

**SECTION B:
STANDARD TERMS AND CONDITIONS
AND
DEFINITIONS AND INTERPRETATIONS**

<i>Contractor (Initial Block)</i>		
<i>Client (Initial Block)</i>		

IMPALA BAFOKENG RESOURCES
DESIGN & CONSTRUCT CONTRACT

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ANNEXURE

Annexure A: Definitions and Interpretations

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IT IS ACCORDINGLY AGREED:

CONDITIONS OF CONTRACT

1. APPOINTMENT AND DURATION

1.1. Appointment of the Contractor

1.1.1. The Client hereby appoints the Contractor to provide the Works under the Contract in accordance with the terms and conditions as set out in this Contract.

1.1.2. The Contractor hereby accepts such appointment.

2. THE SITE

2.1. Access to Site

2.1.1. Subject to clause 2.1.1.1, the Client must make the Site available to the Contractor sufficiently soon for the Contractor to carry out its obligations under this Contract in accordance with the Program.

2.1.1.1. The Contractor must access the Site through the designated Mine Site and Project Site access roads identified in Annexure I (Site Information and Project Approvals). The Contractor's access to and movements around the areas of the Project Site other than the Site are subject to the direction and control of the Client's Representative.

2.1.1.2. The Contractor may not enter into other parts of the Mine Site without the approval of the Client's Representative.

2.1.1.3. The Contractor must, in the performance of the Work under the Contract, not disrupt any mining activities on the Mine Site (except to the extent strictly necessary, and approved by the Client's Representative, for the purpose of the execution of the Works under the Contract).

2.1.1.4. Possession of the Site may not be exclusive to the Contractor.

2.2. Access for the Client, the Client's Representative and others and Site security

2.2.1. The Contractor must ensure that the Client, the Client's Representative, the Client's employees, and any other person authorised by the Client's Representative (including Separate Contractors) have safe access to the Site.

2.2.2. The Contractor must provide the Client and the Client's Representative, at all reasonable times, with access to all workshops and places where work is being prepared or carried out on the Site, or from where materials, manufactured articles or machinery are being obtained for the Work under the Contract.

2.2.3. Subject to clause 2.2.1, the Contractor must, if and to the extent that the Client's Representative designates the Contractor to be in primary control of the Site:

2.2.3.1. control access within the Site; and

2.2.3.2. arrange for proper security for the Site.

2.2.4. The Contractor must not, subject to clause 2.3, allow any person not connected with the Work under the Contract into the Site without the prior written approval of the Client's Representative.

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2.3. Separate Contractors

- 2.3.1. The Contractor acknowledges that Separate Contractors will be present on the Project Site and may be present on the Site during the performance of the Work under the Contract by the Contractor.
- 2.3.2. The Contractor must:
 - 2.3.2.1. co-operate with the Client's Representative in order to co-ordinate the Work under the Contract with Separate Contractors' work;
 - 2.3.2.2. not damage Separate Contractors' work;
 - 2.3.2.3. comply with all reasonable written directions from the Client's Representative regarding Separate Contractors and their work; and
 - 2.3.2.4. allow any Separate Contractors engaged by the Client to use the amenities, facilities and services which are available for use on the Site.
- 2.3.3. Any action of the Contractor under clause 2.3.2 does not lessen or otherwise affect the Contractor's obligations under this Contract. Neither the Client nor the Client's Representative assume any responsibility or duty of care to the Contractor in respect of its actions under clause 2.3.

2.4. Unforeseeable ground conditions

- 2.4.1. If the Contractor considers that the Contractor has encountered an Unforeseeable Ground Condition on the Site during the performance of the Work under the Contract, the Contractor's Representative must within a period of 24 (twenty four) hours of such Unforeseeable Ground Condition coming to the Contractor's attention, give written notice to the Client's Representative that it has encountered an Unforeseeable Ground Condition and details of that Unforeseeable Ground Condition. If, however, the Contractor fails to submit a written notice under this sub-clause within 24 (twenty four) hours from when the Contractor becomes aware, or reasonably ought to have become aware, of the relevant condition, the Contractor shall not be entitled to any additional payment or extension of time, and the Client shall be discharged from all liability in connection therewith.
- 2.4.2. The Client's Representative must, within 14 (fourteen) days following receipt of a valid written notice referred to in clause 2.4.1, give a written notice to the Contractor setting out its determination regarding whether an Unforeseeable Ground Condition has been encountered by the Contractor.
- 2.4.3. If the Client's Representative gives the Contractor a written determination stating that the Contractor has encountered an Unforeseeable Ground Condition on the Site in the performance of the Work under the Contract, the Contractor is entitled to:
 - 2.4.3.1. an extension of time under clause 8.4; and
 - 2.4.3.2. payment of the additional direct and reasonable costs incurred by the Contractor in dealing with the Unforeseeable Ground Conditions after the Contractor has given the notice pursuant to clause 2.4.1.
- 2.4.4. The Client's Representative and the Contractor's Representative must attempt to agree the adjustment referred to in clause 2.4.3.2. If the Client's Representative and the Contractor's Representative fail to reach agreement within 14 (fourteen) days of receipt of the determination referred to in clause 2.4.3 or any extension to the time period agreed

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to between the parties, the Client’s Representative shall determine the adjustment (acting reasonably). The Client’s Representative must give written notice to the Contractor reflecting the adjustment.

2.5. Environmental obligations

2.5.1. The Contractor must:

- 2.5.1.1. comply with all requirements of the Law and this Contract for the protection of the environment;
- 2.5.1.2. perform the Work under the Contract so as to ensure no contraventions of any relevant Environmental Management Programs and any environmental authorisations; and
- 2.5.1.3. perform the Work under the Contract in a manner so as to avoid unlawful Contamination of the Project Site and its surroundings.

2.5.2. The Contractor is responsible for, and must make good, any damage to the environment caused by the performance of the Work under the Contract (including any unlawful pollution of the Project Site or its surroundings).

2.5.3. The Contractor must:

- 2.5.3.1. notify the Client’s Representative of any unlawful pollution of the Project Site or any complaint made by the public;
- 2.5.3.2. clean up any unlawful pollution of the Project Site and its surroundings caused in the performance of the Work under the Contract; and
- 2.5.3.3. comply with all directions of the Client’s Representative and any Authority regarding cleaning up that pollution.

2.6. Survey and setting out

2.6.1. The Contractor must:

- 2.6.1.1. set out the Works in accordance with the requirements of this Contract (including establishing all dimensions, bearings, levels and the correct setting out of all structures); and
- 2.6.1.2. correct any errors it makes in performing its obligations under clause 2.6.1.1.

2.7. Adjoining property

2.7.1. Where the Work under the Contract requires the Contractor to carry out work on, in or over any Adjoining Property and access to that Adjoining Property has not been provided for in the arrangements referred to in clause 2.1.1, the Contractor must notify the Client’s Representative who will then obtain the appropriate permission from the owner and occupier of that Adjoining Property.

2.7.2. The Contractor shall comply with all conditions attaching to such permission and, in any event, promptly make good or, at the option of the owner and occupier of the Adjoining Property, meet the cost of making good any damage to that Adjoining Property arising out of its Work under the Contract caused by a negligent and/or willful act or omission by the Contractor.

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2.8. Client-supplied amenities, facilities and services

- 2.8.1. Subject to clause 2.8.2, the Client must provide the amenities, facilities and services set out in Annexure M (Client-Supplied Amenities, Facilities and Services) for use by the Contractor in performing the Work under the Contract.
- 2.8.2. Where Annexure M (Client-Supplied Amenities, Facilities and Services) states that the Contractor must pay for the use of specific amenities, facilities and services, the Contractor must do so.
- 2.8.3. The Client is not liable for any damage, expense, loss or liability of any nature suffered or incurred by the Contractor in relation to the supply of any amenities, facilities and services pursuant to clause 2.8.1.
- 2.8.4. The Contractor must comply with the Client's Representative's instruction when using the amenities, facilities and services referred to in clause 2.8.1.

2.9. Communications with other Parties

Except as required by Law, the Contractor and/or any of its agents, representatives and other affiliated persons must not liaise (including any form of communication) with any of the following Parties in relation to any matters relating to the Project without the approval of the Client's Representative:

- 2.9.1. owners and occupiers of any Adjoining Property or any land in the vicinity of the Mine Site;
- 2.9.2. the Department of Mineral Resources;
- 2.9.3. the Client's union officials and employees on the Mine Site; and
- 2.9.4. any other third parties.

2.10. Lien

The Contractor shall not have any lien or right of retention and/or security of whatever nature in respect of the Site and/or the Works and/or any part thereof and expressly waives all rights that it may have in this regard whether in terms of the common law or otherwise.

3. PERSONNEL AND SUBCONTRACTING

3.1. Client's Representative

- 3.1.1. The Client has appointed the Client's Representative to:
 - 3.1.1.1. perform the functions of the Client's Representative designated in this Contract; and
 - 3.1.1.2. monitor the performance of the Contractor to ensure the Contractor's compliance with its obligations under this Contract, and may appoint a replacement from time to time.
- 3.1.2. The Client's Representative must carry out his or her functions under this Contract as the agent of the Client (and not as an independent certifier, assessor or valuator).
- 3.1.3. The Client's Representative may delegate all or any of his or her functions under this Contract.

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3.1.4. The Client must promptly inform the Contractor in writing of:

- 3.1.4.1. any appointment or replacement of the Client’s Representative; and
- 3.1.4.2. any delegation by the Client’s Representative of all or any of his or her functions under this Contract to a nominee, and the extent and the scope of that delegation.

3.2. Contractor’s Representative

3.2.1. The Contractor must appoint a representative who must:

- 3.2.1.1. at all times have authority to act on behalf of the Contractor in respect of this Contract; and
- 3.2.1.2. be approved by the Client’s Representative.

3.2.2. The Contractor’s Representative may delegate any of his or her functions under this Contract to a nominee approved by the Client’s Representative.

3.2.3. The Contractor must promptly inform the Client’s Representative in writing of:

- 3.2.3.1. any appointment or replacement of the Contractor’s Representative; and
- 3.2.3.2. any delegation by the Contractor’s Representative of all or any of his or her functions under this Contract to a nominee, and the extent and the scope of that delegation.

3.2.4. The Contractor must ensure that the Contractor’s Representative and any delegate notified to the Client’s Representative under clause 3.2.3 are not replaced without the approval of the Client’s Representative.

3.3. Personnel

3.3.1. The Contractor must:

- 3.3.1.1. provide appropriately qualified, competent, skilled, experienced and professional personnel to perform the Work under the Contract in accordance with its obligations under this Contract and at Law; and
- 3.3.1.2. to the extent practicable and possible, utilise the labour and skills of the Doorstep Community; and
- 3.3.1.3. ensure that all Work under the Contract is performed under the supervision of appropriately qualified, competent, skilled, experienced and professional personnel.

3.3.2. The Contractor must ensure that the key personnel named in Annexure L (Key Personnel) perform the Work under the Contract required of their nominated positions and are not removed from those positions without the approval of the Client’s Representative.

3.3.3. If it is necessary to replace any of the key personnel referred to in clause 3.3.2 (whether as a result of illness, the application of clause 3.3.4 or otherwise), the Contractor must arrange for a replacement by a substitute person approved by the Client’s Representative to perform the Work under the Contract required of the replaced person’s nominated position.

3.3.4. The Client’s Representative may direct the Contractor to remove from the Project Site or from any activity connected with the Work under the Contract, any person employed in

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connection with the Work under the Contract who, in the opinion of the Client's Representative, is guilty of misconduct or is incompetent or negligent, falls within the ambit of clause 7.6.7, or is otherwise interfering with the orderly progress of the Work under the Contract or any other work on the Project Site.

3.3.5. The Contractor must comply with a direction made under clause 3.3.4 within the time specified in the direction by the Client's Representative.

3.3.6. The Contractor is responsible for:

3.3.6.1. industrial relations management of all of the Work under the Contract including the resolution of all Industrial Action and all industrial matters pertaining to the Contractor's Personnel on the Site;

3.3.6.2. all time and cost implications of the management of industrial relations, however arising;

3.3.6.3. coordinating its industrial relations with Separate Contractors to meet the Project requirements; and

3.3.6.4. compliance with all industrial relations legislation including but not limited to the Labour Relations Act, No.66 of 1995 which applies to work performed by the Contractor and its Subcontractors on the Project Site.

3.4. Subcontracting

3.4.1. Subject to clause 3.4.2, the Contractor may enter into subcontracts for the performance by Subcontractors of any of the parts of the Work under the Contract.

3.4.2. If the Information Schedule requires, without derogating from or limiting the Contractor's other obligations under the Contract, the Contractor undertakes, to the extent practicable and possible, to ensure that the Subcontractor utilises the labour and skills of the Doorstep Community.

3.4.3. The Contractor shall:

3.4.3.1. obtain the Client's Representative's prior written approval as to the identity and appointment of the Subcontractor before appointing that Subcontractor to perform any part of the Work under the Contract, unless the selected Subcontractor has been pre-approved by the Client and is listed in Annexure O (Approved Subcontractors); and

3.4.3.2. promptly give the Client's Representative any information requested by the Client's Representative to enable it to consider any request for approval from the Contractor to appoint a Subcontractor.

3.4.4. The Contractor must manage the performance of each Subcontractor to ensure that the quality and timeliness of its performance meet the requirements of this Contract for the Work under the Contract and, in particular, the provisions of clause 7.6.

3.4.5. The Contractor's obligations under this Contract are not lessened or otherwise affected by subcontracting the performance of those obligations.

3.4.6. The Contractor must ensure that all subcontracts for the Work under the Contract adequately address all industrial relations, safety, environmental and programming issues relevant to the Work under the Contract.

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- 3.4.7. If required by the Client’s Representative, the Contractor must supply the Client with a copy of any subcontract for part of the Work under the Contract, and, if additionally requested by the Client’s Representative, immediately provide to the Client all valid invoices submitted by the Subcontractor to the Contractor.
- 3.4.8. The Contractor must ensure that each subcontract entered into by the Contractor shall include provisions which would entitle the Client to require the subcontract to be ceded to the Client. The Contractor shall have no liability to the Client for the work carried out by the Subcontractor after the assignment takes effect.
- 3.4.9. The Client shall at all times have the right, at the Client’s election in each instance, to pay the Subcontractors or any of them directly on the Contractor’s behalf in respect of specific identified payments, in which case the Contractor shall not make those payments. The Client shall only be entitled to exercise its discretion under this clause if the Contractor does not make those payments for a reason which the Client’s Representative, acting reasonably, believes to be:
 - 3.4.9.1. unreasonable; and
 - 3.4.9.2. delaying the completion of the Work under the Contract.
- 3.4.10. The Contractor must, before it mobilises a Subcontractor on the Site, give the Client’s Representative the following details:
 - 3.4.10.1. the identity of the Subcontractor and details of the part of the Work under the Contract to be performed by that Subcontractor;
 - 3.4.10.2. the period for which that Subcontractor will be on the Site; and
 - 3.4.10.3. details of that Subcontractor’s employees and Constructional Plant.

4. MEETING AND REPORTING OBLIGATIONS

4.1. Representative Review Group

- 4.1.1. The Representative Review Group comprises:
 - 4.1.1.1. the Client’s Representative;
 - 4.1.1.2. the Contractor’s Representative; and
 - 4.1.1.3. any other person the Client or the Client’s Representative requires.
- 4.1.2. The Contractor, when the Client’s Representative requires, must ensure that representatives of the Subcontractors attend Representative Review Group meetings.
- 4.1.3. The functions of the Representative Review Group include:
 - 4.1.3.1. reviewing the progress of the Work under the Contract in relation to the Program, the Works Risk Register and the performance of the Contractor and its Subcontractors;
 - 4.1.3.2. reviewing the quality of work and any remedial measures required;
 - 4.1.3.3. reviewing matters arising from the Design Documentation (including construction drawings), including any proposed design changes; and

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4.1.3.4. any other matter that the Parties may require, including the resolution of disputes in terms of clause 14.2.

4.1.4. The Representative Review Group must meet on a weekly basis and/or at any other times the Client's Representative determines.

4.1.5. The Client's Representative must:

4.1.5.1. convene and chair all meetings of the Representative Review Group;

4.1.5.2. assume responsibility for ensuring the taking of minutes of all meetings held by the Representative Review Group;

4.1.5.3. provide a copy of those minutes to the Contractor's Representative who must, if he or she accepts them as accurate, notify the Client's Representative as soon as practicable of their acceptance (upon which notification such minutes become the official record of the relevant meeting);

4.1.5.4. if the Contractor's Representative disagrees with those minutes, discuss and amend the minutes to reflect the agreed position (upon which amendment such minutes become the official record of the relevant meeting); and

4.1.5.5. give to the Representative Review Group members a copy of those minutes if the minutes are accepted by the Contractor's Representative under clause 4.1.5.3, or are agreed by the Client's Representative and the Contractor's Representative under clause 4.1.5.4.

4.2. Reporting obligations

4.2.1. The Contractor must, without limiting the provisions of clause 4.5, by no later than the 1st day of each month provide a written report to the Client's Representative, in a form approved by the Client's Representative, setting out:

4.2.1.1. the progress of the performance of the Work under the Contract against the Program;

4.2.1.2. details of any activities which are behind the progress anticipated in the Program and the Key Dates;

4.2.1.3. strategies implemented or proposed to overcome problems, including corrective action statements for catching up lost time or avoiding potential delays, or optimising the performance of the Work under the Contract;

4.2.1.4. the status of all work performed by the Subcontractors;

4.2.1.5. any foreseen delays to future activities on the Program;

4.2.1.6. the likely effect on the Program of any actual or foreseen delays;

4.2.1.7. a summary of all Change Notice Information Requests and Change Notices;

4.2.1.8. the status of all activities on which work is being undertaken;

4.2.1.9. details of all Subcontractors currently engaged or proposed to be engaged by the Contractor;

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- 4.2.1.10. details of daily (including the monthly) staff levels of the Contractor and all Subcontractors engaged in the Work under the Contract on the Site including all activities, locations and hours of work of those staff;
- 4.2.1.11. details of safety-related issues including the following:
 - 4.2.1.11.1. any incidence of occupational diseases;
 - 4.2.1.11.2. the total number of first aid incidents and total recordable injuries;
 - 4.2.1.11.3. the total number of cases requiring medical treatment;
 - 4.2.1.11.4. the total number of cases causing loss of time of one or more full shifts, subsequent to the incident;
 - 4.2.1.11.5. duration of lost time injuries;
 - 4.2.1.11.6. the total number of near misses; and
 - 4.2.1.11.7. any other information required by the Client's Representative;
- 4.2.1.12. details of environmental-related issues including any breaches or other incidents relating to the environmental requirements of the agreement;
- 4.2.1.13. evidence of compliance with the quality management requirements of this Contract;
- 4.2.1.14. expenditure against predicted cash flow and budget;
- 4.2.1.15. industrial relations issues affecting or which may affect the Work under the Contract;
- 4.2.1.16. any other matters required by the Client's Representative; and
- 4.2.1.17. issues relating to project controls;
- 4.2.2. provide to the Client's Representative within a reasonably practicable time of being requested to do so any information in connection with the Work under the Contract which the Client's Representative reasonably requires;
- 4.2.3. advise the Client's Representative (in writing if the Client's Representative requires and within the time specified by the Client's Representative) of suitable courses of action in relation to matters raised in Representative Review Group meetings;
- 4.2.4. establish and maintain any records and registers which the Client's Representative reasonably requires;
- 4.2.5. ensure that all Subcontractors, whilst engaged in works at the Site, maintain a daily site diary containing the following information:
 - 4.2.5.1. progress of the Work under the Contract against the Program;
 - 4.2.5.2. details of any activities which are behind the progress anticipated in the Program;

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4.2.5.3. details of daily staff levels of the Contractor and Subcontractors engaged in the Work under the Contract on the Site, including all activities, locations and hours of work of those staff; and

4.2.5.4. any other matters required by the Client's Representative; and

4.2.6. provide to the Client's Representative:

4.2.6.1. a weekly summary of the information contained in the daily site diary, in a format approved by the Client's Representative; and

4.2.6.2. a copy of the daily site diaries, if required by the Client's Representative.

