

AGREEMENT FOR THE SUPPLY OF PRODUCTS AND SERVICES

between

[*Insert Name of Supplier*]

(Registration Number: **[*Insert Registration Number of Supplier*]**)

(the "Supplier")

and

[*Insert Name of AGA Contracting Entity*]

(Registration Number: **[*Insert Registration Number of AGA Contracting Entity*]**)

(the "Company")

Contract Number: [*Insert Contract Number*]

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PART I: DEFINITIONS AND INTERPRETATION

1. Definitions and interpretation

1.1 In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

- 1.1.1 **"Affiliates"** means, with respect to any Person, any other Person, directly or indirectly, Controlling, Controlled by or under common Control with such Person. For purposes of this definition, the term "Control" (including the terms "Controlling" "Controlled by" and "under common Control with") means (a) direct or indirect ownership of more than 50% of the share capital or other ownership interests in a Person, (b) the right to exercise more than 50% of the votes of equity holders in a Person, (c) the contractual right to designate such number of the members of a Person's board of directors or similar executive body that, between them, have the right to exercise more than 50% of the votes of the members of such board or executive body, or (d) the power to positively determine, directly or indirectly, the direction of the management or policies of a Person, whether such power is effected through ownership of shares or other securities, by contract, by proxy or otherwise;

1.1.2	"AGA Policies"	any policies, standards, procedures, industry codes and guidelines adopted by the Company from time to time;
1.1.3	"Agreement"	this agreement for the supply of Products and Services and including the Schedule and Annexes hereto;
1.1.4	"Agreement Term"	the term of this Agreement as specified in the Schedule;
1.1.5	"Annexes"	the annexes to the Schedule that form part of this Agreement;
1.1.6	"Authority"	any government or governmental, administrative, fiscal or judicial authority, body, court, department, commission, tribunal, registry or any state owned, controlled or legislatively constituted authority which principally performs public, governmental or regulatory functions, including, without limitation, any competition authorities;
1.1.7	"Commencement Date"	the commencement date of this Agreement as specified in the Schedule;
1.1.8	"Company Representative"	the Person(s) identified in the Schedule as such, or a replacement for such Person(s) appointed in, and pursuant to the terms of this Agreement;

1.1.9	"Confidential Information"	any information specified by a Party to be confidential, any information embodied in data, technical knowledge, specifications, chemical make-up, materials and/or other communications, in tangible or non-tangible form, written or oral, relating to or useful in connection with the design, construction or operation of the Company's facilities or Site, the identity and requirements of the Company's suppliers and customers, the types, specifications, quantities and prices of goods or services; the Company's feedstock, products and/or its business, including but not limited to trade information, employee remuneration and conditions of employment, business development and/or operational plans, the existence and content of contracts, costs, pricing, payment terms, procedures, forecasts, order quantities, sales volumes and raw material usage, patent application, any product or process specifications, any product developments, any product applications, formulae, processes, marketing and manufacturing methods, drawings and plans and information technology specifications either (a) disclosed or provided by the Company, or (b) that may be learned, acquired or derived by the Supplier arising from or in connection with this Agreement, including negotiations and/or discussions; and the Intellectual Property of the Company and all information and data disclosed in any documentation describing and/or referring to any such Intellectual Property;
1.1.10	"Defective Services"	Services which, in the Company's sole determination, do not comply with the terms or requirements of this Agreement, or which are otherwise incorrectly or negligently performed by or on behalf of the Supplier;
1.1.11	"Delivery"	delivery of the Product on the basis as set out in the Schedule, and "Deliver" and "Delivered" shall have a corresponding meaning as the context may so require;
1.1.12	"Delivery Date"	the date of Delivery as provided for in a Purchase Order or the Schedule or as directed in writing by the Company;
1.1.13	"Delivery Point"	the delivery point nominated in the Schedule, or if no such point is specified, the delivery point specified in a Purchase Order;

1.1.14	"Encumbrance"	means any security, interest, option, security interest, pre-emption right, mortgage, charge, pledge, lien, assignment, subordination, hypothecation, title retention or any other security interest, agreement or arrangement, or any agreement to create any of the above;
1.1.15	"Equipment"	apparatus, equipment, machinery, tools, materials, vehicles and other things of whatsoever nature required by the Supplier for the performance of the Services;
1.1.16	"Good Industry Practice"	the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor to comply with its obligations in terms of this Agreement, all applicable Laws and applicable AGA Policies;
1.1.17	"Independent Expert"	has the meaning given to the term in clause 35;
1.1.18	"Intellectual Property"	all intellectual property rights, whether protectable by statute or at common law, including all patents, trademarks, present and future rights of copyright, rights in and to designs, rights in and to inventions, topography rights, rights in and to trade secrets, rights in and to trade names, business names, domain names and logos, rights in and to know-how, rights in and to databases (including rights of extraction), and all rights and forms of protection of a similar nature or having equivalent effect to any of them which may subsist or be capable of protection at the Signature Date or in the future anywhere in the world, whether or not any of these is registered and including applications for any such right or registration, renewal or extension thereof;
1.1.19	"Invoice"	an original invoice in respect of the Products and/or Services submitted by the Supplier to the Company in accordance with this Agreement;
1.1.20	"Laws"	means any applicable statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement, or rule of law of any Authority, both before and at the time of execution of this Agreement;

1.1.21	“Losses”	means (i) all direct losses, liabilities, claims, demands, judgments, damages, payments, interest, fines, penalties, awards, costs and expenses (including reasonable costs of investigation and defense, and reasonable attorneys’ fees) and (ii) all direct loss of profits suffered by the Company or its Affiliates, on the one hand, or the Supplier or its Affiliates on the other hand, but, in each case, excluding (a) claims by a Person for diminution in value of such Person’s shares, (b) damages attributable to any changes in the share price of publicly traded securities of a Party or an Affiliate thereof, and (c) punitive damages, except, in the case of either clause (b) or clause (c), to the extent payable in connection with a third-party claim;
1.1.22	"Parties"	the Company and the Supplier as parties to this Agreement and "Party" shall mean either one of them;
1.1.23	“Person”	includes a natural person, company, close corporation or other juristic person or corporate entity, charity, partnership, trust, joint venture, syndicate or other unincorporated association of persons or entities;
1.1.24	"Personnel"	the: <ul style="list-style-type: none"> (i) directors and employees of a Party; and (ii) in respect of the Supplier, its employees, agents and sub-contractors that have been approved by the Company in writing for the performance of any delegation, whether involved directly or indirectly in the performance of any obligations in terms of this Agreement; and
1.1.25	"Products"	the Products set out in the Schedule and where the context requires, the Products ordered by and supplied to the Company by the Supplier;
1.1.26	"Product Price"	the prices of the Products set out in the Schedule;
1.1.27	"Product Specifications"	the technical specifications of the Products referred to in the Schedule;

1.1.28	"Purchase Order"	an official written purchase order signed by a duly authorised representative of the Company (that does not necessarily need to be the Company Representative) and issued by the Company to the Supplier stipulating, as applicable, the nature and/or quantity of the Products to be purchased in terms of this Agreement;
1.1.29	"Representatives"	the Company Representative and the Supplier Representative, and "Representative" shall mean either one of them, as the context may require;
1.1.30	"Required Insurance"	has the meaning given to the term in clause 36.1;
1.1.31	"Schedule"	the Schedule that forms part of this Agreement;
1.1.32	"Scope of Services"	the Services described in the Schedule;
1.1.33	"Security"	means the security to be provided by the Supplier for the performance of its obligations in terms of this Agreement as specified in the Schedule;
1.1.34	"Service Fees"	the fees in respect of the Services as set out in the Schedule;
1.1.35	"Service Order"	an official written order signed by a duly authorised representative of the Company (that does not necessarily need to be the Company Representative) issued to the Supplier by the Company stipulating as applicable, the nature and/or the quantity of the Services to be provided in terms of this Agreement;
1.1.36	"Services"	collectively or individually, as the context may require, any of the services described in the Scope of Services;
1.1.37	"Signature Date"	the latest of the dates on which this Agreement (or any counterpart) was signed by either Party;
1.1.38	"Site"	the Company's premises specified in the Schedule;
1.1.39	"Supplier Representative"	the Person(s) identified in the Schedule as such or a replacement for such Person(s) appointed in terms of this Agreement;
1.1.40	"Surviving Provisions"	means clauses 1 (<i>Definitions and interpretation</i>); 28 (<i>Indemnity</i>); 34 (<i>Consequences of termination</i>); 35 (<i>Insurance</i>); 37 (<i>Intellectual Property</i>); 41 (<i>Confidentiality</i>); 42 (<i>Dispute Resolution</i>);

- 1.1.41 **"Taxes"** means any tax imposed, levied or charged by any Authority and includes, without limitation, any excise duties, stamp or similar duties, customs and excise duties, withholding taxes, value added or similar transaction taxes and any penalties or interest relating thereto; and
- 1.1.42 **"Termination Date"** means the termination date of this Agreement as specified in the Schedule.

