

Conditions of Contract  
Professional Services



## **Foreword**

These Conditions of Contract shall apply to all requests made by Sibanye Stillwater for quotations or offers for the provision of professional services and are an integral part of any Purchase Order placed by Sibanye-Stillwater with its Contractors.

Where Sibanye-Stillwater and the Contractor enter into a formal agreement, these Conditions of Contract shall be substituted by such a formal agreement to the extent only that the specific provision is dealt with in the formal agreement.

In these terms and conditions, the Definitions and Interpretation Clauses of the General Terms and Conditions, as accepted and signed by the Consultant, will apply. Any additional Definitions augment the Definitions specified in the General Terms and Conditions of Contract.

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# 1 General Provisions

## 1.1 Definitions

In these terms and conditions, unless the context clearly requires a different interpretation, the words and expressions set out below will have the meanings assigned to them, and cognate expressions will have corresponding meanings. These Definitions are relevant to all the documents that together comprise a Contract between the Client and the Consultant.

- 1.1.1 **Amendment** means any amendment to the Contract, agreed to by the Parties and signed by authorised representatives of the Parties.
- 1.1.2 **Background Intellectual Property** means the proprietary rights in and to Intellectual Property created prior to, or outside, the scope of the Contract.
- 1.1.3 **BEE** means black economic empowerment, as set out in the Broad-Based Black Economic Empowerment Act, Act 53 of 2003 and the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry (the Mining Charter).
- 1.1.4 **Client** means the Sibanye-Stillwater Limited subsidiary company specified in the Purchase Order or Contract, and/or its associated companies from time to time, howsoever incorporated and whether legally constituted in South Africa or elsewhere.
- 1.1.5 **Client Representative** means the person nominated by the Client to act on its behalf in terms of the Contract and/or the Purchase Order, or its authorised nominee.
- 1.1.6 **Confidential Information** means all information, whether written, oral or in electronic form, concerning the business and affairs of either Party that the other Party obtains or receives as a result of the discussions leading up to or during the performance of the Contract. Confidential Information will include, but not be limited to, the Contract, any technical, security, commercial, financial, scientific, environmental, marketing or business information, know-how, trade secrets, software, marketing strategies, mining plans, information relating to shareholders or subsidiary companies, client and/or supplier lists, processes, machinery, designs, drawings, reports, technical specifications and data, business practices, business plans, policies, practises, any information to which intellectual property rights apply, whether such information is formally designated as confidential or not, all the data of the Client and any written document, including e-mails, pertaining to the Services.
- 1.1.7 **Contract** means the Form of Agreement and/or the Purchase Order together with these General Conditions of Contract and all relevant annexures, signed by the duly authorised representatives of the Parties.
- 1.1.8 **Consultant** means any corporate body, partnership or person with which or with whom the Contract has been concluded and will include the Consultant's successors in title and permitted assigns.
- 1.1.9 **Consultant Documents** means calculations, computer programmes, models, drawings, designs, manuals and all other documents of a technical nature supplied by the Consultant under the Contract.
- 1.1.10 **Consultant's Employee** means any person in the employ of the Consultant, who is on Site and engaged in the execution of the Contract.
- 1.1.11 **Discoveries** means all work, ideas, concepts, reports, designs, discoveries, inventions (whether patentable or not) and Intellectual Property made by the Consultant or his employees, alone or with others, in the course of executing the Contract or otherwise arising out of the use of any of the Client's materials, resources or facilities including all computer programs, source codes, data, information, designs, compilations, flowcharts and software developed or adapted for specific application to the Client.
- 1.1.12 **Force Majeure** means any event beyond the reasonable control of any one of the Parties, and includes but is not limited to pestilence, epidemic, natural disaster, seismic event, lightning strike/damage, war (whether declared or not), armed conflict or the serious threat of same, act of a foreign enemy, terrorism, political riots, civil commotions, civil war, insurrection, expropriation, piracy, power shortages or interruption, an interruption in the supply of water, sabotage, commercial embargoes and military embargoes, compulsory acquisition, seizure of works, nationalisation, industrial action (including strikes, lockouts and protest action), fall of ground, excessive ingress of water, explosion, fire, any cessation or

curtailment in production, changes in legislation by the South African government or any other government instruction or act, and work stoppages pursuant to a notice in terms of section 54 of the Mine Health and Safety Act or any other reasons, but does not include bad weather not amounting to natural disaster.

- 1.1.13 **Fronting** means a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of the Broad-Based Black Economic Empowerment Act or the implementation of any of the provisions of thereof.
- 1.1.14 **Intellectual Property** means intellectual property in the form of any and all technical or commercial information, including, but not limited to chemical structures; biological or chemical information; manufacturing techniques and designs; specifications and formulae; know-how, data, systems and processes; production methods; trade secrets; financial and marketing information; as well as registered or unregistered intellectual property rights in the form of inventions, trademarks, designs and plant varieties (whether patented, registered or applied for), and any copyrighted works, including literary works and computer programs.
- 1.1.15 **Personal Information** means personal information as defined in the Protection of Personal Information Act, Act 4 of 2013 (POPI) that the Consultant may acquire or have access to in the execution of the Contract.
- 1.1.16 **POPI** and **POPIA** mean the Protection of Personal Information Act, No. 4 of 2013.
- 1.1.17 **Project** means the project named in the Contract for which the Services are to be provided.
- 1.1.18 **Purchase Order** means a written official purchase order issued to the Consultant by the Client's Supply Chain Department, ordering the Services.
- 1.1.19 **Service** means the service as set out in the Contract to be performed by the Consultant and all incidental work, services and actions to be provided by the Consultant in the execution of the Contract.
- 1.1.20 **Site** means the place or places where any part of the Project is executed.
- 1.1.21 **Specification** means the specification and requirements of the Services, as set out in the Contract.
- 1.1.22 **Subcontract** means any Contract made between the Consultant and any corporate body, trading trust, partnership or person for the execution of any part of the Contract, and that has been approved by the Client.
- 1.1.23 **Subcontractor** means any corporate body, trading trust, partnership or person (other than the Consultant) to which or to whom any part of the Contract has been subcontracted, and that has been approved by the Company.
- 1.1.24 **Technical Information** means all drawings, diagrams, calculations, designs, specifications, and other information provided in writing by the Client to the Consultant in relation to the execution of the Contract.
- 1.1.25 **Time for Completion** means the time for completing the Service as stated in the Contract and/or the Purchase Order calculated from the date of issue of the Purchase Order.
- 1.1.26 **Works Contract** means a contract for the performance of permanent or temporary works (if any) to be carried out by a contractor appointed by the Client for the achievement of the Project.
- 1.1.27 **Writing** means any manuscript, document or printed statement signed by an authorised representative of either the Client or the Consultant and includes any e-mail or telefaxed message from one Party to the other, and written will bear the corresponding meaning.

## 1.2 Interpretation

- 1.2.1 In the Contract, unless inconsistent with the context, an expression that denotes:
- a) any one gender will be capable of being construed as a reference to all other genders;
  - b) the singular will include the plural and vice versa;
  - c) a natural person includes a juristic person and vice versa.
- 1.2.2 Party means the Client or the Consultant, as the context requires, and Parties means the Client and the Consultant both.

- 1.2.3 In these General Conditions the title page, the page numbers, the table of contents and all headings to the clauses are for ease of reference only and will not be taken into consideration in the interpretation of the meaning and effect thereof.
- 1.2.4 If any provision in a definition is a substantive provision, conferring rights or imposing obligations on any Party, notwithstanding that such provision is only contained in the relevant definition, effect will be given thereto as if such provision were a substantive provision in the body of these General Conditions.
- 1.2.5 References to legislation will include all subsequent amendments to such legislation, as well as all applicable regulations.
- 1.2.6 Reference to 'days' will be construed as calendar days unless qualified by the word 'business', in which instance a 'business day' will be any day excluding a Saturday, Sunday or statutory public holiday in the Republic of South Africa.
- 1.2.7 When any number of days is prescribed, such number will exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public holiday in the Republic of South Africa, in which case the last day will be the next Business Day.
- 1.2.8 The Contract, including all documents forming part of this Contract, the Consultants Documents, Technical Information and correspondence will be drawn up, construed and interpreted in English.
- 1.2.9 The rule of construction that these General Conditions will be interpreted against the Party responsible for the drafting of these General Conditions, will not apply.
- 1.2.10 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples will not be construed as limiting the meaning of the general wording preceding it.
- 1.2.11 The Consultant acknowledges and agrees that:
- a) it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of these General Conditions and that it has either taken such independent advice or has dispensed with the necessity of doing so; and
  - b) all of the provisions of these General Conditions and the restriction herein contained are fair and reasonable in all the circumstances and are in accordance with the Consultant's intentions.

### **1.3 Domicilia and Notices**

- 1.3.1 Each party chooses domicilium citandi et executandi at its respective registered office or at such alternative address in the Republic of South Africa of which it may notify the other in writing from time to time; provided that, if the registered address of the Consultant is outside the Republic of South Africa, the Consultant must choose domicilium citandi et executandi at an address in the Republic of South Africa.
- 1.3.2 Any communication required to be given or made under the Contract between the Parties will be in writing and will be deemed:
- a) to have been duly made or given if either sent by prepaid registered post or hand delivered to the addresses of the Parties given in the Contract or by email, or to such other address as provided in terms hereof;
  - b) to have been received by the intended addressee, for all purposes;
  - c) if delivered by hand, on the day of normal business following the date of dispatch of such communication or notice;
  - d) if made by prepaid registered post, on the tenth day following the date of dispatch of such communication or notice; if such tenth day is not a normal business day, then on the next normal business day thereafter;
  - e) if delivered by e-mail, when the e-mail message is available on the recipient's network for reading, assumed to be within 24 (twenty-four) hours of sending.
- 1.3.3 Any Party may, at any time, by written notice to the other Party, change its stated domicilium citandi et executandi to another address in South Africa, but this will not invalidate any notices sent prior to receipt of such communication.