4.3. Records on Site

4.3.1. The Contractor must keep at the Site during the performance of the Work under the Contract:

4.3.1.1. one complete set of this Contract;

4.3.1.2. a complete marked-up set of the latest version of all schedules and exhibits to this Contract (showing all changes made to the schedules and exhibits since the date of this Contract);

4.3.1.3. if the Contractor has design obligations in respect of the Works, one copy of all Design Documentation submitted to the Client's Representative for its review in accordance with clause 6;

4.3.1.4. all notices, instructions or other information issued by the Client's Representative to the Contractor; and

4.3.1.5. the daily site diaries referred to in clause 4.2.5,

4.3.1.6. and make them available to the Client's Representative as the Client's Representative may require.

4.4. Minutes

4.4.1. The Contractor shall be responsible for documenting and distributing minutes of all the meetings which include all decisions and actions arising out of these meetings.

4.4.2. The Contractor will distribute the minutes of the meeting within 5 (five) Business Days of each meeting.

4.4.3. The Parties must inform the Contractor within 5 (five) Business Days of receipt of the minutes of any objection that a Party has to the minutes.

4.4.4. Any objection to the minutes will be the first agenda item at the next meeting.

4.4.5. If no objection is received by the time of the next meeting, the minutes will be the agreed record of the meeting.

4.4.6. The minutes will be initialled by the Client's Representative and verified as a true and accurate record of that meeting by all members present at the next meeting.

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4.5. Works Risk Register

4.5.1. With a view to dealing with and mitigating the risk associated with any Change Notice, claims for extensions of time, or other events, circumstances or factors which could adversely affect the progress of the Works, or give rise to additional payments to the Contractor, the Parties shall jointly maintain a Works Risk Register in the form required by the Client’s Representative from time to time.

4.5.2. To this end:

4.5.2.1. the Contractor shall, on or before 15h00 on the last business day of each week during the Contract Period, notify the Client’s Representative of events and circumstances, which have affected, or which it considers could adversely affect the progress of the Works (“Contractor Risk Matters”) detailing, inter alia, the events it considers give rise to additional payment entitlement or which may result in the demobilisation of any of the Contractor’s Personnel and any time implications, together with any proposals to mitigate the impact thereof;

4.5.2.2. the Client shall likewise, on or before 15h00 on the last business day of each week during the Contract Period, notify the Contractor (through the Contractor’s Representative) of events and circumstances which it considers have affected, or which could adversely affect the progress of the Works (“Client Risk Matters”), detailing, inter alia, early and/or late access, portions of the Works that have been disrupted by the Client, and any proposals to mitigate the impact thereof; and

4.5.2.3. the Client’s Representative shall maintain the combined Works Risk Register and coordinate weekly meetings on Site for the purpose of discussing the Contractor Risk Matters and the Client Risk Matters.

4.5.3. The Parties commit to ensuring that the Works Risk Register and the meetings contemplated above are used to:

4.5.3.1. evaluate and establish the effect of Client Risk Matters and Contractor Risk Matters (together “Risk Matters”);

4.5.3.2. engage collaboratively with a view to dealing with and minimising the potential adverse impact of Risk Matters;

4.5.3.3. update the Works Execution Plan;

4.5.3.4. jointly make and consider proposals and seek solutions to Risk Matters;

4.5.3.5. enable the Client’s Representative to make a decision as to whether or not to allow an extension of time in accordance with clause 8.4.

5. SCOPE OF THE WORK UNDER THE CONTRACT AND CHANGES

5.1. Scope of the Work under the Contract

5.1.1. The Contractor must perform the Work under the Contract in accordance with the requirements of this Contract (including the Drawings and Specifications forming part of the Contract).

5.1.2. The Contractor acknowledges that the Work under the Contract includes all work:

5.1.2.1. specifically referred to in this Contract; and

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- 5.1.2.2. which is otherwise necessary or desirable for the proper performance and completion of the Work under the Contract and for the proper performance of the Contractor's obligations under this Contract and generally all work which is required to achieve Practical Completion.

5.2. Changes to the Work under the Contract

- 5.2.1. The Client's Representative may at any time direct the Contractor to, and the Contractor shall comply with the direction to, change the Work under the Contract if that change is required by the Client.
- 5.2.2. That change may involve increases in or additions to, reductions in or omissions from, or changes in the character or the quality of the previous Work under the Contract. If the change requires the omission of work, the Client may have the omitted work carried out by itself or others or as it otherwise sees fit.
- 5.2.3. A direction given under clause 5.2.1 may only be effected by a written form expressly identified as a "Change Notice", signed by the Client's Representative and given to the Contractor.
- 5.2.4. Before issuing a Change Notice, the Client's Representative may issue to the Contractor a written form expressly identified as a "**Change Notice Information Request**" advising the Contractor of the scope of the proposed change to the Work under the Contract and requiring the Contractor to, within the period of time stated in the form:
- 5.2.4.1. provide an estimate of the valuation of the proposed change;
 - 5.2.4.2. provide an estimate of the likely effect (if any) of the proposed change on the Date for Practical Completion and the completion requirements for any part of the Work under the Contract identified in Annexure H (Key Dates) and/or the Date of Works Completion; and
 - 5.2.4.3. where the proposed change is likely to delay the time for achievement of Practical Completion or the completion requirements for any part of the Work under the Contract identified in Annexure H (Key Dates):
 - 5.2.4.4. advise the Client's Representative whether it is practicable to accelerate the progress of the Work under the Contract to achieve Practical Completion or the completion requirements for the part of the Work under the Contract identified in Annexure H (Key Dates) which will be delayed, by an earlier date; and
 - 5.2.4.5. if it is practicable to do so, provide an estimate of the earlier date and the acceleration costs.
- 5.2.5. Within the period of time stipulated in the Change Notice Information Request, the Contractor must provide to the Client's Representative a written response containing the information required by the Change Notice Information Request.

5.3. Valuation

- 5.3.1. The Client's Representative and the Contractor's Representative must attempt to agree the adjustment to the Contract Price (if any) in connection with the Change Notice. If the Client's Representative and the Contractor's Representative fail to reach agreement, the Client's Representative shall determine the adjustment (acting reasonably in consultation with the Clients appropriate signatories).

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5.3.2. The Client's Representative in making a determination under clause 5.3.1 must:

- 5.3.2.1. apply the rates as per Annexure C (Contract Rates) (which are inclusive of margin) with appropriate adjustments for changes to assumptions and allowances on which those rates were based unless they are not reasonably relevant to the subject matter or the Parties otherwise agree; or
- 5.3.2.2. if there are no applicable rates in Annexure C (Contract Rates), do so on such basis as:
- 5.3.2.3. the Contractor's actual proven direct and reasonable costs or savings (as the case may be) in carrying out the change to the Work under the Contract the subject of a Change Notice; and
- 5.3.2.4. the margin (being a percentage of the cost or savings (as the case may be) referred to in clause 5.3.2.3) set out in the Information Schedule for the Contractor's preliminaries, profits and overheads.

5.4. Daywork

5.4.1. The Client's Representative may, at its absolute discretion, give a written direction to the Contractor to carry out any change to the Work under the Contract as daywork.

5.4.2. If the Client's Representative gives the Contractor a written direction under clause 5.4.1, the Contractor must:

- 5.4.2.1. carry out the daywork in an efficient manner; and
- 5.4.2.2. each day provide the Client's Representative a written report, in a form approved by the Client's Representative, signed by the Contractor; which include the following:
 - 5.4.2.2.1. setting out records of all labour, Constructional Plant and materials used by the Contractor for the performance of the daywork; and
 - 5.4.2.2.2. including particulars and copies of time sheets, daily diaries, invoices, receipts and other documents evidencing the cost of the daywork.

5.4.3. The Client's Representative must have regard to the following when determining the cost of the daywork:

- 5.4.3.1. payment is only for the actual labour time and the actual machine hours for the Constructional Plant used for the daywork and standby hire rates do not apply;
- 5.4.3.2. the rates set out in Annexure C (Daywork Rates) for labour and Constructional Plant to the extent that they are applicable;
- 5.4.3.3. if there are no applicable rates in Annexure C (Daywork Rates), on such basis as the Client's Representative and the Contractor may agree; and
- 5.4.3.4. failing agreement, as the Client's Representative reasonably determines based on:
 - 5.4.3.4.1. the Contractor's actual proven direct and reasonable costs in carrying out the daywork; and
 - 5.4.3.4.2. the margin (being a percentage of the costs (as the case may be) referred to in clause 5.4.3.4.1 set out in the Information Schedule for the Contractor's

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preliminaries, profits and overheads.

6. DESIGN-RELATED OBLIGATIONS

6.1. Applicability of clause 6

Clauses 6.2 to 6.4.4 apply if and only if the Information Schedule states that the Contractor has design obligations in respect of the Works.

6.2. General

6.2.1. The Contractor must design and construct the Work under the Contract in accordance with this Contract (including the Drawings and Specifications forming part of the Contract).

6.2.2. The Contractor warrants that the Works when completed will be fit for their intended purpose.

6.3. Warranty and standard of care

6.3.1. The Contractor warrants that:

6.3.1.1. it has carefully examined the Drawings and Specifications forming part of the Contract; and

6.3.1.2. it is practicable to carry out the design of the Work under the Contract and comply with its other obligations under this Contract without the need for any change in the Work under the Contract.

6.3.2. The Contractor must carry out the design of the Work under the Contract with the professional skill, care and diligence that would be expected of a professional designer and contractor experienced in projects or activities of a similar nature to the Work under the Contract.

6.3.3. The Contractor must ensure that each member of the Design Team carries out that part of the design of the Work under the Contract for which that member of the Design Team is responsible to the Contractor with the professional skill, care and diligence expected of a designer experienced in projects or activities of a similar nature to that part of the Work under the Contract.

6.3.4. The Contractor must ensure that the design of the Work under the Contract:

6.3.4.1. is suitable for its intended purpose; and

6.3.4.2. fulfils the other requirements of this Contract.

6.4. Preparation of Design Documentation

6.4.1. The Contractor must:

6.4.1.1. prepare all Design Documentation;

6.4.1.2. ensure that the Design Documentation is prepared by employees or Subcontractors with appropriate professional qualifications; and

6.4.1.3. ensure that it obtains all relevant approvals from Authorities in respect of the Design Documentation.

6.4.2. The Contractor must:

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- 6.4.2.1. give the Client's Representative for its review 2 (two) copies and an electronic copy (in a format acceptable to the Client's Representative) of:
 - 6.4.2.2. all Design Documentation by the dates or within the times set out in the Program; and
 - 6.4.2.3. all changes to Design Documentation submitted under clause 6.4.3;
 - 6.4.2.4. allow sufficient time before their issue to Subcontractors for the Client's Representative to review that Design Documentation and to comment if necessary (but in any case, not less than 10 (ten) Business Days must be allowed for the Client's Representative to review and comment on that Design Documentation); and
 - 6.4.2.5. if the Client's Representative gives the Contractor a written notice within the time allowed for its review stating that the Design Documentation or any amended Design Documentation submitted for its review does not comply with the requirements of this Contract:
 - 6.4.2.6. amend that Design Documentation so that it complies with those requirements;
 - 6.4.2.7. promptly resubmit the amended Design Documentation to the Client's Representative for its review; and
 - 6.4.2.8. allow the Client's Representative sufficient time to review the amended Design Documentation and to comment if necessary (but in any case, not less than 5 (five) Business Days must be allowed for the Client's Representative to review and comment on the amended Design Documentation).
- 6.4.3. Any change which the Contractor proposes to any Design Documentation which has been submitted for review in accordance with clause 6.4.2 must be promptly submitted to the Client's Representative with details of:
- 6.4.3.1. the proposed change; and
 - 6.4.3.2. the reasons for the proposed change, together with any other information and supporting documentation the Client's Representative reasonably requires.
- 6.4.4. Review of any Design Documentation by the Client's Representative in accordance with this Contract is solely to monitor the performance of the Contractor. The Contractor is totally responsible for carrying out the design of the Work under the Contract in accordance with this Contract.

6.5. Project Intellectual Property

- 6.5.1. Subject to clause 6.5.4, the Contractor agrees to assign to the Client absolutely all of the Contractor's right, title and interest in the Project Intellectual Property upon its creation.
- 6.5.2. The Contractor must, if required by the Client, do all further things necessary to assign the Contractor's right, title and interest in any of the Project Intellectual Property to the Client.
- 6.5.3. If the right, title and interest in any of the Project Intellectual Property is not capable of being assigned to the Client, the Contractor must ensure that the Client is irrevocably licensed (whether by sub-licence from the Contractor or direct licence from the owner of the right, title and interest) to use that Project Intellectual Property for all purposes including any connected with the Work under the Contract.

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- 6.5.4. The Client grants the Contractor a royalty free licence to use the Project Intellectual Property and any other intellectual property to perform the Work under the Contract and its other obligations under this Contract. The Contractor may sub-license the Project Intellectual Property to Subcontractors for such purpose.
- 6.5.5. The Contractor grants the Client for all time a royalty free non-exclusive irrevocable licence to use the Contractor Intellectual Property in connection with the Work under the Contract.

7. CONSTRUCTION-RELATED OBLIGATIONS

7.1. Works Execution Plan

- 7.1.1. Prior to the commencement of the Works on the Site, the Contractor shall prepare and provide to the Client’s Representative a Works Execution Plan to show how the Contractor will perform the Work under the Contract. The Works Execution Plan must comply with the requirements of Annexure N (Further Requirements for Works Execution Plan) to the extent applicable.
- 7.1.2. The Contractor must ensure that the Works Execution Plan is updated:
 - 7.1.2.1. at the frequency set out in the Information Schedule; and
 - 7.1.2.2. in accordance with a written request of the Client’s Representative within the time stipulated in the request, to show how the Contractor will perform the Work under the Contract.
- 7.1.3. The Contractor warrants that compliance with the Works Execution Plan will ensure that the Work under the Contract is performed in accordance with the requirements of this Contract.
- 7.1.4. The Contractor acknowledges that if it is in fact not feasible to perform the Work under the Contract in accordance with the Works Execution Plan, it must perform the Work under the Contract using whatever methodology may prove to be necessary to complete the Work under the Contract in accordance with this Contract.
- 7.1.5. Nothing in this clause 7.1 entitles the Contractor to:
 - 7.1.5.1. any compensation or extension of time; or to
 - 7.1.5.2. any compensation for standing time to the extent that the Date of Practical Completion is earlier than the Date for Practical Completion; or
 - 7.1.5.3. any compensation for standing time to the extent that the Date of Final Completion is earlier than the Date for Final Completion.

7.2. Compliance with Law, Standards and Policies

- 7.2.1. The Contractor must:
 - 7.2.1.1. ensure that its Subcontractors and Contractor’s Personnel, carry out all its obligations in this Contract in accordance with Good Engineering Practice (GEP) and at all times comply with Law in the performance of the Work under the Contract and performing its other obligations under this Contract;
 - 7.2.1.2. at all times comply, and ensure that its Subcontractors comply, in all respects with all current:

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- 7.2.1.2.1. Client Policies;
 - 7.2.1.2.2. laws, rules and regulations, statutory or domestic.
 - 7.2.1.2.3. the Mine Health and Safety Act, 29 of 1996; and
 - 7.2.1.2.4. industry standards, when performing the Work under the Contract;
 - 7.2.1.2.5. Protection of Personal Information Act (POPIA) no.4 of 2013 as further stipulated in Annexure P.
- 7.2.1.3. promptly give the Client’s Representative copies of all relevant documents issued by Authorities;
- 7.2.1.4. adhere to all reporting obligations in terms of the National Environmental Management Act 107 of 1998, National Water Act 36 of 1998 and the National Environmental Management: Waste Act 59 of 2008; and
- 7.2.1.5. ensure the provision of all protective clothing and/or safety equipment required by the Contractor’s Personnel for the performance of this Contract and shall procure that such Contractor’s Personnel who are required to use the personal protective equipment are trained and instructed in the proper use, the limitations and the appropriate maintenance of that equipment.
- 7.2.2. The Contractor is solely responsible for the performance of its obligations under clause 7.2.1. This obligation is not affected by any approval given by the Client, the Client’s Representative or the Authorities.
- 7.2.3. The Contractor acknowledges that:
- 7.2.3.1. the Client has, prior to the date of this Contract obtained the Project Approvals in respect of the Work under the Contract necessary to comply with Law;
 - 7.2.3.2. the Contractor has been provided with evidence of the matters referred to in clause 7.2.3.1;
 - 7.2.3.3. subject to clause 7.2.3.5, the Contractor must:
 - 7.2.3.3.1. give all other notices;
 - 7.2.3.3.2. pay all other levies, charges or fees; and
 - 7.2.3.3.3. obtain all other permits, approvals or other authorizations, in respect of the Work under the Contract necessary to comply with Law which the Client has not given, paid or obtained before the date of this Contract;
 - 7.2.3.4. if the Contractor’s compliance with Law necessitates a change to the Work under the Contract:
 - 7.2.3.4.1. the Contractor must promptly inform the Client’s Representative in writing with details of that change together with the Contractor’s proposal for carrying out that change (such proposal must be consistent with the Contractor’s obligations under this Contract);
 - 7.2.3.4.2. the Contractor must obtain the Client’s Representative’s written approval before it implements that proposal;

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7.2.3.4.3. if the Client's Representative does not approve the Contractor's proposal referred to in clause 7.2.3.4.1, the Contractor must develop that proposal until the Client's Representative approves the revised proposal.

7.2.3.5. nothing in this clause 7.2 entitles the Contractor to any compensation or an extension of time.

7.3. Compliance with Project Approvals

7.3.1. The Client and the Contractor must each comply with the conditions of the Project Approvals.

7.3.2. If the Contractor does not comply with any of the conditions of the Project Approvals which have been identified as the Contractor's responsibility:

7.3.2.1. the Client may give notice to the Contractor requiring the Contractor to comply with the condition within the reasonably practicable time specified in the notice; and

7.3.2.2. if the Contractor fails to comply with the notice under paragraph 7.3.2.1:

7.3.2.2.1. the Client may comply with those conditions; and

7.3.2.2.2. all costs and expenses incurred by the Client are recoverable from the Contractor as a debt due to the Client.

7.4. Quality management

7.4.1. The Contractor must:

7.4.1.1. use good quality, new and undamaged materials (unless otherwise specified in this Contract) for the Works which must be suitable for the purpose for which they are required;

7.4.1.2. ensure that all workmanship is in accordance with the requirements of this Contract; and

7.4.1.3. subject to any express provisions of this Contract to the contrary, comply with relevant standards (including South African Standards, codes of practice and manufacturers' standards) as may be applicable when performing the Work under the Contract.

