreement or otherwise required by the context of this Agreement, have the same meanings as those ascribed to them in the Contract and Construction Regulations;
- 1.2 **Act** means the Occupational Health and Safety Act, No. 85 of 1993, as amended from time to time, including all regulations to the Act and applicable instructions or directives as may be issued by the Department of Employment and Labour relating to occupational health and safety;
- 1.3 **Agreement** means this agreement entered into in terms of, and as contemplated in, Section 37(2) of the Act;

- 1.4 **Construction Regulations** means the regulations entitled "Construction Regulations, 2014" promulgated in terms of Section 43 of the Act and published under Government Gazette Notice R84 in Government Gazette 37305 of 07 February 2014;
- 1.5 **Contract** means the engineering, procurement and construction contract relating to the design, manufacture, transport, supply, installation, commissioning and testing of a solar PV Facility and related equipment and infrastructure, between the Employer and the Contractor, to which this Agreement is attached as a Schedule, as amended, varied, restated, novated or substituted by the Parties in accordance with such agreement from time to time;
- 1.6 **Parties** means the Employer and the Contractor and **Party** means either one (as the context suggests); and
- 1.7 **Works** means the work to be performed by the Contractor in terms of the Contract.

2. DUTIES AND RESPONSIBILITIES OF THE PARTIES

- 2.1 Notwithstanding the performance of Works by the Contractor for the Employer, the Parties acknowledge and agree that they are separate employers, as contemplated in the Act and accordingly, must each ensure compliance with the provisions of the Act.
- 2.2 In addition to the discharge of their respective obligations in terms of the Act as employers, the Parties acknowledge that the Works are being executed as a turnkey package by the Contractor as more fully detailed and provided for in the Contract. The Construction Regulations apply to the Works. The Contractor warrants that it has the necessary competencies and resources to carry out the Works safely as per regulation 5(1)(h) of the Construction Regulations.
- 2.3 The Contractor shall co-operate with the Employer's Representative as provided for in the Contract and the Construction Regulations so as to ensure that their respective obligations in terms of the Act are complied with and discharged.
- 2.4 The Employer, either itself or through an appointed health and safety Agent, shall discharge its duties as the Client as contemplated in the Construction Regulations. The Contractor shall discharge all duties of the "Principal Contractor" (as defined in the Construction Regulations) and, where applicable the Contractor, in terms of the Construction Regulations.

3. WARRANTIES

- 3.1 The Contractor warrants that it agrees to the arrangements and procedures as prescribed by the Employer and as provided for in terms of Section 37(2) of the Act for the purposes of compliance with the Act.
- 3.2 The Contractor acknowledges that this Agreement constitutes an agreement in terms of Section 37(2) of the Act, whereby all responsibility for health and safety matters relating to the Works the Contractor has to perform shall be the obligation of the Contractor.
- 3.3 The Contractor shall be deemed to be an employer in its own right whilst on the Site and accepts all the duties of an employer as contemplated in the Act in terms of and for the purposes of section 16(1) and 37(2) of the Act. The Contractor shall accordingly ensure that the requirements of the Act and any Regulations promulgated thereunder are complied with by itself and/or its nominated Chief Executive Officer.
- 3.4 The Contractor hereby undertakes to ensure that the health and safety of any person at the Site or any person who may be affected by the Contractor performing the Works is not endangered by its conduct and/or activities while on the Site.
- 3.5 The Contractor shall co-operate with the Employer's Representative as provided for in the Contract and the Act and regulations made thereunder that apply to the Works so

as to ensure that their respective obligations in terms of the Act are complied with and discharged.

- 3.6 The Contractor warrants that the Contract Price includes a sufficient amount for the Contractor's and all Subcontractors' proper compliance with the Act, specifically including the Construction Regulations, all health and safety regulations, rules, guidelines, and as required by any applicable Laws, and generally for the proper maintenance of health and safety in and about the execution of the Works.

