

TERMS AND CONDITIONS OF AGREEMENT



PART A INTRODUCTION

- 1.1 This document contains the Terms and Conditions (the "Terms") on which the Company contracts with the Contractor.
- 1.2 It is a precondition of any Agreement between the Company and the Contractor that the Contractor shall sign these Terms by initialling each page and completing and signing the last page as provided.
- 1.3 By signing these Terms, the Contractor agrees and acknowledges that: (i) it has satisfied itself with regard to the Terms and agrees to be bound by the Terms; (ii) these Terms shall be applicable to any and all Agreements entered into between the Company and the Contractor and/or the provision of any Goods and/or Services to the Company by the Contractor, and shall replace any other agreements, terms and conditions which may have been previously agreed to between the Parties, whether verbally or in writing; and (iii) the Terms may be amended from time to time, and the Contractor shall be deemed to have read and accepted the latest version of the Terms whenever these are made available to it.
- 1.4 Any terms and conditions of the Contractor shall be of no force and effect to the extent that such terms and conditions conflict with these Terms.

PART B INTERPRETATION

2. DEFINITIONS

In these Terms, the following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings:

- 2.1 "AFSA" means the Arbitration Foundation of South Africa;
- 2.2 "Agreement" means: (i) these Terms together with any (ii) Purchase Order and/or (iii) Services Schedule and/or (iv) any schedules and annexures thereto, as well as (v) any other terms and conditions which may be agreed to by the Parties in writing subsequent to an Agreement coming into force;
- 2.3 "Applicable Laws" means any and all laws, statutes, regulations, ordinances, rules, guidelines, policies, notices, orders and directions or other laws which may apply to the provision of the Services by the Contractor;
- 2.4 "Confidential Information" means, without limiting the generality of the term: (i) any information which has been supplied to the Contractor, notwithstanding whether it is identified as confidential as well as information the confidential nature of which is so obvious that it need not to be specified, (ii) notwithstanding in which form such information is provided to the Contractor, and (iii) whether disclosed to the Contractor before or after the Effective Date of this Agreement, but excluding information which is in the public domain at the time of the disclosure to the Contractor and information which is disclosed by the Contractor to satisfy an order of a court of competent jurisdiction, provided that the onus shall at all times rest on the Contractor to establish that such information falls within the aforementioned exceptions;
- 2.5 "COIDA" means the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993;
- 2.6 "Commencement Date" means the date on which the Contractor shall commence delivering the Goods and/or rendering the Services, as indicated on the Purchase Order or Services Schedule or elsewhere in writing between the Parties, failing which it shall be the same date as the Effective Date;
- 2.7 "Company" means Transmin South Africa (Pty) Ltd, a limited liability company, incorporated and registered in terms of the laws of South Africa under registration number 2014 / 094208 / 07, The term shall include the Company's parent and affiliated companies, where relevant;
- 2.8 "Completion Date" means the last date by which the Goods must be delivered and/or the Services rendered, as indicated on the Purchase Order or Services Schedule or elsewhere in writing between the Parties, failing which it shall be the earliest possible date that a reasonable contractor would be able to deliver and/or render the Goods and/or Services;
- 2.9 "Contract Fee" shall have the meaning set out in clause 7.1;
- 2.10 "Contractor" means the Party signing these Terms and described as such in a Purchase Order or Services Schedule, as well as its Personnel and, where relevant, its Subcontractors;
- 2.11 "COP" means code of practice;
- 2.12 "Creditor" shall have the meaning set out in clause 17.3;
- 2.13 "Debtor" shall have the meaning set out in clause 17.3;
- 2.14 "Director" shall mean a director of the Company or its holding company;
- 2.15 "DMR" means the Department of Mineral Resources;
- 2.16 "Effective Date" means the date on which the Agreement shall commence, as indicated on the Purchase Order or Services Schedule, failing which it shall be the date of signature of these Terms by the Contractor;
- 2.17 "Extended Term" shall have the meaning set out in clause 5.2;
- 2.18 "Goods" means the goods to be delivered to the Company by the Contractor in terms of the Agreement, as specified in the Purchase Order or the Services Schedule;
- 2.19 "Force Majeure" shall have the meaning set out in clause 16;
- 2.20 "Governing Law" shall have the meaning set out in clause 23.1;
- 2.21 "Grantor" and "Grantee" shall have the meaning set out in clause 22;
- 2.22 "Health and Safety Systems" means the health and safety systems implemented by the Company, as amended and updated from time to time. These systems may include, but are not limited to HIRAs, COPs, standards, procedures, training, communication, supervision, appointments, medical examinations, compulsory attendance at meetings and disciplinary procedures;
- 2.23 "HIRA" means a hazard identification and risk assessment;
- 2.24 "Initial Term" shall have the meaning set out in clause 5.1;
- 2.25 "MHSA" means the Mine Health and Safety Act No. 29 of 1996, as amended from time to time;
- 2.26 "MPRDA" means the Mineral and Petroleum Resources Development Act No. 28 of 2002, as amended from time to time;
- 2.27 "OHSA" means the Occupational Health and Safety Act No. 93 of 1993, as amended from time to time;
- 2.28 "Parties" means, collectively, the Company and the Contractor, and "Party" means either of the Parties;
- 2.29 "Period of Extension" means the period by which the Agreement may be extended, at the discretion of the Company, as indicated on the Purchase Order or Services Schedule, alternatively in accordance with clause 5.2;
- 2.30 "Personnel" means the Contractor's employees and any other resources hired by the Contractor on whatever contractual basis;

