



# Jones & Wagener

Consulting Civil Engineers

59 Bevan Road PO Box 1434 Rivonia 2128 South Africa  
Tel: 00 27 (0)11 519 0200 Fax: 00 27 (0)11 519 0201 email: post@jaws.co.za

A. C. van Vollenhoven  
Archaetnos  
P.O. Box 55  
**Groenkloof**  
0027

16 November, 2012

Our Ref: **C812\_00**  
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**Attention: Anton C van Vollenhoven**

Dear Anton

## **KIPOWER IPP POWER PLANT**

### **LETTER OF APPOINTMENT FOR RELOCATION OF GRAVES AND DOCUMENTATION OF FARMSTEAD ON HAVERKLIP 265 IR**

#### **JONES & WAGENER ORDER No. C182/MvZ/22282**

With reference to your quotation received on 14 September 2012, we hereby appoint you to carry out the specified scope of work, according to the defined schedule and to provide the approved deliverables within your quoted budget.

The sub-consulting work is to be carried out according to the attached "Conditions of Engagement" and shall fulfil the following criteria.

#### **1. SCOPE OF WORK**

Archaetnos will relocate the graves identified by Dr J Pistorius on the farm following the procedure in the document "The Grave Relocation Process" as compiled by Archaetnos.

The work will be carried out in terms of the provisions of the National Heritage Resources Act, Act 25 of 1999, and the Human Tissues Act, Act 65 of 1983.

Archaetnos will be managing African Grave Relocation Specialists (AGRS) who will be doing the actual curation or reinterment of the graves. Archaetnos will also generate all the required reports for the relocation of the graves.

The graves of graveyard GY04 are to be relocated and the details of the old farmstead S01 need to be recorded. The locations of graveyard (GY04) and the old farmstead (S01) are indicated on Figure 2.

**JONES & WAGENER (PTY) LTD** REG NO. 1993/02655/07 VAT No. 4410136685

**DIRECTORS:** PW Day (Chairman) PrEng MSc(Eng) HonFSAICE D Brink (CEO) PrEng BEng(Hons) FSAICE PG Gage PrEng CEng BSc(Eng) GDE MSAICE AStructE JP van der Berg PrEng PhD MEng MSAICE  
TT Goba PrEng MEng FSAICE GR Wardle (Alternate) PrEng MSc(Eng) FSAICE  
**TECHNICAL DIRECTORS:** JA Kempe PrEng BSc(Eng) GDE MSAICE AStructE JR Shamrock PrEng MSc(Eng) MSAICE MIWM JE Glendinning PrSciNat MSc(Env Geochem) NJ Vermeulen PrEng PhD MEng MSAICE  
DC Rowe PrEng BSc(Eng) MSAICE A Oosthuizen PrEng BEng(Hons) MSAICE HR Aschenborn PrEng BEng(Hons) MSAICE M van Zyl PrSciNat BSc(Hons) MIWM MW Palmer PrEng MSc(Eng) MSAICE  
**ASSOCIATES:** BR Antrobus PrSciNat BSc(Hons) MSAIEG AJ Bain BEng AMSAICE PJJ Smit BEng(Hons) AMSAICE R Puchner PrSciNat MSc(Geol) MSAIEG MAEG TG le Roux PrEng MEng MSAICE  
M van Biljon MSc(Hydrogeology)  
**CONSULTANTS:** W Ellis PrEng CEng MStructE  
**FINANCIAL MANAGER:** HC Neveling BCom MBL



