

# University of Johannesburg



## Standard Terms and Conditions

### Supply of Services and Goods (Procurement)

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## 1. Introduction

The Supplier wishes to provide a Supply to UJ, which UJ accepts based on the terms and conditions set out in these ST&Cs. The parties have agreed that, notwithstanding any previous discussions or agreements, that these ST&Cs regulates the Supply to UJ and accurately records the agreement between the parties.

## WHEREBY IT IS AGREED AS FOLLOWS:

## 2. Definitions

Unless the context indicates otherwise, the following expressions will have the corresponding meanings:

- 2.1. **ABC Laws** means the Bribery Act 2010 (United Kingdom), the Foreign Corrupt Practices Act 1977 (United States of America), the Prevention and Combating of Corrupt Activities Act 12 of 2004 (South Africa), the United Nations Convention Against Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction, 1997 ("**OECD Convention**"), and all other applicable law including (i) statute, ordinance, rule or regulation; (ii) order of any court, tribunal or any other judicial body; and (iii) rule, regulation, guideline or order of any public body, or any other administrative requirement, which:
  - (a) prohibits the offering of any gift, payment or other benefits to any person or any officer, employee, agent or advisor of such person; and/or
  - (b) is broadly equivalent to the Foreign Corrupt Practices Act 1977 (United States of America) and/or Bribery Act 2010 (United Kingdom), or was intended to enact the provisions of the OECD Convention, or which has as its objective the prevention of corruption and which is applicable in the jurisdiction in which the Parties are registered, conduct business and/or in which any aspect of the Agreement is to be performed;
- 2.2. **Acceptance Agreement** means an agreement in terms of which the Supplier specifically agrees to be bound by these ST&Cs;
- 2.3. **Agreement** means either:
  - 2.3.1. an Acceptance Agreement together with these ST&Cs and any annexures or schedules;
  - 2.3.2. a Supply-agreement (and where a Purchase Order is issued flowing from that Supply-agreement then including such Purchase Order) together with these ST&Cs and any annexures or schedules;
  - 2.3.3. where no Supply-agreement was executed, a Purchase Order together with these ST&Cs and any annexures or schedules; or
  - 2.3.4. where the Supplier otherwise (other than as contemplated in clauses 2.3.1, 2.3.2 or 2.3.3) provides a Supply and UJ elects to accept such a Supply in Writing. In these circumstances UJ shall be entitled to accept the Supply in Writing but an obligation to pay shall only arise at the election of UJ and the Supplier shall waive any claim (including a claim for enrichment) as a result thereof.
- 2.4. **Applicable Laws** means all statutes, ordinances, regulations, proclamations, rules by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body and other acts having the force of law of any authority having jurisdiction and includes the common law as applicable in South Africa, which shall also include:
  - 2.4.1. the ABC Laws; and
  - 2.4.2. the Applicable Sanctions.
- 2.5. **Applicable Sanctions** means all sanctions, embargoes and trade restrictions imposed by the United Nations Security Council, the United States of America and the European Union, as well as any other Sanctions that are binding on UJ and/or the Supplier;
- 2.6. **Best Industry Practices** means the exercise of that degree of skill, diligence, professionalism and foresight which would reasonably and ordinarily be expected from a highly skilled and experienced supplier engaged under similar circumstances as those envisaged in an Agreement, and by agreeing that time is of the essence and in full compliance with the Applicable Laws and the Policies;
- 2.7. **Business Day** means 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;
- 2.8. **Business Hours** means the hours between 08h00 and 16h00 on any Business Day. Any reference to time will be based upon South African Standard Time;
- 2.9. **Client** means any client or customer of UJ, including but not limited to, UJ students, exchange students and foreign students;
- 2.10. **Confidential Information** means all confidential and proprietary information disclosed by UJ to the Supplier whether prior to or after the Supply and includes, without limiting its ordinary meaning, and in respect of UJ'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 UJ to an Agreement which comes to the attention of the Supplier pursuant to an Agreement;
- 2.11. **Commissioning** means the process by which the Supply is tested to verify if it functions according to its design objects or specifications to the satisfaction of UJ;
- 2.12. **Conflict of Interest** means where the Supplier has an interest in, or derives some benefits from, transactions to which UJ is a Party, whether directly or indirectly and also includes instances where there is a reasonable possibility, whether in the eyes of the Supplier or any third-party, of such conflict occurring;
- 2.13. **Data** means any data, including Personal Information, as set out in the Electronic Communications and Transactions Act 25 of 2002, the Protection of Personal Information Act 4 of 2013 and/or any equivalent legislation or law of a jurisdiction where Data or Personal information may be Processed;
- 2.14. **Data Subject** means the person to whom Personal Information relates;
- 2.15. **Defect** means with respect to the Supply:
  - 2.15.1. any error, problem, non-conformity or defect resulting from a deviation from the documentation for such deliverable;
  - 2.15.2. 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;