1.2 In this Agreement unless expressly provided otherwise:

- 1.2.1 references to a Law include any subordinate legislation made from time to time under that provision and include that Law as amended, supplemented, modified or re-enacted from time to time;
- 1.2.2 any reference to a person, includes, without being limited to, any individual, body corporate, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated association, government, state or agency of a state (including a Tax authority), or other entity, whether corporate or unincorporated;
- 1.2.3 words importing the masculine gender include the feminine and neuter genders and *vice versa*; the singular includes the plural and *vice versa*; and natural persons include artificial persons and *vice versa*;
- 1.2.4 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 1.2.5 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
- 1.2.6 a reference to a clause is a reference to a clause of this Agreement, unless otherwise stated or inconsistent with the context in which it appears;
- 1.2.7 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day;
- 1.2.8 any reference to days, months, or years, shall be a reference to calendar days, calendar months or calendar years, as applicable, unless otherwise stated;
- 1.2.9 any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. *pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or

enforceability of such provision in any other jurisdiction;

- 1.2.10 any reference in this Agreement to "this Agreement" or any other agreement, document or instrument shall be construed as a reference to this Agreement or that agreement, document or instrument as amended, varied, restated, novated or substituted from time to time;
- 1.2.11 all the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it;
- 1.2.12 the currency of this Agreement shall be as specified in the Schedule;
- 1.2.13 the use of any expression in this Agreement covering a process such as winding-up, liquidation or dissolution (without limitation *eiusdem generis*) shall be construed as including any equivalent or analogous proceedings under any jurisdiction; and
- 1.2.14 the use of the word "including" followed by specific example(s) shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example(s).
- 1.3 Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of this Agreement (i.e. the *contra proferentem* rule), shall not apply.

PART II: APPOINTMENT AND DURATION

2. Appointment

The Company hereby appoints the Supplier, who accepts such appointment, to supply the Products and Services in accordance with the terms, and subject to the conditions, as set out in this Agreement.

3. Commencement and duration

This Agreement shall commence on the Commencement Date and shall continue for the Agreement Term unless otherwise terminated earlier in accordance with the terms of this Agreement.

4. General terms of appointment

- 4.1 The Company gives no undertaking regarding the extent to which it will place orders with the Supplier to supply the Products and provide the Services in terms of this Agreement, and nothing contained in this Agreement shall be construed as granting any exclusivity or restraint between the Company and the Supplier in respect of the supply of the Products and the provision of the Services by the Supplier.
- 4.2 The Company shall only purchase Products in terms of this Agreement pursuant to

a Purchase Order and shall only request Services in terms of this Agreement pursuant to a Service Order.

- 4.3 The Supplier agrees to carry out its obligations in terms of this Agreement as an independent contractor of the Company and nothing in this Agreement, whether expressed or implied shall:
- 4.3.1 be construed as creating an employment or labour-broking relationship between the Supplier and/or its Personnel, on the one hand, and the Company, on the other;
 - 4.3.2 be construed as creating a partnership or joint venture between the Parties;
 - 4.3.3 constitute either Party as an agent or representative of the other Party;
 - 4.3.4 entitle the Supplier or any of its Personnel for any purpose whatsoever to hold themselves out to be an employee(s) of the Company;
 - 4.3.5 afford the Supplier or any of its Personnel any employment-related claim against the Company hereunder or otherwise; and/or
 - 4.3.6 entitle either Party to bind or attempt to bind the other Party, or to represent to any third party that it has the authority to bind the other Party or to confer any obligation on the other Party, unless specifically mandated to do so in writing by the other Party.

5. Personnel

- 5.1 The Supplier shall use the Personnel only for the purposes of carrying out its obligations in terms of this Agreement.
- 5.2 Notwithstanding the use of the Supplier's Personnel by the Supplier for the supply of the Products and Services, the Supplier shall remain fully responsible for the proper performance of its duties and obligations in accordance with the terms and subject to the conditions of this Agreement.
- 5.3 The terms of every contract with Personnel must be no less stringent than the terms of this Agreement, provided that the Supplier may include in any such contract all terms that the Supplier considers necessary to maintain control over the work to be performed by such Personnel and to allow the Supplier to comply with its obligations under this Agreement.

6. Representatives

- 6.1 The Supplier shall ensure that the Supplier Representative is available to the Company at all reasonable times for the Agreement Term in respect of matters concerning the Supplier's performance of its obligations set out in this Agreement.
- 6.2 The Company Representative has the authority to give directions for and on behalf of the Company as set out in this Agreement, but shall only have the authority to agree to an amendment of this Agreement for and on behalf of the Company to the extent expressly permitted in this Agreement.

- 6.3 The Supplier Representative has full authority to represent and bind the Supplier in all matters pertaining to this Agreement, including the authority to agree to any amendment to the terms and conditions of this Agreement for and on behalf of the Supplier. Matters within the knowledge of the Supplier Representative are deemed to be within the knowledge of the Supplier.
- 6.4 A Party shall be entitled to revoke the appointment of its Representative, with the approval of the other Party which approval shall not be unreasonably withheld or delayed subject to a simultaneous appointment of a replacement Representative by written notice to the other Party.

7. Documentation

- 7.1 Documentation which may require approval of the Company Representative pursuant to the supply of Products and/or Services shall be submitted to the Company Representative as and when required. The Parties shall address in the Purchase Order and/or Service Order, or elsewhere as appropriate in this Agreement, the timeframes for submission of any such requests for approval and for review and approval by the Company Representative.
- 7.2 Ownership of, and Intellectual Property in, all documentation arising out of the supply of the Products and/or Services shall vest in the Company. The Company shall have full right of disposal of such documentation without payment of any further consideration to the Supplier.
- 7.3 Upon written notice, the Supplier shall provide the Company with any certificates, books and records and such documentation and other information as may be reasonably requested by the Company from time to time in order to verify that the design, manufacture, importation, supply and Delivery of the Products and/or the performance of the Services, as applicable, complies with the provisions of this Agreement.

PART III: PRODUCT SPECIFICATIONS AND STANDARDS

8. Product Specifications

The Supplier represents, warrants and undertakes that each Product supplied by it under this Agreement shall:

- 8.1 as a final Product, and in respect of its design, fabrication, testing, packaging, loading or transport and Delivery (and installation and commissioning where specified), conform to the Product Specifications, applicable AGA Policies, Good Industry Practice, all applicable Laws, their description (or representative sample if applicable), the terms of the applicable Purchase Order and all other requirements of this Agreement;
- 8.2 not be manufactured from inferior or defective raw materials;
- 8.3 be free of Encumbrances and that the Supplier shall have good title to them;
- 8.4 be new and of good and merchantable quality and fit for its intended purpose; and

8.5 be free of defects (latent and patent) in design, workmanship and material.

9. Delivery, title and risk

9.1 The Supplier shall Deliver the Products to the Delivery Point in accordance with the Delivery provisions of the Schedule.

9.2 Unencumbered ownership of the Products shall pass to the Company upon payment for the Products by the Company in full.

9.3 The risk in the Products shall pass to the Company upon Delivery of the Products to the Delivery Point.

9.4 The Supplier must arrange and pay for the transport of the Product, by the method of transport specified in the Schedule, to the Delivery Point.

10. Product packaging

The Supplier must clearly mark all packages with, at a minimum, the name of the Company, the address for Delivery, the Purchase Order number and for the attention of the Person at the Site designated by the Company in writing.

11. Product stock to be maintained

11.1 The Supplier must maintain adequate stock levels of the Products as set out in the Schedule (or any lesser amount as may be agreed by the Company from time to time in writing).

11.2 The Company may from time to time and in its reasonable discretion stipulate in writing the purchase volumes and details of the Products to be maintained in stock for the period, to enable the Supplier to accurately meet the Company's requirements.

11.3 If at any time during this Agreement the stock maintained by the Supplier is insufficient to meet the Company's consumption as reflected in this Agreement and related Purchase Orders and/or the Schedule, the Supplier shall immediately give written notice to the Company, and the Supplier shall source and supply Products to the Company of the same specifications as the Product Specifications. Any additional costs associated with complying with the obligations of this clause 11.3 shall be at the Supplier's expense.

11.4 In the event that the Supplier fails to act in accordance with its obligations in terms of clause 11.3 the Company shall be entitled to itself source Products or a substitute at the expense of the Supplier.

11.5 The Company is not obliged to take or pay for any Products, other than in accordance with Purchase Orders placed by it. The Company may return, at the Supplier's cost, any excess Products Delivered.

12. Defective Products

12.1 Should the Supplier Deliver any Products which do not comply with the Product Specifications or the provisions of this Agreement, the Company shall have the

right to refuse to take Delivery, or after having taken Delivery, to reject the said Products and promptly notify the Supplier in writing. In the event of such refusal or rejection the said Products, the Company may choose to hold the Products at the sole risk of the Supplier. A failure to inspect by the Company prior to despatch of Product or acceptance by the Company of Products not complying with the Product Specifications, shall not prejudice or affect the rights of the Company to reject subsequent Deliveries of Products not complying with the Product Specifications.

