



Murray & Roberts Cementation

Supply Chain Department

Standard Terms and Conditions for the Supply of Goods and Services to Murray & Roberts Cementation (Pty) Ltd (MRC)

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Agreement:

1. INTERPRETATION

- 1.1 In this Agreement, clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention:
- 1.1.1 an expression which denotes:
- 1.1.1.1 any gender includes the other genders;
- 1.1.1.2 a natural person includes an artificial or juristic person and *vice versa*; and
- 1.1.1.3 the singular includes the plural and *vice versa*.
- 1.2 The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:
- 1.2.1 **"Agreement"** means the supply of Goods and Services agreement between the Parties whereby they agree to be bound by this Agreement, the Purchase Order and all other documents executed under this Agreement, each of which may be amended from time to time, including all annexures hereto and policies; procedures and other documents incorporated herein by way of reference;
- 1.2.2 **"Causal Event"** means:
- 1.2.2.1 a compromise or composition or threatened compromise or composition by the **Supplier** with its creditors;
- 1.2.2.2 provisional or final liquidation of the **Supplier** or placement of the **Supplier** in judicial management, whether provisionally or finally;
- 1.2.2.3 in circumstances where there is a default or cessation or a reasonable prospect of default or cessation (as the case may be) of the **Supplier's** normal line of business;
- 1.2.2.4 commitment of any act or omission which would, in the case of an individual, be an act of insolvency;
- 1.2.2.5 disposal by the **Supplier** of a material portion of its undertaking or assets; or
- 1.2.2.6 any change in the control or material change in the shareholding of the **Supplier**,
- 1.2.2.7 the Causal Events set forth in clauses 1.2.2.5 and 1.2.2.6 are subject to the further qualification that they shall only be considered Causal Events where **MRC**, acting in good faith, considers such events to be detrimental to it for sound business reasons;
- 1.2.3 **"Client"** means any client of **MRC**;
- 1.2.4 **"Client Agreement"** means any agreement entered into or to be entered into between **MRC** and its Client;
- 1.2.5 **"Confidential Information"** means all confidential and proprietary information disclosed by **MRC** to the **Supplier** whether prior to or after the Signature Date and shall include, without limiting its ordinary meaning, and in respect of **MRC's** business affairs and technologies, oral, written, printed, photographically and electronically recorded information of all types, documents, letters, agreements, undertakings, messages, codes, data, formulae, specifications, blueprints, plans, processes, marketing methods, know-how, methodology, intellectual property, trade secrets, projects, projections, cash flow charts, software and copies, notes and extracts, and the strategic plans, financial plans and financial planning process, the direction, manner, timing and implementation of any projects to be undertaken, as well as any information, economic as well as financial, regarding the affairs of **MRC** to this Agreement which comes to the attention of the **Supplier** pursuant to this Agreement.
- 1.2.6 **"Contract Price"** means the prices payable by **MRC** to the **Supplier** for the Goods and/or Services as set out in **Annexure C**;
- 1.2.7 **"Commissioning"** means the process by which the Goods are tested to verify if it functions according to its design objects or specifications to the satisfaction of **MRC**.
- 1.2.8 **"Completion Date"** means the period as recorded in **Annexure A**;
- 1.2.9 **"Defect"** or **"Deficiencies"** or **"Defective"** means with respect to the Goods and/or Services:
- 1.2.9.1 any error, problem, non-conformity or defect resulting from a deviation from the documentation for such deliverable;
- 1.2.9.2 any other error, problem, non-conformity or defect that impacts the use or performance of the deliverable where the deliverable is used or performs in the environment defined for its use or performance; or
- 1.2.9.3 incorrect or incomplete documentation;
- 1.2.10 **"Defect Liability Period"** means the period specified in **Annexure A**;
- 1.2.11 **"Duration"** means the period as recorded in **Annexure A**;
- 1.2.12 **"Effective Date"** means the date as recorded in **Annexure A**;
- 1.2.13 **"End-of-Contract Assistance"** means the provision by the **Supplier** of all reasonable information and assistance to **MRC** to enable **MRC** or a third party designated by **MRC** to take over the **Supplier's** obligations under this Agreement in the event of termination or expiration of this Agreement as provided for in clauses 37, 37.4 and 39;
- 1.2.14 **"Goods"** means any items supplied to **MRC** by the **Supplier** as provided for in Sections A and C and as set out in **Annexure A**;
- 1.2.15 **"Intellectual Property"** means any patent, copyright, design, trademark, trade name, brand name, license or other property of similar nature whether registered or not, owned or partly owned by either Party from time to time;
- 1.2.16 **"Loan Equipment"** means any equipment, which either Party has lent to the other, regardless as to whether such loan is regulated in terms of the Agreement;
- 1.2.17 **"Losses"** means all losses, liabilities, damages and claims, and all related costs and expenses (including legal charges on a scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties);
- 1.2.18 **"Memorandum of Agreement"** means an agreement between the Parties whereby they agree to be bound by this Agreement;
- 1.2.19 **"MHSA"** means the Mine Health and Safety Act, (Act No 29 of 1996);
- 1.2.20 **"MRC"** means Murray & Roberts Cementation (Pty) Ltd (Reg. Number 1954/003508/07)
- 1.2.21 **"Parties"** means the parties to this Agreement, being **MRC** and the **Supplier**;
- 1.2.22 **"Purchase Order"** means the official purchase order relating to the supply of the Goods and/or Services;
- 1.2.23 **"Relationship Manager"** means one individual designated by each Party in writing to the other to whom all communications regarding this Agreement will be addressed. Either Party may replace such individuals from time to time on reasonable prior notice. The Relationship Manager appointed by the Parties are named in **Annexure A**;
- 1.2.24 **"Services"** means the services, functions and responsibilities, as defined in **Annexure A** as these may evolve during the continued duration of this Agreement as they may be supplemented, enhanced, modified or replaced in accordance with the terms of these Agreement;
- 1.2.25 **"Specification"** means the specification of the Goods and/or Services, as the case may be, as set out in **Annexure E**;
- 1.2.26 **"Staff"** means any employee, independent contractor, agent, consultant, sub-contractor or other representative of either Party;

- 1.2.27 "**Supplier**" means an existing or potential supplier, contractor or service provider. A supplier may be a natural person or a legal entity;
- 1.2.28 "**Supply Chain Manager**" means the manager of **MRC's** Supply Chain department from time to time or their authorised representative;
- 1.2.29 "**Working Days**" means the days on which the Services are to be rendered as set out in **Annexure A**.
- 1.3 Any reference in this Agreement to –
- 1.3.1 "business hours" shall be construed as being the hours between 08h00 and 16h00 on any business day. Any reference to time shall be based upon South African Standard Time;
- 1.3.2 "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.3.3 "law" means any South African law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;
- 1.3.4 "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and
- 1.3.5 "writing" means legible writing and in English and excludes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, No 25 of 2002 but shall not exclude telefaxes. Communications in traditional letter format may be transmitted as .pdf attachments by the Parties and other contractual role players one to the other by e-mail.
- 1.4 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 shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5 The words "shall" and "will" and "must" used in the context of any obligation or restriction imposed on a Party have the same meaning.
- 1.6 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 1.7 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 1.8 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.9 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 1.10 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.11 If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.
- 1.12 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.13 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 1.14 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement;
- 1.15 The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 1.16 Any reference in this Agreement to "this Agreement" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 1.17 In this Agreement the words "clause" or "clauses" and "annexure" or "annexures" refer to clauses of and annexures to this Agreement.
- 1.18 Whenever a person is required to act "as an expert and not as an arbitrator" in terms of this Agreement, then:
- 1.18.1 the determination of the expert shall (in the absence of error) be final and binding but subject to clause 1.18.6;
- 1.18.2 subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly;
- 1.18.3 the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
- 1.18.4 the expert shall consult with the relevant Parties (provided that the extent of the expert's consultation shall in his or its sole discretion) prior to rendering a determination;
- 1.18.5 having regard to the sensitivity of any Confidential Information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question; and
- 1.18.6 to the extent that the decision of the expert is in manifest error, the Parties shall be entitled to appeal such decision in terms of the rules for commercial arbitration of the Association of Arbitrators (Southern Africa).

SECTION A: GENERAL TERMS & CONDITIONS

2. BASIS OF AGREEMENT

- 2.1 **MRC** and the **Supplier** hereby enter into this Agreement on the terms and conditions set out herein. The appointment of the **Supplier** is on a non-exclusive and ad hoc basis. Notwithstanding anything to the contrary contained herein or in any other document, no guarantee is made as to any volumes or quantities whatsoever and **MRC** shall further not be precluded from obtaining the Goods and/or Services from a third Party or to provide same itself.
- 2.2 For the avoidance of doubt, it is specifically recorded that any deviation from this Agreement must be specifically identified and recorded as such in **Annexure B** in order to be effective against either Party. In this regard, to the extent that any **Supplier's** terms and conditions stated upon a quotation, an invoice, a proposal or any other contractual document furnished by the **Supplier** to **MRC** conflict with this Agreement, such deviation shall be of no force or effect unless specifically identified and recorded as such and signed by both Parties herein.
- 2.3 This Agreement shall be binding upon the Parties following the execution by them of this Agreement, and any subsequent amendment, annexure and/or purchase orders relating to this Agreement, issued hereinafter shall not be binding until signed by both Parties.
- 2.4 This Agreement consist of three sections, namely:
- 2.4.1 **Section A**, being the general terms and conditions;
- 2.4.2 **Section B**, being the terms and conditions applicable to the provision of the Services by the **Supplier** to **MRC** other than

labour supply services; and

2.4.3 **Section C**, being the terms and conditions applicable to the supply of Goods by the **Supplier** to **MRC**.

2.5 The provisions of clause 2.4.1, **Section A** shall be applicable to all **Suppliers** regardless of whether Goods and/or Services, are provided to **MRC**. To the extent that the **Supplier** is engaged to supply any service(s), clause 2.4.2, **Section B** of this Agreement, shall, in addition to **Section A**, regulate such activities. To the extent that the **Supplier** is engaged to supply any Goods, clause 2.4.3, **Section C** of this Agreement, in addition to **Section A**, shall regulate such activities.

2.6 All official Purchase Orders issued by **MRC's** Supply Chain department shall be governed by this Agreement.

2.7 The terms and conditions set forth in the Memorandum of Agreement shall not be effective until such Memorandum of Agreement is executed by both Parties. Unless otherwise agreed between the Parties in writing, any work, supply or service undertaken by the **Supplier** which is not set forth in an executed Memorandum of Agreement shall be at the **Supplier's** risk and cost.

3. DURATION

3.1 This Agreement shall commence upon the Effective Date of the Agreement concluded between the Parties under this Agreement and shall endure thereafter for the period stated in the Agreement.

3.2 It is specifically recorded that this Agreement provides for the early termination of the relationship between the Parties by **MRC** under certain circumstances. Such early termination may be in respect of particular Agreements between the Parties, particular Purchase Orders, or the entire relationship between the Parties.

3.3 To the extent that the Client Agreement is terminated for whatsoever reason, then this Agreement shall, at the election of **MRC**, automatically terminate on the same date, and the **Supplier** shall have no claim against **MRC** of whatsoever nature as a result.

3.4 If, during the currency of this Agreement **MRC's** operations are curtailed for any reason, **MRC** shall have the right to terminate this Agreement and the **Supplier** shall have no claim against **MRC** of whatsoever nature as a result.

4. PASS THROUGH

This Agreement may be concluded based on a need identified in a Client Agreement. In such instances, the terms and conditions set out in this clause shall apply:

4.1 The Client Agreement contains duties and obligations, including the duty by **MRC** to comply with certain policies and procedures, legislation, indemnities and liabilities which will have a financial implication on **MRC**.

4.2 To the extent applicable, the **Supplier** hereby undertakes and warrants that they will at all times comply with the same duties and obligations as are placed on **MRC** by the Client in terms of the Client Agreement as if the **Supplier** were **MRC**.

4.3 To the extent that **MRC** is held liable under the duties and obligations placed on it in terms of the Client Agreement, then **MRC** shall hold the **Supplier** liable for same. If **MRC** is invoiced under the Client Agreement for any damages relating to the supply of Goods and/or Services in terms of this Agreement, then **MRC** will invoice the **Supplier** for such damages, and said damages will be deemed to be liquid damages and **MRC** shall be entitled to apply set-off in respect of same. The **Supplier** indemnifies and holds **MRC** harmless irrevocably and *in rem suam* in respect of any such liability and damages.

4.4 If the duties and obligations contained in this Agreement are higher than those which are set out in the Client Agreement (excluding the payment and rights clauses), then this Agreement will prevail. To the extent that the duties and obligations contained in the Client Agreement are higher than in this Agreement, then to the maximum extent practically possible, the duties and obligations in the Client Agreement will prevail.

4.5 It shall be incumbent on the **Supplier** to obtain copies of the policies and procedures contained in the Client Agreement. The said policies and procedures are available on request and can be viewed at **22 Skeen Boulevard, Bedfordview**.

5. THE SUPPLIER'S DUTIES

5.1 The **Supplier** professes specialised knowledge, skill, attributes and expertise generally and in respect of the supply of the Goods and Services in particular, and warrants and undertakes to carry out its obligations in terms of the Agreement in a responsible, professional and expert manner, and to exercise the utmost caution, care and diligence in the performance of the Services. The provisions of this clause shall not detract in any way from any statutory or common law duty of care that may be imposed on the **Supplier** in the performance of the Services or supply of the Goods or in connection with the Agreement.

5.2 The **Supplier** shall, to the extent possible and/or permissible, cede to **MRC** the benefit of warranties and indemnities received from third party manufacturers, lessors or licensors of Goods supplied to **MRC** under any agreements between the **Supplier** and such manufacturers, lessors or licensors. In order to give due and proper effect to the terms of this clause, the **Supplier** undertakes, as and when requested by **MRC** in writing, to execute all such instruments and to do all such things as may be necessary (and to the extent that the **Supplier** is permitted) to effect the cession and in the event of the **Supplier** failing to comply promptly with any such request, the **Supplier** hereby irrevocably nominates, constitutes and appoints **MRC** to be its agent, with power to sign all such documents and do all such acts, matters and things as may be necessary to effect the cession. If the cession contemplated in this clause 5.2 is not effected as contemplated, then in such circumstances the **Supplier** shall enforce such warranties and indemnities as reasonably directed by **MRC** and at the cost of **MRC**. The **Supplier** shall comply with all terms and conditions of agreements with such manufacturers, lessors and licensors.

5.3 Notwithstanding the foregoing, the **Supplier** acknowledges that, in all its negotiations and agreements with such manufacturers, lessors and licensors, it is obliged to apply its best endeavours to ensuring that all such warranties and indemnities are capable of cession. To the extent that this is not possible, the Parties shall co-operate to achieve an alternative arrangement acceptable to both Parties.

5.4 The **Supplier** shall at all times during the currency of this Agreement, maintain the appointment of a Relationship Manager. It is recorded that the Relationship Manager's duties shall include, but not be limited to, the settlement of financial aspects of the relationship between the Parties, the regulation of financial and legal relationships, the governance of the Agreement and the responsibility of maintaining professional relationships between the Parties.