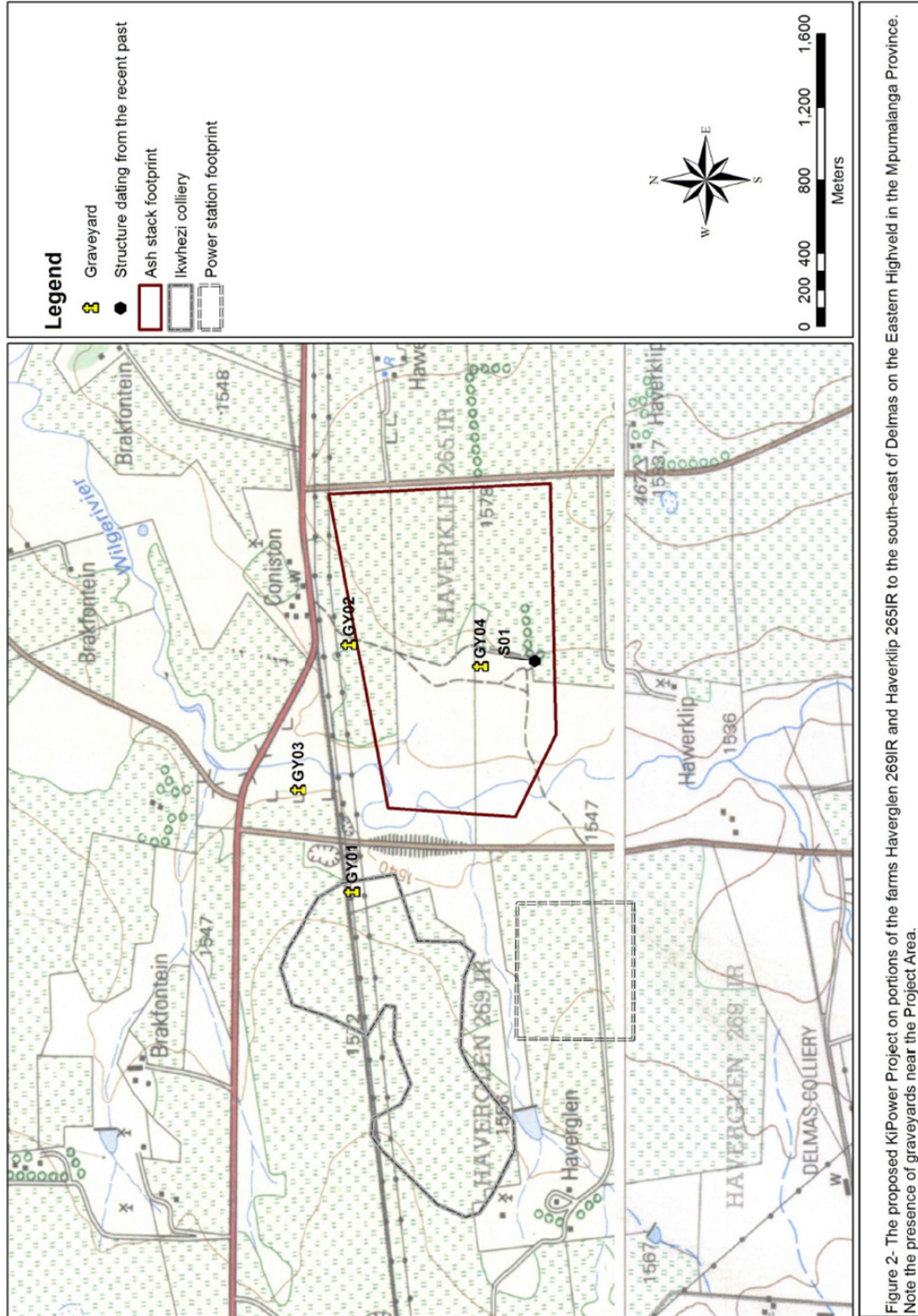


Figure 2- The proposed KiPower Project on portions of the farms Haverghien 269IR and Haverklip 265IR to the south-east of Delmas on the Eastern Highveld in the Mpumalanga Province. Note the presence of graveyards near the Project Area.

(SOURCE: A PHASE I HERITAGE IMPACT ASSESSMENT (HIA) STUDY FOR A PROPOSED 600MW POWER PLANT AND ASSOCIATED INFRASTRUCTURE FOR KIPOWER (PTY) LTD NEAR DELMAS ON THE EASTERN HIGHVELD IN THE MPUMALANGA PROVINCE OF SOUTH AFRICA, JULIUS PISTORIUS, JULY 2012)



## 2. **DELIVERABLES**

The following deliverables are to be generated:

- Curation of the remains, and/or reinterment of the remains as per the wish of the identified families, persons or communities of Graveyard GY04 as listed by Dr J Pistorius;
- Submission of all required reports compliant to the stipulations of the relevant legislation to the relevant compliance agencies, as well as the identified families and other stakeholders. In addition, copies of reports and documentation must also be made available to Jones & Wagener for record keeping purposes.

## 3. **PROGRAM**

Jones & Wagener will provide regular programme updates for the overall authorisation and technical aspects.

- Complete the curation and/or reinterment within four months from the date of receiving the order.