- 12.2 For the avoidance of doubt, acceptance of the Products at the Delivery Point by any third party on behalf of the Company, such as a transport provider, shall not affect or limit:
- 12.2.1 any right the Company may have to refuse or reject the Products upon the Company inspecting the Products when they are Delivered to the Site (if the Delivery Point is not at the Site); or
- 12.2.2 the Supplier's warranties or other obligations under this Agreement.
- 12.3 In the event that the Company refuses or rejects Products in accordance with clause 12.1 above, the Supplier shall remove the said Products and shall pay all Losses to the Company arising from and incidental to such removal and the Supplier shall further be liable for all Losses to the Company in respect of defective Products including but not limited to transport, off-loading and loading costs. Without derogating from the generality of the foregoing the Supplier shall be liable for Losses to the Company due to unsuitably packed Products and for any difference in freight charges that arises from its failure to follow any transport instruction in terms of this Agreement or to properly describe the Products being transported. The Supplier must assist the Company in obtaining documents and other information required for the resolution of any transport dispute.
- 12.4 At the sole discretion of the Company, and without derogating from clause 12.3 above, the Supplier shall replace any Products rejected or refused at the cost of the Supplier.
- 12.5 Should any dispute arise as to whether Products refused or rejected by the Company comply with the Product Specifications or the provisions of this Agreement, such dispute shall be referred to an Independent Expert for determination in accordance with clause 35. If the Supplier, within 5 Business Days of such refusal or rejection, fails to refer a dispute in accordance with clause 35, the Supplier shall be bound by the provisions of clauses 12.1, 12.2, 12.3 and 12.4 in respect of such Products.
- 12.6 The Supplier must promptly repair any defects, or as necessary replace any Product, when such Product does not comply with the requirements of this Agreement or is defective in design, material, or workmanship, and such noncompliance or defects appear in the Product under proper use within one year of the Company putting the Product into service or within 18 months of Delivery, whichever is later.
- 12.7 The Supplier agrees that, upon receipt of a notice issued by the Company of any

latent or patent defect in any Product, the Product shall be redesigned, repaired or replaced as appropriate by the Supplier at its expense, failing which the Company may without prejudice to its other rights perform or cause to be performed such redesign, repair or replacement at the Supplier's risk and expense, which expense shall be recoverable from the Supplier as debt due and payable to the Company.

- 12.8 Should any dispute arise as to whether defects are present in the goods, such dispute shall be referred to an Independent Expert for determination in accordance with clause 35. In the event of the Supplier, within 5 Business Days of the date of receipt of notice contemplated in clause 12.8, fails to refer a dispute in accordance with clause 35, the Supplier shall be bound to replace the Products or repair the defects in accordance with the provisions of clauses 12.4 and 12.6.
- 12.9 Failure on the part of the Company to implement the provisions of this clause 12 in respect of any Products in which latent or patent defects are present shall not prejudice or affect the rights of the Company to invoke the said provisions in the event of latent or patent defects being present in any subsequent Delivery of Products.
- 12.10 In addition to the rights of the Company set out in this clause, the Company shall have all other common law rights which it would otherwise have for latent or patent defects in the Products, both with regard to the remedies available to it and with regard to the length of time the Supplier remains liable for the latent defects.
- 12.11 Any action by the Company in terms of this clause 12 shall be without prejudice to any claims for damages which the Company might have against the Supplier. The Company's remedies in terms of this clause are without prejudice to any other remedy to which the Company may be entitled in Law, or elsewhere in this Agreement.

13. Delay in Product Delivery

- 13.1 The Supplier acknowledges that time is of the essence in this Agreement. In the event of the Supplier becoming aware of any possible or actual delay in the Delivery of the Products by the Delivery Date, the Supplier shall immediately notify the Company in writing thereof and provide details of the expected length of the delay and the steps to be taken to reduce the delay.
- 13.2 If delay in Delivery is caused by any of the circumstances specified in clause 35, the Delivery Date shall be extended by a period which is reasonable, taking into account all the circumstances related to the delay, subject to the requirements of clause 35.
- 13.3 Without limiting any other right or remedy that the Company may have, if the Products are required to be Delivered and are not Delivered to the Delivery Point by the Delivery Date:
- 13.3.1 the Supplier must pay, as pre-estimated and liquidated damages, a sum calculated as the rate specified in the Schedule for every calendar day after the Delivery Date to and including:

- 13.3.1.1 the date the Product reaches the Delivery Point; and
- 13.3.1.2 the date this Agreement is terminated.
- 13.3.2 The Company shall be entitled to require the Supplier to Deliver by methods other than those stipulated in this Agreement and any Losses to the Company so incurred shall be for the account of the Supplier.
- 13.3.3 The Company shall also have the right to, at the risk and expense of the Supplier, obtain the Product from another source and refuse late Delivery when eventually Delivered.
- 13.4 Acceptance by the Company of any Products in respect of which Delivery has been delayed beyond the Delivery Date shall not prejudice or affect the rights of the Company to implement the provisions of this clause 13 in the event of any subsequent Deliveries of Products being delayed beyond the Delivery Date.
- 13.5 The Supplier acknowledges that the sums payable to the Company under clause 13.3 represent the Company's genuine pre-estimate of damages likely to be suffered by the Company if the Product (or parts thereof) are not Delivered by the Delivery Date and those sums ought not to be construed as nor they are intended to be, a penalty.

PART IV: SERVICES SPECIFICATIONS AND STANDARDS

14. Performance of Services

- 14.1 The Supplier represents, warrants and undertakes that it shall (and procure that its Personnel shall) in performing the Services shall:
 - 14.1.1 conform with the Scope of Services, applicable AGA Policies, Good Industry Practice, all applicable Laws, the terms of the applicable Service Order and all other provisions of this Agreement;
 - 14.1.2 ensure that inferior or defective Equipment is not used in the performance of the Services;
 - 14.1.3 the material and Equipment necessary for the performance of the Services shall:
 - 14.1.3.1 be free of defects (latent and patent) in design, workmanship and material; and
 - 14.1.3.2 be fit for their intended purpose;
 - 14.1.4 exercise the standards of diligence, skill and care normally exercised by similarly qualified and competent persons in the performance of work comparable to the Services;
 - 14.1.5 ensure the Services are fit for any purpose notified by the Company and in the absence of notification, for the purpose for which works of that or a similar type are commonly acquired;

- 14.1.6 act in accordance with all directions of the Company (including in relation to health and safety, industrial relations (whilst on the Site) and environmental matters;
 - 14.1.7 act in a workmanlike, careful, safe and proper manner;
 - 14.1.8 perform the Services in a timely manner; and
 - 14.1.9 comply with all the requirements of this Agreement.
- 14.2 The Supplier is responsible for the supply and transport of the material and Equipment required for purposes of the performance of the Services.
- 14.3 Without limiting the generality of any other provision of this Agreement, the Company may, in its absolute and sole discretion, from time to time issue instructions to the Supplier in connection with the following, which instructions must be promptly complied with by the Supplier:
- 14.3.1 the method or manner of the execution, doing or performance of the Services generally, and each part of the Services; and
 - 14.3.2 the time or times within which the Services, or any part thereof, are to be commenced and/or completed.

15. Defective Services

- 15.1 In the event of Defective Services, then without prejudice to any other rights of the Company in terms of this Agreement, the Company shall be entitled, but not obliged, on written notice to the Supplier to require the Supplier to re-perform and/or to make good any such Defective Services at Supplier's own cost and to the Company's satisfaction.
- 15.2 Should any dispute arise as to whether any Services are Defective Services, such dispute shall be referred to an Independent Expert for determination in accordance with clause 35. If the Supplier, within 5 Business Days of the date of receipt of notice contemplated in clause 15.1, fails to refer a dispute in accordance with clause 35, the Supplier shall be bound by the provisions of clause 15.1 in respect of such Products.

PART V: PRICING TERMS AND PAYMENT, MARKET TESTING

16. Product Price and adjustments

- 16.1 The Product Price payable by the Company to the Supplier for the Products, shall be as set out in the Schedule.
- 16.2 Adjustments to the Product Price, if any, shall be determined in accordance with the Product Price adjustment provisions referred to in the Schedule.
- 16.3 For the avoidance of doubt, the Product Price is inclusive of, and the Supplier shall not be entitled to any additional payment in respect of:

- 16.3.1 any and all recoverable expenses incurred by the Supplier in relation to the supply of the Product;
- 16.3.2 all Taxes; and
- 16.3.3 the costs of packaging, insurance and Delivery of the Products.

17. Service Fees and adjustments

- 17.1 The Service Fees payable by the Company to the Supplier in respect of the Services shall be as set out in the Schedule.
- 17.2 Adjustments to the Service Fees, if any, shall be determined in accordance with the Service Fees adjustment provisions referred to in the Schedule.
- 17.3 For the avoidance of doubt, the Service Fees are inclusive of, and the Supplier shall not be entitled to any additional payment in respect of:
 - 17.3.1 any and all expenses incurred by the Supplier in relation to the supply of the Services;
 - 17.3.2 all Taxes;
 - 17.3.3 all labour, overheads, administration, installation, supervision, material, testing and any other costs and expenses of whatsoever nature, incurred by the Supplier pursuant to the performance of the Services; and
 - 17.3.4 any and all costs associated with any reporting obligations under any Laws.

18. Invoicing and payment

- 18.1 The Supplier shall provide the Company with a monthly Invoice by no later than the last day of each month in respect of Products and Services supplied to the Company up to the 25th day of that month, or such other date as advised by the Company from time to time.
- 18.2 Each Invoice shall be in a format approved by the Company from time to time.
- 18.3 The Supplier shall promptly provide any information reasonably requested by the Company in order to substantiate an Invoice. In the event that an Invoice and any supporting documentation are incomplete or incorrect, payment of such Invoices will only be effected not later than the number of days for payment as specified in the Schedule following the date of receipt of a correct Invoice and the relevant supporting documentation (if any) by the Company.
- 18.4 The Company shall be entitled to dispute, and not pay, any Invoice reflecting any Products, Services, Product Prices, Service Fees, rebate, discount or condition at variance with a Purchase Order and/or Service Order and/or this Agreement.
- 18.5 Subject to clauses 18.3 and 18.4, all Invoices shall be paid by the Company to the Supplier no later than the number of days for payment as specified in the Schedule after receipt of the Invoice by the Company. The Company shall at all times be entitled to the Supplier's standard discount for prompt payment.