5.5 The **Supplier** shall at all times during the currency of this Agreement, be required to procure the availability of sufficient numbers of key **Supplier** Staff with knowledge of **MRC's** requirements and technical expertise relating to those requirements.

5.6 **MRC** shall be entitled, by giving no less than 2 (two) business days' written notice thereof to the Supplier's Relationship Manager setting out full and precise reasons, to require the **Supplier** to reconsider the deployment of any member of the **Supplier** Staff who, in its reasonable opinion, is failing to perform his duties in a satisfactory manner. The **Supplier** shall investigate the complaint and shall, if is able to rectify the conduct of that member of the **Supplier** Staff within 2 (two) business days' of its receipt of such complaint, do so, failing which it shall ensure that such Staff member is withdrawn from the **MRC** environment. The foregoing notwithstanding, where in **MRC's** reasonable opinion, circumstances warrant an accelerated process in terms of this clause 5, the time periods set out above may be adjusted.

5.7 The **Supplier** undertakes to apply and comply in all respects with all regulatory and other obligations imposed upon it in terms of any law or in terms of any guidelines in respect of corporate governance.

5.8 The **Supplier** undertakes that it shall ensure that it and its Staff shall:

5.8.1 adhere to **MRC** security policies of general application to **MRC** Staff;

5.8.2 while on **MRC** or the Client's premises, conduct themselves in a manner which is appropriate to the context of a well-managed corporate environment and is appropriately respectful to the interests of all Staff.

5.9 Access to **MRC** or the Client's property or project site shall be restricted to the **Supplier's** authorised Staff and vehicle/s and only

on permission from **MRC**. Access to the Client's property shall at all times be subject to **MRC's** and the Clients' approval and conditions of access and all other policies and procedures of **MRC** and the Client pertaining to the Supplier being on site.

- 5.10 **MRC** shall have the right, at all times, without prior notice or warning to search, inspect or examine any of the **Supplier's** property, agents, representatives, employees or **Supplier's** equipment whilst such is on the **MRC** or the Client's property or project site.
- 5.11 The **Supplier's** vehicles shall be restricted to areas and routes for which access to the project site or **MRC** or the Client's property is necessary. The **Supplier** shall not be permitted to drive freely through **MRC's** or the Client's property.
- 5.12 No employees of the **Supplier** shall be permitted to sleep or lodge on **MRC's** or the Client's property or project site.
- 5.13 Should **MRC** at any time have reason to believe that any member of the **Supplier's** Staff is failing to comply with the policies and procedures set out in this Agreement or that such Staff member poses a threat or risk to **MRC**, **MRC** shall be entitled to deny such Staff member access to any or all of **MRC's** premises and require the **Supplier** to withdraw such member of Staff from the **Supplier's** provision of Services to **MRC** without delay.
- 5.14 The **Supplier** shall be obliged to ensure that Staff who no longer require a right of access to **MRC** or the Client's premises or any part thereof for the normal performance of their Services shall immediately return all access cards, security codes and any other like **MRC** property to **MRC**.
- 5.15 The **Supplier** shall undertake the Services in compliance with the requirements set forth in **Annexure A**.
- 5.16 The **Supplier** undertakes to apply reasonable endeavours to promptly bring to **MRC's** attention an act or omission of **MRC** or its Staff, which may impact upon the provision of Services. In addition, the **Supplier** undertakes to apply reasonable endeavours to promptly bring to **MRC's** attention an act or omission of the **Supplier** or its Staff which may impact upon the provision of Services.
- 5.17 The **Supplier** shall be responsible for developing and/or maintaining up-to-date documentation pertaining to any Goods and/or Services provided to **MRC**. The form and substance of such documentation (including any updates thereto) shall be specified in **Annexure A** and shall be subject to **MRC's** approval. The failure by the **Supplier** to comply with the contents of this clause will be deemed to be a material breach of this Agreement.
- 5.18 The **Supplier** shall attend, and ensure the attendance of its Staff, at all meetings required in terms of the Agreement.
- 5.19 The **Supplier** shall prepare all reports as required in terms of the Agreement.
- 5.20 The **Supplier** shall undertake the Services in accordance with the Working Days.

6. TIME FOR COMPLETION

- 6.1 Within 14 (fourteen) days of the Effective Date or any other dates that may be mutually agreed between the **Supplier** and **MRC**, the **Supplier** shall submit a programme to **MRC** for approval. The programme shall be in a form acceptable to **MRC** incorporating agreed key dates and showing the order in which the **Supplier** proposes to carry out the Services or deliver the Goods. Approval by **MRC** of the programme shall not relieve the **Supplier** of any of its duties or responsibilities under this Agreement.
- 6.2 After the programme has been submitted to and approved by **MRC**, the **Supplier** shall adhere to the order of procedure and method stated therein unless the **Supplier** obtains the permission in writing of **MRC** to vary such order or method. **MRC** may, however, at its discretion and during the progress of the Agreement, direct that the **Supplier** vary the order in which the **Supplier** proposes to carry out the Services or deliver the Goods and the **Supplier** shall update the programme accordingly.

Should it at any time during the progress of this Agreement become evident to **MRC** that the execution of the Agreement is not in accordance with the programme approved or as varied in terms of the above, **MRC** may direct the **Supplier** to take such measures, including the employment of additional labour and/or extension of working hours, to ensure that the programme is adhered to. Any

additional costs incurred by the **Supplier** as a result of a direction by **MRC** in terms of this clause shall, unless it can be shown that the delay was caused by reasons attributable to **MRC**, be for the **Supplier's** account.

7. EXTENSION OF TIME FOR COMPLETION

If by reason of any cause attributable to **MRC**, the **Supplier** shall have been delayed in the completion of the Agreement the **Supplier** may, within a reasonable period but no later than 14 (fourteen) days after becoming aware of the cause, submit a request for an extension of time to **MRC** for **MRC's** consideration. **MRC** may grant to the **Supplier** such extension of time as, in **MRC's** sole opinion, is necessary to complete the Agreement. The terms and conditions of any extension of time granted shall be confirmed by means of an amendment to the Agreement issued by the Supply Chain Manager.

8. MRC'S DUTIES

- 8.1 **MRC** shall grant the **Supplier** reasonable access to site, data, information, equipment and facilities, as reasonably required by the **Supplier** in order to effectively perform its duties and obligations in terms of the Agreement.
 - 8.2 **MRC** shall for the duration of this Agreement allow the **Supplier's** Staff to make reasonable use of **MRC's** resources and facilities as are necessary for it to perform its duties and obligations in terms of the Agreement. Commonly such resources and facilities shall consist of a lay down area, ablution facilities, telephone and fax connection points, water and electricity supplies, and other such reasonably required resources at **MRC** or the Client's premises and/or property.
 - 8.3 **MRC** shall ensure that the **Supplier** is afforded the reasonable assistance by **MRC** Staff as is reasonably required by the **Supplier** to effectively perform its duties and obligations in terms of the Agreement, provided that adequate notice of such requirement is given.
 - 8.4 **MRC** undertakes to apply reasonable endeavours to promptly bring to the **Supplier's** attention an act or omission of the **Supplier** or its Staff which may impact upon the **Supplier's** performance of its duties and obligations in terms of the Agreement. In addition, **MRC** undertakes to apply reasonable endeavours to promptly bring to the **Supplier's** attention an act or omission of **MRC** or its Staff, which may impact upon its performance of its duties and obligations in terms of the Agreement.
 - 8.5 **MRC** shall take reasonable measures to ensure that the users of the Goods and/or Services provided by the **Supplier** under this Agreement use such Goods and/or Services as intended to the extent expressly set forth in this Agreement.
 - 8.6 **MRC** shall provide the **Supplier** at the appropriate times with the technical information necessary to enable the **Supplier** to comply with its obligations in terms of the Agreement. All technical information shall be and remain the property of **MRC** and shall be handed over to **MRC** on demand.
 - 8.7 In the event of any omission or discrepancy occurring in the technical information, this shall be brought to the attention of **MRC** before or at the time of tendering. If, at any later stage, any ambiguity or discrepancy is discovered in the technical information the matter shall immediately be referred to **MRC's** Supply Chain Manager for their decision.
- ## 9. SUPPLIER TESTING
- 9.1 Prior to presenting any Goods or any other deliverable to **MRC** to carry out acceptance testing, the **Supplier** shall submit to **MRC** for its review and approval its pre-acceptance testing plan. The **Supplier** shall perform all testing required in accordance with the pre-acceptance testing plan in accordance with such plan as approved by **MRC**.
 - 9.2 If the **Supplier** is responsible for installation and/or implementation and/or commissioning of any Goods or deliverables under this Agreement and any subsequent Purchase Orders, the **Supplier** shall implement and/or install and/or commission such Goods and deliverables and verify that the Goods or deliverables have been properly implemented.
 - 9.3 The pre-acceptance testing plan and any other testing required under clause 9 shall be sufficiently rigorous to identify any deficiencies that are reasonably discoverable.

- 9.4 The **Supplier** shall promptly remedy any deficiencies identified during such pre-acceptance testing and retest the Goods or deliverables in accordance with clause 9 to verify that the deficiency has been successfully remedied and that there are no other deficiencies. The **Supplier** shall repeat this testing and remedial process until the pre-acceptance testing required under this clause 9.3 is accomplished without revealing any deficiencies.
- 10. INSPECTION**
- MRC** shall at all reasonable times be entitled to inspect the Goods to be supplied by the **Supplier** at the premises of the **Supplier** and/or its sub-contractors. The **Supplier** shall make the necessary arrangements for **MRC's** access to the Goods. Failure to inspect the Goods shall in no way impair **MRC's** rights under the common law or those set out in this Agreement, nor deemed to constitute acceptance by **MRC** of the Goods, notwithstanding **MRC's** opportunity to inspect the Goods or the substantiality or ease of discovery of the Defect or non-conformity.
- 11. QUALITY CONTROL**
- 11.1 Prior to the date on which the **Supplier** is scheduled to deliver any Goods or other deliverables, the **Supplier** shall develop and present to **MRC** for its review and approval an appropriate set of acceptance criteria for **MRC's** use in the acceptance testing of such items based on SABS-ISO requirements.
- 11.2 **Annexure G** identifies typical moderate to high risk items requiring the application of a quality management system, which in the absence of other agreed criteria shall be used in the acceptance testing of the Goods.
- 11.3 The **Supplier** shall present to **MRC** for its review and approval the acceptance criteria sufficiently in advance of its presentation to **MRC** of the items so that **MRC** has a reasonable period of time to review the acceptance criteria in detail, determine the adequacy of the acceptance criteria to evaluate whether the items meets **MRC's** requirements, and provide its comments to the **Supplier**.
- 11.4 If **MRC** does not approve the acceptance criteria, **MRC** shall as soon as practicable, notify the **Supplier** thereof in writing and provide the **Supplier** with a sufficiently detailed, written description of the reasons for its decision to reject the acceptance criteria to enable the **Supplier** to correct the same.
- 11.5 The **Supplier** shall as soon as is practicable:
- 11.5.1 revise the acceptance criteria to address **MRC's** concerns, resubmit to **MRC** the acceptance criteria for **MRC's** review and approval; or
- 11.5.2 where appropriate, furnish **MRC** with a written explanation of the applicable acceptance criteria to **MRC's** satisfaction.
- 11.6 The acceptance criteria shall be fully documented by the **Supplier** and shall, as a minimum, require:
- 11.6.1 that the items do not contain any deficiencies;
- 11.6.2 that the items satisfy **MRC's** stated business needs based upon functional and technical specifications in respect thereof as defined in the Specification or the Agreement as of the later of the Effective Date of the applicable Purchase Order and/or Agreement and the date that **MRC** requests that the **Supplier** produce such item, unless a fixed price for an item has been agreed in advance, in which case the date shall be the Effective Date;
- 11.6.3 that **MRC** has successfully completed an audit; if same is required by **MRC**;
- 11.6.4 the timeframes applicable for acceptance testing by **MRC** of the item;
- 11.6.5 that where the **Supplier** is the designer of the Goods, the **Supplier** must ensure compliance with the relevant provisions of the Mine Health and Safety Act, Act No. 29 of 1996 and all other relevant legislation including furnishing **MRC** with all required manuals and risk assessments in respect of the Goods. The **Supplier** is to take cognisance of his responsibility in terms of section 21 of the Mine Health and Safety Act of 1996.
- 11.7 The **Supplier** shall provide technical specifications and procedures including test parameters based on the original equipment manufacturer's ("OEM") specifications for approval by **MRC**. The **Supplier** shall obtain prior approval from **MRC** for amendments due to continuous improvement.
- 11.8 The **Supplier** acknowledges that each item of Goods or other deliverables provided to **MRC** requires formal acceptance by **MRC**, which can only be accomplished in accordance with this clause 11. Upon successful completion of all requirements described in clause 9 and clauses 11.1 to 11.6, the **Supplier** shall present the Goods to **MRC** at the location designated by **MRC** for acceptance testing.
- 11.9 **MRC** shall commence acceptance testing of the Goods or other deliverables as soon as practical following delivery thereof.
- 11.10 Acceptance testing shall determine whether the delivered items operate in accordance with their specifications and complies with the acceptance criteria, where applicable.
- 11.11 During acceptance testing, the **Supplier** shall assist **MRC**, to the extent necessary and reasonable, in conducting the acceptance testing and respond to any queries relating to the items within a reasonable time.
- 11.12 The **Supplier** shall be entitled at any time after the expiry of the period referred to in clause 11.17, to deliver written notice to **MRC** requiring **MRC** to identify any part of any deliverable items which contains any deficiencies and to provide a documented example of the fault in question. Should **MRC** fail to comply with any such notice within 7 (seven) days of receipt thereof, **MRC** shall be deemed to have accepted the item.
- 11.13 If **MRC** discovers a Defect, **MRC** shall promptly inform the **Supplier** in writing thereof. The **Supplier** shall, at no charge to **MRC**, correct each Defect within 24 (twenty four) hours of receiving **MRC's** notice of such Defect, or where it is not reasonably possible to do so, within such longer period as the Parties may agree in writing as reasonably required, provided that the **Supplier** shall be under no such obligation where the Defect arises from the acts, omissions or delays of **MRC**.
- 11.14 Upon correction of the deficiencies, the **Supplier** shall repeat the process described in clause 9.1 and resubmit the corrected Goods to **MRC** for acceptance testing.
- 11.15 Following acceptance testing, if **MRC** does not accept the item it shall give the **Supplier** written notice of its rejection (including a written and sufficiently detailed description of the deficiencies in order to enable the **Supplier** to remedy same) and a final period of 14 (fourteen) days in which to correct the Defect. If the **Supplier** is unable to correct the Defect within this period, then **MRC** may in its sole discretion elect to:
- 11.15.1 direct the **Supplier** to continue its efforts to make the item comply with the acceptance criteria, in which case the **Supplier** shall continue such efforts; or
- 11.15.2 accept the item with its deficiencies, in which event the charges with respect to such Goods or other deliverable shall be equitably reduced to reflect the presence of such deficiencies; or
- 11.15.3 without limiting the generality of **MRC's** right to terminate this Agreement and/or any Purchase Order(s) for cause under clause 37.1, terminate the Purchase Order without liability by written notice to the **Supplier**, in which case the **Supplier** shall, at **MRC's** request, refund to **MRC** all amounts paid by **MRC** to the **Supplier** in terms of the applicable Purchase Order whereupon the **Supplier** shall be entitled to remove the items from **MRC's** premises. Such refund shall be made within 14 (fourteen) days of receiving **MRC's** notice.
- 11.16 For the purposes of this clause 11, an upgrade, enhancement or modification to supported/maintained items shall be subject to acceptance testing.
- 11.17 Subject to the full co-operation by the **Supplier** and the number and severity measure/serious nature of the deficiencies identified by **MRC** during the acceptance testing process, **MRC** shall use reasonable endeavours to complete the acceptance testing and accept or reject the Goods subject to testing.