## **1.4 Solicitation**

- 1.4.1 Neither Party will employ, or seek to employ or entice (directly or indirectly) to leave the employment of the other Party, any employee of the other for the duration of the Contract, plus a period of 6 (six) months thereafter, without the written consent of the other Party, which will not be unreasonably withheld.
- 1.4.2 It is recorded that a general advertisement advertising job vacancies will not constitute a breach of this Clause.

## **1.5 Right to Audit**

- 1.5.1 The Client will have the right to appoint an auditor, being either an independent auditing firm or the Client's Internal Auditing Department, (the Auditing Authority) to audit the Consultant's records that specifically relate to the Contract.
- 1.5.2 The auditor will give the Consultant notice of its intention to conduct an audit, and the Consultant will assist and co-operate with the auditor.
- 1.5.3 The cost of any such audit will be for the Client's account.
- 1.5.4 The Consultant agrees that the Client may disclose findings from these audits to any relevant stakeholders from time to time, including Client Management, trade union leadership, Regulatory bodies and international watchdog bodies.

## **1.6 Severability**

- 1.6.1 If any one or more of the provisions of the Contract will be declared or adjudged (formally or informally) by a competent authority to be illegal, invalid or unenforceable under any law applicable in any jurisdiction in which the Contract is to be performed (the 'Severable Provision'), that provision will be severable and divisible from the other terms and conditions of the Contract, and the Parties will retain the right to enforce all the other terms of the Contract and will retain all such rights as are validly conferred on them by the Contract.

## **1.7 Waiver**

- 1.7.1 Failure by either Party to enforce any provision of the Contract will not constitute a waiver of such provision or affect in any way that Party's right to require performance of any such provision at any time in the future, nor will the waiver of any subsequent breach nullify the effectiveness of the provision itself.
- 1.7.2 No act of relaxation, indulgence or grace on the part of a Party will operate as or be deemed to be capable of founding an estoppel.

## **1.8 Entire Agreement**

- 1.8.1 The Contract constitutes the entire agreement between the Parties. No variation, addition to or cancellation of the Contract will be of any force or effect unless reduced to writing and signed by authorised representatives on behalf of the Parties as an Amendment to the Contract.

## **1.9 Priority of Documents**

- 1.9.1 The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents forming the Contract will be as stated in the Contract.
- 1.9.2 Without prejudice to anything herein contained and notwithstanding any reference in the Contract or elsewhere to the Consultant's tender, proposal, quotation, conditions of sale or otherwise, the provisions of these General Conditions will prevail over the foregoing tender, proposal, quotation and/or conditions of sale of the Consultant or otherwise.

## **1.10 Conflict of Interest**

- 1.10.1 The Consultant undertakes and warrants that it does not hold any interest or have any obligation, whether directly or indirectly under and by virtue of a contract or otherwise, which may or may appear to conflict with the obligations of the Consultant under these General Conditions and the Contract, that have not previously been advised in writing to the Client.

- 1.10.2 The Consultant may not cause, or in any way contribute, to a conflict of interest. If the Consultant is aware of, or suspects, a conflict of interest, the Consultant will immediately report such conflict of interest to an appropriate senior manager of the Client, or will use the confidential reporting mechanism, details of which can be obtained from the Client's website. The obligation on the Consultant is continuous and a conflict of interest must be reported when it arises, not merely at the inception of the Contract.
- 1.10.3 Notwithstanding anything to the contrary herein contained, the Client reserves the right to terminate any Contract as a result of such actual or apparent conflict of interest. The Client will incur no liability of any means whatsoever arising from such termination.

## **1.11 Costs**

- 1.11.1 Each Party will bear its own cost in connection with the preparation of the Contract.

## **1.12 Cession, Assignment and Delegation**

- 1.12.1 The Consultant may not cede, assign, delegate or transfer any part the Contract or any benefits, rights or obligations thereunder to any other person, except with the prior written consent of the Client Representative.
- 1.12.2 The Client will not be bound to give such consent and may withhold same without assigning any reason therefore, or it may grant such consent subject to such terms and conditions as the Client may, at its absolute discretion, deem fit.
- 1.12.3 The Client may assign any rights under these General Conditions and the Contract to any legal entity that assumes all of the Client's obligations and accepts all of the Client's rights by giving 14 (fourteen) days' notice thereof to the Consultant.

## **1.13 Cession of Book Debts**

- 1.13.1 The Consultant may not, during the currency of the Contract, cede or transfer to any person its right, title and interest in and to any existing or future book debts of its business, except with the prior consent, in writing, of the Client.
- 1.13.2 The Consultant will notify the Client before the Signature Date of the existence of any cession of book debts and whether such cession is in respect of existing book debts or future book debts, or both. If the Consultant fails to comply with the above provisions, the Client will be at liberty to terminate the Contract.

## **1.14 Technical Information**

- 1.14.1 The Client will provide the Consultant at the appropriate times with the Technical Information necessary to enable the Consultant to complete the Services. All Technical Information will be and remain the property of the Client.
- 1.14.2 In the event that any ambiguity or discrepancy is discovered in the Technical Information, the matter will immediately be referred to the Client Representative for his decision.
- 1.14.3 The Contactor accepts responsibility for ensuring that he obtains and carries out the Services in accordance with the latest revision of the Technical Information approved by the Client.
- 1.14.4 Any such approval by the Client will not relieve the Consultant of any obligations under the Contract, nor constitute the Client's assumption of responsibility for the accuracy or adequacy of any of the Consultant's information or Services incorporated in such Technical Information.
- 1.14.5 The Technical Information may not be complete in every detail. The Consultant must notify the Client immediately when the Consultant become aware of any conflict, error, omission or discrepancy in the Technical Information, and the Client will issue written instructions to be followed. If the Consultant proceeds with any of the Services prior to receiving such instructions, all necessary corrections will be at the Consultant's expense.
- 1.14.6 Any deviation by the Consultant from the Technical Information will be considered to be a change in the Scope of Work and will require written approval from the Client.

## **1.15 Consultant Designs**

- 1.15.1 Where the Contract provides for preparation by the Consultant of designs and details of any Works, the Consultant shall submit to the Client Representative for its approval all drawings or such other documentation as may be required, giving full details, dimensions and particulars, together with all relevant information, and erecting and operating instructions (if any).
- 1.15.2 The Client Representative shall be provided with copies in triplicate of any such approved documents or drawings and erecting or operating instructions required in connection with any work to be designed by the Consultant. The Consultant shall, notwithstanding any approval by the Client Representative, be liable for any error or deficiency in any drawing or document supplied by him for that part of the Works and for any loss or damage arising out of such error or deficiency.

## **1.16 Consultants Documents**

- 1.16.1 Any of the Consultant Documents that requires the approval of the Client Representative will be submitted to the Client Representative within the Time for Completion or, to the extent applicable, before the commencement of the Work Contract.
- 1.16.2 The Client Representative may respond with approval or disapproval thereof, with comments or recommended modifications required thereto. Such modifications will be incorporated into the relevant Consultants Documents by the Consultant and re-submitted to the Client Representative without delay. Notwithstanding approval by the Client Representative, the Consultant will be liable for the accuracy and adequacy of all Consultant Documents.
- 1.16.3 The Consultant will maintain an up-to-date schedule of all Consultant Documents. The Consultant will supply the schedule to the Client Representative at intervals stipulated by the Client Representative in consultation with the Consultant.
- 1.16.4 The Client Representative will have the right at all reasonable times to inspect the Consultant Documents at the premises of the Consultant.
- 1.16.5 All Consultant Documents will become and remain the property of the Client.

## **1.17 Consultants Documents as a Deliverable**

- 1.17.1 Within the time for Completion, the Consultant will supply to the Client Representative all Consultant Documents forming part of the Services required in terms of the Contract and any other documentation requested by the Client Representative. Such Consultant Documents will include the operating and maintenance instructions, spares lists and drawings of the Services as completed, in sufficient detail to enable the Client to continue with the Works Contracts or any other work required for the Project. Subject to clause 13.2 ownership of all such Consultant Documents will vest in the Client.

## **1.18 Mistakes in Documentation**

- 1.18.1 The Consultant will be responsible for all discrepancies, errors or omissions, including faulty design and/or detailing in any of the Consultant Documents, whether or not such documentation has been approved by the Client Representative, except insofar as the discrepancies, errors, omissions, faulty design and/or detailing are due to discrepancies, errors or omissions in the Technical Information.

# **2 Laws, Regulations and Policies**

## **2.1 Laws and Regulations**

- 2.1.1 The Parties must at all times comply in all respects with the provisions of all applicable statutes, ordinances, proclamations, by-laws and regulations, both local and national.
- 2.1.2 If the cost to the Consultant for the performance of the Contract is increased or reduced by reason of the passing or amendment of any applicable legislation after the Signature Date or the date of the Purchase Order as the case may be, the Consultant may apply for an adjustment to the Price so that such increase or reduction will be added to or deducted from the Contract Price, as the case may be.
- 2.1.3 The Consultant will hold the Client harmless against all penalties and liabilities incurred by the Consultant in breach of any applicable statutes, ordinances, proclamations, by-laws and regulations, both local and national, and where applicable, international.

2.1.4 The Consultant will comply with all legislation in force and with any regulations promulgated thereunder from time to time in respect of any of the Work to be supplied and in respect of any vehicles, machinery, plant, equipment, apparatus or materials used in the provision of the Work.

## **2.2 Client Standards**

2.2.1 The Consultant, its employees, sub-Consultants and representatives shall strictly comply with all standards, rules, codes of practice, procedures, and managerial instruction of whatever nature applicable to the Site.