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- 2.15.3. where any deliverable or the Supply does not meet any aspect of the Specifications;
- 2.15.4. where the deliverable or the Supply does not comply with any stipulation or requirement contained in an Agreement; and/or
- 2.15.5. where a deliverable or the Supply does not meet any stipulation or requirement of an Applicable Law or a Policy.
- 2.16. **Defective** means a Supply or Service which has a Defect;
- 2.17. **Contract Price** means the prices and or rates payable by UJ to the Supplier for the Supply as set out in an Agreement;
- 2.18. **Defect Liability Period** means for patent defects 36 (thirty six) months from the day of the last Supply or such other period specified in an Agreement (whichever is the later);
- 2.19. **Effective Date** means:
- 2.19.1. in respect of an Acceptance Agreement, the date as recorded in the Acceptance Agreement;
- 2.19.2. in respect of a Supply-agreement, the date as recorded in the Supply-agreement; and
- 2.19.3. in respect of a Purchase Order, the date of issue of the Purchase Order or as stated in such Purchase Order; or
- 2.19.4. if no effective date is stated in the Acceptance Agreement, Supply-agreement or Purchase Order, then the effective date will be the earliest date on which a duty or right vests on a Party in terms of an Agreement.
- 2.20. **Financial Quarter** means the half year and year end cycle of UJ, wherein payments of the Contract Price will fall within the months of September, December, March and June of a year;
- 2.21. **Force Majeure** means the failure of either Party to perform an obligation under the Agreement that is outside the Party's reasonable control which is occasioned by an event or circumstances of or due to:
- 2.21.1. *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);
- 2.21.2. *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);
- 2.21.3. acts of God, war, hostilities, riots, civil or military insurrection and like political disturbances, natural disasters such as earthquakes, fires, floods and storms, pandemics or public health crisis; 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; or
- but excludes (i) any strikes by the Supplier's employees, and (ii) any inconvenience, hardship, discomfort, strikes, lockouts and the mere shortage of labour, materials or utilities unless directly caused by events or circumstances which themselves are *vis major* or *casus fortuitous*.
- 2.22. **Goods** means any items supplied to UJ by the Supplier in terms of an Agreement;
- 2.23. **Hazardous Materials** means any regulated substance, emission or material which is deemed to be dangerous to the workplace health and safety and/or to the environment;
- 2.24. **Insolvency Event** means:
- 2.24.1. a compromise or composition or threatened compromise or composition by the Supplier with its creditors;
- 2.24.2. the passing of a resolution for or the placing into provisional or final liquidation of the Supplier or the Supplier resolving to begin business rescue proceedings or the placement of the Supplier under business rescue;
- 2.24.3. 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;
- 2.24.4. commitment of any act or omission which would, in the case of an individual, be an act of insolvency;
- 2.24.5. disposal by the Supplier of a material portion of its undertaking or assets where UJ, in its discretion and acting in good faith, considers such events to be detrimental to it for sound business reasons; or
- 2.24.6. any change in the control or material change in the shareholding of the Supplier where UJ, in its discretion and acting in good faith, considers such events to be detrimental to it for sound business reasons;
- 2.25. **Intellectual Property** means all present and future rights in relation to any copyright, moral rights, marks of trade (whether registrable or not), designs (whether registered, registrable or not), inventions (including any patents), business or company or trading names, trade secrets, work methods and other tacit knowledge or technical know-how, rights in circuit layouts and other drawings (whether registered, registrable or not), and any application or right to apply for registration of any such right;
- 2.26. **Loan Equipment** means any equipment, which either Party has lent to the other, regardless as to whether such loan is regulated in terms of an Agreement;
- 2.27. **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;
- 2.28. **OHSA** means the Occupational Health and Safety Act 85 of 1993 (as amended from time to time);
- 2.29. **Parties** means the parties to an Agreement, being UJ and the Supplier;
- 2.30. **Personal Information** means information relating to an either a natural or juristic person as defined in the Protection of Personal Information Act 4 of 2013;
- 2.31. **Policies** means all policies, procedures, rules and regulations of UJ and any UJ code of conduct (including those related to ethics, compliance and corporate governance) as may be implemented from time to time and as may be amended and/or updated from time to time by UJ, in its sole discretion and election, which will be made available to the Supplier on request;
- 2.32. **Process, Processing or Processed** means, in relation to Personal Information, the alternation, blocking, consultation, collection, collation, deletion, destruction, distribution, linking, merging, modification, organisation, receipt, recording; retrieval, storing, testing, and/or updating;
- 2.33. **Senior Manager: Supply Chain Management** means the manager of UJ's Procurement department from time to time or their authorised representative;
- 2.34. **Purchase Order** means the official purchase order which is deemed to have incorporated the ST&C, as issued by UJ to the Supplier, relating to the Supply;
- 2.35. **Relationship Manager** means one individual designated by