12. DEFECT LIABILITY PERIOD FOR THE GOODS AND/OR SERVICES

12.1 The **Supplier** shall make good, at its cost, and within such period as **MRC** may stipulate, any defects in the Goods or Services arising from defective design, materials or workmanship, or from any act or omission of the **Supplier** that may develop under proper use and in conditions for which the Goods are supplied or Services are rendered during the period of 12 (twelve) months from the actual date of delivery of the Goods or rendering of the Services or the period stated in **Annexure A** being the Defect Liability Period whichever is the longer.

12.2 If the **Supplier** repairs or replaces or re-performs any part of the Goods or Services, the terms of the above clause shall apply to such repairs or replacements or re-performs from the date so repaired or replaced.

12.3 Nothing in this clause shall derogate from the **Supplier's** liability at common law for patent or latent defects.

13. CONTRACT PRICE

13.1 The Contract Price applicable to performing Services or providing Goods under this Agreement shall be as specified in **Annexure C**.

13.2 The Contract Price shall include, where applicable, all taxes, duties and trade discounts but exclude any settlement discounts.

13.3 VAT applicable to any Contract Price payable is to be reflected separately. **MRC** shall pay all VAT that is payable on such Contract Price.

13.4 In all instances, **MRC** may demand, before payment is made, that the Contract Price computation be substantiated by documentary evidence.

13.5 In the absence of any special arrangements to the contrary, the cost of transportation, packing materials and containers of whatsoever nature shall be included in the Contract Price and such packing materials and containers shall upon delivery of the Goods become the property of **MRC**. The **Supplier** shall be liable for any loss or damage due to inadequate packing.

13.6 If the Services are performed on a time and materials basis, the **Supplier** will be compensated only for actual hours of work performed and such compensation shall be at the rates set forth in **Annexure C**. In this regard, the following further provisions are of application:

13.6.1 all rates are deemed to be fully inclusive of all the **Supplier's** Staff costs and expenses for rendering the Services pursuant to this Agreement, including protective and safety clothing, mobilisation and demobilisation costs, compliance with laws, including but not limited to, the **Supplier's** portion of any employee insurance and social security benefits, payroll and income taxes, levies, premiums for insurance and all other contributions and benefits and the costs to the **Supplier** for its Staff, unless otherwise specifically provided for in **Annexure C**; and

13.6.2 time and materials rates; unit rates and fixed prices are deemed to be inclusive of any and all costs and expenses incurred by the **Supplier** in establishing and maintaining a supply base/office or any other establishment.

13.7 The **Supplier** shall be deemed to have satisfied itself as regards the sufficiency of its Contract Price for the Services or Goods and such Contract Price shall remain fixed and firm for the duration of the Agreement or the applicable Purchase Order, unless otherwise specifically provided for in this Agreement.

In respect of any time and materials charges levied by the **Supplier** in respect of work performed by its Staff, all hours for such Staff shall be recorded and authorised in strict accordance with **MRC's** time and attendance system.

13.8 Third party expenses specifically identified in **Annexure C** shall be treated as pass-through expenses in accordance with clause 13.12 to the extent that such third party expenses do not exceed the estimate therefor set forth in **Annexure C**. Unless authorised by **MRC** in writing, any third party expenses not so identified (including third party expenses excess of the estimate set forth in **Annexure C** and any expenses for which no estimate was set forth in

Annexure C) shall be for the **Supplier's** account. The **Supplier** shall not incur any third party expense as a pass-through expense without **MRC's** prior consent.

13.9 Unless otherwise specified in **Annexure C**, the Contract Price is inclusive of any export and import tax as at the Effective Date.

13.10 Unless specifically agreed to the contrary, the **Supplier** will quote all prices in South African Rand.

13.11 Both Parties acknowledge that the Contract Price is intended to compensate the **Supplier** fully for all Services or Goods provided or supplied pursuant to this Agreement. Accordingly, **MRC** will not be obligated to pay the **Supplier** any amounts in addition to those specifically described in **Annexure C**.

13.12 With respect to any expenses that are to be treated as a pass-through expense, the following shall apply:

13.12.1 the **Supplier** shall arrange to receive the invoices for each pass-through expense. Promptly following the receipt of an invoice, the **Supplier** shall review such invoice and determine which charges are valid and proper. The **Supplier** shall then provide **MRC** with such invoice together with a statement identifying the charges that are, and are not, proper and valid. Payment shall be made directly to the third party by **MRC**;

13.12.2 the **Supplier** shall not apply a margin to or otherwise mark-up or charge an administration fee for pass-through expenses;

13.12.3 the **Supplier** shall use commercially reasonable efforts to minimise the cost of Goods and Services provided to **MRC** on a pass-through expense basis, **MRC** reserves the right to (a) obtain such services or materials directly from a third party; (b) designate the third party source for such services or materials; (c) designate the particular services or materials (e.g., in the case of hardware, make and model) the **Supplier** shall obtain; (d) require the **Supplier** to identify and consider multiple sources of such services or materials or to conduct a competitive procurement; and (e) review and approve the pass-through expense for such services or materials before entering into a contract for such services or materials; and

13.12.4 materials procured on a pass-through expense basis shall be acquired by the **Supplier** in **MRC's** name and **MRC** shall have all right, title and interest in such materials.

14. CONTRACT PRICE ADJUSTMENT

14.1 The Contract Prices stipulated in **Annexure C** are fixed and firm and not subject to adjustment for the Duration.

14.2 To the extent that a Contract Price Adjustment is considered at any time, the Contract Price shall be subject to negotiation and agreement between the two Parties; dependant on an application by the **Supplier** for such adjustment being received by the Supply Chain Manager not less than 2 (two) months prior to the proposed effective date of such adjustment.

14.3 The Supply Chain Manager shall consider the application, and same shall be tabled at the Supply Chain Steering Committee for review and approval. To the extent that same is accepted, an amendment to this Agreement shall be concluded between the Parties. At no time will **MRC** be obliged to accept any application for adjustment and same may be rejected without **MRC** having to provide reasons for such rejection.

14.4 Any application for a Contract Price adjustment must be accompanied by a proposed revised price, together with all calculations and other substantiating documentary evidence as may be required by the Supply Chain Manager.

14.5 Any Goods delivered or Services provided by the **Supplier** prior to the effective date of the adjustment shall be deemed to have been delivered at the prior Contract Prices applicable.

14.6 Following any such adjustment, the Contract Price shall again be fixed and firm and free of adjustment for a further period of not less than 12 (twelve) months.

14.7 In the event that no agreement is reached regarding price adjustment, then **MRC** reserves the right to terminate the

Agreement with immediate effect.

Murray & Roberts Cementation (Pty) Ltd
Private Bag 3010
Bedfordview
2008
Attention: The Financial Accountant

14.8 **MRC** shall be entitled at any time during the duration of this Agreement to call for competitive quotations from alternative suppliers and should a lower quotation be received from a supplier who is willing to enter into an agreement with **MRC** on terms similar to those herein contained, **MRC** shall advise the **Supplier** that a lower quote has been received. Provided that the **Supplier** shall then have the option to lower its quote and should the **Supplier** and **MRC** not reach agreement, **MRC** shall be entitled to terminate this Agreement with 30 (thirty) days written notice to the **Supplier**, without any further obligation to the **Supplier**.

14.9 To the extent that the Parties are unable to reach agreement in respect of any price adjustment, then **MRC** shall be entitled on 30 (thirty) days written notice to the **Supplier** to terminate this Agreement.

15. PAYMENT

15.1 All original invoices and statements are to reach **MRC** by no later than the 28th of each month in which the charges arose. Invoices shall be made monthly in arrears and shall only be considered for payment when accompanied by originals of the supporting documentation signed by **MRC's** authorised representative and the invoices have been approved for payment.

15.2 Payment on statements will be made on the 30th day of the month following the month of submission of invoices and statements, save for payments to be made in terms of **MRC's** financial quarters such as half year and year end cycle. Payments on statements which fall within the financial quarters such as half year and year end cycle, being the payments for September, December, March and June, shall be paid on the 1st working day of the following month. As an example, if a statement is submitted on 30 May, the **Supplier** shall receive payment of the invoice on the 1st working day of July. Where applicable, such payments shall not entitle the **Supplier** to withdraw their settlement or trade discounts which shall continue to be applicable to all such payments.

15.3 All payments shall be made by means of electronic funds transfer by **MRC** into the **Supplier's** bank account. **MRC** shall not be obliged to pay any invoice or demand for payment received more than 90 (ninety) days from the date of a Purchase Order or the completion of performance in terms of this Agreement.

15.4 **MRC** shall be entitled to stipulate, on reasonable written notice, invoicing standards applicable to any invoice issued by the **Supplier** to **MRC**.

15.5 The **Supplier** shall submit invoices which correspond with the prices reflected on the Purchase Order(s) issued by **MRC** to the **Supplier** or the Contract prices stipulated in **Annexure C**. All invoices and statements submitted by the **Supplier** must include the complete purchase order numbers as issued by **MRC** to the **Supplier**.

15.6 The **Supplier** shall maintain complete and accurate records of, and supporting documentation for the amounts billed to and payments made by **MRC** in accordance with generally accepted accounting principles applied on a consistent basis. The **Supplier** agrees to provide **MRC** with any and all information with respect to each invoice as may be reasonably requested by **MRC** to verify accuracy and compliance with the provisions of this Agreement.

15.7 With respect to any amount that is to be paid by **MRC** under this Agreement, **MRC** may set-off against such amount any amount that the **Supplier** is obliged to pay **MRC** whether under this Agreement or otherwise.

15.8 Subject to clause 15.7, **MRC** shall pay the undisputed Contract Price when such payments are due under this Agreement. **MRC** may withhold any amounts that it disputes in good faith, provided that such amount in dispute shall be automatically referred to dispute resolution in terms of clause 41.

15.9 Any disputed amount payable by **MRC** to the **Supplier** shall not bear interest.

15.10 The **Supplier** must supply original invoices and statements, in the name of **MRC** and stating the Contract and/or Purchase Order number, as follows:

15.10.1 All invoices and statements shall be addressed and posted to:

15.10.2 Invoices and statements must be submitted electronically to ceminvoice@murrob.com

15.11 All invoices shall be subject to 10% (ten percent) retention by **MRC**. 50% (fifty percent) of the monies so retained shall be released at the end of the Duration and the remaining 50% (fifty percent) of the monies so retained will be released at the end of the Defect Liability Period.

15.12 The **Supplier** will only be paid for Goods delivered or Services rendered as detailed in the Agreement and/or a Purchase Order. No payment will be made where variations to the Goods or Services are carried unless such variations are carried out in terms of an instruction in writing by **MRC's** Supply Chain Manager and an amendment to the Agreement issued and signed by both Parties.

15.13 The Goods and/or Services detailed shall be invoiced at the prices contained in the Agreement and/or a Purchase Order. No variations to such prices shall be permitted unless contained in an amendment to the Agreement issued by the Supply Chain Manager and signed by both Parties.

15.14 The Supplier's banking details are as set out in **Annexure A**.

16. ELECTRONIC FUNDS TRANSFER (EFT)

16.1 **MRC** confirms that all payments to the **Supplier** will be made by EFT and accordingly the **Supplier** agrees to provide:

16.1.1 **MRC** confirmation from the **Suppliers** bank of the **Supplier's** bank account details including the bank, branch and account number; and

16.1.2 **MRC** with a original of a cancelled cheque from the **Supplier's** bank account referred to above.

16.2 The **Supplier** further agrees and acknowledges that **MRC**, on giving or causing to be given an instruction to its bankers to effect the transfer of the amount due to the **Supplier**, will have fully and effectively discharged its obligation to make such payment to the **Supplier**.

The **Supplier** indemnifies **MRC**, its employees and agents against any claims of whatsoever nature which may be brought against any of them by any person or entity alleging non-payment of any amounts due to the **Supplier**, for any EFT payment transfer which has been effected in terms of the above.

17. FOREIGN CURRENCY CONTROL

17.1 Foreign Currency

17.1.1 Should any portion of the Contract Price contain amounts in respect of imported Goods which is subject to exchange rate variation then the **Supplier** shall declare such to the Supply Chain Manager at the time of submission of an offer. To this end the **Supplier** shall furnish the following information –

17.1.1.1 the country of origin of such Goods;

17.1.1.2 the actual free on board value of the Goods (not expressed as a percentage of the Contract Price); and

17.1.1.3 the bank's selling rate of exchange on which the price is based.

17.1.2 **MRC** reserves the right to pay either the **Supplier's** principal direct, bear the foreign currency risk on such amounts declared or request the **Supplier** to provide forward cover therefore;

17.1.3 It is an express condition, however, that should additional cost be incurred due to the **Supplier** defaulting in:

17.1.3.1 the submission of foreign currency with its offer; or

17.1.3.2 in the timely provisioning of forwarded cover when requested to provide such; or

17.1.3.3 the timely submission of commercial invoices in the

foreign currency; or

17.1.3.4 the delivery date;

then such additional cost shall be for the account of the **Supplier**.

17.2 Control Document

17.2.1 Where **MRC** has elected to bear the foreign currency risk itself and to pay the relevant amount in foreign currency then the **Supplier** shall within 1 (one) month of the date of receipt of the Goods at the port of entry into the Republic of South Africa provide the Supply Chain Manager with original:

17.2.1.1 Custom stamped commercial invoices; and

17.2.1.2 Custom stamp bill of lading; and

17.2.1.3 Custom stamped bill of entry.

In the event that the **Supplier** is unable to submit originals of the said documents to the Supply Chain Manager then the **Supplier** shall provide to the Supply Chain Manager, in a form approved by the Supply Chain Manager, an undertaking, signed by an official of the **Supplier** having authority to do so, guaranteeing that the **Supplier** will hold the original documents in its safe keeping and make them available for inspection by either **MRC** or an official of the South African Reserve Bank when required to do so. The said documents shall be retained by the **Supplier** for a period of not less than 5 (five) years.

17.3 Cost, Insurance and Freight ("CIF") and SA port charges

17.3.1 CIF and SA Port Charges shall be fixed and firm and free of adjustment except when affected by statutory or rate of exchange variations.

17.3.2 Any variation of CIF and SA Port Charges resulting from statutory or rate of exchange variations must be claimed separately by the **Supplier** and substantiated by documentary evidence to the satisfaction of the Supply Chain Manager.