Initial _____

- 2.31 "Policies and Procedures" means the operational policies and procedures of the Company, as amended and updated from time to time;
- 2.32 "Purchase Order" means an official purchase order document issued by the Company to the Contractor, which bears a unique purchase order number, confirming the Company's order for the provision of Goods and/or rendering of Services;
- 2.33 "Regulations" means the health and safety, environmental and operational regulations imposed upon the Company with the Applicable Laws, in particular the MHSA, OHSA and the MPRDA;
- 2.34 "Services" means the services to be rendered to the Company by the Contractor in terms of the Agreement, as specified in the Purchase Order or the Services Schedule;
- 2.35 "Services Schedule" means including but not limited to a Scope of Works (SoW), Subcontract Agreement (SCA), a written scope of the Goods and/or Services to be provided and/or rendered to the Contractor by the Company;
- 2.36 "Site" means the location(s) of the Company, its representatives and or Subcontractors, as set out in the Purchase order or the Services Schedule;
- 2.37 "Statement of Account" shall have the meaning set out in clause 8;
- 2.38 "Subcontract" means a contract concerning any activity between: (i) the Contractor and any Subcontractor; or (ii) between any two or more Subcontractors;
- 2.38 "Subcontractor" means any person or entity which contracts with the Contractor for the performance of any part of the Services on behalf of the Contractor;
- 2.39 "Tax Invoice" shall have the meaning set out in clause 8;
- 2.40 "Termination Date" means the date on which the Agreement shall terminate, as indicated on the Purchase Order or Services Schedule, failing which it shall be the date that the Goods and/or Services have been delivered in full, as confirmed in writing by the Company;
- 2.41 "Terms" means these terms and conditions, as contained in this Agreement; and
- 2.42 "Warranty Period" shall have the meaning set out in clause 10.1.

3. GENERAL

- 3.1 Unless the context indicates otherwise, an expression which denotes any gender includes the other genders, a natural person includes a juristic person or a trust (and vice versa) and the singular includes the plural (and vice versa).
- 3.2 Clause headings are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 3.3 Any reference to an enactment is to that enactment as at the date of signature hereof.
- 3.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 3.5 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 3.6 References to any Party include its successors or permitted assigns.
- 3.7 References to the obligations of the Contractor include the obligations of its Personnel.
- 3.8 When any number of days is prescribed, same shall be reckoned exclusive of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next

succeeding day which is not a Saturday, Sunday or public holiday.

- 3.9 References to a week are to be construed as references to a 7 (seven) consecutive day period from the nominated day of commencement and references to a "month" shall be a calendar month.
- 3.10 Schedules or annexures shall be deemed to be incorporated in and form part of the Agreement.
- 3.11 Expressions defined in these Terms or any other documents forming part of the Agreement shall bear the same meaning in the schedules or annexures or any other documents forming part of the Agreement.
- 3.12 In the event of any conflict or discrepancy between these Terms and any schedules or annexures or any other documents forming part of the Agreement, or any document referred to in any of the annexures or schedules, these Terms shall prevail, unless the conflicting provision was clearly intended to be a variation of these Terms.
- 3.13 References to the Agreement or any other document shall, where appropriate, be construed as reference to the Agreement or such other document as varied, supplemented, novated and/or replaced in any manner from time to time.
- 3.14 The expiration or termination of the Agreement shall not affect such of the provisions of the Agreement as expressly provided that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the provisions themselves do not expressly provide for this.
- 3.16 The rule of construction that an agreement shall be interpreted against the party responsible for the drafting or preparation thereof shall not apply to any Agreement entered into between the Parties.
- 3.17 The Parties agree that, if any provision of an Agreement is in conflict with any law, such provision shall be regarded as *pro non scripto* and be of no force and effect, and shall be deemed to be separate and severable from the Agreement, without in any way affecting the validity of the remaining provisions of the Agreement.

PART C GENERAL CONDITIONS OF CONTRACT

4. RELATIONSHIP OF THE PARTIES

- 4.1 Notwithstanding anything to the contrary contained therein, no Agreement between the Parties shall constitute or be deemed to create a principal/agent or employer/employee relationship or joint venture or partnership between the Company and the Contractor.

5. DURATION AND TERMINATION

- 5.1 Notwithstanding the date of signature of a Purchase Order or Services Schedule, an Agreement shall be deemed to have commenced on the Effective Date and shall expire on the Termination Date ("Initial Term"), unless terminated earlier as provided for in terms of the Agreement.
- 5.2 The Company shall have the right to extend the duration of any Agreement, at its sole and absolute discretion, for the Period of Extension ("Extended Term") by giving a written notice of its decision to do so to the Contractor no later than 1 (one) month prior to the Expiry / Completion Date of the Initial Term as stipulated in clause 5.1 above and thereafter the expiry of any Extended Term. During any Extended Term, the Contract Fee payable by the Company shall remain the same as the Contract Fee payable by the Company during the Initial Term, unless

Initial _____

TERMS AND CONDITIONS OF AGREEMENT



- agreed otherwise by the Company and the Contractor in writing.
- 5.3 Notwithstanding the provisions of clauses 5.1 and 5.2 above, any Agreement can be terminated by either Party by giving 1 (one) month's written notice to the other Party.
- 5.4 In the event of termination of the Agreement for whatever reason, including but not limited to Force Majeure, any and all payments made by the Company to the Contractor shall be refundable by the Contractor to the Company within 5 (five) days of termination of this Agreement, with the exception of any costs of the Contractor which were actually incurred and necessary to render and/or deliver the Services by the Contractor up to and including the date on which the Agreement was so terminated, and in which case the Contractor shall provide the Company with proof of such actually incurred costs and the ownership of any and all items purchased and/or manufactured in the execution of the Contractor's obligations and duties in terms of the Agreement, shall pass to the Company on termination of this Agreement.
- 5.5 For clarification purposes, in the event of termination or cancellation of this Agreement by whichever Party and for whatever reason, the Company shall not be liable for payment of any costs and/or fees, with the sole exception of actually incurred costs of the Contractor, for which costs the Contractor shall provide proof to the Company's satisfaction.
- 6. CONTRACTOR'S SPECIFIC OBLIGATIONS**
- 6.1 The Parties agree that the competence and diligence of the Contractor shall have a material influence on the successful implementation of the Agreement. Accordingly and without in any way restricting the generality of the obligations imposed upon the Contractor in the Agreement, the Contractor shall ensure that it, its Personnel and its Subcontractors carry out the obligations set forth in this clause 6, all of which are material to the Agreement.
- 6.2 The Contractor shall be responsible for identifying and obtaining all permits and licences in terms of any applicable law which may be necessary to enable the Contractor to carry out its obligations under the Agreement and shall ensure that it shall at all times be in lawful possession of such permits and/or licences for the duration of the Agreement.
- 6.3 The Contractor warrants and undertakes that it, its Personnel and Subcontractors shall at all times comply with: (i) all health and safety regulations and any law or statutory enactment relevant to the Company's operations, including, in particular, the OHSA; (ii) any law, regulation and statutory enactment applicable to the Goods and/or Services to be provided by the Contractor to the Company in terms of this Agreement; and (iii) the Company's Policies and Procedures.
- 6.4 The Contractor acknowledges that the Company may, from time to time, amend the Policies and Procedures referred to in clause 6.3 hereof and issue further Policies and Procedures, without notice to the Contractor. The Contractor undertakes to acquaint itself with the Policies and Procedures and to request confirmation of these policies on a regular basis.
- 6.5 The Contractor accepts that compliance with the OHSA, is essential to the operations of the Company and that non-compliance with these statutes could have severe consequences for the Company. Accordingly, the Contractor indemnifies the Company of all liability of any nature whatsoever arising as a result of any breach by the Contractor of its obligations under this clause 6 and