4. **ARRANGEMENTS AND PROCEDURES BETWEEN THE PARTIES**

- 4.1 The Contractor shall, in the execution of the Works, provide and maintain, as far as reasonably practicable, a working environment that is safe and without risk to the health of its employees (**Contractor's Personnel**) and other persons present on or around the Site or any person who may be affected by the Works or engaged in the execution of the Works. Without derogating from the generality of this obligation or the Contractor's other responsibilities under the Contract, the Contractor shall, as a minimum do the following:

4.1.1 Hazard identification and risk assessment

- 4.1.1.1. The Contractor shall as far as reasonably practicable, identify all hazards associated with the Works to be performed, assess the risks associated with those hazards and take such steps as may be reasonably practicable to eliminate or mitigate against any hazard or potential hazard to the safety or health of the Contractor's Personnel, before resorting to personal protective equipment. In addition, the Contractor shall comply with the Act, including Construction Regulations, all health and safety regulations, rules, guidelines and procedures, and as required by any applicable Laws, in respect of such specifically identified risks .

- 4.1.1.2. As part of its risk assessments to be undertaken as required by the Act, the Contractor shall carry out appropriate hazard identifications and risk assessments which shall include baseline, issue based and continuous hazard identification and risk assessments to identify the hazards and assess the risks associated with the work to be performed at the Site. The Contractor shall open and maintain a health and safety file as contemplated under regulation 7(1)(b) of the Construction Regulations.

- 4.1.1.3. The Contractor shall provide adequate personal protective equipment, in accordance with regulation 2(1) of the General Safety Regulations (GNR.1031 of 30 May 1986) or as otherwise required under the Act, to the Contractor's Personnel and implement measures to ensure that it is worn by them at all relevant times.

- 4.1.1.4. The Contractor shall ensure that substances or articles that are used in connection with the Works and may pose risk are processed, used, handled, stored or transported in compliance with the applicable Laws.

4.1.2 Written work procedures and instructions relating to the Works

- 4.1.2.1. The Contractor shall ensure that it has an updated copy of the Act at the Site at all times, and that this is accessible to the Contractor's Personnel.

- 4.1.2.2. The Contractor shall as far as is reasonably practicable, prepare, implement, maintain, review and update work procedures, systems of work, standards, rules, codes of practice and/or safe work procedures setting out the manner in which Work must be performed by all of the Contractor's Personnel. In implementing these systems, the Contractor shall ensure that:

- 4.1.2.2.1. the Contractor's Personnel are able, as far as reasonably practicable, to use the systems in order to perform the Works safely and without harm to their health;

- 4.1.2.2.2. there are systems of work which are, as far as reasonably practicable, safe and without risks to health;
- 4.1.2.2.3. as far as is reasonably practicable, that the Contractor's Personnel are conversant with these procedures and that they comply with the measures set out in order that the Works can be performed safely;
- 4.1.2.2.4. it has taken all necessary measures as far as is reasonably practicable, to ensure that the applicable requirements of the Act are complied with by the Contractor's Personnel; and
- 4.1.2.2.5. the systems include measures for the appropriate inspections on a daily basis and provide for regular planned maintenance of equipment and plant.
- 4.1.2.3. The procedures will as far as is reasonably practicable, form part of the health and safety training, including all such required periodic refresher health and safety training, and communication provided by the Contractor to the Contractor's Personnel.

4.1.3. Appointment and/or designation of competent personnel

- 4.1.3.1. The Contractor shall appoint competent persons as contemplated in the Act and as contemplated under the Construction Regulations.
- 4.1.3.2. In accordance with Section 16(2) of the Act, the Contractor's chief executive officer, without derogating from his or her responsibility or liability, may assign any duty contemplated in the Act to competent person(s) under his or her control, which person(s) shall act subject to the control and direction of the Contractor's chief executive officer. The designated person(s) appointed in terms of Section 16(2) of the Act shall be trained on any occupational health and safety matter, including any provisions in the Act pertinent to the Works.
- 4.1.3.3. The Contractor shall as far as reasonably practicable, ensure that its appointed responsible persons and the Contractor's Personnel are at all times familiar with the provisions of the Act and that they comply with the provisions.
- 4.1.3.4. The Contractor shall not appoint any subcontractor(s) to perform any work unless it is reasonably satisfied that the subcontractor has the necessary competencies and resources to perform the work safely.
- 4.1.3.5. The Contractor shall ensure that each Subcontractor and any other personnel assisting the Contractor in the execution of the Works complies with, adheres to and undertakes the health and safety related responsibilities, obligations and activities required of the Contractor. In this regard the Contractor shall:
 - 4.1.3.5.1. not appoint any Subcontractor(s) to perform any work unless it is reasonably satisfied that the Subcontractor has the necessary competencies and resources to perform the work safely;
 - 4.1.3.5.2. ensure that prior to work commencing on the Site that every Subcontractor is registered and in good standing with the Compensation Fund or with a licensed compensation insurer as contemplated in Compensation of Occupational Injuries and Diseases Act;
 - 4.1.3.5.3. ensure that periodic health and safety audits are conducted at the Site where work is carried out by any Subcontractors at reasonable intervals mutually agreed upon between the Contractor and any Subcontractor;
 - 4.1.3.5.4. keep a comprehensive and updated list of all the Subcontractors providing the Works on the 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 Employer and available on request.