7.4.2. The Contractor must give the Client's Representative access to the Contractor's and each Subcontractor's quality systems to enable monitoring and quality auditing.

7.4.3. If the Client's Representative reasonably considers any Work under the Contract not to be, or if the Work under the Contract is not, in accordance with this Contract, the Client's Representative may:

7.4.3.1. direct the Contractor to rectify any part of the Work under the Contract by:

7.4.3.1.1. demolishing the work;

7.4.3.1.2. removal of the material from the Project Site (including any Contamination);

7.4.3.1.3. reconstructing, replacing or correcting the material or work; or

7.4.3.1.4. not delivering the material or work to the Project Site;

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7.4.3.1.5. direct the Contractor not to rectify that part of the Work under the Contract.

7.4.4. The Contractor must, where requested and within 3 (three) Business Days, provide a rework Program detailing the activities and time frame within which the corrective action shall be taken.

7.4.5. The Client may have the work referred to in clause 7.4.3.1 carried out by others at the Contractor's cost if:

7.4.5.1. the Client's Representative has directed the Contractor to rectify a part of the Work under the Contract in accordance with clause 7.4.3.1 within the period reflected in the rework Program provided in terms of clause 7.4.4 above; and

7.4.5.2. the Contractor has failed to rectify that work within that period, and all costs and expenses incurred by the Client are recoverable from the Contractor as a debt due to the Client.

7.4.6. Review of any samples, goods, equipment or materials by the Client or the Client's Representative in accordance with this Contract is solely to monitor the performance of the Contractor. The Contractor is responsible for carrying out the Work under the Contract in accordance with this Contract.

7.5. Inspection and testing

7.5.1. If this Contract requires the Contractor to give written notice to the Client's Representative before putting out of view any part of the Work under the Contract, the Contractor must give such written notice to the Client's Representative in accordance with this Contract.

7.5.2. Before conducting any test required under this Contract, the Contractor must:

7.5.2.1. inform the Client's Representative in writing that it is ready to conduct the test; and

7.5.2.2. give at least 7 (seven) days' prior written notice to the Client's Representative of the time, date and place of the test.

7.5.3. If the Client's Representative does not attend at that time, the Contractor may then proceed with the test.

7.5.4. Unless otherwise expressly set out in this Contract, all tests and their associated cost are the responsibility of the Contractor.

7.5.5. At any time prior to the expiration of the Defects Correction Period, the Client's Representative may direct that any part of the Work under the Contract (including materials or workmanship) be tested.

7.5.5.1. If the Client's Representative has a reasonable basis for forming the view that the Work under the Contract does not comply with the requirements of this Contract when giving that direction, the Contractor is not entitled to any compensation or an extension of time unless the Contractor gave notice to the Client's Representative and the Client's Representative failed to attend in terms of clause 7.5.2. Then accordingly, the Contractor shall be entitled to an extension of time and/or additional compensation in terms of the agreement; or

7.5.5.2. If the Client's Representative does not have a reasonable basis for forming the view that the Work under the Contract does not comply with the requirements of this

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Contract when giving that direction and the testing shows that every part of the Work under the Contract that is the subject of that direction is in compliance with the requirements of this Contract. Then accordingly, the Contractor shall be entitled to an extension of time and/or additional compensation in terms of the agreement.

7.5.5.3. The Client's Representative and the Contractor's Representative must attempt to agree on the payment to which the Contractor is entitled under clause 7.5. If the Client's Representative and the Contractor's Representative agree on that payment, the Client's Representative must issue a written notice setting out the adjustment to the Contract Price;

7.5.5.4. If the Client's Representative and the Contractor's Representative fail to reach agreement on the adjustment within 7 (seven) days of that direction, the Client's Representative shall determine the adjustment (acting reasonably), if and to the extent applicable. The Client's Representative must give written notice to the Contractor reflecting the said adjustment to the Contract Price.

7.5.6. The Contractor must:

7.5.6.1. provide such assistance and samples and make accessible such parts of the Work under the Contract as may be required by the Client's Representative to carry out any tests;

7.5.6.2. on completion of the tests, if necessary, rectify the Work under the Contract at its own expense so that the Work under the Contract fully complies with this Contract; and

7.5.6.3. promptly provide to the Client's Representative the results of any tests undertaken by the Contractor (and in the case of any part of the Work under the Contract which is manufactured off the Project Site, the Contractor must provide to the Client's Representative the results of any tests undertaken by the Contractor before that part of the Work under the Contract is despatched from the place of manufacture).

7.5.7. For the purposes of this clause 7.5, testing includes examination and measuring.

7.5.8. If the Contractor fails to:

7.5.8.1. give written notice in accordance with this Contract to the Client's Representative whenever any part of the Work under the Contract is ready or about to be put out of view;

7.5.8.2. comply with its obligations under clause 7.5.2;

7.5.8.3. comply with the Client's Representative's direction pursuant to clause 7.5.4; or

7.5.8.4. comply with its obligations under clause 7.5.6.1 and clause 7.5.6.3,

Then, the Client may open up or pull down that part of the Work under the Contract, and carry out such tests as are necessary, and all costs and expenses incurred by the Client are recoverable from the Contractor as a debt due to the Client.

7.5.9. If the Contractor fails to comply with its obligations under clause 7.5.6.2, the Client may rectify the Work under the Contract and all costs and expenses incurred by the Client are recoverable from the Contractor as a debt due to the Client.

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7.6. Safety requirements

- 7.6.1. The Contractor shall comply fully with all Law and the provisions of the Client’s Policies. The Contractor agrees to familiarise itself, and to procure that the Contractor’s Personnel familiarise themselves, with the provisions of the Client’s Policies, as amended from time to time.
- 7.6.2. The Contractor must ensure that all persons for whom it is responsible or over whom it is capable of exercising control while performing the Work under the Contract and performing its other obligations under this Contract comply with all statutory obligations of the Contractor.
- 7.6.3. If the Contractor or its employees, Subcontractors or agents damage property, the Contractor must promptly make good the damage and promptly pay any compensation which the Law requires the Contractor to pay.
- 7.6.4. If the Contractor fails to comply with an obligation under this clause 7.6, the Client may perform or have performed the obligation on the Contractor’s behalf and the reasonable costs and expenses incurred by the Client are recoverable from the Contractor as a debt due to the Client.
- 7.6.5. The Contractor must comply with, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while performing Work under the Contract comply with:
 - 7.6.5.1. any safety regulations (including any site-related safety regulations) issued from time to time to the Contractor by the Client’s Representative; and
 - 7.6.5.2. the requirements of the safety management plan which forms part of the Works Execution Plan.
- 7.6.6. The Contractor must comply with any reasonably practicable direction of the Client’s Representative given following a perceived breach of the safety regulations (including any construction methodology which the Client’s Representative considers to be unsafe in the performance of the Work under the Contract).
- 7.6.7. The Contractor must remove from the Site any person for whom it is responsible or over whom it is capable of exercising control (including any of its Subcontractors and their employees) who, in the opinion of the Client’s Representative:
 - 7.6.7.1. has contravened safety rules or failed to follow directions on safety or safe working procedures;
 - 7.6.7.2. gives another person wrong directions on safety or safe working procedures or refuses to give another person proper directions in this respect; or
 - 7.6.7.3. is instrumental through his or her acts or omissions in causing a lost time incident which involves another person being absent from activities connected with the Work under the Contract.
- 7.6.8. The Contractor must take all measures necessary to protect people and property on or adjacent to the Site and the Work under the Contract.

7.7. Health and Safety.

- 7.7.1. The Contractor shall at all times take all reasonable precaution to maintain the health and

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safety of the Contractor's Personnel. In collaboration with local and provincial health authorities, the Contractor shall ensure that medical staff, first aid facilities and ambulance service are available to address medical emergencies as well as day to day health and safety requirements. The Contractor must also have suitable arrangements/procedures in place to address all necessary welfare and hygiene requirements for the prevention of epidemics and management of pandemics. The Contractor must submit his procedures and protocols in this regard to the Client for approval.

- 7.7.2. The Client may, at his discretion, provide emergency medical treatment, facilities or related services to the Contractor's Personnel for any Works related illness or injury occurring on Site where a Contractor is unable to do so and when deemed critical/life-threatening (i.e. immediate medical care required).
- 7.7.3. Notwithstanding clause 7.7.2, the Contractor will be notified of a medical emergency of his Personnel and where deemed suitable by the Client, be afforded the opportunity to manage the medical emergency in line with Clause 7.7.1 above.
- 7.7.4. The Client may choose to provide the services, if the Contractor cannot or fails to comply with any of the conditions of health and safety as required by the Client and the related Laws of South Africa:
- 7.7.5. In the event that such services are provided to the Contractor, then the Contractor shall fully reimburse the Client for all costs and expenses incurred. If the Contractor fails to duly and timeously pay for health and safety services rendered by the Client then the Client may set-off the costs as per Clause 9.3 of the Conditions of Contract.
- 7.7.6. The Contractor assumes full and complete responsibility and liability for all illness, injuries and damages including costs and expenses to any of its Personnel arising out of any medical care required.
- 7.7.7. Nothing herein contained shall be construed as imposing on the Client any Contractual duty to provide emergency medical treatment or related health and safety services to Contractor and his Personnel or to make such facilities and/or services available to the Contractor and his Personnel unless otherwise agreed or as per Clause 7.7.2 above.

7.8. Removal of materials and Constructional Plant from the Project Site

The Contractor must not remove from the Project Site any materials or Constructional Plant brought onto the Project Site without the approval of the Client's Representative which approval will not be unreasonably withheld.

7.9. Obligations after Practical Completion

- 7.9.1. After Practical Completion, the Contractor must promptly complete all outstanding items of work required to be completed to comply with this Contract and its obligations under clause 7.9.
- 7.9.2. At any time before the end of the Defects Correction Period, the Client's Representative may direct the Contractor:
 - 7.9.2.1. to rectify any defect in or omission from the Work under the Contract; or
 - 7.9.2.2. not to rectify a defect in or omission from the Work under the Contract.
- 7.9.3. The Client's Representative must ensure that a direction given under clause 7.9.2.1:

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- 7.9.3.1. identifies the defect or omission; and
 - 7.9.3.2. states a date (which shall be reasonably practicable) by which the Contractor must complete the rectification.
 - 7.9.4. The Contractor must comply with a direction given under clause 7.9.2.
 - 7.9.5. Any direction under clause 7.9.2.1 may provide, in respect of the rectification work, that there is to be a separate Defects Correction Period commencing on the date the rectification work is completed of a stated duration not exceeding 52 (fifty two) weeks from that date.
 - 7.9.6. If directed by the Client's Representative, the Contractor must also prepare and submit to the Client's Representative a Program and method statement for the performance of rectification work.
 - 7.9.7. If the Contractor fails to comply with a direction of the Client's Representative given under clause 7.9.2.1 by the date stipulated in the direction:
 - 7.9.7.1. the Client may have the rectification work carried out by others; and
 - 7.9.7.2. all costs and expenses incurred by the Client are recoverable from the Contractor as a debt due to the Client.
 - 7.9.8. If, after the expiration of the Defects Correction Period, the Client's Representative forms the view that all defects in or omissions from the Work under the Contract which are the subject of directions given under clause 7.9.2.1 have been rectified, the Client's Representative must promptly issue to the Client and the Contractor a certificate stating that it has formed that view.
 - 7.9.9. If the Client's Representative issues a direction under clause 7.9.2.2, the Client's Representative must within 14 (fourteen) days of issue of that direction give the Client and the Contractor a reasonable determination of the cost of rectifying the defect or omission the subject of that direction and that amount is recoverable by the Client from the Contractor as a debt due to the Client.

8. TIME

8.1. Completion of Work under the Contract

- 8.1.1. The Contractor must:
 - 8.1.1.1. commence performance of the Work under the Contract and continue to perform the Work under the Contract progressively in an orderly manner having regard to the duration and sequence of activities shown on and in accordance with the Program;
 - 8.1.1.2. satisfy the completion requirements for each part of the Work under the Contract identified in Annexure H (Key Dates) by the corresponding Key Date; and
 - 8.1.1.3. bring the Works to Practical Completion by the Date for Practical Completion.
- 8.1.2. The Contractor must comply with any reasonably practicable direction of the Client's Representative following a perceived breach of Annexure H (Key Dates).
- 8.1.3. While the Contractor may achieve Practical Completion before the Date for Practical Completion or satisfy the completion requirements for any part of the Work under the

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Contract identified in Annexure H (Key Dates) before the corresponding Key Date; the Client and the Client's Representative have no responsibility or duty of care to do, or refrain from doing, anything to enable the Contractor to achieve those results.

8.2. Program

8.2.1. Site handover

8.2.1.1. The Site will be handed over to the Contractor at the start of the works in accordance with the conditions of contract.

8.2.2. Constraints on Program

8.2.2.1. Refer to the Key Dates Schedule enclosed in Annexure H (Key Dates) of the Contract.

8.2.3. The Contractor shall take into account in formulating its program that as a general rule no work will be permitted on Sundays unless applied for in writing and written approval received from the Project Chief Safety Officer.

8.2.4. Program requirements

8.2.4.1. The Contractor submits with his tender a program which describes the Works Information Sheet in sufficient detail so as to indicate the Contractor's ability to complete the works by the Completion Date requested herein as per Key Dates Schedule. The program shall be accompanied by detailed information which reflects the placing of the resources upon which the tender and the Works is based. Such information shall include details of specific items of Equipment and specific crews for individual disciplines.

8.2.4.2. For each section/area of the works the Program is to indicate the following:

8.2.4.2.1. When receipt of construction drawings is required. (This information must be clearly stated in order to indicate lead times for all items);

8.2.4.2.2. Procurement of materials. (This information to be clearly stated, in order to indicate lead times for all items);

8.2.4.2.3. Start and finish dates of construction activities and the reasonable linkages associated thereto (including intermittent milestones for beneficial access as required in the Key Date schedule);

8.2.4.2.4. Access dates for other Contractors where necessary.

8.2.4.2.5. On award of the contract, the accepted dates together with any accepted alterations by the Contractor become the Accepted Program.

8.2.5. Construction Program

8.2.5.1. The detailed Contract Program must detail, show and conform to the following requirements:

8.2.5.1.1. Commencement and completion dates for the various activities of the Works and the dates for suppliers and subcontractors to provide their portion of the Works;

8.2.5.1.2. Milestone dates for Client's obligations e.g. issue of fabrication/construction drawings, delivery of free issue plant and materials, site and construction access

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dates, temporary and permanent utility/services, vendor supervision and Client's approvals;

- 8.2.5.1.3. Milestone dates for the Contractor, as well as other Contractors, suppliers and subcontractors to provide the Works e.g. drawings and documentation, quality control plans, delivery of Plant and materials to Site, inspection, commissioning and Take-Over.
 - 8.2.5.1.4. The Contract Program must be logic driven and fully linked with no unlinked activities.
 - 8.2.5.1.5. The Contractor must add resources to the detailed Contract Program and produce S-curves.
 - 8.2.5.1.6. The Contractor must produce weekly and as part of the monthly progress report the following:
 - 8.2.5.1.6.1. Updated or revised bar-chart Program with baseline and current bars;
 - 8.2.5.1.6.2. Progress S-curves derived from the bar-chart update; and
 - 8.2.5.1.6.3. A milestone tabulation and narrative confirming the completion date(s) or the driving factors of any reported forecast lateness.
 - 8.2.5.1.7. The Client uses a Work Breakdown Structure (WBS) which will be provided, where applicable, to allow the contractor to prepare the detailed contract Program to a similar work package structure.
 - 8.2.5.1.8. The Contractor must supply resource histograms when requested.
 - 8.2.5.1.9. The Contractor must supply rolling horizons/look-ahead Programs when requested.
 - 8.2.5.1.10. The Contractor shall provide further detail when a recovery plan is requested in the event that the works are behind schedule.
- 8.2.6. The construction Program must be signed by the Contractors contract manager. Any planning information on the works must be freely available to the Client and/or the Clients Representative's project planner, the Supervisor and the Project Manager.
- 8.2.7. Construction program updates
- 8.2.7.1. The construction Program must be updated on a weekly basis and be submitted electronically on the last business day of each week by 14h00 to be discussed (period will be from Friday to Thursday) at the Site construction progress meeting.
 - 8.2.7.2. The Contractor's planner must agree the actual on Site progress with the Client's Representative, one day prior to the weekly construction progress meeting.
 - 8.2.7.3. The construction Program must be signed by the Contractor's contract manager. Any planning information on the works must be made freely available to the Client's project planner, the Supervisor and the Client's Representative.

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8.2.8. Revising the Program

8.2.8.1. The Accepted Program shall be the construction Program including rolling horizons showing the details to complete the works within the parameters of the Accepted Program.

8.2.8.2. Delays that do not affect the Key Dates or Practical Completion date do not require revisions to the Accepted Program only delays that effect the Key Dates or Practical Completion date will have a contractual obligation. Each delay that changes the Accepted Program will require the Contractor to submit a revised Program in terms of the conditions of contract.

8.2.9. The Contractor shall submit a program in an acceptable form and detail within 28 (twenty eight) days of appointment.

8.2.10. The Contractor must ensure that the Program is updated:

8.2.10.1. weekly; and

8.2.10.2. within the time stipulated in a written request by the Client’s Representative, to show progress achieved and, where appropriate, changes to the sequence and duration of activities required to meet the Key Dates and the Date for Practical Completion (including the effect (if any) of any extension of time) together with any corresponding changes to proposed manpower and shifts to be worked and resources to be utilised, and that 2 (two) copies of each update (in colour) are promptly provided to the Client’s Representative.

8.2.11. Where a Program is rejected by the Client’s Representative for non-compliance with this Contract, the Contractor must submit a corrected and revised Program within 7 (seven) days of being notified that the Program is unacceptable.

8.3. Risk of delay and resultant increased costs

8.3.1. The Contractor accepts the risk of all increased costs resulting from delay in the performance of the Work under the Contract and the performance of its other obligations under this Contract with the exception of a delay directly caused by:

8.3.1.1. a breach by the Client of any of its obligations under this Contract;

8.3.1.2. a Change Notice;

8.3.1.3. a change in Law (including the introduction of any new Law and the repeal or modification of any existing Law) after the date of this Contract which:

8.3.1.3.1. affects the Contractor in the performance of the Work under the Contract; and

8.3.1.3.2. was not reasonably foreseeable as at the date of this Contract.

8.3.1.4. the suspension of the performance of the Work under the Contract (or any part of the Work under the Contract) pursuant to a written notice given under clause 8.11.1 unless that direction was given as a result of a breach by the Contractor of its obligations under this Contract; or

8.3.1.5. an Unforeseeable Ground Condition.

8.3.1.6. Any interruption to the supply of utilities and services (i.e. ventilation, support, air,

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water and electricity), unless where these interruptions are caused by any act, omission, damage or misuse by the Contractor, their sub-contractors or their suppliers of the utilities.

