

**IN THE REGIONAL COURT  
(Mpumalanga, Middelburg)**

**CASE NUMBER:**

**In the matter of:**

**THE STATE**

**versus**

**MATSHELA MOSES KOKO AND 16 OTHERS  
(hereinafter referred to as the accused)**

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**DRAFT CHARGE SHEET**

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**IN THE REGIONAL COURT  
(Mpumalanga: Middelburg)**

After consultation with the Director of Public Prosecutions: Mpumalanga Division, Middelburg, in terms of section 24(2) of Act 32 of 1998<sup>1</sup>, the Investigating Director, appointed in terms of Presidential Minute no 158 as head of the Investigating Directorate<sup>2</sup>, who as such prosecutes for and on behalf of the State, presents and informs the Court that:

**MATSHELA MOSES KOKO**

An adult South African male citizen with identification number 6903095350087, residing at 683 Saraton Estate, Cedar Avenue West, Maroeladal Extension 10, Fourways, Johannesburg (in his personal capacity)

(hereinafter referred to as **ACCUSED 1**)

**HLUPHEKA FRANS SITHOLE**

An adult South African male citizen with identification number 7207075482087 residing at 378 Lombardy Estate, Pretoria East (in his personal capacity)

(hereinafter referred to as **ACCUSED 2**)

**MOSIMA ELIZABETH KOKO**

An adult South African female citizen with identification number 7112270300086 residing at 683 Saraton Estate, Cedar Avenue West, Maroeladal Extension 10, Fourways, Johannesburg (in her personal capacity)

(hereinafter referred to as **ACCUSED 3**)

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<sup>1</sup> National Prosecuting Authority Act

<sup>2</sup> Established by Proclamation No. 20 of 2019 of 25 March 2019 as published in Government Gazette No. 42383 on 4 April 2019

### **TURNKEY FINISHINGS (PTY)LTD**

A private company duly incorporated in terms of the Companies Act 61 of 1973 as amended, as represented by its Director, **ACCUSED 3**, in terms of Section 332 of the Criminal Procedure Act 51 of 1977.

(hereinafter referred to as **ACCUSED 4**)

### **DOMINION CAPITAL (PTY)LTD**

A private company duly incorporated in terms of the Companies Act 61 of 1973 as amended, as represented by its Director, **ACCUSED 3**, in terms of Section 332 of the Criminal Procedure Act 51 of 1977.

(hereinafter referred to as **ACCUSED 5**)

### **KOKETSO AREN**

An adult South African female citizen with identification number 9009120583085 residing at 30 Bantry Close Road Johannesburg (in her personal capacity)

(hereinafter referred to as **ACCUSED 6**)

### **FIRM STRATEGY (PTY)LTD**

A private company duly incorporated in terms of the Companies Act 61 of 1973 as amended, as represented by its Director, **ACCUSED 6**, in terms of Section 332 of the Criminal Procedure Act 51 of 1977.

(hereinafter referred to as **ACCUSED 7**)

### **THABO OWEN MOKWENA**

An adult South African male citizen with identification number 7009195761089 residing at 4 Clonmore Road, Bryanston, Sandton (in his personal capacity)

(hereinafter referred to as **ACCUSED 8**)

**LEAGO EPC (PTY)LTD**

A private company duly incorporated in terms of the Companies Act 61 of 1973 as amended, as represented by its Director, **ACCUSED 8**, in terms of Section 332 of the Criminal Procedure Act 51 of 1977.

(hereinafter referred to as **ACCUSED 9**)

**LEAGO CONSOLIDATED (PTY)LTD**

A private company duly incorporated in terms of the Companies Act 61 of 1973 as amended, as represented by its Director, **ACCUSED 8**, in terms of Section 332 of the Criminal Procedure Act 51 of 1977.

(hereinafter referred to as **ACCUSED 10**)

**JOHANNES CHRISTIAAN COETZEE**

An adult South African male citizen with identification number 6304225188085 residing at 55 St Michael Street, Clubville Middelburg (in his personal capacity)

(hereinafter referred to as **ACCUSED 11**)

**WATSON SEBATAOLO SESWAI**

An adult South African male citizen with identification number 7604235358054 residing at 22 Pytchley, Unit 4, Bryanston, Johannesburg (in his personal capacity)

(hereinafter referred to as **ACCUSED 12**)

**THATO CHOMA**

An adult South African female citizen with identification number 9106290469085 residing at 683 Saraton Estate, Cedar Avenue West, Maroeladal Extension 10, Fourways, Johannesburg (in her personal capacity)

(hereinafter referred to as **ACCUSED 13**)

**THRONE CONCEPTS (PTY)LTD**

A private company duly incorporated in terms of the Companies Act 61 of 1973 as amended, as represented by its Director, **ACCUSED 13**, in terms of Section 332 of the Criminal Procedure Act 51 of 1977

(hereinafter referred to as **ACCUSED 14**)

**SUNIL VIP**

An adult German male citizen with passport number C7MVM57WP residing in Germany (in his personal capacity)

(hereinafter referred to as **ACCUSED 15**)

**MARKUS BRUEGMANN**

An adult German male citizen with passport number C4YLG129 residing in Germany (in his personal capacity)

(hereinafter referred to as **ACCUSED 16**)

**IMPULSE INTERNATIONAL (PTY)LTD**

A private company duly incorporated in terms of the Companies Act 61 of 1973 as amended, as represented by its Director, **Davania Pather**, in terms of Section 332 of the Criminal Procedure Act 51 of 1977.

(hereinafter referred to as **ACCUSED 17**)

**GOPAL SHAMJI KAMBI**

An adult male and British citizen with passport number 099194310 residing in the United Kingdom (in his personal capacity)

(hereinafter referred to as **ACCUSED 18**)

DRAFT

The accused are guilty of the following offences:

1. **Count 1:** Fraud read with Section 51 (2)(a) of the Criminal law Amendment Act, 51 of 1997. **Only in Respect of Accused 1**
2. **Count 2:** Fraud read with Section 51 (2)(a) of the Criminal law Amendment Act, 51 of 1997. **Only in Respect of Accused 2**
3. **Count 3:** Contravention of section 13(1)(a) of the Prevention and Combating of Corrupt Activities Act, 12 of 2004 and read with Section 51 (2)(a) of the Criminal law Amendment Act, 51 of 1997. **Only in respect of Accused 1, 8, 9, 10**  
**First Alternative:** Contravention of section 12(1)(a) of the Prevention and Combating of Corrupt Activities Act, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1, 8, 9, 10**  
**Second Alternative:** Contravention of section 4(1)(a) of the Prevention and Combating of Corrupt Activities Act, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1**  
**Third Alternative:** Contravention of section 10(a) of the Prevention and Combating of Corrupt Activities Act, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1**  
**Fourth Alternative:** Contravention of section 3(1)(a) of the Prevention and Combating of Corrupt Activities Act, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1, 8, 9, 10**
4. **Count 4:** Contravention of Section 12(2)(a) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of 15,16**  
**First Alternative:** Contravention of Section 12(1)(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of 15, 16**  
**Second Alternative:** Contravention of Section 4(1)(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of 15, 16**  
**Third Alternative:** Contravention of Section 10(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of 15, 16**  
**Fourth Alternative:** Contravention of Section 3(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of 15, 16**

5. **Count 5:** Contravention of Section 13(2)(a) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1**
- First Alternative:** Contravention of Section 12(1)(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1**
- Second Alternative:** Contravention of Section 4(1)(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1**
- Third Alternative:** Contravention of Section 3(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1**
6. **Count 6:** Contravention of Section 12(1)(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1, 2**
- First Alternative:** Contravention of Section 4(1)(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1, 2**
- Second Alternative:** Contravention of Section 10(a) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1, 2**
- Third Alternative:** Contravention of Section 3(a) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1, 2**
7. **Count 7:** Contravention of Section 12(1)(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 15, 17**
- First Alternative:** Contravention of Section 4(1)(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 15, 17**
- Second Alternative:** Contravention of Section 10(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 15, 17**
- Third Alternative:** Contravention of Section 3(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 15, 17**



8. **Count 8:** Contravention of Section 12(1)(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1, 2**  
**First Alternative:** Contravention of Section 4(1)(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1, 2**  
**Second Alternative:** Contravention of Section 10(a) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1, 2**  
**Third Alternative:** Contravention of Section 3(a) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1, 2**
9. **Count 9:** Contravention of Section 12(1)(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 17**  
**First Alternative:** Contravention of Section 4(1)(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 17**  
**Second Alternative:** Contravention of Section 10(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 17**  
**Third Alternative:** Contravention of Section 3(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 17**
10. **Count 10:** Contravention of Section 12(1)(a) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1**  
**First Alternative:** Contravention of Section 4(1)(a) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1**  
**Second Alternative:** Contravention of Section 10(a) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1**  
**Third Alternative:** Contravention of Section 3(a) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 1**

11. **Count 11:** Contravention of Section 12(1)(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 12, 17**  
**First Alternative:** Contravention of Section 4(1)(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 12, 17**  
**Second Alternative:** Contravention of Section 10(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 12, 17**  
**Third Alternative:** Contravention of Section 3(b) of the Prevention and Combating of Corrupt Activities, 12 of 2004 read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 12, 17**
12. **Count 12:** Fraud read with Section 51 (2)(a) of the Criminal law Amendment Act, 51 of 1997. **Only in respect of Accused 2, 18**
13. **Count 13:** Contravention of Section 4 of the Prevention of Organised Crime Act, 121 of 1998 **Only in respect of Accused 13, 14**  
**First Alternative:** Contravention of Section 5(a) and/or (b) of the Prevention of Organised Crime Act, 121 of 1998 **Only in respect of Accused 13, 14**  
**Second Alternative:** Contravention of Section 6 of the Prevention of Organised Crime Act, 121 of 1998 **Only in respect of Accused 13, 14**
14. **Count 14:** Contravention of Section 4 of the Prevention of Organised Crime Act, 121 of 1998 **Only in respect of Accused 13**  
**First Alternative:** Contravention of Section 5(a) and/or (b) of the Prevention of Organised Crime Act, 121 of 1998 **Only in respect of Accused 13**  
**Second Alternative:** Contravention of Section 6 of the Prevention of Organised Crime Act, 121 of 1998 **Only in respect of Accused 13**
15. **Count 15:** Fraud read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 8, 10**
16. **Count 16:** Fraud read with Section 51(2) of the Criminal Law Amendment Act, 51 of 1997. **Only in respect of Accused 8, 10**
17. **Count 17:** Contravention of Section 4 of the Prevention of Organised Crime Act, 121 of 1998 **Only in respect of Accused 3, 4**  
**First Alternative:** Contravention of Section 5(a) and/or (b) of the Prevention of Organised Crime Act, 121 of 1998 **Only in respect of Accused 3, 4**  
**Second Alternative:** Contravention of Section 6 of the Prevention of Organised Crime Act, 121 of 1998 **Only in respect of Accused 3, 4**

18. **Count 18:** Contravention of Section 4 of the Prevention of Organised Crime Act, 121 of 1998  
**Only in respect of Accused 3, 5**  
**First Alternative:** Contravention of Section 4 of the Prevention of Organised Crime Act, 121 of 1998  
**Only in respect of Accused 3, 5**  
**Second Alternative:** Contravention of Section 5(a) and/or (b) of the Prevention of Organised Crime Act, 121 of 1998  
**Only in respect of Accused 3, 5**  
**Third Alternative:** Contravention of Section 6 of the Prevention of Organised Crime Act, 121 of 1998  
**Only in respect of Accused 3, 5**
19. **Count 19:** Contravention of Section 4 of the Prevention of Organised Crime Act, 121 of 1998  
**Only in respect of Accused 3, 5**  
**First Alternative:** Contravention of Section 5(a) and/or (b) of the Prevention of Organised Crime Act, 121 of 1998  
**Only in respect of Accused 3, 5**  
**Second Alternative:** Contravention of Section 6 of the Prevention of Organised Crime Act, 121 of 1998  
**Only in respect of Accused 3, 5**
20. **Count 20:** Contravention of Section 4 of the Prevention of Organised Crime Act, 121 of 1998  
**Only in respect of Accused 6, 7**  
**First Alternative:** Contravention of Section 5(a) and/or (b) of the Prevention of Organised Crime Act, 121 of 1998  
**Only in respect of Accused 6, 7**  
**Second Alternative:** Contravention of Section 6 of the Prevention of Organised Crime Act, 121 of 1998  
**Only in respect of Accused 6, 7**
21. **Count 21:** Contravention of Section 4 of the Prevention of Organised Crime Act, 121 of 1998  
**Only in respect of Accused 6, 7, 11**  
**First Alternative:** Contravention of Section 5(a) and/or (b) of the Prevention of Organised Crime Act, 121 of 1998  
**Only in respect of Accused 6, 7, 11**  
**Second Alternative:** Contravention of Section 4 of the Prevention of Organised Crime Act, 121 of 1998  
**Only in respect of Accused 6, 7, 11**
22. **Count 22:** Contravention of Section 4 of the Prevention of Organised Crime Act, 121 of 1998  
**Only in respect of Accused 2**
23. **Count 23:** Contravention of Section 4 of the Prevention of Organised Crime Act, 121 of 1998  
**Only in respect of Accused 1**
24. **Count 24:** Contravention of section 3(1)(a) read with Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.  
**Only in respect of Accused 18**
25. **First Alternative:** Contravention of section 10(a) read with Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.  
**Only in respect of Accused 18**

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## PREAMBLE TO THE CHARGE SHEET

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## I. INTRODUCTION – THE ROLE PLAYERS

### A. Eskom (SOC)Ltd

- 1 Eskom Holdings SOC Limited (“**Eskom**”) is a public company duly incorporated in terms of the Eskom Conversion Act, Act 13 of 2001 and the company laws of South Africa with registration number 2002/015527/30 having a share capital held by the Government of the Republic of South Africa.
- 2 Eskom is classified as an organ of the State in accordance with the provisions of Section 239 of the Constitution of the Republic of South Africa Act, Act 108 of 1996 (“**The Constitution**”).
- 3 Eskom is also incorporated as a State-Owned Entity (“**SOE**”) in terms of the Companies Act, Act 71 of 2008 (“**Companies Act**”) and a major public entity in terms of Schedule 2 of the Public Finance Management Act, Act 1 of 1999 (“**PFMA**”).
- 4 Eskom Rotek Industries (“**ROTEK**”) is a wholly-owned subsidiary of Eskom Enterprises, which in turn forms part of Eskom. It was established to provide construction, maintenance, and transportation services in support of Eskom operations.
- 5 Procurement of goods and services by Eskom is regulated by Section 217 of The Constitution, the PMFA, the Preferential Procurement Policy Framework Act 5 of 2000 (“**PPPFA**”), and the Preferential Procurement Regulations, in terms of which Eskom is legally obliged to create and maintain a procurement system enabling the contracting of goods and services in a manner that is fair, equitable, transparent, competitive, and cost-effective.
- 6 In terms of section 49 of the PFMA, every entity must have an authority which must be accountable for the purposes of the PMFA. The Eskom Board is the accounting authority for purposes of the PMFA.
- 7 The Technology and Commercial Group within Eskom is mandated to lead procurement and is the supply chain management entity within Eskom which ensures standardisation of procedures and processes across procurement and supply chain operations.