each Party in Writing on the Supplier Application Form or in the Agreement to whom all communications regarding an Agreement will be addressed, which may be replaced from time to time on reasonable prior notice;

- 2.36. **Services** means the services, functions and responsibilities, as set out in an Agreement;
- 2.37. **Site** means the area where the Supply is to be rendered as identified in each Agreement;
- 2.38. **Specification** means the specification of the Supply as set out in an Agreement and may include technical specifications to which Goods are to be manufactured and/or service levels to which Services are to be performed and the method in which any goods are to be manufactured or Services are to be rendered. The Specification shall also be the higher of those dictated by SANS, accepted international practices but always meeting the higher of the requirements of the Applicable Law, the Policies and the Best Industry Practices;
- 2.39. **Staff** means any employee, independent contractor, agent, consultant, sub-contractor or other representative of either Party;
- 2.40. **ST&Cs** means these standard terms and conditions, which comprises of:
  - 2.40.1.1. Section A, being the general terms and conditions; and
  - 2.40.1.2. Section B, being the terms and conditions applicable to the provision of the Supply (Goods & Services).
- 2.41. **Subcontract** means any subcontracting arrangement and any agreement or commitment to enter into a subcontract, in part or in whole, relating to the Supply whether formal or informal and whether recorded in writing or not;
- 2.42. **Subcontractor** means any party to the relevant Subcontract which has agreed to supply any part of the Supply to the Supplier;
- 2.43. **Supplier** means any natural person or legal entity that is an existing or potential Supplier, contractor or service provider;
- 2.44. **Supplier Application Form** means an application form in terms of which the Supplier applied to become a vendor to UJ;
- 2.45. **Supply** means the supply of Goods and/or Services and/or ancillary deliverables (including plant, materials, equipment and the like) necessarily required to supply the Goods and Services as contemplated in terms of an Agreement;
- 2.46. **Supply-agreement** means a written agreement (which may include a Purchase Order) concluded between the Supplier and UJ for the Supply incorporating these ST&Cs;
- 2.47. **UJ** means the University of Johannesburg, an institution of higher education established in accordance with the Higher Education Act 101 of 1997;
- 2.48. **UJ's Fraud Corruption and Ethics Hotline** means UJ's fraud, corruption and ethics hotline, in which all suspected fraud, corruption and unethical behaviour may be reported on the contact number 0800 872 846 or [uj@tip-offs.com](mailto:uj@tip-offs.com) and which relates to the duties set out in clause 20;
- 2.49. **VAT** means value added tax levied from time to time in terms of the Value Added Tax Act 89 of 1991 or any similar tax levied on the supply of goods imposed in terms of any law passed in substitution of the Value Added Tax Act 89 of 1991 and for which tax a purchaser of such goods will be liable in terms of such substituting law;
- 2.50. **Working Days** means the days on which the Supply are to be rendered as advised by UJ from time to time; and
- 2.51. **Writing or Written** means legible writing and in English and excludes any form of electronic communication contemplated in the Electronic Communications and Transactions Act 25 of