## 4. **BUDGET**

Invoices are to be issued on a monthly basis based on progress made. The budget for the project is as follows:

QTY	DESCRIPTION	UNIT PRICE	TOTAL
8	Hours for detailed documentation of graves (including	R 500.00	R 4 000.00
8	Exhumation and documentation of graves	R 500.00	R 4 000.00
500	Travel (km's) for exhumation and documentation	R 5.50	R 2 750.00
10	Exhumation report hours	R 500.00	R 5 000.00
1	Admin		R 787.50
	Total		R 16 537.50
	VAT @ 14%		R 2 315.25
	<b>Total (inclusive VAT)</b>		<b>R 18 852.75</b>

Invoices must be accompanied by a short monthly progress report and timesheet.

## 5. **BASIS OF APPOINTMENT**

The basis of this appointment is dependent on the contractual arrangement with our client for the specific project, for which Jones & Wagener will utilise your skills. It is understood that this appointment will terminate on completion of the project as per the scope of work provided by Archaetnos.

Should the contract that Jones & Wagener holds with the Client be terminated for whatever reason during the course of this agreement, and should Jones & Wagener be unable to utilise your skills on any other project then this agreement will immediately be terminated. If the contract is terminated for whatever reason, it is accepted that there is no expectation to receive payment for the balance of the work not yet completed on this project.

Please note acceptance of this appointment implies that you will meet all conditions defined in the attached "Terms of Engagement". Please sign the acceptance (initial every

page) of the appointment below and return the original to the Jones & Wagener Project Manager.

Thank you for your co-operation. We look forward to the satisfactory completion of an interesting project.

Yours faithfully



P. Sewmohan  
**Project Manager**

Attachments : Terms of Engagement



M van Zyl  
**Project Director**

**Accepted by:**

Thus done and signed at ..... on the ..... day of  
..... 20.....

A.C. von Vollenhoven

## **TERMS OF ENGAGEMENT BETWEEN JONES & WAGENER CONSULTING AND SUB-CONSULTANT**

### **6. ROLE OF SUB-CONSULTANT**

- 1.1 In performing the Services defined in the Scope of Works, the Sub-consultant shall exercise the degree of skill, care, and diligence normally exercised by members of the profession performing services of a similar nature, and shall perform the Services in a timely manner.
- 1.2 The Sub-consultant shall use all reasonable efforts to inform itself of Jones & Wagener's requirements for the Project and for that purpose shall consult Jones & Wagener throughout the performance of the Services.
- 1.3 If the Sub-consultant considers that the information made available by Jones & Wagener is not sufficient to enable the Sub-consultant to provide the Services in accordance with this Agreement, the Sub-consultant shall promptly notify Jones & Wagener who shall then provide such further assistance and information as is necessary and available.
- 1.4 If the Sub-consultant becomes aware of any matter that will change the scope or timing of the Services, it will give written notice to Jones & Wagener of the changes.

### **7. ROLE OF JONES & WAGENER**

- 2.1 Jones & Wagener shall advise the Sub-consultant as to who is Jones & Wagener's representative for the purposes of this Agreement. Jones & Wagener shall, unless specified otherwise in the Scope of Works, be the sole avenue of communication between the Client and the Sub-consultant.
- 2.2 Jones & Wagener shall as soon as practicable make available to the Sub-consultant all available information relating to Jones & Wagener's requirements for the Sub-consultant's provision of the Services.
- 2.3 If Jones & Wagener becomes aware of any matter that may impact the scope or timing of the Services, Jones & Wagener will give written notice to the Sub-consultant of the changes.

### **8. DELIVERABLES**

- 3.1 The Sub-consultant shall prepare all Deliverables in accordance with the standard of care outlined in Clause 1.
- 3.2 The approval of Deliverables by Jones & Wagener or the Client shall not necessarily constitute finalisation of the Deliverables and further work, amendments, or alternatives may be required. Should further work, amendments, or alternatives be required, same will be provided to the Sub-consultant in writing. Any approval does not relieve the Sub-consultant from its obligations under this Agreement.
- 3.3 The Sub-consultant shall immediately give written notice to Jones & Wagener upon discovering any error, inconsistency, omission or defect in any Deliverable and shall

promptly carry out such amendments as may be necessary to meet its obligations under this Agreement at its own cost.

- 3.4 The Sub-consultant shall be liable for costs incurred by Jones & Wagener or the Client as a result of errors or omissions in Sub-consultant's Deliverables unless such Deliverables are clearly marked "preliminary."
- 3.5 The Sub-consultant shall not make any amendments to approved Deliverables without Jones & Wagener's prior written consent.