- 8 The Eskom Board is required to have and maintain an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive, and cost-effective. In giving effect to this, the core fiduciary duties of the Eskom Board are to:
  - 8.1 exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity
  - 8.2 act with fidelity, honesty, integrity and in the best interest of the public entity in managing the financial affairs of the public entity; and
  - 8.3 to seek to prevent any prejudice to the financial interest of the State.
- 9 In accordance with the legislative framework and the required governance practices, Eskom's Delegation of Authority Policy (as approved by the Eskom Board of Directors and updated from time to time) created the financial and commercial parameters for decision-making, approvals and consents across Eskom and specifically within the procurement and supply chain environment.
- 10 Procurement and the supply chain operation within Eskom are furthermore governed normatively by the latest revisions of:
  - 10.1 Eskom's Conflict of Interest Policy
  - 10.2 the Eskom Code of Ethics; and
  - 10.3 the Eskom Lifesaving Rules with respect to ethical and safe conduct.

Procurement and Supply Chain's Management Procedure (32 -1034)

- 11 Eskom's development of the Approved Procurement Framework is based on the aforementioned legal and policy considerations. The specific processes and operational aspects of the procurement and supply chain environment within Eskom are set out in detail for use by its Procurement Practitioners within the latest revision of Eskom's Procurement and Supply Chain Management Procedure and the various Process Control Manuals.

- 12 Eskom's Procurement and Supply Chain Management Procedure (32 -1034) is applicable to Eskom, its divisions, wholly-owned subsidiaries and entities wherein Eskom has a controlling interest, operating in terms of South African law, which are subject to the provisions of the PMFA.
- 13 Eskom's Procurement and Supply Chain Management Procedure (32 -1034) was authorized by Accused 1 on 19 May 2014 in his position as Group Executive (Acting) Technology and Commercial.
- 14 Eskom's Procurement and Supply Chain's Management Procedure states in paragraph 3.5.1 (i) as follows with respect to appointing a service provider in terms of the Sole Source Process:

*"Where, as a result of proven in-depth market analysis, only one supplier in the market has been identified as being capable or available to supply the assets, goods or services in the existing circumstances, it may then become necessary to deviate from competitive tendering and follow the sole source process.*

...

*There are a number of ways in which a supplier may be justified as a sole source:*

a. *True Sole Source (Monopoly)*

*Assets, goods or services can be supplied only by a particular supplier and no reasonable alternatives or substitute exist such as reasons connected with intellectual property rights (e.g., patents or copyrights), or in the absence of competition.*

*Thorough market research must be done to ensure that a true monopoly exists both in local, national, and international markets. In the longer terms, Eskom should consider alternatives or try to encourage development of competition.*

b. *Installed Base (original Equipment Manufacturer (OEM))*

...

c. *Incompatible Material*

...

d. *Established (On-Site) Supplier*

*At times, additional works or services not forming part of the initial contract become necessary in order to complete the plant, system or structure. If separating the additional works/services from the original contract will be difficult for technical or economic reasons and/or the separation will cause significant cost or time constraints for Eskom, a valid sole source motivation exists.*

*The Procurement Practitioner together with the End-User/cross-functional team must do a formal cost/benefit analysis to establish whether it is more cost-effective to continue with the established supplier, or whether to request competitive tenders/proposals. This must form part of the motivation for the use of the supplier as a sole source.”*

- 15 Eskom’s Procurement and Supply Chain’s Management Procedure states at paragraph 3.5.2 as follows with respect to Emergency Procurement:

*“Emergency procurement must be differentiated from an “urgent” requirement which is foreseeable and not necessarily immediate in need, as opposed to an imminent/immediate and unforeseeable requirement without which, an emergency, as defined below, will arise.*

*Requirements for foreseeable “urgent” procurement where any of the below-mentioned threats/risks to Eskom will only materialise after a period of time and therefore cannot be considered immediate, must still be administered via a PR in the SAP system, using the normal procurement methods and sourcing mechanisms....*

*When emergencies arise and there is no procurement function immediately available, i.e., after working hours or at a remote location, or when a procurement function is available, but there is limited time to initiate a normal procurement process via one of the acceptable procurement methods or sourcing mechanisms, the emergency procurement procedure may be used to resolve the emergency through the procurement of the required assets, goods, or services.*

*An emergency is a situation that may imminently/immediately (i.e., within 24 hours) gives rise to the following threats/risks to ESKOM which cannot be*



*readily alleviated through any other means or interim measures, unless the relevant assets, goods, services are procured:*

- a. Threats to human life or safety.*
- b. Threats of interruptions in the supply of electricity to customers or load loss.*
- c. Threats of substantial ecological damage.*
- d. The threat of major consequential expense to ESKOM; or*
- e. The threat of serious damage to ESKOM's reputation and good name"*

16 Eskom's policy relating to unsolicited tenders is stated at 3.4.5.8 of the policy:

*"Eskom is not obliged to consider unsolicited offers outside a competitive tender process, or outside mandated negotiations.*

*There are two (2) types of unsolicited offers that may be received:*

- The first type is an offer that is made by a supplier when there is no procurement process; and*
- The second type is made during a closed/limited competitive process (tender or competitive negotiations) where an "uninvited" supplier has approached an Eskom employee/director before the closing date requesting to submit a tender/offer.*

*Eskom employees that are approached with the first type of unsolicited offer should immediately refer the supplier to the SD&L Department within Group Technology and Commercial to engage in this registration process without further representation, engagement or commitment.*

*...*

*The Procurement Practitioner should then refer the matter to the relevant General Manager: Commercial, for decision-making. A management decision, documented for audit purposes, should then be taken as to whether to allow the unsolicited offer...*

*If the relevant GM: Commercial, decides to consider an unsolicited offer, the following considerations must be taken into account:*

- The assets, goods or services offered in terms of the unsolicited tender/offer is a unique innovative concept that is proven to be exceptionally beneficial to, or proven to have exceptional cost advantages for Eskom; and/or*

- *The supplier making the offer is the sole provider of the assets, goods or services in the circumstances; and/or*
- *The need for the assets, goods or services by Eskom has been approved during its strategic planning, budgeting and/or investment processes.”*

#### Conflict of Interest Policy (32-173)

- 17 Eskom’s Conflict of Interest Policy, which was authorised on 29 August 2014, sets out the obligations of employees and directors regarding conflicts of interest and the declaration and management of these interest.
- 18 The Conflict of Interest Policy states that “*Eskom subscribes to ethical values and legal principles. This requires that Eskom, its directors, employees, customers, and suppliers act with integrity and create public confidence by conducting business in a fair, impartial and transparent manner. For this reason, Eskom makes every effort to ensure that conflicts of interest do not compromise or are not perceived to compromise its business decisions and actions.*”
- 19 All employees and directors have, in accordance with the Conflict of Interest Policy, an obligation to declare and manage conflicts of interest. The obligation is to declare all conflicts of interest, directorships, memberships, details of any related or inter-related persons or other associates that do business with Eskom, and all material personal interest, whether a conflict exists or not.
- 20 The Conflict of Interest Policy also states that, in addition to the prescribed annual declaration, any conflict must be declared as soon as the employee or director knows that it has arisen, which requires that an amendment to the annual declaration must be submitted within five working days of knowing that such conflict has arisen.
- 21 Even if there are no conflicts of interest, the prescribed electronic form must still be completed and submitted by the directors and employees with a task grading of nine and above.
- 22 Junior Management is level 14 – 16, Middle Management is Level 17 and 18, Senior Management is Level 19 (Band E), while General Executives are Band F.

- 23 The fact that an employee or a director declared a conflict of interest, does not mean that it has been addressed, and the conflict must further be managed responsibly.
- 24 Where there is a conflict of interest (actual, potential, or perceived), it is required that the employee or director *“must refrain from being part of any deliberations, document preparations, execution or meetings and must not have access to information dealing to that particular matter”*.
- 25 The policy specifically states that *“related parties of employees must not engage in, nor have interest in any Eskom contract where there is a conflict of interest. This includes third-party-related transactions with an indirect link to an Eskom contract (for example, having a personal or other interest in a business that has an interest in a Supplier to Eskom).*
- 26 Employees may not have a personal or other interest in an Eskom contract, whether as a supplier, an advisor, or by virtue of being a director or owner of a business, or any other capacity. The policy further states that *“this includes third party related transactions with an indirect link to an Eskom contract (for example, having a personal or other interest in a business that has an interest in a Supplier of Eskom”*.
- 27 In terms of paragraph 3.3.3 of the Conflict of Interest Policy, the situations where conflicts could arise are listed as inter alia:
- “(a) the acceptance and/or offering of business courtesies,*
  - (b) directors having private business interests in entities that do or might do business with Eskom,*
  - (c) directors and employees having affiliations with non-profit organisations that received funding or any form of aid from Eskom.*
  - and*
  - (d) private, professional, political, academic, or other interest that may conflict with Eskom’s interests”*.
- 28 Persons are considered “related” for purposes of declaration of interests as per the policy if they, inter alia:

*“(i) are married or live together in a relationship similar to a marriage, or*

*(ii) are separated by no more than two degrees of natural or adopted consanguinity or affinity”.*

29 The policy defines related and inter-related as follows:

*“Related:*

*a. When used in respect of two persons, means persons who are connected to one another in any manner contemplated below:*

*(a)an individual is related to another individual if they –*

*(i) are married, or live together in a relationship similar to a marriage; or*

*b. are separated by no more than two degrees of natural or adopted consanguinity or affinity;*

*Inter-related:*

*When used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related to the third in any such manner, and so forth in an unbroken series.”*

30 According to Eskom’s Declaration of Interest Procedure document, every Eskom employee has a duty to avoid a conflict of interest.

31 According to the policy, a conflict of interest arises when one’s personal interests, personal financial interest, or any other interests, affect, or could be perceived to affect or has the potential to affect one’s objectivity and discretion and/or the objectivity and discretion of another in performing Eskom duties or making decisions on behalf of Eskom.

32 A personal interest is defined as an interest that *“may be an actual or potential, direct or indirect interest of an employee or a director, or of a related person or an inter-related person or other associates of the employee or director, in any business, entity, undertaking, or investment, as a shareholder, director, associate, member, advise/consultant, prescribed officer or in any other capacity”*.

33 The obligation in terms of the procedure is to *“declare all interest, regardless of whether they are conflicting, directorships, memberships, details of any related or inter-related*

*persons, or other associates that does business with Eskom and all material personal interest, whether a conflict exists or not*”.

## **B. KUSILE**

34 Kusile is a coal-fired power plant under construction located in the Nkangala district of Mpumalanga, South Africa.

35 Kusile is a Ndebele and Siswati word meaning “*the dawn has come*”.

36 Construction at Kusile started in 2008 and will, once completed, be the fourth-largest coal-fired power station in the world.

37 It comprises of 6 units and Balance of Plant (“**BOP**”), each unit rated at 800MW installed capacity for a total capacity of 4800MW.

38 The **C&I** works package is one of the 45 main packages at Kusile. The C&I works require the supply of the electronic “brain” of the power station.

39 The C&I system controls the switches, valves, and other mechanical and electronic functioning of the whole system. The C&I system is fundamental to the control of all operating and interfacing parts of Kusile and to connecting these to ensure that the Kusile functions properly and safely.

## **C ZAABB**

40 ABB SA (Pty)Ltd (“**ZAABB**”) was registered as a private company on 19 March 1965, with its registered office at ABB Campus, 2 Lake Road, Longmeadow Business Park (North), Modderfontein.

## **D ACCUSED 1**

41 With the assistance of Eskom, Accused 1 was admitted to study for a B.Sc. Engineering degree at the University of Cape Town, for which Eskom provided financial assistance.

42 Accused 1 obtained his degree in 1995, whereafter he joined Eskom in 1996.

- 43 Accused 1 married Accused 3 on 9 December 2009.
- 44 Accused 1 is the stepfather of Accused 6 and Accused 13.
- 45 Accused 1 was employed by Eskom from 1998 until his resignation on 16 February 2018 and held the following positions during the relevant period:
- 45.1 Acting Group Executive for Technology and Commercial from 1 May 2014,
- 45.2 Group Executive (Group Technology and Commercial) from 1 December 2014,
- 45.3 On 2 November 2015, he was laterally transferred from Group Executive (Commercial) to Group Executive (Generations), and
- 45.4 Interim Chief Executive, a position he held from 1 December 2016 until his resignation on 16 February 2018.
- 46 Accused 1 was also a board member of Rotek from 27 June 2012 until his resignation.
- 47 Accused 1 signed an employment contract in 2010 with Eskom, which states as follows at paragraph 4.2:
- “The Employee shall disclose to the Company, in writing, all interest of the Employee, which may conflict with the interest of the Company. The Employee shall make the first declaration of interest on signing this contract and thereafter at the request of the Company or as new interests of the Employee arise. The Employee agrees to take such steps as the Company reasonably requires for resolving or managing any such conflict.”*
- 48 Accused 1 was thus a public officer as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 12 of 2004 (“**PRECCA**”).
- 49 At all times relevant to the charge sheet, Accused 1 was in an employment relationship with Eskom and/or the State.

50 Accused 1's grading was Band F, and he was thus higher than a level 9 and had a duty to declare as and when a possible conflict of interest arises in terms of the Conflict of Interest Policy.

51 Accused 1 did not declare a conflict of interest regarding ZAABB, Accused 15, Accused 16 or Accused 17 which he should have done in terms of the Conflict of Interest Policy.

## **E ACCUSED 2**

52 Accused 2 was employed by Eskom from 2007 and held the following positions during the relevant period:

52.1 Senior Manager (Project Engineering), appointed on 11 October 2010, and

52.2 Project Director: Kusile Power Station ("**KUSILE**"), appointed on 1 December 2015 at R 2 000 010.00 per annum. He held this position until his resignation on 1 April 2017.

53 Accused 2 was thus a public officer as defined in section 1 of PRECCA.

54 Accused 2's grading was Band F, and he was thus higher than a level 9 and had a duty to declare as and when a possible conflict of interest arises in terms of the Conflict of Interest Policy.

55 Accused 2 did not declare a conflict of interest regarding Accused 12, 15 and 17 in terms of the Conflict of Interest Policy as described above.

56 At all times relevant to the charge sheet, Accused 2 was in an employment relationship with Eskom and/or the State.

## **F ACCUSED 3**

57 Accused 3 is the wife of Accused 1 and the mother of Accused 6 and Accused 13.

58 Accused 3 also uses the name "*Kgomotso Koko*" and "*Kgomotso Choma*", under which she was the co-winner of The Apprentice: South Africa in 2006.

## **G ACCUSED 4**

59 Accused 4 was registered on 3 August 2015 with registration number 2015/250382/07, with its registered address listed as 325 Spoonbillway, Xanadu, Hartbeespoort with Accused 3 as its sole director.

60 Xanadu is a residential estate in Hartbeespoort, North-West.

61 The property situated at 325 Spoonbillway, Xanadu, is owned by Accused 1 and Accused 3.

## **H ACCUSED 5**

62 Accused 5 was registered under registration number 2002/063138/23.

63 Accused 5 converted to a company on 8 December 2005 under registration number 2005/043348/07 with its main objective listed as "Construction" and its registered address as 11 Neven Street, Witbank, with Accused 3 as its sole director.