- 18.6 Unless otherwise negotiated by the Parties, the Company shall make all payments to the Supplier directly into such bank account as stipulated by the Supplier in the Schedule or in writing from time to time.
- 18.7 Without prejudice to any of its other rights and remedies, the Company may from time to time set-off against any amounts owed to the Supplier, whether under this Agreement or otherwise, all or any of the amounts owed by the Supplier to the Company whether under this Agreement (including pursuant to any indemnity contained in this Agreement) or any other agreement or account.

19. **Market testing**

The Company shall have the right to review the competitiveness of the Supplier's terms and conditions for the supply of the Products and/or Services on the following terms and conditions:

- 19.1 The Company Representative shall inform the Supplier Representative that the Company intends reviewing the Supplier's terms and conditions of supply of the Products and/or Services against the prevailing market terms and conditions.
- 19.2 The Supplier shall have 10 days to provide the Company Representative with a proposal for revised terms and conditions.
- 19.3 If the Supplier does not provide a proposal to the Company Representative, within the timeframe stipulated in clause 19.2, which the Company Representative considers (in his or her sole discretion) to be adequate then the Company shall proceed to market testing.
- 19.4 During such market testing, should the Company receive a *bona fide* signed offer from a third party for terms and conditions that are commercially more favourable than the Supplier's terms and conditions then the Company shall notify the Supplier. The Supplier will then have 5 days to match or better such third party offer.
- 19.5 Should the Supplier fail to respond within the timeframe stipulated in clause 19.4, or should the response not be satisfactory to the Company Representative (in his or her sole discretion), then the Company will be entitled to terminate this Agreement by providing 30 days written notification of its intention to do so to the Supplier.

PART VI: INFORMATION, ACCESS AND INSPECTION RIGHTS AND OBLIGATIONS

20. **Information and investigations**

- 20.1 The Supplier acknowledges and agrees that as at the Signature Date:
- 20.1.1 it has satisfied itself as to the suitability and correctness of any information provided by or on behalf of the Company in relation to the performance of this Agreement;
- 20.1.2 it has carefully examined all documents provided by or on behalf of the Company in relation to the performance of this Agreement and has satisfied

- itself that such documents are correct and accurate in all respects;
- 20.1.3 the Company is not responsible for any inferences and conclusions drawn by the Supplier from information provided by or on behalf of the Company in relation to the performance of this Agreement;
- 20.1.4 it has performed all investigations and inspections necessary for the performance of this Agreement;
- 20.1.5 the Company does not warrant the correctness, accuracy or otherwise of such information provided by or on behalf of the Company in relation to the performance of this Agreement;
- 20.1.6 the Company does not accept any responsibility for the use of information provided by or on behalf of the Company in relation to the performance of this Agreement by the Supplier nor for any losses arising therefrom, including any inferences and conclusions drawn by the Supplier from such information; and
- 20.1.7 it has taken all steps necessary to fully inform itself of all matters and conditions that may affect its performance of this Agreement, and any failure on the part of the Supplier to do so does not relieve the Supplier from its obligations under this Agreement nor does it entitle the Supplier to any adjustment of the Product Price or the Service Fees.
- 20.2 The Supplier acknowledges that following the Signature Date it may be provided with further information by or on behalf of the Company in relation to the performance of this Agreement, in which cases it agrees that the provisions of this clause 20 shall apply to such further information provided by the Company.

21. Company's inspection and test rights

- 21.1 The Company shall be entitled to inspect the Products and/or Services being supplied at any time to determine whether the Products and/or Services are being supplied in accordance with this Agreement. Such right may be exercised at any reasonable time on any Business Day, on reasonable notice and includes, without limitation, the right to inspect:
- 21.1.1 certificates of raw materials and test certificates for materials and equipment used in the manufacture of any Product;
- 21.1.2 the Supplier's stock; and
- 21.1.3 the Supplier's manufacturing and progress reports.
- 21.2 Further, the Company shall at any time be entitled to conduct such tests of the Products and/or Services as it deems reasonably necessary. The costs of tests carried out by the Company will be borne by the Company.
- 21.3 In the event that the Supplier is obliged to carry out tests in respect of the Products and/or Services, the tests must be conducted on the dates and times as agreed between the Company Representative and the Supplier Representative. In the

event that the Company and the Supplier Representatives cannot agree on the dates and time of testing, then the final determination shall be made by the Company. The Company Representative is entitled to be present at the testing. Notwithstanding the aforementioned, the testing will proceed regardless of whether the Company Representative is present. The Supplier Representative shall provide the Company with a copy of the results of the test immediately upon completion of a particular test.

- 21.4 If the results of an inspection and/or test reveal that the Products and/or Services, as applicable, are not supplied in accordance with this Agreement, the Company shall notify the Supplier Representative of such defect and/or failure and, without limiting any other right or remedy the Company may have under this Agreement, direct the Supplier to take such measures as may be required to remedy the defect and/or failure to ensure that the Products and/or Services are in accordance with this Agreement at the Supplier's cost and expense.

22. Access to Site

22.1 Conditions of access

- 22.1.1 The provisions of this clause 22 apply if and to the extent only that the Supplier or its Personnel are on the Site, including for the purposes of Delivering the Products and/or in connection with supplying the Services. The Supplier, and its Personnel, may not access the Site until the Supplier receives the approval of the Company.
- 22.1.2 The Supplier hereby acknowledges that it and its Personnel:
- 22.1.2.1 shall at all times enter the Site at their own risk;
 - 22.1.2.2 are not entitled to possession of the Site;
 - 22.1.2.3 may only access the areas allocated by the Company as necessary, in the opinion of the Company, for performance of the Services and/or the Delivery of the Products;
 - 22.1.2.4 must comply with all applicable Site rules and procedures including any relating to induction or Site orientation;
 - 22.1.2.5 must co-operate with the Company, its Personnel, and the Company's other contractors, workmen and agents and give them any information or data reasonably necessary or expedient to ensure proper performance of their respective work;
 - 22.1.2.6 must obtain prior approval from the Company, in a timeframe consistent with this Agreement, for any action likely to interfere with the Company's operations or the work of any other contractors, workmen or agents; and
 - 22.1.2.7 if required by the Company to do so, must wear or carry badges or passes issued by the Company for the purpose of identification at all

times whilst on or entering the Site or the Company's mining or exploration tenements.

22.2 **Removal from Site**

The Company may, in its absolute discretion, require the removal from the Site of any person for whom the Supplier is responsible (including all Personnel) who, in the opinion of the Company, are incompetent or conduct themselves in a reprehensible or irresponsible fashion or are otherwise rendered to be unsuitable to continue to be employed by the Supplier for purposes of carrying out the Services or in connection with this Agreement. The Company may require the replacement, within such time as the Company directs, of any such person removed from Site, and such replacement person must have the requisite skills and technical expertise for purposes of carrying out the Supplier's obligations in terms of this Agreement.

23. **Fossicking and collection of minerals prohibited**

- 23.1 Collection of mineral specimens, whether or not of economic significance, at the Site is strictly forbidden, and all such specimens remain the property of the Company.
- 23.2 Any action by any person, including Personnel and persons associated with the Supplier, on the Site which can be construed as fossicking, prospecting, sampling for minerals and samples containing gold or any other metal or mineral within the Site will entitle the Company to require the removal of that person from the Site in accordance with clause 22.2.

PART VII: COMPLIANCE REQUIREMENTS

24. **Health, safety and environment**

- 24.1 The Supplier shall at all times take all reasonable steps to protect the environment and maintain the health and safety of the Supplier's Personnel and all Persons on Site.
- 24.2 Without in any way limiting the generality of the foregoing, to the extent the Supplier or any of its Personnel are required to be on Site or to be near the vicinity of a Site for the purposes of supplying the Products and/or Services under this Agreement the Supplier shall, and shall ensure that its Personnel, comply with and implement as the case may be:
- 24.2.1 the Company's health, safety and environmental policies and standards applicable to the Site from time to time, including the health, safety and environmental policies and standards contained in the AGA Policies and the requirements of Good Industry Practice;
- 24.2.2 any health, safety and environmental precautions and regulations which the Company Representative may consider necessary for the proper protection of the Supplier's Personnel and all persons on the Site;

- 24.2.3 any health and safety management plans or environmental management plans submitted by the Supplier to the Company in terms of this Agreement or otherwise;
- 24.2.4 all relevant health, safety and environmental Laws in force from time to time; and
- 24.2.5 the health, safety and environmental conditions contained in this clause 24.
- 24.3 The Supplier shall:
 - 24.3.1 at its cost provide the Supplier's Personnel and all persons allowed by the Supplier to be present on the Site with protective equipment in full compliance with the safety policies and standards of the Site in force from time to time; and
 - 24.3.2 at its cost provide and install all safety equipment reasonably required in relation to the supply of the Products and/or Services and/or specified by the Company from time to time, and shall keep and maintain all such safety equipment in good and working order.
- 24.4 The Supplier shall ensure there are processes in place that implement and reinforce line accountability for safety and health outcomes.
- 24.5 The Supplier shall maintain appropriate records in accordance with the safety and environmental system in force on the Site from time to time in respect of all matters concerning safety, environmental, health and welfare of the Supplier's Personnel, and damage to or loss of any property on the Site.
- 24.6 Without limiting the generality of this clause 24 the Company shall be entitled in its sole discretion to take such steps, related to this Agreement and more specifically the work of the Supplier, at the cost of the Supplier as shall be necessary for the maintenance of the health and safety of any of the Supplier's Personnel on the Site.
- 24.7 Without derogating from any other rights in terms of this Agreement or at Law, in the event of any breach of this clause 24, the Company may:
 - 24.7.1 require the Supplier, the Supplier's Personnel and/or any other person associated with the Supplier to leave the Site immediately; and
 - 24.7.2 require the Supplier and/or any of its Personnel to remove any material or substance from the Site at the Supplier's cost,and the Supplier must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, Personnel and the environment.