17.3.3 Approval of claims for CIF and SA Port Charges variations will be confirmed by an amendment to the Contract issued by the Supply Chain Manager.

Any claim for variations to CIF and SA Port charges shall be submitted as soon as possible to the Supply Chain Manager, but in any event not later than 30 (thirty) days from the date of receipt of the Goods at the port of entry into the Republic of South Africa.

18. THE SUPPLIER'S WARRANTIES

18.1 The **Supplier** warrants the adequacy and sufficiency of all materials, plant, equipment and workmanship and the adequacy and sufficiency of the documentation including all designs for any Goods to be provided or Services to be rendered and that such Goods as designed and constructed and all the supplies incorporated therein shall be new and all workmanship relating thereto furnished by the **Supplier** shall be in full conformity with the requirements of the Agreement and the associated technical information and shall be fit for the use intended by the Agreement and/or Purchase Order(s) as the case may be, shall be free of any Defects in the material, equipment and workmanship and shall be in accordance with the applicable codes and industry standards as set forth in the Agreement.

18.2 The **Supplier** accordingly agrees to remedy by correction or replacement, at its own cost and expense, promptly upon receipt of notice from **MRC** any breach of any of these warranties.

18.3 The **Supplier** represents and warrants that it shall at all times:

18.3.1 use adequate numbers of qualified Staff with suitable training, education, experience and skill to perform the Services;

18.3.2 use and adopt any standards and processes required under the Agreement; and

18.3.3 provide the Services with promptness and diligence and in a workmanlike manner and in accordance with the practises and high professional standards used in well-managed operations who supply goods similar to the Goods.

18.4 The **Supplier** represents and warrants that it shall at all times with respect to Services for which the **Supplier** is compensated on a time and materials basis, use its best efforts to perform the Services in the most cost-effective manner consistent with the level of quality and performance required under this Agreement and the applicable Purchase Order(s).

18.5 The **Supplier** represents and warrants that it shall at all times perform its responsibilities under this Agreement and under any Purchase Order(s) in a manner that does not infringe, or constitute an infringement or misappropriation of, any Intellectual Property or other proprietary rights of any third party and have the rights required to meet its obligations under clause 23.

18.6 The **Supplier** represents and warrants that it shall:

18.6.1 be authorised to distribute, license, support and maintain any item provided to **MRC** under this Agreement;

18.6.2 has all the necessary licenses, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the provision of the Goods;

18.6.3 that it shall comply with all legal requirements and the terms and conditions of all licenses, certificates, authorisations and consents required for the provision of the Goods; and

18.6.4 ensure that upon the date of delivery of any Goods, possession or use of such Goods by **MRC** within the territory(ies) in which **MRC** takes receipt thereof shall not breach any law or regulation of that territory(ies) or of the territory from which the Goods were sourced.

18.7 The **Supplier** represents and warrants that it shall at all times:

18.7.1 ensure that Goods shall comply with the Specifications therefore stipulated in the Agreement in terms of which they are supplied or procured or in terms of the specifications of the original equipment manufacturer;

18.7.2 ensure that any and all spare parts required for the maintenance of Goods shall be available to **MRC** within 24 (twenty four) hours of being requested by **MRC** and that it shall have access to a supply of all spare parts required for the maintenance of such Goods, for a period of 5 (five) years from the Effective Date in terms of which Goods are supplied to **MRC**; and

18.7.3 all Goods developed or delivered by the **Supplier** pursuant to the Agreement will be free from deficiencies and will comply in all respects with the technical and functional specifications therefore as agreed by the Parties and annexed to the Agreement or the applicable Purchase Order(s).

18.8 To the extent that the **Supplier** fails in any respect to comply with the above warranties and without in any way detracting from whatever other rights and remedies **MRC** may have, the **Supplier** hereby indemnifies and holds **MRC** harmless against any Losses incurred as a result of such failure.

18.9 Notwithstanding clause 18.8, to the extent that the **Supplier** fails in any respect to comply with the warranties in clause 18.5, and without in any way detracting from whatever other rights and remedies **MRC** may have, the **Supplier** shall promptly at the **Supplier's** expense use its best efforts to secure for **MRC** the right to continue using the item or replace or modify the item to make it non-infringing, provided that any such replacement or modification will not degrade the performance or quality of the affected component of the Goods and/or Services. In the event that none of such actions can be accomplished by the **Supplier**, and only in such event, the **Supplier** shall remove the item from the Goods and/or Services and the **Supplier's** charges shall be equitably reduced to reflect the reduction in the value of the Goods and/or Services to **MRC**. **MRC** may terminate the Agreement or the applicable Purchase Order(s) without liability and without prejudice to any claims against the **Supplier** which **MRC** may have, if the **Supplier** removes the item from the Goods and/or Services and, in **MRC's** reasonable opinion, inclusion of such item in the Goods and/or Services is material to the value of, and benefit derived from the Goods and/or Services by **MRC**.

18.10 The **Supplier** may from time to time provide certain Goods and other items for which the **Supplier** is entitled to warranties and indemnities

from the manufacturers, lessors or licensors of such items. Without limiting the generality of the **Supplier's** other warranties and indemnities under this Agreement, the **Supplier** shall:

- 18.10.1 pass through to **MRC** the benefits of such warranties and indemnities to the extent that the **Supplier** is permitted under any agreements between the **Supplier** and such manufacturers, lessors or licensors; and
- 18.10.2 enforce such warranties and indemnities as directed by **MRC**.
- 18.11 **MRC** subscribes to a "Buy Quiet" procurement policy. The target noise emission from the Goods shall be less than 85 dB(A), measured at the highest (Leq) noise level at any point 1 (one) metre from the Goods at a height of 1,5 (one comma five) metre at any operator position. As such the **Supplier** shall:
 - 18.11.1 comply with this requirement;
 - 18.11.2 specify noise emission levels together with any sound dampening measures taken; and
 - 18.11.3 supply an exposition of the diagnostic process by which these control measures have been provided should the Goods generate noise levels in excess of the 85 dB(A) level.
- 18.12 The **Supplier** acknowledges that non compliance with any or all of the requirements in clause 18.11 shall constitute a material breach of this Agreement.

19. PERFORMANCE BOND

- 19.1 To the extent provided for in **Annexure A**, the Supply Chain Manager may require the **Supplier** to provide within 10 (ten) days of the Effective Date, a guarantee (hereinafter referred to as a "Performance Bond") issued by a banking or insurance institution registered in the Republic of South Africa and approved by the Supply Chain Manager.
- 19.2 The said Performance Bond shall be in the form issued by the Supply Chain Manager, valued at 10% (ten percent) of the total Contract Price and shall, notwithstanding any variations or extensions of time made, given or conceded under the Agreement, bind the guarantor jointly and severally with the **Supplier** for the due fulfilment of the Agreement by the **Supplier**.
- 19.3 The costs of preparing, completing and maintaining the said Performance Bond shall, except as provided hereunder, be for the account of the **Supplier**.
- 19.4 Should the **Supplier** fail to submit such Performance Bond in accordance with the above provision, **MRC** shall, at **MRC's** sole discretion, be entitled to withhold payment from the **Supplier** up to the equivalent value of the bond and hold such money until such time as the said bond has been provided to the Supply Chain Manager or the Goods delivered or the Services rendered.
- 19.5 The Performance Bond shall remain in full force and effect until the Goods are delivered and/ or the Services are rendered. The Performance Bond shall thereupon, at the request of the **Supplier**, be returned to the **Supplier**. Should delivery in respect of the whole of the Goods be delayed due to reasons attributable to **MRC**, **MRC** shall be responsible for the cost of maintaining the performance bond beyond the time when such Performance Bond should have been returned.

20. INSURANCE

- 20.1 The **Supplier** shall for the continued duration of this Agreement have and maintain in force sufficient insurance to cover both its obligations and liabilities under this Agreement. The **Supplier** shall provide on request a copy of such insurance policy to **MRC**. In this regard:
 - 20.1.1 the **Supplier** shall be responsible for providing its own insurance such as public liability insurance, goods in transit insurance and specifically comprehensively insure all its own plant, material and equipment on an all-risk basis, as well as workmen's compensation insurance as required in terms of the provision of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993 as amended, or any similar enactment which may replace this Act;
 - 20.1.2 should the insurers dispute in whole or in part their liability for any reason, the **Supplier** shall have recourse against the

insurers only;

- 20.1.3 there shall be no subrogation against **MRC**, its agents or representatives under these insurances, whether mentioned herein or not, and taken out by or maintained by the **Supplier**.
 - 20.2 The **Supplier** should, on demand, furnish proof of its insurer's knowledge of the above undertaking.
 - 20.3 Where hazardous goods are transported pursuant to the Agreement or a Purchase Order, the **Supplier** shall observe statutory requirements, including the requirements of South African and internal agreements relating to the packing, labelling and carriage of hazardous goods and shall obtain adequate insurance to cover any potential hazards which may be occasioned through the transportation of such goods.
 - 20.4 **MRC** reserves the right to amend the terms of insurance as instructed from time to time by its insurers. Any amendments resulting from instructions will be negotiated between the Parties.
 - 20.5 The **Supplier** shall provide the additional insurance as set out in **Annexure A** hereto.
- ## 21. INDEMNITIES
- 21.1 The **Supplier** hereby indemnifies and holds harmless **MRC**, its successors and assigns, from any and all Losses arising from or in connection with any claim or action arising from the **Supplier's** failure to observe or perform any duties or obligations to be observed or performed on or after the Effective Date by the **Supplier** under licenses for third party Intellectual Property or third party service contracts.
 - 21.2 The **Supplier** hereby indemnifies and holds harmless **MRC**, its successors and assigns, from any and all Losses arising from any claim of infringement of any third party Intellectual Property or other proprietary rights, alleged to have occurred because of **MRC's** use of any Goods or other resources provided by the **Supplier** to **MRC**, or based upon performance of the Services by the **Supplier**.
 - 21.3 The **Supplier** hereby indemnifies and holds harmless **MRC**, its successors and assigns, from any and all Losses arising from any claim arising out of the **Supplier's** insurance obligations pursuant to clause 21.
 - 21.4 The **Supplier** hereby indemnifies and holds harmless **MRC**, its successors and assigns, from any and all Losses arising from any claim or action arising from the **Supplier's** failure to observe or perform any duties or obligations in accordance with any law, license, certificate, authorisations and consents required for the provision of Goods and/or Services by the **Supplier** to **MRC**.
 - 21.5 Without in any way detracting from the rights of **MRC** in terms of this Agreement, the **Supplier** hereby indemnifies and holds harmless **MRC**, its successors and assigns, from any and all Losses which **MRC** may suffer as a result of any breach of Agreement, any breach by the **Supplier** of the warranties in clause 18 and non-compliance with the terms of clause 28.
 - 21.6 Each Party ("**Breaching Party**") hereby indemnifies and holds harmless the other Party ("**Aggrieved Party**"), its successors and assigns from any and all Losses arising from or in connection with any claim or action arising from the Breaching Party's breach of any obligation with respect to Confidential Information.
 - 21.7 The Breaching Party hereby indemnifies and holds harmless the Aggrieved Party, its successors and assigns from any and all Losses arising from or in connection with:
 - 21.7.1 the death or bodily injury of any Staff, client, business invitee, or business visitor or other person, caused by the Breaching Party;
 - 21.7.2 the damage, loss or destruction of any real or tangible personal property of any Staff, client, business invitee, or business visitor or other person caused by the Breaching Party; and
 - 21.7.3 any claim by any Staff, client, business invitee, or business visitor or other person against the Aggrieved Party but resulting from an act or omission of the Breaching Party in its capacity as an employer of any person.

22. INDEMNITY PROCEDURES FOR THIRD PARTY CLAIMS AGAINST MRC

- 22.1 Within 72 (seventy two) hours after receipt of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which **MRC** seeks indemnification pursuant to clause 21, **MRC** will notify the **Supplier** of such claim in writing and advise the **Supplier** of its election to:
- 22.1.1 assume control of the defence and/or settlement of that claim; or
- 22.1.2 instruct the **Supplier** to assume control of the defence and/or settlement of that claim; or
- 22.1.3 recommend to the **Supplier** that such claim not be defended or settled.
- 22.2 If **MRC**, in terms of clause 22.1, recommend that any claim not be defended or settled, the **Supplier** shall have the election, within 24 (twenty four) hours of **MRC's** notice in terms of clause 22.1, to either:
- 22.2.1 pay the value of such claim to **MRC**; or
- 22.2.2 defend and/or settle the claim, at the **Supplier's** expense, in which event the provisions of clause 22.3 shall apply.
- 22.3 If the **Supplier**, in terms of clause 22.1, is instructed by **MRC** to control the defence and/or settlement of a claim, it shall do so at its own cost and shall at all times comply with all of **MRC's** reasonable instructions and required actions relating to the defence and/or settlement of such claim. Under no circumstances shall the **Supplier** without the prior written approval of **MRC**:
- 22.3.1 make any admission or acknowledgment that would be binding on or prejudicial to the interests of **MRC**;
- 22.3.2 settle, compromise or cease to defend any such claim.
- 22.4 If **MRC**, in terms of clause 22.1, assumes control of the defence and/or settlement of a claim, the **Supplier** acknowledges that:
- 22.4.1 **MRC** shall have sole control over such defence and/or settlement;
- 22.4.2 **MRC** shall be entitled to join the **Supplier** to any such proceedings, in which event the **Supplier** shall, in consultation with **MRC**, defend such proceedings at its own cost. The foregoing notwithstanding, **MRC's** costs in defending and/or settling any such claim shall be for the **Supplier's** account.
- 22.5 The **Supplier** shall at all times be entitled, upon written notice to **MRC**, to participate in any such proceedings (including the right to instruct its own attorneys and/or counsel). Any such participation shall be for the **Supplier's** account.

23. INTELLECTUAL PROPERTY RIGHTS

- 23.1 The **Supplier** acknowledges and agrees that all rights in and to **MRC's** and/or **MRC's** client's intellectual property made available to **Supplier** by **MRC's** and/or **MRC's** client from time to time, vests and shall remain vested in **MRC** and that **MRC** is the owner thereof.
- 23.2 The **Supplier** acknowledges and agrees that **MRC** shall own all rights, including without limitation all Intellectual Property rights in and to any materials prepared or created by **Supplier**, or to which **Supplier's** members contributed, pursuant to this Agreement. **Supplier** shall ensure that all **Supplier's** employees are informed and agree that all Intellectual Property in and to such material vests in **MRC**.
- 23.3 To the extent that title to material is not automatically vested in **MRC**, the **Supplier** hereby irrevocably assigns all right, title and interest in and to the same to **MRC**. The **Supplier** further undertakes, as and when requested by **MRC**, to execute all such instruments and to do all such things as may be necessary to vest copyright and ownership of such material in **MRC** and/or **MRC'S** Client, and in the event of **Supplier** failing to comply promptly with any such request by **MRC**, **Supplier** hereby unconditionally and irrevocably nominates and appoints **MRC** to be its agent, with power to sign all such documents and do all such other acts, matters and things as may be necessary to give due and proper effect to the terms of this clause.