## **9. VARIATION**

- 4.1 Any variation in the Scope of Works required by Jones & Wagener shall be notified to the Sub-consultant in writing.
- 4.2 Any change in the Scope of Works identified by the Sub-consultant as necessary to complete the Services under this Agreement shall be notified to Jones & Wagener in writing. The Sub-consultant shall not commence such variation work without written confirmation as in Clause 4.1 above.
- 4.3 Any variation in the Scope of Works shall be valued in accordance with the Sub-consultant's rates as provided; or if that is not applicable, by written agreement between the parties.

## **10. PAYMENT**

- 5.1 The Sub-consultant shall submit to Jones & Wagener a monthly tax invoice for the Services performed, reimbursable expenses incurred, and VAT (if applicable). All payment shall be in Rand unless otherwise specified in Schedule 1. The final invoice shall be submitted no later than 30 days after final work performed for the Project.
- 5.2 Except in regard to disputes as outlined in 5.3 below, Jones & Wagener shall pay the Sub-consultant for the Services Invoices that are issued on the finalisation of deliverables, and will be paid on a monthly basis.

- **Pay-when-Paid**

*J&W will include the amount of the sub-Contractor/Consultant's invoice in J&W's invoice to the client at the first available opportunity. Invoices will be paid within a maximum of 7 days of receipt of payment from the Client. Irrespective of any payments received or not received from the Client, payment will be made within a maximum of 120 days after receipt of the sub-Contractor/Consultant's statement, provided there are no disputes on the Contractor/Consultant's claim. Please note that:*

- *The work will be performed for Kuyasa Mining.*
- *The client's payment terms to Jones & Wagener on this project have been stated as 30 days from receipt of invoice.*

- 5.3 If Jones & Wagener disputes the whole or any portion of the invoiced amount, it shall pay that portion not in dispute and shall notify the Sub-consultant of the reasons for disputing the other amounts. Any disputed amount shall be subject to the dispute resolution process in Clause 10.
- 5.4 In the event of termination of this Agreement, the Sub-consultant shall be paid for Services not in dispute performed up until the date of termination.

## **11. INDEMNITY AND INSURANCE**

- 6.1 The Sub-consultant shall indemnify Jones & Wagener against any claim, liability, or action arising out of or resulting from any negligent acts, errors, or omissions on the part of the Sub-consultant in the performance or non-performance of the Services.
- 6.2 The Sub-consultant shall effect and maintain the following policies of insurance:
- (a) Professional Indemnity insurance for not less than R2,500,000 for a single event claim;
  - (b) Public Liability insurance for not less than R1,000,000 for each claim;
  - (c) Workers Compensation insurance to cover any person employed by the Sub-consultant;
  - (d) Motor Vehicle insurance for each vehicle owned, used, leased, hired, or operated by the Sub-consultant or its agents.
  - (e) Equipment insurance as available on commercial terms for each piece of field equipment to be used in the provision of the Services.
- 6.3 The Sub-consultant shall produce to Jones & Wagener satisfactory evidence that all insurances are current and in force at the time of execution of this Agreement, such insurances to remain in force for the duration of the engagement under this Agreement. The Sub-consultant shall inform Jones & Wagener if, during the period of engagement, the Sub-consultant becomes uninsured for any of the insurances listed above. If the Sub-consultant becomes uninsured, Jones & Wagener can at its discretion:
- (a) effect insurance at the Sub-consultant's cost to cover the Sub-consultant for the duration of any current Project to which the Sub-consultant is providing Services;
  - (b) dismiss the Sub-consultant from any current Projects to which the Sub-consultant is providing Services;
  - (c) notify the Sub-consultant that the Sub-consultant shall not be engaged on Projects until such insurances are in place; or
  - (d) terminate this Agreement immediately upon notice.
- 6.4 The Sub-consultant shall use its best endeavours to maintain insurances to the above amounts for seven years after the termination of this Agreement.

## **12. QUALITY ASSURANCE, ENVIRONMENT, AND HEALTH AND SAFETY**

- 7.1 The Sub-consultant shall at all times be responsible for quality assurance, environmental management, and the health and safety of its employees, agents, and directors.
- 7.2 Jones & Wagener or the Client may undertake audits of the Sub-consultant's environmental management and health and safety practices, who shall provide reasonable access to its plant, site, and records for that purpose.