2002, but in accordance with clause 3.22, 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.

### 3. Interpretation

In an Agreement:

- 3.1. references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 3.2. a reference to any one gender includes reference to the other genders;
- 3.3. a reference to the singular includes reference to the plural and *vice versa*;
- 3.4. clause headings are for convenience and may not be used in the interpretation of an Agreement, unless the context clearly indicates a contrary intention;
- 3.5. a reference to a Party includes reference to that Party's successors and assigns;
- 3.6. the words "**include**" and "**including**" mean "**include without limitation**" and "**including without limitation**";
- 3.7. the use of the words "**include**" or "**including**" followed by a specific example(s) will not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule will not be applied in the interpretation of such general wording or such specific example(s);
- 3.8. any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in clause 2 or elsewhere in an Agreement will be given effect to as if it were a substantive provision in the body of an Agreement;
- 3.9. where any term is defined within the context of any particular clause in an Agreement, the term so defined will, unless it appears clearly from the clause that such term has limited application to the relevant clause, bear the meaning ascribed to it for all purposes in terms of an Agreement, notwithstanding that such term has not been defined in clause 2;
- 3.10. unless otherwise provided, defined terms appearing in an 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;
- 3.11. a reference to any statutory enactment will be construed as a reference to that enactment as at the Effective Date and as amended or substituted from time to time;
- 3.12. unless specifically otherwise provided, any number of days prescribed will 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;
- 3.13. if the due date for performance of any obligation in terms of an Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation will be the immediately preceding Business Day;
- 3.14. where figures are referred to in numerals and in words, and there is any conflict between the two, the words will prevail, unless the context indicates a contrary intention;
- 3.15. the rule of interpretation that an Agreement will be interpreted against the Party responsible for the drafting and any similar rules of interpretation (i.e. the *contra proferentem* rule) will not apply to an Agreement and the Parties waive any rights they have to rely on such rule;
- 3.16. Except as set out in clause 34.1 or any other express stipulation, no provision of an Agreement will constitute a

stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to an Agreement;

- 3.17. the use of any expression in an Agreement covering a process available under the Applicable Law, such as winding-up, will, if either of the Parties to an Agreement is subject to the Applicable Law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the Applicable Law of such other jurisdiction;
- 3.18. in an Agreement the words "clause" or "clauses" and "annexure" or "annexures" refer to clauses of and annexures to an Agreement;
- 3.19. a reference to a document includes an amendment or supplement to or a replacement or novation of that document;
- 3.20. prior drafts of any Agreement will not be admissible in any proceedings as evidence of any matter relating to any negotiations preceding the signature date of any of those and absent a signature date then the effective date;
- 3.21. the termination any Agreement shall not affect those provisions of any Agreement which expressly provide that they will operate after such expiry or termination, or those which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this; and
- 3.22. whilst the Parties may correspond via email during the currency of an Agreement for operational reasons, all formal notices required in terms of an Agreement, and any amendment of or variation to an 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. Only the signatories to an Agreement that have legal authority to commit UJ to the ST&Cs and any other Agreement have the authority to sign such documents.