2.2.2 Such standards, rules, codes of practice, procedures shall include but not be limited to:

- a) the standard health, safety and environmental rules, procedures and codes of practice;
- b) the procedures and standards of the MHSA and the OHSA;
- c) the following policies, which are available on the Client's website:
  - i) the Client's Ethics Policy and Code of Ethics;
  - ii) the Client's Environmental Policy;
  - iii) the Client's Human Rights Policy Statement;
  - iv) the Client's Labour policy;

2.2.3 the Mining Charter;

2.2.4 The Consultant will be held liable for any and all errors and/or omissions due to its failure to adhere to the Client's Standards.

## **2.3 Radiation**

2.3.1 Material on Site may be radioactive. To the extent applicable, the Consultant will, at its own cost, comply with and take into consideration when executing the Service the rules, regulations and laws of the National Nuclear Regulator (NNR) and the Client's Standards, when working on Site or handling the Client's property. If necessary, prior to the commencement of any Services the Consultant will obtain from the Client a Radiation Protection Certificate. Such a certificate will state the protective measures the Consultant must take. Prior to the dismantling or stripping of any Client's property, the Consultant will obtain a Radiation Protection Certificate, issued by the Client and approved by the NNR.

2.3.2 The Client reserves the right to claim against the Consultant any loss or damage which the Client may suffer as a result of any claim for compensation or otherwise from any person which arises from nuclear damage that was caused by the Consultant, its agents, employees or servants either through any act or omission, negligence, default or deliberate misconduct.

## **2.4 Black Economic Empowerment**

2.4.1 The Consultant acknowledges that in complying with the Mining Charter, the Client is required to meet particular BEE procurement spend targets and to report on all such expenditure incurred and spent with its Consultants.

2.4.2 In the event that the work to be done in execution of the Contract does not require a specific skill set, or may be done by unskilled labourers, the Consultant will be obliged to source the required complement for the Contract from local communities. The Consultant will endeavour to support the Client's local development initiatives through developing skills of the sourced complement from the local communities. The Client will track measurement of the requirement as per this Clause.

2.4.3 Where there is a change in the BEE status of the Consultant, either through a change in circumstances, ownership or management, or through the amended assessment of a rating agency, then the Consultant will advise the Client Representative of such change within 10 (ten) days.

2.4.4 In the event that the Client, in its sole and absolute discretion, at any time determines that the Consultant's BEE credentials or compliance to sourcing from local communities are unsatisfactory, the Client will notify the Consultant thereof in writing, whereafter representatives of the Client and the Consultant will meet in an attempt to agree on an appropriate resolution to the requirement. In the event that no such resolution is reached within 7 (seven) days of delivery of the written notice to the

Consultant, the Client will be entitled (but not obliged) to terminate the Contract by giving 30 (thirty) days written notice to the Consultant.

## **2.5 Anti-Bribery and Sanctions Laws and Policies**

### **2.5.1 Consultant's Warranty on Adherence to Anti-Bribery and Sanctions Laws and Policies:**

- a) The Consultant warrants that the Consultant complies with all anti-bribery, anti-corruption and anti-money laundering laws, regulations and/or policies of South Africa, the United Kingdom of Great Britain and Northern Ireland (UK), European Union (EU), the United States of America (USA), Organisation for Economic Co-operation And Development (OECD) and the United Nations (UN) to which the Client/Employer is subject (all such laws, regulations and/or policies are hereinafter collectively referred to as the International Anti-Bribery Laws).
- b) The Consultant warrants that the Consultant complies with all laws, regulations and policies relating to economic or trade sanctions or export controls of the above territories (hereinafter collectively referred to as the Sanctions Laws).
- c) The Consultant warrants that the Consultant has adequate anti-corruption compliance programmes, policies and procedures (Anti-Corruption Programme) in place to enable compliance with all International Anti-Bribery Laws, as well as all economic or trade-sanctions or export-control related laws, regulations and/or policies to which the Client is subject, including but not limited to: the provisions of the South African Prevention and Combating of Corrupt Activities Act no 12 of 2004, the U.S. Foreign Corrupt Practices Act of 1977, the US OFAC Regulations, the US Export Administration Regulations, provisions of the Anti-Corruption Commission Act no. 46 of 1996, the United Nations Convention Against Corruption (UNODC) and, if applicable, the United Kingdom Bribery Act of 2010.
- d) The Consultant warrants that neither the Consultant nor any of its Employees nor any other person acting on the Consultant's behalf has ever been subject to any economic or trade sanctions or export controls imposed by any Territory; and neither the Consultant nor any of the Consultant's Employees nor any other person acting on the Consultant's behalf, has ever engaged in any corrupt activities; or directly or indirectly through intermediaries, paid, given or offered to pay or give any money, gift or anything else of value to attempt to influence any act or decision for the purpose of obtaining or keeping business, (including a decision not to act) of any person, including but not limited to:
  - i) a government official, governmental employee, or
  - ii) any official or employee of any entity in which any official or employee of a public international organisation, or
  - iii) any political party or political party official, or
  - iv) any candidate for political office in his/her official capacity or
  - v) to induce an official to use his/her influence to effect/affect a decision so as to assist the Consultant in obtaining or retaining business or directing business to any person/entity, or to secure any improper advantage.

### **2.5.2 Consultant's Undertaking on Adherence to Anti-Bribery and Sanctions Laws and Policies**

- a) The Consultant undertakes, on behalf of itself and its Employees or other agents, until the date on which the Consultant has fulfilled the Consultant's obligations under the Contract, (including any Defects Liability Period):
  - i) to comply with all International Anti-Bribery Laws, Sanctions Laws and/or any Anti-Bribery and Sanctions Legislation to which the Client is subject, including those of any jurisdiction where it conducts business;
  - ii) to implement and enforce its Anti-Corruption Programme;
  - iii) to implement and/or enforce any code of ethical business practice adopted from time to time by the Client;
  - iv) not to engage in any corrupt activities;

- v) not to directly or indirectly pay, give or offer to pay or give any loan of money, gift or anything else of value to attempt to influence any act or decision (including a decision not to act) of any person, including but not limited to a government official, governmental employee, or any political party or political party official, or candidate for political party official, or candidate for political office, in his/her official capacity or to induce an official to use his/her influence to effect a decision so as to assist the Party in obtaining or retaining business or directing business to any person/entity or to secure any improper advantage; and not to make facilitation payments to facilitate or expedite any routine governmental action.
  - b) The Consultant will, during such period, comply with any changes or amendments to the International Anti-Bribery Laws, Sanctions Laws and/or any Anti-Bribery and Sanctions Legislation. For the avoidance of doubt, the Consultant undertakes that it will at all times comply with any such International Anti-Bribery Laws, Sanctions Laws and any other Anti-Bribery and Sanctions Legislation, as amended from time to time.
  - c) The Consultant or anyone in the Consultant's employ will not pay or offer to pay, give or offer to give any money and any gift of whatsoever nature whether by way of a commission, gratuity or otherwise, or lend or offer to lend any money or any asset, or give or offer to give any other valuable consideration to any person in the employ of the Client.
  - d) The Consultant undertakes to endeavour to ensure that any Sub-Consultant sub-contracted for any part of any Contract it enters into with the Client will comply with the provisions of this Clause.
  - e) The Consultant warrants that it has not infringed any law of any sovereign state prohibiting collusion, price fixing, bid rigging, or illegal price information exchange.
- 2.5.3 The Client undertakes and warrants that its Employees, members, constituency and related third parties will at all times and in respect of all engagements in terms of the Contract adhere to the provisions of this Clause.
- 2.5.4 The Client, its Employees, members, constituency and related third parties will not pay or offer to pay, give or offer to give any money and any gift of whatsoever nature whether by way of a commission, gratuity or otherwise, or lend or offer to lend any money or any asset, or give or offer to give any other valuable consideration to any person in the employ of the Consultant.

## **2.6 Jurisdiction and Governing Law**

- 2.6.1 The Contract will be governed, construed and interpreted in accordance with the law of the Republic of South Africa, including its conflict of laws rules.

## **2.7 Ethics and Human Rights**

- 2.7.1 In accepting the Contract, the Consultant undertakes to act only with utmost good faith and care in the execution thereof. In the event that the Consultant commits an act that may compromise the ethical relationships between the Consultant and the Client, in terms of this or other contracts, or that is contrary to standard business practices, then the Client will have the power, at its discretion, to terminate the Contract immediately by giving notice to that effect to the Consultant.
- 2.7.2 The Consultant will not unlawfully discriminate against its employees within the meaning of any appropriate law.
- 2.7.3 The Consultant will prohibit slavery, servitude, forced labour, compulsory labour and human trafficking (together, "Modern Slavery") from its operations. The Consultant will also take reasonable steps to understand its supply chains (comprising both its suppliers and its suppliers' suppliers) and work with its suppliers to reduce the risk of Modern Slavery in its supply chains.

## **2.8 Fronting**

- 2.8.1 Where the Client receives a notification of possible Fronting practices and/or suspects that the Consultant is participating in Fronting practices, the Client may suspend any Contract or Purchase Order while the Fronting allegations are being investigated.

2.8.2 Should the Client find that the Consultant was participating in Fronting practices, the Client will be entitled to terminate any Purchase Order with immediate effect. Unless any wilful, reckless or grossly negligent conduct is proved to be attributable to the Client, the Consultant hereby indemnifies the Client against any losses suffered as a result of such suspension or termination, even if the Consultant is found not to have been participating in Fronting practices.

## **2.9 Non-Dealing Agreement**

2.9.1 The Consultant acknowledges that the Client is part of a group of companies, the ultimate parent of which is listed on the New York and Johannesburg Stock Exchanges. The Consultant hereby irrevocably undertakes that it and its Employees will not deal in the shares or other securities of Sibanye Gold Limited when in possession of any inside information, or in the shares or other securities of any other Client to whom the inside information may relate or on the price of whose shares or other securities such information would, if in the public domain, be reasonably expected to have a material effect.