- 7.3 If at any time Jones & Wagener or the Client considers that the Sub-consultant's conduct, plant, or condition in providing the Services constitutes a risk to health and safety or the environment, Jones & Wagener may, at its discretion, either
- (a) direct the Sub-consultant to rectify that conduct, plant, or condition, which the Sub-consultant shall comply with immediately;
  - (b) suspend the Sub-consultant 's services until such time as the conduct, plant, or condition shall be rectified; or
  - (c) terminate this Agreement, which shall take effect immediately notwithstanding any notice provisions elsewhere in this Agreement.

Any suspension, termination, or rectification under this sub clause shall be at Sub-consultant's own cost.

- 7.4 Any incidents, accidents, or events arising out of the provision of Services under this Contract which are required to be reported by law shall be reported promptly to the Jones & Wagener representative.
- 7.5 Nothing in this clause shall in any way limit the responsibilities and obligations of the Sub-consultant under this Agreement.

### **13. CONFIDENTIALITY AND COPYRIGHT**

- 8.1 The Sub-consultant shall not disclose any details of information developed or discussed under this Agreement with any third party, during or after the term of engagement under this Agreement, without the prior written approval of Jones & Wagener. The above provision shall not apply to any disclosure required by law, to any information in the Sub-consultant's possession prior to this Agreement, or to any information generally available to the public.
- 8.2 Ownership of all Deliverables developed by the Sub-consultant shall remain vested in the Sub-consultant. The Sub-consultant hereby grants Jones & Wagener a non-exclusive, royalty-free, transferable license to use said Deliverables for the purposes of this Agreement.
- 8.3 The Sub-consultant indemnifies Jones & Wagener from any action, suit, demand, or damages arising from the Sub-consultant's infringement of a third party's intellectual property or copyright interests.

### **14. TERMINATION**

Either party may terminate its obligations under this Agreement in the event of a substantial breach by the other party of its obligations and the breach has not been remedied within 30 days of a written notice requiring the breach to be remedied; OR upon giving the other party 30 days' written notice if its intention to do so.

### **15. DISPUTE RESOLUTION**

Any dispute between Jones & Wagener and the Sub-consultant shall be notified in writing by the aggrieved party to the other within 7 days of the onset of the dispute. It shall be handled as follows:



- (a) Within 7 days of notification, the parties and their principals shall meet in good faith, without legal representation, in an attempt to resolve the dispute.
- (b) If the dispute is not resolved within a reasonable time, it shall be the subject of mediation, administered in accordance with the procedures as set out by the Arbitration Foundation of South Africa, with a mediator appointed by that body.
- (c) The costs of the mediation shall be borne equally by the parties in the dispute.
- (d) If either party were unwilling to agree to mediation or be dissatisfied with the opinion expressed by the mediator or should the mediation fail then such party may:-
  - i. Serve process instituting action arising out of such dispute or difference in a competent civil court; or
  - ii. With the consent of the other party refer the dispute to arbitration by a single arbitrator to be mutually agreed upon or, failing agreement, to be nominated by the President of Consulting Engineers South Africa (CESA). The arbitration shall be in accordance with the provisions of the Arbitration Act of 1965 as amended and shall be conducted in accordance with such procedure as may be agreed between the parties or, failing such agreement, in accordance with the Rules for the Conduct of Arbitration's published by the Association of Arbitrators current at the date the arbitrator is appointed.
  - iii. Service of process under Clause (i) or referral to arbitration under Clause (ii) shall take place within three calendar months of the date of notice from either party declaring that the settlement negotiations under (a) have failed, or, if mediation is agreed on, within three calendar months of the date of the mediator's opinion or the date upon which the mediator declares that the mediation has failed. Claims not brought within the time periods set out herein will be deemed to be waived.
  - iv. Judgment upon the award rendered in any arbitration proceedings may be entered in any court having jurisdiction by either Jones & Wagener or the Sub-consultant or application may be made to such court for a judicial acceptance of the award and an order for enforcement (as the case may be).
  - v. If any dispute arises between the Client and Jones & Wagener which touches or concerns the Sub-consultancy Services, then, in place of arbitration under Clause (ii) and provided the dispute resolution clause of the Prime Contract is incorporated in the Sub-Consultancy Agreement, Jones & Wagener may by notice to the Sub-consultant require that any dispute under this Agreement in that connection shall be dealt with jointly with the dispute between the Client and Jones & Wagener. In connection with such joint dispute the Sub-consultant shall be bound in same manner as Jones & Wagener by any award by an arbitrator.
  - vi. Any reference to arbitration shall not relieve either Party from any liability for the due and punctual performance of its obligations under this Agreement.
  - vii. Any award or decision made by the Arbitrator shall be final and binding on the parties without right of appeal and enforceable by any court having jurisdiction for this purpose.