#### 4. Agreement Structure

##### 4.1. Structure of an Agreement

- 4.1.1. The Supplier will provide the Supply to UJ on the terms and conditions of the ST&Cs.
- 4.1.2. The Supply will be regulated by either:
  - 4.1.2.1. an Acceptance Agreement; or
  - 4.1.2.2. one or more Supply-agreements; or
  - 4.1.2.3. in certain instances, UJ may elect to issue through its Supply Chain department a Purchase Order without the conclusion of a Supply-agreement.
- 4.1.3. Subject to clause 4.3, if any conflict or inconsistency exist between:
  - 4.1.3.1. the Acceptance Agreement, Supply-agreement or Purchase Order (respective) and the ST&Cs, then the provisions of the ST&Cs will take preference; and
  - 4.1.3.2. the provision in an Acceptance Agreement, Supply-agreement or Purchase Order (respective) and the provision of an annexure attached to these documents (provided that such an annexure complies with clause 4.3 and any other relevant express provision of the ST&Cs), then the provisions of the annexure will take preference; and
  - 4.1.3.3. Part A and Part B of the ST&Cs, then Part A of the ST&Cs will take preference.

4.1.4. Each Acceptance Agreement, Supply-agreement and Purchase Order incorporates and are governed by the ST&Cs and shall, together with the ST&Cs, constitute a separate and divisible agreements, legally independent from one another.

4.1.5. The Parties agree to conduct all business on the terms contained in the ST&Cs, and that these ST&Cs shall govern all Supply to UJ whether or not a Purchase Order was issued or an Acceptance Agreement or a Supply-agreement has been agreed to or signed.

##### 4.2. Supplier's Documents

4.2.1. Any documents provided by the Supplier that is in conflict with an Agreement, including the Supplier terms and conditions stated upon an order, website or otherwise, a request to supply Goods or Services or any other contractual document furnished by the Supplier to UJ will be of no force or effect.

4.2.2. Any quotation of the Supplier, whether signed by UJ or not, will not constitute an agreement or an acceptance of an offer made by the Supplier. Similarly, neither shall an acceptance of a quote by e-mail constitute an agreement.

4.2.3. Unless otherwise agreed between the Parties in Writing in accordance with an Agreement, any work, Supply or service undertaken by the Supplier which is not set out in the Agreement will be at the Supplier's risk and cost.

##### 4.3. Amendments to an Agreement

4.3.1. The ST&C are not capable of amendment except as expressly permitted in these ST&Cs (including clauses 17 and 36.4), or where the following process is followed and requirements are met:

4.3.1.1. The Parties may agree in the Supply-agreement or Acceptance Agreement to amend these ST&Cs.

4.3.1.2. An amendment to the ST&Cs may only be valid within the context and the subject matter of the Supply-agreement or Acceptance Agreement.

4.3.1.3. An amendment recorded in the Supply-agreement or Acceptance Agreement must explicitly state that it is the intent of the Parties to amend the ST&Cs and expressly identify the clause(s) the Parties intend to amend in the ST&Cs.

4.3.1.4. The amendment to the ST&Cs will only be effective if it is in Writing and signed by both Parties.

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## PART A: GENERAL TERMS AND CONDITIONS

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#### 5. Appointment

5.1. The appointment of the Supplier is on a non-exclusive and *ad hoc* basis.

5.2. Notwithstanding anything to the contrary contained in an Agreement or in any other document:

5.2.1. UJ makes no guarantee as to any volumes or quantities of the Supply whatsoever; and

5.2.2. UJ may, in its discretion, obtain and source the

Supply from a third Party or to provide any Goods or Services itself.