- 23.4 The **Supplier** acknowledges and agrees that **MRC** and/or **MRC'S** Client as the case may require, shall have the right to modify any of the Goods provided to **MRC** by **Supplier**, pursuant this Agreement and **Supplier** shall ensure that all **Supplier's** employees are informed and agree that **MRC** has the right to modify such Goods. However, such modification(s) shall not relieve **Supplier** from any of its obligations as stated herein.

- 23.5 Save with the written consent of **MRC** neither the **Supplier** nor any of its employees shall at any time, copy, duplicate or reproduce in any manner or form, the material or any part thereof or make any adaptations or translations of such material.

- 23.6 The **Supplier** shall not introduce into **MRC's** environment any third party Intellectual Property for the continued Duration of this Agreement or otherwise use such third party Intellectual Property to provide the Services without first obtaining **MRC's** written consent thereto. To the extent that **MRC** grants such consent, the **Supplier** shall be responsible for obtaining a license on behalf of **MRC** and in **MRC's** name, to sue such third party Intellectual Property from the third party.

24. CHANGE CONTROL

- 24.1 The **Supplier** shall control and manage changes to the Goods and/or Services, to the environment in which it provides the Goods and/or Services, and that it maintains and supports as part of the Goods and/or Services, in accordance with the change control requirements of **MRC**, current change management standards and procedures which includes the documentation thereof and the submission of said documentation by the **Supplier** to **MRC**. The **Supplier** shall not take any action or make any decision which may:
- 24.2 have a material effect on **MRC** or its data or equipment; or
- 24.3 adversely affect the performance of efficiency of, or charges for (including third party expenses) the Services, without first:
- 24.4 analysing the possible action or change and providing **MRC** with a change control report;
- 24.5 providing **MRC** with a reasonable period of time to review the change control report; and
- 24.6 obtaining **MRC's** consent to the proposed change. With respect to any change which may have an adverse effect on **MRC** or the Services, **MRC** may withhold its approval in its sole discretion.
- 24.7 The **Supplier** shall schedule changes so as to minimise disruption of **MRC's** normal business operations.
- 24.8 Until such time as any changes have been agreed by **MRC** in writing, the Parties shall continue to perform their respective obligations in terms of this Agreement.
- 24.9 Changes shall be implemented in accordance with priorities designated by **MRC**.

25. INDEPENDENT SUPPLIERS

- 25.1 The **Supplier** shall:
- 25.1.1 perform the Services and carry out his obligations with due diligence, efficiency and economies in accordance with good corporate governance; generally accepted professional techniques and practices, and shall observe sound management principles, practices and employ appropriate methods.
- 25.1.2 always act, in respect of any matter relating to any agreement or to the Services, as faithful advisor to **MRC**, and shall at all times support and safeguard **MRC's** legitimate interests in any dealings with any sub-consultants, suppliers or third parties.
- 25.2 The Agreement shall not render the **Supplier** to be an employee, partner, agent or joint venture with **MRC** for any purpose. The **Supplier** is, and will remain an independent **Supplier** in relationship with **MRC**. **MRC** shall not be responsible for withholding taxes with respect to the **Supplier's** compensation. The **Supplier** shall have no claim against **MRC** for leave pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

26. LOAN EQUIPMENT

- 26.1 No lien over any Loan Equipment shall be established in favour of the

- Party in possession of such Loan Equipment.
- 26.2 The Party in possession of the Loan Equipment shall be entitled to retain such Loan Equipment for such use as shall be as agreed between Parties, it being recorded that the Parties acknowledge that it is desirable that such terms be recorded in an annexure. During the period of the loan, the Party in possession of the Loan Equipment shall:
- 26.2.1 take proper and diligent care of such Loan Equipment;
- 26.2.2 mark all items owned by **MRC** uniquely;
- 26.2.3 take all reasonable steps to exclude any landlord's hypothec over such Loan Equipment including giving any landlord written notice of the other Party's ownership of such Loan Equipment; and
- 26.2.4 accept all risk in the Loan Equipment taking reasonable steps to protect the Loan Equipment from loss and/or damage and shall insure same against all risks. Both Parties shall be entitled to make reasonable inspection of the other's premises at which such Loan Equipment is located in order to establish whether or not the other is complying with its obligations in terms of this clause 26.
- 26.3 The Party in possession of the Loan Equipment shall return such Loan Equipment to the owner on the termination of the loan period in the same condition in which it was received, fair wear and tear excepted and shall remedy to the satisfaction of the other, any damage to the Loan Equipment sustained whilst under its care, alternatively, in the event of the Loan Equipment being damaged beyond repair, shall, on written demand by the other and forthwith, replace such Loan Equipment with new equipment of the same standard, quality and specification.
- 27. AUDITS**
- 27.1 The **Supplier** shall allow **MRC**, its auditors (including internal audit Staff and external auditors) as **MRC** may from time to time designate in writing, access at all reasonable times to any facility or part of a facility at which either the **Supplier** or any of its sub-contractors is providing the Services, to the **Supplier** Staff, and to hardware, software, data and records relating to the provision of Goods and/or Services for the purpose of performing audits and inspections of either the **Supplier** or any of its sub-contractors to:
- 27.1.1 verify the accuracy of the **Supplier's** charges and invoices;
- 27.1.2 verify the integrity of **MRC's** data and examine the systems that process, store, support and transmit that data;
- 27.1.3 examine the **Supplier's** performance of the Services or supply of the Goods;
- 27.1.4 provide to **MRC's** auditors and inspectors such assistance and co-operation as they may reasonably require, including installing and operating audit software. **MRC** shall ensure that any such audit shall not disrupt unreasonably the **Supplier's** business operations and shall comply with the **Supplier's** reasonable security or confidentiality requirements; and
- 27.1.5 at any reasonable time, audit and perform a due diligence on the **Supplier** in order to ensure compliance of the **Supplier** with applicable legislation, regulations, policies and procedures as well as undertakings regarding service delivery and BEE objectives.
- 27.2 **MRC** or its authorised representative shall have the right to conduct a due diligence at any time during the currency of this Agreement regarding compliance with, but not limited to, the following:
- 27.2.1 the terms and conditions of this Agreement;
- 27.2.2 all applicable legislation, regulations, policies and procedures;
- 27.2.3 undertakings regarding service delivery and Black Economic Empowerment objectives.
- 27.3 The **Supplier** shall make available promptly to **MRC** the findings of any review or audit conducted by the **Supplier** (including internal and external auditors) to the extent such findings reflect conditions and events which have a material impact on **MRC**.
- 27.4 Promptly after the issuance of any audit report or findings issued under clause 27.2 or 27.3, the **Supplier** and **MRC** shall meet to review such audit report or findings and to mutually agree upon the appropriate manner, if any, in which to respond to the changes suggested by the audit report or findings.
- 27.5 The **Supplier** shall maintain a complete audit trail of all financial and non-financial transactions resulting from this Agreement as reasonably necessary to give effect to the provisions of this clause 27. The **Supplier** will maintain and provide **MRC** access upon request to the records, documents and other information that make up such audit trail until the later of (i) 3 (three) years after expiration or termination of this Agreement; (ii) all pending matters relating to this Agreement (e.g. disputes) are closed; or (iii) such other period as is required by applicable law.
- 28. REGULATORY REQUIREMENTS**
- The **Supplier** warrants that it is and will remain for the duration of this Agreement, fully cognisant of any relevant legislative or regulatory requirements and rulings of any competent authority that has jurisdiction over the provision of Goods and/or Services under this Agreement. The **Supplier** shall promptly identify and notify **MRC** of any relevant changes in law, legislative enactments and/or regulatory requirements and of rulings of any competent authority that may relate to the **Supplier's** provision of the Goods and/or Services. The **Supplier** and **MRC** shall co-operate to identify the impact of such changes on how the **Supplier** provides the Goods and/or Services. The **Supplier** shall be responsible for any fines and penalties arising from any non-compliance with any law, legislative enactment or regulatory requirements or rulings of any competent authority relating to the delivery or use of the Goods and/or Services. **MRC** shall remain responsible for communications with and participation in any governmental or regulatory body having jurisdiction over **MRC**, or any industry body in which **MRC** participates. **MRC** shall consult with the **Supplier** regarding such matters to the extent **MRC** deems appropriate, and the **Supplier** shall make itself available for such consultation as reasonably required by **MRC**.
- 29. ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM**
- 29.1 **MRC** is committed to compliance with all relevant legislation in the jurisdictions in which he operates, including legislation and guidelines related to the prevention of money laundering and the combating of the financing of terrorism. Accordingly, **MRC** will cooperate with all the relevant authorities and bodies, and expects the **Supplier** to do the same.
- 29.2 It is a policy of **MRC** to rely on the diligence and compliance of financial institutions together with the relevant financial intelligence legislation as regards to the traceability of funds and **MRC** expects the **Supplier** to apply the same caution. **MRC** reserves the right in this regard to do whatever is necessary to perform a due diligence, including verification of banking details, sources of funds, etc.
- 29.3 Should the **Supplier** have cause to suspect that **MRC** might be or have been exposed to funds for which the source is doubtful, the circumstances must immediately be advised to the Supply Chain Manager of **MRC**.
- 29.4 **MRC** further reserves the right to investigate and / or report any doubtful / suspicious transactions to whichever authorities that may need to be so advised.
- 29.5 If there is a suspicion that the Contract was entered into under dubious circumstance this Contract can be placed on hold, at the risk of the **Supplier** pending an investigation to **MRC's** satisfaction.
- 30. BLACK ECONOMIC EMPOWERMENT**
- 30.1 It is recorded that all the suppliers of Goods and/or Services to **MRC** are required to make certain representations to **MRC** with regard to Black Economic Empowerment (BEE). Generally, these commitments will be made at the time that the **Supplier** is registered as an approved supplier with **MRC**, yet resubmission of BEE certificates may be requested and there shall be pre-qualification criteria in respect of all tenders. Any such commitments form part of the Terms and Conditions binding upon the **Supplier** and failure to comply with such commitments is a material breach of this Agreement.

- 30.2 **MRC** has implemented a transformation process aligned to the BEE Act and the B-BBEE (Broad-Based Black Economic Empowerment) Codes of Good Practice.
- 30.3 As per the DTI's definition "*Broad-Based Black Economic Empowerment means the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socioeconomic strategies, that include, but are not limited to:*
- 30.3.1 *Increasing the number of black people that manage, own and control enterprises and productive assets;*
 - 30.3.2 *Facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;*
 - 30.3.3 *Human resource and skills development;*
 - 30.3.4 *Achieving equitable representation in all occupational categories and levels in the workforce;*
 - 30.3.5 *Preferential procurement; and*
 - 30.3.6 *Investment in enterprises that are owned or managed by black people."*
- 30.4 Therefore, it is the **Supplier's** responsibility to take cognisance that there are qualification criteria for preferential procurement purposes instituted by **MRC**.
- 30.5 The **Supplier** shall be obliged to advise **MRC** of a change in his BEE Status (qualifying Contribution Level), including the submission of a current BEE certificate from a SANAS accredited agency to **MRC**. In the event of the **Supplier's** BEE status expiry during the currency of the agreement, the **Supplier** shall immediately inform **MRC** and shall submit within 7 (seven) days, a new certificate reflecting the current BEE status.
- 30.6 The **Supplier** shall at all times make every effort to source any labour, components and anything else relating to the Goods or Services from companies local to the area in which the **Client** is situated. The **Supplier** will also give preference to BEE entities in his sourcing process.
- 30.7 The **Supplier** acknowledges the following extract from the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry, September 2010:
- 'Local procurement is attributable to competitiveness and transformation, captures economic value, presents opportunities to expand economic growth that allows for creation of decent jobs and widens scope for market access of South African capital goods and services. In order to achieve this, the mining industry (including the **Supplier**) must procure from BEE entities in accordance with the following criteria:
- 30.7.1 Procure a minimum of 40% of capital goods from BEE entities by 2014;
 - 30.7.2 Ensure that multinational suppliers of capital goods annually contribute a minimum of 0.5% of annual income generated from local mining companies towards socio-economic development of local communities into a social development fund from 2010;
 - 30.7.3 Procure 70% of services and 50% of consumer goods from BEE entities by 2014.
- The targets above are exclusive of non-discretionary expenditure.'
- 30.8 Furthermore the **Supplier** acknowledges and agrees that preference shall be given to black owned companies with shareholding greater than >50%, and black woman owned companies with shareholding greater than >30%. The minimum black ownership level must be with shareholding at 26%.
- 30.9 The **Supplier** shall submit an annual report in this regard to **MRC** detailing his successes with regards to preferential procurement.
- 31. SAFETY, HEALTH AND THE ENVIRONMENT**
- 31.1 The **Supplier** at all times for the duration of this Agreement ensure that it complies with all relevant occupational health and safety legislation, including the Mine Health and Safety Act, Act No. 29 of 1996 and the Occupational Health and Safety Act No. 85 of 1993. It shall be incumbent upon the **Supplier** to ensure that every member of its Staff shall undergo medical examinations as required by **MRC** or the Client. The **Supplier** Staff may also be required to complete an induction programme of the Client or **MRC** and this shall be for the account of the **Supplier**.
- 31.2 The **Supplier** shall comply with all reasonable instructions regarding compliance and adherence to security and any other regulations and procedures which may, from time to time, apply to personnel; suppliers; agents or places of work.
- 31.3 The **Supplier** is to take cognisance of his responsibility in terms of the Mine Health and Safety Act of 1996, Section 21, namely;
- 31.3.1 Any person who designs, manufactures, repairs, imports or supplies any article for use at a mine must ensure, as far as reasonably practicable –
 - that the article is safe and without risk to health and safety when used properly; and that it complies with all the requirements in terms of the MHSA, that ergonomic principles are considered and implemented during design, manufacture; or
 - 31.3.2 The attention of installers/erectors is drawn to their responsibilities in terms of the Mine Health and Safety Act of 1996, Section 21, namely –
 - any person who erects or installs any article for use at a mine must ensure, as far as reasonably practicable, that nothing about the manner in which it is erected or installed makes it unsafe or creates a risk to health and safety when used properly and that ergonomic principles are considered during erection or installation; or
 - 31.3.3 The attention of designers is drawn to their responsibilities in terms of the Mine Health and Safety Act of 1996, Section 21, namely –
 - any person who designs any article for use at a mine must ensure, as far as reasonably practicable, that ergonomic principles are considered and implemented during design; and
 - 31.3.4 The **Supplier** shall provide sufficient information in writing, for example risk assessments, functional specifications, operating and maintenance manuals, usage sheets, application methodologies, training manuals, safety data sheets, etc. so that **MRC's** Staff are in a position to identify the hazards and assess the risks associated with correct operation, installation and erection of articles supplied.
 - 31.3.5 Non supply of suitable information will be considered as a breach of this Agreement.
- 31.4 the **Supplier** shall at all times and at its cost comply with all rules and regulations, both statutory and domestic, regarding environmental management.
- 32. LABOUR RELATIONS & LEGISLATION**
- 32.1 The **Supplier** shall warrant to **MRC** that the **Supplier** complies with and shall continue to comply with all relevant labour legislation and shall comply with any legislation which may come into being during the currency of this Agreement. In this regard and without limitation, the **Supplier** confirms that it is complying with the following legislation, where applicable:
- 32.1.1 Labour Relations Act, No. 66 of 1995, as amended;
 - 32.1.2 Basic Conditions of Employment Act, No. 7 of 1997, as amended;
 - 32.1.3 Employment Equipment Act, No. 55 of 1998;
 - 32.1.4 Skills Development Act, No. 97 of 1998;
 - 32.1.5 Skills Development Levies Act, No. 9 of 1999;
 - 32.1.6 Occupational Health and Safety Act, No. 85 of 1993;
 - 32.1.7 Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
 - 32.1.8 Unemployment Insurance Act, No. 63 of 2001;
 - 32.1.9 Unemployment Insurance Contributions Act, No. 4 of 2002;
 - 32.1.10 Mines and Works Act, Act No. 27 of 1956;