agrees that each breach by the Contractor of any applicable provision of OHSA will result in a penalty payable by the Contractor to the Company of the actual amount of the damages suffered by the Company or, at the election of the Company, an amount of 5% (five percent) of the Contract Fee.

7. CONTRACT FEE

- 7.1 The Contract Fee shall be set out in the Purchase Order or the Services Schedule and shall be the total amount of the Company's payment liability towards the Contractor in respect of the Goods and/or Services, including the amount of any tax, duty or other charge of any nature whatsoever.
- 7.2 The Contractor shall not be entitled to increase the Contract Fee in order to make provision for any increases in cost arising as a result of or during the period of any delay, whatever the cause, unless the Company consents in writing to such increase.

8. PAYMENT TERMS

- 8.1 The Company shall pay the Contractor 45 (Forty Five) days end of month (EOM), after the date of a properly rendered invoice;
- 8.2 The Contractor shall issue a Tax Invoice to the Company on the dates and/or intervals provided for in the Purchase Order or Services Schedule or, if no such intervals are provided for, only on competition, meaning the last date by which the Goods have been delivered and/or the Services rendered;
- 8.3 The Tax Invoice shall specify the Goods and/or Services delivered and/or rendered and shall quote the relevant reference number of the Purchase Order or Services Schedule.
- 8.4 At the end of each month in which one or more Tax Invoices were issued, the Contractor shall send a consolidated Statement of Account to the Company, referencing the issued Tax Invoices still outstanding.

9. OWNERSHIP, DELIVERY OF GOODS AND RENDERING OF SERVICES

- 9.1 The Goods and/or Services shall be delivered and/or rendered at the place of delivery specified on the Purchase Order or the Services Schedule, unless the parties have agreed in writing to a different place of delivery.
- 9.2 If a date of delivery is specified in the Agreement, the Goods and/or Services shall be delivered and/or rendered on or before such date. Should no date be specified in the Agreement, the Goods and/or Services shall be delivered and/or rendered promptly and within a reasonable time. It is recorded and agreed that time is of the essence for delivery and/or rendering of the Goods and/or Services. The Company shall not be obliged to accept partial or late delivery or rendering of Goods or Services.
- 9.3 Ownership of the Goods, whether they are delivered separately or as a part of the Services, shall pass to the Company upon delivery of or payments of the Goods, whichever occurs earlier, provided that no such passing of ownership shall affect or alter any of the Company's rights to reject any of the Goods or part thereof in accordance with these Terms.
- 9.4 Notwithstanding the provisions of clause 9.3, the risk in the Goods shall pass to the Company on the date of installation or commissioning thereof, whichever is the later, provided however that any rejected Goods shall be held by the Company at the Contractor's risk.

Initial _____

- 9.5 The Company's acceptance of delivery and/or rendering of any Goods and/or Services shall not be an acknowledgment that the correct quantity and quality of Goods and/or Services has been received.
- 9.6 Should there be any discrepancy in the description, dimension or quantities of the Goods or Services in the Purchase Order or the Services Schedule, or any other document or communication relating to the Purchase Order or the Services Schedule, the Contractor shall promptly communicate such discrepancy to the Company for clarification before proceeding to deliver any Goods or render any of the Services, in respect of which such discrepancy exists.
- 9.7 All work performed in respect of the Goods and/or Services is subject to inspection and testing by the Company's representatives during the course of manufacturing, installation and commissioning of any of the Goods and during the planning and rendering of any of the Services.
- 9.8 In the event of Contractor delay with respect to delivery of correct and non-defective Goods or rendered Services, the Company may at its discretion demand that the Contractor: (i) pays the Company a sum by way of liquidated damages of 2% (two per cent) of the total charges to be paid under the Purchase Order day of delay, however such liquidated damages shall not exceed a total of 20% (twenty per cent) of the total charges of the Purchase Order in question, (ii) immediately delivers, i.e. via the fastest means of transportation, at the cost of the Contractor (airfreight included) and/or (iii) agrees to receive and Goods not complying with those described in this Agreement at Contractor risk and expense. If the Company has incurred any costs (including costs of rectification to remedy defective Goods) of which can be directly attributable to the Contractor's delay in respect of delivery of correct and non-defective Goods and those costs exceed the sum of liquidated damages that the Company can recover from the Contractor, then at the Company's discretion, the Company can recover from the Contractor the costs incurred in lieu of the liquidated damages.
- 10. CONTRACTOR'S WARRANTIES**
- 10.1 The Contractor warrants, for a period of not less than 24 (twenty-four) months from the date of delivery (the "Warranty Period") that: (i) the Goods and/or Services shall comply with the specifications indicated on the Purchase Order or Services Schedule; (ii) the Goods and/or Services shall be suitable for the purpose for which they are intended by the Company; (iii) that all Goods shall be in good working condition on the date of delivery to the Company and/or that all Services shall have been properly and professionally rendered.
- 10.2 During the Warranty Period, the Contractor shall, upon the Company's request, promptly and at its own cost remedy any defects in the Goods and/or Services or replace any defective Goods and/or Services or parts thereof, in which case any replacement Goods and/or Services or parts thereof shall carry a further 12 (twelve) month warranty from the date of replacement, provided that nothing in this clause 10.2 shall preclude the Company from claiming damages from the Contractor should damages have been suffered as a result of any defect in the Goods and/or Services.
- 10.3 Notwithstanding clause 10.2, if any Goods or parts thereof are not to the Company's satisfaction, the Company shall be entitled (but not obliged) to reject the Goods at any time within a period of 3 (three) months after delivery, in which event the Contractor shall, within 36 (thirty six) hours of the

Company notifying the Contractor of its rejection of the relevant Goods: (i) refund the Company in full any payments made in respect of the rejected Goods; and (ii) remove the Goods from the place of delivery.