- 8.3.1.7. Any stoppage in the works due to the issuance of a stop order under section 54 or section 55 of the MHS Act by the inspectorate of the DMR, which statutory instruction or order is issued as a result of a negligent act or omission on the part of the Client or a third party.
- 8.3.1.8. Any changes to the current Client’s Policies, Standards, Codes of Practice and Procedures which are specified in the contract during the execution of the contract, as a result of which the Contractor suffers (or will suffer) delays and/or incurs (or will incur) additional costs and/or any delays suffered and/or additional costs incurred by the Contractor as a result of changes in the Laws of the Republic of South Africa (including the addition of new Laws, Procedures and Standards and the repeal or modification of existing Laws, Procedures or Standards) or in such interpretation, made after the Contract Date.
- 8.3.1.9. A Force Majeure event as defined, however there will be no additional costs or payments for delays in this regard.

8.3.2. The Contractor may recover from the Client compensation for delay or disruption to the performance of the Work under the Contract if there is a delay in achieving Practical Completion and the Contractor has been granted an extension of time for a cause of delay referred to in clause 8.3.1 on the following basis:

- 8.3.2.1. if there is an applicable rate in Annexure C (Delay Costs and Standby Rates), the Client’s Representative must determine the delay costs using that applicable rate;
- 8.3.2.2. if there is more than one applicable rate in Annexure C (Delay Costs and Standby Rates), the Client’s Representative must determine the delay costs using the rate that the Client’s Representative (in its absolute discretion) determines is applicable; and
- 8.3.2.3. if there is no applicable rate in Annexure C (Delay Costs and Standby Rates), then:
- 8.3.2.4. the Client’s Representative and the Contractor’s Representative may agree on the delay costs; and
- 8.3.2.5. failing agreement, the Client’s Representative must reasonably determine the delay costs.

8.3.3. The Client’s Representative must give a written notice to the Contractor adjusting the Contract Price to reflect the amount of delay costs referred to in clause 8.3.2.

8.4. Extensions of time to Key Dates and Date for Practical Completion

8.4.1. Subject to clause 8.9.8, the Contractor is entitled to an extension of time to a Key Date or the Date for Practical Completion resulting from a Time Adjustment Event if, and only if:

- 8.4.1.1. The Contractor gives written notice to the Client’s Representative when he/she is aware or ought reasonably to be aware of an event that may or will delay the progress of the Works and/or have an impact on the Contract Price. The Contractor shall give written notice to the Client’s Representative as soon as reasonably possible, but in any event no later than 24 hours, after it has come to his attention. In such notice the Contractor shall provide:

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- 8.4.1.1.1. detailed particulars of the delay or potential delay and the potential adverse effects; and
- 8.4.1.1.2. proposals for the steps to be taken to mitigate the potential adverse effects thereof.
- 8.4.1.1.3. how the Key Date or the Date for Practical Completion (as the case may be) is likely to be delayed, both in the progress of one or more activities and as a whole; and
- 8.4.1.1.4. the date on which the cause of delay first arose;
 Failing which, the Contractor shall have forfeited the right to an extension of time to the relevant Key Date or the Date for Practical Completion resulting from that Time Adjustment Event;
- 8.4.1.2. The Contractor gives the Client’s Representative within 28 (twenty-eight) days after the cessation of the delay or within such other period as approved by the Client’s Representative:
 - 8.4.1.2.1. a written claim for extension of time specifying the number of days claimed, the date on which the cause of the delay first arose and the date of the cessation of the delay; and
 - 8.4.1.2.2. a statement of the facts on which the claim is based;
- 8.4.2. If the event or circumstance giving rise to the claim has a continuing effect:
 - 8.4.2.1.1. The claim contemplated in 8.4.1.2.1 shall be considered as interim;
 - 8.4.2.1.2. the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Client’s Representative may reasonably require; and
 - 8.4.2.1.3. the Contractor shall send a final claim within 28 (twenty-eight) days after the end of the effects resulting from the event or circumstance, or within such other period as approved by the Client’s Representative.
- 8.4.3. The Contractor reasonably satisfies the Client’s Representative that:
 - 8.4.3.1.1. the only cause of the delay is a Time Adjustment Event;
 - 8.4.3.1.2. the Key Date or the Date for Practical Completion (as the case may be) has actually been changed;
 - 8.4.3.1.3. the delay is demonstrable on an assessment of the critical path on the network of the current revision of the Program when the cause of the delay first arose;
 - 8.4.3.1.4. the Contractor has consistently taken all reasonable steps to minimize the delay and to reprogram and expedite the sequence of activities;
 - 8.4.3.1.5. the cause of the delay is not in any way connected with an act or omission of the Contractor; and

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8.4.4. The circumstances of the delay were recorded in each Works Risk Register from the time that the cause of the delay first arises until the time that the claim for the extension of time is submitted.

8.5. Determination of extension of time claims in relation to Time Adjustment Events

8.5.1. Subject to clause 8.9.8, the Client's Representative must, within 7 (seven) days, or as agreed between the parties, of receipt of the later of:

8.5.1.1. a written notice given by the Contractor under clause 8.3.3; or

8.5.1.2. the information referred to in clause 8.5.2,

give the Contractor:

8.5.1.3. written notice of any extension of time which is granted and the new Key Date or the new Date for Practical Completion (as the case may be); or

8.5.1.4. if no extension is given, written notice of that decision.

8.5.2. If the Client's Representative gives a written direction (such a direction must be given within 28 (twenty eight) days of receipt by the Client's Representative of a written notice given by the Contractor under clause 8.3.3) to the Contractor to provide the Client's Representative with further information in support of the Contractor's extension of time claim submitted under clause 8.3.3, the Contractor must give that supporting information within 5 (five) days of that written direction.

8.5.3. If the Client's Representative does not give a written notice within the period referred to in clause 8.5.1, the Contractor must within 7 (seven) days of the expiry of that period give written notice to the Client and the Client's Representative requesting the Client's Representative to give its determination of the extension of time (if any).

8.5.4. Subject to clause 8.5.5, if the Client's Representative does not give its determination within 14 (fourteen) days of receipt of a written notice from the Contractor under clause 8.5.3, the Contractor's written extension of time claim submitted under clause 8.3.3 shall be deemed to have been rejected.

8.5.5. If the Contractor's written extension of time claim submitted under clause 8.3.3 is deemed to have been rejected in accordance with clause 8.5.4, the Contractor may, if it does not agree with that rejection, refer the matter for dispute resolution in accordance with clause 14.

8.6. Independent discretion to extend time

8.6.1. If there is a delay to any Work under the Contract for which the Contractor is not entitled to an extension of time, the Client's Representative may grant an extension of time but has no obligation to grant, or to consider whether it should grant, an extension of time.

8.6.2. If the Client's Representative grants an extension of time under clause 8.6.1:

8.6.2.1. it must give the Contractor written notice, which expressly refers to clause 8.6; and

8.6.2.2. the Contractor is not entitled to any compensation for the delay.

8.7. Liquidated delay damages

If the Contractor fails to bring the Works to Practical Completion by the Date for Practical

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Completion, the Contractor must pay the Client liquidated damages at the rates specified in the Information Schedule for every day after the Date for Practical Completion, up to and also counting the Date of Practical Completion or the date of earlier termination of this Contract, and all liquidated damages payable by the Contractor to the Client are recoverable from the Contractor as a debt due to the Client. Details of the Practical Completion Date and / or sectional practical completion dates shall be set out in the Information Schedule.

8.8. No entitlement

Notwithstanding any delay to any Work under the Contract for which the Contractor is not entitled to an extension of time, the Contractor:

- 8.8.1. must bring the Works to Practical Completion by the Date for Practical Completion;
- 8.8.2. must satisfy the completion requirements for any part of the Works identified in Annexure H (Key Dates) by the corresponding Key Date; and
- 8.8.3. is not entitled to have any remedy against the Client in respect of the delay including any entitlement to damages for breach of this Contract.

8.9. Acceleration of the Work under the Contract

8.9.1. The Client’s Representative may direct the Contractor to do either or both of the following:

- 8.9.1.1. alter the sequence of activities comprised in the Work under the Contract from that shown on the Program; and
- 8.9.1.2. accelerate the progress of any one or more of such activities so as to complete such activities in advance of the dates for completion of those activities shown on the Program.

8.9.2. A direction given under clause 8.9.1 may only be effected by a written form expressly identified as an “Acceleration Direction” signed by the Client’s Representative and given to the Contractor or the Contractor’s Representative.

8.9.3. Before issuing an Acceleration Direction, the Client’s Representative may issue a written form, expressly identified as an “**Acceleration Direction Information Request**”, advising the Contractor of the proposed variation and requiring the Contractor, within the time specified, to:

- 8.9.3.1. advise whether it is practicable to accelerate the Work under the Contract; and
- 8.9.3.2. if it is practicable to accelerate the Work under the Contract:
 - 8.9.3.2.1. provide an estimate of the valuation of the proposed acceleration and any adjustment to the Contract Price; and
 - 8.9.3.2.2. provide an estimate of the effect the proposed acceleration will have on the time for achieving Practical Completion, including the earlier date.

8.9.4. The Contractor must (where possible) perform the Work under the Contract in accordance with the Client’s Representative’s direction on receipt of a direction given by the Client’s Representative under clause 8.9.1.

8.9.5. Subject to clause 8.9.6 and clause 8.9.7, the Contractor is entitled to payment for the additional direct and reasonable costs set out in Annexure C (Contract Rates and Payment

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Terms) incurred as a result of complying with an Acceleration Direction.

- 8.9.6. The Client’s Representative and the Contractor’s Representative must attempt to agree on the payment to which the Contractor may be entitled under clause 8.9.7 as a result of complying with the Acceleration Direction. If the Client’s Representative and the Contractor’s Representative agree on that payment, the Client’s Representative must give a written notice to the Contractor setting out the adjustment to the Contract Price.
- 8.9.7. If the Client’s Representative and the Contractor’s Representative fail to reach agreement within 7 (seven) days of the issue of the Acceleration Direction, the Client’s Representative shall determine the amount payable (acting reasonably). The Client’s Representative must give a written notice to the Contractor reflecting the said adjustment to the Contract Price.
- 8.9.8. The Client’s Representative may issue an Acceleration Direction in lieu of the Contractor’s entitlement to an extension of time under clause 8.4.

8.10. Practical Completion

- 8.10.1. At least 14 (fourteen) days before the date on which the Contractor estimates that the Works will reach Practical Completion, the Contractor must give the Client’s Representative written notice of that date (“nominated date”).
- 8.10.2. The Client’s Representative and the Contractor’s Representative must jointly inspect the Work under the Contract at a mutually convenient time on a date no earlier than 7 (seven) days prior to the nominated date.
- 8.10.3. Within 7 (seven) days after the nominated date, the Client’s Representative must either:
 - 8.10.3.1. give the Client and the Contractor a certificate which must state the date on which Practical Completion was achieved (which must not be earlier than the date of the joint inspection); or
 - 8.10.3.2. give the Contractor written notice of matters and things required to be done before Practical Completion can be achieved; or
 - 8.10.3.3. give the Contractor written notice that the Works are so far from Practical Completion that it is not yet practicable to issue a written notice under clause 8.10.3.2 and requiring the Contractor to continue with the performance of the Work under the Contract.
- 8.10.4. If the Client’s Representative gives the Contractor a written notice under clause 8.10.3.2 or 8.10.3.3:
 - 8.10.4.1. the Contractor may notify the Client’s Representative in writing when the Contractor has complied with that written notice;
 - 8.10.4.2. the Client’s Representative and the Contractor’s Representative must jointly inspect the Work under the Contract at a mutually convenient time; and
 - 8.10.4.3. clause 8.10.3 and clause 8.10.4 apply again until the Client’s Representative gives a certificate under clause 8.10.3.1.

8.11. Suspension

- 8.11.1. The Client’s Representative may at any time give written notice to the Contractor to

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suspend the performance of all or any part of the Work under the Contract (including details of the extent to which the Client's Representative requires the Contractor to keep its personnel, Subcontractors and Constructional Plant on standby).

- 8.11.2. If the Contractor receives a written notice from the Client under clause 8.11.1, the Contractor must immediately suspend the performance of the Work under the Contract (or the relevant part).
- 8.11.3. Subject to clause 8.11.8, the Client must pay the Contractor compensation for reasonable costs incurred in accordance with the Bill of Quantities, in the suspension of the performance of the Work under the Contract (or the relevant part):
 - 8.11.3.1. in accordance with the standby rates in Annexure C (Delay Costs and Standby Rates), to the extent that they are applicable;
 - 8.11.3.2. if there are no applicable rates in Annexure C (Delay Costs and Standby Rates), on such basis as the Client's Representative and the Contractor's Representative may agree; or
 - 8.11.3.3. failing agreement, as the Client's Representative reasonably determines, during the suspension of any part of the Work under the Contract to compensate the Contractor for:
 - 8.11.3.3.1. keeping its personnel, Subcontractors and Constructional Plant on standby (to the extent stated in the written notice referred to in clause 8.11.1); and
 - 8.11.3.3.2. the demobilization and remobilization of the Contractor's Personnel, Subcontractors and Constructional Plant.
- 8.11.4. The Client's Representative must give a written notice to the Contractor adjusting the Contract Price to reflect the compensation referred to in clause 8.11.3.
- 8.11.5. The Client's Representative may at any time give written notice to the Contractor to resume the performance of the Work under the Contract (or the relevant part) which has been suspended.
- 8.11.6. If the Contractor receives a written notice under clause 8.11.5:
 - 8.11.6.1. the Contractor must immediately resume performance of the Work under the Contract (or the relevant part) which has been suspended; and
 - 8.11.6.2. subject to clause 8.4 and clause 8.11.8, the Client's Representative must extend the Key Dates affected by the suspension and the Date for Practical Completion.
- 8.11.7. Subject to clause 8.11.8 and clause 8.11.9, if the suspension of the performance of the Work under the Contract (or the relevant part) which is the subject of a written notice under clause 8.11.1 continues for more than 90 (ninety) days:
 - 8.11.7.1. the Contractor may give written notice to the Client's Representative (with a copy to the Client) requiring the Client's Representative to give a written notice to the Contractor under clause 8.11.5 to resume performance of the Work under the Contract (or the relevant part); and
 - 8.11.7.2. if the Client's Representative fails to give a written notice to the Contractor under clause 8.11.5 within 28 (twenty eight) days of receipt of the Contractor's written notice given under clause 8.11.7.1 the Contractor:

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- 8.11.7.2.1. may terminate this Contract by giving the Client 28 (twenty-eight) days' prior written notice;
- 8.11.7.2.2. is entitled to be paid in accordance with clause 9.2 for the part of the Work under the Contract performed in the relevant period up to the date of termination or the date the Contractor ceased to perform the Work under the Contract; and
- 8.11.7.2.3. acknowledges and agrees that it is not entitled to any other compensation including for any consequential costs, Losses or damages.

8.11.8. If the Client's Representative gives a written notice under clause 8.11.1 as a result of a breach by the Contractor of its obligations under this Contract, the Contractor is not entitled to:

- 8.11.8.1. any compensation under clause 8.11.3;
- 8.11.8.2. any extension of time under clause 8.11.7.2; or
- 8.11.8.3. terminate this Contract under clause 8.11.8.2.

8.11.9. If the Client's Representative gives a written notice under clause 8.11.1 as a result of a breach by the Contractor of its obligations under this Contract and if the breach is:

- 8.11.9.1. capable of rectification, the performance of the part of the Work under the Contract the subject of the written notice may be suspended until the breach is rectified by the Contractor; or
- 8.11.9.2. not capable of rectification, the period of suspension must be reasonable.

8.12. Force Majeure Event

8.12.1. Clauses 8.12.2 to 8.12.5 apply if and only if the Information Schedule says they apply.

8.12.2. If a Force Majeure Event occurs, the affected Party must immediately give the other Party a written notice containing the:

- 8.12.2.1. full particulars of the Force Majeure Event including its nature and likely duration;
- 8.12.2.2. obligations of the Party the performance of which is prevented or delayed; and
- 8.12.2.3. nature and extent of the effects of the Force Majeure Event on those obligations.

8.12.3. The obligations of the Party affected by the Force Majeure Event are placed on hold, to the extent that they are affected by the Force Majeure Event, from the date the affected Party gives the written notice under clause 8.12.2 until cessation of the Force Majeure Event. Clause **Error! Reference source not found.** is not applicable where a Force Majeure Event has been declared.

8.12.4. On the cessation of the Force Majeure Event which is the subject of a written notice given under clause 8.12.2, the Party affected by the Force Majeure Event must:

- 8.12.4.1. immediately give written notice to the other Party of the cessation of the Force Majeure Event; and
- 8.12.4.2. resume performance of the obligations suspended as a result of the Force Majeure

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Event.

8.12.5. The Party affected by a Force Majeure Event:

- 8.12.5.1. must use its best endeavours to remove the effect of that Force Majeure Event affecting its obligations under this Contract; and
- 8.12.5.2. shall not be relieved from liability under this Contract to the extent that it is not able to perform, or has not in fact performed, its obligations under this Contract due to its failure to comply with its obligations under clause 8.12.5.1; and
- 8.12.5.3. report to the other Party in writing (on a daily basis unless the other Party requests a longer period between reports) of the steps taken by it to remove the effect of that Force Majeure Event.

9. CONTRACT PRICE AND PAYMENT

9.1. Contract Price

The Client must pay the Contractor the Contract Price in accordance with the requirements of this Contract.

9.2. Payment

9.2.1. Annexure C (Payment Terms) sets out (amongst other things):

- 9.2.1.1. the terms for payment of the Contract Price; and
- 9.2.1.2. any limitations or other constraints on the Contractor's ability to make claims for payment.

9.2.2. Annexure C (Lump Sum Breakdown) may be referred to by the Client's Representative for the purposes of:

- 9.2.2.1. the assessment of progress claims; and
- 9.2.2.2. the valuation of changes to the scope of the Work under the Contract pursuant to clause 5.3 to the extent that items listed in Annexure C (Lump Sum Breakdown) are relevant, and for no other purpose.

9.2.3. All payments due in terms of or as a consequence of this Contract shall be paid in accordance with the provisions as stipulated in Annexure C (Payment Terms).

9.3. Set-off

9.3.1. The Client may set-off or deduct from:

- 9.3.1.1. any amounts due to the Contractor under this Contract (including any amounts certified by the Client's Representative for payment by the Client to the Contractor); or
- 9.3.1.2. the amount available to the Client if it exercises its rights under the unconditional undertakings referred to in clause 9.4,
- 9.3.1.3. any liquid amounts due or which may become due from the Contractor to the Client in respect of this Contract or the Work under the Contract (unless they have been included in the Client's Representative's determination under clause 9.2.2).

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9.3.2. The Client may separately recover from the Contractor any debt owed by the Contractor to the Client under this Contract, even if the debt has not been included in the Client's Representative's determination under clause 9.2.2.

9.4. Securities

9.4.1. The Contractor must, within 28 (twenty eight) days of the last signature of this Contract, provide the Client with the security set out in the Information Schedule, each:

- 9.4.1.1. for the amount set out in the Information Schedule;
- 9.4.1.2. issued by a reputable bank or other financial institution acceptable to the Client; and
- 9.4.1.3. in the form set out in Annexure J (Security: Unconditional Undertakings), as security for the performance of its obligations under this Contract.

9.4.2. The Contractor may not take any steps whatsoever to:

- 9.4.2.1. prevent the issuer of those guarantees or the Client in respect of dealing with those guarantees; or
- 9.4.2.2. restrain the Client from exercising its rights under those guarantees.