25. **Compliance with Laws**

- 25.1 The Supplier shall, and shall ensure that its Personnel shall, at all times and in all respects comply with all applicable Laws and shall not do anything or allow

anything to be done which does or is likely to cause a contravention of any provision of any applicable Laws.

- 25.2 The Supplier shall be responsible for obtaining and maintaining all applicable quality accreditation, certification, notices, licences, authorisations and permits required by any Authority in connection with the supply of the Products and/or Services, and shall also have the financial responsibility for, and shall pay, all fees and taxes associated with such accreditation, certification, notices, licences, authorisations and permits.

26. Business ethics

- 26.1 The Supplier undertakes that it will perform in a manner consistent with and ensure that its Personnel perform in a manner consistent with the AGA Policies, including the AngloGold Ashanti Limited Code of Business Principles and Ethics (the "**Code of Ethics**"), the AngloGold Ashanti Supplier Code of Conduct (the "**Supplier Code**"), and any other policies that the Company may specify from time to time.
- 26.2 The Supplier has and undertakes to at all times familiarise itself with the contents of the AGA Policies described in clause 26. Copies of the Code of Ethics and the Supplier Code may be viewed at www.anglogoldashanti.com and may be amended or replaced from time to time at the sole discretion of the Company.
- 26.3 The Supplier acknowledges and hereby confirms that, as at the Signature Date, it does not have any interest which actually constitutes or may potentially constitute a conflict of interest relating to its obligations under this Agreement, including the supply of the Products and/or Services, except as has been disclosed to and acknowledged by the Company in writing prior to the Signature Date.
- 26.4 The Supplier agrees to regularly undertake conflicts of interest checks for the Agreement Term and undertakes to inform the Company immediately of any actual or potential conflicts of interest with regards to its obligations under this Agreement.
- 26.5 The Supplier agrees to work with the Company and do whatever is necessary and reasonable to effectively manage such conflicts of interest to the satisfaction of the Company. In any such cases, if the Company is not satisfied, in its sole discretion, with the management of any such conflicts of interest, it shall have the right to take such action as it deems necessary to address the conflict of interest or protect its interest, including the immediate termination of this Agreement by written notice.
- 26.6 The Supplier undertakes that it and its Personnel are familiar with, understand and will abide by all applicable anti-bribery and anti-corruption Laws, including the US Foreign Corrupt Practices Act, and shall not and will ensure that its Personnel will not pay any fees, commission, or grant favours, rebates, benefits, advantages; including gifts entertainments, hospitality of more than nominal value to any third party (including government officials), Personnel or agents of the Company

contrary to the Laws mentioned above, as well as the Company's policy on gifts, hospitality and sponsorship, and anti-corruption policies, including the Code of Ethics and the Supplier Code.

- 26.7 The Supplier agrees to notify the Company of any fraudulent or corrupt activity that may come to its notice or the notice of its Personnel in relation to this Agreement herein. The Supplier agrees to cooperate with the Company on the investigation of every fraudulent activity in relation to this Agreement and to implement corrective measures as the Company may direct to address any fraudulent or corrupt activity in terms of applicable Laws and AGA Policies.
- 26.8 The Company shall have the right to audit and review records and documents, upon giving the Supplier at least 7 days' prior notice; and to interview such persons as it may deem necessary to confirm compliance by the Supplier with the above provisions.
- 26.9 The Supplier agrees that, if requested by the Company, that it will at its own cost ensure that its Personnel undertake training (including online and refresher courses) provided by the Company related to any Laws or AGA Policies.
- 26.10 The Supplier acknowledges that it, and any of its Personnel, may be required by the Company to sign an affirmation confirming, *inter alia*, its compliance with the provisions of this clause 26.

PART VIII: GENERAL WARRANTIES AND INDEMNITIES

27. Supplier warranties

- 27.1 In addition to the warranties contained elsewhere in this Agreement, the Supplier warrants to the Company that:
- 27.1.1 it is duly constituted, organised and validly existing under the Laws of _____;
- 27.1.2 it has the full capacity, legal standing and authority to enter into and manage, generate invoices in respect of the Products to be supplied and the Services to be rendered in accordance with the terms of this Agreement;
- 27.1.3 it has the necessary capacity, capability, resources, experience and expertise to comply with its obligations under any applicable Laws and this Agreement;
- 27.1.4 this Agreement constitutes legal, valid and binding obligations, enforceable in accordance with its terms;
- 27.1.5 all authorisations required in connection with the entering into, performance, validity and enforceability of this Agreement have been obtained and will remain in full force and effect for the duration of this Agreement;
- 27.1.6 it will not be able to claim immunity from suit, execution, attachments or other legal process in any proceedings taken in any jurisdiction in relation to this Agreement;

- 27.1.7 the entering into and performance by the Supplier of this Agreement will not conflict with any law or regulation or conflict with its constitutional documents;
- 27.1.8 it is not aware of any insolvency, liquidation or business rescue proceedings which have been instituted against it;
- 27.1.9 the supply of the Products to the Company does not and will not infringe the rights of any third party or cause a third party to suffer losses;
- 27.1.10 the performance of the Services does not and will not infringe the rights of any third party or cause a third party to suffer losses;
- 27.1.11 all authorisations required to have been obtained by or under any Law in order to enable the Supplier lawfully to enter into and perform the obligations assumed by it in this Agreement have been obtained and will be maintained by the Supplier for the Agreement Term;
- 27.1.12 it shall use the Intellectual Property supplied to it by the Company, if any, strictly in accordance with the provisions of this Agreement, the directions and know-how supplied in terms of this Agreement or as provided or stipulated by the Company in writing from time to time; and
- 27.1.13 it complies and will continue to comply with:
 - 27.1.13.1 the Amendment of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry issued under section 100(2)(b) Minerals and Petroleum Resources Development Act, 28 of 2002 ("Mining Charter");
 - 27.1.13.2 the Broad-Based Black Economic Empowerment Act, 2003 ("BBBEE Act"); and
 - 27.1.13.3 the Broad-Based Black Economic Empowerment Codes of Good Practice, issued by the Department of Trade Industry ("DTI Code").
- 27.2 Each of the warranties set out above:
 - 27.2.1 are without prejudice to any other warranty;
 - 27.2.2 shall not be limited by any other clause of this Agreement;
 - 27.2.3 shall be deemed to be material and to be a material representation inducing the Company to enter into this Agreement; and
 - 27.2.4 shall be given as at the Signature Date and constitutes a continuing representation and warranty for the Agreement Term and shall survive the termination of this Agreement for any reason whatsoever.
- 27.3 The fact that the Supplier has given the express warranties listed above shall not in any way be construed as relieving the Supplier from any liability which it may have at common law arising out of a failure to disclose any fact to the Company affecting this Agreement or the Products and/or supplied thereunder.

28. Indemnity

- 28.1 The Supplier hereby indemnifies and holds the Company, its Affiliates and the Personnel of the Company and its Affiliates ("**Indemnified Parties**" or "**Indemnified Party**" as applicable) harmless against any and all Losses of whatsoever nature (including indirect or consequential loss, as permitted under applicable Laws) and howsoever arising out of:
- 28.1.1 the performance, non-performance or breach of any representation, warranty, undertaking or obligation under or provision of this Agreement by the Supplier;
 - 28.1.2 the negligence or wilful misconduct of the Supplier or its Personnel;
 - 28.1.3 any act or omission by the Supplier or its Personnel arising out of the performance or non-performance of this Agreement;
 - 28.1.4 the operation of the Supplier's facilities;
 - 28.1.5 any infringement or alleged infringement of any Intellectual Property of any third party as a result of the supply of Products and/or carrying of the Services by the Supplier;
 - 28.1.6 any defects in the Products or the provision of the Services; and /or
 - 28.1.7 any breach of the obligation to maintain the Required Insurance on the terms and conditions of clause 36.
- 28.2 It is not necessary for an Indemnified Party to incur an expense or make a payment before enforcing a right of indemnity conferred by this Agreement.
- 28.3 The provisions of this clause 28 constitute a stipulation in favour of each of the Indemnified Parties capable of acceptance by any of them at any time, either expressly, tacitly or by conduct.