64 Accused 5 changed its name from Dominion Capital to High Echelon Trading 94 on 9 December 2005.

65 On 1 August 2017, Accused 5 changed its name from High Echelon Trading 94 back to Dominion Capital (Pty)Ltd.

66 The registered address of Accused 5 was changed to The Pivot, Block E Ground Floor, Monte Casino Boulevard, Fourways on 2 August 2017, which was in the same building used by Accused 17 from 2 April 2013.

## **I ACCUSED 6**

67 Accused 6 is the daughter of Accused 3, the stepdaughter of Accused 1 and the sister of Accused 13.



- 68 Accused 6 obtained a degree from the University of Witwatersrand in 2013 and was employed by PriceWaterhouseCooper in 2015 and 2016.
- 69 On 31 March 2016, Accused 6 was appointed as a director of Accused 17 and obtained 250 ordinary shares.
- 70 Accused 6 resigned from Impulse on 20 September 2016, whereafter she transferred her shares to the Mokoni Trust.
- 71 Pragasen Pather (“**PATHER**”), who was also a director and shareholder of Accused 17, transferred a further 100 shares to the Makoni Trust.
- 72 Mokoni Trust (IT 00216/2016 (MN)) and Bokoni Trust (IT 00217/2016(MN)) was registered with the Master of the High Court, Nelspruit on 7 July 2016 by Accused 11.
- 73 Bokoni Trust is the sole beneficiary of the Mokoni Trust.
- 74 Accused 6 is the income beneficiary of the Bokoni Trust.
- 75 Accused 6, together with Accused 11 and Accused 12 are the Trustees of the Mokoni and Bokoni Trust.
- 76 Accused 6 resigned as a trustee of the Mokoni Trust on 23 February 2017 but remains the Income Beneficiary.

## **J ACCUSED 7**

- 77 Accused 7 was registered on 23 February 2016 with registration number 2016/072200/07 with its registered address as 325 Spoonbill Way, Xanadu Eco Park, Hartbeespoort.
- 78 Accused 7 is a company registered in terms of the Companies Act, Act 71 of 2008, and therefore a corporate body within the meaning of section 332 of Act 51 of 1977.
- 79 Accused 11 registered Accused 7.

- 80 Upon registration, Mokgebeleke Sylvia Maila (“**MAILA**”) was its sole director.
- 81 Maila is the sister of Accused 3 and the aunt of Accused 6 and Accused 13.
- 82 On 25 February 2016, Accused 7 changed its address to 04723 Mamelodi West, Gauteng.
- 83 On 29 February 2016, Maila resigned as director and on 23 March 2016 Accused 6 became the sole director of Accused 5.
- 84 The Ukwakhiwa Third Party Administration Account, held by Standard Bank under account number 20 303 293 4 was opened on 1 April 2016 whereafter it received R 1 000 000.00 (split into five payments of R 200 000 each) paid into the account by way of electronic transfer from the Impulse Standard Bank account under account number 001869426.
- 85 Accused 7 also opened an account with First National Bank, with account number 62632316982, on 23 August 2016 whereafter Accused 17 made two deposits into the account. The first deposit was on 13 September 2016 to the amount of R 100 000 while the second deposit was on 23 September 2016 to the amount of R 1 000 000.
- 86 Accused 6 was the sole administrator of First National Bank with account number 62632316982.
- 87 Accused 7 changed its name from Ukwakhiwa Investments to Firm Strategy on 17 March 2022 and its address to The Pivot, Montecasino Boulevard, Fourways, the same building where Accused 5 has an office and Accused 17 previously had an office.

**K ACCUSED 8**

- 88 Accused 8 and Accused 1 were childhood friends and attended the same university.
- 89 Accused 1 was one of the best men at Accused 8’s wedding on 22 September 2013 while Accused 13 was a bridesmaid.

90 Accused 1, Accused 8, ZAABB, Accused 15 and Accused 16 had regular contact with each other during 2014 – 2016 when the Early Works Order (“**EWO**”) in terms of the Control and Instrumentation (“**C&I**”) Contract at Kusile was awarded to ZAABB.

91 Accused 8 was at all material times responsible for Accused 9 and Accused 10.

## **L ACCUSED 9**

92 Accused 9 was registered on 3 April 2007 with registration number 2007/010156/07, stating its main Object as “Project Management, Training, Consulting and Transport Services”. The sole director was initially Accused 8, but as of 20 January 2014, he was one of 4 directors.

93 Accused 8 was the sole director of Accused 9 again from 10 September 2018.

94 Accused 9 changed its name from Leago Strategic Services to Leago ECP (Pty)Ltd on 20 May 2015.

95 Accused 8 was at all relevant times a director of, and exercised effective control over, Accused 9.

96 Accused 9, through Accused 8, entered into a contract with ZAABB in terms of which it provided the Skill Development and Industrialisation (“**SD&L**”) portion of the C&I contract. The value of the contract was R 96 166 400 (exclusive of VAT).

## **M ACCUSED 10**

97 Accused 10 was registered on 20 September 2007 with registration number 2007/027181/07.

98 Accused 10 was known as Ponelo Group until 24 February 2015 whereafter it changed its name to Leago Consolidated.

99 Accused 8 was at all relevant times a director of and exercised effective control over, Accused 10.

100 On 27 May 2015, ZAABB signed a second contract with Accused 8, on behalf of Accused 10. The contract was for the provision of 5 engineers for 12 months at the cost of R 5 809 824 (including VAT). The amount was payable monthly after the submission of an invoice.

## **N ACCUSED 11**

101 Accused 11 obtained his BA and LLB degrees from the North-West University, Potchefstroom in 1988 and 1990 respectively.

102 He is currently practising as an attorney under the name StröhCoetzee Attorneys in Middelburg, Mpumalanga.

103 Accused 3 and Accused 6 are clients of Accused 11, and he advised them on how to establish the Mokoni and Bokoni Trust as well as Accused 7.

104 During February 2016, Accused 3 and 6 consulted with Accused 11 with the intent to set up Accused 7, the Mokoni and Bokoni Trust.

105 Accused 11 advised, and assisted, Accused 3 and Accused 6 on setting up legal entities and trusts as described above in order for the Accused not to hold the shares in their own names.

106 The purpose of the Mokoni and Bokoni Trust was to hide the role played by Accused 6 in Impulse.

107 Indiwize and Mokoni Trusts are shareholders of Accused 7.

108 According to Accused 11, Accused 7 actively traded and was involved in the Development of 3 on Buitekant, a townhouse project in Middelburg.

109 Accused 11 was also the sole administrator of the Ukwakhiwa Third Party Administration Account, held at Standard Bank under account number 20 303 293 4.

**O ACCUSED 12**

110 Accused 11 was introduced to employees of ZAABB as the Business Development Director of Accused 17 although he received no salary from Impulse, had no office and performed no duties.

111 Accused 1 used Accused 12 to secure business between Accused 17 and Eskom.

112 Accused 12 played a vital part in the Impulse Scheme #1.

**P ACCUSED 13**

113 Accused 13 is the daughter of Accused 3, the sister of Accused 6 and the stepdaughter of Accused 1.

114 Accused 13 is the sole director of Accused 12.

**Q ACCUSED 14**

115 Accused 14 was registered on 21 October 2015 with registration number 2015/362664/07 with its registered address 683 Saraton Estate, Cedar Avenue West, Maroeladal Extension 10, Fourways, Johannesburg, the residential address which she shares with Accused 1 and 3.

**R. ACCUSED 15**

116 Accused 15 entered into an employment relationship with *Elsag Bailey Process Automation NV*, which was acquired by the ABB Group in 1999.

117 Accused 15 reported to ABB AG, which is based in Mannheim, Germany.

118 Accused 15 held the position of Group Vice President, BU Power Generation: Head of Sales and Marketing during the relevant period.

119 In March 2016, Accused 15 was tasked to pursue the C&I Contract and thereby to lead the "*Capture Team*" as a "*Sale Shark*".

120 Accused 15 was a key role player in relation to the initiation and execution of:

120.1 the Leago Scheme, as set out below, and

120.2 the Impulse Scheme #2, as set out below.

121 Accused 15's employment was terminated by ABB AG.

## **S. ACCUSED 16**

122 Accused 16 entered into an employment relationship with ABB Switzerland AG, which is located in Baden, Switzerland in April 2010.

123 Accused 16 was appointed as the Group Vice President, BU Power Generation and held the position between April 2010 – December 2015.

124 Accused 16 later held the position of Global Product Group Manager, Microgrids and Distributed Generation in Grid Automation.

125 Accused 16's employment was terminated by ABB Switzerland AG.

126 After 1 March 2016, Accused 16 moved to another Business Unit within ABB and his involvement in the Kusile project ended.

## **T. ACCUSED 17**

127 Pather was the sole director of several entities, *inter alia* Accused 17 and Indiwize Construction (Pty)Ltd ("**INDIWIZE**") at the time of his death on 27 June 2021.

128 Impulse was registered on 5 June 2012 with registration number 2012/097222/07.

129 The sole director was Pather, except for the period 31 March 2016 – 20 September 2016 when Accused 6 was also listed as a director.

130 Indiwize was registered on 1 November 2012 with registration number 2012/196338/07.

131 Davania Pather, Pather's daughter, was appointed as representative of Accused 17.

#### **U. ACCUSED 18**

132 Accused 18 is a British citizen and was in an employment relationship with Arup Tata and was performing working on their behalf at Kusile.

133 Accused 18 was part of the Kusile Execution Team ("**KET**") and was appointed as the KET Head of Project Controls.

134 Accused 18 was appointed at Kusile on Accused 2's instruction.

135 Accused 1 instructed that Accused 18 is removed from Kusile in February 2017.

## **II. CHRONOLOGICAL SEQUENCE OF RELEVANT EVENTS AND SUMMARY OF SUBSTANTIAL FACTS**

### **V REPLACEMENT OF ALSTOM IN RESPECT OF THE C&I CONTRACT**

136 The tender in respect of the Kusile C&I was awarded to Alstom S&E Africa Propriety Limited ("**Alstom**") in November 2009. Dynamic Instruments (Pty)Ltd ("**DI**") was the sub-contractor used by Alstom.

137 Alstom was unable to service the contract and in 2013 there were rumours that the contract with Alstom would be cancelled and awarded to a new party.

138 In 2013, ZAABB and its employees, specifically Accused 16, came to learn of the plan by Eskom to replace Alstom and decided to approach Accused 1 for a "*Top Down Approach*".

139 ZAABB is part of the Asea Brown Bovari ("**ABB**") group of companies, which amongst others, include

140 ABB AG ("**DEAAB**"), which is based in Mannheim, Germany,

140.1 ABB S.p.A ("**ITABB**"), which is based in Milan Italy, and

140.2 Asea Brown Boveri Limited (“**CHABB**”), which is based in Zurich, Switzerland and provided overall management support to ZAABB, DEAAB and ITAABB.

141 The sole purpose for ZAABB and Accused 16’s approach to Accused 1 was to establish a corrupt relationship whereby ZAABB would secure the tender for the C&I works at Kusile.

142 On 23 May 2014, Eskom issued a new Request for Proposal (“**RFP**”) in respect of the Kusile C&I as Alstom was not performing, and their contract was to be terminated on the appointment of a new contractor.

143 In April 2014, Accused 1 introduced Accused 8, Accused 9 and Accused 10 to Accused 16.

144 Accused 16, and subsequently ZAABB, were of the view that to ensure their participation in the replacement of Alstom, it was essential to acquire a local black economic empowerment (“**BEE**”) partner. However, it was considered vital to select the “right” BEE partner. The major criterion for the selection of such a partner was its political connectivity (whether this was founded on one or more corrupt relationships of mutual support or otherwise), since Accused 15, and subsequently ZAABB, were of the view that the final decisions for the award of such contracts are always taken at a political level. At the time of the agreement described below, Accused 8, Accused 9 and Accused 10 was regarded as a BEE partner who met this criterion, *inter alia* because of the corrupt relationship between Accused 1 and Accused 8.

#### **W. Leago Scheme**

145 Accused 1 introduced Accused 8 to Accused 16 with the purpose of using Accused 8’s companies to funnel gratification back to him.

146 In exchange for ZAABB awarding contracts to Accused 9 and 10, Accused 1 would abuse his position at Eskom to ensure that the C&I contract was awarded to ZAABB.

147 ZAABB was awarded the C&I contract, whereafter ZAABB entered into two contracts with Accused 8 through his entities, namely Accused 9 and Accused 10.

148 Accused 9 was awarded the SD&L portion of the C&I contract as well as a contract to provide engineers to ZAABB.



149 Accused 8, 9 and 10 did not pay gratification to Accused 1, and as a result their relationship ended and Accused 1 had to find another vehicle to obtain gratification from ZAABB.

150 The new vehicle was Accused 17, which can be divided into the Impulse Scheme #1 and Impulse Scheme #2.

#### **X. Impulse Scheme #1**

151 Accused 1 was introduced to Accused 12, 18 and Pather in the early part of 2015.

152 Accused 1 decided to replace Accused 8, 9 and 10 with Accused 12, Accused 17 and Pather.

153 Accused 1 attempted to have Mr X enter into a contract between Mr X's foreign company and Eskom but failed as the foreign company was unable to register as a vendor with Eskom.

154 Accused 1 then referred Mr X to Accused 12 so that the contract could be concluded between Accused 17 and Eskom.

155 On 20 November 2015, Eskom and Accused 17 entered into Contract 4600058330 for "Planning of Turbine Centreline activities through Quality Work Packages in SAP".

156 The contract was concluded at the cost of R 65 854 766.30 (excluding VAT). The contract was modified twice, first with an extension of one month at no additional cost. The second modification was to extend the contract with 12 months at an additional cost of R 29 442 000 (excluding VAT). The new combined value was R 95 296 766.84 (excluding VAT).

157 Eskom and Accused 17, with the assistance of Accused 1, also entered into a contract at Kusile on 25 March 2016.

158 Accused 2 declared an emergency at Kusile and instructed that Accused 17 must be appointed to provide additional staff.

159 Accused 18 motivated the emergency.

160 On 31 March 2016, Accused 6 became a shareholder and director of Accused 17.

161 On 29 March 2016, Mr Y, an employee reporting to Accused 1, declared an emergency to retain the services of a specialised engineer, Mr Pleisteiner.

162 On 12 April 2016, a contract was concluded between Eskom and Accused 17 to provide Eskom with the services of Mr Pleisteiner at the cost of R 1 905 750 (excluding Vat)

163 The contract was extended with a further 6 months at the cost of R 1 702 750 (excluding VAT) without the Emergency being ratified.

#### **Y. Impulse Scheme #2**

164 Accused 1, Accused 2, ZAABB and Accused 15 entered into another scheme with Accused 17.

165 In terms of Impulse Scheme #2, Accused 2 would award Variation Orders to ZAABB in terms of the C&I contract at Kusile.

166 Accused 1, ZAABB and Accused 15 would agree on the contract value and Accused 2 would ensure that the contract was awarded at the agreed price.

167 In turn, ZAABB would appoint Accused 17 to perform the work at Kusile.

168 Accused 17 would in turn act as a conduit to ensure that Accused 1 and 2 receive gratification for their role in Impulse Scheme #2.

169 In terms of Impulse Scheme #2 four Variation Orders were awarded to ZAABB who in turn made use of the services of Accused 17.

#### **Y. Gratification**

170 Accused 1, 3, 6, 7, 13, 14, 17 set up an elaborate scheme under the guidance of Accused 11 whereby Accused 17 would transfer money either to Indiwize or Accused 7 or 14's accounts from where it would be used to the benefit of Accused 3, 6, 13 and ultimately Accused 1.