- 32.1.11 Minerals and Petroleum Act;
- 32.1.12 Mine Health and Safety Act, Act No. 29 of 1996;
- 32.1.13 Provisions of the Nuclear Energy Act, Act No. 92 of 1982;
- 32.1.14 Atmospheric Pollution Act, Act No. 45 of 1965;
- 32.1.15 Environment Conservation Act, Act No. 73 of 1989;
- 32.1.16 Hazardous Substances Act, Act No.15 of 1973;
- 32.1.17 Motor (Road) Transportation Act, Act No. 74 of 1997;
- 32.1.18 Electronic Communications Act, Act No. 25 of 2002;
- 32.1.19 Prevention of Combating of Corrupt Activities Act, Act No 12 of 2004 and
- 32.1.20 Companies Act, Act No 71 of 2008 as amended.
- 32.2 Where the **Supplier** provides a Service to **MRC** at any of its selected areas, it shall give preference to local labour and shall, in the recruitment of any category of Staff, first determine, to the satisfaction of **MRC**, that no similar category is available locally and shall liaise with local interest groups in determining the availability of labour.
- 32.3 The **Supplier** shall make every endeavour to maintain sound labour relations and to prevent industrial action. The **Supplier** shall notify **MRC** at the earliest opportunity of any anticipated industrial action and shall, in the event of industrial action, co-operate with **MRC** in respect of the implementation and co-ordination of contingency plans, press liaison and evacuation of the **Supplier's** Staff from **MRC's** premises.
- 32.4 Participation by the Staff of the **Supplier** in industrial action, whether legal or protected in terms of any labour legislation or not, will not absolve the **Supplier** of any of its obligations pertaining to this Agreement.
- 33. CONFLICT OF INTEREST**
- 33.1 The **Supplier** undertakes that it shall not engage in practises or pursue interests which are in conflict with the interest of **MRC** and which could result in financial damage or loss being suffered by **MRC**, or **MRC's** reputation being harmed in the eyes of the business community or the public at large.
- 33.2 Conflict of interest will exist when the **Supplier** has an interest in, or derives some benefits from, transactions to which **MRC** is a Party, whether directly or indirectly. It also includes instances where there is a reasonable possibility, whether in the eyes of the **Supplier** or any third party, of such conflict occurring.
- 33.3 All conflicts of interest must be disclosed in writing to **MRC**.
- 33.4 The **Supplier** shall inform its Staff of the contents of this clause 33 and shall ensure their adherence thereto. The **Supplier** warrants that it shall not engage in any form of corrupt practices while rendering the Services and/or supply of Goods to **MRC**.
- 33.5 The **Supplier** undertakes to disclose to **MRC** at the inception of this Agreement, and at any time thereafter if it becomes aware of the fact that any of its Directors, employees, officers, or any other party has any family, or other connection with any employee of **MRC**.
- 33.6 The **Supplier** shall complete the declaration of conflict of interest attached hereto in **Annexure I**.
- 34. DOCUMENTATION**
- 34.1 All documents, correspondence and drawings to be supplied by the **Supplier** to **MRC** shall be in the English language. All documentation which requires the approval of **MRC** shall be submitted to **MRC's** Supply Chain Manager at all times as stated elsewhere in the Agreement but otherwise within 14 (fourteen) days of the Effective Date.
- 34.2 To the extent applicable, the **Supplier** will before the Effective Date of the Agreement deliver to **MRC** the applicable drawings and designs and the manuals and tools to manufacture, maintain, operate/use and service the Goods as more fully set out in **Annexure H**.
- 34.3 To the extent that this Agreement is terminated for whatsoever reason, then the **Supplier** hereby grants to **MRC** an irrevocable, royalty free license to use, reproduce and copy the drawings, manuals, technical documents and other documents in which copyright may subsist in perpetuity.
- 34.4 The **Supplier** shall comply with **MRC's** company codes of best practices and such policies are available on the website.
- 35. VARIATIONS**
- MRC's** Supply Chain Manager shall have power, by notice, in writing, to direct the **Supplier** to alter, amend, omit, add to or otherwise vary any of the Goods and/or Services supplied. Any approved variation to the Agreement will be enforced by an official amendment to the Agreement, issued by the **MRC's** Supply Chain Manager.
- 36. CONFIDENTIALITY**
- 36.1 The **Supplier** acknowledges the significant importance of Confidential Information to **MRC** and, where applicable, third party proprietors of such information, and recognises that **MRC** and/or third party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with this Agreement.
- 36.2 The **Supplier** agrees and undertakes:
- 36.2.1 except as permitted by this Agreement, not to disclose or publish any Confidential Information in any manner, for any reason or purpose whatsoever without the prior written consent of **MRC** and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the **Supplier** to obtain the consent of such third party;
- 36.2.2 except as permitted by this Agreement, not to utilise, employ, exploit or in any other manner whatsoever without the prior written consent of **MRC** and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the **Supplier** to obtain the consent of such third party;
- 36.2.3 to restrict the dissemination of the Confidential Information to only those of the Staff who are actively involved in activities for which use of Confidential Information is authorised and then only on a "need to know" basis, and the **Supplier** shall initiate, maintain and monitor internal security procedures reasonably acceptable to **MRC** to prevent unauthorised disclosure by the Staff;
- 36.2.4 to take all practical steps, both before and after disclosure, to impress upon the Staff who are given access to Confidential Information the secret and confidential nature thereof.
- 36.2.5 to ensure that none of its or its sub-contractor's, employees, agents or representatives (without limitation) take any photographs and or video recordings (in the broadest possible sense) of **MRC'S** or **MRC'S** Clients (without limitation) premises, works or equipment.
- 36.3 All Confidential Information disclosed by **MRC** to the **Supplier** or which otherwise comes to the knowledge of the **Supplier**, is acknowledged by the **Supplier**:
- 36.3.1 to be proprietary to **MRC** or where applicable, the relevant third party proprietor; and
- 36.3.2 not to confer any rights of whatsoever nature in such Confidential Information on the **Supplier**.
- 36.4 The **Supplier** shall protect the Confidential Information in the manner, and with the endeavour, of a reasonable person protecting their own Confidential Information. In no event shall the **Supplier** use less than reasonable efforts to protect the confidentiality of the Confidential Information.
- 36.5 **MRC** may at any time on written request to the **Supplier**, require that the **Supplier** immediately returns to **MRC** any Confidential Information and may, in addition, require that the **Supplier** furnish a written statement to the effect that upon such return, it has not retained in its possession or under its control, either directly or indirectly, any such Confidential Information or material.
- 36.6 Alternatively, the **Supplier** shall, as and when required by **MRC** on written request to the **Supplier**, destroy all such Confidential Information and material and furnish **MRC** with a written statement to the effect that the same has been destroyed. The **Supplier** shall comply with any request in terms of this clause 36.6 within 7 (seven)

days of receipt of such request.

36.7 The **Supplier** may retain Confidential Information to the extent required by, and for the duration of, any Services performed for **MRC** in terms of agreements between the Parties, provided that **MRC** has not waived performance of such Services and subject to the right of **MRC** to recover the Confidential Information at any time in terms of this clause 36.7.

36.8 The **Supplier** shall ensure that the **Supplier** Staff who have access to Confidential Information, give a written undertaking in favour of **MRC** in regard to the Confidential Information on substantially the same terms and conditions contained within this Agreement. **MRC** shall be entitled to deny a **Supplier** Staff member access to its premises or prevent such member conducting any work in relation to the Services on its premises or under **MRC's** direct control, should **MRC** not be in receipt of a signed undertaking from such member on such terms and conditions as determined by **MRC**. **MRC's** failure to obtain receipt of the undertaking referred to in this clause 36.8 shall in no way detract from the **Supplier's** obligations in terms of this Agreement.

36.9 The Parties record that this clause 36 shall not be applicable where the **Supplier** discloses Confidential Information to attorneys or auditors, provided that such disclosure is reasonably required by the **Supplier** for the purposes of conducting its business activities.

36.10 Nothing contained in this Agreement will restrict either Party from the use of any generic ideas, concepts, know-how, or techniques developed or learned by such Party in the course of performing any Services under this Agreement, provided that in doing so such Party does not disclose **MRC** Confidential Information to third parties or infringe the Intellectual Property rights of the other Party or third parties who have licensed or provided materials to the other Party.

36.11 **Supplier** shall comply with any confidentiality, copyright, patents and indemnity agreements of **MRC**. Each employee of the **Supplier** is required to sign any confidentiality, copyright, patents and indemnity agreements as may be required by **MRC**

36.12 The **Supplier** shall keep indemnified **MRC** against all losses and costs including legal costs as between attorney and client and all other expenses that **MRC** may incur as a result of any action, proceeding or claim made against **MRC** resulting from any Intellectual Property infringement.

37. TERMINATION

37.1 If the **Supplier** commits a breach of this Agreement and fails to remedy such breach within 14 (fourteen) days of notice or such period as determined by the conditions of Contract thereof from the other, **MRC** shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement or otherwise, to terminate this Agreement and/or any or all Purchase Order(s) without prejudice to any claims which **MRC** may have for damages against the other upon written notice to the other, it being recorded that the withholding of disputed charges in terms of clause 15.8 shall not constitute a breach of this Agreement.

37.2 If:

37.2.1 a Causal Event occurs in respect of the **Supplier**; or

37.2.2 the **Supplier** fails to adhere to any legal requirement or breaches any term or condition of any license, authorisation or consent required for the provision of the Services and which failure or breach **MRC**, in its sole discretion, considers to be detrimental to **MRC** for sound business reasons,

then **MRC** shall be entitled, but not obliged, to terminate this Agreement and/or any or all Purchase Order(s) on written notice to the **Supplier**, in which event such termination shall be without any liability and without prejudice to any claims which **MRC** may have for damages against the **Supplier**.

37.3 Should the **Supplier** fail to fulfil any of its BEE obligations contemplated in clause 30 above and set out in **Annexure F** of the Agreement, or it is established that the **Supplier** has misrepresented itself in its tender submissions, or dissolves whatever arrangement is already in place, **MRC** shall have the right to terminate this Agreement and/or any or all Purchase Order(s) on written notice to the **Supplier**, in which event such termination shall be without any liability and without prejudice to any claims which **MRC** may have for damages against the **Supplier**. In the event of such termination,

MRC shall be entitled to re-tender the Goods and/or Services or award a contract to an alternate supplier based on a tender evaluation.

37.4 The expiration or termination of the Agreement shall not affect such of the provisions of the Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

38. TERMINATION FOR CONVENIENCE

MRC may terminate this Agreement or any Purchase Order(s) in whole or in part for convenience and without cause at any time by giving the **Supplier** at least 30 (thirty) days prior notice designating the termination date. **MRC** shall have no liability to the **Supplier** with respect to such termination. If a purported termination by **MRC** under clause 37.1 is determined by a competent authority not to be a proper termination under the applicable clause, then such termination by **MRC** shall be deemed to be a termination for convenience under this clause 38.4 and the **Supplier** shall have no further claims of whatsoever nature against **MRC** as a result of such termination.

39. END-OF-CONTRACT ASSISTANCE

39.1 At the expiration or termination of this Agreement and/or any or all Purchase Order(s), the **Supplier** shall, at the request of **MRC**, make itself available to provide End-of-Contract Assistance. The End-of-Contract Assistance to be provided by the **Supplier** in the case of termination or expiration of a Purchase Order will include the End-of-Contract Assistance described in such Purchase Order.

39.2 If this Agreement or any Purchase Order(s) or part thereof expires, or if this Agreement or any Purchase Order(s) or part thereof is terminated other than pursuant to clause 37, End-of-Contract Assistance will be provided to **MRC**. Subject to approval of **Supplier's** quotation, the **Supplier** shall be entitled to charge for such assistance. If the Agreement or any Purchase Order(s) is terminated by **MRC** in terms of clause 37 and **MRC** elects to have the **Supplier** provide End-of-Contract Assistance, the **Supplier** shall be not entitled to charge for such assistance. In the event that the **Supplier** is entitled to charge for such End-of-Contract Assistance in terms of this clause 39, the **Supplier** shall charge on a time and materials basis at hourly rates as agreed to between the Parties.

40. LIMITATION OF LIABILITY

Notwithstanding anything to the contrary set forth in this Agreement, the Parties agree that they shall be liable to the other for any Losses which are regarded in law as direct damages but excluding indirect, incidental and/or consequential damages arising from the Losses.

41. MEDIATION AND ARBITRATION

41.1 Any dispute arising between the Parties in regard to any aspect of this Agreement ("**Dispute**") shall be referred to a mediator agreed upon between the Parties, upon written notice by any Party.

41.2 If the Parties are unable either to agree on a mediator within 7 (seven) days or to resolve the Dispute by way of mediation, within 28 (twenty eight) days of the Dispute having been raised in writing, then the Dispute shall be submitted to and decided by arbitration. Save as set out herein, the arbitration shall be conducted in Johannesburg in accordance with the rules and regulations in force from time to time of the Association of Arbitrators (Southern Africa).

42. NOTICES AND DOMICILIUM

42.1 The Parties hereto select as their respective *domicilia citandi et executandi* the following addresses or such other address as may be substituted by notice given as herein required:

42.1.1 **MRC:**

Physical: 22 Skeen Boulevard, Bedfordview, 2007

Postal: Private Bag 3010, Bedfordview, 2008

Attention: The Financial Director

Fax: +2711 201 5500

The **Supplier:** The address appearing in **Annexure A**.