- 5.3. An Agreement will not render the Supplier to be an employee, partner, agent or joint venture with UJ for any purpose. The Supplier is and will always remain an independent Supplier in relationship with UJ for the duration of an Agreement.
- 5.4. UJ is not responsible for withholding taxes with respect to the Supplier's compensation. The Supplier has no claim against UJ for any leave pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

## 6. The Supplier's Duties and Warranties

### 6.1. Supplier's General Duties

- 6.1.1. The Supplier shall, at all times during the currency of an Agreement, maintain the appointment of a Relationship Manager. The Relationship Manager's duties includes, 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 an Agreement and the responsibility of maintaining professional relationships between the Parties and the Relationship Manager shall have the full authority to fulfil its duties as aforesaid.
- 6.1.2. The Supplier shall provide the Supply:
  - 6.1.2.1. in the manner specified in an Agreement;
  - 6.1.2.2. in a manner that meets the Specifications, Applicable Laws and Policies;
  - 6.1.2.3. in a proper workmanlike and careful manner, in accordance with Best Industry Practices;
  - 6.1.2.4. with properly equipped facilities and non-hazardous materials (except as otherwise specified in an Agreement);
  - 6.1.2.5. with due diligence, efficiency, economies in accordance with good corporate governance; generally accepted professional techniques and practices, and shall observe sound management principles, practices and employ appropriate methods;
  - 6.1.2.6. always act, in respect of any matter relating to any Agreement or to the Supply, as faithful advisor to UJ, and shall at all times support and safeguard UJ's legitimate interests in any dealings with any third parties.
- 6.1.3. Any packing materials and containers shall upon delivery of the Goods become the property of UJ. The Supplier shall be liable for any loss or damage due to inadequate packing.
- 6.1.4. The Supplier shall be responsible for, developing and maintaining up-to-date documentation pertaining to the provision of the Supply. The form and substance of such documentation (including any updates thereto):
  - 6.1.4.1. shall be specified in an Agreement; and
  - 6.1.4.2. if it is not specified in an Agreement, then the documentation shall be supplied in accordance with Best Industry Practices and shall be subject to UJ's approval.
- 6.1.5. The failure by the Supplier to comply with the contents of clause 6.1.3 will be deemed to be a material breach of the Agreement.

- 6.1.6. The Supplier shall prepare all reports as reasonably requested by UJ from time to time or as required in terms of an Agreement.
- 6.1.7. The Supplier shall provide the Supply in accordance with the Working Days.
- 6.1.8. Except as otherwise provided for in the Agreement, the Supplier shall not be excused delay in delivery or performance of the Supply.
- 6.1.9. Notwithstanding any other provision in an Agreement, the Parties agree that the performance of the Supplier's obligations shall in all instances, be regarded as time being of the essence.