PART IX: SUSPENSION, CANCELLATION AND TERMINATION RIGHTS

29. Suspension of Services

- 29.1 The Company Representative may by notice require the Supplier to suspend the whole or any portion of the Services, for any reason. If it is possible to estimate the length of the suspension, the notice of suspension must provide an estimate.
- 29.2 Upon receipt of a notice of suspension, the Supplier must:
- 29.2.1 suspend the Services as directed by the Company Representative;
 - 29.2.2 at its cost, immediately remove all its Personnel, Equipment and other substances brought onto the Site by it or its Personnel, unless directed otherwise by the Company Representative;
 - 29.2.3 take all reasonable steps to reduce any expense or cost consequent upon the suspension;

- 29.2.4 if requested by the Company Representative to do so, re-direct the labour force to work on a portion of the Services unaffected by the reason for the suspension; and
- 29.2.5 promptly comply with any direction from the Company Representative to recommence work.
- 29.3 The Company:
- 29.3.1 must pay to the Supplier all reasonable and direct expenses and costs arising from a suspension of the Services under clause 29.1 of a minimum continuous duration in excess of 12 hours unless the suspension is due directly or indirectly to:
- 29.3.1.1 any instruction given by an Authority;
- 29.3.1.2 a failure by the Supplier or its Personnel to comply with any Laws or AGA Policies in relation to health, safety or protection of the environment; or
- 29.3.1.3 some other fault on the part of the Supplier or its Personnel including breach of this Agreement; and
- 29.3.2 may, when the reason for any suspension no longer exists, direct the Supplier in writing to recommence work on the Services or on the relevant part of the Services; and
- 29.3.3 for the avoidance of doubt, has no obligation to pay any compensation to the Supplier for a suspension of the Services under clause 29.1 of a continuous duration of less than 12 hours.
- 29.4 Suspension of the Services in accordance with this clause 29 does not frustrate or terminate this Agreement.

30. Cancellation of Purchase Orders and/or Service Orders

30.1 Cancellation of Purchase Orders and/or Service Orders

If the Supplier breaches any of the terms of this Agreement the Company may at its election and without prejudice to any of its other rights or remedies, cancel any Products not Delivered or Services not yet supplied which are the subject of a Purchase Order or Service Order and the Supplier is not entitled to any compensation in respect of that cancellation.

30.2 Consequences of cancellation where Supplier is not in breach

30.2.1 Notwithstanding the Supplier not being in breach of this Agreement, the Company may, at its election, cancel any Products not Delivered or Services not yet supplied provided that:

30.2.1.1 if the Products are any of the Supplier's standard stock, the Company must pay for Products shipped prior to the cancellation and accepted by the Company (unless such Products are supplied to the Company by the

Supplier on a consignment basis, in which case the Company must pay for any Products put into use by the Company prior to cancellation); and

- 30.2.1.2 if Products are manufactured or fabricated in accordance with the Product Specifications:
- 30.2.1.2.1 upon receipt of notice of cancellation, the Supplier must cease manufacture in accordance with and to the extent specified in the notice and immediately do all things possible to mitigate any costs incurred; and
- 30.2.1.2.2 the Company must pay to the Supplier any expenditure reasonably incurred by the Supplier prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and which has not been otherwise recouped by the Supplier.

31. Title to material: incomplete Products

Title and ownership to material or incomplete Products shall pass to the Company upon the earlier of Delivery or payment (including payment of an amount by the Company under clause 30.2.1.2.2 above).

32. Termination for convenience

- 32.1 The Company may elect to terminate this Agreement for its convenience by providing the Supplier with 30 days' prior written notice stating the Company's election to terminate for its convenience and the effective date of such termination.
- 32.2 In the event that this Agreement is terminated pursuant to clause 32.1, then subject to the Company's rights under this Agreement to deduct and withhold amounts due to the Supplier, the Company shall pay to the Supplier, as the Supplier's sole remedy in relation to such termination:
- 32.2.1 all amounts due and unpaid for the Products Delivered to the Company as at the date of termination in terms of this clause 29 and/or the Service Fees due and unpaid for Services performed as at the date of termination in terms of this clause 29; or
- 32.2.2 in the event that the date of termination occurs prior to the Delivery Date and the Products which have been ordered have not yet been Delivered, an amount equal to the Product Price for such Products not Delivered, as and when such Products are Delivered to the Company in accordance with clause 9.
- 32.2.3 For the avoidance of doubt, no early termination fee of any kind shall be payable by the Company to the Supplier for the early termination of this

Agreement for any reason whatsoever.

33. Termination for default

33.1 Supplier default

33.1.1 If the Supplier:

- 33.1.1.1 breaches any provision of this Agreement and fails to remedy the breach within 14 days of written notice to do so, or such longer time period as agreed to by the Company in writing;
- 33.1.1.2 takes steps to place itself, or is placed, in liquidation, whether voluntary or compulsory, or in judicial management in either case whether provisionally or finally or in business rescue;
- 33.1.1.3 takes steps to deregister itself or is deregistered;
- 33.1.1.4 commits an act of insolvency as defined in the applicable Laws pertaining to insolvency as at the date of this Agreement, or, being a corporate body, commits an act which would be such an act of insolvency if committed by a natural person;
- 33.1.1.5 undergoes a change of Control without the prior written consent of the Company;
- 33.1.1.6 is unable to meet its day-to-day liabilities and/or its liabilities exceed its assets;
- 33.1.1.7 falsifies any documents or records or commits any act of fraud or dishonesty in respect of its dealings with the Company or matters arising from the terms of this Agreement;
- 33.1.1.8 cedes, delegates, assigns or transfers (or purports to do so) its rights, benefits or obligations under this Agreement without the prior written consent of the Company; and/or
- 33.1.1.9 sells the whole or any material part of its business, assets and/or its facilities to any third party without the prior written consent of the Company,

then the Supplier shall be in default.

33.1.2 If the Supplier is in default, the Company will be entitled, in addition to all other remedies in terms of this Agreement or at Law:

- 33.1.2.1 to demand specific performance of this Agreement and to take such action as may be necessary in order to implement and fulfil its rights herein and to recover any damage which it may suffer as a result of the Supplier's default; or
- 33.1.2.2 to terminate forthwith this Agreement and claim such damages as the Company may have suffered as a result of the Supplier's default.

33.1.3 Further, if the Supplier is in default the Company is entitled (but not obliged) to request copies of all sub-contracts and other agreements between the Supplier and its Personnel which relate to the Products and/or Services. The Company is also entitled to direct the Supplier to:

33.1.3.1 procure the assignment to the Company, or to another person or entity designated by the Company, of the Supplier's rights and obligations under such of those sub-contracts and agreements as the Company may direct; and/or

33.1.3.2 take such other action relating to such sub-contracts and agreements as the Company may reasonably specify.

33.2 **Company default**

33.2.1 If the Company fails to make a payment of any amount due to the Supplier under this Agreement in accordance with clause 18 that is not the subject of a dispute between the Parties or the exercise of the Company's rights under clause 18 ("**Company Default**"), the Supplier may serve a written notice on the Company requiring the Company to remedy the Company Default within a specified period of not less than 30 days ("**Company Default Notice**").

33.2.2 If the Company fails to remedy the Company Default within the time specified therefor in the Company Default Notice, the Supplier may either:

33.2.2.1 cease performance of all or any part of its obligations under this Agreement until such time as the Company Default is remedied; or

33.2.2.2 terminate this Agreement by 14 days' written notice to the Company.

33.2.3 Following termination of this Agreement by the Supplier pursuant to clause 33.2.2.2, the Supplier is only entitled to recover from the Company all amounts due and unpaid in relation to Products Delivered and/or Services supplied as at the date of termination.

33.2.4 In respect of any breach by the Company other than a breach referred to in clause 33.2.1, the Supplier may only terminate this Agreement by written notice to the Company if the breach is material and the Company fails to remedy such breach within 14 days of written notice calling on the Company to do so, or such longer time period as agreed to by the Supplier.

34. **Consequences of termination**

34.1 Upon termination or expiry of this Agreement in whole or in part for any reason whatsoever:

34.1.1 unless otherwise specified by the Company in writing, the Supplier shall fulfil any valid Purchase Order and Service Order in accordance with the provisions of this Agreement;

34.1.2 the Supplier shall immediately take all possible action to mitigate any Losses that may arise from termination of this Agreement;

- 34.1.3 subject to clauses 18.3 and 18.4 of this Agreement the Company shall settle any outstanding Invoices rendered by the Supplier;
- 34.1.4 each Party shall immediately cease any and all use of any Confidential Information supplied to it by the other Party for any purpose whatsoever, and shall return to the other Party all Confidential Information of that Party in its possession or under its control, except that the Company may retain any Confidential Information it deems necessary in order to effect or make use of the Products and/or Services supplied;
- 34.1.5 the Supplier shall immediately discontinue all use of the Company's Intellectual Property and return to the Company all materials, data and documentation in its possession and/or under its control relating, amongst other things, to the Company's Intellectual Property; and
- 34.1.6 the Supplier shall render to the Company a final report, which shall include all information which the Company may reasonably require for the purposes of establishing the specific nature, extent and quality of the Products and Services which were rendered by the Supplier pursuant to this Agreement.
- 34.2 Following termination, the Supplier agrees that it shall not at any time in the future use the Company's Intellectual Property or assist any third party to use the Company's Intellectual Property .

PART X: GENERAL PROVISIONS

35. Independent Expert

- 35.1 In the event that the Parties are unable to resolve any differences that they may have with respect to the matters specified in clauses 12.5, 12.8 or 15.2, they shall refer all such matters that remain in dispute (the "**Unresolved Matters**") to a suitably qualified expert jointly selected by them (the "**Independent Expert**"). If they are unable to agree upon the Independent Expert, such Person shall be selected by [•].
- 35.2 The Parties shall act in good faith to agree upon, as soon as reasonably practicable, the terms on which the Independent Expert shall act (and for these purposes acting in good faith shall include agreeing to any commercially reasonable terms proposed by the Independent Expert (including without limitation its fees, costs and any limitations on its liability)). Following agreement by the Parties on the relevant terms they shall sign terms of engagement which reflect such terms as agreed by the Independent Expert (the "**Terms of Engagement**"). If the Parties fail to agree on terms of engagement for the Independent Expert within 5 Business Days after determination of the identity of the Independent Expert or either Party fails to sign the Terms of Engagement, the Parties agree that each of them will execute the standard form of the Independent Expert's terms of engagement as proposed by the Independent Expert for its appointment.
- 35.3 The Independent Expert shall determine the Unresolved Matters, acting as an expert and not as an arbitrator, on a basis consistent with the requirements of this

Agreement and, where applicable, by conducting the relevant tests and analyses. The Parties shall instruct the Independent Expert to use best endeavors to render its final written determination within 30 days after such firm's engagement. Save in the case of fraud or manifest error, the Independent Expert's final written determination shall be final, conclusive and binding upon the Parties.