- 10.4 Similarly, if any Services or parts thereof are not to the Company's satisfaction, the Company shall be entitled (but not obliged) to reject the Services at any time within a period of 3 (three) months after rendering thereof, in which event the Contractor shall, within 36 (thirty six) hours of the Company notifying the Contractor of its rejection of the relevant Services, refund the Company in full any payments made in respect of the rejected Services.
- 10.5 The Company shall not be liable for any costs resulting from the rejection of any Goods or Services.
- 10.6 To the extent that the Services require of the Contractor to utilise machinery, the Contractor warrants that: (i) in the event of a breakdown or stoppage of any such machinery, it shall have a replacement machine available and operating within 3 (three) hours of such breakdown or stoppage; and (ii) there shall be no more than 2 (two) breakdowns or stoppages of any machine within any 30 (thirty) day period.

11. SECTION 21 MHPA OBLIGATIONS

- 11.1 The Contractor must ensure its full compliance with the provisions of section 21 of the MHPA.
- 11.2 The Contractor undertakes to ensure that any article designed, manufactured, repaired, imported or supplied by the Contractor and/or its Subcontractors is safe and without risk to health and safety when used properly and that the use of such article complies with all provisions of the MHPA.
- 11.3 Where the Contractor erects or installs any article for use, the Contractor undertakes to ensure that nothing about the manner in which the article was erected or installed, renders it unsafe or creates a risk to health and/or safety when used properly.
- 11.4 Where the Contractor designs or constructs a building or structure, including but not limited to a temporary structure, the Contractor undertakes to ensure that the design or construction is safe and without risk to health and/or safety when used properly.
- 11.5 Where the Contractor manufactures, imports or supplies any hazardous substance, the Contractor undertakes to ensure that the hazardous substance manufactured, imported or supplied is safe and without risk to health and/or safety when used, handled, processed, stored or transported in accordance with the information provided by the Contractor, which information must comply with the minimum prescribed requirements contained in section 21 of the MHPA.
- 11.6 The Parties agree that no terms of the Agreement will be construed as an assumption by the Company of any of the Contractor's duties as contemplated in section 21 of the MHPA and that neither the Agreement nor any ancillary documentation constitutes a written undertaking by the Company as contemplated in section 21(2)(b) MHPA.

12. BLACK ECONOMIC EMPOWERMENT

The Contractor acknowledges the importance of and the commitment of the Company to broad-based black economic empowerment ("BEE") within the meaning prescribed by the Act No. 53 of 2003 and the relevant Codes of Good Practice and/or Charters published by the Department of Trade and Industry and/or the Department of Mineral Resources from time to time in accordance with

Initial _____

TERMS AND CONDITIONS OF AGREEMENT



the provision of the aforementioned Act, and undertakes to timeously inform the Company if at any time the Contractor's status under the BEE legislation should change for any reason.

13. ANTI-CORRUPTION

- 13.1 The Contractor hereby undertakes that, at the date of the entering into force of the Agreement, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Agreement and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.
- 13.2 The Contractor agrees that, at all times in connection with and throughout the course of the Agreement and thereafter, it will familiarise itself with and comply with and that it will take reasonable measures to ensure that its subcontractors, agents or other third parties, subject to its control or determining influence, will comply with Part I of the ICC Rules on Combating Corruption 2011, which is hereby incorporated by reference into the Agreement, as if written out in the Agreement in full.
- 13.3 If the Company, as a result of the exercise of an audit of the Contractor's accounting books and financial records, or otherwise (which audit the Contractor hereby expressly consents to), brings evidence that the Contractor has been engaging in material or several repeated breaches of the provisions of Part I of the ICC Rules on Combating Corruption 2011, it will notify the Contractor accordingly and require the Contractor to take the necessary remedial action in a reasonable time and to inform it about such action. If the Contractor fails to take the necessary remedial action, or if such remedial action is not possible, it may invoke a defence by proving that by the time the evidence of breach(es) had arisen, it had put into place adequate anti-corruption preventive measures, as described in Article 10 of the ICC Rules on Combating Corruption 2011, adapted to its particular circumstances and capable of detecting corruption and of promoting a culture of integrity in its organisation. If no remedial action is taken or, as the case may be, the defence is not effectively invoked, the Company may, at its discretion, either suspend the Agreement or terminate it, it being understood that all amounts contractually due at the time of suspension or termination of the Agreement will remain payable, as far as permitted by the Applicable Laws.
- 13.4 Any entity, whether an arbitral tribunal or other dispute resolution body, rendering a decision in accordance with the dispute resolution provisions of the Agreement, shall have the authority to determine the contractual consequences of any alleged non-compliance with this ICC Anti-corruption Clause.

14. INDEMNITY, LIABILITY AND INSURANCE

- 14.1 The Contractor, its Personnel and Subcontractors shall have no claim of any nature whatsoever whether for damages, cancellation or otherwise, against the Company, its servants, agents or others on whose behalf the Company would be liable, in respect of any loss or damage sustained by the Contractor, its Personnel or Subcontractors of any nature whatsoever or any damage caused to the assets of the Contractor, its Personnel or Subcontractors or assets kept on the Company's premises by any third parties or in regard to the Contractor's

business or sustained by any of its Personnel or Subcontractors, howsoever caused including the negligent (including grossly negligent) acts or omissions of the Company, its servants, agents or others for whom it may be liable in law. This constitutes also a *stipulatio alteri* in favour of such persons the benefits of which may be accepted by them at any time.