## **2.10 Protection of Personal Information**

2.10.1 The Consultant will:

- a) comply with the information protection principles under POPI and any equivalent or associated legislation and with the Client's information protection policies (in so far as they are relevant), in respect of the processing of the Personal Information as provided to the Consultant by the Client from time to time;
- b) subject to compliance with POPI and any other Clause in the Contract, on the Client's request, permit any authorised officers of the Client to inspect the Consultant's premises and information systems, and have access to, and be provided with, copies of any information (including, without limitation, Personal Information), to enable the Client to:
- c) satisfy itself that the Consultant is complying with its obligations under this Clause and furthermore;
- d) assess compliance with the Contract and the provision of the Services;
- e) comply with its own legal functions, duties and responsibilities in respect of the Services;
- f) only undertake processing of Personal Information reasonably required in the execution of the Contract and, in any event, strictly in accordance with the Client's instructions from time to time;
- g) not disclose Personal Information to any person other than to employees to whom disclosure is necessary for the execution of the Contract;
- h) ensure that any disclosure to a third party is subject to a binding legal obligation on the third party to comply with the obligations set out in this Clause. For the avoidance of doubt, any such third party will not relieve the Consultant of its obligation to comply fully with this Clause, and the Consultant remains fully responsible and liable for ensuring full compliance with this Clause in all respects;
- i) immediately inform the Client of any request from an individual for access to its Personal Information, and comply with the Client's instructions in relation to complying with that request;
- j) have in place, and undertake to maintain during the term of the Contract, appropriate technical and organisation measures against the accidental, unauthorised or unlawful processing, destruction, loss, damage or disclosure of Personal Information, and adequate security programmes and processes to ensure that unauthorised persons do not have access to the Personal Information or to any equipment used to process the Personal Information; and
- k) take all reasonable steps to ensure that any of its Employees who have access to Personal Information are honest, reliable and competent.

2.10.2 The Personal Information:

- a) is the property of the Client;
- b) will be returned immediately to the Client upon termination or expiration of the Contract; and
- c) may not be copied and/or retained in any form by the Consultant upon expiration or termination of the Contract, except as required by law or under the Contract.

- 2.10.3 The Consultant will indemnify and keep indemnified the Client against all claims, demands, actions, proceedings, damages, charges, costs and expenses (including legal costs and expenses) that may be brought against the Client in respect of or in any way arising out of or in connection with the Contract.

## 3 The Consultant

### 3.1 General Obligations

- 3.1.1 The Consultant warrants that:
- a) it has obtained and maintains all permits, licences, certificate or other approvals required by the Consultant under any statute and will, when requested to do so by the Client, provide the Client with copies thereof.
  - b) it is fully experienced and properly organised, financed, equipped, staffed, qualified, licensed and able to fulfil its obligations in terms of the Contract and in terms of any generally accepted good practices and standards, legislation and specifications that may govern it in fulfilling its contractual obligations;
  - c) it has power, authority and legal right to sign and execute the Contract and that the Contract has been duly authorised by all necessary actions and constitutes valid and binding obligations on it in accordance with the terms of the Contract.
  - d) it shall comply with all applicable legislation, by-laws and regulations and that the Services will not contain any recommendation that constitutes a contravention of any applicable legislation, by-laws or regulation;
- 3.1.2 The Consultant will exercise the reasonable skill, care and diligence to be expected from a consultant experienced in the provision of such services for projects of similar size, nature and complexity as the Project.
- 3.1.3 To the extent achievable using the standard of care in clause 3.1.2, the Consultant shall perform the Service with a view to satisfying any function and purpose that may be described in the Contract.
- 3.1.4 The Consultant will give prompt written notice to the Client Representative, of any error, omission, fault or other defects in the specification for the Services that the Consultant discovers when reviewing the Technical Information or executing the Contract. The Services will include any work that is necessary to satisfy the Client's requirements that is implied by the Contract, and any work that, although not mentioned in the Contract, is deemed necessary for the completion of the Services.

### 3.2 Relationship between the Parties

- 3.2.1 The Consultant is an independent Consultant and has the responsibility for and control over the details and means for performing the Services, provided that the Consultant acts within the scope of the Contract.
- 3.2.2 Nothing in the Contract will be deemed to constitute or appoint the Consultant or any of the Consultant's Employees or agents to be the agent, representative, partner, co-venturer or employee of the Client. Under no circumstances will the Consultant be deemed to be in any relationship with the Client that carries with it fiduciary responsibilities.
- 3.2.3 The Consultant is not an agent of the Client and has no authority to represent or bind the Client as to any matters, except as expressly authorised by the Client in writing.
- 3.2.4 The Consultant is responsible for, inter alia, all costs and expenses howsoever and whatsoever necessary to fulfil his contractual and other obligations.

### 3.3 Subcontracting

- 3.3.1 The Consultant will not Subcontract the whole of the Contract, or any part of the Contract, without the prior written consent of the Client Representative, which consent will not be unreasonably withheld.
- 3.3.2 The Consultant will be responsible for the acts, errors, omissions, defaults and neglects of any Subcontractor, its agents, representatives or employees as fully as if they were the acts, errors, omissions, defaults or neglects of the Consultant, its agents, representatives or employees.

- 3.3.3 Where the Subcontractor is a professional service provider, the Consultant shall ensure to enter into an agreement materially similar to this Agreement making provision for, among other, adequate professional indemnity insurance covering the total risk exposure which such sub-consultant may cause as a result of a breach of its obligation to exercise reasonable skill, care and diligence in the performance of its obligations.
- 3.3.4 Where the Subcontractor is a contractor appointed for the performance of any permanent or temporary works (if any) to be carried out for the achievement of the Project, the Consultant shall ensure to enter into an appropriate contract for construction or supply with such Subcontractor. Such contracts for construction or supply shall make provision for among other delay damages, retention, performance guarantees, advance payment guarantees and appropriate insurances to cover all foreseeable risks.
- 3.3.5 All insurances procured by the Subcontractors shall be in addition to the insurances procured by the Consultant in term of this Agreement.
- 3.3.6 Any limitation of liabilities agreed under this Agreement shall be deemed to have increased by a reasonable amount to cover the risk exposure through defaults by the Subcontractor.

### **3.4 Procurement outside the Contract**

- 3.4.1 The Contract does not give exclusive rights of execution of the Contract to the Consultant.
- 3.4.2 The Client may obtain the same or similar Services from any other third party.
- 3.4.3 The procurement of Works or Goods and/or Services outside the Contract, for any work undertaken by outside parties on behalf of the Client during the Contract, will not be a breach of the Contract.

### **3.5 Environmental Compliance**

- 3.5.1 The Consultant warrants that it will at all times take into consideration and to the extend applicable comply with the Client's environmental standards and policies in the execution of the Services.
- 3.5.2 Where the Services include the appointment of the Consultant as the engineer, client representative, project manager or similar under a Works Contract, the Consultant will advise the Client within 2 (two) hours of becoming aware of any pollution and/or degradation of the environment and the Parties will set up the measures to implement whatever remedial and/or preventative action is deemed necessary by the Client to ensure legal compliance.

### **3.6 Health and Safety**

- 3.6.1 The Consultant must at all times take all reasonable precautions and must take into consideration and to the extend applicable comply with all laws and regulations governing safety and all applicable Site health and safety regulations, for the duration of the Contract, to ensure the health and safety of the Consultant's Employees.
- 3.6.2 Where the Services include the appointment of the Consultant as the engineer, client representative, project manager or similar under a Works Contract, the Consultant will send to the Client details of all health and safety incidents. The Consultant will maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Client may reasonably require.

### **3.7 Site Data and Sufficiency of Contract Price**

- 3.7.1 Except as otherwise provided for in the Contract:
- a) The Consultant will be deemed to have obtained all necessary information as to risks, remediation work, defects, contingencies and other circumstances that may influence or affect the Services.
  - b) By signing the Contract, the Consultant accepts responsibility for having foreseen all reasonable difficulties and costs of successfully executing the Contract, including any rehabilitation or cleaning up of environmental pollution.
  - c) The Contract Price will not be adjusted to take account of any unforeseen difficulties or costs. The Contract Price will be deemed to include all items necessary to execute the Contract in accordance with the requirements of the Client Representative and the specifications, and the Contract Price will be deemed to include all the Consultant's activities, costs and profits.
- 3.7.2 The Consultant will be deemed to have satisfied itself of and taken account of:

- a) all the conditions and circumstances affecting the Contract and the Project;
- b) the provision of the Services as described in the Contract;
- c) the general conditions and circumstances at the Site;
- d) the general labour position on Site.

### **3.8 Site Meetings**

3.8.1 Where the Services include the appointment of the Consultant as the engineer, client representative, project manager or similar under a Works Contract, the Consultant will ensure that one or more representatives of the Consultant are present at all Site meetings, having the necessary authority to make decisions on the Consultant's behalf. In addition, the Consultant must ensure that it represents all its Subcontractors. Minutes of any Site meeting will not be deemed to serve as notice for or an instruction to commence any additional work and/or notice of claims.

## **4 The Client**

### **4.1 The Client Representative**

4.1.1 The Client will appoint a Client Representative who will carry out the duties assigned to him in the Contract. The Client Representative will, from time to time, assign duties and delegate the necessary authority to assistants, and may also revoke such assignment or delegation. The assignment, delegation or revocation will be in writing and will not take effect until the Consultant and the appointed assistant(s) have received copies of any such assignment or delegation by the Client Representative. The assistants will be suitably qualified persons, who are competent to carry out the assigned duties and exercise the delegated authority.

4.1.2 The Client Representative will have no authority to amend the Contract.

4.1.3 Except where stated otherwise in the Contract:

- a) the Client Representative has no authority to relieve any party of any duty, obligations or responsibilities under the Contract; and
- b) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Client Representative shall not relieve the Consultant from any responsibility he has under the contract, including responsibility for errors, omissions, discrepancies and non-compliances.