171 Accused 2 in turn also made use of an elaborate scheme where Accused 17 would transfer money to Indiwize and from there to Nthesaserv (Pty)Ltd. Accused 17 would

also transfer money directly to Nthesaserv (Pty)Ltd. The money, R 3 100 000 was used to the benefit of Accused 2.

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### III. CHARGES

Be informed that the Accused are being charged together, in terms of Section 155 and 156 of Act 51 of 1977, the court are hereby informed that evidence admissible at the trial of one of the Accused will also be admissible as evidence at the trial of any other such Accused as the separate offences were committed at the same place and at the same time or at about the same time and the evidence admissible against some of the Accused will prove the offence of which the other has been charged. Charges are further read with Sections 89, 90, 91 and 93 of Act 32 of 1944.

**COUNT: 1**

**ONLY IN RESPECT OF ACCUSED 1**

Accused 1 is charged with Fraud read with sections 1, 92, 96, 103, 245, 256, 264 and 270 of Act 51 of 1977 and section 51(2) of Act 105 of 1997 (in that it involves an amount of more than R 500 000)

In that during the period 2014 to 2017 and at or near Megawatt Park, in the Regional Division of Gauteng, Accused 1 unlawfully and with intent to defraud, falsely and to the prejudice, either real or potential, of Eskom and/or Rotek

gave out to the to the aforesaid persons and/or institution, in his declaration of financial interests in terms of Policy of Interest that he had received no financial sponsorships or assistance and/or other benefit of a material nature for the abovementioned period and/or that there was no conflict of interest

Failed to reveal to Eskom/Rotek, when there was a duty so to reveal, that he had received financial sponsorship or assistance and/or other benefit of a material nature and/or that there was a conflict of interest for the abovementioned period between himself and ZAABB, Accused 3, Accused 4, Accused 5, Accused 6, Accused 7, Accused 8, Accused 9, Accused 10, Accused 12, Accused 13, Accused 14, Accused 15, Accused 16 and Accused 17.

Whereas in truth and in fact he well knew that he had received financial sponsorships or assistance and or benefits and/or that there was a conflict of interest.

**COUNT: 2**

**ONLY IN RESPECT OF ACCUSED 2**

**Accused 2 is charged with Fraud read with sections 1, 92, 96, 103, 245, 256, 264 and 270 of Act 51 of 1977 and section 51(2) of Act 105 of 1997 (in that it involves an amount of more than R 500 000)**

In that during the period 2016 to 2017 and at or near Kusile Power Station, in the Regional Division of Mpumalanga, Accused 2 unlawfully and with intent to defraud, falsely and to the prejudice, either real or potential, of Eskom

Gave out to the Eskom, in his declaration of financial interests in terms of Policy of interest that he had received no financial sponsorships or assistance and/or other benefit of a material nature for the abovementioned period, and/or that there was no conflict of interest

Failed to reveal to the abovementioned persons and/or entities, when there was a duty so to reveal, that he had received financial sponsorship or assistance and/or other benefit of a material nature and/or that there was a conflict of interest for the abovementioned period between himself and Accused 1, Accused 12, Accused 15, Accused 17 and ZAABB

Whereas in truth and in fact he well knew that he had received the financial sponsorships or assistance and or benefits and/or that there was a conflict of interest.

**MAIN COUNT: 3**

**ONLY IN RESPECT OF ACCUSED 1, 8, 9 and 10**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 13(1)(a) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2014 – 2015 and at or near Sandton in the Regional Division of Gauteng, Accused 1, Accused 8, Accused 9 and Accused 10 directly and/or indirectly wrongfully accepted and/or agreed and/or offered to accept gratification for the benefit of himself and/or for the benefit of another person to wit, ZAABB and/or Accused 15 and/or Accused 16 and/or its employees to wit:

**Skill Development and Industrialisation Contract R 96 166 400 (exclusive of VAT)**

AND/OR

**Provision of Engineers Contract valued at R 5 809 824 (including VAT)**

as an inducement to, personally or by influencing any other person so to act:

- (a) Award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or
- (b) Upon an invitation to tender for such contract, make a tender for that contract which has as its aim to cause the tenderee to accept a particular tender,
- (c) Or as a reward for acting as contemplated as above

are guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders in that Accused 1, 8, 9, and/or 10 furthered and/or having furthered the interests of ZAABB as set out in the preamble.

**FIRST ALTERNATIVE COUNT: 3      ONLY IN RESPECT OF ACCUSED 1, 8, 9 and 10**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 12(1)(a) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal Law Amendment Act, 105 of 1997.**

In that during the period 2014 – 2015 and at or near Sandton in the Regional Division of Gauteng, Accused 1, Accused 8, Accused 9 and Accused 10 directly and/or indirectly wrongfully accepted and/or agreed and/or offered to accept gratification for the benefit of himself and/or for the benefit of another person to wit:

**Skill Development and Industrialisation Contract R 96 166 400 (exclusive of VAT)**

AND/OR

**Provision of Engineers Contract valued at R 5 809 824 (including VAT)**

In order to improperly influence, in any way –

- (a) The promotion, execution or procurement of any contract with a public body to wit Eskom, or
- (b) By fixing the price, consideration or other money stipulated or otherwise provided for in such contract; or
- (c) As a reward for acting as contemplated above;

are guilty of the offence of corrupt activities relating to contracts in that Accused 1, 8, 9 and 10 furthered and/or having furthered the interests of ZAABB as set out in the preamble, is guilty of an offence in respect of corrupt activities relating to contracts.

**SECOND ALTERNATIVE COUNT: 3                      ONLY IN RESPECT OF ACCUSED 1**

**That the Accused is guilty of the crime of Corruption in Contravention of Section 4(1)(a) read with sections 1, 2, 4(2), 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2014 – 2015 and at or near Sandton in the Regional Division of Gauteng, Accused 1, a public officer, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, to wit:

**Skill Development and Industrialisation Contract R 96 166 400 (exclusive of VAT)**

AND/OR

**Provision of Engineers Contract valued at R 5 809 824 (including VAT)**

In order to act and/or omit to act personally and/or by influencing other person(s) to act, in a manner

that amounts to –

- a. illegal, dishonest, unauthorised or biased exercise or carrying out or
- b. misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory or contractual or any other legal obligation

that amounts to:

- a. a breach of trust and/or
- b. abuse of a position of authority
- c. violation of a legal duty or a set of rules and/or designed
- d. designed to achieve an unjust result and/or
- e. that amounts to an unauthorised or improper inducement to do or not to do anything

To wit by furthering and/or having furthered the interests of ZAABB as set out in the preamble.

Accused 1 is guilty of the offence of corrupt relating to public officers.

**THIRD ALTERNATIVE TO COUNT: 3**

**ONLY IN RESPECT OF ACCUSED 1**

**That the Accused is guilty of the crime of Corruption in Contravention of Section 10(a) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2014 - 2015 and at or near Sandton in the Regional Division of Gauteng, Accused 1, who is party to an employment relationship with Eskom and who, directly or indirectly, accepted or agreed or offered to accept the unauthorised gratification as described in the preamble from Accused 8, 9, 10, 15, 16 and/or 17 and/or entities, whether for the benefit of that person or for the benefit of another person in respect of that party doing any act in relation to the exercise, carrying out or performance of that party's powers, duties or functions within the scope of that party's employment relationship, more particularly as described in the preamble, is guilty of the offence of receiving an unauthorised gratification.



**FOURTH ALTERNATIVE TO COUNT 3 ONLY IN RESPECT OF ACCUSED 1, 8, 9 and 10**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 3(a) read with sections 1, 2, 21, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.**

In that during the period 2014 to 2015 and at or near Megawatt Park in the Regional Division of Gauteng, Accused 1, Accused 8, Accused 9 and Accused 10 directly or indirectly and wrongfully accepted and/or agreed and/or offered to accept the gratifications, from another person and/or persons to wit:

**Skill Development and Industrialisation Contract R 96 166 400 (exclusive of VAT)**

AND/OR

**Provision of Engineers Contract valued at R 5 809 824 (including VAT)**

in order to act and/or omit to act, personally and/or by influencing another person to act, in a manner:

- a. that amounts to the illegal, dishonest, unauthorized, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual, or other obligation; and/or
- b. that amounts to:
  - the abuse of a position of authority
  - a breach of trust; and/or
  - the violation of a legal duty or a set of rules; and/or
- c. designed to achieve an unjust result; and/or
- d. that amounts to an unauthorized or improper inducement to do or not to do anything.

to wit by furthering and/or having furthered the interests of ZAABB as set out in the preamble.

**MAIN COUNT: 4**

**ONLY IN RESPECT OF 15 AND 16**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 13(2)(a) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2014 – 2015 and at or near Sandton in the Regional Division of Gauteng, Accused 15 and Accused 16 directly and/or indirectly wrongfully gave and/or agreed and/or offered to give gratification for the benefit of another and/or persons to wit:

**Skill Development and Industrialisation Contract R 96 166 400 (exclusive of VAT)**

AND/OR

**Provision of Engineers Contract valued at R 5 809 824 (including VAT)**

in order to act and/or omit to act, personally and/or by influencing another person to act, in a manner:

as an inducement to, personally or by influencing any other person so to act, award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person;

or

as a reward for acting as contemplated above

are guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders in that Accused 1 furthered and/or having furthered the interests of ZAABB, 15 and 16 as set out in the preamble.

**FIRST ALTERNATIVE COUNT: 4**

**ONLY IN RESPECT OF 15 AND 16**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 12(1)(b) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2014 – 2015 and at or near Sandton in the Regional Division of Gauteng, Accused 15 and Accused 16 directly and/or indirectly wrongfully gave and/or agreed and/or offered to give gratification for the benefit of another or for another person and/or persons to wit:

**Skill Development and Industrialisation Contract R 96 166 400 (exclusive of VAT)**

AND/OR

**Provision of Engineers Contract valued at R 5 809 824 (including VAT)**

In order to improperly influence, in any way –

- a) The promotion, execution, or procurement of any contract with a public body to wit Eskom, or
- b) By fixing the price, consideration or other money stipulated or otherwise provided for in such contract; or
- c) as a reward for acting as contemplated above;

are guilty of the offence of corrupt activities relating to contracts in that Accused 1 furthered and/or having furthered the interests of ZAABB, 16, and 17 as set out in the preamble.

**SECOND ALTERNATIVE COUNT: 4**

**ONLY IN RESPECT OF 15 AND 16**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 4(1)(b) read with section 1, 2, 4(2), 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2014 – 2015 and at or near Sandton in the Regional Division of Gauteng Accused 15 and Accused 16 directly and/or indirectly wrongfully gave and/or agreed and/or offered to give gratification to a public officer, to wit Accused 1, whether for the benefit of that public officer or for the benefit of another person to wit:

**Skill Development and Industrialisation Contract R 96 166 400 (exclusive of VAT)**

AND/OR

**Provision of Engineers Contract valued at R 5 809 824 (including VAT)**

In order to act and/or omit to act personally and/or by influencing other person(s) to act, in a manner

- (i) that amounts to –
  - (aa) illegal, dishonest, unauthorised or biased exercise or carrying out or
  - (bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, or contractual or any other legal obligation
- (i) that amounts to:
  - (aa) a breach of trust and/or
  - (bb) abuse of a position of authority
  - (cc) violation of a legal duty or a set of rules and/or designed
- (ii) designed to achieve an unjust result and/or
- (iii) that amounts to an unauthorised or improper inducement to do or not to do anything

To wit by furthering and/or having furthered the interests of ZAABB, Accused 15 and Accused 16 as set out in the preamble.

Accused 15 and Accused 16 are guilty of the offence of corrupt activities relating to public officers.

**THIRD ALTERNATIVE TO COUNT: 4**

**ONLY IN RESPECT OF 15 AND 16**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 10(b) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2014 - 2015 and at or near Sandton in the Regional Division of Gauteng, Accused 15 and Accused 16 directly and/or indirectly wrongfully gave and/or agreed and/or offered to give gratification for the benefit of another to wit, Accused 1, who was employed by Eskom or from another person and/or persons to wit:

**Skill Development and Industrialisation Contract R 96 166 400 (exclusive of VAT)**

AND/OR

**Provision of Engineers Contract valued at R 5 809 824 (including VAT)**

in respect of that party, to with Accused 1, doing any act in relation to the exercise, carrying out or performance of that party's powers, duties, or functions within the scope of that party's employment relationship, is guilty of the offence of offering an unauthorised gratification.

**FOURTH ALTERNATIVE TO COUNT**

**ONLY IN RESPECT OF 15 AND 16**

**That the Accused are guilty of the crime of Corruption in Contravention of section 3(b) read with sections 1, 2, 21, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.**

In that during the period 2014 – 2015 and at or near Megawatt Park in the Regional Division of Gauteng, Accused 15 and Accused 16 directly or indirectly and wrongfully gave or agreed or offered to give to any other person, Accused 1, Accused 8, Accused 9 and Accused 10 any gratification to wit:

**Skill Development and Industrialisation Contract R 96 166 400 (exclusive of VAT)**

AND/OR

**Provision of Engineers Contract valued at R 5 809 824 (including VAT)**

whether for the benefit of that other person or for the benefit of another person to act, personally or by influencing another person so to act, in a manner –

- (i) that amounts to the –
  - (aa) illegal, dishonest, unauthorized, incomplete, or biased exercise, or
  - (bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
- (ii) that amounts to:
  - (aa) the abuse of a position of authority
  - (bb) a breach of trust; and/or
  - (cc) the violation of a legal duty or a set of rules; and/or
  - (iii) designed to achieve an unjust result; and/or
  - (iv) that amounts to an unauthorized or improper inducement to do or not to do anything.

To wit by furthering and/or having furthered the interests of ZAABB as set out in the preamble, is guilty of the offence of corruption.

**MAIN COUNT: 5**

**ONLY IN RESPECT OF ACCUSED 1**

**That the Accused is guilty of the crime of Corruption in Contravention of Section 13(2)(a) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2014 – 2015 and at or near Sandton in the Regional Division of Gauteng, Accused 1 directly and/or indirectly wrongfully gave and/or agreed and/or offered to give gratification for the benefit of another to wit:

**Control and Instrumentation Contract at Kusile Power Station to the value of  
R 2 522 783.96**

in order to act and/or omit to act, personally and/or by influencing another person to act, in a manner:

as an inducement to, personally or by influencing any other person so to act, award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person;

or

as a reward for acting as contemplated above

is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders in that Accused 1 furthered and/or having furthered the interests of ZAABB, Accused 15 and Accused 16 as set out in the preamble.

**FIRST ALTERNATIVE COUNT: 5**

**ONLY IN RESPECT OF ACCUSED 1**

**That the Accused is guilty of the crime of Corruption in Contravention of Section 12(1)(b) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2014 – 2015 and at or near Sandton in the Regional Division of Gauteng, Accused 1 directly and/or indirectly wrongfully gave and/or agreed and/or offered to give gratification for the benefit of another to wit:

**Control and Instrumentation Contract at Kusile Power Station to the value of  
R 2 522 783.96**

In order to improperly influence, in any way –

- a) The promotion, execution, or procurement of any contract with a public body to wit Eskom, or
- b) By fixing the price, consideration or other money stipulated or otherwise provided for in such contract; or
- c) as a reward for acting as contemplated above;

is guilty of the offence of corrupt activities relating to contracts in that Accused 1 furthered and/or having furthered the interests of ZAABB, Accused 15 and Accused 16 as set out in the preamble.