- 35.4 The costs of the Independent Expert including its tests and/or analyses shall initially be borne by the Supplier, however, in the event of the tests and/or analyses proving that defects are not present in the Products or Services, the Company shall refund to the Supplier all reasonable and documented costs incurred by the Supplier in respect of the Independent Expert and any such tests and/or analyses.

36. Insurance

- 36.1 For the Agreement Term, the Supplier shall maintain in force (and ensure that its sub-contractors maintain in force) any insurance required by Law and the following insurance set out below:
- 36.1.1 general liability and third party insurance in respect of any injury to, or death of, any Person (except Persons otherwise insured as Personnel) or any losses, damage or destruction to property not belonging to nor in the care, custody or control of the Supplier, caused by the Supplier or its Personnel that arises out of or in connection with the performance of the Services under this Agreement, such insurance shall have a limit of indemnity not less than the amount specified in the Schedule in respect of each and every claim arising from one original cause;
- 36.1.2 professional indemnity insurance in respect of any negligent act or omission by the Supplier or its Personnel in the performance of the Services, and including in cases where the Supplier assumes a design or other professional responsibility, which shall include cover for claims arising from defective negligent or incorrect designs carried out by or on behalf of the Supplier in carrying out its obligations in terms of this Agreement;
- 36.1.3 product liability insurance, in respect of the Products supplied by the Supplier, covering legal liability for claims arising from, among other things, defective or negligent or incorrect design or manufacture of the Products supplied by the Supplier to the Company;
- 36.1.4 comprehensive automobile and truck liability insurance covering all automotive equipment used by Supplier in connection with the performance of Services, with a combined single limit of not less than the amount specified in the Schedule for each occurrence involving personal injury and/or property damage;
- 36.1.5 public liability insurance to provide indemnity against legal liability of the Supplier for the death or illness of, or bodily injury to, any Person and/or the loss of, or damage to, property arising from or in connection with the Supplier's performance pursuant to this Agreement; and

- 36.1.6 any additional insurance as may be provided for in the Schedule.
(herein after referred to as the "**Required Insurance**")
- 36.2 The Supplier shall continue maintaining the Required Insurance in force, for a period of 1 year after the Termination Date.
- 36.3 Whenever requested in writing by the Company, the Supplier shall furnish the Company with certificates and/or adequate proof of the Required Insurance. The Supplier's obligation to maintain the Required Insurance cover must not be interpreted as limiting any claim which the Company may have against the Supplier in any way.
- 36.4 The Supplier shall immediately give notice to the Company should any of the Required Insurance or risk covered by the Required Insurance cease to be maintained or insured by it. The Supplier shall also give the Company 30 days' written notice of any cancellation, non-renewal or material modification of any Required Insurance.
- 36.5 If the Supplier fails upon request to produce, in accordance with clause 36.3 to the satisfaction of the Company, evidence that there is in force any of the Required Insurance, the Company may, in its absolute discretion, elect to effect and keep in force any such insurance and the Supplier shall pay to the Company all sums expended by the Company for such purpose. Should the Company elect not or if it is not able to effect and keep in force the Required Insurance, then the Supplier's failure to produce in accordance with clause 36.3 to the Company's satisfaction evidence that there is in force any of the Required Insurance shall constitute a breach of this Agreement.
- 37. Intellectual Property**
- 37.1 The Supplier represents, warrants and undertakes that no third party will have a valid claim against the Company or any of its Affiliates for infringement and/or unauthorised use of any Intellectual Property arising from the sale and/or use of the Product, and/or the provision of the Services.
- 37.2 Without derogating from the Company's other rights in terms of this Agreement or in Law, should any such claim succeed, then the Supplier shall at its cost either acquire the right for the Company or its Affiliate to continue using the Intellectual Property concerned or modify or substitute the item concerned in a manner approved by the Company so that it no longer infringes such right, or refund the Company all payments and costs incurred by the Company or its Affiliate in respect of the infringing item.
- 38. Liens**
- 38.1 The Supplier waives any lien or right of retention it may have and warrants that none of its Personnel or other third party shall have any Encumbrance whatsoever against any of the Products.
- 38.2 The Company may refuse to make payment of each relevant Invoice until the

Supplier confirms in writing that all claims and demands against the Supplier (including claims by its Personnel or other third party) that may constitute or become a claim or lien against any the Products and/or any of the material or Equipment used in the performance of the Services have been paid or satisfied.

39. Security

39.1 Security

The Supplier will within 5 days of the Signature Date provide the Company with the Security.

39.2 Conversion of the Security

The Company may:

- 39.2.1 call on a Security where the Company has become entitled to exercise a right under this Agreement in relation to the Security;
- 39.2.2 call on a Security where the Supplier has breached this Agreement and the breach has not been remedied within 14 days after notice of it has been given to the Supplier by the Company, or such longer time period as agreed to by the Company in writing; or
- 39.2.3 at any time, convert a Security (other than cash) into cash provided that the Company may only have access to the cash funds when it is entitled to exercise a right under this Agreement in relation to the Security.

39.3 Company's security obligations on completion

Within 28 days of the date of the expiry of the Supplier's warranty obligations under this Agreement and/or Purchase Order and/or Service Order, the Company must return:

- 39.3.1 the Security provided under clause 39.1 of this Agreement, unless it has been called on; and
- 39.3.2 any funds obtained by the Company by calling on any Security to the extent that the Company has not had, nor is it entitled to have, recourse to those funds.

40. Force Majeure

- 40.1 For the purposes of this Agreement, the expression "**Force Majeure Event**" means in respect of a Party, any event or circumstance or combination of events or circumstances occurring after the Commencement Date, the occurrence of which is beyond the reasonable control (direct or indirect) of, and could have not been avoided by steps which might reasonably be expected to have been taken by, such Party acting as a reasonable and prudent Party, provided that an economic downturn or hardship suffered by a Party will not be deemed hereunder to be a Force Majeure Event.
- 40.2 A Force Majeure Event will include but not necessarily be limited to any of the

following matters:

- 40.2.1 war, invasion, acts of government, acts of a foreign enemy, acts of terrorism, hostilities or warlike operations (whether that be declared or not), civil war, mutiny, rebellion, revolution, insurrection, military or usurped power, blockade, confiscation or destruction or requisition by order of any Authority, including prevention or denial of trade, sanctions or closure of borders;
- 40.2.2 earthquake, flood, fire, drought or other physical disaster; or
- 40.2.3 strike or lockout or other industrial action by employees.
- 40.3 If either Party to this Agreement is prevented from or delayed in performing any of its obligations under this Agreement by a Force Majeure Event , then it will notify the other Party in writing of the nature and expected duration of such Force Majeure Event and of the obligation, the performance of which is delayed or prevented and both Parties will thereupon be excused from the performance or punctual performance, as the case may be, of their respective obligations from the date of such notification, for so long as the circumstances or prevention or delay may continue, except as otherwise provided herein.
- 40.4 A Party claiming Force Majeure must use its best endeavours to remove or overcome the effects of that Force Majeure as quickly as possible.
- 40.5 If by virtue of the foregoing, the Parties are excused from the performance or punctual performance of any obligation for a continuous period of 90 days and provided that such performance is still excused, then either Party may at any time thereafter, by written notice to the other Party, terminate this Agreement forthwith. Notwithstanding any other terms of this Agreement, in the event of a termination pursuant to this clause, the Parties will each absorb its own costs and losses occasioned by termination and neither of them shall have the right to claim damages or any other amount from the other of them, provided, however, to the extent either Party has an obligation arising from any activity prior to the Force Majeure Event which can be performed despite a declaration of such Force Majeure Event, such Party shall be required to perform said obligations.

41. Confidentiality

- 41.1 The Supplier will keep confidential and will not disclose to any third party any Confidential Information, without the prior written consent of the Company. The Supplier agrees to keep all Confidential Information confidential and to disclose it only to its officers, directors, employees, consultants and professional advisors who:
 - 41.1.1 have a need to know (and then only to the extent that each such Person has a need to know);
 - 41.1.2 are aware that the Confidential Information should be kept confidential;
 - 41.1.3 are aware of the Supplier's undertaking in relation to the Confidential Information in terms of this Agreement; and

- 41.1.4 have been directed by the Supplier to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.
- 41.2 The obligations of the Supplier in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to Confidential Information that:
- 41.2.1 is disclosed to the Supplier in terms of this Agreement but at the time of such disclosure such Confidential Information is known by the Company to be in the lawful possession or control of the Supplier and not subject to an obligation of confidentiality;
- 41.2.2 is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Supplier; or
- 41.2.3 is required by the provisions of any Laws or during any court or other legal proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed and the Party required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure of and to limit, as far as reasonably possible, the extent of such disclosure and has consulted with the other Party prior to making such disclosure.
- 41.3 The Supplier undertakes to co-operate with the Company in relation to any announcements concerning this Agreement, and in particular undertake not to make any announcements, statements or disclosures or issue any documentation relating to this Agreement without the prior written approval of the Company.