9.4.3. The Client:

- 9.4.3.1. is not obliged to pay the Contractor interest on the proceeds of the guarantees referred to in clause 9.4.1 if the Client converts any of them into cash; and
- 9.4.3.2. does not hold the proceeds or money referred to in clause 9.4.1 on trust for the Contractor.

9.4.4. The Client must release:

- 9.4.4.1. 1 (one) of the guarantees provided in accordance with clause 9.4.1 within 14 (fourteen) days after receipt of a written request from the Contractor, which request may only be made after the Date of Practical Completion of the last Separable Portion; and
- 9.4.4.2. the other guarantee provided in accordance with clause 9.4.1 within 14 (fourteen) days after receipt of a written request from the Contractor, which request may only be made after the Client's Representative has issued to the Client and the Contractor the certificate pursuant to clause 7.9.7.2.

9.4.5. The Contractor is responsible for all stamp duty (including penalties, if applicable) payable in connection with:

- 9.4.5.1. the guarantees provided by the Contractor under clause 9.4.1; and
- 9.4.5.2. any demands made on those unconditional undertakings.

9.5. Final payment

9.5.1. Within 2 (two) months after the Date of Practical Completion, (or if there are Separable Portions, then within 2 (two) months after the Date of Practical Completion of the last Separable Portion) or within such extended period as the Client's Representative may permit in writing, the Contractor must provide to the Client's Representative a final

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payment claim titled “Final Payment Claim”.

- 9.5.2. The Contractor must include in the Final Payment Claim the portion of the Contract Price which the Contractor considers to be due from the Client in respect of this Contract.
- 9.5.3. After the expiration of the period referred to in clause 9.5.1, the Contractor is barred from making any claim against the Client in respect of the Contract Price which has not been made.
- 9.5.4. After the expiration of the 2 (two) month period referred to in clause 9.5.1, any other claim which the Contractor could have made against the Client in contract, delict or otherwise but which has not been made is barred.

9.6. Final Payment Certificate

9.6.1. The Client’s Representative:

- 9.6.1.1. must within 14 (fourteen) days after receipt of the Contractor’s Final Payment claim;
or
- 9.6.1.2. if the Contractor does not comply with its obligations under clause 9.5.1, may at any time, issue to the Contractor and the Client a certificate titled “Final Payment Certificate”, which states:
 - 9.6.1.2.1. the Contract Price adjusted according to the provisions of this Contract;
 - 9.6.1.2.2. the value of the Work under the Contract performed by the Contractor assessed by the Client’s Representative and taken into account in determining the amount certified for payment to the Contractor by the Client, or to the Client by the Contractor (as the case may be), in the last certificate issued pursuant to clause 9.2.2;
 - 9.6.1.2.3. any money which is due or which may become due to the Client in respect of this Contract or the Work under the Contract; and
 - 9.6.1.2.4. the amount certified as then being due for payment to the Contractor by the Client, or to the Client by the Contractor (as the case may be).

9.6.2. Where an amount is due from the Client to the Contractor in respect of the Final Payment Certificate, the Client must pay the Contractor the amount stated in the Final Payment Certificate as due from the Client to the Contractor on the date set out in the Information Schedule after receipt by the Client of the Final Payment Certificate.

9.6.3. Where an amount is due from the Contractor to the Client in respect of the Final Payment Certificate, the Contractor must, within 30 (thirty) days after receipt of the Final Payment Certificate and a Valid Tax Invoice for the certified amount, pay the Client the amount stated in the Final Payment Certificate as due from the Contractor to the Client.

9.7. Taxes

9.7.1. Unless otherwise expressly provided in this Contract, the Contract Price includes, and the Contractor must at its own cost pay, all taxes (including payroll tax, levies, duties, and taxes and duties arising from importation of goods or services) due, imposed and/or charged in connection with the Work under the Contract.

9.7.2. If any supply made under this Contract is or becomes subject to the payment of VAT, the

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Party to whom the supply is made (“the Recipient”) must, upon the issue of a Valid Tax Invoice to the Recipient, pay to the Party making the supply (“the Supplier”), as consideration in addition to any consideration payable or to be provided elsewhere in this Contract an additional amount on account of VAT.

- 9.7.3. Any amount in respect of VAT payable under clause 9.7.2 must be paid to the Supplier.
- 9.7.4. If any Party is required to reimburse or indemnify the other Party for a cost, expense or liability (“Cost”) incurred by the other Party, the amount of that Cost for the purpose of this Contract is the amount of the Cost incurred including VAT.
- 9.7.5. The Recipient will only be able to make payments of VAT to a registered VAT Vendor (as defined in the VAT Act).

10. INDEMNITIES AND LIMITATIONS

10.1. Indemnity by the Contractor

10.1.1. Save as otherwise expressly provided for in this clause 10, neither Party, nor its officers, employees, agents or assigns shall be liable to the other for any indirect, consequential, incidental or contingent damages, including but not limited to a loss of any part of the Works, loss of profits or loss of any contract arising out of a breach of this Contract or any negligent act or omission on its/their part or any cause whatsoever, except in relation to:

- 10.1.1.1. wilful misconduct, or in relation to any fraud, gross negligence illegal or unlawful acts;
- 10.1.1.2. the payment of penalties;
- 10.1.1.3. amounts recovered by insurance proceeds by either Party; or
- 10.1.1.4. breach of intellectual property warranties given to the Client by the Contractor.

10.1.2. The Contractor indemnifies and holds the Client Parties harmless against and from all losses, damages, claims, actions and costs (including but not limited to costs on an attorney and own client scale), or liability in respect thereof suffered and incurred by the Client arising out of or in relation to:

- 10.1.2.1. the infringement by the Contractor or any Subcontractor of any third party intellectual property rights;
- 10.1.2.2. physical loss of or damage to any property of the Client other than the Works;
- 10.1.2.3. personal injury, disease or illness to, or death of, persons, to the extent that such losses, damages, claims and costs do not arise out of the negligence of the Client; and/or
- 10.1.2.4. any spillage, emission, fire, explosion, pollution and/or any other hazardous environmental conditions or occurrences (“Environmental Issue”) at the Site as a result of or arising from any negligent or wilful act or omission of the Contractor or the Contractor’s Personnel, in which case, the Contractor shall, in addition, be obliged to at its expense, take all such steps as are necessary to clean up and/or remedy such Environmental Issue and any damage caused thereby, to the reasonable satisfaction of the Client, except to the extent that such claims, actions, proceedings and/or losses are solely caused by the negligence or wilful misconduct of any Client Party.

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10.2. Limitation on Claims

10.2.1. Notwithstanding anything to the contrary contained in this Contract, the Contractor's maximum aggregate liability for any loss and all damages under or arising directly or indirectly from this Contract is limited as follows:

- 10.2.1.1. The Contractor's liability to the Client for loss of or damage to the Client's property is limited to 10% of the Contract Value.
- 10.2.1.2. The Contractor's liability for defects due to his design is limited to the total limit of liability. However with the exception that the design responsibility is inherently that of the Contractor because a defect in the design will cause the execution of the works to be affected prior to completion.
- 10.2.1.3. Contractor's liability to the Client (including liability for its agents, representatives, Contractor's employees or Subcontractors) is limited to instances where the liability arises due to the negligence of the Contractor and only in respect of those for whom the Contractor is held in law to be vicariously liable.
- 10.2.1.4. The Contractor's total liability to the Client for all matters in aggregate arising under or in connection with this Contract, other than for the correction of Defects, shall not exceed the amount so stated in the Information Schedule;
- 10.2.1.5. To the extent that the liability arises from a subcontract or is otherwise attributable to a Subcontractor, the liability of the Contractor to the Client in connection therewith is limited to the amount which is recoverable from the Subcontractor in question (the Contractor being required to take action in relation to the recovery of any such liability).

10.2.2. Neither the total aggregate limitation of liability, nor any sub cap referred to in clause 10.2.1 nor the limit of the Contractor's liability to the Client for damage to or loss of any property of the Client (other than the Works) set out above will, however, apply in relation to any liability of the Contractor, or any Subcontractor as the case may be, to the extent of any amount that either Party recovers or, but for the failure by the Contractor to comply with its obligations under clause 11.2, would have been recoverable under any insurance policy effected and maintained by the Client as the insuring Party in terms of this Contract.

10.2.3. To the extent that any insurance proceeds are recovered by the Client for the event giving rise to the claim in question, then the amount recoverable from the Contractor in respect of any claim under an indemnity granted in clause 10.1 shall be reduced in accordance with the following provisions:

- 10.2.3.1. if the insurance proceeds are received before the Contractor pays the amount due to the Client in terms of the relevant indemnity claim, the indemnity amount claimed from the Contractor shall be reduced by the insurance proceeds received less any costs incurred by the Client in recovering those proceeds;
- 10.2.3.2. if the insurance proceeds are received after the Contractor pays the amount due to the Client in terms of the relevant indemnity claim, the Client shall pay to the Contractor as a refund the lesser of the indemnity amount claimed on the one hand and the insurance proceeds less the costs of recovering such proceeds on the other.

10.2.4. The limitation of liability set out in this clause 0 does not limit the liability of the Contractor where liability:

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10.2.4.1. arises from cases of death or personal injury, unless attributable to any negligence, wilful act or breach of this Contract by the Client, the Client's Personnel or any of their respective agents;

10.2.4.2. arises from cases of third party property damage unless attributable to any negligence, wilful act or breach of this Contract by the Client, the Client's Personnel or any of their respective agents.

11. RISK OF LOSS OR DAMAGE AND INSURANCE

11.1. Responsibility for care of the Site and the Works

11.1.1. The Contractor is responsible for the care of the Site from when the Client makes the Site available to the Contractor under clause 2.1 to the date on which the certificate certifying the Date of Practical Completion has been issued by the Client's Representative.

11.1.2. The Contractor is responsible for the care of the Works to the date on which the certificate certifying the Date of Practical Completion has been issued by the Client's Representative. The Contractor must promptly make good loss from, or damage to, any part of the Works whilst it is responsible for its care. Provided that any such losses and/or damages emanates as a result of a negligent and/or willful act and/or omission by the Contractor.

11.2. Insurance

11.2.1. Insurance to be effected by the Client;

11.2.1.1. Insurance of Works and Contract Works SASRIA

Without limiting the Contractor's obligations and responsibilities under this Contract; the Client shall insure (subject to the terms, conditions, exceptions and limitations of such insurance) against physical loss or damage to the Works including temporary work or to any materials for incorporation therein during the:

11.2.1.1.1. period of construction of the Works; and

11.2.1.1.2. Defects Correction Period for loss or damage arising from a cause occurring on Site prior to the commencement of the Defects Correction Period and for loss or damage to the Works occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with clause 7.9 Obligations after Practical Completion herein;

provided always that:

11.2.1.1.3. The obligation of the Client to insure under this clause shall be limited to providing the Contract Works and Contract Works SASRIA insurance (as described in the insurance manual provided by the Client).

11.2.1.1.4. The Contractor is liable for the Deductible(s) payable as set out in the Information Schedule. In the event of any insured claim for loss or damage to the Works or materials which are the subject of more than one contract with the Client the Deductible shall be applied proportionately to the total amount of such insured claim.

11.2.1.1.5. The Contractor shall comply with and be subject to the terms, exceptions, conditions and limitations of the insurance effected by the Client pursuant to this clause.

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11.2.1.1.6. Nothing in this clause shall render the Client liable to insure against loss or damage to materials or equipment not for incorporation into the Works.

11.2.1.2. Third Party Liability Insurance

Without limiting the Contractor's obligations and responsibilities under this Contract; the Client shall insure (subject to the terms, conditions, exceptions and limitations of such insurance) their legal liability for compensation and claimant's costs and expenses in respect of accidental loss of or damage to property (not being loss or damage to property to which Insurance of Works applies) arising out of execution of the Works or in carrying out of the Contract.

Provided always that:

11.2.1.2.1. The obligation of the Client to insure under this clause shall be limited to providing the Third-Party Liability insurance, (as described in the insurance manual provided by the Client) and shall be for an indemnity of such a sum as together with the amount of a similar liability (if any) of the Client or any of his Contractors in respect of the same occurrence or series of occurrences arising out of one event, does not exceed the Indemnity Limit specified in the Information Schedule.

11.2.1.2.2. The Contractor is liable for the Deductible(s) payable as set out in the Information Schedule in respect of any claim made by or against the Contractor or his Subcontractors under the insurance effected by the Client.

11.2.1.2.3. The Contractor shall comply with and be subject to the terms, exceptions, conditions and limitations of the insurance effected by the Client pursuant to this clause.

11.2.1.2.4. Nothing in this clause shall render the Client liable to insure against:

11.2.1.2.4.1. any claim made against the Contractor by an employee of the Contractor for death or personal injury arising out of and in the course of his employment;

11.2.1.2.4.2. loss of or damage to property in the ownership, care, custody or control of the Contractor;

11.2.1.2.4.3. death or personal injury and loss of or damage to property caused by, through or in connection with the ownership, possession or use of any private car or goods-carrying vehicle.

11.2.1.3. Marine Insurance

11.2.1.3.1. Without limiting the Contractor's obligations and responsibilities under this Contract; the Contractor shall insure (subject to the terms, conditions, exceptions and limitations of such insurance) against "All risks" of physical loss or damage including institute riots, strikes and war to goods and/or merchandise of any description, used for or to be incorporated into the Works and at the risk of the Contract, during marine transit by conveyances and/or vessels of any type and/or barges (excluding inland waterway). The Basis of Indemnity and Deductible are stated in the Information Schedule.

11.2.1.3.2. The Contractor is liable for the Deductible(s) payable as set out in the Information Schedule in respect of any claim made by the Contractor or his Subcontractors under the insurance effected by the Client.

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11.2.1.4. Single Project Professional Indemnity Insurance

- 11.2.1.4.1. Without limiting the Contractor’s obligations and responsibilities under this Contract; the Contractor shall maintain (subject to the terms, conditions, exceptions and limitations of such insurance) professional indemnity insurance coverage in place for a period commencing from the date of Contract and to continue for a period of 72 (seventy-two) months, subject to the Indemnity Limit and Deductible stated in the information Schedule.
- 11.2.1.4.2. The Contractor is liable for the Deductible(s) payable as set out in the Information Schedule in respect of any claim made by the Contractor or his Subcontractors under the insurance effected by the Client.

11.2.2. Insurance to be effected by the Contractor

Without limiting the Contractor’s obligations and responsibilities under this Contract; the Contractor shall effect:

11.2.2.1. Constructional Plant Insurance

- 11.2.2.1.1. Constructional Plant and other things brought onto Site by the Contractor or Subcontractors including but not limited to site accommodation and other temporary structures and the contents thereof for not less than the full replacement value at Site. The insurance shall be on an “All Risks” basis and include cover for transit to Site whether by conveyance or under its own motive power until it is no longer required on Site. Such insurance shall include SASRIA insurance.

11.2.2.2. Motor Vehicle Liability Insurance

- 11.2.2.2.1. Against legal liability to third parties for death, bodily injury or damage to third party property arising out of the use of motor vehicles licensed for road use owned, hired, leased or borrowed by the Contractor or Subcontractors for a limit of not less than that stated in the Information Schedule including passenger liability (authorized or unauthorized).

11.2.2.3. Insurance against Accidents to Workmen (COID) / Client’s Liability

- 11.2.2.3.1. Against any liability under the Compensation for Occupational Injuries and Diseases Act of 1993, as may be amended and any liability arising from compliance with the provisions of the Occupational Health and Safety Act No 85 of 1993, as may be amended and shall further ensure that Subcontractors have insured their workmen in terms of this legislation.
- 11.2.2.3.2. **Client’s liability insurance** with an indemnity limit of no less than that stated in the Information Schedule.

12. DEFAULT AND TERMINATION

12.1. The Client’s remedy notice

12.1.1. If the Client considers that the Contractor is in breach of this Contract, the Client may give the Contractor:

- 12.1.1.1. a written notice specifying the date by which the Contractor must rectify the breach to the extent that the breach is capable of rectification; or

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12.1.1.2. if the breach is incapable of rectification, a written notice specifying the Client's requirements to mitigate the effects of that breach.

12.1.2. If the Client gives the Contractor a written notice referred to in clause 12.1.1.1:

12.1.2.1. the Contractor must comply with the written notice; and

12.1.2.2. the Contractor must give the Client's Representative a Program to rectify the breach or mitigate the effects of the breach, as the case may be, in accordance with the terms of the Client's written notice.

12.1.2.3. If the Contractor fails to rectify the breach or overcome or mitigate the effects of the breach, as the case may be, in accordance with the terms of a written notice referred to in clause 12.1.1.1; the Client may take any action it considers appropriate to:

12.1.2.3.1. rectify that breach; or

12.1.2.3.2. mitigate the effects of the breach; and

12.1.2.3.3. the Contractor must indemnify the Client against any damage, expense, loss or liability the Client suffers or incurs in respect of that action, unless that damage, expense, loss or liability arises from the negligence or wilful default of the Client.

12.1.2.4. The Contractor must pay compensation to the Client for damages suffered by the Client because of that breach, such compensation:

12.1.2.4.1. to be agreed by the Parties; or

12.1.2.4.2. failing agreement, to be determined by the Client's Representative.

12.2. Termination following default

The Client may terminate this Contract by giving the Contractor 7 (seven) days' written notice if the Contractor has not complied with a written notice given under clause 12.1.1.

12.3. Termination for insolvency

Either Party may terminate this Contract, with immediate effect, by written notice to the other Party if the other Party is Insolvent.

12.4. Termination for Change of Control

12.4.1. If there is a material change in control of the Contractor without the Client's consent, the Client may terminate this Contract with immediate effect.

12.4.2. For the purposes of clause 12.4.1, a "change of control" means the acquisition or control, directly or indirectly, of the voting rights or of the issued share capital of the Contractor or the right to appoint and/or remove all or the majority of the members of the board of directors or other governing body of the Contractor, the power to direct or cause the direction of the management, to merge and exercise significant influence on the management or policies of the Contractor, whether obtained directly or indirectly, and whether obtained by ownership of share capital, the possession of voting rights, through contract or otherwise.

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12.5. Consequence of termination under clause 12.2, 12.3 and 12.4

12.5.1. If the Client gives the Contractor a written notice pursuant to any of clauses 12.2, 12.3 and 12.4, the Contractor must:

- 12.5.1.1. cease the performance of the Work under the Contract within the time specified in the written notice;
- 12.5.1.2. ensure that the Site is left in a safe condition and the Work under the Contract is properly secured; and
- 12.5.1.3. hand over to the Client all Documentation.

12.5.2. If following termination of this Contract for any reason the Client requires the use of any Constructional Plant for the purposes of completing or having others complete the Work under the Contract, the Client's Representative may give a written direction to the Contractor at any time before the Constructional Plant is removed from the Site, requiring the Contractor to allow the Client or its nominee to use any Constructional Plant.

12.5.3. If the Contractor receives a direction pursuant to clause 12.5.2:

- 12.5.3.1. the Contractor must comply with that direction; and
- 12.5.3.2. the Client must pay the Contractor reasonable compensation for the use of the Constructional Plant items.