**SECOND ALTERNATIVE COUNT: 5**

**ONLY IN RESPECT OF ACCUSED 1**

**That the Accused is guilty of the crime of Corruption in Contravention of Section 4(1)(b) read with section 1, 2, 4(2), 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2014 – 2015 and at or near Sandton in the Regional Division of Gauteng, Accused 1, a public official, directly and/or indirectly wrongfully gave and/or agreed and/or offered to give gratification for the benefit of another to wit,

**Control and Instrumentation Contract at Kusile Power Station to the value of  
R 2 522 783.96**

In order to act and/or omit to act personally and/or by influencing other person(s) to act, in a manner

that amounts to –

- a. illegal, dishonest, unauthorised or biased exercise or carrying out or
- b. misuse or selling of information or material acquired in the course of the
- c. exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, or contractual or any other legal obligation

that amounts to:

- a. a breach of trust and/or
- b. abuse of a position of authority
- c. violation of a legal duty or a set of rules and/or
- d. designed to achieve an unjust result and/or
- e. that amounts to an unauthorised or improper inducement to do or not to do anything

To wit by furthering and/or having furthered the interests of ZAABB, Accused 15 and Accused 16 as set out in the preamble.

Accused 1 is guilty of the offence of corrupt activities relating to public officers.



**THIRD ALTERNATIVE TO COUNT: 5**

**ONLY IN RESPECT OF ACCUSED 1**

**That the Accused is guilty of the crime of Corruption in Contravention of Section 3(b) read with sections 1, 2, 21, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.**

In that during the period 2014 – 2015 and at or near Megawatt Park in the Regional Division of Gauteng, Accused 1 directly or indirectly and wrongfully gave or agreed or offered to give to any other person any gratification or another person and/or persons to wit:

**Control and Instrumentation Contract at Kusile Power Station to the value of  
R 2 522 783.96**

whether for the benefit of that other person or for the benefit of another person to act, personally or by influencing another person so to act, in a manner – that amounts to the –

- a. illegal, dishonest, unauthorized, incomplete, or biased exercise, or
- b. misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

that amounts to:

- a. the abuse of a position of authority
- b. a breach of trust; and/or
- c. the violation of a legal duty or a set of rules; and/or
- d. designed to achieve an unjust result; and/or
- e. that amounts to an unauthorized or improper inducement to do or not to do anything.

To wit by furthering and/or having furthered the interests of ZAABB, Accused 15 and Accused 16 as set out in the preamble, is guilty of the offence of corruption.

**MAIN COUNT: 6**

**ONLY IN RESPECT OF ACCUSED 1 AND 2**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 12(1)(a) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2016 – 2017 and at or near Kusile in the Regional Division of Mpumalanga, Accused 1 and Accused 2 directly and/or indirectly wrongfully accepted and/or agreed and/or offered to accept gratification for the benefit of himself and/or for the benefit of another person to wit, to wit:

**Emergency Contract Number 4600060205 to the value of R 63 445 861.52 (excluding VAT)**

AND/OR

**Sole Source Contract Number 4600061009 to the value of R 198 911 159.58 (excluding VAT)**

In order to improperly influence, in any way –

- a. The promotion, execution, or procurement of any contract with a public body to wit Eskom, or
- b. By fixing the price, consideration or other money stipulated or otherwise provided for in such contract; or
- c. As a reward for acting as contemplated above;

are guilty of the offence of corrupt activities relating to contracts in that Accused 1 and Accused 2 furthered and/or having furthered the interests of Accused 12 and Accused 17 as set out in the preamble, is guilty of an offence in respect of corrupt activities relating to contracts.

**FIRST ALTERNATIVE COUNT: 6**

**ONLY IN RESPECT OF ACCUSED 1 AND 2**

**That the Accused are guilty of the crime of Corruption in contravention of Section 4(1)(a) read with section 1, 2, 4(2), 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2016 – 2017 and at or near Kusile in the Regional Division of Mpumalanga, Accused 1 and Accused 2, public officers, directly or indirectly, accepted or agreed or offered to accept any gratification from any other person whether for the benefit of himself or for the benefit of another person, to wit

**Emergency Contract Number 4600060205 to the value of R 63 445 861.52 (excluding VAT)**

AND/OR

**Sole Source Contract Number 4600061009 to the value of R 198 911 159.58 (excluding VAT)**

In order to act and/or omit to act personally and/or by influencing other person(s) to act, in a manner

that amounts to –

- a. illegal, dishonest, unauthorised or biased exercise or carrying out or
- b. misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory or contractual or any other legal obligation

that amounts to:

- a. a breach of trust and/or
- b. abuse of a position of authority
- c. violation of a legal duty or a set of rules and/or
- d. designed to achieve an unjust result and/or
- e. that amounts to an unauthorised or improper inducement to do or not to do anything

To wit by furthering and/or having furthered the interests of Accused 12 and Accused 17 as set out in the preamble.

Accused 1 and Accused 2 are guilty of the offence of corrupt relating to public officers.

**SECOND ALTERNATIVE COUNT: 6      ONLY IN RESPECT OF ACCUSED 1 and 2**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 10(a) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2016 – 2017 and at or near Kusile in the Regional Division of Mpumalanga, Accused 1 and Accused 2, who were parties to an employment relationship as set out in the preamble and who, directly or indirectly, accepted or agreed or offered to accept from any other person any unauthorised gratification, whether for the benefit of that person or for the benefit of another person in respect of that party doing any act in relation to the exercise, carrying out or performance of that party's powers, duties or functions within the scope of that party's employment relationship, are guilty of the offence of receiving an unauthorised gratification.

**THIRD ALTERNATIVE TO COUNT: 6      ONLY IN RESPECT OF ACCUSED 1 AND 2**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 3(a) read with sections 1, 2, 21, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.**

In that during the period 2016 – 2017 and at or near Kusile in the Regional Division of Mpumalanga, Accused 1 and Accused 2 directly or indirectly and wrongfully accepted and/or agreed and/or offered to accept the gratifications,

**Emergency Contract Number 4600060205 to the value of R 63 445 861.52 (excluding VAT)**

AND/OR

**Sole Source Contract Number 4600061009 to the value of R 198 911 159.58 (excluding VAT)**

to wit: Accused 12 and Accused 17 in order to act and/or omit to act, personally and/or by influencing another person to act, in a manner:

that amounts to the

- a. illegal, dishonest, unauthorized, incomplete, or biased exercise, or
- b. misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or other legal obligation;

that amounts to:

- a. the abuse of a position of authority;
- b. a breach of trust; or
- c. the violation of a legal duty or a set of rules,

designed to achieve an unjustified result; or

that amounts to an unauthorized or improper inducement to do or not to do anything.

To wit by furthering and/or having furthered the interests of Accused 17 as set out in the preamble.

**MAIN COUNT: 7**

**ONLY IN RESPECT OF 15 AND 17**

**That the accused are guilty of the crime of Corruption in Contravention of Section 12(1)(b) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2015 – 2017 and at or near Kusile in the Regional Division of Mpumalanga, Accused 15 and Accused 17 directly and/or indirectly wrongfully gave and/or agreed and/or offered to give any other person gratification, whether for the benefit of that other person or for the nefit of another person, to wit Accused 1 and Accused 2, to award the following Variation Orders in terms of the Control and Instrumentation Contract to ZAABB:

**Unit 1 Acceleration Variation Order R 249 405 034**

**AND/OR**

**The Demobilisation Variation Order R 179 000 000**

**AND/OR**

**Unit 2 Trunk Cable Variation Order and Site Establishment R 300 634 935**

**AND/OR**

**Unit 2 Acceleration Variation Order R 289 859 523**

In order to improperly influence, in any way –

- a) The promotion, execution, or procurement of any contract with a public body to wit Eskom, or
- b) By fixing the price, consideration or other money stipulated or otherwise provided for in such contract; or
- c) as a reward for acting as contemplated above;

are guilty of the offence of corrupt activities relating to contracts in that Accused 15 and Accused 17 furthered and/or having furthered the interests of ZAABB and Accused 17 as set out in the preamble.

**FIRST ALTERNATIVE COUNT: 7 ONLY IN RESPECT OF 15 AND 17**

**That the Accused are guilty of the crime of Corruption in contravention of section 4(1)(b) read with section 1, 2, 4(2), 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2015 – 2017 and at or near Kusile in the Regional Division of Mpumalanga, Accused 15 and Accused 17 directly and/or indirectly wrongfully gave and/or agreed and/or offered , whether for the benefit of that public officer, to wit Accused 1 and 2, or for the benefit of another person in order to act, personally or by influencing another person so to act, to award the following Variation Orders in terms of the Control and Instrumentation Contract to ZAABB:

**Unit 1 Acceleration Variation Order R 249 405 034**

**AND/OR**

**The Demobilisation Variation Order R 179 000 000**

**AND/OR**

**Unit 2 Trunk Cable Variation Order and Site Establishment R 300 634 935**

**AND/OR**

**Unit 2 Acceleration Variation Order R 289 859 523**

In order to act and/or omit to act personally and/or by influencing other person(s) to act, in a manner

that amounts to –

- a. illegal, dishonest, unauthorised, incomplete, or biased exercise; or
- b. misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, or contractual or any other legal obligation

that amounts to:

- a. abuse of a position of authority;
- b. a breach of trust; or
- c. the violation of a legal duty or a set of rules and/or designed designed to achieve an unjust result or

that amounts to an unauthorised or improper inducement to do or not to do anything

To wit by furthering and/or having furthered the interests of ZAABB as set out in the preamble.

Accused 15 and Accused 18 are guilty of the offence of corrupt activities relating to public officers.

**SECOND ALTERNATIVE COUNT: 7      ONLY IN RESPECT OF ACCUSED 15 AND 17**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 10(b) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2015 – 2017 and at or near Kusile in the Regional Division of Middelburg, Mpumalanga, Accused 15 and Accused 17 who, directly or indirectly, gave or agreed or offered to give to any person who is party to an employment relationship any unauthorised gratification, whether for the benefit of that party or for the benefit of another person in respect of that party, to wit Accused 1 and Accused 2, doing any act in relation to the exercise, carrying out or performance of that party's powers, duties or functions within the scope of that party's employment relationship, is guilty of the offence of receiving or offering an unauthorised gratification.

**THIRD ALTERNATIVE TO COUNT: 7      ONLY IN RESPECT OF ACCUSED 15 AND 17**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 3(b) read with sections 1, 2, 21, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.**

In that during the period 2015 – 2017 and at or near Kusile in the Regional Division of Mpumalanga, Accused 15 and Accused 17 directly or indirectly and wrongfully gave or agreed or offered to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, to wit Accused 1 and 2 to award the following Variation Orders in terms of the Control and Instrumentation Contract to ZAABB:

**Unit 1 Acceleration Variation Order R 249 405 034**

**AND/OR**



**The Demobilisation Variation Order R 179 000 000**

**AND/OR**

**Unit 2 Trunk Cable Variation Order and Site Establishment R 300 634 935**

**AND/OR**

**Unit 2 Acceleration Variation Order R 289 859 523**

to act, personally or by influencing another person so to act, in a manner –  
that amounts to the –

- a. illegal, dishonest, unauthorized, incomplete or biased, or
- b. misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

that amounts to –

- a. the abuse of a position of authority
- b. a breach of trust; or
- c. the violation of a legal duty or a set of rules,  
designed to achieve an unjust result; or

that amounts to an unauthorized or improper inducement to do or not to do anything.

To wit by furthering and/or having furthered the interests of ZAABB as set out in the preamble,  
is guilty of the offence of corruption.

**MAIN COUNT: 8**

**ONLY IN RESPECT OF ACCUSED 1 AND 2**

**That the accused are guilty of the crime of Corruption in Contravention of Section 12(1)(a) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2014 – 2015 and at or near Kusile Power Station in the Regional Division of Mpumalanga, Accused 1 and Accused 2 directly and/or indirectly wrongfully accepted and/or agreed and/or offered to accept gratification from any other person, whether for the benefit of themselves, or for the benefit of other person or of another person, to wit to

award the following Variation Orders in terms of the Control and Instrumentation Contract to ZAABB:

**Unit 1 Acceleration Variation Order R 249 405 034**

**AND/OR**

**The Demobilisation Variation Order R 179 000 000**

**AND/OR**

**Unit 2 Trunk Cable Variation Order and Site Establishment R 300 634 935**

**AND/OR**

**Unit 2 Acceleration Variation Order R 289 859 523**

In order to improperly influence, in any way –

- a. The promotion, execution, or procurement of any contract with a public body, private organisation, corporate body or any other organisation or institution to wit Eskom, or
  - b. By fixing the price, consideration or other money stipulated or otherwise provided for in such contract; or
- as a reward for acting as contemplated above;

are guilty of the offence of corrupt activities relating to contracts in that Accused 1 and Accused 2 furthered and/or having furthered the interests of ZAABB and Accused 17 as set out in the preamble.

**FIRST ALTERNATIVE COUNT: 8**

**ONLY IN RESPECT OF ACCUSED 1 AND 2**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 4(1)(a) read with section 1, 2, 4(2), 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2015 – 2017 and at or near Kusile Power Station in the Regional Division of Mpumalanga, Accused 1 and Accused 2, public officers, directly or indirectly,

accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of themselves or for the benefit of another person, to wit to award the following Variation Orders in terms of the Control and Instrumentation Contract to ZAABB:

**Unit 1 Acceleration Variation Order R 249 405 034**

**AND/OR**

**The Demobilisation Variation Order R 179 000 000**

**AND/OR**

**Unit 2 Trunk Cable Variation Order and Site Establishment R 300 634 935**

**AND/OR**

**Unit 2 Acceleration Variation Order R 289 859 523**

In order to act and/or omit to act personally and/or by influencing other person(s) to act, in a manner

that amounts to –

- a. illegal, dishonest, unauthorised, incomplete, or biased; or
- b. misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, or contractual or any other legal obligation

that amounts to:

- a. the abuse of a position of authority;
- b. a breach of trust; or
- c. the violation of a legal duty or a set of rules;

designed to achieve an unjust result and/or

that amounts to an unauthorised or improper inducement to do or not to do anything

to wit by furthering and/or having furthered the interests of ZAABB and Accused 17 as set out in the preamble.

**SECOND ALTERNATIVE COUNT: 8      ONLY IN RESPECT OF ACCUSED 1 AND 2**

**That the accused are guilty of the crime of Corruption in Contravention of Section 10(a) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2015 – 2017 and at or near Kusile Power Station in the Regional Division of Mpumalanga, Accused 1 and Accused 2, who were parties to an employment relationship and who, directly or indirectly, accepted or agreed or offered to accept from any other person any unauthorised gratification, whether for the benefit of that person or for the benefit of another person in respect of that party doing any act in relation to the exercise, carrying out or performance of that party's powers, duties or functions within the scope of that party's employment relationship, is guilty of the offence of receiving an unauthorised gratification.