42.2 All notices, requests, demands and determinations under this Agreement (other than routine operational communications), shall be valid and effective only if in writing and if delivered by hand; telefax; mail or e-mail as specifically provided for herein. In this regard, a notice, request, demand and determination under this Agreement:

- 42.2.1 delivered by hand shall be deemed duly given when delivered by hand during ordinary business hours as evidenced by a receipt declaration by a member of the addressee's Staff or a delivery declaration by a person authorised to deliver the notice, request, demand and determination by the addresser; or
- 42.2.2 delivered by mail, shall be deemed duly given when mailed in a properly addressed envelope to a responsible person at the addressee's *domicilium* by registered mail, which delivery shall be evidenced by the registered mail receipt. A notice, request, demand and determination sent by mail shall be deemed to have been received 5 (five) days after posting if addressed within the Republic of South Africa to an address within the Republic of South Africa, and 10 (ten) days after posting in all other instances; and
- 42.3 Notwithstanding the above, any notice given in writing in English and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause. The Parties record that whilst they may correspond via email during the currency of the Agreement and this Agreement for operational reasons, all formal notices required in terms of this Agreement, and any amendment or variation to the Agreement or this Agreement may be given or concluded via email on condition that amendments or variations are signed by both parties and returned to the other by means of scanning and transmitting scanned and/or pdf documents. The **Supplier** is required to take cognizance that only the signatories to the Agreement have legal authority to commit **MRC** to the terms and conditions of this and any other Agreement.
- 42.4 Communications in traditional letter format may be transmitted as pdf attachments by the Parties and other contractual role players one to the other by e-mail.
- 43. VIS MAJOR AND CASUS FORTUITUS**
- 43.1 Failure on the part of a Party (the "**Affected Party**") to perform in terms of or comply with the provisions of the Agreement shall not be deemed to be a breach of the Agreement by the Affected Party, insofar as such failure is due to an event or circumstances of *vis major* (i.e. any superior force, power or agency which cannot be resisted or controlled by an ordinary individual – including acts of nature and acts of man) or is due to *casus fortuitous* (i.e. an inevitable event that is something exceptional, extraordinary or unforeseen and which human foresight cannot be expected to anticipate or to reasonably foresee, of if it can be foreseen, it cannot be avoided by the exercise of reasonable care or caution).
- 43.2 Without limiting the generality and intention of clause 43.1 in any way, the event or circumstances may include (without being limited thereto):
- 43.2.1 acts of God, war, hostilities, riots, civil or military insurrection and like political disturbances, natural disasters such as earthquakes, fires, floods and storms, acts or omissions by Governments (central, federal, regional, provincial, local, municipal) and state organs/public authorities; terrorism or sabotage, denial of the use of railway or other means of public transport;
- 43.2.2 provided that inconvenience, hardship, discomfort, strikes, lock-outs and the mere shortage of labour, materials or utilities shall not constitute *vis major* or *casus fortuitous*, unless caused by events or circumstances which themselves are *vis major* or *casus fortuitous*.
- 43.3 If the Affected Party is by reason of *vis major* or *casus fortuitous* prevented from fulfilling its obligations under the Agreement, the Affected Party shall immediately notify the other Party in writing thereof. Such notice shall stipulate:
- 43.3.1 the cause, nature and extent of the event or circumstances;
- 43.3.2 the expected duration of the circumstances or event;
- 43.3.3 the extent to which the performance of the Affected Party will be affected.
- 43.4 The Parties shall then promptly confer within 5 (five) days with a view to dealing with the matter in a cost-effective basis.
- 43.5 To the extent that the Affected Party is prevented to perform its obligations in terms of the Agreement due to *vis major* or *casus fortuitous*, the Affected Party shall for the duration of *vis major* or *casus fortuitous* be temporarily excused from its liability to perform such obligations – provided always that the Affected party shall not be so excused or discharged from its obligations if its non-performance is due to the fault, negligence or wilful act or omission of the Affected Party.
- 43.6 The Affected Party shall within 5 (five) days of its notice to the other Party in terms of clause 43.2, having regard to all the relevant factors, submit in good faith alternative proposals to the other Party as to how the event or circumstances can be overcome. Such proposals shall be in sufficient detail to enable the other Party to technically and financially assess the alternatives and to decide whether any of the alternatives are acceptable to the other Party. Should the other Party, in its sole discretion, not accept any of the alternative proposals, the other Party may terminate the Agreement by giving the Affected Party written notice without this termination giving rise to any claim for damages, compensation or loss of any nature against the Affected Party or the other Party.
- 43.7 Until the other Party has made its decision referred to in clause 43.4 above, and if the other Party has decided not to terminate the Agreement, as aforesaid, the following provisions shall apply:
- 43.7.1 the Affected Party shall make every effort to mitigate the effect on the other Party of its failure or omission to perform fully;
- 43.7.2 the Affected Party shall keep the other Party fully informed about the situation.
- 43.8 To the extent that the Affected Party is prevented by *vis majors* or *casus fortuitous* to comply fully with its obligations in terms of the Agreement, the other Party shall not have any claim for damages, compensation or loss of any nature against the Affected Party – provided always that the other Party shall have a claim for damages or other lawful remedy against the Affected Party in the event that the non-performance by the Affected Party is due to the fault, negligence or wilful act or omission of the Affected Party.
- 43.9 In the event that the period of *vis major* or *casus fortuitous* exceeds an uninterrupted period of 120 (one hundred and twenty) days, either Party may terminate this Agreement and/or any or all Purchase Orders.
- 44. COSTS**
- Each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.
- 45. CORRUPT PRACTICES**
- 45.1 The **Supplier** shall, comply with all applicable South African laws, statutes and regulations relating to anti-money laundering/proceeds of crime and anti-bribery and anti-corruption (as may be amended from time to time) including but not limited to the South African Prevention and Combating of Corrupt Activities Act 2004 (collectively referred to as the "Anti-corruption Laws").
- 45.2 The **Supplier** acknowledges that **MRC** takes a zero-tolerance approach to acts of fraud, bribery and corruption and is committed to ensuring that those who act on its behalf conduct themselves with the utmost integrity and without improper influence and as such **MRC** requires a commitment from the **Supplier** that it too, in performing its obligations to **MRC** under the Contract, will conduct its business in a like manner. In this regard **MRC** and **Supplier** also undertake to one another other than in the event that either one becomes aware of any laws, statutes, regulations and international policies relating to anti-money laundering/proceeds of crime and anti-bribery and anti-corruption, other than the Anti-corruption Laws at any time during the duration of the Contract that may be applicable to either of them ("the Additional Anti-corruption Laws"), then they shall endeavour, in good faith, to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts as may be necessary or incidental to amend the definition of Anti-corruption Laws in this clause 45 to incorporate reference to the Additional Anti-corruption Laws.
- 45.3 The **Supplier** shall:
- 45.3.1 not engage in any activity, practice or conduct which would constitute an offence in respect of any corruption or corrupt activities contemplated in the Anti-corruption Laws ("Corrupt

Act”);

complete and up to date.

- 45.3.2 comply with **MRC'S** Anti-Bribery and Corruption Standard and Statement of Business Principles (**Annexures J and K**) as amended from time to time and in so far as it relates to the **Supplier** and the performance of the works. For the avoidance of doubt, in the event of any conflict between the provisions of the Code of Business conduct and Ethics and the Business Integrity Policy, the latter shall prevail;
- 45.3.3 have and shall maintain in place through the term of the Agreement its own policies and procedures to ensure compliance with Anti-Corruption Laws, Anti-corruption Policy and this Clause 61 where appropriate;
- 45.3.4 promptly and in writing notify **MRC** of the occurrence and details of any suspected Corrupt Act or breach of the Anti-corruption Policy that may be, or has been, committed or is likely to be committed by the **Supplier** and/or any of any of its associated persons and/or **Sub-Suppliers** (or anyone employed by or acting on behalf of them) in connection with the performance of this Agreement; and
- 45.4 On the date stipulated in **Annexure A**, and annually thereafter, certify (in a form agreed by **MRC** and the **Supplier** both acting reasonably) to **MRC** in writing signed by an officer of the **Supplier**, compliance with this clause by the **Supplier**, its associated persons and **Sub-Suppliers** (and anyone employed by or acting on behalf of them). The **Supplier** shall provide such supporting evidence of compliance as **MRC** may reasonably request.
- 45.5 Subject to the provisions of clause 46, the **Supplier** shall indemnify **MRC** and/or (without limitation) its Directors, employees, and officers against any losses, liabilities, damages, costs (including, but not limited to legal fees), which have been awarded against **MRC** and/or any individual by a competent Court, tribunal, regulatory body or government agency as a result of the **Supplier** and/or any of its associated persons and/or its **Sub-Supplier** (or anyone employed by or acting on behalf of them) engaging in any Corrupt Act.
- 45.6 The **Supplier** shall provide **MRC** with all reasonable assistance to enable **MRC** to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purposes of compliance with this clause 45.
- 45.7 The **Supplier** agrees to co-operate with **MRC** in connection with any enquiries **MRC** may make in connection with the **Supplier**, **Sub-Supplier's** or any of its associated persons' compliance with the Anti-corruption Laws and/or the Anti-corruption Policy and failure to do so shall entitle **MRC** to terminate the Agreement without notice and without any right to recourse by **Supplier** and with immediate effect.
- 45.8 The **Supplier** shall promptly notify **MRC** of any changes to the information provided by the **Supplier** in connection with its application to provide the Goods / Services under this Contract.
- 45.9 The **Supplier** warrants that to the best of its knowledge and understanding at the time of entering into the Contract that:
- 45.9.1 in entering into this Contract, it has not committed any Corrupt Act or breached the Anti-corruption Policy; and
- 45.9.2 save as fully disclosed to **MRC**, is in the public domain or as disclosed to the South African Competition authorities as part of its fast track process regarding historical transgression, neither it, or any of its directors, officers, employees or other persons associated with it;
- 45.9.2.1 has been convicted of any offence involving bribery or corruption, fraud or dishonesty;
- 45.9.2.2 has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body or court in connection with any Corrupt Act; or
- 45.9.2.3 has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government Contracts; and
- 45.9.2.4 the information it provided to **MRC** in connection with its application to provide the Goods / Services under this Contract is true, accurate,
- 45.10 The **Supplier** shall promptly and in writing notify **MRC** if any of the events listed in this clause 45 occurs during the course of the Agreement.
- 45.11 The **Supplier** undertakes not to use the amounts paid to him pursuant to this Contract for any illegal, unethical or improper purposes.
- ## 46. GENERAL
- 46.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
- 46.2 This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.
- 46.3 No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.
- 46.4 No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Parties in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement, and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
- 46.5 All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 46.6 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 46.7 Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either Party without the prior written consent of the other Party, except that **MRC** may assign its rights and obligations under any or all Agreements without the approval of the **Supplier** to an entity which acquires all or substantially all of the assets of **MRC**; provided that in no event shall such assignment relieve **MRC** of its obligations under this Agreement.
- 46.8 The **Supplier** may not delegate or sub-contract its obligations under this Agreement.
- 46.9 The Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
- 46.10 The Parties warrant and acknowledge that the relationship between them is not in the nature of a partnership and that neither Party is in any manner entitled to make or enter into binding agreements of any nature on behalf of the other Party.
- 46.11 The **Supplier** shall not, during the currency of the Agreement, cede or transfer to any person its right, title and interest in and to any existing or future book debts of its business at any time,

except with the consent, in writing, of **MRC**.

SECTION B: SUPPLY OF SERVICES

47. SERVICES

47.1 The **Supplier** will provide the Services to **MRC** subject to the terms and conditions of this Agreement.

47.2 At **MRC's** election, **MRC** may perform itself or retain third parties to perform any of the Services provided that **MRC** shall:

47.2.1 by written notice to the **Supplier**, advise the **Supplier** of such election; and

47.2.2 pay the **Supplier** for Services in terms of any existing Agreement for their continued duration of the Agreement or the applicable Purchase Order(s). In this regard:

47.2.2.1 the **Supplier** shall co-operate with **MRC** or third parties performing Services;

47.2.2.2 where third parties require access to the **Supplier** Confidential Information (excluding financial information) to provide the Services, the **Supplier** shall be entitled to require that such third parties retained by **MRC** comply with the **Supplier's** reasonable confidentiality requirements.

47.3 Without limiting the generality of the **Supplier's** obligation to perform the Services in accordance with any service levels, the **Supplier** shall as soon as practicable notify **MRC** if an act or omission of such a third party may cause the **Supplier** a problem in providing, or delay the **Supplier's** provision of the Services and the **Supplier's** failure to meet any service level as a result of the third party act or omission shall not constitute a service level default by the **Supplier**. Should **MRC** become aware of any such act or omission, it shall as soon as practicable, notify the **Supplier**, by written notice, of such occurrence.

47.4 The **Supplier** shall, on the written order of **MRC**, suspend the progress or alter the request for Services or any part thereof for such time or times and in such manner as **MRC** may consider necessary and shall during such suspension or alteration properly protect and secure the Services so far as is necessary in the opinion of **MRC**. The extra cost (if any) in giving effect to **MRC's** instructions under this clause shall be borne and paid by **MRC** unless such suspension of alteration is:

47.4.1 otherwise provided for in the Agreement, provided that the **Supplier** shall be entitled to recover any such extra cost unless having given notice in writing to **MRC** of its intention to claim within 7 (seven) days of **MRC's** order or instruction;

47.4.2 if the progress of the Services or any part thereof is suspended on the written order of **MRC** for more than 90 (ninety) days, the **Supplier** may serve a written notice on **MRC** requiring permission, within 28 (twenty eight) days from receipt thereof, to proceed with the provision of Services or that part thereof in regard to which progress is suspended.

47.5 The Agreement shall be subject to changes by additions, deletions or revisions thereto by **MRC**. The **Supplier** will be advised of such changes by receipt of additional and/or revised project plans and/or functional and technical specifications or written change requests.

47.6 Except as otherwise provided in this Agreement, the **Supplier** shall be responsible for providing the facilities, Staff and other resources as necessary for the **Supplier** to provide the Services in accordance with the service levels.

48. COMPLIANCE BY THE SUPPLIER

48.1 The **Supplier** hereby warrants to **MRC** that the **Supplier** is registered as an employer with, and in respect of, the following:

48.1.1 South African Revenue Services;

48.1.2 Compensation Commission;

48.1.3 Unemployment Insurance Fund;

48.1.4 all and any applicable Bargaining Councils;

48.1.5 skills development;

48.1.6 Employment Equity Registry;

48.2 The **Supplier** shall comply with all prescribed formalities, submit all

prescribed returns and make all payments as may be required in connection with the list set out in clause 48.1 above.

48.3 The **Supplier** undertakes, at all times, to comply with the provisions of any collective agreements which may be binding up or become binding upon the **Supplier** and/or its Staff and/or **MRC**.

48.4 The **Supplier** shall provide **MRC** with copies of certificates of registration and/or prescribed forms or returns relating to each and every one of the items in 48.1 above, if requested to do so by **MRC**.

48.5 The **Supplier** shall submit to **MRC** proof of payment of all liabilities and obligations pursuant to legislation including, but not limited to, the Income Tax Act, if requested to do so by **MRC**.

48.6 The **Supplier** shall provide proof of its registration with the South African Revenue Services within 5 (five) days of the date of signature of this Agreement. The **Supplier** shall be responsible for any tax obligations in relation to the persons procured by it to perform work for **MRC**.

49. SUPPORT AND MAINTENANCE SERVICES

49.1 Where the **Supplier** provides a Service to **MRC** relating to support or maintenance of any item in terms of this Agreement, the following terms shall, unless otherwise agreed, apply to such Services:

49.1.1 the **Supplier** undertakes that in providing such Services it shall use its best endeavours to ensure that the supported/maintained items function error-free; and to maintain the supported/maintained items in such a manner as to ensure the supported/maintained items' continued compliance with their specifications.

49.1.2 **MRC** shall be responsible for requesting the assistance of the **Supplier** with regard to any faults or failures in the supported/maintained items.