- 14.2 The Contractor indemnifies the Company, its servants, agents or person for whom it may be liable in law against any loss, damage or expense, including all claims for and on account of bodily injury, disability, disease or death, loss of or damage to property and legal costs, which may be demanded from or sustained by one or more of the Company, its servants, agents or person for whom it is liable in law, by reason of any claim brought by any third party (not restricted to claims contemplated in this clause), arising out of the implementation of the Agreement or any act or omission on the part of the Company, its servants, agents or person for whom it is liable in law.
- 14.3 The Contractor accepts full liability for loss (including consequential damages) that may be suffered by the Company and/or third parties due to a failure by the Contractor, its Personnel and/or Subcontractors to render and/or deliver to the Company professional Services of the highest standards and Goods of the highest quality.
- 14.4 The Contractor warrants that it shall: (i) by the Effective Date at its own cost secure insurance in favour of *inter alia* the Company, its servants, agents, and persons for whom it is liable in law against liability (including third party liability) in respect of any claim, whether delictual, contractual or arising from any other causes of action whatsoever, by any party, including but not limited to claims by employees of the Company, financial institutions, suppliers to the Contractor or the Company; and (ii) ensure that all insurance premiums payable are paid timeously and regularly and that all insurance contracts entered are maintained for the duration of the Agreement.

15. PERSONNEL

- 15.1 It is specifically agreed that all obligations applicable under this Agreement to the Contractor shall apply *mutatis mutandis* to its Personnel.
- 15.2 With regards to its Personnel, the Contractor shall: (i) be responsible for the training of the Personnel in all procedures applicable to the nature of their employment; (ii) ensure that the Personnel adhere strictly to all rules governing their movements within any premises owned or operated by the Company; (iii) ensure that only the Contractor's designated Personnel enter the Company's premises, unless the Parties have agreed otherwise in writing; and (iv) ensure that, at all times during the subsistence of this Agreement, it is in the position to deploy a suitably numbered and qualified complement of Personnel with suitable experience to perform the duties undertaken in terms of this Agreement.
- 15.3 The Company reserves the right, at its sole and absolute discretion, to reject Personnel deployed by the Contractor, if, in the Company's opinion, such Personnel lack the necessary qualifications or experience or are incapable of performing the Services or producing the Goods.
- 15.4 In the event that any of the Personnel are precluded from or unable to perform their duties for whatever reason (including rejection pursuant to clause 15.3), the Contractor shall immediately provide substitutes with similar or higher experience and qualifications at no

Initial _____

additional cost to the Company. The Company shall be entitled (but not obliged) to interview such substitute Personnel and the Contractor shall be entitled to deploy them only with the Company's express consent.

15.5 In the event that the Contractor is unable to deploy sufficient Personnel to render the Services to the Company or to produce the Goods, the Contract Fee shall be reduced *pro rata*.

16. FORCE MAJEURE

16.1 If any Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement by reason of strike, lock-out, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other cause or contingency beyond the reasonable control of that Party, the Party so affected shall be relieved of its obligations hereunder during the period that such event and its consequences continue but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damages either general, special or consequential which the other Party may suffer due to or resulting from such delay or failure, provided always that written notice shall forthwith be given of any such inability to perform by the affected Party.

16.2 Any Party invoking force majeure shall upon termination of such event giving rise thereto forthwith give written notice thereof to the other Parties.

16.3 Should such force majeure continue for a period of more than 30 (thirty) days then any Party shall be entitled forthwith to cancel this Agreement in respect of any obligations still to be performed hereunder.

17. BREACH, CANCELLATION

17.1 Should the Contractor: (i) breach any of the provisions of this Agreement; (ii) be placed under liquidation, whether provisionally or finally; (iii) enter into any arrangement with its creditors which would have the effect that one or more of the Contractor's creditors are preferred above any other of the Contractor's creditors; (iv) have any of its property attached by any creditor or person claiming a right of retention to such property; and/or, (v) fail to comply with the provisions of any of the laws, regulations, statutory enactments, policies and/or procedures stipulated in this Agreement, then and in such an event, the Company shall be obliged, and without limiting its rights, to give written notice of such breach and to request that such breach be remedied within 5 (five) days from the date of such notice and in the event of the Contractor failing to remedy such breach, to forthwith terminate this Agreement and to recover any damages from the Contractor sustained by the Company in consequence of the Contractor's breach.

17.2 Notwithstanding any provisions to the contrary contained herein, the Company shall have the right to terminate this Agreement on 1 (one) month's written notice to the Contractor, in the event of: (i) the Company or the Contractor ceasing to operate for whatsoever reason, or (ii) a change of ownership of the Contractor, without the express consent by the Company, which consent shall not be unreasonably withheld.

17.3 In the event of either Party terminating this Agreement and the one (the "Debtor") is indebted to the other (the "Creditor") arising from any cause whatsoever, the Debtor shall pay any such sum owing to the Creditor within 5 (five)

days after such amount which may be owing, has been demanded.

17.4 If the Contractor commits a material breach of this Agreement and (if the breach is capable of remedy) fails to remedy the breach within 5 (five) days of receipt of written notice from the Company to do so, the Company shall be entitled to take such action as may be available in law, including action for cancellation, an interdict or for specific performance, and/or claim damages which may have been suffered as a result of the breach.

17.5 To the extent that any portion of this Contract is not terminated pursuant to 17 above, Contractor will continue performance of that portion.

18. DISPUTES

18.1 The Parties shall use their best efforts to settle all disputes by agreement. Any dispute arising out of or in connection with the interpretation, performance, or non-performance by either Party of its obligations under this Agreement, that is not settled within 30 (thirty) days after notification by one Party to the other that a dispute exists, shall be referred to and finally be resolved by arbitration. The arbitration award shall be final and binding upon the Parties. The performance of this Agreement shall continue during the arbitration proceedings.

18.2 The arbitration shall be conducted in accordance with the applicable rules of AFSA or any body or institution succeeding AFSA having similar status.