12.6. Termination for convenience

12.6.1. Notwithstanding any other provision of this Contract:

- 12.6.1.1. the Client may at its sole discretion terminate this Contract by giving 90 (ninety) days' written notice to the Contractor; and
- 12.6.1.2. the Contractor must:
- 12.6.1.3. cease the performance of the Work under the Contract within the time specified in the written notice;
- 12.6.1.4. ensure that the Site is left in a safe condition and the Work under the Contract is properly secured; and
- 12.6.1.5. hand over to the Client all Documentation.

12.6.2. If for any reason a purported termination under any of clauses 12.2, 12.3 or 12.4 or at general law by the Client is held to be ineffective, the purported termination is not a breach or repudiation of this Contract and must be treated as having been effected under clause 12.6.1 except that the Contractor is not entitled to the compensation referred to in clause 12.6.4.3.

12.6.3. If this Contract is terminated pursuant to clause 12.6.1.1, the Contractor may, after demobilisation from the Project Site, submit a statement in a form approved by the Client's Representative setting out:

- 12.6.3.1. the value of the Work under the Contract performed by the Contractor;
- 12.6.3.2. except to the extent already covered by a payment under clause 12.6.3.1, the cost

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of materials ordered for the Works to the extent the Contractor cannot cancel such orders, provided that; and:

- 12.6.3.2.1. upon payment by the Client, the unencumbered title to the materials passes to the Client; and
- 12.6.3.2.2. the materials have not been prematurely ordered; and
- 12.6.3.2.3. reasonable demobilization costs incurred by the Contractor.

12.6.4. Following receipt of a statement provided in accordance with clause 12.6.3, the Client's Representative must, within 14 (fourteen) days, determine the amount payable in respect of that statement and issue a certificate to the Client and the Contractor setting out that determination showing:

- 12.6.4.1. the Client's Representative's assessment of the value of the items stated in the statement provided in accordance with clause 12.6.3;
 - 12.6.4.2. the value of the Work under the Contract performed by the Contractor, assessed by the Client's Representative and taken into account in determining the amount certified for payment to the Contractor by the Client, or to the Client by the Contractor (as the case may be), in the last certificate issued pursuant to clause 9.2.2;
 - 12.6.4.3. the amount set out in the Information Schedule;
 - 12.6.4.4. any money which has been previously set-off or deducted under clause 9.3;
 - 12.6.4.5. any money which is due or which may become due from the Contractor to the Client in respect of this Contract or the Work under the Contract; and
 - 12.6.4.6. the amount certified as then being due for payment to the Contractor by the Client, or to the Client by the Contractor (as the case may be).
- 12.6.5. Where an amount is due from the Client to the Contractor in respect of a certificate issued pursuant to clause 12.6.4, the Client must pay the Contractor the amount certified as payable by the Client's Representative under clause 12.6.4 by the time for payment set out in the Information Schedule after receipt by the Client's Representative of the statement provided in accordance with clause 12.6.3; and
- 12.6.6. Where an amount is due from the Contractor to the Client in respect of a certificate issued pursuant to clause 12.6.4, the Contractor must, within 30 (thirty) days after receipt of that certificate, pay the Client the amount stated in that certificate as due from the Contractor to the Client.
- 12.6.7. The Contractor is not entitled to any other compensation, including for any consequential costs, losses or damages.

12.7. Preservation of rights on termination

Termination of this Contract for any reason does not affect the rights of a Party that arise before the termination, or as a consequence of the event or occurrence giving rise to the termination, or as a consequence of the breach of any obligation under this Contract which continues to take effect after termination. All limitations and exclusions of liability survive termination.

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12.8. Return of documents upon termination

If directed by the Client’s Representative on the termination of this Contract for any reason, the Contractor shall, within 48 (forty eight) hours of any request to do so, deliver to the Client all designs, documents, materials and other things intended for use in connection with the Work under the Contract or incorporation into the Works.

13. GENERAL PROVISIONS

13.1. Communications and Notices

13.1.1. Any communication or notice required to be given or made under the Contract shall be in Writing and in English and shall be deemed:

13.1.1.1. To have been duly made or given if:

13.1.1.1.1. sent by electronic mail system (“email”) to the relevant e-mail addressee provided for in the Information Schedule, with the exception of any communication which may have a time and /or cost implication (which shall be hand delivered with a transmittal notice to the addressee); and

13.1.1.1.2. correctly uploaded onto a data system notified by the Client to the Contractor in the Information Schedule for purposes of the submission of notices in terms of this Contract; or

13.1.1.2. Any communication or notice that:

13.1.1.2.1. is transmitted by email to the addressee using the addressee’s email address shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the date of successful transmission thereof, provided that if it was sent after business hours (17h00), then it shall be deemed to be delivered within 4 (four) hours of the beginning of the next Business Day after it is transmitted; and

13.1.1.2.2. has been uploaded in the manner provided for in clause 13.1.1.1 shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the date of successful uploading thereof, provided that if it was uploaded after business hours (17h00), then it shall be deemed to be submitted within 4 (four) hours of the beginning of the next Business Day after it is uploaded.

13.2. Domicilium

13.2.1. The Parties choose their *domicilium citandi et executandi* for all purposes of giving of notice, the serving of any process and for any other purpose under the Contract, the address set out in Annexure “D” (Information Schedule).

13.2.2. Either of the Parties shall be entitled from time to time, by notice in writing to the other to vary its domicilium to any other address within the Republic of South Africa, provided that the change shall become effective on the 7th (seventh) day after the receipt of the notice.

13.3. Confidentiality

13.3.1. Each Party shall:

13.3.1.1. keep confidential the Confidential Information of the other Party and use the same

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care to do so as it uses to protect its own Confidential Information; and

- 13.3.1.2. not disclose or grant access to the other Party's Confidential Information or any part thereof to any other person unless it is necessary in order to perform its obligations in terms of this Contract.
- 13.3.2. The Contractor agrees and undertakes that the Confidential Information belonging to the Client shall only be used for the purpose of performing the Works in terms of this Contract and for no other purpose whatsoever. To this end the Contractor shall be entitled to disclose the Confidential Information to the Contractor's Personnel to the extent necessary for the purpose of performing the Works if such disclosure is made in good faith and in each case only to the extent reasonably necessary in the circumstances.
- 13.3.3. The obligations set out in clause 13.3.1 shall not apply to any:
 - 13.3.3.1. Confidential Information which the receiving Party can demonstrate is already in the public domain or becomes available to the public through no breach by the receiving Party;
 - 13.3.3.2. Confidential Information which was rightfully in the receiving Party's possession without obligation of confidence prior to receipt from the disclosing Party, as proven by its Written records;
 - 13.3.3.3. Confidential Information which can be proved to have been rightfully received by the receiving Party from a third party without obligation of confidence;
 - 13.3.3.4. Confidential Information which is independently developed by the receiving Party as proven by its Written records;
 - 13.3.3.5. Confidential Information which is approved for release with the prior Written consent of the disclosing Party; and
 - 13.3.3.6. disclosure of Confidential Information which is required by law to be disclosed or must be disclosed in order to comply with a judicial order or decree or the rules of a stock exchange, provided that the receiving Party has (where reasonably possible) given the disclosing Party Written notice of such request such that the disclosing Party has an opportunity to defend, limit or protect such disclosure.
- 13.3.4. The Contractor shall return (or if so instructed by the Client, destroy) all of the original Client's Confidential Information and any copies or reproductions thereof (both written and electronic) in its possession and in the possession of any third party to whom it has disclosed such Confidential Information:
 - 13.3.4.1. at any time upon the Client giving written notice to the Contractor to do so (provided that the Contractor may retain copies thereof to the extent necessary to enable the Contractor to continue to perform the Works); or
 - 13.3.4.2. in any event, within 14 (fourteen) days of the termination of this Contract.
- 13.3.5. The taking of images (whether photographs, video footage or otherwise) of the Site or the Works or any portion thereof, in the course of construction and after completion, is restricted and requires the prior written authorisation of the Client; save that the Client shall be considered to have given permission to the Contractor to take images of the Works to the extent required for the purpose of complying with this Contract. All images taken by on or behalf of the Contractor for any purpose in connection with this Contract shall be Results of the Services and the rights therein shall vest exclusively in the Client.

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13.3.6. The rights and obligations contained in this clause 13.3 shall continue in full force and effect for a period of 3 (three) years from the date of completion or termination of the Contract.

13.4. Black Economic Empowerment

13.4.1. To the extent that Annexure D (Information Schedule) specifies that the Contractor should have a minimum percentage of its issued share capital or other equity, membership or partnership interest beneficially directly or indirectly owned by HDPs or Black Persons or maintain a particular minimum black economic empowerment (“BEE”) rating, the Contractor shall, upon request from the Client from time to time, provide the Client with:

13.4.1.1. such documentary proof of the percentage of its equity which is directly or indirectly owned by HDPs or Black Persons as may be reasonably acceptable to the Client; and/or

13.4.1.2. a rating certificate from a duly accredited BEE rating agency, reflecting the Contractor’s overall BEE rating (“Rating”) in terms of the scorecard published in terms of the BEE Act or the Mining Charter Scorecard, as the case may be.

13.4.2. The Contractor shall immediately notify the Client if there is any material change (in particular if there is a reduction below the minimum requirements set out in Annexure D (Information Schedule)), in the percentage of its equity which is directly or indirectly owned by HDPs or Black Persons and/or its Rating, as the case may be, and if, in the reasonable opinion of the Client, this will have an impact on its own BEE status or rating, it shall in writing notify the Contractor accordingly, and should the Contractor fail to remedy this within 90 (ninety) days of being requested to do so by the Client, the Client shall be entitled to immediately terminate this Contract on written notice to the Contractor.

14. DISPUTE RESOLUTION

14.1. Determination of Disputes

14.1.1. All Disputes in respect of this Contract or the Work under the Contract shall be resolved or determined, as the case may be, in accordance with the terms and procedures set out in this clause.

14.1.2. Written notice of a Dispute must be given to the other Party. If the Dispute relates to a claim or other entitlement of the Contractor, the notice shall include sufficient detail and supporting particulars to enable the Client to consider and assess the claim or entitlement and the notice shall be signed by the Contractor’s chief executive/operating officer.

14.1.3. If a Dispute cannot be resolved between the Client’s Representative and the Contractor’s Representative within 15 (fifteen) Business Days of such Dispute arising, then such Dispute shall be submitted by either Party for determination as follows:

14.1.3.1. Firstly, either Party may refer the dispute or difference to the Mine Manager or Managing Director of the Parties for resolution; and

14.1.3.2. Secondly, failing resolution by the Parties as set out above in clause 14.1.3.1. either Party may refer the Dispute to adjudication. The adjudicator to be agreed between the Parties failing which the Chairman for the time being of Association of Arbitrators (Southern Africa) (or its successor) or his nominee to appoint a suitable adjudicator. The adjudicator’s decision will be binding on the Parties unless disputed by either Party within 14 (fourteen) days of the decision and thereafter referred to arbitration.

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14.1.4. Only a director of a Party, or their nominee in writing for such purpose, shall be entitled to submit a Dispute to arbitration in terms hereof.

14.2. Arbitration

14.2.1. Should either Party dispute the adjudicator's decision as per clause 14.1.3.2 either Party may, after giving written notice ("the Arbitration Notice") to the other Party of its intention to do so, refer such Dispute to arbitration by a single arbitrator to be appointed by agreement between the Parties or, failing agreement within 10 (ten) Business Days of receipt of the Arbitration Notice, appointed, at the written request of either Party (which request shall be copied to the other Party), by the Chairman for the time being of Association of Arbitrators (Southern Africa) (or its successor) or his nominee.

14.2.2. The service of the notices under clauses 14.1.2, 14.1.3.1 and 14.1.3.2. is a condition precedent to the commencement of the arbitration proceedings in respect of a Dispute.

14.2.3. Unless otherwise expressly agreed by the Parties in writing:

14.2.3.1. The Parties may agree on the arbitration procedure and on the arbitrator, but failing agreement within 7 (seven) days of a Party delivering notice to the other Party that it wishes to institute arbitration proceedings, the arbitration shall take place in accordance with the Association of Arbitrators (Southern Africa) Arbitration Rules in force at the time of the dispute.

14.2.3.2. The appointing authority shall be the Association of Arbitrators (Southern Africa). The number of arbitrators shall be 1 (one).

14.2.3.3. Unless agreed otherwise the arbitration shall be administered by the Parties.

14.2.3.4. The place of arbitration shall be Sandton, Johannesburg, South Africa.

14.2.3.5. The arbitration proceedings shall be conducted as expeditiously as possible but the time periods provided for in Section 23(a) of the Arbitration Act 42 of 1965 (as amended) ("the Arbitration Act") shall not apply thereto.

14.2.3.6. The award of the arbitrator shall be final and binding and not subject to appeal.

14.2.3.7. The provisions of this clause 14.2.3 constitute an irrevocable consent by the Parties to the arbitration proceedings contemplated in terms hereof and neither of the Parties shall be entitled to withdraw from the provisions hereof or claim at any arbitration proceedings contemplated herein that he is not bound hereby or such proceedings.

14.2.3.8. The provisions of this clause 14.2.3 are severable from the rest of this Contract and shall remain in effect despite the termination, cancellation, invalidity or alleged invalidity of this Contract for any reason whatsoever.

14.2.4. Nothing in this clause 14 shall, however, preclude either Party from seeking interim and/or urgent relief from a Court of competent jurisdiction and to this end the Parties hereby consent to the jurisdiction of the South Gauteng High Court.

14.3. Dispute resolution not to delay performance of the Work under the Contract

14.3.1. Notwithstanding the other provisions of this clause 14, the Contractor must:

14.3.1.1. proceed without delay to continue to perform the Work under the Contract and its

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other obligations under this Contract; and

14.3.1.2. comply with all directions of the Client’s Representative including any direction in respect of a dispute or difference being dealt with in accordance with clause 14.

15. ADHERENCE TO ANTI-BRIBERY LAWS AND POLICIES

15.1. Parties warranty

15.1.1. The Parties warrant for the duration of the Contract and until completion of all the Works, on behalf of either Party, its employees, Subcontractors and agents:

15.1.1.1. to comply with all international laws and regulations relating to the prevention and combating of bribery, corruption, money laundering and other economic crime to which it or its shareholders is or are (as the case may be) subject, including those of any jurisdiction where it conducts business;

15.1.1.2. to observe the Client’s anti-corruption and anti-economic crime compliance Programs, policies and procedures (“anti-corruption and anti-economic crime Program”) in place to enable compliance with all anti-bribery, anti-corruption, anti-money laundering and anti-economic crime laws, regulations and/or policies to which it is subject, including but not limited to the provisions of the United Kingdom Bribery Act of 2010, the US Foreign Corrupt Practices Act, the South African Prevention of Organised Crime Act of 1998, the South African Financial Intelligence Centre Act of 2001 and the South African Prevention and Combating of Corruption Activities Act of 2004 (collectively, the “anti-corruption and anti-economic crime legislation”);

15.1.1.3. to implement and/or enforce any code of ethical business practice that may be adopted from time to time by the Client and/or its shareholders;

15.1.1.4. not to engage in any corrupt activities; and

15.1.1.5. not to directly or indirectly pay, give or offer to pay or give any money, gift or anything else of value to attempt to influence any act or decision (including a decision not to act) of any person, so as to assist the Contractor and/or Client in obtaining or retaining business or directing business to any person/entity or to secure any improper advantage.

15.2. Contractor’s notice

15.2.1. The Contractor undertakes to notify the Client immediately it becomes aware that any of the warranties in clause 15.1 are false or that it has failed to comply with any of its obligations.

15.3. Work specific clause

Without limiting or derogating from clause 15.1, the Contractor warrants that it has not and undertakes not to offer, directly or indirectly, any advantage to third Parties and not to request, to promise or accept for its own benefit or for the benefit of a third party, illicit gifts with the purpose of obtaining favourable judgment in connection with the entering into of this Contract or in connection with the Works. The Contractor undertakes to impose such anti-corruption measures on its employees, Subcontractors and agents.

15.4. Anti-collusion warranty

15.4.1. The Contractor warrants that neither it nor any of its Affiliates has, and has verified that its Subcontractors have not, engaged, and undertakes that it and its Affiliates and Subcontractors will not engage, in any collusive practice in connection with the matters

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contemplated in this Contract.

15.4.2. For the purpose of this clause “collusive practices” means any agreement (which includes without limitation a contract, arrangement or understanding, whether or not legally enforceable) or concerted practice (being co-operative, or co-ordinated conduct between firms, achieved through direct or indirect contact, that replaces their independent action, but which does not amount to an agreement) between two or more persons (other than between the Consultant and its Affiliates), regardless of any technological, efficiency or other pro-competitive gains, involving the direct or indirect fixing of a purchase or selling price or any other trading condition, the division of markets by allocating customers, suppliers, territories, or specific types of goods or services and/or collusive tendering.

15.5. Right to audit

15.5.1. Should the Client be required to conduct an audit of all relevant books, records, systems, processes, procedures and documents of the Contractor, its relevant Affiliates and Subcontractors in order to verify compliance by the Contractor with its obligations in terms of this Contract and/or to assess any entitlement or claimed entitlement of the Contractor under this Contract.

15.5.2. The Contractor shall co-operate and render all assistance requested by the Client relating to such audit. In addition, the Contractor shall provide the Client access to all such books, records, systems, data and documents of the Contractor that are relevant to this Contract and/or any entitlement or claimed entitlement of the Client under this Contract and to any premises and personnel of the Contractor (and those of Subcontractors) for the purposes of conducting such audit. The Client shall have the right to take copies of any records and information they reasonably require to assist in connection with any such audit.

15.5.3. The Contractor shall maintain all data, records and documentation relating to this Contract and keep full and proper records in connection with the Works and all matters related thereto (whether contained in documents or in electronic format) for the duration of this Contract, and (save to the extent otherwise required to comply with clause 15.4.2) for a period of at least 5 (five) years after termination of this Contract or completion of the Works (as the case may be).

15.6. Client’s rights and remedies

15.6.1. Notwithstanding anything to the contrary, and without limiting or derogating from the Client’s other rights under this Contract or in Law:

15.6.1.1. the Client may, on written notice to the Contractor, terminate the Contractor’s appointment in terms of this Contract and expel it from the Site in the event of a breach by the Contractor of any of the warranties or undertakings in this clause 15. The provisions of clause 0 shall apply to such termination as if such expulsion had been made under clause 12.2;

16. PROTECTION OF PERSONAL INFORMATION (ACT)

16.1. Commencement

The provisions of this clause will only become operative on the Signature Date as stated in this Contract.

16.2. Processing limitations

It is recorded that, pursuant to its obligations under this Contract, the Service Provider will process Personal Information in connection with and for the purposes of the provision of the

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services for or on behalf of RBPlat and will act as RBPlat’s Operator for purposes of Protection of Personal Information Act (POPIA) no.4 of 2013.

The Parties have agreed on the following contractual clauses in order to adduce adequate safeguards with respect to the protection of Personal Information:

- 16.2.1. Unless required by law, Service Provider shall process the Personal Information only on behalf of RBPlat and in compliance with its instructions and this Contract; for the purposes connected with the provision of the Service Provider’s services or as specifically otherwise instructed or authorised by RBPlat in writing.
- 16.2.2. The Service Provider shall treat the Personal Information that comes to its knowledge or into its possession as confidential and shall not disclose it without the prior written consent of RBPlat.

16.3. Security measures

16.3.1. The Service Provider warrants that it shall secure the integrity of the Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss of, or damage to, or unauthorised destruction of the Personal Information; unlawful access to or processing of the Personal Information.