**THIRD ALTERNATIVE TO COUNT 8      ONLY IN RESPECT OF ACCUSED 1 AND 2**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 3(a) read with sections 1, 2, 21, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.**

In that during the period 2015 to 2017 and at or near Kusile Power Station in the Regional Division of Mpumalanga, Accused 1 and Accused 2 directly or indirectly and wrongfully accepted and/or agreed and/or offered to accept the gratification from any other person, whether for the benefit of themselves or for the benefit of another person to wit to award the following Variation Orders in terms of the Control and Instrumentation Contract to ZAABB:

**Unit 1 Acceleration Variation Order R 249 405 034**

**AND/OR**

**The Demobilisation Variation Order R 179 000 000**

**AND/OR**

**Unit 2 Trunk Cable Variation Order and Site Establishment R 300 634 935**

**AND/OR**

**Unit 2 Acceleration Variation Order R 289 859 523**

In order to act, personally or by influencing another person so to act, in a manner – that amounts to the –

- a. illegal, dishonest, unauthorized, incomplete or biased; or
- b. misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual, or any other legal obligation;

that amounts to:

- a. the abuse of a position of authority
- b. a breach of trust; and/or
- c. the violation of a legal duty or a set of rules; or

designed to achieve an unjust result; or

that amounts to an unauthorized or improper inducement to do or not to do anything.

To wit by furthering and/or having furthered the interests of ZAABB and Accused 17 as set out in the preamble.

**MAIN COUNT 9**

**ONLY IN RESPECT OF ACCUSED 17**

**That the Accused is guilty of the crime of Corruption in Contravention of Section 12(1)(b) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2015 – 2017 and at or near Kusile Power Station in the Regional Division of Mpumalanga, Accused 17 directly and/or indirectly wrongfully gave and/or agreed and/or offered to give gratification from any other person, whether for the benefit of

themselves or for the benefit of that other person or of another person in order to award contracts to Accused 17:

**Emergency Contract Number 4600060205 to the value of R 63 445 861.52 (excluding VAT)**

AND/OR

**Sole Source Contract Number 4600061009 to the value of R 198 911 159.58 (excluding VAT)**

In order to improperly influence, in any way –

- a. The promotion, execution, or procurement of any contract with a public body, private organisation, corporate body or any other organisation or institution to wit Eskom, or
- b. the fixing of the price, consideration or other money stipulated or otherwise provided for in such contract; or
- c. as a reward for acting as contemplated above;

is guilty of the offence of corrupt activities relating to contracts in that Accused 1 and Accused 2 furthered and/or having furthered the interests of Accused 17 as set out in the preamble.

**FIRST ALTERNATIVE COUNT: 9                      ONLY IN RESPECT OF ACCUSED 17**

**That the Accused is guilty of the crime of Corruption in Contravention of Section 4(1)(b) read with section 1, 2, 4(2), 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2015 – 2017 and at or near Kusile Power Station in the Regional Division of Mpumalanga, Accused 17 directly and/or indirectly wrongfully gave and/or agreed and/or offered to give gratification to a public officer, to with Accused 1 and Accused 2 or for the benefit of another person, to award contracts to Accused 17:

**Emergency Contract Number 4600060205 to the value of R 63 445 861.52 (excluding VAT)**

AND/OR

**Sole Source Contract Number 4600061009 to the value of R 198 911 159.58 (excluding VAT)**

In order to act and/or omit to act personally and/or by influencing other person(s) to act, in a manner

that amounts to –

- a. illegal, dishonest, unauthorised, incomplete or biased; or
- b. misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

that amounts to –

- a. the abuse of a position of authority;
- b. a breach of trust; or
- c. the violation of a legal duty or a set of rules;

designed to achieve an unjustified result; or

that amounts to any other unauthorised or improper inducement to do or not to do anything.

To wit by furthering and/or having furthered the interests of Accused 17 as set out in the preamble.

**SECOND ALTERNATIVE COUNT: 9**

**ONLY IN RESPECT OF ACCUSED 17**

**That the Accused is guilty of the crime of Corruption in Contravention of Section 10(b) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2015 - 2017 and at or near Kusile Power Station in the Regional Division of Mpumalanga, Accused 17, who directly or indirectly, give or agrees or offers to give to any person who was a party to an employment relationship, to wit Accused 1 and Accused 2, any unauthorised gratification, whether for the benefit of that party or for the benefit of another person, in respect of that party doing any act in relation to the exercise, carrying out or performance of that party's powers, duties or functions within the scope of that party's employment relationship, is guilty of offering an unauthorised gratification.

**THIRD ALTERNATIVE TO COUNT 9**

**ONLY IN RESPECT OF ACCUSED 17**

**That the accused is guilty of the crime of Corruption in Contravention of section 3(b) read with sections 1, 2, 21, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.**

In that during the period 2015 to 2017 and at or near Kusile Power Station in the Regional Division of Mpumalanga, Accused 17 directly or indirectly and wrongfully gave or agreed or offered to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, Accused 1 and Accused 2 to award contracts to Accused 17:

**Emergency Contract Number 4600060205 to the value of R 63 445 861.52 (excluding VAT)**

AND/OR

**Sole Source Contract Number 4600061009 to the value of R 198 911 159.58 (excluding VAT)**

In order to act, personally or by influencing another person so to act, in a manner – that amounts to the –

- a. illegal, dishonest, unauthorized, incomplete or biased exercise, or
- b. misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

that amounts to –

- a. the abuse of a position of authority;
- b. a breach of trust; or
- c. the violation of a legal duty or a set of rules, designed to achieve an unjustified result; or

that amounts to any other unauthorized or improper inducement to do or not to do anything,

is guilty of the offence of corruption.

To wit by furthering and/or having furthered the interests of Accused 17 as set out in the preamble, is guilty of the offence of corruption.



**MAIN COUNT: 10**

**ONLY IN RESPECT OF ACCUSED 1**

**That the accused is guilty of the crime of Corruption in Contravention of Section 12(1)(a) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2014 to 2017 and at or near Megawatt Park, in the Regional Division of Gauteng, Accused 1 directly and/or indirectly wrongfully accepted and/or agreed and/or offered to accept gratification from any other person, whether for the benefit of himself, or for the benefit of other person or of another person, to wit to award the following contracts to Accused 12 and Accused 17:

**Sole Source Contract 4600058330 for “Planning of Turbine Centreline activities through Quality Work Packages in SAP at a value of R 95 296 766.84 (excluding VAT)**

AND/OR

**Emergency Contract to secure the services of Mr Pleisteiner at a value of R 3 608 500 (excluding VAT)**

In order to improperly influence, in any way –

- a. The promotion, execution, or procurement of any contract with a public body, private organisation, corporate body or any other organisation or institution to wit Eskom, or
- b. By fixing the price, consideration or other money stipulated or otherwise provided for in such contract; or

as a reward for acting as contemplated above;

are guilty of the offence of corrupt activities relating to contracts in that Accused 1 furthered and/or having furthered the interests of Accused 12 and Accused 17 as set out in the preamble.

**FIRST ALTERNATIVE COUNT: 10**

**ONLY IN RESPECT OF ACCUSED 1**

**That the Accused is guilty of the crime of Corruption in Contravention of Section 4(1)(a) read with section 1, 2, 4(2), 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2014 – 2017 and at or near Sandton in the Regional Division of Gauteng, Accused 1, a public officer, directly or indirectly, accepted or agreed or offered to accept any gratification from any other person, to wit Accused 12 and Accused 17, whether for the benefit of himself or for the benefit of another person in order to award contracts to Accused 12 and Accused 17:

**Sole Source Contract 4600058330 for “Planning of Turbine Centreline activities through Quality Work Packages in SAP at a value of R 95 296 766.84 (excluding VAT)**

AND/OR

**Emergency Contract to secure the services of Mr Pleisteiner at a value of R 3 608 500 (excluding VAT)**

In order to act, personally or by influencing another person so to act, in a manner – that amounts to the –

- a. Illegal, dishonest, unauthorised, incomplete, or biased; or
- b. Misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

that amounts to –

- a. the abuse of a position of authority;
- b. a breach of trust; or
- c. the violation of a legal duty or a set of rules;

designed to achieve an unjustified result; or

that amounts to any other unauthorised or improper inducement to do or not to do anything,

is guilty of the offence of corrupt activities relating to public officers.

**SECOND ALTERNATIVE COUNT 10**

**ONLY IN RESPECT OF ACCUSED 1**

**That the Accused is guilty of the crime of Corruption in Contravention of Section 10(a) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2014 - 2017 and at or near Sandton in the Regional Division of Gauteng, Accused 1 who is party to an employment relationship and who, directly or indirectly, accepted or agreed or offered to accept from any other person any unauthorised gratification, whether for the benefit of that person or for the benefit of another person in respect of that party doing any act in relation to the exercise, carrying out or performance of that party's powers, duties or functions within the scope of that party's employment relationship, is guilty of the offence of receiving an unauthorised gratification.

**THIRD ALTERNATIVE TO COUNT 10**

**ONLY IN RESPECT OF ACCUSED 1**

**That the Accused is guilty of the crime of Corruption in Contravention of Section 3(a) read with Sections 1, 2, 21, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, 12 of 2004.**

In that during the period 2014 to 2017 and at or near Megawatt Park in the Regional Division of Gauteng, Accused 1 directly or indirectly and wrongfully accepted or agreed or offered to accept any gratification from any other person, whether for the benefit of himself or for the benefit of another person, to wit to award contracts to Accused 12 and Accused 17:

**Sole Source Contract 4600058330 for "Planning of Turbine Centreline activities through Quality Work Packages in SAP at a value of R 95 296 766.84 (excluding VAT)**

AND/OR

**Emergency Contract to secure the services of Mr Pleisteiner at a value of R 3 608 500 (excluding VAT)**

In order to act, personally or by influencing another person so to act, in a manner –  
That amounts to the –

- a. illegal, dishonest, unauthorised, incomplete, or biased; or

b. misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

that amounts to –

- a. the abuse of a position of authority;
- b. a breach of trust; or
- c. the violation of a legal duty or a set of rules, designed to achieve an unjustified result; or

that amounts to any other unauthorised or improper inducement to do or not to do anything,

To wit by furthering and/or having furthered the interests of Accused 12 and Accused 17 as set out in the preamble.

**MAIN COUNT 11**

**ONLY IN RESPECT OF ACCUSED 12 AND 17**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 12(1)(b) read with Section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2015 – 2017 and at or near Megawatt Park in the Regional Division of Gauteng, Accused 12 and Accused 17 directly and/or indirectly wrongfully gave or agreed or offered to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, to wit Accused 1 to award contracts to Accused 12 and Accused 17:

**Sole Source Contract 4600058330 for “Planning of Turbine Centreline activities through Quality Work Packages in SAP at a value of R 95 296 766.84 (excluding VAT)**

AND/OR

**Emergency Contract to secure the services of Mr Pleisteiner at a value of R 3 608 500 (excluding VAT)**

In order to improperly influence, in any way –

- a. The promotion, execution or procurement of any contract with a public body, private organisation, corporate body or any other organisation, corporate body or any other organisation or institution; or
  - b. the fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract; or
- as a reward for acting as contemplated above

is guilty of the offence of corrupt activities relating to contracts.

**FIRST ALTERNATIVE COUNT 11**

**ONLY IN RESPECT OF ACCUSED 12 AND 17**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 4(1)(b) read with section 1, 2, 4(2), 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2015 – 2017 and at or near Megawatt Park in the Regional Division of Gauteng, Accused 12 and Accused 17 directly and/or indirectly wrongfully gave and/or agreed and/or offered to give gratification to a public officer, to wit Accused 1, or for the benefit of another person, to award contracts to Accused 12 and Accused 17:

**Sole Source Contract 4600058330 for “Planning of Turbine Centreline activities through Quality Work Packages in SAP at a value of R 95 296 766.84 (excluding VAT)**

AND/OR

**Emergency Contract to secure the services of Mr Pleisteiner at a value of R 3 608 500 (excluding VAT)**

in order to act and/or omit to act personally and/or by influencing other person(s) to act, in a manner that amounts to –

- a. illegal, dishonest, unauthorised, incomplete or biased; or
- b. misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory or contractual or any other legal obligation

that amounts to:

- a. a breach of trust;
  - b. a breach of trust; or
  - c. violation of a legal duty or a set of rules;
- designed to achieve an unjust result or  
that amounts to an unauthorised or improper inducement to do or not to do anything

to wit by furthering and/or having furthered the interests of Accused 12 and Accused 17 as set out in the preamble.

Accused 12 and Accused 17 is guilty of the offence of corrupt activities relating to public officers.

**SECOND ALTERNATIVE COUNT 11      ONLY IN RESPECT OF ACCUSED 12 AND 17**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 10(b) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during the period 2015 – 2017 and at or near Megawatt Park in the Regional Division of Gauteng, Accused 12 and Accused 17, who directly or indirectly, give or agrees or offers to give to any person who is party to an employment relationship any unauthorised gratification, whether for the benefit of that party or for the benefit of another person, in respect of that party, to wit Accused 1, doing any act in relation to the exercise, carrying out or performance of that party's powers, duties or functions within the scope of that party's employment relationship, is guilty of the offence of offering an unauthorised gratification.

**THIRD ALTERNATIVE TO COUNT 11      ONLY IN RESPECT OF ACCUSED 12 AND 17**

**That the Accused are guilty of the crime of Corruption in Contravention of Section 3(b) read with sections 1, 2, 21, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004.**

In that during the period 2015 – 2017 and at or near Megawatt Park in the Regional Division of Gauteng, Accused 12 and Accused 17 directly or indirectly and wrongfully gave or agreed or offered to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, to wit Accused 1 to award contracts to Accused 12 and Accused 17:

**Sole Source Contract 4600058330 for “Planning of Turbine Centreline activities through Quality Work Packages in SAP at a value of R 95 296 766.84 (excluding VAT)**

AND/OR

**Emergency Contract to secure the services of Mr Pleisteiner at a value of R 3 608 500 (excluding VAT)**

to act, personally or by influencing another person so to act, in a manner – that amounts to the –

- a. illegal, dishonest, unauthorised, incomplete, or biased; or
- b. misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

that amounts to –

- a. the abuse of a position of authority;
- b. a breach of trust; or
- c. the violation of a legal duty or a set of rules, designed to achieve an unjustified result or

that amounts to any other unauthorised or improper inducement to do or not to do anything,

is guilty of the offence of corruption.

To wit by furthering and/or having furthered the interests of Accused 12 and Accused 17 as set out in the preamble, is guilty of the offence of corruption.

**COUNT 12: FRAUD**

**ONLY IN RESPECT OF ACCUSED 2 AND 18**

**Accused 2 is charged with Fraud read with sections 1, 92, 96, 245, 256, 264 and 270 of Act 51 of 1977 and section 51(2) of Act 105 of 1997 (in that it involves an amount of more than R 500 000).**

In that during 2016, and at or near Kusile Power Station in the Regional District of Mpumalanga, Accused 2 intentionally and unlawfully made misrepresentations to Eskom by declaring that there was an emergency at Kusile Power Station on 25 March 2016 and on 22

July 2016, which necessitated the appointment of Accused 17 to provide Construction Staff to support Kusile Power Station Project.