## **5 Personnel and Labour**

### **5.1 Engagement and Labour laws**

5.1.1 The Consultant will make its own arrangements for the employment of all its Employees, local or otherwise, and for their payment, housing, meals and transport.

5.1.2 The Consultant will comply with all the relevant labour laws applicable to the Consultant's Employees, including laws relating to their employment, health and safety, welfare, immigration and emigration and will allow them all their legal rights.

## **6 Commencement, Delays and Suspension**

### **6.1 Duration of Contract**

6.1.1 Any Contract entered into between the Parties shall become effective on Signature Date of the Contract and shall, subject to the further provisions of this contract, continue until the date Specified in the Contract.

6.1.2 The Client and the Consultant may negotiate an extension to the Contract, provided that Written notice of such intention is presented by the Client to the Consultant prior to the termination date of the Contract.

## **6.2 Commencement of Work**

- 6.2.1 The Contract, in its entirety or in part, will not be enforceable until such time as valid Purchase Order is generated by the Client and delivered to the Consultant as and when the Consultant is required to supply or execute the Services.
- 6.2.2 This Clause will remain in full force, notwithstanding any of the following:
- a) a Contract may have been signed, or a notice to commence may have been issued by a person with ostensible or actual authority;
  - b) the Contract may have been adopted and applied by the Parties, or
  - c) a Party may have performed in terms of the Contract.
- 6.2.3 In the event that the Consultant performs any work without a valid Purchase Order unless the work is authorised in terms of Sibanye-Stillwater's Emergency/Breakdown procedure, the Client will not be liable for payment for such work and action may be taken against the Consultant. This may include, but is not limited to, a review of the Consultant's vendor status.
- 6.2.4 The Consultant shall commence with the Services with due expedition and without delay upon receipt of the Purchase Order ("Commencement Date").

## **6.3 Suspension**

- 6.3.1 The Client Representative may at any time instruct the Consultant to suspend the provision of Services or any part thereof. The Client's Representative may also notify the Consultant as to the cause of the suspension and whether it arose as a result of the Consultant.
- 6.3.2 If the Consultant suffers delay or incurs additional costs from complying with the Client Representatives' instruction under this Clause, the Consultant will give notice to the Client's Representative, and may claim:
- a) an extension of the time for completing the Services, if completion is or will be delayed; and
  - b) payment of any such additional costs.
- 6.3.3 Upon receipt of this notice the Client's Representative shall make a determination in respect of such claim. The Client Representative shall take into consideration all circumstances leading up or applicable to the claim including whether such suspension was necessary by reason of any default on the part of the Consultant in which event, the Consultant will not be entitled to an extension of the time for completing the Services or payment of any additional costs.
- 6.3.4 The Consultant shall not proceed with the work without the Written permission of the Client's Representative to proceed.
- 6.3.5 If any suspension has continued for more than 90 (ninety) consecutive days, the Consultant may request, in Writing, the Written permission of the Client's Representative to proceed. If the Client's Representative does not respond within 28 (twenty-eight) days after receipt of the Consultants request, the Consultant may, by giving notice to the Client's Representative, submit a notice in terms of 8.2.3 to omission of the affected part of the Deliverable or the Works. If the suspension affects the whole of the Services, the Consultant may give notice of termination to the Client's Representative.

## **6.4 Completion**

- 6.4.1 The Services shall be completed by the Consultant within the Time for Completion.

## **6.5 Extension of Time**

- 6.5.1 The Consultant may submit a written application for an extension of the time for completing the Services to the Client Representative if completion of the Services is or will be delayed as a result of any of the following causes:
- a) force majeure or
  - b) any delay, impediment or event caused by or attributable to the Client or the Client's Employees.

- 6.5.2 The Client Representative may grant such extension of time as is necessary to complete the Services. The terms and conditions of any such extension of time granted will be confirmed by means of an Amendment to the Contract, issued by the Client.

## 7 Contract Price and Payments

### 7.1 Payments and Invoices

Unless otherwise specified in the Contract:

- 7.1.1 The Consultant will on a monthly basis submit a measurement request to the Client for the measurement of completed Services, if applicable. This measurement request may be in any format agreed to between the Parties in the Contract.
- 7.1.2 The Client will confirm measurement of the completed Services stipulated on the request for measurement and will approve payment. The Parties are jointly responsible for the accuracy of measurements, regardless of whether invoices have been ratified by the Client or not.
- 7.1.3 The Consultant will submit invoices, which will be recorded in a monthly statement by the Consultant. The Consultant will be responsible for the accuracy of the invoices and supporting documents. The Consultant will only be paid for Services in terms of the Contract and subsequent Amendments.
- 7.1.4 Provided the Consultant complies with its contractual obligations and unless otherwise agreed by the Parties, the Client will make payment on statement received at the end of the month and ratified by it, in 30 (thirty) days: i.e. invoices that are submitted to the Client Representative by the 10th of each month will be submitted to Shared Services for ratification by the 28th of the same month, and paid by the 30th of the following month.
- 7.1.5 The Consultant's invoices will comply with the prescriptions for Tax (VAT) invoices as specified in the Value Added Tax Act, Act 89 of 1991, as amended, be fully detailed and will include, where applicable, but not limited to the following:
- a) Invoice Number (sequential);
  - b) Addresses of both parties;
  - c) VAT registration numbers of both Parties;
  - d) Date of Issue;
  - e) Time period during which the section of the Services was executed and for which the invoice is submitted;
  - f) Description of the Services and the amount claimed;
  - g) Escalation calculation and rise and fall formula used, if applicable;
  - h) Client Contract Number;
  - i) The number of the Contract and/or of the Purchase Order, as the case may be;
- 7.1.6 The Client will not be liable for payment of any interest on the outstanding balance of any statement or for any related charges.
- 7.1.7 All payments made by the Client to the Consultant will be made by electronic funds transfer, in the currency stipulated in the Contract, into a bank account nominated and updated when necessary by the Consultant.
- 7.1.8 The Consultant may not cede or assign the right to receive payment without the prior written consent of the Client.
- 7.1.9 Costs, damages or expenses for which the Consultant is liable to the Client, may be offset or deducted by the Client against or from any monies due or becoming due to the Consultant as a result of its business dealings with the Client, or may be recovered by action at law from the Consultant.
- 7.1.10 Payment or ratification of invoices will not affect the Client's rights relating to quality or warranty under the Contract.
- 7.1.11 On giving or causing to be given an instruction to the Client's bankers to effect the transfer of the amount due to the Consultant the Client will fully and effectively discharge its obligation to make payment to the Consultant

- 7.1.12 Late submission of payment documentation and submission of incomplete or incorrect documentation will result in delayed payment.
- 7.1.13 The Consultant will supply the Client with complete bank details in respect of Electronic Funds Transfer, and payments will not be made other than through this method.
- 7.1.14 The Consultant will be promptly notified of any claims or disputes by the Client, and if the Client disputes payment of the invoice then the period of time referred to above will be deemed not to have commenced.
- 7.1.15 If any item or part of an item on an invoice submitted by the Consultant is contested by the Client, the Client will give a notice of its intention to withhold the payment with reasons. The Client will not make partial payments of invoices that are contested.
- 7.1.16 The Consultant will not be entitled to any bonuses, whether production-related or otherwise.

## **7.2 Taxes, Duties, Fees, Levies and Permits**

- 7.2.1 The Consultant must pay or cause to be paid, when due, any and all payroll taxes and contributions that are measured by wages, salaries or other remuneration paid to Employees employed by the Consultant or a Subcontractor, that arise by virtue of their employment and that now or hereafter are imposed by any government, provincial, municipal, local or other lawful authority, including - without limitation - taxes or contributions for annual holiday pay, Unemployment Insurance, Industrial Council Levy, sick pay, Provident Fund, Medical Aid, Service Levy and Living-out allowances.
- 7.2.2 The Consultant will pay, when due, all taxes, duties, levies, wharfage, demurrage, fees or charges of whatever nature required for the execution of the Work in terms of the Contract, and implied by these General Conditions.
- 7.2.3 The Consultant will be responsible for complying with all importation regulations and the payment of all customs and excise duties, levies or any other costs incurred by the Consultant in respect of any imports into the Republic of South Africa.
- 7.2.4 In the event that the Consultant is to be reimbursed by the Client, such costs will be shown separately in the Contract. The Client will not be responsible for any costs incurred by the Consultant due to the Consultant's failure to comply with import control regulations.
- 7.2.5 Any import permit obtained by the Consultant in terms of the foregoing is to be in the joint names of the Consultant and the Client, if so stated in the Contract.
- 7.2.6 The Consultant will, at its cost, obtain from the relevant authorities and administer all necessary permits and licences and fulfil all immigration formalities to enable the Consultant to fulfil its obligations in terms of the Contract.
- 7.2.7 The Client will, at its cost, obtain from the relevant authorities the necessary permission to carry out the Services.

## **7.3 Monies Due from the Consultant**

- 7.3.1 Any costs, damages or expenses for which the Consultant is liable to the Client may be offset or deducted by the Client against or from any monies due or becoming due to the Consultant as a result of its business dealings with the Client; alternatively, these may be recovered from the Consultant by action at law.

# **8 Variations and Contract Price Adjustment**

## **8.1 Contract Price Adjustment**

- 8.1.1 Unless otherwise agreed to by the Parties, the Price will be fixed and firm for the first 12 (twelve) months of the Contract. Thereafter, unless agreed to otherwise by the Client, application may be made by the Consultant for an adjustment of the Price.
- 8.1.2 Any application for an adjustments of the Price will be made by the Consultant to the Client 60 (sixty) days before the proposed effective date of the adjustment to the Price, in writing by email to [priceadjustments@sibanyestillwater.com](mailto:priceadjustments@sibanyestillwater.com), which application will be supported by such documentary evidence as may be required by the Client. No price adjustments will be effective until all documentary evidence is received and the price adjustment has been approved in writing by the Client.