42. **Dispute resolution**

42.1 **Separate, divisible agreement**

This clause 42 is a separate, divisible agreement from the rest of this Agreement and shall:

- 42.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of this Agreement and not to this clause 42. The Parties intend that any such issue shall at all times be and remain subject to arbitration in terms of this clause 42; and
- 42.1.2 remain in effect even if this Agreement terminates or is terminated.

42.2 **Dispute**

In the event of any other dispute arising out of or in connection with this Agreement or the subject matter of this Agreement, including without limitation, any dispute concerning:

- 42.2.1 the existence of this Agreement apart from this clause 42;

- 42.2.2 the interpretation and effect of this Agreement;
- 42.2.3 the Parties' respective rights or obligations under this Agreement;
- 42.2.4 the rectification of this Agreement;
- 42.2.5 the breach, termination or cancellation of this Agreement or any matter arising out of the breach, termination or cancellation; and
- 42.2.6 damages arising in delict, compensation for unjust enrichment or any other claim, whether or not the rest of this Agreement apart from this clause 42 is valid and enforceable,

a Party may give the other Party written notice of the dispute, setting out the nature and full particulars of the dispute and requiring its resolution under this clause 42 ("**Dispute Notice**").

42.3 **Meeting of Representatives**

- 42.3.1 On service of the Dispute Notice the Representatives shall meet at least once and attempt in good faith to resolve the Dispute.
- 42.3.2 If the Representatives are for any reason unable to resolve the dispute within 10 days of service of the Dispute Notice, the Dispute shall be referred to the nominated senior management of the Parties (or their respective nominees) who shall attempt in good faith to resolve the Dispute.

42.4 **Nominated senior management**

If the nominated senior management of the Parties (or their respective nominees) are for any reason unable to resolve the Dispute within 20 days of it being referred to them, then the dispute shall be submitted to and decided by arbitration as set out in this clause 42.

42.5 **Arbitration**

- 42.5.1 The Parties may agree on the arbitration procedure and on the arbitrator and, failing agreement within 10 days of the dispute being submitted to arbitration, the arbitration shall be conducted in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules in force at the time of the dispute without recourse to the ordinary courts of law, except as explicitly provided for in clause 42.5.9.
- 42.5.2 Unless agreed otherwise in writing, the arbitration shall be administered by the Parties.
- 42.5.3 The appointing authority in terms of the UNCITRAL Arbitration Rules shall be the Association of Arbitrators (Southern Africa) (Association of Arbitrators).
- 42.5.4 The number of arbitrators shall be 1 who shall be an attorney or senior advocate (with at least 10 years' experience). If the Parties are unable to agree on an arbitrator within 10 Business Days of being requested to do so in writing by the either Party, either Party may request that such arbitrator be

appointed by the Chairman, for the time being, of the Association of Arbitrators, who shall be requested to appoint the arbitrator within 21 days after being requested to do so. The arbitrator shall be and remain at all times wholly independent and impartial.

- 42.5.5 The place of arbitration shall be Johannesburg and the arbitration shall be conducted in English.
- 42.5.6 The governing procedural law of the arbitration shall be the law of South Africa.
- 42.5.7 The arbitrator shall have the same remedial powers as a court of law in South Africa would have were it adjudicating the dispute. The arbitrator shall deliver an award together with written reasons within 30 days from the date upon which the arbitration ends.
- 42.5.8 The Parties irrevocably agree that any decisions and awards of the arbitrator shall be binding on them; shall be carried into effect; and may be made an order of court of competent jurisdiction.
- 42.5.9 Nothing contained in this clause 42.5 shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending the commencement of the arbitration or pending the determination of the dispute by arbitration. In respect of such proceedings, each of the Parties specifically consents to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.

43. Addresses

- 43.1 The Parties choose the addresses as specified in the Schedule, at which notices may be given, and at which documents in legal proceedings may be served (i.e. their *domicilia citandi et executandi*), in connection with this Agreement.
- 43.2 Notices delivered to the above addresses shall be deemed to have been duly given:
- 43.2.1 on delivery, if delivered to the Party's physical address; and
- 43.2.2 on despatch, if sent to the Party's fax number or email address.
- 43.3 A Party may change its address for this purpose, on 7 days' prior written notice to the other Party, provided that the new address includes a physical address in jurisdiction in which the Party is domiciled.

44. Surviving provisions

- 44.1 If this Agreement is so lawfully terminated, no Party shall have any claim under this Agreement of any nature against the other Parties or their respective Affiliates (except in respect of any rights and liabilities which have accrued before termination or under any of the Surviving Provisions).
- 44.2 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any

such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

45. **Miscellaneous matters**

- 45.1 This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of this Agreement and supersedes and novates in its entirety any previous understandings or agreements, oral or written, between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.
- 45.2 Without limiting clause 45.1:
- 45.2.1 tender documentation (if any) does not, except to the extent that it is reproduced in this Agreement itself, form part of this Agreement; and
- 45.2.2 if the Supplier's terms and conditions are supplied in connection with the Delivery of the Product and/or the performance of Services (including when accepting or acknowledging a Purchase Order or Service Order) such terms and conditions will be of no legal effect and will not form part of this Agreement (notwithstanding the endorsement, acceptance or signing of any such document by a representative of the Company).
- 45.3 Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third Person (ie a *stipulatio alteri*) which, if accepted by the Person, would bind any Party in favour of that Person.
- 45.4 A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.
- 45.5 No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.
- 45.6 The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.
- 45.7 The Supplier may not cede any or all of its rights or delegate any or all of its obligations under this Agreement without the prior written consent of the Company, which consent may be withheld for any reason whatsoever, however the Company shall be entitled to cede and assign its rights and delegate its obligations under this Agreement without the prior consent of the Supplier provided that any cessionary or assignee shall be obliged to be bound by this Agreement and shall be capable of fulfilling and shall fulfil all the obligations of the Company in terms of this Agreement.

45.8 Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

45.9 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

Signed at _____ on _____ 201_

Witness _____ for **the Supplier**

1.
.....
duly authorised and warranting such authority

2.

Signed at _____ on _____ 201_

Witness _____ for **the Company**

1.
.....
duly authorised and warranting such authority

2.

THE SCHEDULE

Annexes to the Schedule	<p>1) Annexe "A" – Products and Product Specifications</p> <p>2) Annexe "B" – Product Price</p> <p>3) Annexe "C" – Scope of Services</p> <p>4) Annexe "D" – Service Fees</p> <p>5) Annexe "E" – BEE Status and Compliance; and Socio Economic Development Contributions</p>
Company Representative	<p>Name:</p> <p>Position:</p> <p>Address:</p> <p>Phone:</p> <p>Fax:</p> <p>E-mail:</p>
Supplier Representative	<p>Name:</p> <p>Position:</p> <p>Address:</p> <p>Phone:</p> <p>Fax:</p> <p>E-mail:</p>
Products and Product Specifications	The specifications of the Products as Provided for in Annexe "A"
Scope of Services	The Services and the specifications thereof as set out in Annexe "C".
Service Fees	The fees for the Services and adjustment thereof as set out in Annexe "D"
Product Price	The price for the Products and adjustment thereof as set out in Annexe "B"
Payment terms	The Company shall pay the Supplier the Product Price and Service Fees no later than [*Insert*] days following the date of receipt of a correct Invoice and the relevant supporting documentation (if any) by the Company.
BEE Status and Socio Economic Development Contributions	The BEE Status and Compliance; And Socio Economic Development Contributions are set out in Annexe "E"
Stock to be maintained (if	[*Insert minimum stocks to be maintained by the Supplier*]

<i>applicable)</i>	
Rate of Liquidated Damages	Liquidated damages shall be payable at the rate of [*Insert*] percent of the Product Price for each completed day of delay. The liquidated damages shall not exceed [*Insert*] percent of the Product Price.
Agreement Term	Notwithstanding the date of signature hereof, this Agreement shall be deemed to have commenced on [*Insert date*] (the " Commencement Date ") and shall continue until [*Insert date*] 20_____, unless terminated earlier in accordance with the provisions of this Agreement (" Termination Date ").
Site	[*Insert site/s where the Products are to be delivered*]
Delivery (<i>including incoterm if applicable</i>)	[*Insert*]
Delivery Date	[*Insert*]
Additional Insurance (<i>if any</i>)	[*Insert additional insurance if applicable*]
Amount for general liability and third party insurance [*Insert additional insurance if applicable*]	[*Insert additional insurance if applicable*]
Amount for automobile and truck liability insurance	[*Insert additional insurance if applicable*]
Currency	A reference to <Insert currency symbol> is to <insert currency description>
Security	[*Required Security to be inserted*]
Supplier's Banking details	Account holder: Bank: Account No: Branch Code:
Addresses for Notices and Legal Proceedings	The Supplier's address shall be: <u>Physical Address:</u> [*Insert*] Company's address shall be: <u>Physical address:</u>

	[*Insert*]
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Annexe "A"

Products (including Product Specifications)

[*Insert Products to be supplied and Product Specifications*]

Annexe "B"

Product Price

[*Insert Product Prices and provision for adjustment thereof (if applicable)*]

Annexe "C"

Scope of Services

[*Insert description of Services*]

Annexe "D"

Service Fees

[*Insert Service Fees and provision for adjustment thereof (if applicable)*]

Annexe "E"

Bee Status and Compliance; and Socio Economic Development Contributions