And that the aforesaid misrepresentations made by Accused 2 resulted in actual or potential prejudice to Eskom in that a contract was entered into between Eskom and Accused 17 to the cumulative amount of R 63 445 861.52

In truth and in fact, when Accused 2 gave out and pretended as aforesaid, he knew that there was no emergency at Kusile Power Station which warranted the deployment of Impulse Accused 17 and thereby caused potential or actual prejudice to the amount of R 63 445 861.52

**MAIN COUNT 13: ONLY IN RESPECT OF ACCUSED 13 AND 14**  
**Money Laundering in Contravention of Section 4 read with Sections 1, and 8 of the Prevention of Organised Crime act, act 121 of 1998 (“POCA”), as amended**

Whereas the cumulative amount of R 4 448 280.00 was paid to Accused 14’s First National Bank account with number 62587898762, managed by Accused 13 as the sole director, during the period 28 April 2016 to 06-07-2017 which cumulative amount constituted of formed part of the proceeds of unlawful activities to wit the gratification from Accused 17.

And whereas Accused 13 and Accused 14 knew or ought to have reasonably known that the said cumulative amounts was or formed part of the proceeds of unlawful activities, to wit the gratification paid by Accused 17 to Accused 1.

Now therefore Accused 13 and 14 is guilty of the offence of contravening section 4 read with section 1 and 8 of POCA, as amended:

In that in and during the period 28 April 2016 to 6 July 2017 at or near Fourways in the Regional Division of Gauteng, Accused 13 and 14 did unlawfully

- (a) enter into an any agreement or engaged in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement, or transaction is legally enforceable or not; or
- (b) performed any other act in connection with such property, whether it is performed independently or in concert with any other person,



Which had or was likely to have the effect -

- (i) Of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof, and/or
- (ii) Of enabling or assisting Accused 1 who has committed or commits an offence whether in the Republic or elsewhere -
  - (aa) to avoid prosecution for fraud and corruption; and/or
  - (bb) to remove or diminish the said property acquired directly, or indirectly, as a result of the commission of fraud and corruption.

**FIRST ALTERNATIVE TO COUNT 13: ONLY IN RESPECT OF ACCUSED 13 AND 14**  
**Contravention of Section 5 (a) and /or (b), read with Sections 1 and 8 of the Prevention of Organised Crime Act, 121 of 1998, (“POCA”) as amended.**

Whereas the Accused 13 and Accused 14, knew or ought reasonably to have known that another person to wit Accused 1 had obtain the proceeds of unlawful activities property to wit the gratifications from Accused 17 in the cumulative amount of R4 448 280.00, and

In that on or during the period 28 April 2016 to 6 July 2017 at or near Fourways in the Division of Gauteng, Accused 13 and Accused 14, did unlawfully entered into any agreement with anyone or engages in any arrangement or transaction whereby –

- (a) the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or
- (b) The said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his behalf, or to benefit him in any other way.

**SECOND ALTERNATIVE TO COUNT: 13 ONLY IN RESPECT OF ACCUSED 13 AND 14**  
**Contravention of section 6 read with Section 1 and 8 of Prevention of Organised Crime Act, 121 of 1998, (“POCA”) as amended.**

Whereas the Accused 13 and Accused 14, knew or ought reasonable to have known that the cumulative amount of R 4 448 280.00 that was deposited into Accused 14’s First National Bank account 62587898762 is or from the proceeds of unlawful activities.

In that on or during the period 28 April 2016 to 6 July 2017 at or near Fourways in the Division of Gauteng, the said Accused 3, did unlawfully

- (a) acquired;
- (b) used; or
- (c) had possession of,

the said amount of money knowing or ought to have reasonably known that it is or formed part of the proceeds of unlawful activities of another person.

**MAIN COUNT: 14**

**ONLY IN RESPECT OF ACCUSED 13**

**Money Laundering in Contravention of Section 4 read with Sections 1, and 8 of the Prevention of Organised Crime Act, act 121 of 1998 (“POCA”), as amended**

Whereas the cumulative amount of R 764 436.00 was paid to Thato Choma Events and Concepts’ Standard Bank account with number 02 154 501 4 during the period 11 February 2016 to 30 November 2016 which cumulative amount constituted of formed part of the proceeds of unlawful activities to wit the gratification from Accused 17 or persons/entities unknown to the State

and whereas Accused 13 knew or ought to have reasonably known that the said cumulative amounts was or formed part of the proceeds of unlawful activities, to wit the gratification paid by Accused 17 or persons/entities unknown to the State to Accused 1.

now therefore Accused 13 is guilty of the offence of contravening section 4 read with section 1 and 8 of POCA, as amended:

In that in and during the period 11 February 2016 to 30 November 2016 at or near Hartbeespoort in the Regional Division of Gauteng, Accused 13 did unlawfully

- a) entered into an any agreement or engaged in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement, or transaction is legally enforceable or not; or
- b) performed any other act in connection with such property, whether it is performed independently or in concert with any other person,

Which had or was likely to have the effect -

- (i) Of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof, and/or
- (ii) Of enabling or assisting Accused 1 who has committed or commits an offence whether in the Republic or elsewhere -
  - (aa) to avoid prosecution for fraud and corruption; and/or
  - (bb) to remove or diminish the said property acquired directly, or indirectly, as a result of the commission of fraud and corruption.

**FIRST ALTERNATIVE TO COUNT: 14**

**ONLY IN RESPECT OF ACCUSED 13**

**Contravention of Section 5 (a) and /or (b), read with Sections 1 and 8 of the prevention of Organised Crime Act, 121 of 1998 (“POCA”), as amended.**

Whereas Accused 13 knew or ought reasonably to have known that another person to wit Accused 1 had obtained the proceeds of unlawful activities property to wit the gratifications from Accused 17 and/or persons/entities unknown to the State in the cumulative amount of R 764 436.00, and

In that on or during the period 11 February 2016 to 30 November 2016 at or near Hartbeespoort the Division of Gauteng, Accused 13, unlawfully entered into any agreement with anyone or engages in any arrangement or transaction whereby –

- a. the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or
- b. The said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his behalf or to benefit him in any other way.

**SECOND ALTERNATIVE TO COUNT: 14**

**ONLY IN RESPECT OF ACCUSED 13**

Contravention of section 6 read with section 1 and 8 of prevention of organised crime act, 121 of 1998, as amended.

Whereas the accused knew or ought to reasonable to have known that the cumulative amount of R 764 436.00 that was deposited into Thato Choma Events and Concepts' Standard Bank account with account number 02 154 501 4 is or from the proceeds of unlawful activities.

**In that** on or during the period 11-02-2016 to 30 November 2016 at or near Hartbeespoort in the Division of Gauteng, the said Accused 13, did unlawfully

- a. acquired;
- b. used; or
- c. had possession of,

the said amount of money knowing or ought to have reasonably known that it is or formed part of the proceeds of unlawful activities of another person.

**MAIN COUNT 15: FRAUD**

**ONLY IN RESPECT OF ACCUSED 8 AND 10**

**Accused 8 and 10 are charged with Fraud read with sections 1, 92, 96, 245, 256, 264 and 270 of Act 51 of 1977 and section 51(2) of Act 105 of 1997 (in that it involves an amount of more than R 500 000).**

In that the Accused on or about 6 November 2014 at or near Modderfontein in the Regional Division of Gauteng, the Accused 8 and Accused 10, wrongfully, falsely and with the intent to defraud misrepresented to ABB that:

Accused 10 is entitled to payment in the amount of R 3 242 242.08 for the delivery of the following services:

- a. **Providing of six engineers equipped with laptops which include standard Microsoft office and auto card software packages on the Kusile & Medupi Early Works contract,**
- b. **That it was for the services of six engineers for the period of 18 August 2014 to 31 November 2014 at an hourly rate of R 660 per hour per engineer.**

and did the Accused, by means of the said misrepresentations and/or fraudulent conduct, induce ZAABB to their prejudice or potential prejudice

to accept the misrepresentations as true and correct and make payment in the amount of R 3 242 242.08 on presentation of invoice No 1 dated 6 November 2014 on the Kusile & Medupi Early Works as payment for the supply of six engineers for the period 18 August 2014 to 31 November 2014.

Whereas in truth and fact, the accused when they presented as aforesaid well knew that:

- a. Accused 10 did not provide six engineers equipped with laptops which include standard Microsoft office and auto card software packages,
- b. Six engineers did not work on the Kusile & Medupi Early Works contract for the period of 18 August 2014 to 31 November 2014 at an hourly rate of R660 per hour per engineer.
- c. Only 4 engineers were provided from 15 October 2014 to 31 November 2014 to work on the Kusile & Medupi Early Works contract.

And therefore, the Accused committed the crime of Fraud

**MAIN COUNT 16: FRAUD ONLY IN RESPECT OF ACCUSED 8 AND 10**

**Accused 8 and 10 are charged with Fraud read with sections 1, 92, 96, 103, 245, 256, 264 and 270 of Act 51 of 1977 and section 51(2) of Act 105 of 1997 (in that it involves an amount of more than R 500 000)**

In that Accused 8 and Accused 10 on or about 26 January 2015 at or near Modderfontein in the Regional Division of Gauteng, Accused 8 and Accused 10, wrongfully, falsely and with the intent to defraud and misrepresent to ZAABB that:

Accused 10 is entitled to payment in the amount of R 2 445 901.92 for the delivery of the following services:

- a. **Providing of six engineers equipped with laptops which include standard Microsoft office and auto card software packages on the Kusile & Medupi Early Works contract,**

- b. That it was for the services of six engineers for the period of December 2014 to 31 March 2015 at an hourly rate of R 660 per hour per engineer.**

and did Accused 8 and Accused 10, by means of the said misrepresentations and/or fraudulent conduct, induce ZAABB to their prejudice or potential prejudice.

To accept the misrepresentations as true and correct and make payment in the amount of R 2 445 901.92 on presentation of invoice No 2 dated 26 January 2015 on the Kusile & Medupi Early Works as payment for the supply of six engineers for the period 1 December 2014 to 31 March 2015.

Whereas in truth and fact, the accused when they presented as aforesaid well knew that:

- a. Accused 10 did not provide six engineers equipped with laptops which include standard Microsoft office and auto card software packages,
- b. Six engineers did not work on the Kusile & Medupi Early Works contract for the period of 1 December 2014 to 31 March 2015 at an hourly rate of R 660 per hour per engineer.
- c. Only 4 engineers were provided from 1 December 2014 to 28 February 2015 on the Kusile & Medupi Early Works contract.

And therefore, the accused did commit the crime of Fraud

**MAIN COUNT: 17**

**ONLY IN RESPECT OF ACCUSED 3 AND 4**

**Money Laundering in Contravention of Section 4 read with Sections 1, and 8 of the Prevention of Organised Crime Act, 121 of 1998 (“POCA”), as amended**

Whereas the cumulative amount of R 5 701 631.01 was paid to Accused 4’s First National Bank account with number 62557612522 during the period 2 September 2015 to 3 August 2017 which cumulative amount constituted of formed part of the proceeds of unlawful activities to wit the gratification from Accused 17 and/or other persons/entities unknown to the State.

And whereas Accused 3 and Accused 4 knew or ought to have reasonably known that the said cumulative amounts was or formed part of the proceeds of unlawful activities, to wit the

gratification paid by Accused 17 and/or other person/entities unknown to the State to Accused 1.

Now therefore Accused 3 and Accused 4 is guilty of the offence of contravening section 4 read with section 1 and 8 of POCA, as amended:

In that in and during the period 2 September 2015 to 3 August 2017 at or near Hartbeespoort in the Regional Division of Gauteng, Accused 3 and Accused 4 unlawfully

- a. entered into an any agreement or engaged in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement, or transaction is legally enforceable or not; or
- b. performed any other act in connection with such property, whether it is performed independently or in concert with any other person,

Which had or was likely to have the effect –

- (i) Of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof, and/or
- (ii) Of enabling or assisting Accused 1 who has committed or commits an offence whether in the Republic or elsewhere -
  - (aa) to avoid prosecution for fraud and corruption; and/or
  - (bb) to remove or diminish the said property acquired directly, or indirectly, as a result of the commission of fraud and corruption.

**FIRST ALTERNATIVE TO COUNT: 17      ONLY IN RESPECT OF ACCUSED 3 AND 4**  
**Contravention of Section 5 (a) and /or (b), read with Sections 1 and 8 of the Prevention of Organised Crime Act, 121 of 1998 (“POCA”), as amended.**

Whereas Accused 3 and Accused 4 knew or ought reasonably to have known that another person to wit Accused 1 had obtained the proceeds of unlawful activities property to wit the gratifications from Accused 17 in the cumulative amount of R 5 701 631.01, and

In that on or during the period 2 September 2015 to 3 August 2017 at or near Hartbeespoort the Division of Gauteng, Accused 3 and Accused 4, did unlawfully enter into any agreement with anyone or engage in any arrangement or transaction whereby –

- a. the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or
- b. The said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his behalf or to benefit him in any other way.

**SECOND ALTERNATIVE TO COUNT: 17      ONLY IN RESPECT OF ACCUSED 3 AND 4**  
**Acquisition, possession or use of proceeds of unlawful activities**

**Contravention of section 6 read with section 1 and 8 of Prevention of Organised Crime Act, 121 of 1998 (“POCA”), as amended.**

Whereas Accused 3 and Accused 4 knew or ought to reasonable to have known that the cumulative amount of R 5 701 631.01 that were deposited into Accused 4’s First National Bank account 62557612522 is or from the proceeds of unlawful activities.

In that on or during the period 2 September 2015 to 3 August 2017 at or near Hartbeespoort in the Division of Gauteng, the said Accused 3 and Accused 4, did unlawfully

- a. acquired;
- b. used; or
- c. had possession of,



the said amount of money knowing or ought to have reasonably known that it is or formed part of the proceeds of unlawful activities of another person.

**MAIN COUNT: 18**

**ONLY IN RESPECT OF ACCUSED 3 AND 5**

**Money Laundering in Contravention of Section 4 read with Sections 1, and 8 of the Prevention of Organised Crime Act, 121 of 1998 (“POCA”), as amended**

Whereas the cumulative amount of R 19 903 450.50 was paid to Accused 5’s First National Bank account with number 62163071568 during the period November 2014 to October 2017 which cumulative amount constituted of formed part of the proceeds of unlawful activities to wit the gratification from Accused 17 and/or persons/entities unknown to the State

And whereas Accused 3 and Accused 5 knew or ought to have reasonably known that the said cumulative amounts was or formed part of the proceeds of unlawful activities, to wit the gratification paid by Accused 17 and/or person/entities unknown to the State to Accused 1.

Now therefore Accused 3 and Accused 5 are guilty of the offence of contravening section 4 read with section 1 and 8 of POCA, as amended:

In that in and during the period November 2014 to October 2017 at or near Pretoria in the Regional Division of Gauteng, Accused 3 and Accused 4 unlawfully

- a. entered into an any agreement or engaged in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement, or transaction is legally enforceable or not; or
- b. performed any other act in connection with such property, whether it is performed independently or in concert with any other person,

Which had or was likely to have the effect –

- (i) Of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof, and/or

(ii) Of enabling or assisting Accused 1 who has committed or commits an offence whether in the Republic or elsewhere -

(aa) to avoid prosecution for fraud and corruption; and/or

(bb) to remove or diminish the said property acquired directly, or indirectly, as a result of the commission of fraud and corruption.