- (e) Notwithstanding the subject of the dispute, the parties shall continue to perform all other obligations under this Agreement.

## **16. ASSIGNMENT**

The Sub-consultant shall not assign, sublet, or transfer any right or obligation under this Agreement without the prior written consent of Jones & Wagener, which shall not be unreasonably withheld. Unless specifically stated to the contrary, no assignment, sublease, or transfer shall release or discharge the assignor from any obligation under this Agreement. If required by the Client, the Sub-consultant shall sign a deed of novation.

## **17. GENERAL MATTERS**

- 12.1 This Agreement shall be subject to the laws of the Republic of South Africa; or if the services are provided outside of South Africa and the Sub-consultant is local to the jurisdiction where the services are provided, the laws of that jurisdiction.
- 12.2 This Agreement is the entire Agreement between the parties for the provision of the Services, and shall take precedence over any other terms including any appearing on the Sub-consultant's invoices, purchase orders and the like. If any clause of this Agreement is found to be inoperable due to illegality, such clause is severed from the Agreement and the rest of the Agreement remains in force.
- 12.3 Nothing in this Agreement, nor in the performance of the Services, shall operate to create a relationship of agency, partnership, or other relationship other than that of purchaser of services and independent consultant between Jones & Wagener and the Sub-consultant.
- 12.4 A notice will be deemed properly served under this Agreement if it is in writing and is sent to the usual business address of the recipient.
- 12.5 Definitions:
- (a) "Agreement" means this contract between Jones & Wagener and the Sub-consultant plus the Scope of Works of the engagement of the Sub-consultant for the provision of the Services.
  - (b) "Client" means Jones & Wagener's client on this Project.
  - (c) "Deliverables" means the documentation and services to be delivered by the Sub-consultant as detailed in the Scope of Works between Jones & Wagener and the Sub-consultant.
  - (d) "Jones & Wagener" means Jones & Wagener Consulting (Pty) Ltd.
  - (e) "Project" means the project in respect of which Jones & Wagener has engaged the Sub-consultant for the provision of the Services.
  - (f) "Scope of Works" is as defined and agreed in a proposal, purchase order, or schedule between Jones & Wagener and the Sub-consultant.

- (g) "Services" means those services defined in the scope of work between Jones & Wagener and the Sub-consultant.
- (h) "Sub-consultant" means the company, person, or entity named in the Scope of Works who has agreed to provide Jones & Wagener with the Services.

**EXECUTED** as an Agreement:

**EXECUTED** on behalf of Jones & Wagener (Pty) Ltd

by



.....  
Project Director

Marius van Zyl  
.....  
Name of Project Director (print)

16 November 2012  
.....  
Date

**EXECUTED** on behalf of Archaetnos

.....  
Project Director

.....  
Name of Project Director (print)

.....  
Date

**SCHEDULE 1**

Project Number	D182
Jones & Wagener	Contact Name: Marius van Zyl  Jones & Wagener (Pty) Ltd  Address: P.O. Box 1434, Rivonia, 2128 Telephone: +27 11 519 0217 Fax: +27 11519 0201
Sub-consultant	Contact Name: A. C. von Vollenhoven  Company Name: Archaetnos  Address: P O Box 55, Groenkloof, 0027  Telephone: 083 291 6104 Fax: 086 520 4173
Project Name	PROPOSED KI POWER IPP POWER PLANT AND RESIDUE DISPOSAL FACILITY: RELOCATION OF GRAVES AND DOCUMENTATION OF FARMSTEAD - HAVERKLIP 265 IR
Scope of Work	As described in cover letter and Archaetnos' "The Grave Relocation Process"
Start Date	Friday, 16 November 2012
Completion Date	End March 2013
Fee Schedule	See Section 4
Professional Indemnity Insurance	As in Clause 5
Public Liability Insurance	As in Clause 5
Equipment Insurance	As in Clause 5