16.3.2. The Service Provider shall take reasonable measures to:

- 16.3.2.1. Identify all reasonable foreseeable internal and external risks to the Personal Information in its possession or under its control;
- 16.3.2.2. Establish and maintain appropriate safeguards against the risks identified;
- 16.3.2.3. Regularly verify that the safeguards are effectively implemented;
- 16.3.2.4. Ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards; and
- 16.3.2.5. Notify RBPlat of the risks identified and the safeguards established and implemented from time to time.

16.3.3. The Service Provider shall:

- 16.3.3.1. Have due regard to generally accepted information security practices and processes which may apply to it;
- 16.3.3.2. Comply with RBPlat’s information security practices and procedures and applicable industry or professional rules and regulations, of which RBPlat undertakes to keep the Service Provider informed from time to time; and
- 16.3.3.3. Within five (5) business days of a request from RBPlat, the Service Provider shall provide to RBPlat a written explanation and full details of the appropriate technical and organisational measures taken by or on behalf of the Service Provider to demonstrate and ensure compliance with this clause.

16.4. The Service Provider’s general obligations with regards to Personal Information

16.4.1. In addition to the other obligations set out in this clause, the Service Provider shall:

- 16.4.1.1. Take reasonable steps to ensure the reliability of any of its staff who have access to

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the Personal Information;

- 16.4.1.2. Limit access to the Personal Information only to those staff who need to know to enable the Service Provider to perform the services and ensure that staff used by the Service Provider to provide the services have undergone training in the care and handling of the Personal Information;
- 16.4.1.3. Deal promptly and properly with all reasonable inquiries from RBPlat relating to its processing of the Personal Information and provide to RBPlat copies of the Personal Information in the format reasonably specified by RBPlat;
- 16.4.1.4. Promptly inform RBPlat of its inability to comply with RBPlat’s instructions and this clause, in which case RBPlat is entitled to suspend the processing of Personal Information and/or terminate this Contract;
- 16.4.1.5. Provide RBPlat with full co-operation and assistance in relation to any requests for access or correction or complaints made by Data Subjects;
- 16.4.1.6. At the request of RBPlat or any regulatory body, submit its Personal Information processing facilities for audit of the processing activities covered by this Contract.

16.5. Notifications

16.5.1. The Service Provider must notify RBPlat in writing:

- 16.5.1.1. within 1 (one) business day or otherwise as soon as reasonably possible if any Personal Information has been or may reasonably be believed to have been accessed or acquired by an unauthorised person or if a breach has occurred with reference to its use of the Personal Information under this Contract. The notification must provide sufficient information to allow affected Data Subjects to take measures against the potential consequences of the compromise, including, if known to the Service Provider, the identity of the unauthorised person who may have accessed or acquired the Personal Information;
- 16.5.1.2. within 3 (three) business days of receipt thereof, of any request for access to or correction of the Personal Information or complaints received by the Service Provider relating to RBPlat’s obligations in terms of POPIA and provide RBPlat with full details of such request or complaint; and
- 16.5.1.3. Promptly of any legally binding request for disclosure of Personal Information or any other notice or communication which relates to the processing of the Personal Information from any supervisory or governmental body.

16.6. Return or destruction of Personal Information

Upon termination of this Contract or upon request by RBPlat, the Service Provider shall return any material containing, pertaining or relating to the Personal Information disclosed pursuant to this Contract to RBPlat. Alternatively, the Service Provider shall, at the instance of RBPlat, destroy such material and shall certify to RBPlat that it has done so, unless the law prohibits the Service Provider from doing so. In applying this destruction alternative, the Service Provider shall provide RBPlat with the Certificate of Destruction to confirm that the destruction was done in a manner that the Personal Information cannot be reconstructed to its original format. In that case, the Service Provider warrants that it will guarantee the confidentiality of the Personal Information and will not actively process the Personal Information any further.

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16.7. Warranties

The Service Provider warrants that in addition to the warranties stated in the rest of this Contract, it shall comply with all regulatory and statutory requirements which impact on or relate to Service Provider and the Services, including, but not limited to, POPIA.

16.8. Indemnities

The Service Provider hereby indemnifies and holds harmless RBPlat from any and all penalties, claims, loss or damage arising from any claim or action brought against RBPlat and arising from or due to Service Provider's breach of its information protection obligations set out in this clause.

16.9. Ownership of Information

The Service Provider acknowledges and agrees that RBPlat retains all right, title and interest in and to the Personal Information.

The Service Provider shall not possess or assert any lien or other right against or to such Personal Information and no such Personal Information shall be sold, assigned, leased or otherwise disposed of to third parties by the Service Provider or commercially exploited by or on behalf of the Service Provider or its sta

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DEFINITIONS AND INTERPRETATION

ANNEXURE A

A1 DEFINITIONS

In the Contract the following words and expressions shall have the meanings hereby assigned to them:

- “Acceleration Direction”** means the acceleration direction contemplated by clause 8.9.2;
- “Acceleration Direction Information Request”** means the acceleration direction information request contemplated by clause 8.9.3;
- “Accepted Program”** means the construction Program as developed horizons showing in detail the execution of the Works and is recorded and agreed by the Client as the Accepted Program on award of the contract;
- “Adjoining Property”** is any property adjoining the Mine Site;
- “Affiliate”** means, in respect of a Party, any company which is its holding company or its subsidiary or a subsidiary of such holding company;
- “Agent”** means Impala Bafokeng Resources Proprietary Limited, (Registration Number: 2002/013/162/07), a private company with limited liability duly incorporated under the law of the Republic of South Africa;
- “Arbitration Notice”** means the written notice given by either Party to refer such Dispute to arbitration by a single arbitrator to be appointed by agreement between the Parties;
- “Annexures”** means the annexures to this Contract, as those may be amended from time to time in accordance with the provisions of this Contract;
- “Author”** means any person, including a relevant employee of the Contractor or a Subcontractor or any other contributing person, who is the author of any Copyright Works, which are assigned or licensed to the Client under this Contract;
- “Authority”** means:
- (a) the national, provincial and local government, (as the case may be), including any governmental department or government or statutory authority; and
 - (b) any other Party under a Law which has a right to impose a requirement or whose consent is required by a legislative instrument with respect to, or in connection with, the Work under the Contract;
- “BEE Act”** means the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, including any regulations promulgated thereunder, any Codes issued in terms thereof, and any relevant sector charter/s applicable to the business of the

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Client published in terms thereof, all as amended from time to time;

- “Black Person”** means “black people” as defined in the BEE Act (as read with the Codes of Good Practice) from time to time;
- “Business Day”** is a day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- “Change Notice”** means a change direction as contemplated by clause 5.2.3;
- “Change Notice Information Request”** bears the meaning assigned to that term by clause 5.2.4;
- “Client”** [means Impala Bafokeng Resources Proprietary Limited, Registration Number 2002/013162/07;
- “Client’s Code Of Practice”** means the Contractor shall adhere to the Codes, Standards and Regulations, including but not limited to the documents listed in Annexure G (Drawings and Specifications) of the Contract. The Codes, Standards and Regulations shall also include the accepted international standards approved by the Client. The Codes, Standards and Regulations shall be applied by the Contractor in accordance with the Works under the Contract and updated when required. The Contractor is responsible for ensuring that the latest versions of the documents are available in providing the Works under the Contract. In the event that the abovementioned Codes, Standards, Regulations and accepted international standards contradict each other, the Contractor will be required to adhere to the most stringent provision, unless otherwise agreed by the Client in writing. Where there are conflicts between the Codes, Standards and Regulations the Contractor shall be required to notify the Client in writing so that the Client may be aware of the conflicts and the Contractors proposal on which Codes, Standards and Regulations which they intend following;
- “Client Parties”** means the Client and/or their affiliates, subsidiaries, holding companies (and their subsidiaries), directors, employees, officers, contractors or other representatives, including the Agent;
- “Client’s Personnel”** means the Client’s Representative and all other staff, labour and other employees of the Client and any other personnel notified to the Contractor, by the Client or the Client’s Representative, as Client’s Personnel;
- “Client’s Policies”** means the Client’s policies, procedures and standards relating to its business and operations, as listed under Annexure E (Client Policies), as amended from time to time, and which shall e available on request from the Contractor;
- “Client’s Procedure”** means the Contractor shall adhere to the Procedures as provided by the Client, including but not limited to the documents listed in Annexure G (Drawings and Specifications) of the Contract. The Procedures shall be applied by the Contractor in accordance with the Works under the Contract and updated by the Client when required. The Contractor is responsible for ensuring that the latest versions of the documents are available in providing the Works under the Contract;

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- “Client’s Representative”** means the person named in Annexure D (Information Schedule), as appointed by the Client to act as its representative (from time to time), for the purpose of managing the execution of and compliance under the Contract (Supply Chain Manager), or his duly appointed nominee;
- “Client Risk Matter”** means events and circumstances which the Client considers have affected, or which could adversely affect the progress of the Works and notifies the Contractor in accordance with the Contract;
- “Confidential Information”** means all proprietary information of a Party and or Client Parties, including, without limitation, all information relating to their business, products, services, Clients, affairs and/or finances, which is not readily available, in the ordinary course of business, to third Parties;
- “Constructional Plant”** is plant and equipment used for the performance of the Work under the Contract but not forming part of the Works;
- “Contamination”** includes but is not limited to any pollution or significant degradation to the environment as defined in the Environmental Legislation;
- “Contract”** means collectively:
- (a) this Contract;
 - (b) the drawings (listed in Annexure G (Drawings and Specifications) which have been initialled by the Client and the Contractor for identification purposes; and
 - (c) the specifications set out or listed in Annexure G (Drawings and Specifications) which have been initialled by the Client and the Contractor for identification purposes;
- “Contract Price”** means the amount payable to the Contractor in accordance with this Contract, as more fully provided for in Annexure C (Contract Price);
- “Contract Price Breakdown”** means the costs as more fully detailed in Annexure C (Contract Price, Rates and Payment Terms) of this Contract;
- “Contract Period”** refers to the period the Contract is deemed to be in force as set out in the Information Schedule;
- “Contractor”** means the competent Party, identified as such in the Information Schedule, and includes the Contractor’s duly appointed representatives, successors in title and permitted assignees. The Party is deemed to have the necessary knowledge and skill to execute the Works with the necessary care and diligence in accordance with best practice in the industry;
- “Contractor Intellectual Property”** means:
- (a) all works (including literary and artistic works and other copyright works), inventions, discoveries, signs, marks, improvement to existing inventions or processes and novel designs, whether or not registerable as designs or patents or trademarks throughout the world including any development or improvement to equipment, technology,

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methods, processes or techniques owned, in whole or in part, by the Contractor relating to the Work under the Contract; and

(b) all existing and future copyright and intellectual property rights throughout the world in the things referred to in paragraph (a);

“Contractor’s Personnel” means the Contractor’s Representative and all personnel whom the Contractor utilises to execute the Contract, who may include the staff, labour and other employees of the Contractor and of each Subcontractor of the Contractor; and any other personnel or contractors assisting the Contractor in the performance of its obligations in terms of this Contract;

“Contractor’s Representative” means the person named in the Information Schedule, as appointed by the Contractor as its representative in accordance with clause 12.2 for the purpose of the Contract, or their duly appointed nominee;

“Contractor Risk Matter” means events and circumstances which the Contractor considers have affected, or which could adversely affect the progress of the Works and notifies the Client in accordance with the Contract

“Copyright Works” are any copyright works forming part of any documentation which the Contractor is required to provide to the Client or the Client’s Representative under this Contract;

“Date for Final Completion” is the date by which the Contractor must bring the Works to Final Completion, as adjusted in accordance with this Contract. As at the date of this Contract, the Date for Final Completion is set out in the Information Schedule;

“Date of Final Completion” is the date by which the Contractor brings the Works to Final Completion as certified in a certificate issued by the Client’s Representative pursuant to clause 8;

“Date for Practical Completion” is the date by which the Contractor must bring the Works to Practical Completion, as adjusted in accordance with this Contract. As at the date of this Contract, the Date for Practical Completion is set out in the Information Schedule;

“Date of Practical Completion” is the date by which the Contractor brings the Works to Practical Completion as certified in a certificate issued by the Client’s Representative pursuant to clause 8;

“Date for Project Completion” is the date by which the Contractor must bring the Works to Project Completion;

“Date of Project Completion” is the date by which the Contractor brings the Works to Project Completion as certified in a certificate issued by the Client’s Representative pursuant to clause 8;

“Defect” A defect in the Works shall mean a part of the Works which is not in accordance with the Specification.

“Defects Correction Period” means:

(a) the period commencing on the Date of Practical Completion and

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expiring 52 (fifty-two) weeks after the Date of Practical Completion;
and

(b) any further Defects Correction Period created in accordance with clause 7.9.5;

“Design Documentation” means all design documentation (including specifications, drawings, calculations and other Technical Information) required for the proper completion of the Work under the Contract;

“Design Team” means:

- (a) the Contractor; and
- (b) all Subcontractors engaged by the Contractor having design obligations;

“Dispute” means any dispute or difference between the Parties in connection with or arising from this Contract in the widest sense, including any dispute or difference in connection with or in respect of the conclusion or existence of this Contract, the carrying into effect of this Contract, the interpretation or application of the provisions of this Contract, the Parties’ respective rights and/or obligations in terms of and/or arising out of this Contract and/or the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of this Contract;

“Documentation” means all documentation which the Contractor is required to produce (including any produced by its Subcontractors) in accordance with this Contract including the Design Documentation, plans, drawings, specifications, calculations, models, equipment, information and other data stored by any means;

“Doorstep Community” Shall mean communities who are directly influenced by RBPlat mining activities as defined in the Historically Disadvantaged South African Procurement Policy.

“Drawings” means:

- (a) the drawings (listed in Annexure G (Drawings and Specifications)) which have been initialled by the Client and the Contractor for identification purposes;
- (b) such other drawings as may be supplied by the Client to the Contractor from time to time for the purposes of this Contract; and
- (c) any modification of the drawings referred to in paragraphs (a) and (b) above in writing by the Client’s Representative to the Contractor;

“Effective Date” means the date on which this Contract shall come into effect, as set out in the Information Schedule, or such other date as the Agent may notify the Contractor in Writing;

“Environmental Legislation” means the Mineral and Petroleum Resources Development Act 28 of 2002; National Environmental Management Act 107 of 1998; National Water Act 36 of 1998; National Environmental Management: Waste Act 59 of 2008; and

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National Environmental Management: Air Quality Act 39 of 2004;

- “Environmental Management Programs”** means any environmental Programs approved under the Mineral and Petroleum Resources Development Act 28 of 2002 in respect of the Mining Titles or under the National Environmental Management: Waste Act 59 of 2008 for any environmental authorisations;
- “Environmental Management System”** means the environmental management system set out in Annexure I (Site Information and Project Approvals);
- “Final Completion”** means the later of:
- (a) the expiry of the Defects Correction Period for the Project; or
 - (b) the completion of any defective or incomplete works or services forming part of the Project identified during the Defects Correction Period;
- “Final Payment Certificate”** means the final payment certificate contemplated by clause 9.6.1;
- “Final Payment Claim”** means the final payment claim contemplated by clause 9.5.1;
- “Force Majeure Event”** means any event or circumstance or combination of events and circumstances which:
- (a) is beyond the reasonable control of the Party affected by that event or circumstance or both;
 - (b) wholly or partially prevents the performance by the affected Party of any of its obligations under this Contract; and
 - (c) cannot be prevented, overcome or remedied by the exercise by the affected Party of a standard of care and diligence consistent with that of a contractor experienced in projects or activities of a similar nature to the Work under the Contract (as the case may be),
- including:
- (d) *vis major, casus fortuitus*, act of God, riot, insurrection or other civil disorder, war (whether declared or not), military operations, floods, fire, nationalisation or similar action, embargoes, orders of court or acts of civil or military authorities; and
 - (e) a strike or industrial dispute which:
 - (i) has as its result a national wide application, or intent a national, provincial or union-wide application, or is a strike or industrial dispute which is targeted at the Client and the Mine by persons other than Contractor’s Personnel;

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and

(ii) affects the Project, but which was not caused directly or indirectly by the Contractor or the Contractor’s Personnel, but not other industrial-related disputes including strikes, lockouts, industrial difficulties, labour difficulties, work bans, blockades or picketing;

“Good Engineering Practice” or “GEP” means the exercise of that degree of skill, care, diligence, prudence and foresight that reasonably would be expected from competent contractors executing work comparable to the Works at sites comparable to the Site;

“HDP” means historically disadvantaged persons as defined in the MPRDA and shall be deemed to include “Historically Disadvantaged Persons” as defined in the Mining Charter;

“Indemnified Parties” are the Client, its officers, employees and agents;

“Industrial Action” means any strike, lockout or other collective industrial action;

“Information Schedule” means the information schedule attached as Annexure “D” to this Contract;

“Insolvent” means with respect to a Party, that:

- (a) the total of that Party’s assets at a fair valuation is less than the total amount of liabilities, including without limitation, contingent liabilities;
- (b) that Party is not able to pay its debts and other liabilities, contingent obligations and other commitments as they fall due in the normal course of business;
- (c) an application has been made or a resolution has been passed for the winding-up, liquidation, Judicial Management (as defined in the Companies Act, 1973) or Business Rescue (as defined in the Companies Act, 2008) of the Party or for a provisional or final liquidator, judicial manager or Business Rescue practitioner to be appointed in respect of the Party or a meeting has been convened for the purposes of passing a resolution to wind up or place the Party into Business Rescue;
- (d) it is in receivership, under judicial management, in liquidation, in provisional liquidation, under administration or wound up or has had a receiver appointed to any part of its property;
- (e) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any Law or dissolved (other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other Party to this Contract); or
- (f) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 (thirty) days), a resolution passed, a proposal put forward, or any other action taken, in each case in connection with that Party, which is

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preparatory to or could result in any of the circumstances in any of paragraphs (a), (b), (c) or (d) above;

- “Intellectual Property Rights”** means any and all rights, title and interest in any and all intellectual property rights (whether registered or not), including, future copyright, related rights, patents, utility models, trade-marks, trade names, service marks, designs, databases, know-how, trade secrets and inventions (whether patentable or not), goodwill and all other identical or similar intellectual property as may exist anywhere in the world and any applications for registration of such intellectual property;
- “Key Date”** is a key date applicable to the Work under the Contract identified and described in Annexure H (Key Dates) as a Key Date, as adjusted in accordance with this Contract. Notwithstanding that they may be referred to in Annexure H (Key Dates), the Date for Practical Completion and the Date for Project Completion are not “Key Dates”;
- “Law”** means:
- (a) National, Provincial and Government legislation including regulations, by-laws, and other subordinate legislation;
 - (b) common law;
 - (c) Authorities’ requirements; and
 - (d) guidelines of the Commonwealth, the State and local governments and Authorities with which the Contractor is legally required to comply;
- “Losses”** means all losses, liability, damage (whether direct or consequential), costs (including legal costs on an attorney and client basis), charges, penalties and expenses suffered by the Party in question;
- “Mine Site”** means the site of the Client’s mine as shown on Annexure I (Site Information and Project Approvals);
- “Mining Charter”** means Broad Based Socio Economic Empowerment Charter for the South African Mining Industry (together with the Mining Charter Scorecard), published in terms of the provisions of Section 100(2)(a) of the MPRDA;
- “Mining Charter Scorecard”** means the scorecard for the Mining Charter published pursuant to Section 100(2)(a) of the MPRDA from time to time;
- “Moral Rights”** means any of the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being “droit moral” or other analogous rights arising under any statute (including the *Copyright Act 98 of 1978*) or any other law outside South Africa, that exists, or that may come to exist, anywhere in the world;
- “MPRDA”** means the South African Mineral and Petroleum Resources Development Act, 20 of 2002 (as amended);