**FIRST ALTERNATIVE TO COUNT: 18      ONLY IN RESPECT OF ACCUSED 3 AND 5  
**Contravention of Section 5 (a) and /or (b), read with Sections 1 and 8 of the Prevention of Organised Crime Act, 121 of 1998 (“POCA”), as amended.****

Whereas Accused 3 and 5 knew or ought reasonably to have known that another person to wit Accused 1 had obtain the proceeds of unlawful activities property to wit the gratifications from Accused 17 in the cumulative amount of R 19 903 450.50 and

In that on or during the period November 2014 to October 2017 at or near Pretoria the Division of Gauteng, Accused 3 and Accused 5, did unlawfully entered into any agreement with anyone or engages in any arrangement or transaction whereby –

- a. the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or
- b. The said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his behalf or to benefit him in any other way.

**SECOND ALTERNATIVE TO COUNT: 18      ONLY IN RESPECT OF ACCUSED 3 AND 5  
**Contravention of Section 6 read with Section 1 and 8 of Prevention of Organised Crime Act, 121 of 1998 (“POCA”), as amended.****

Whereas Accused 3 and 5 knew or ought to reasonable to have known that the cumulative amount of R 19 903 450.50 that were deposited into Accused 5’s First National Bank account 621 63007 1568 is or form the proceeds of unlawful activities.

In that on or during the period November 2014 to October 2017 at or near Pretoria in the Division of Gauteng, the said Accused 3 and Accused 5 did unlawfully

- a. acquired;
- b. used; or
- c. had possession of,

the said amount of money knowing or ought to have reasonably known that it is or formed part of the proceeds of unlawful activities of another person.

**MAIN COUNT: 19**

**ONLY IN RESPECT OF ACCUSED 3 AND 5**

**Money Laundering in Contravention of Section 4 read with Sections 1, and 8 of the Prevention of Organised Crime Act, 121 of 1998 (“POCA”), as amended**

Whereas the cumulative amount of R 2 467 744.32 was paid to Accused 5’s Standard Bank account with number 361253699 during the period January 2017 which cumulative amount constituted of formed part of the proceeds of unlawful activities to wit the gratification from Accused 17.

And whereas Accused 3 and Accused 5 knew or ought to have reasonably known that the said cumulative amounts was or formed part of the proceeds of unlawful activities, to wit the gratification paid by Accused 17 to Accused 1.

Now therefore Accused 3 and 5 are guilty of the offence of contravening section 4 read with section 1 and 8 of POCA, as amended:

In that in and during the period January 2017 at or near Sandton in the Regional Division of Gauteng, Accused 3 and Accused 5 did unlawfully

- a. entered into an any agreement or engaged in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement, or transaction is legally enforceable or not; or
- b. performed any other act in connection with such property, whether it is performed independently or in concert with any other person,

Which had or was likely to have the effect –

- (i) Of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof, and/or
- (ii) Of enabling or assisting Accused 1 who has committed or commits an offence whether in the Republic or elsewhere –
  - (aa) to avoid prosecution for fraud and corruption; and/or
  - (bb) to remove or diminish the said property acquired directly, or indirectly, as a result of the commission of fraud and corruption.

**FIRST ALTERNATIVE TO COUNT: 19      ONLY IN RESPECT OF ACCUSED 4 AND 5**  
**Contravention of section 5 (a) and /or (b), read with Sections 1 and 8 of the Prevention of Organised Crime Act, 121 of 1998 (“POCA”), as amended.**

Whereas the Accused 3 and Accused 5 knew or ought reasonably to have known that another person to wit Accused 1 had obtain the proceeds of unlawful activities property to wit the gratifications from Accused 17 in the cumulative amount of R 2 2 467 744.32, and

In that on or during the period January 2017 at or near Sandton the Regional Division of Gauteng, Accused 3 and Accused 5, did unlawfully entered into any agreement with anyone or engages in any arrangement or transaction whereby –

- a. the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or
- b. The said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his behalf or to benefit him in any other way.

**SECOND ALTERNATIVE TO COUNT: 19      ONLY IN RESPECT OF ACCUSED 3 AND 5**

**Acquisition, possession or use of proceeds of unlawful activities**

Contravention of Section 6 read with Section 1 and 8 of the Prevention of Organised Crime Act, 121 of 1998, as amended.

Whereas the accused knew or ought to reasonable to have known that the cumulative amount of R 2 2 467 744.32 that was deposited into Accused 5's Standard Bank account 361253699 is or from the proceeds of unlawful activities.

In that on or during the period January 2017 at or near Sandton in the Regional Division of Gauteng, the said Accused 3 and Accused 5, did unlawfully

- a. acquired;
- b. used; or
- c. had possession of,

the said amount of money knowing or ought to have reasonably known that it is or formed part of the proceeds of unlawful activities of another person.

**MAIN COUNT: 20      ONLY IN RESPECT OF ACCUSED 6 AND 7**

**Money Laundering in Contravention of Section 4 read with Sections 1 and 8 of the Prevention of Organised Crime Act, 121 of 1998 ("POCA"), as amended**

Whereas the cumulative amount of R 21 790 292.00 was paid to Accused 7's First National Bank account with number 62632316982 during the period 13 September 2016 to 19 April 2017 which cumulative amount constituted of formed part of the proceeds of unlawful activities to wit the gratification from Accused 17.

And whereas Accused 6 and Accused 7 knew or ought to have reasonably known that the said cumulative amounts was or formed part of the proceeds of unlawful activities, to wit the gratification paid by Accused 17 to Accused 1.

Now therefore Accused 6 and Accused 7 are guilty of the offence of contravening section 4 read with section 1 and 8 of POCA, as amended:

In that in and during the period September 2016 to April 2017 at or near Hartbeespoort in the Regional Division of Gauteng, Accused 6 and 7 did unlawfully

- a. entered into an any agreement or engaged in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement, or transaction is legally enforceable or not; or
- b. performed any other act in connection with such property, whether it is performed independently or in concert with any other person,

Which had or was likely to have the effect -

- (i) Of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof, and/or
- (ii) Of enabling or assisting Accused 1 who has committed or commits an offence whether in the Republic or elsewhere -
  - (aa) to avoid prosecution for fraud and corruption; and/or
  - (bb) to remove or diminish the said property acquired directly, or indirectly, as a result of the commission of fraud and corruption

**FIRST ALTERNATIVE TO COUNT: 20                      ONLY IN RESPECT OF ACCUSED 6 AND 7**  
**Contravention of Section 5 (a) and /or (b), read with Sections 1 and 8 of the Prevention of Organised Crime Act, 121 of 1998, as amended.**

Whereas Accused 6 and Accused 7 knew or ought reasonably to have known that another person to wit Accused 1 had obtain the proceeds of unlawful activities property to wit the gratifications from Accused 17 in the cumulative amount of R 21 790 292.00, and

In that on or during the period 13 September 2016 to 19 April 2017 at or near Hartbeespoort in the Division of Gauteng, Accused 6 and Accused 7, did unlawfully entered into any agreement with anyone or engages in any arrangement or transaction whereby –

- a. the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or
- b. The said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his behalf or to benefit him in any other way.

**SECOND ALTERNATIVE TO COUNT: 20      ONLY IN RESPECT OF ACCUSED 6 AND 7**  
**Contravention of section 6 read with section 1 and 8 of Prevention of Organised Crime Act, 121 of 1998, as amended.**

Whereas the accused knew or ought to reasonable to have known that the cumulative amount of R 21 790 292.00 that were deposited into Accused 7's First National Bank account 62632316982 is or form the proceeds of unlawful activities.

In that on or during the period 13 September 2016 to 19 April 2017 at or near Hartbeespoort in the Division of Gauteng, the said Accused 6 and Accused 7, did unlawfully

- a. acquired;
- b. used; or
- c. had possession of,

the said amount of money knowing or ought to have reasonably known that it is or formed part of the proceeds of unlawful activities of another person.

**MAIN COUNT: 21      ONLY IN RESPECT OF ACCUSED 6, 7, 11**  
**Money Laundering in contravention of section 4 read with sections 1, and 8 of the prevention of organized crime act, act 121 of 1998 ("POCA"), as amended**

Whereas the cumulative amount of **R24 250 000.00** was paid to Ukwakhiwa Investment (Pty) Ltd's Standard Bank account with number 20 303 293 4 during the period 1 April 2016 to 30 June 2017 which cumulative amount constituted of formed part of the proceeds of unlawful activities to wit the gratification from Accused 17.

And whereas Accused 3 knew or ought to have reasonably known that the said cumulative amounts was or formed part of the proceeds of unlawful activities, to wit the gratification paid by Impulse International (Pty) Ltd to Accused 1.

Now therefore Accused 3 is guilty of the offence of contravening section 4 read with section 1 and 8 of POCA, as amended:

In that in and during the period February 2016 to June 2017 at or near Middelburg in the Regional Division of Mpumalanga, Accused 6, Accused 7 and Accused 11 did unlawfully

- a. entered into any agreement or engaged in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement, or transaction is legally enforceable or not; or
- b. performed any other act in connection with such property, whether it is performed independently or in concert with any other person,

Which had or was likely to have the effect -

- (i) Of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof, and/or
- (ii) Of enabling or assisting Accused 1 who has committed or commits an offence whether in the Republic or elsewhere -
  - (aa) to avoid prosecution for fraud and corruption; and/or
  - (bb) to remove or diminish the said property acquired directly, or indirectly, as a result of the commission of fraud and corruption.

**FIRST ALTERNATIVE TO COUNT: 21      ONLY IN RESPECT OF ACCUSED 6, 7, 11**  
**Contravention of section 5 (a) and /or (b), read with sections 1 and 8 of the prevention of organized crime act, no 121 of 1998, as amended.**

Whereas the Accused 6, 7, 11 knew or ought reasonably to have known that another person to wit Accused 1 had obtain the proceeds of unlawful activities property to wit the gratifications from Impulse International (Pty) Ltd in the cumulative amount of R24 500 000.00, and



In that on or during the period 1 April 30 June 2017 at near Middelburg in the Regional Division of Mpumalanga, Accused 6, Accused 7 and Accused 11 did unlawfully entered into any agreement with anyone or engages in any arrangement or transaction whereby –

- a. the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or
- b. The said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his behalf or to benefit him in any other way.

**SECOND ALTERNATIVE TO COUNT: 21**                      **ONLY IN RESPECT OF ACCUSED 6, 7, 11**

Contravention of section 6 read with section 1 and 8 of prevention of organised crime act, 121 of 1998, as amended.

Whereas the accused knew or ought to reasonable to have known that the cumulative amount of R24 500 000.00 that were deposited into Ukwakiwa Investment (Pty) Ltd's Standard Bank account with account number 20 303 2934 is or form the proceeds of unlawful activities.

In that on or during the period 1 April 2016 to 30 June 2017 at or near near Middelburg in the Regional Division of Mpumalanga, Accused 6, Accused 7 and Accused 11, did unlawfully

- a. acquired;
- b. used; or
- c. had possession of,

the said amount of money knowing or ought to have reasonably known that it is or formed part of the proceeds of unlawful activities of another person.

**MAIN COUNT: 22**

**ONLY IN RESPECT OF ACCUSED 2**

**Money Laundering in Contravention of Section 4 read with Sections 1 and 8 of the Prevention of Organised Crime Act, 121 of 1998 ("POCA"), as amended**

Whereas the cumulative amount of R 3 100 000.00 was paid to Nthesaserve (Pty) Ltd's First National Bank account with number 62400237310 during the period 12 August 2016 to 31 December 2017 which cumulative amount constituted of formed part of the proceeds of unlawful activities to wit the gratification from Accused 17.

And whereas Accused 2 knew or ought to have reasonably known that the said cumulative amounts was or formed part of the proceeds of unlawful activities, to wit the gratification paid by Accused 17 to Accused 2.

Now therefore Accused 2 is guilty of the offence of contravening section 4 read with section 1 and 8 of POCA, as amended:

In that in and during the period 12 August 2016 to 31 December 2017 at or near Hartbeespoort in the Regional Division of Gauteng, Accused 2 did unlawfully

- (a) entered into an any agreement or engaged in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement, or transaction is legally enforceable or not; or
- (b) performed any other act in connection with such property, whether it is performed independently or in concert with any other person,

Which had or was likely to have the effect –

- (i) Of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof, and/or
- (iii) to avoid prosecution for fraud and corruption; and/or
- (iii) to remove or diminish the said property acquired directly, or indirectly, as a result of the commission of fraud and corrupt

**MAIN COUNT: 23**

**ONLY IN RESPECT OF ACCUSED 1**

**Money Laundering in Contravention of Section 4 read with Sections 1 and 8 of the Prevention of Organised Crime Act, 121 of 1998 (“POCA”), as amended**

Whereas the cumulative amount of R 38 500 000.00 was paid to Accused 7 during the period 1 April 2016 to 30 December 2017 which cumulative amount constituted of formed part of the proceeds of unlawful activities to wit the gratification from Accused 17.

And whereas Accused 1 knew or ought to have reasonably known that the said cumulative amounts was or formed part of the proceeds of unlawful activities, to wit the gratification paid by Accused 17 to Accused 1.

Now therefore Accused 1 is guilty of the offence of contravening section 4 read with section 1 and 8 of POCA, as amended:

In that in and during the period 2 September 2015 to 3 August 2017 at or near Hartbeespoort in the Regional Division of Gauteng, Accused 1 did unlawfully

- (a) entered into an any agreement or engaged in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement, or transaction is legally enforceable or not; or
- (b) performed any other act in connection with such property, whether it is performed independently or in concert with any other person,

Which had or was likely to have the effect –

- (i) Of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof, and/or
- (ii) Of enabling or assisting Accused 1 who has committed or commits an offence whether in the Republic or elsewhere –
  - (aa) to avoid prosecution for fraud and corruption; and/or
  - (bb) to remove or diminish the said property acquired directly, or indirectly, as a result of the commission

**Main Count 24:**

**ONLY IN RESPECT OF ACCUSED 18**

**Corruption in contravention of section 3(1)(a) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during 2016 and at or near Kusile Power Station in the Regional Division of Mpumalanga, Accused 18 directly and/or indirectly wrongfully accepted and/or agreed and/or offered to accept gratification for the benefit of himself and/or for the benefit of

another person to wit, a Prado vehicle to the value of R 940 632.44 from another person and/or persons to wit: Accused 17 and/or Pragasan Pather and/or Accused 2

In order to act and/or omit to act personally and/or by influencing other person(s) to act, in a manner

- a. that amounts to illegal, dishonest, unauthorised or biased exercise or carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory or contractual obligation and/or
- b. that amounts to:
  - a breach of trust and/or
  - abuse of a position of authority
  - violation of a legal duty or a set of rules and/or designed
- c. designed to achieve an unjust result and/or
- d. that amounts to an unauthorised or improper inducement to do or not to do anything

**FIRST ALTERNATIVE TO COUNT: 25**

**ONLY IN RESPECT OF ACCUSED 18**

**Corruption in contravention of section 10(a) read with section 1, 2, 24, 25 and 26 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 and Section 51 (2)(a) of the Criminal law Amendment Act, 105 of 1997.**

In that during 2016 and at or near Kusile Power Station in the Regional Division of Mpumalanga, Accused 18, who was a party to an employment relationship, directly or indirectly wrongfully accepted and/or agreed and/or offered to accept unauthorised gratification, whether for the benefit of Accused 18 and/or for the benefit of another person to wit a Prado vehicle to the value of R 940 632.44 from another person and/or persons to wit: Accused 17 and/or Pragasan Pather and/or Accused 2.

In case of conviction the said Investigating Director prays for sentence according to law, against the accused.