### 6.2. Supplier's Warranties

- 6.2.1. The Supplier undertakes and warrants that:
  - 6.2.1.1. it will comply with the Applicable Laws and Policies in the provision of the Services;
  - 6.2.1.2. it possesses specialised knowledge, skill, attributes and expertise in the provision of the Supply;
  - 6.2.1.3. that it will carry out its obligations under an Agreement in a responsible, professional and expert manner, and to exercise the utmost caution, care and diligence in the provision of the Supply;
  - 6.2.1.4. it will use adequate numbers of qualified Staff with suitable training, education, experience and skill to perform the Supply;
  - 6.2.1.5. it will use and adopt all standards and processes required under an Agreement to fulfil its obligations;
  - 6.2.1.6. it will provide the Supply 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 supplies goods and services similar to the Goods, Services and to Best Industry Practices;
  - 6.2.1.7. if the Supplier is compensated on a time and materials basis for the Supply, then the Supplier shall use its best efforts to perform the Supply in the most cost-effective manner consistent with the level of quality and performance required under an Agreement;
  - 6.2.1.8. it will perform its responsibilities under an Agreement 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 16;
  - 6.2.1.9. it is authorised to distribute, license, support and maintain any item provided to UJ under an Agreement;
  - 6.2.1.10. it has all the necessary licenses, certificates, authorisations and consents required under the Applicable Law or under any other applicable jurisdiction for the provision of the Supply;
  - 6.2.1.11. that the Supplier Application Form was completed, and all information contained therein was both true and correct;
  - 6.2.1.12. 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 Supply;
- 6.2.1.13. it shall ensure that upon the date of delivery of the Supply, possession or use of the Supply by UJ within the territories in which UJ takes receipt thereof shall not breach any law or regulation of that territories or of the territory from which the Supply is sourced;
- 6.2.1.14. the Supply shall comply with the Specifications in terms of which they are supplied or procured or in terms of the specifications of the original equipment manufacturer;
- 6.2.1.15. it shall ensure that any and all spare parts required for the maintenance of the Supply shall be available to UJ within 48 (forty-eight) hours of being requested by UJ;
- 6.2.1.16. it shall have access to a supply of all spare parts required for the maintenance of the Supply for a period as specified in the Acceptance Agreement or the Supply-agreement, and if not specified then a period of 5 (five) years from the date in terms of which the Supply are supplied to UJ;
- 6.2.1.17. all the Supply developed or delivered by the Supplier pursuant to an Agreement will be free from Defects and will comply in all respects with the technical and functional specifications in an Agreement;
- 6.2.1.18. The Supplier shall provide replacement parts necessary to ensure the uninterrupted operation of the goods supplied for the duration of the warranty period, from delivery of any particular item of the goods and if requested by UJ shall make these parts available to a third-party maintainer of UJ's choice at the same price as if the parts had been supplied to UJ;
- 6.2.1.19. the adequacy and sufficiency of all materials, plant, equipment and workmanship and the adequacy and sufficiency of the documentation including all designs for any Supply 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 an Agreement, and the associated technical information and shall be fit for the use intended by an Agreement, as the case may be, shall be free of any Defects in the material, equipment and workmanship and shall be in accordance with the Specifications.
- 6.2.2. The provisions of clause 6.2.1 will not detract in any way from any statutory or common law duty of care that may be imposed on the Supplier in the Supply.
- 6.2.3. Each of the warranties contained in clause 6.2.1 are separate and divisible. If there is any breach of the warranties contained in clause 6.2.1, then (and without in any way detracting from whatever other rights and remedies UJ may have):
- 6.2.3.1. The Supplier shall promptly, upon receiving notice from UJ, remedy at its own cost and expense any breach of the warranties set out in clause 6.2.1.
- 6.2.3.2. If the Supplier fails to remedy the breach within a reasonable period of time as indicated by UJ, then the breach would constitute a material breach of the Agreement.
- 6.2.3.3. The Supplier indemnifies and holds UJ harmless against any Losses incurred as a result of any failure or breach of warranties set out in clause 6.2.1.
- 6.2.4. To the extent that the Supplier fails in any respect to comply with the warranties in clauses 6.2.1.8, 6.2.1.9 and 6.2.1.10 (and without in any way detracting from whatever other rights and remedies UJ may have), the Supplier shall:
- 6.2.4.1. promptly, at the Supplier's expense, use its best efforts to secure for UJ 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 Supply.
- 6.2.4.2. If none of such actions in clause 6.2.4.1 can be accomplished by the Supplier, and only in such event, the Supplier shall remove the item from the Supply and the Supplier's charges shall be equitably reduced to reflect the reduction in the value of the Supply to UJ.
- 6.2.4.3. UJ may terminate an Agreement without liability and without prejudice to any claims against the Supplier which UJ may have, if the Supplier removes the item from the Supply in terms of clause 6.2.4.2 and, in UJ's reasonable opinion, inclusion of such item in the Supply is material to the value of, and benefit derived from the Supply by UJ.
- 6.3. Benefit and Cession of Third-Party Warranties**
- 6.3.1. The Supplier may from time to time provide certain Supply 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 an Agreement, the Supplier shall:
- 6.3.1.1. pass through to UJ 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
- 6.3.1.2. enforce such warranties and indemnities as directed by UJ.
- 6.3.2. The Supplier shall, to the extent possible and permissible, cede to UJ the benefit of warranties and indemnities received from third party manufacturers, lessors or licensors of Goods supplied to UJ under any agreements between the Supplier and such manufacturers, lessors or licensors.
- 6.3.3. In order to give due and proper effect to the terms of clause 6.3.2, the Supplier undertakes, as and when requested by UJ, to execute all instruments and to do all such things as may be necessary (and to the extent that the Supplier is permitted) to effect the cession. If the Supplier fails to comply promptly with any such request, the Supplier hereby irrevocably nominates, constitutes and appoints UJ to be its agent, with power to sign all documents and do all acts, matters and things as may be necessary to effect the cession.