- 8.1.3 The Consultant will give a cost breakdown of:
- a) variation in costs of labour, material, equipment, consumables and transport actually incurred by the Consultant;
  - b) the period of time expressed in months, for which the adjusted Price, if any, will remain fixed;
  - c) any additional employees required (complement);
  - d) proposed increased Price for the Services, and
  - e) motivation for the adjustment of the Price.
- 8.1.4 The Client may, in the event of an application for the price adjustment being lodged, call for tenders or proposals for the supply of the Services. If more favourable tenders or proposals are submitted, the Client may elect to terminate the Contract in accordance with the termination provisions.
- 8.1.5 If the application for Price Adjustment is accepted by the Client, the adjustment of the Price will be reflected in an Amendment, signed by the Parties.
- 8.1.6 If the application for Price Adjustment is not accepted by the Client, the Parties will negotiate in good faith and make every reasonable effort to come to an agreement. Should the Parties fail to reach an agreement, the Client will have the right to terminate the Contract by giving the Consultant 60 (sixty) days' notice of termination. The Consultant will be obliged to continue to supply the Services to the Client, at the Price paid by the Client immediately prior to any such application for Price Adjustment being made by the Consultant, until the termination of the Contract becomes effective.
- 8.1.7 In the event that the requested effective date has passed before the application for Price Adjustment is approved by the Client, any Services will continue to be made at the Price applicable at the time that the application is made, until the application for Price Adjustment is accepted in writing by the Client and an Amendment has been signed by the Parties.
- 8.1.8 The Client will have the right to reject any proposed Price Adjustment and the Client may, at its discretion, cancel the Contract without payment of any compensation to the Consultant for any damages whatsoever, including loss of business and/or profits resulting from such cancellation.

## **8.2 Variations**

- 8.2.1 All variations to the Contract will be processed according to the Client's policies and procedures and will be reflected as Amendments and signed by the Parties to the Contract.
- 8.2.2 The Services may be subject to change by additions, deletions or revisions by the Client, and the Consultant will be advised of such changes in writing.
- 8.2.3 The Consultant will submit to the Client, within 10 (ten) days after receipt of notice of a change, a document containing a detailed breakdown with supporting calculations and pricing for the change together with any change in the time required for execution of the amended Services. Pricing will be in accordance with the pricing structure of the Contract and will clearly define increase, decrease or no change in compensation.
- 8.2.4 The Consultant may not suspend performance of the Contract during the review and negotiation of any change, except as may be instructed by the Client.
- 8.2.5 The Consultant will not perform any additional work or work not specified in the Contract without a written commitment, in the form of an amendment to the Contract, unless such work is authorised in terms of Sibanye-Stillwater's Emergency/Breakdown procedure. In the event that the Consultant performs such additional work not covered by the Emergency/Breakdown procedure, or specified in the Contract, the Client will not be liable for payment of the extra work and action may be taken against the Consultant. This may include, but is not limited to, a review of the Consultant's vendor status.

# **9 Inspections, Testing, Examinations, and Defects**

## **9.1 Consultants Obligations**

- 9.1.1 The Client may at any time inspect the Services on the Site or such other place or places as may be specified in the Contract. The Consultant shall provide such assistance as may be required for examining Services.

9.1.2 The Consultant shall provide all necessary assistance for the purpose of such inspections to be performed by the Client or, if so instructed by the Client to be performed by others.

## **9.2 Notice of Inspections or Testing under a Works Contract**

9.2.1 Where the Consultant is appointed as the engineer, client representative, project manager or similar under a Works Contract, the Consultant will provide the Client Representative with at least five (5) days prior notice in writing of the time, date and place at which any inspections and/or tests are to be performed under such Works Contract. Special arrangements will be agreed on in respect of Plant being manufactured overseas.

9.2.2 Inspections and testing will be conducted so that progress of the Works Contract is not delayed and the witnessing of such inspections and/or tests will not be reason for the Consultant to delay the Services. Inspections and/or tests will not be delayed by the absence of the Client Representative. Provided notice has been given by the Consultant in accordance with the above, the Consultant may proceed with the inspections and/or tests on the date and at the time and place indicated in the notice. The Consultant must forward to the Client Representative duly certified copies of the results of the inspections and/or tests carried out.

## **9.3 Remedies in Case of Default in Performance**

9.3.1 If any part or the whole of the Services is of defective quality, the Client will, without prejudice to any other rights that the Client may have in terms of the Contract or in law, be entitled to reject any such defective Services and the Client may:

- a) instruct the Consultant to replace, redo or make good the defective Services; or
- b) instruct the Consultant to purchase replacement Services from a third party and the Consultant will be liable to the Client for any excess cost of the Services incurred by the Client.

## **9.4 Failure to Remedy Defects**

9.4.1 If the defect is such that the Client has been deprived substantially of the Services or a part thereof, the Client may terminate the Contract in respect of such parts of the Services that cannot be put to the intended use. The Client will, to the exclusion of any remedy it may have in terms of the Contract or under law, be entitled to recover from the Consultant all sums paid in respect of such parts of the Services.

## **9.5 Access to the Services and Tests**

9.5.1 The Consultant will have the right of access to all parts of the Services and to records of the Services. Such right of access will be during the Client's normal working hours at the Consultant's risk and cost. Access will also be granted to any authorised representative of the Consultant whose name has been communicated in writing to the Client Representative..

## **9.6 Making Good Defects in the designs or specifications**

9.6.1 Where a defect in the Project or the works under a Works Contract results from a defect in the Consultant's designs or specifications, the Consultant will be liable for the costs of the making good thereof. The Client may request the Consultant to make good the defect, or it may, at its sole discretion, either do the work itself or employ a third party to make good the defect at the Consultants cost.

9.6.2 The Consultant will make good the defect(s) as soon as practicable.

# **10 Risk and Indemnity**

## **10.1 General Indemnity**

10.1.1 In addition to any specific Indemnities stipulated in the Contract, the Consultant hereby agrees to the following General Indemnities, and indemnifies and holds the Client and its directors and employees harmless from and against:

- 10.1.2 any liability, loss and expense that the Client, directors or employees may sustain or incur (including legal fees and expenses), due any act or omission of the Consultant or any of its employees and arising from whatsoever cause, including delict, contract or a breach of any statutory duty; and/or
- 10.1.3 any liability, loss and expense that the Client, directors or employees may sustain or incur (including legal fees and expenses), arising from any injury to, death or disease of any of their employees and whether or not these arose in the course of supplying the Services which is attributable to any negligence on the part of the Consultant, its Employees or Subcontractors.
- 10.1.4 any liability, loss, claim, costs or damages or degradation of the environment (including legal fees and expenses) that may be incurred by the Client or brought against it or claimed from the Client arising out any negligence on the part of the Consultant, its Employees or Subcontractors, including, without derogating from the generality of the foregoing,
- a) liability, loss, claim, costs or damages or degradation that arise out of or in the course of or by reason of the Consultant's execution of the Contract or any part thereof;
  - b) any defect of whatsoever nature in the Services;
  - c) the unauthorised use or the infringement of any Intellectual Property rights in respect of the Services;
  - d) any stoppages in terms of section 54 (or any other section) of the Mine Health and Safety Act, 29 of 1996, which results in stoppages at any of the Client's operations as a direct or indirect consequence of the Consultant's activities;
  - e) any damage to property by the Consultant;
  - f) any damage to the property of the Consultant, and
  - g) the cost of any damages arising from any industrial action by the Consultant's Employees.
- 10.1.5 In the event that the Client at any time incurs any liability, loss, damages, costs or claims as envisaged in this Clause, it will be entitled, without prejudice to any other rights that it may have, to withhold any or all monies due to the Consultant in terms of the Contract until such time as the Consultant has made good its obligations in terms of this Clause.
- 10.1.6 Unless any negligence, wilful act or breach of these General Conditions is proved to be attributable to the Client, the Client's employees or its respective agents, the Client will not be liable for any damages or compensation payable in respect or in consequence of any accident or injury to any workman or other person in the employment of the Consultant or any sub-Consultant and the Consultant will indemnify and keep indemnified the Client against all such damages and compensation and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or incidental thereto. In addition, the Consultant will indemnify the Client against any claim brought against the Client by an employee of the Consultant save in the event that the claim arises due to the proven negligence, wilful act or breach of contract by the Client or the Client's employees.

## **10.2 Ownership and Risk**

- 10.2.1 Each of the Consultants Documents specified as a deliverable in the Contract will become the property of the Client when the Consultant receives payment.

# **11 Insurance**

## **11.1 Insurance to be maintained**

- 11.1.1 The Consultant will, at its own cost and expense, obtain and maintain in force during the currency of the Contract:
- a) Professional indemnity insurance in amounts sufficient to cover its liabilities under this Contract;
  - b) Insurance against any liability to pay damages or compensation to its Employees with an insurer approved by the Client (which approval will not be unreasonably withheld). The Consultant will ensure that all its Subcontractors insure against this liability with regard to their own Employees; and
  - c) Public liability insurance in amounts sufficient to cover its liability for accidental death of or injury to third parties and/or accidental loss of or damage to third party property arising directly from

- the execution of the Contract and/or in connection with the Consultant's presence on the Site, including during the maintenance of Defects Liability Period;
- d) Motor vehicle insurance in respect of all motor vehicles brought onto the Site by the Consultant.