4.1.4. Establishment of health and safety committees

- 4.1.4.1. The Contractor shall designate health and safety representatives in compliance with Section 17 of the Act and ensure that these health and safety representatives perform the functions assigned to them as contemplated in Section 18 of the Act.
- 4.1.4.2. The Contractor shall establish a health and safety committee(s), and ensure that as far as reasonably practicable, the Contractor's health and safety representatives and the Contractor's Personnel, being committee members, hold health and safety meetings as often as may be required, and at least once every 3 (three) months.
- 4.1.4.3. The Contractor shall ensure as far as reasonably practicable, that the Contractor's health and safety committees perform the functions assigned to them as contemplated in Section 20 of the Act.

4.1.5. Provision of health and safety training and instructions

The Contractor undertakes to take all precautions, to the extent reasonably practicable, to maintain the health and safety of the Contractor's Personnel. In this regard, the Contractor shall:

- 4.1.5.1. provide health and safety training to the Contractor's Personnel as contemplated in the Act which must meet the requirements of an employer's duty to inform, as contemplated in Section 13 of the Act, which, without limitation, includes:
 - 4.1.5.1.1. providing appropriate information, instructions and training, including all such required periodic refresher health and safety training, to the Contractor's Personnel, which will include communication of information regarding the hazards associated with the Works to be performed;
 - 4.1.5.1.2. ensure that it provides access to the Site to the Employer (or its nominee) to carry out periodic health and safety audits in compliance with the Construction Regulations;
 - 4.1.5.1.3. ensuring that the Contractor's Personnel understand the hazards and assessed risks associated with Work to be performed;
 - 4.1.5.1.4. ensuring that users and operators of Goods are properly trained in the use thereof in accordance with the Act; and
 - 4.1.5.1.5. ensuring that all the Contractor's personnel comply with all training and information obligations in respect of any personal protective equipment required and/or issued.

4.1.6. Supervision, Discipline and Reporting

- 4.1.6.1. The Contractor shall ensure that the Works performed at the Site are done under the strict supervision of the competent persons, and that no unsafe or unhealthy work practices are permitted. Discipline regarding health and safety matters shall be strictly enforced against any of the Contractor's Personnel regarding non-compliance by such Personnel with any health and safety matter.
- 4.1.6.2. The Contractor shall ensure that, as far as reasonably practicable, the Contractor's Personnel are to be informed, in writing, regarding the scope of their authority in compliance with Section 8(2)(j) of the Act.
- 4.1.6.3. The Contractor shall ensure that its employees carrying out the Works have been appointed and authorised in writing to perform the Works and/or operate plant or machinery.

- 4.1.6.4. The Contractor shall ensure as far as reasonably practicable, that the Contractor's Personnel report all unsafe or unhealthy working situations immediately after they become aware of such unsafe or unhealthy work situations to their direct supervisor.
- 4.1.6.5. The Contractor shall ensure as far as reasonably practicable, all reportable incidents involving its employees and/or equipment in the performance of the Works, are reported to the Department of Employment Labour and investigated as required by Section 24 of the Act, read with General Administrative Regulation 8.
- 4.1.6.6. The Contractor shall ensure that, as far as reasonably practicable, all the Contractor's equipment and plant are of sound order and fit for the purpose for which they are intended and that they comply with the requirements of Section 10 of the Act.
- 4.1.6.7. The Contractor shall implement a system to ensure, as far as reasonably practicable, that all its employees obey all health and safety rules and procedures laid down by the Contractor in the interest of health and safety.
- 4.1.6.8. The Contractor shall ensure that it keeps a consolidated health and safety file as required by the Construction Regulations (Health and Safety File). The Health and Safety File shall be made available to the Employer upon request and upon the termination or expiry (whichever occurs earlier) of the Contract.
- 4.1.6.9. The Contractor shall ensure that it notifies the Employer of the identity of its full-time construction supervisor contemplated in the Construction Regulations and whose obligation it is to supervise construction work, prior to commencing any construction on the Site.
- 4.1.6.10. The Contractor shall ensure that it complies with the guidelines to the Construction Regulations in relation to housekeeping on the Site.