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- “Parent Support Instrument”** means the form of guarantee and indemnity set out in Annexure J (Security: Parent Support Instrument), if applicable;
- “Party”** means the Client or the Contractor, as the context requires, and “Parties” shall mean the Client and the Contractor collectively;
- “Practical Completion”** means that stage in the performance of Work under the Contract when:
- (a) the Work is complete except for minor Defects which:
 - (i) do not prevent the Works from being reasonably capable of being used for its intended purpose;
 - (ii) the Contractor has reasonable grounds for not immediately rectifying; and
 - (iii) the rectification of which will not adversely affect the efficient, safe and convenient use or operation of the Works;
 - (b) all items of plant and equipment to be incorporated into the Works have been installed, completed, commissioned, are in a usable condition and are immediately available for normal or simulated emergency operating conditions to the satisfaction of the Client;
 - (c) all testing and commissioning required by Annexure K (Performance Testing) and a C5 certificate has been issued by the Client in recognition of the Works in compliance with the requirements of C5 certification as required by the Client’s Representative for the Works has been completed and passed;
 - (d) the requirements of all relevant statutory or other certifying authorities in respect of the Works have been met;
 - (e) all documents and other information essential for the use, operation and maintenance of the Works (including as-built drawings, operation manuals related documentation, Specifications and design drawings) prepared under this Contract have been supplied to the Client including the copies of all as-built drawings, related documentation, warranties specified in the Specifications or otherwise normally provided by suppliers, manufacturers and/or Subcontractors for work similar to the Works provided that for this purpose it shall be sufficient to provide:
 - (i) as-built records, in red-line format, to the extent that there are reasonable grounds for not then supplying final as-built drawings; and
 - (ii) provisional operation and maintenance manuals, to the extent that there are reasonable grounds for not then supplying final operation and maintenance manuals, but provided that such manuals shall nevertheless be insufficient detail to enable the Client to safely, reliably and conveniently operate, maintain, dismantle, reassemble, adjust and repair the Works;

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- (f) all training requirements (as determined by the Client) have been completed; and
- (g) all other requirements determined by the Client’s Representative have been fulfilled;

“Program” means the program as developed and updated by the Contractor in accordance with clause 8.2 and in compliance with the program contained in the Works Execution Plan;

“Project” means the project set out in the Information Schedule;

“Project Approvals” means the documents specified in the Information Schedule.;

“Project Chief Safety Officer” means the personnel whom the Client employs and utilises to oversee the safety of all personnel, equipment and environmental matters when this Contract is executed and may include the staff, labour and other employees of the Contractor and of each Subcontractor of the Contractor; and any other personnel or Contractors assisting the Client in the performance of its obligations in terms of this Contract;

“Project Completion” is that stage in the performance of the Work under the Contract when:

- (a) the Work under the Contract is complete except for minor omissions and minor defects which the Client determines:
 - (i) do not prevent the Work under the Contract from being reasonably capable of being used for its intended purpose;
 - (ii) which the Contractor has reasonable grounds for not immediately rectifying; (for example, the Defect has arisen after the Defects Liability Period for the Works); and
 - (iii) the rectification of which will not adversely affect the efficient use or operation of the Work under the Contract, and must not prejudice the safe and convenient use or operation of the Work under the Contract;
- (b) all testing and commissioning required to satisfy the requirements set out in Annexure K (Performance Testing) have been carried out and passed and a C6 certificate has been issued by the Client in recognition of the Works’ compliance with the requirements of C6 certification as required by the Client’s Representative; and
- (c) all documents and other information (in addition to those supplied as part of Practical Completion) essential for the use, occupation and operation of the Works, have been provided to the Client (including final as-built drawings and final operation and maintenance manuals to the extent that only red-line drawings or provisional operation and maintenance manuals were provided at Practical Completion);

“Project Intellectual Property” means:

- (a) all works relating to the Works (including the Design Documentation,

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literary and artistic works and other copyright works), inventions, discoveries, signs, marks improvement to existing inventions or processes and novel designs whether or not registerable as designs or patents or trademarks throughout the world including any development or improvement to equipment, technology, methods, processes or techniques made by the Contractor on its own or in collaboration with others during or arising out of the performance of the Work under the Contract and the Contractor’s performance of its obligations under this Contract but excluding Contractor Intellectual Property; and

(b) all existing and future copyright and other intellectual property throughout the world in the things referred to in paragraph (a) above;

“Project Sponsor” means:

(a) in respect of the Client, the person so named in the Information Schedule (or any member of the executive management of the Client or one of its Affiliates) appointed by the Client in place of this person from time to time, on written notice to the Contractor; and

(b) in respect of the Contractor, the person so named in the Information Schedule (or any member of the executive management of the Contractor or one of its Affiliates) appointed by the Contractor in place of this person from time to time, on written notice to the Client;

“Representative Review Group” means the project progress meeting as constituted in accordance with clause 3.4.10.3;

“Separable Portion” if applicable, means a portion of the Work under the Contract described in Annexure B (Works Information Sheet);

“Separate Contractors” are contractors (other than the Contractor) engaged by the Client to carry out any works or services of whatever nature at the Mine Site;

“Site” means the location of the Client’s operation and/or site on the Mine Site where the execution of the Work is to take place, as stated in the Information Schedule;

“Specifications” means:

(a) the specifications set out or listed in Annexure G (Drawings and Specifications) which have been initialled by the Client and the Contractor for identification purposes;

(b) such other specifications as may be supplied by the Client’s Representative to the Contractor from time to time for the purposes of this Contract; and

(c) any modification of the specifications referred to in paragraphs (a) and (b) above noted in writing by the Client’s Representative to the Contractor;

“Subcontract” means any contract/agreement made between any Subcontractor and the Contractor for the execution and/or supply of any part of the Contract;

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- “Subcontractor”** means any contractor, supplier, consultant, service provider, corporate body, partnership or person (other than the Contractor) to which or to whom any part of the Contract has been sub-contracted by the Contractor;
- “Tax Invoice”** means a document provided in accordance with Section 20 of the Value Added Tax Act, Act 89 of 1991, as amended;
- “Technical Information”** means all documentation, drawings, diagrams, calculations, designs, specifications and other information provided by the Client’s Representative to the Contractor in relation to the Work, including without limitation, the Specifications;
- “Temporary Works”** are works used in the performance of the Work under the Contract but which do not form part of the Works;
- “Time Adjustment Event”** means any one or more of the following:
- (a) a breach by the Client of any of its obligations under this Contract;
 - (b) a Change Notice;
 - (c) the suspension of the performance of the Work under the Contract (or any part of the Work under the Contract) pursuant to a written notice given under clause 8.11.1 unless that direction was given as a result of a breach by the Contractor of its obligations under this Contract;
 - (d) a change in Law (including the introduction of any new Law and the repeal or modification of any existing Law) after the date of this Contract which:
 - (i) affects the Contractor in the performance of the Work under the Contract; and
 - (ii) which was not reasonably foreseeable as at the date of this Contract;
 - (e) exceptionally adverse climatic conditions;
 - (f) an Unforeseeable Ground Condition; or
 - (g) a Force Majeure Event if the Information Schedule states that clause 8.12 applies;
- “Unforeseeable Ground Conditions”** are any ground conditions at the Site (excluding any ground conditions resulting from inclement weather wherever occurring) which differ materially from those which a competent, experienced and prudent contractor should have anticipated if the Contractor had carried out its obligations;
- “Valid Tax Invoice”** is an invoice which complies with the VAT Act relating to the production and form of tax invoices for VAT purposes;
- “Value Added Tax”** or means the tax to be levied in terms of the Value Added Tax Act, Act 89 of

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- “VAT”** 1991 (the VAT Act), as amended or substituted from time to time;
- “Warranty Period”** means the warranty period specified in the Information Schedule;
- “Writing”** means any manuscript, typewritten or printed statement signed by an authorised representative of either the Client or the Contractor and/or any electronic mail (email) from one Party to the other and “Written” shall have a corresponding meaning.
- “Work under the Contract”** is all the work and all the services which the Contractor is required by this Contract to perform, including the complete design, construction and setting to work of the Works, rectification work, Temporary Works, use of Constructional Plant and generally all work and services required to achieve Practical Completion, Project Completion and Final Completion;
- “Works”** are that part of the Work under the Contract (including changes in accordance with clause 5.2) which is required by this Contract (including Annexure B (Works Information Sheet) and Annexure G (Drawings and the Specifications) to be handed over to the Client;
- “Works Execution Plan”** means the works execution plan to be developed and updated in accordance with clause 7.1; and
- “Works Risk Register”** means the referred to in Clause 4.5.1, containing the weekly record of all changes / events / decisions that have occurred or taken place in the preceding meetings.

A2 INTERPRETATION AND PRELIMINARY

A2.1 Law of this Contract

This Contract is governed by the law in force in the Republic of South Africa in respect of both substantive and procedural principles without reference to conflict of laws principles.

A2.2 References

In this Contract (unless the context otherwise requires):

- A2.2.1 a reference to this Contract includes all schedules, exhibits and annexures to this Contract;
- A2.2.2 a reference to “including”, “includes” or “include” must be read as if it is followed by “(without limitation)”;
- A2.2.3 a reference to a court is to a court situated in the Republic of South Africa;
- A2.2.4 a reference to a Party is to a Party to this Contract;
- A2.2.5 where an expression is defined, any other part of speech or grammatical form of that expression has a corresponding meaning;
- A2.2.6 the singular includes the plural and vice-versa;
- A2.2.7 any one gender, whether masculine, feminine or neuter, includes the other two;

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- A2.2.8 a reference to an agreement, deed, instrument or other document (including references to this Contract) includes the same as varied, amended, novated or supplemented from time to time;
- A2.2.9 a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinated legislation issued under, that legislation or legislative provision;
- A2.2.10 headings do not affect the interpretation of this Contract;
- A2.2.11 a reference to any Party includes that Party’s executors, administrators, substitutes, successors and permitted assigns;
- A2.2.12 a reference to ZAR, R, rand or South African Rand is to the lawful currency of the Republic of South Africa;
- A2.2.13 in the Drawings and Specifications wherever the imperative form of a verb is used alone without it being prefaced by the words “The Contractor must”, those words must be read to be included as prefacing that verb;
- A2.2.14 a reference to a Subcontractor includes a subconsultant or supplier engaged by the Contractor in respect of the Work under the Contract; and
- A2.2.15 a reference to a day means a calendar day.

A2.3 Contra proferentem

In the interpretation of this Contract, no rule of contract interpretation applies to the disadvantage of one Party on the basis that it put forward this Contract or any part of it.

A2.4 Rights and remedies not affected

The rights, powers and remedies provided in this Contract are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Contract.

A2.5 Ambiguities, errors, omissions, discrepancies or inconsistencies

- A2.5.1 The various documents comprising this Contract shall be taken to be mutually explanatory of each other.
- A2.5.2 If, however:
 - A2.5.2.1 the Client or the Contractor notifies the Client’s Representative in writing of; or
 - A2.5.2.2 the Client’s Representative otherwise discovers, an ambiguity, error, omission, discrepancy, inconsistency or other fault in, from or between any of the terms of this Contract,
 - A2.5.2.3 the Client’s Representative must issue such direction as may be necessary to resolve or correct that ambiguity, error, omission, discrepancy, inconsistency or other fault.
- A2.5.3 Nothing in this clause entitles the Contractor to any compensation or an extension of time.

A2.6 Application of this Contract

This Contract applies to the performance of the Work under the Contract whether performed before, on or after the date of this Contract.

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A2.7 Entire Contract

This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes all prior agreements, representations, warranties, promises, statements, negotiations and letters in respect of its subject matter.

A2.8 Variation and waivers in writing

A2.8.1 A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. The single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a Party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

A2.8.2 A provision of or a right created under this Contract may not be:

A2.8.2.1 waived except in writing signed by the Party granting the waiver; or

A2.8.2.2 varied except in writing signed by the Parties.

A2.9 Consent requirements

Unless otherwise expressly provided in this Contract, where a Party's agreement, approval or consent to any act, matter or thing is required under this Contract:

A2.9.1 the agreement, approval or consent must be given in writing in order to be valid;

A2.9.2 the agreement, approval or consent must be obtained prior to the act, matter or thing to which it relates;

A2.9.3 the agreement, approval or consent may be refused, given unconditionally or given subject to conditions in the discretion of the Party giving it;

A2.9.4 a Party seeking agreement, approval or consent must use its best endeavours to ensure that the Party giving consent is given reasonable time and information to make a determination as to the act, matter or thing (and not object to the Party taking reasonable time in making that determination);

A2.9.5 the Party must not be unreasonable in refusing, delaying or imposing conditions on its consent; and

A2.9.6 that consent or approval shall be construed as having been given only in respect of that specific matter.

A2.10 Nature of the relationship

A2.10.1 Nothing in this Contract constitutes a joint venture, agency, partnership or other fiduciary relationship between the Client and the Contractor, or between either of them and the employees, Subcontractors or consultants of the other.

A2.10.2 The Contractor acknowledges that it has no authority to bind the Client or any of the Client's Personnel.

A2.10.3 At all times during the performance of the Work under the Contract, the Contractor is an independent contractor and not an employee or agent of the Client.

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A2.11 Joint and several

If the Contractor is comprised of more than one person:

A2.11.1 the obligations of those persons as the Contractor under this Contract are joint and several; and

A2.11.2 the Client may proceed against any or all of them in respect of the Contractor's obligations in the Client's absolute discretion. The Client is not obliged to make any claim against all the persons comprising the Contractor.

A2.12 Warranties as to capacity and acknowledgment

A2.12.1 The Client warrants that it has the power to execute, deliver and perform its obligations under this Contract and all necessary corporate and other action has been taken to authorise that execution, delivery and performance.

A2.12.2 The Contractor warrants that it has the power to execute, deliver and perform its obligations under this Contract and all necessary corporate and other action has been taken to authorise that execution, delivery and performance.

A2.12.3 The Contractor acknowledges that it has:

A2.12.3.1 examined the Site and its surroundings;

A2.12.3.2 examined all other information relevant to the risks, contingencies and other circumstances having an effect on its obligations under this Contract which is obtainable by making reasonable enquiries;

A2.12.3.3 examined this Contract;

A2.12.3.4 examined the Pre-Contract Information;

A2.12.3.5 examined the Project Approvals; and

A2.12.3.6 entered into this Contract based upon its own investigations, examinations and determinations; and

A2.12.3.7 subject to the other provisions of this Contract, has satisfied itself that it is practicable to perform and complete the Work under the Contract in accordance with this Contract without any need for changes in the Works, and the Contractor is not relieved of its obligations under this Contract, and it does not have any remedy against the Client, by reason of the existence or occurrence of any matter or thing not anticipated by the Contractor as at the date of this Contract and which may not be contemplated by this Contract.

A2.12.4 The Contractor has relied on and shall for the purpose of the Work under the Contract be entitled to rely on the accuracy (but not the sufficiency or completeness) of the raw geotechnical data contained in the geotechnical report/s included as parts of the Pre-Contract Information. The Contractor is responsible for its own interpretation of the raw data. The Client accepts no responsibility for any opinion, view or interpretation contained in the geotechnical report/s included as parts of the Pre-Contract Information.

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A2.13 Application of certain terms to Separable Portions

The interpretations of:

A2.13.1 Date for Practical Completion;

A2.13.2 Date of Practical Completion;

A2.13.3 Defects Correction Period; and

A2.13.4 Practical Completion and clause 8.1.1.3, clause 8.6, clause 8.9 and clause 11.1.1

apply separately to each Separable Portion and references in those clauses to the Works and the Work under the Contract mean so much of the Works and the Work under the Contract as is comprised in the relevant Separable Portion.

A2.14 Parent Support Instrument

A2.14.1 Clause A2.14.2 applies if and only if the Information Schedule states that the Contractor is required to comply with clause A2.14.2.

A2.14.2 The Contractor must, on or before the date provided for in the Information Schedule:

A2.14.2.1 procure the Contractor's ultimate parent company, or such other Party as the Client may notify to the Contractor, to execute the Parent Support Instrument; and

A2.14.2.2 give the Client a copy of the Parent Support Instrument duly executed by the Contractor's ultimate parent company, or such other Party as the Client may have notified to the Contractor.

A2.14.3 Until such time as the Parent Support Instrument is provided in terms of clause A2.14.2 above, the Client shall not, notwithstanding any other provision of this Contract, be obliged to make any payments whatsoever to the Contractor.

A2.15 Assignment

A2.15.1 Assignment by the Contractor

A2.15.1.1 The Contractor must not cede all or any of its rights, or delegate any of its obligations, under this Contract or create any lien, pledge, reversionary cession or other hypothecation or allow any lien, pledge, reversionary cession or other hypothecation to subsist over this Contract without the approval of the Client. The Client's approval shall not be unreasonably withheld.

A2.15.1.2 Notwithstanding the general prohibition contained in clause A2.15.1.1, for the purpose referred to in clause 5.1 of the Annexure J (Security: Parent Support Instrument), the Client hereby grants its consent to the Contractor to the cession and delegation to the Guarantor (as defined in the Parent Support Instrument) of all of the rights and obligations under this Contract to that Guarantor, at no cost to the Guarantor. To the extent that it is required, the Contractor similarly grants its consent to the cession and delegation referred to in this clause A2.15.1.

A2.15.2 Assignment by the Client

A2.15.2.1 The Client is entitled to cede and delegate all of its rights and obligations under and/or

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arising from this Contract to the Client or its nominee, and to that end, the Contractor hereby grants its irrevocable and unconditional consent to the Client to the cession and delegation to the Client or its nominee (as the case may be) of all or part of the Client's rights and obligations in terms of and/or arising from this Contract.

A2.15.2.2 In addition, the Contractor hereby grants its irrevocable consent to the Client to the cession and delegation of all or part of the Client's rights and obligations in terms of and/or arising from this Contract to a Party other than the Client or its nominee, provided that the Client shall provide to the Contractor written notification of any such cession and delegation prior to it taking effect.

A2.16 Comments, review, representation or approval by the Client or the Client's Representative

The Contractor acknowledges that no comment, review, representation, vetting, inspection, testing or approval by the Client or the Client's Representative in respect of the Contractor's obligations under this Contract will lessen or otherwise affect the Contractor's obligations under this Contract.

A2.17 Counterparts

This Contract may be executed in any number of counterparts which, when taken together, constitutes one instrument.

A2.18 Severance

If any provision of this Contract, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

A2.19 Language

All notices, demands and other oral or written communications given or made by or on behalf of any Party to the other Party shall be in English or accompanied by a certified translation into English.

A2.20 Agreement date

The date of agreement of this Contract shall be the date specified in the Information Schedule included in Annexure D, if the Contract Agreement Date is not specified in the Information Schedule included in Annexure D, the date of agreement for this Contract will be the date of the last signature on the signatories page.

Contractor (Initial Block)		
Client (Initial Block)		