## **11.2 Failure to Insure**

- 11.2.1 If the Consultant fails to effect and keep in force any insurance which it may be required to effect as above, then the Client may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid from any payments due or which may become due to the Consultant or recover same as a debt from the Consultant. This will not relieve the Consultant from its liability in the event of damage

# 12 Confidentiality

## **12.1 Protection of Confidential Information**

- 12.1.1 'Receiving Party' will mean the Party receiving the other's Confidential Information and 'Disclosing Party' will mean the Party disclosing its Confidential Information to the other Party.
- 12.1.2 The Receiving Party may disclose Confidential Information only to its officers and employees and then only such officers and employees to whom such disclosure is necessary, provided that such officers and employees agree in writing to be bound by the terms and conditions of this Clause.
- 12.1.3 The Receiving Party agrees
- a) not to disclose Confidential Information to any third party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party;
  - b) not to utilise, employ, exploit or in any other manner whatsoever use Confidential Information for any purpose whatsoever other than in relation to the Contract;
  - c) that the unauthorised or unlawful use or disclosure of Confidential Information may cause irreparable loss, harm and damage to the Disclosing Party, which Party make take recourse in the law.
- 12.1.4 The Receiving Party agrees to protect Confidential Information by using the same standard of care used to safeguard its own information of a confidential nature and by taking all reasonable steps to prevent any unauthorised disclosure of Confidential Information.
- 12.1.5 The Disclosing Party may, at any time by way of written notice to the Receiving Party, require the Receiving Party to return any material containing, pertaining to or relating to Confidential Information and to expunge such Confidential Information from any word processor, computer or other similar device into which it was entered or programmed, and may, in addition, require the Receiving Party to furnish a written statement (certified as correct by a director of the Receiving Party) to the effect that, upon such return, the Receiving Party has not retained in its possession, or under its control, either directly or indirectly, any such material. The Receiving Party will comply with all requirements in terms of this Clause within 7 (seven) days of receipt of written notice thereof.

## **12.2 Exclusions**

- 12.2.1 The obligations of the Receiving Party pursuant to the provisions of the Contract will not apply to any information that:
- a) is known to or in the possession of the Receiving Party prior to disclosure thereof by the Disclosing Party;
  - b) is or becomes publicly known, otherwise than pursuant to a breach of the Contract by the Receiving Party;
  - c) is acquired or developed independently of the Disclosing Party by the Receiving Party in circumstances that do not amount to a breach of the provisions of the Contract;
  - d) is disclosed by the Receiving Party to satisfy the order of a Court of competent jurisdiction or to comply with provisions of any law or regulations in force from time to time, provided that in these circumstances, the Receiving Party will advise the Disclosing Party in writing prior to such disclosure to enable the Disclosing Party to take whatever steps it deems necessary to protect

its interest in this regard; provided further that the Receiving Party will disclose only that portion of the Confidential Information that it is legally required to disclose and the Receiving Party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;

- e) is disclosed to a third party pursuant to the prior written authorisation from the Disclosing Party;
- f) to the extent necessary under the rules of any recognised stock exchange.
- g) The Consultant may not take any photographs, with any device, of any of the Client's premises, workings, Employees or any other thing belonging to the Client or relating to the Contract, without the express written permission of the Client.

### **12.3 Disclosure, Use or Copying of Confidential Information**

- 12.3.1 The Consultant may not make press releases or issue other advertising pertaining to the Contract without first obtaining the written approval of the Client.
- 12.3.2 The Consultant may not use the Client's name for marketing or advertising purposes.
- 12.3.3 Breach of this Clause will be a material breach of the Contract, entitling the non-breaching Party to summarily terminate the Contract in addition to any other remedies available to it in law.
- 12.3.4 The rights and obligations contained in this Clause will continue in full force and effect after termination or completion of the Contract.
- 12.3.5 The Receiving Party acknowledges and agrees that the Disclosing Party has expended considerable time, effort and expense in establishing a reputable brand and that the Confidential Information, if used or disclosed in breach of its obligations under these General Conditions, may have or are be likely to have an adverse effect on the Disclosing Party for which the Receiving Party may be held liable in damages.
- 12.3.6 Copies Necessary for the Execution of the Work: The Receiving Party may make copies of written or computer-stored materials incorporating Confidential Information only if those copies are necessary for the execution of the Work and must return to the Disclosing Party all Confidential Information (including any copies made by it) and permanently delete any Confidential Information stored by it in a computer or electronic retrieval system so that it is incapable of retrieval, within 7 (seven) days of the first to occur of the following:
  - a) a receipt of a request from the Disclosing Party to do so; or
  - b) the termination of the engagement of the Consultant in accordance with the Breach and Termination Clause, and
  - c) provide a certificate to the Disclosing Party within 7 (seven) days that these obligations have been complied with. The provisions of this Clause will not apply to any copies of such electronic storage made for bona fide back-up purposes in the normal course of the Consultant's business, but the duties of confidentiality of the Consultant will continue in respect of such back-up media.
- 12.3.7 The Receiving Party must notify the Disclosing Party immediately if it becomes aware of, or suspects, any disclosure, use or copying of Confidential Information that is not authorised and must take all steps reasonably required by the Client to stop that unauthorised disclosure, use or copying.
- 12.3.8 The Receiving Party must restrict disclosure of the Confidential Information to employees who need to know it in order to execute the Contract and must ensure that those employees execute confidentiality agreements similar in effect to this entire Confidentiality Clause.
- 12.3.9 The Consultant will not, without the prior written consent of the Client,
  - a) publish, cause or permit to be published any article, story or other material having any reference whatsoever to the Services; or
  - b) display any advertisements in connection with the Services.

## **13 Intellectual Property**

### **13.1 Third Party Intellectual Property Rights Infringement**

- 13.1.1 The Consultant will in no way infringe or allow any infringement of a third party's intellectual property rights in the performance of its obligations in terms of the Contract. The Consultant hereby warrants that it holds all necessary licences, authorities and permissions necessary to perform its duties and that where necessary it will assign the benefit of the same to the Client in respect of the Work.
- 13.1.2 The Consultant hereby indemnifies the Client against any claims arising against it as a result of any such infringement by the Consultant, including all costs, damages and attorney fees, if any, finally awarded against the Client in any action which is attributable to such claim and will reimburse the Client with all costs including management time and legal costs incurred by it in connection with any such action (including providing guarantees for such costs satisfactory to the Client); provided that the Client gives written notice to the Consultant of such action.
- 13.1.3 The indemnity will not apply to any infringement of Intellectual Property Rights that is due entirely to the Consultant following a design or process stipulated by the Client, provided that such infringement was not at the time known by the Consultant to be an infringement.
- 13.1.4 It is a condition of this indemnity that the Client will give the Consultant notice of any action, proceeding, claim or threat instituted or made against it. The Client will consult with the Consultant and the Client has the option to either:
- a) permit the Consultant, at Consultant's expense, to conduct all negotiations or any litigation that may ensue with the proviso that the Client is informed of all actions taken and the results thereof;
  - or
  - b) conduct any negotiations or litigation that may ensue, with the proviso that the Consultant will be consulted and will not be liable for costs incurred, outside the normal course of litigation, of which the Consultant does not approve.

## **13.2 Intellectual Property and Discoveries**

- 13.2.1 The Client grants the Consultant a non-exclusive right and license to use the Client's Background Intellectual Property including the Technical Information solely for the purpose of undertaking its obligations under the Contract.
- 13.2.2 The Client and the Consultant shall retain the rights in and to their respective Background Intellectual Property.
- 13.2.3 The Consultant may in its sole discretion include its Background Intellectual Property in the Services and the Consultant Documents solely to enable the Client to understand and interpret the Services and the Consultant Documents. The inclusion of the Consultant's Background Intellectual Property in the Services and the Consultant Documents:
- a) will be clearly marked as Consultant Background Intellectual Property and distinguished from Foreground Intellectual Property; and
  - b) will be subject to the confidentiality provisions applicable to the Contract.
- 13.2.4 Unless otherwise stated and to the extent that the Client wishes to use any of the Consultants Background Intellectual Property, the Consultant shall grant the Client a license to use its Background Intellectual Property.
- 13.2.5 The rights in and to all Discoveries shall vest in the Client. The rights however in and to Discoveries which constitute the improvement, modification or development of Consultants Background Intellectual Property shall vest in the Consultant.

## **14 Default and Termination**

### **14.1 Breach and Termination**

- 14.1.1 Either Party may terminate the Contract forthwith on written notice to the other Party, in the event of a breach of the Contract by the other Party that is incapable of remedy.
- 14.1.2 Where the breach is capable of remedy, the aggrieved Party may terminate the Contract on written notice to the breaching Party, where the breaching Party has failed to remedy the breach within 14 (ten) days from receipt of a written notice from the aggrieved Party requesting that the breach to be remedied.

- 14.1.3 If the Consultant breaches any material provision or term of the Contract and fails to remedy such breach within 14 (fourteen) days of receipt of written notice from the Client requiring it to do so, then the Client will be entitled, without notice and in addition to any other remedy available to it at law or under the Contract, to:
- a) claim immediate specific performance of all of the Consultant's obligations; or
  - b) execute the Work itself or acquire the Work from a third party, in which event the Client will be entitled to recover from the Consultant any amount by which the price so paid exceeds the Purchase Price and any costs and expenses associated with acquiring the Work from such third party; or
  - c) terminate the Contract.
- without prejudice to its right to claim damages arising from such breach.
- 14.1.4 If the Client breaches any material provision or term of the Contract and fails to remedy such breach within 14 (fourteen) days of receipt of written notice from the Consultant requiring it to do so, then the Consultant will be entitled, without further notice and in addition to any other remedy available to it at law or under the Contract to:
- a) claim immediate specific performance; or
  - b) terminate the Contract
- without prejudice to its right to claim direct damages arising from such breach.
- 14.1.5 The aggrieved Party's remedies in terms of this Clause are without prejudice to any other remedy to which it may be entitled in law.
- 14.1.6 A Party (Defaulting Party) will be deemed to have breached the Contract, entitling the other Party, without prejudice to any other rights that the other Party may have in law or in terms of the Contract, to cancel the Contract forthwith, with or without claiming damages, or to obtain an order for specific performance, with or without claiming damages, in the event that:
- a) the Defaulting Party goes into liquidation or judicial management (whether provisional or final), or commits any act of insolvency;
  - b) a judgement is given against the Defaulting Party in any competent court for more than R5 million, which judgement is not paid or appealed within 14 (fourteen) Business Days;
  - c) the Defaulting Party commits or permits an action which brings the other Party into public disrepute;
  - d) the Defaulting Party breaches any of the warranties in the Contract;
  - e) the Defaulting Party carries out the same or a similar breach more than once in 6 (six) months;
  - f) the Defaulting Party breaches the Anti-Bribery and Sanctions Laws and Policies Clause;
  - g) the Defaulting Party or anyone in its employ pays or offers to pay, or gives or offers to give, any money or any gift of whatsoever nature, whether by way of a commission, gratuity or otherwise, or lends or offers to lend any money or any asset, or gives or offers to give any other valuable consideration to any person in the employ of the other Party;
  - h) the Defaulting Party breaches any relevant legislation;
- 14.1.7 The Consultant will be deemed to have breached the Contract, entitling the Client, without prejudice to any other rights that the Client may have in law or in terms of the Contract, to cancel the Contract forthwith, with or without claiming damages, or to obtain an order for specific performance, with or without claiming damages, in the event that:
- a) a change in ownership or shareholding occurs that may affect the quality or delivery of Services;
  - b) the Consultant fails to comply with the Client Standards;
  - c) the Consultant fails to take out and maintain a licence or permission to carry out the Services;
  - d) the Consultant fails to take out and maintain, for the duration of the Contract, the required insurances;
  - e) the Consultant and Client fail to reach agreement on a variation in Price.