18.3 The arbitration shall take place in, Johannesburg in the English language in front of 3 (three) arbitrators, who shall determine the matters in dispute in accordance with the Governing Law.

18.4 The Parties shall equally share the cost of arbitration, including the fees and expenses of the arbitrators, unless otherwise provided by the arbitration award.

18.5 In the event that the Company institutes any legal, arbitration or debt recovery procedures against the Contractor, and the Company is successful with such procedures, the Contractor shall be liable to reimburse the Company for all related expenses (including legal costs on the attorney-and-client scale), on demand.

18.6 The provisions of this clause 18 shall not prevent any Party from approaching any court of competent jurisdiction for urgent interim relief.

19. DOMICILE AND NOTICES

19.1 For all purposes arising from this Agreement, the Parties choose as their respective *domicilium citandi et executandi* their respective Registered Addresses as stipulated in the Purchase Order and/or the Services Schedule. Either Party may from time to time vary its domicile to any other address, provided that such other address may not be a post office box or poste restante. Any such change of domicile shall come into effect 14 (fourteen) days after a written notice to that effect is posted by the sender.

19.2 Any notice to a party: (i) sent by prepaid registered post in a correctly addressed envelope to its chosen *domicilium citandi et executandi* shall be deemed to have been received on the 5th (fifth) Business Day after posting (unless the contrary is proved); or (ii) delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the following Business Day; or (iii) sent by fax to its chosen fax number stipulated on the Purchase Order or Services Schedule, shall be deemed to have been received on the

Initial _____

date of despatch (unless the contrary is proved); or (iv) sent by e-mail to its chosen e-mail address stipulated on the Purchase Order or Services Schedule, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

20. CESSION OF RIGHTS AND SUBCONTRACTORS

20.2 The Contractor shall not be entitled to cede, delegate, assign, or in any other manner dispose of any of its rights or obligations in terms of the Agreement, without the Company's prior written consent.

20.3 In the event that the Contractor utilises a Subcontractor, the Contractor shall ensure that such Subcontractor fully complies with this Agreement, as well as any other written agreement between the Parties which may be applicable to the Subcontractor and the Contractor indemnifies the Company for any damage or loss which may be suffered by the Company as a result of the Subcontractor's non-compliance with any provision of this Agreement or any other applicable agreement between the Parties.

20.4 The Company shall be entitled but not obliged, at its sole and absolute discretion, to pay directly to the Subcontractor its relevant portion of the Contract Fee and any amount so paid by the Company shall be deducted from the contract fee payable to the Contractor.

21. WHOLE AGREEMENT, NO VARIATION

21.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof. The Company shall not be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded in this Agreement, whether it induced the contract between the Company and the Contractor or not.

21.2 No: (i) amendment or consensual cancellation of the Agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of an Agreement; and/or (ii) settlement of any disputes arising under an Agreement; and/or (iii) extension of time, waiver or relaxation or suspension of any of the provisions or terms of an Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of an Agreement, shall be binding unless recorded in a written document signed by the Financial Controller or Procurement Manager of the Company.

22. WAIVER

22.1 No indulgence or extension of time or latitude or waiver or relaxation of any of the provisions or terms of an Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of an Agreement which any Party (the "Grantor") may allow to any other Party (the "Grantee") shall constitute a waiver by the Grantor of any of the Grantor's rights or operate as an estoppel against the Grantor and the Grantor shall not thereby be prejudiced or stopped from exercising any of its rights against the Grantee which may have arisen in the past or which may arise in the future or operate so as to preclude the Grantor thereafter from exercising its rights strictly in accordance with the Agreement.

22.2 Any extension, waiver or relaxation or suspension shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

22.3 Termination of this Agreement shall be without prejudice to, and shall not constitute a release or waiver of, any claims or other rights, which either Party may have against the other.

23. GOVERNING LAW AND JURISDICTION

23.1 This Agreement is to be interpreted and implemented in accordance with the law of the Republic of South Africa (the "Governing Law").

23.2 Subject to clause 18, the Parties irrevocably consent to the exclusive jurisdiction of the courts of the Republic of South Africa for the resolution of all disputes and the determination of all matters arising from this Agreement, and in particular consent to the jurisdiction of the High Court of South Africa, Gauteng Division, Johannesburg.

PART D HEALTH & SAFETY CONDITIONS

24. GENERAL

24.1 In the event that the Contractor delivers Goods and/or provides all or any part of the Services, including but not limited to deliveries and collections of any items whatsoever, at the Company addresses, or enters the Company's third party Sites for whatever reason, the terms of this PART D shall apply.

24.2 The Company is required to ensure compliance with the provisions of the MHSA to safeguard, as far as reasonably practicable, the health and safety of persons performing work. The Parties agree to the management of the health and safety of Personnel and of any persons who may be affected by the Services on the terms as set out in this Agreement. The health and safety of the Contractor's and its Subcontractors' Personnel and of any persons providing and carrying out any work and/or the Services, will primarily be governed by the provisions of the MHSA.

25. HEALTH AND SAFETY SYSTEMS

25.1 The Company has implemented various Health and Safety Systems to ensure, as far as reasonably practicable, that the provisions of the MHSA are complied with.

25.2 The Contractor: (i) agrees and to ensure compliance with these Health and Safety Systems; (ii) acknowledges that it is aware of the Company's Health and Safety Systems; (iii) undertakes to familiarise itself with all variations to the applicable Health and Safety Systems implemented by the Company and to participate constructively within these structures, and (iii) warrants full co-operation with the Company on all aspects of health and safety. This co-operation includes, but is not limited to, full disclosure of information relating to health and safety, including compliance, to the Company on the Company's request.

25.3 In addition to the health and safety meetings established by the Company at which the Contractor and/or its Subcontractors must attend at the Company's request, the Contractor shall hold meetings with all of its Personnel and its Subcontractors and the Subcontractor's Personnel at regular intervals, at which meetings the reinforcement of standards, procedures, safety tips, and general safety matters must be discussed. Minutes of such meetings, jointly with a register of all persons who have attended the meetings, shall be kept by the Contractor. The Company shall be entitled to inspect these records at any reasonable time.