5. SUBSTANCE ABUSE

- 5.1 There shall be zero tolerance for substance abuse at the Site. The Contractor shall put in place suitable measures to ensure that Contractor's Personnel are not under the influence at Site. If Contractor's Personnel are found to be under the influence of substance(s), at the Site, the Contractor shall take necessary steps against such person (including disciplinary action, where appropriate, and the immediate removal of the person from the Site).
- 5.2 Being "*under the influence*" includes the presence of drugs or alcohol in a person's system (whether detectable through behaviour and/or testing) to the extent the person's faculties are in any way impaired and/or to the extent the person is unable to perform work in a safe and productive manner. Insofar as the consumption of alcohol is concerned, alcohol levels in the blood in excess of 0.00 percent shall be considered as being under the influence. Without limitation, persons shall likewise be considered to be under the influence where the presence of drugs or alcohol corresponds to or exceeds accepted medical standards or those prescribed under applicable Laws.

6. FIRE PRECAUTIONS AND FACILITIES

- 6.1 The Contractor shall ensure that an adequate supply of fire protection and first aid facilities are provided at the Site.
- 6.2 The Contractor shall ensure that the Contractor's Personnel are familiar with the emergency procedures and fire precautions at the Site which include fire alarm signals and emergency exits and that such precautions are adhered to.

7. COMPLIANCE WARRANTY

The Contractor warrants that it complies with and undertakes that it will continue to comply with the Act and that, by virtue of the arrangements contained herein, the

provisions of Section 37(1) of the Act do not and will not apply between the Contractor and the Contractor's Personnel, and the Employer.

8. **DURATION OF AGREEMENT**

This Agreement shall remain in force for the duration of the Contract and/or whilst the Contractor, its subcontractors and the Contractor's Personnel are present at the Site.

9. **COUNTERPARTS**

This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Either Party may enter into this Agreement by signing any such counterpart.

10. **NON-VARIATION AND NON-WAIVER**

10.1 No variation, amendment, or consensual cancellation of this Agreement or any provision or term thereof (including this clause) shall be binding or have any force or effect unless reduced to writing and signed by or on behalf of the Parties (by duly authorized representatives).

10.2 Without derogating from the foregoing, no agreement or purported agreement reached at any project review or other meeting in connection with the Works, notwithstanding that it may be contained in any minute signed by or on behalf of the Parties, shall constitute an amendment to this Agreement unless and until incorporated in a formal addendum to this Agreement which is signed by or on behalf of the Parties (by duly authorized representatives).

10.3 No waiver or relaxation of any of the provisions or terms of this Agreement shall operate as an estoppel against a party in respect of any of its rights in terms of this Agreement.

10.4 No failure by a Party to enforce any provision of this Agreement shall constitute a waiver of such provisions or affect in any way such Party's rights to require the performance of such provision at any time in the future, nor shall a waiver of a subsequent breach nullify the effectiveness of the provision itself.

SIGNED by the Parties on the following dates and at the following places respectively.

SIGNED at _____ on this the ____ day of _____ 20__

For and on behalf of:
The Employer

Signatory:
Capacity:
Who warrants his authority hereto

SIGNED at _____ on this the ____ day of _____ 20__

For and on behalf of the Contractor:
CNWE ENERGY PROPRIETARY LIMITED

Signatory:
Capacity:
Who warrants his authority hereto

SIGNED at _____ on this the ____ day of _____ 20__

For and on behalf of the Contractor:
**NORTHWEST ELECTRIC POWER DESIGN
INSTITUTE CO., LTD. OF CHINA POWER
ENGINEERING CONSULTING GROUP**

Signatory:
Capacity:
Who warrants his authority hereto