- 14.1.8 The aggrieved Party will be entitled to indemnification and payment by the defaulting Party of its legal costs on a scale as between attorney and own client in any legal proceedings arising from or associated with any breach by the defaulting Party of its obligations in terms of this Clause.
- 14.1.9 In the event that the Client terminates the Contract for whatsoever reason and appoints a Consultant of its choice to complete the Services, the Consultant will actively participate and ensure a smooth handover to the new Consultant. This will include, but is not limited to, providing all relevant Documentation.

## **14.2 Optional Termination by the Client**

- 14.2.1 The Client may, at its option, terminate the Contract in whole or in part at any time by giving 60 (sixty) days' written notice thereof to the Consultant, whether or not the Consultant is in default, without incurring any liabilities arising from the early termination of the Contract. The Client may itself complete the remaining portion of the Services or have this completed by others.
- 14.2.2 Upon any such termination, the Client will pay to the Consultant all amounts due and not previously paid to the Consultant for Services completed in accordance with the Contract, and for any work thereafter completed, as more specifically specified in such notice.

## **14.3 Effect of Termination**

- 14.3.1 Regardless of the manner in which the engagement of the Consultant is terminated, the following Clauses are expressly agreed as surviving such termination, in addition to any other such provision in the Contract:
- a) Indemnities;
  - b) Warranties;
  - c) Confidentiality;
  - d) Intellectual Property;
  - e) Resolution of Disputes.

## **14.4 Curtailment and Cessation of Operations**

- 14.4.1 Notwithstanding any other Clause in the Contract, the Client will be entitled to terminate the Contract in its entirety, or to reduce the scope of the Services in the event of the Client experiencing a material and significant curtailment of operations, or ceasing to carry out any mining activities, as the case may be, in the country where the Contract normally applies.
- 14.4.2 The Consultant will bear its own direct and indirect costs connected with or incidental to such termination, including the purchase of specialised equipment or vehicles for the Contract. The Consultant will not in any event be entitled to additional or extra compensation by reason of this termination.
- 14.4.3 Upon termination in terms of this Clause, the Client will not be liable to the Consultant for damages, any other claim or compensation arising out of the termination, whether for loss of business, profits or any other cause.

## **15 Force Majeure**

- 15.1.1 A Party will be relieved of liability for the non-performance or defective performance of an obligation under the Contract caused by an event or series of events of force majeure or casus fortuitus (herein referred to as a Force Majeure event) beyond the reasonable control of that Party.
- 15.1.2 If the obligations of a Party are adversely and materially affected by a force majeure event that results in cessation, lessening or degradation of an essential service such as electricity, water or sewerage, and/or an actual or potential hazard that affects or may affect the health and safety of persons on the Client's property, a Party will not be liable for performance of the obligation affected.
- 15.1.3 A Party subject to Force Majeure will immediately notify the other Party in writing of the circumstances amounting to force majeure and will provide an estimate (updated in writing from time to time) of when those circumstances are expected to cease.

- 15.1.4 Execution of any such obligation is suspended for as long as the Force Majeure event continues to make the execution impossible.
- 15.1.5 In conditions of Force Majeure, each Party will take all reasonable, lawful steps to resume performance of the Party's obligations under the Contract as soon as reasonably possible, and will discuss with the other Party ways and means to overcome such conditions.
- 15.1.6 If conditions of Force Majeure persist continuously in respect of a Party for a period of more than 6 (six) months, either Party may terminate the Contract with immediate effect on written notice, provided that the obligation which the affected Party is unable to perform is a material obligation under the Contract.
- 15.1.7 The affected Party will bear the direct and indirect costs for the time that it is affected by the Force Majeure event, as well as the costs connected with or incidental to termination of the Contract.
- 15.1.8 A Party will not in any event be entitled to additional or extra compensation by reason of the Force Majeure event.
- 15.1.9 Standing time will not be paid for a Force Majeure event.
- 15.1.10 A Party subject to a Force Majeure event will not be liable for any costs, loss or damages, penalties or inconvenience suffered by the other Party.
- 15.1.11 Reasonable extension for Performance: If a Party's performance is delayed by a Force Majeure event, the Party will be entitled to an extension of time for performance. The Client will be entitled in its sole discretion to determine the period of extension that will apply.
- 15.1.12 If either Party experiences economic hardship as a result of a force majeure event, then that Party may apply to the other Party to amend the relevant Contract obligations.

## 16 Claims, Disputes and Arbitration

### 16.1 Claims

- 16.1.1 If there are any circumstances in which the Consultant considers itself entitled to claim additional payment, the Consultant will:
  - a) give written notice to the Client Representative of its intention to claim for additional payment, within 14 (fourteen) days after which the Party reasonably should have become aware of the circumstances giving rise to the claim; and
  - b) as soon as reasonably possible after the date of the written notice, but not later than 28 (twenty eight) days from such written notice, submit full and complete details of its claim to the Client Representative, together with any additional information that may be required to assess the validity of its claim.
- 16.1.2 After due consultation between the Client Representative and the Consultant, the Client Representative will determine whether the Consultant is entitled to additional payment, and advise the Consultant accordingly. The Client Representative will initiate an Amendment to the Contract if the Client Representative determines that an additional payment is required.
- 16.1.3 The Client will not be liable for and the Consultant hereby waives its right to any claim or potential claim of the Consultant that was not reported by the Consultant in accordance with the provisions of this Clause. The Consultant agrees to continue performance of the Contract during the time that any claim of the Consultant is pending.

### 16.2 Informal Dispute Resolution

- 16.2.1 In the event of any dispute or difference between the Parties relating to or arising from the Contract, the Parties will first seek to informally resolve the dispute, in good faith, before resorting to any of the other formal dispute resolution procedures below.

### 16.3 Technical Disputes

- 16.3.1 If a dispute is of a technical nature, either Party may refer the matter to a technical expert nominated by the head of the South African Consulting Engineers Association. The decision of the technical expert will, in the absence of manifest error or fraud, be binding on the Parties.

### 16.4 Formal Dispute Resolution

- 16.4.1 Either Party may, if the other Party agrees thereto in writing, demand that the dispute be referred for arbitration, in accordance with the commercial arbitration Rules of the Arbitration Foundation of South Africa (AFSA). Such arbitration will be held in Johannesburg, unless otherwise agreed to.
- 16.4.2 Each Party irrevocably consents to the arbitration proceedings, and no Party will be entitled to withdraw from such arbitration proceedings or to claim that it is not bound by this Clause.
- 16.4.3 Each Party agrees that the decision of the arbitrator in the arbitration proceedings
- a) will be final and binding on each of them; and
  - b) will be carried into effect; and
  - c) may be made an order of Court by agreement between the Parties.
- 16.4.4 There will be one arbitrator, who will be, if the question in issue is
- a) primarily an accounting matter, an independent chartered accountant of not less than 10 (ten) years' standing;
  - b) primarily a legal matter, a practising advocate or commercial attorney of not less than 10 (ten) years' standing;
  - c) any other matter, a suitably qualified, independent person.
- 16.4.5 The appointment of the arbitrator will be agreed on between the Parties, but failing agreement between them within 5 (five) Business Days after the arbitration has been demanded, either of the Parties will be entitled to request the Registrar of AFSA to make the appointment. In making the appointment, the Registrar will have regard to the nature of the dispute and the Parties' requirement for speedy arbitration.
- 16.4.6 The arbitrator will have the powers conferred upon an arbitrator under the Rules, except that the arbitrator will have no authority to award punitive, consequential, special or indirect damages. The arbitrator will not be entitled to issue injunctive and other equitable relief.
- 16.4.7 The cost of the arbitration proceedings and any proceedings in court to confirm or to vacate any arbitration award, as applicable (including, without limitation, reasonable attorneys' fees and costs), will be borne by the unsuccessful party, as determined by the arbitrators, and will be awarded as part of the arbitrator's award.
- 16.4.8 Notwithstanding the foregoing, nothing will preclude either Party from
- a) applying to court for a temporary interdict or other relief of an urgent nature, pending the decision of the award of the arbitrator, or
  - b) choosing to resolve the dispute through court processes instead of arbitration, on the condition that arbitration proceedings have not been instituted in respect of the same relief being sought by the relevant Party.
- 16.4.9 The Parties agree that any legal action or proceedings arising out of or in connection with the Contract may be brought in a court of competent jurisdiction in the Republic of South Africa, and submit to the exclusive jurisdiction of that court.
- 16.4.10 This Clause is severable from the rest of the Contract and will therefore remain of full force and effect after the Contract is terminated or cancelled.