26. HEALTH HAZARD AND RISK MANAGEMENT

26.1 The Company notifies the Contractor, and the Contractor hereby acknowledges that it has been notified that its Personnel and its Subcontractors' Personnel may be exposed to hazards to their health.

Initial _____

- 26.2 The Contractor acknowledges that the Company has notified the Contractor in respect of relevant and appropriate hazards to the health of its Personnel and its Subcontractor's Personnel.
- 26.3 Without derogating from the generality of the above, the Contractor acknowledges that the notification has included: (i) the results of any relevant health hazard identified and assessed in terms of section 11 of the MHSA; (ii) the results of periodic reviews of the hazard identification and assessment, where appropriate; and (iii) the appropriate medical surveillance required after consideration of the health hazards, to which the Contractor's and its Subcontractors' Personnel may be exposed, and which have been identified.
- 26.4 The Contractor undertakes to: (i) assess the information and results of any hazard identification provided by the Company; (ii) ensure compliance with the system of medical surveillance implemented by the Company; (iii) ensure the retention of records of medical surveillance carried out in respect of each Personnel exposed to identified health hazards; (iv) utilise the services of the Occupational Medical Practitioner appointed by the Company; and (v) ensure that its and the Subcontractors' Personnel undergo an exit medical examination, which examination shall be conducted by the Occupational Medical Practitioner appointed by the Company, and provide the Company with the certificate as required in terms of the MHSA.
- 26.5 In order to assist the Company in ensuring that the obligations as set out in the MHSA are complied with, the Contractor undertakes to ensure the following: (i) that the Contractor and/or its Subcontractors have full knowledge of the work to be performed in respect of the Services to be rendered and the hazards associated with this work to the health and safety of Personnel and any and all persons who may be affected by the Services; (ii) that the Contractor and/or its Subcontractors, prior to carrying out any work and at intervals to be determined by the Company, which shall not be greater than at the start of each shift, conduct a HIRA in respect of the specific tasks to be performed and implement the identified control mechanisms; (iii) that all Personnel of the Contractor and/or its Subcontractors are trained, competent and assessed to perform any work allocated to them and that the Contractor has satisfied itself as far as reasonably practicable that any instructions given to any Personnel of the Contractor and/or of the Subcontractor can be carried out safely; (iv) that all Personnel of the Contractor and/or its Subcontractors successfully complete induction training provided by the Company and at intervals determined by the Company; (v) that no Personnel of the Contractor and/or its Subcontractors will be permitted to perform any work on the Site or in respect of the Services, unless they have been found competent to perform that task; and (vi) that adequate and competent supervisors are present to supervise all work being carried out and that the supervisors carry out documented planned task observations on Personnel at regular intervals.
- 26.6 The Contractor warrants that all persons engaged in or performing supervisory functions are suitably qualified and trained to understand the risks and hazards associated with any work to be performed and to ensure compliance with Applicable Laws.
- 26.7 The Contractor undertakes to comply with all of the provisions of the MHSA or other Applicable Laws in respect of its and its Subcontractors' Personnel.
- 26.8 The Contractor undertakes to comply with all of the provisions of the MHSA and other Applicable Laws in respect of any persons employed by the Company, and any other persons (third parties).
- 26.9 The Contractor warrants that no unsafe equipment, machinery articles or substances will be used by the Contractor, its Personnel, the Subcontractors and/or the Subcontractors' Personnel, whilst performing work on any Site or in connection with the Services.
- 26.10 The Contractor undertakes to ensure that the equipment brought onto Site or used in connection with the provision of the Services, or that equipment of its Subcontractors will fully comply with the procedures and systems implemented for the equipment brought onto the Site, as may be determined by the Company from time to time.
- 26.11 The Contractor warrants that its and/or the Subcontractors' Personnel are suitably qualified, trained and experienced to work on the Site and to carry out any work in connection with the Services.
- 26.12 Where the Contractor, the Subcontractors and/or their Personnel, are in the reasonable opinion of the Company, or by representatives of the DMR, found to be incompetent, or behave in a manner which endangers, or potentially endangers the health or safety of any Personnel or other person, the Contractor shall immediately remove such Personnel and/or person, and such Personnel and/or person shall not be allowed to perform any work, and/or render any services whatsoever on the Site or in connection with the Services.
- 26.13 The Contractor shall at all times carry out its work and provide the Services in a manner to avoid the risk of bodily harm (safety and health) to persons or risk of damage to any property. The Contractor shall take all precautions, which are necessary and adequate to eliminate any conditions, which involve a risk of bodily harm (safety and health) to persons or a risk of damage to any property. The Contractor shall inspect all work, materials and equipment on an on-going basis to discover and determine any such conditions. This clause 26.13 does not exclude the right of the Company to conduct similar inspections either on its own or in conjunction with the Contractor.
- 26.14 The Contractor shall maintain accurate records of occurred and of potential accidents, incidents, injuries and/or damages and shall furnish these to the Company at such intervals as required by the Company, but not less than once a month.
27. **REPORTING OF ACCIDENTS AND INCIDENTS**
The Contractor must ensure that immediately after the occurrence of an accident or incident, involving its or the Subcontractors' Personnel or an accident or incident witnessed by the Contractor and/or its Subcontractors, that the Company is notified immediately by the quickest means possible.
28. **ENFORCEMENT**
- 28.1 The Contractor shall take such steps to ensure that the Contractor, its Personnel and Subcontractors are aware of the Company's Health and Safety Systems, and shall take steps to enforce the applicable standards through appropriate measures, including monitoring, corrective counselling and discipline.
- 28.2 Without detracting from the generality of the above, and without limiting its liability in any way, the Contractor undertakes to ensure that the Contractor, its Personnel

Initial _____

and Subcontractors will at all times comply with all Applicable Laws and with any conditions, instructions or any other provisions of a like nature, which may be specified by the Company from time to time, or any instructions, orders, prohibition, exemption certificates and the like, issued in terms of the MHSA or other Applicable Laws.

28.3 The Contractor agrees to co-operate with the Company regarding the institution of disciplinary action against any Personnel, who are alleged to have contravened the health and safety rules and requirements of the Site and/or the Company.