49.2 The manner in which the **Supplier** shall provide the support Services shall be specified in **Annexure A** relating to such Services which shall record the hours of Service, Working Days, the method for determining the severity of problems to be resolved, the escalation procedures applicable to such supported/maintained items and any service levels applicable to the performance of the support Services.

49.3 In the performance of Services, the **Supplier** shall on an ongoing basis and in a sustained manner apply its best endeavours to provide future avoidance advice. In addition, the **Supplier** shall identify the nature and cause of the problem and advise **MRC** of the same and irrespective of the source of the problem, recommend appropriate methods for resolving the same and provide **MRC** with future avoidance advice as well as undertaking any necessary preventative measures to minimise recurrence of the problem.

49.4 The **Supplier** shall, at its expense, supply all items necessary or required for the provision of the Services, provided that should the Services be provided at **MRC's** premises, such as supplies of electricity, network and telephone connectivity reasonably required by the **Supplier** to provide such Services, such Services will be made available to the **Supplier** in accordance with **MRC's** generally accepted procedures and at **MRC's** expense.

49.5 Should any supported/maintained items be removed by the **Supplier** to be repaired at the **Supplier's** premises, the risk in such supported/maintained items shall vest in the **Supplier** as from the time of removal thereof from **MRC's** premises until their return by the **Supplier** to **MRC's** premises.

49.6 Any spares or replacement parts or components supplied in the performance of the Services, shall accede to the supported/maintained items upon installation thereof and shall become the property of the owner of the supported/maintained items, whilst parts removed by the **Supplier** for replacement shall become the property of the **Supplier** on removal thereof. Unless otherwise agreed by **MRC** in writing, all spare or replacement parts or components supplied under this Agreement in respect of supported/maintained items which:

49.6.1 if under warranty, shall be as supplied by the manufacturer thereof in terms of its warranty program and shall be used in accordance with the manufacturer's specifications; and

49.6.2 if not under warranty, shall be either new or refurbished.

50. DEVELOPMENT SERVICES

Where the **Supplier** provides a Service to **MRC** relating to the development of any item, the scope of any Services to be undertaken by the **Supplier** relating to the development of the items shall be outlined in a project plan and in the functional and technical specifications which shall be annexed to the Agreement relating to the development of the Services.

51. SERVICE PERFORMANCE STANDARDS

The **Supplier** shall ensure that the Services (including all workmanship) and all products, materials, documentation, tools and equipment used or required for the rendering of the Services, comply with **MRC's** quality assurance and other general requirements as there may be from time to time.

52. SERVICE LEVELS

52.1 Notwithstanding the fact that an Agreement may not contain any service levels, the **Supplier** is required to perform the Services with promptness, diligence and courtesy and the **Supplier** shall at all times execute the Services in a professional manner and in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services.

52.2 The Agreement may set forth the quantitative service levels by which the **Supplier's** performance of the Services is to be measured.

52.3 The **Supplier** recognises that its failure to meet an agreed service level may have a material adverse impact on the business and operations of **MRC** and that the damage from the **Supplier's** failure to meet any service level is not susceptible to precise determination. Accordingly, in the event that the **Supplier** fails to meet a service level, then in addition to any non-monetary remedies available to **MRC**, **MRC** may elect, in lieu of pursuing other monetary remedies, to recover as its sole and exclusive monetary remedy for such failure to meet a service level a penalty determined by reference to **Annexure A** as liquidated damages.

52.4 In the event **MRC** is entitled to a penalty under this Agreement, the amount of such penalty shall be set forth as a deduction on the **Supplier's** invoice for the month following the month in which the service level failure occurred. If **MRC** elects to impose a penalty, **MRC's** payment of the **Supplier's** invoice shall be net of such penalty.

52.5 If the **Supplier** fails to meet any service level, the **Supplier** shall:

52.5.1 investigate and report on the root causes of the problem;

52.5.2 promptly correct the problem and begin meeting the service levels;

52.5.3 advise **MRC**, as and to the extent requested by **MRC**, of the status of remedial efforts being undertaken with respect to such problems; and

52.5.4 take appropriate preventive measures so that the problem does not recur.

52.6 Where service levels are provided for in the Agreement or a Purchase Order, the **Supplier** shall be responsible for monitoring and measuring its performance of the Services against the service levels. It is recorded that **MRC** is entitled to reasonable access to all data in the **Supplier's** possession relating to service levels and service level performance as provided for in the Agreement and/or Purchase Order.

SECTION C: SUPPLY OF GOODS

53. SUPPLY OF GOODS

53.1 Prior to supplying any Goods in terms of this Agreement, the **Supplier** shall furnish **MRC** with a detailed written quotation upon which shall be stated an all inclusive price for such Goods and where applicable, the technical specifications and/or plans of the Goods and the details as to the date until which such quotation shall be open for acceptance by **MRC**. Save as provided herein, no other terms and conditions stated upon such quotation shall be binding upon either Party. For the avoidance of doubt, the total price stated upon the written quotation shall be exclusive of value added taxation, but inclusive of all time and material costs, all fixed price costs, all third party time and materials costs, any additional taxation items, any import/export duties and any currency risk together with all additional obligations included in this Agreement (such as insurance, testing

etc). Where a written quotation does not state a date of expiry, it shall be open for acceptance by **MRC** for a period of 90 (ninety) days following its receipt by **MRC**.

53.2 Notwithstanding acceptance of a written quotation, the delivery and/or installation of any Goods, or any other act or omission on the part of **MRC** relating to the Goods which form the subject matter of any quotation, neither Party shall acquire any rights or obligations, other than as specified in clause 53.1, unless and until both Parties have concluded an Agreement for the supply of such Goods and a Purchase Order has been issued to the **Supplier**.

53.3 The Goods shall be supplied and delivered in accordance with the terms specified in **Annexure A** or the Special Conditions of Contract.

53.4 In all instances, time shall be of the essence.

54. PROCUREMENT

54.1 The Parties may from time to time agree approved supply lists, including where appropriate, technical specifications and plans, functional specifications and pricing. Such approved supply lists shall constitute an Agreement, and shall form part of the Agreement and any amendments or variations thereto.

54.2 Unless otherwise agreed, **MRC** shall be liable to the **Supplier** for the payment of the costs of any Goods procured, provided that the cost of such items shall be as per the approved supply list.

55. LEASING OF GOODS

Unless otherwise agreed in the Agreement, where the **Supplier** leases Goods to **MRC**, the following provisions shall apply:

55.1 any Goods leased to **MRC** by the **Supplier** shall be listed in a schedule to be annexed to the Agreement in terms of which such Goods are leased. Such schedule shall contain the following information regarding each and every item of such Goods:

55.1.1 an appropriate description of the Goods, preferably including an asset identification number;

55.1.2 the monthly rental payable in respect of that item of Goods;

55.1.3 the useful life of that item of Goods expressed in months and measured from the 1st (first) day of the month immediately following the month in which such Goods are accepted by **MRC**. Each item of Goods listed in such schedule shall be leased independently and upon the terms and conditions set forth in 55.2 for a period being the useful life therefore as stated in such schedule, and for the rental specified in such schedule.

55.2 any lease contemplated in clause 55.1 shall be subject to the following terms and conditions: **MRC** shall:

55.2.1 at all times keep the Goods under its control and shall take reasonable care in the use of the Goods and shall protect the same from loss and damage;

55.2.2 only use the Goods for the purpose for which it was intended;

55.2.3 ensure that any Services performed in respect of such Goods are in compliance with the reasonable specifications for such Goods as provided by the **Supplier** and/or the original equipment manufacturer thereof;

55.2.4 at its own expense take reasonable steps to keep the Goods free from attachment, hypothec or other legal charge or process and shall not without the prior written consent of the **Supplier** sell, let, loan, pledge, transfer or otherwise encumber the Goods in any way or permit any lien to arise in respect of the Goods;

55.2.5 not do anything which may cause damage to the Goods;

55.2.6 take reasonable steps to ensure that all restrictions on the use of the Goods that are imposed by any law are observed by **MRC** and its Staff; and

55.2.7 not modify the Goods otherwise than in accordance with the provisions of this Agreement.

55.3 any item listed in a schedule shall be subject to a lease as referred to in clause 55.1 while it remains so listed. When the useful life of the item has ended, the lease shall be deemed expired with effect from the last day of the month in which such useful life ends. Any such

lease may only be terminated by agreement of the Parties, by expiration or by **MRC** where **MRC** in its sole discretion determines any Goods leased by it from the **Supplier** to be irremediably Defective and as a result thereof cancels its lease of such Goods. The **Supplier** shall immediately update the schedule in order to give effect to any termination, expiration or cancellation of any lease in respect of any Goods listed in the schedule. Should this Agreement be terminated then all leases of Goods in terms of this Agreement shall terminate as of the Effective Date of any termination of this Agreement. Where a Purchase Order is terminated, then all leases of Goods pursuant to the terminated Purchase Order shall terminate as of the Effective Date of any termination of such Purchaser Order. Upon the termination, expiration or cancellation of any Goods lease the **Supplier** shall as soon as reasonably possible remove all Goods subject to such termination, expiration or cancellation from **MRC's** premises and thereafter neither Party shall have any liability whatsoever under such lease.

56. LICENSING SERVICES

56.1 Where the **Supplier** licenses **MRC** to use any Goods, such license shall, unless otherwise agreed in writing and recorded in the Agreement, be granted on the basis that **MRC** shall receive a non-exclusive, non-transferable license to use and deploy the goods, within its own business environment.

56.2 **MRC** shall be entitled to make and maintain back-up copies of Goods which are in the nature of software for operational security purposes and may make such number of copies of part or all of the software as are strictly necessary for such purposes. Back-up copies may be used whenever the software is rendered unusable or inoperable, provided that the **Supplier** shall be notified of such event without delay.

57. RISK AND OWNERSHIP IN GOODS

57.1 The risk in Goods to be provided shall remain with the **Supplier** until delivery and offloading of such Goods has been effected and the Goods have been received by **MRC** or its agent specified in **Annexure A** at the point of delivery stated in **Annexure A**.

57.2 The title to the Goods, free of all liens or encumbrances, shall pass to **MRC** at the earlier of:

- 57.2.1 delivery of the Goods to **MRC** or its agent; or
- 57.2.2 payment or part payment therefor.

57.3 Delivery of Goods to **MRC** shall be as evidenced in such manner as may be agreed by the Parties in **Annexure A** and in the absence of such agreement, as evidenced by the **MRC** signature to the **Supplier's** delivery note. This clause 57 shall not be construed as limiting any of **MRC's** rights in terms of clause 11, and the **Supplier** shall bear all liability for any latent or patent Defect identified during acceptance testing by **MRC**.

58. RETURN OF DEFECTIVE DELIVERABLES

58.1 If at any time during the process of, or prior to acceptance of Goods by **MRC**, **MRC** shall give notice in writing that it is dissatisfied with any materials, equipment and workmanship, or with any part or parts of the Goods on account of such material, equipment or workmanship being faulty or of inferior quality and not meeting the specified tests and requirements, or on account of any such part or parts of the Goods having been unsoundly or improperly executed, owing to inferior design, materials or workmanship or to inaccurate setting out, or on account of any part or parts of the Goods not being in strict conformance with the Contract Price, the **Supplier** shall immediately proceed to alter, reconstruct or remove and replace such part or parts of the Goods, and, whether the Goods have been completed or are in the course of execution when objection is intimated, such alterations, reconstruction, or removal and replacement shall be executed at the cost of the **Supplier**, and no extension of the date for completion shall be granted by reason of making good the Defects or Deficiencies.

58.2 Should the **Supplier** unduly delay or refuse the making good of any Defects or Deficiencies in terms of this clause 58, **MRC** shall have the right to employ at any time and pay other persons to have the Defects or Deficiencies rectified, and all expenses consequent thereon and incidental thereto shall be borne by the **Supplier**, and shall be recovered from it by **MRC**, or may be deducted from any monies due or that may become due to the **Supplier** and **MRC** shall not be answerable or accountable for any loss or damage that may arise or happen to materials rejected and removed by it, nor for any

loss, damage or injury which the **Supplier** may claim to have sustained by reason of the actions of **MRC** under this clause 58.

58.3 Should any Goods be delivered to **MRC** in a damaged or sub-standard condition, **MRC** shall be entitled to return such Goods to the **Supplier**, at the **Supplier's** cost, in which event the **Supplier** shall, at **MRC's** election, either refund or procure the refund to **MRC** of the full amount paid by **MRC** in respect thereof or replace or procure the replacement of such Goods with the equivalent Goods, delivered in an acceptable condition. In the event that, by reason of the contractual relationship between **MRC** and the third party supplier of the Defective Goods, or by reason of the contractual relationship between **MRC** and the third party supplier of the Defective Goods, or by reason of the contractual relationship between the **Supplier** and the third party supplier of such Goods, the **Supplier** is prevented from refunding or procuring the refund of the amount payable in respect of the Goods, the **Supplier** shall replace or procure the replacement of such Goods.

59. PACKAGING

Unless otherwise specified in the Agreement, the cost of packing materials and containers of whatsoever nature used in connection with the Goods shall be included in the purchase price and such packing materials and containers shall upon delivery of the Goods become the property of **MRC**. The **Supplier** shall be liable for any loss or damage due to inadequate packing.

60. HAZARDOUS GOODS

Hazardous Goods must be marked by the **Supplier** with international danger symbols and the name of the material must be displayed in English. The **Supplier** shall ensure that hazardous Goods delivered to **MRC** are accompanied by the relevant hazardous chemical data sheets or any other such documentation as may be requested by **MRC** or its Client from time to time.

61. WARRANTY MAINTENANCE

61.1 The **Supplier** shall carry out with all possible speed the maintenance work arising out of a breach of warranty, including work necessary to remedy Defects or Deficiencies, found necessary and ordered by **MRC** during the period of the warranty. In the case of work rendered necessary owing to Defective materials, equipment and workmanship, the cost shall be borne by the **Supplier**.

61.2 Without relieving the **Supplier** from any of its obligations, the **Supplier** irrevocably and unconditionally authorises **MRC** to, at **Supplier's** cost and behalf, repair and maintain the Goods should **Supplier** not be able to comply with sub-clause 61.1.

61.3 Any payment due by the **Supplier** resulting from any actions taken by **MRC** in terms of sub-clause 61.2 shall either be set-off by **MRC** against any monies due and owing to **Supplier** from this or any other Agreement, alternatively (at **MRC'S** sole option) be paid by **Supplier** within 30(thirty) days from date of repair or maintenance.

62. PUBLICITY

62.1 Except as agreed beforehand in writing or as may be required by law or regulation, neither party shall make any public announcement or public disclosure with regard to the Agreement and will refrain from disclosing the existence and contents of the Agreement to any other party or authority or to the media.

62.2 Both Parties shall be responsible to ensure that its employees, agents, Contractors, Sub-Contractors and representatives comply with the provisions of this clause.

62.3 Non-adherence to this clause by either party or its employees, agents, Contractors, Sub-Contractors and representatives shall entitle the other party to cancel the Agreement forthwith, without prejudicing any other right the party may have in law.