29. COMPENSATION REGISTRATION

29.1 The Contractor warrants that the Contractor and/or its Subcontractors are duly registered with the Compensation Commissioner, as required in terms of COIDA and that all payments due to the Commissioner have been made.

29.2 The Contractor undertakes to provide a copy of its valid Certificate of Good Standing, or the valid Certificate of Good Standing in respect of any of its Subcontractors, with the Compensation Commissioner to the Company immediately upon request.

29.3 The Contractor will ensure that registration in terms of COIDA shall remain in force whilst any Personnel of the Contractor and/or its Subcontractors are performing work for or on behalf of the Company.

30. INSURANCE

The Contractor warrants that it is in possession of the following insurance cover which shall remain in force whilst the Contractor and/or the Subcontractors and/or their Personnel are working for or on behalf of the Company and which shall remain in force for the duration of this Agreement, whichever period is the longest: (i) public liability insurance cover with a minimum value of ZAR 10 000 000 (ten million South African Rand); and (ii) any other insurance cover that will adequately make provision for any possible losses and/or claims arising from the Contractor's and/or the Subcontractors' and/or their Personnel's acts and/or omissions on the Site.

PART E CONFIDENTIALITY AND NON-DISCLOSURE PROVISIONS

31. RESTRICTIONS ON DISCLOSURE AND USE

31.1 The Contractor agrees: (i) not to disclose, publish, utilise, employ, exploit or use the Confidential Information in any manner except for the Purpose agreed between the Parties, but not for any other reason or purpose whatsoever, including, but not limited to purposes which may result in the competing in any way with the Company or a third party, without the prior written consent of the Company, which consent may be withheld in the sole and absolute discretion of the Company; (ii) that, where applicable, it will restrict the dissemination of the Confidential Information to only those of its personnel, advisors, agents and consultants who are actively involved in providing services for and on behalf of the Contractor, and then only on a "need to know" basis and it will initiate internal security procedures reasonably acceptable to the Company to prevent unauthorised disclosure and will take all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof, which shall include, but not be limited to binding any third party advisors who are not otherwise bound by confidentiality undertakings to

the Contractor, to this Agreement through separate confidentiality and non-disclosure agreements in favour of the Company and enforceable by it, and which agreements shall form part of this Agreement; (iii) to promptly notify the Company in the event that the Contractor becomes legally compelled in a judicial, administrative or governmental proceeding to disclose any of the Confidential Information so that the Company, at its expense, may seek a protective order or other appropriate remedy and/or waive compliance with this Agreement; and (iv) to advise the Company promptly upon becoming aware of any loss and/or unauthorised disclosure of the Confidential Information or the breach of confidentiality or misappropriation of the Confidential Information.

31.2 In the event of one the Contractor visiting any of the facilities of the Company, the Contractor undertakes that any information which may come to its knowledge as a result of any such visit, and any information relating to documents, plans, legal matters, mining operations, plant and equipment which may be seen at such facilities, the operation thereof and the various applications thereof, shall be kept strictly confidential and that any such information shall not be divulged to any third party and shall not be made use of in any way other than for the purpose agreed between the Parties, without the Company's prior written consent.

31.3 Notwithstanding any of the provisions of this Agreement, the Contractor shall not disclose any information in relation to the relationship between the Parties and/or this Agreement nor issue press releases without the prior written consent of the Company.

32. TITLE

32.1 All Confidential Information disclosed by the Company to the Contractor is acknowledged by the Contractor to be proprietary to the Company; and not to confer any rights of whatsoever nature in such Confidential Information to the Contractor.

32.2 Nothing contained in this Agreement shall be construed as constituting or implying, and there is no granting or conferring, whether by sale, license or otherwise, to the Contractor of any right, title or interest to or in any Confidential Information disclosed, nor in any of the patents, trademarks or copyrights of the Company.

33. STANDARD OF CARE

33.1 The Parties acknowledge that the Confidential Information is a valuable, special and unique asset belonging to the Company. Hence the Contractor shall protect the Confidential Information of the Company in the same manner and with the same endeavour which a reasonable man would use to protect his own Confidential Information.

33.2 Should the Contractor become aware of any unauthorised disclosure or use of Confidential Information, it shall immediately notify the Company thereof in writing and, without in any way detracting from the Company's rights and remedies in terms of this Agreement, take such steps as may be necessary to prevent a recurrence thereof.

34. RETURN OF INFORMATION

34.1 The Company may at any time request the Contractor to return any material containing, pertaining to, or relating to the Confidential Information and may, in addition, request the Contractor to furnish a written statement to the effect that upon such return, the Contractor has not retained in

Initial _____

TERMS AND CONDITIONS OF AGREEMENT



its possession, or under its control, either directly or indirectly, any such material.

34.2 Notwithstanding the provisions of clause 34.1, the Contractor shall, within 5 (five) days of receipt of the Company's written request, destroy such material and provide the Company with a written statement to that effect, except to the extent it is required to retain Confidential Information to fulfil the Contractor's legal requirements or its internal document retention procedures. Confidential Information which is stored by the Contractor in automatic email archives and back-up systems is deemed to be destroyed as it follows the regular process of destruction.

34.3 DURATION OF CONFIDENTIALITY PROVISIONS

Notwithstanding anything to the contrary contained in this agreement, these confidentiality provisions will remain in force for a period of 10 (ten) years after either: (i) the expiry of the Initial Term or any further Extended Term, if applicable, or (ii) the date of termination of this Agreement for any reason other than the expiry of either the Initial Term or any Extended Term, if applicable and shall be automatically renewed for a period of 5 (five) years, unless terminated by either Party giving the other Party 3 (three) months written notice prior to the expiry date of the Initial or Extended Term, as the case may be.

END OF TERMS AND CONDITIONS

DATE OF THIS VERSION: 21ST SEPTEMBER 2016

ACCEPTANCE OF TERMS AND CONDITIONS FOR AND ON BEHALF OF THE CONTRACTOR

NAME OF CONTRACTOR: _____

SIGNATURE: _____

NAME: _____
who warrants that he/she is duly authorised thereto

POSITION: _____

DATE: _____

Initial _____