- 6.3.4. If the cession is not effected as contemplated in clauses 6.3.2 and 6.3.3 then the Supplier shall enforce such warranties and indemnities as reasonably directed by UJ and at the cost of UJ. The Supplier shall comply with all terms and conditions of the agreements with such manufacturers, lessors and licensors.
- 6.3.5. Notwithstanding the foregoing, the Supplier acknowledges that, in all its negotiations and the 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.
- 6.4. **“Buy Quiet” Procurement Policy**
- 6.4.1. UJ 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 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:
- 6.4.1.1. comply with this requirement;
- 6.4.1.2. specify noise emission levels together with any sound dampening measures taken; and
- 6.4.1.3. 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.
- 6.4.2. The Supplier acknowledges that non-compliance with any or all of the requirements in clause 6.4.1 shall constitute a material breach of an Agreement.
- 6.5. **Specific Duties Related to Supplier’s Staff**
- 6.5.1. The Supplier shall at all times procure sufficient numbers of key Staff with knowledge of UJ’s requirements and technical expertise relating to those requirements in the Specifications and required for the Supply.
- 6.5.2. UJ may, by giving at least 2 (two) Business Days’ written notice to the Supplier’s Relationship Manager, require the Supplier to reconsider the deployment of any member of the Supplier Staff who, in UJ’s reasonable opinion, is failing to perform their duties in a satisfactory manner (**“the Complaint”**).
- 6.5.3. The Supplier shall investigate the Complaint and shall, if it 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 UJ environment. The foregoing notwithstanding, where in UJ’s reasonable opinion, circumstances warrant an accelerated process the time periods set out in clause 6.5.2 may be adjusted.
- 6.5.4. The Supplier undertakes that it shall ensure that it and its Staff shall:
- 6.5.4.1. adhere to the Policies including any site-specific policies, procedures, rules and regulations; and
- 6.5.4.2. while on UJ or another 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.
- 6.5.5. Access to UJ property, another premises or project site
- is be restricted to the Supplier’s authorised Staff and vehicles, and only on permission from UJ. Access to the Client’s property shall at all times be subject to UJ’s and the Clients’ approval and conditions of access and all other policies and procedures of UJ pertaining to the Supplier being on site.
- 6.5.6. UJ 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, Staff or Supplier’s equipment whilst such is on the UJ property, another premises or the project site.
- 6.5.7. The Supplier’s vehicles shall be restricted to areas and routes for which access to the project site or UJ property is necessary. The Supplier shall not be permitted to drive freely through UJ’s property or the project site.
- 6.5.8. The Supplier shall ensure that none of its Staff sleeps or lodges on UJ’s property or another premises or project site.
- 6.5.9. Should UJ at any time have reason to believe that any member of the Supplier’s Staff is failing to comply with the Policies or that such Staff member poses a threat or risk to UJ, UJ shall be entitled to deny such Staff member access to any or all of UJ’s property or another premises or project site and require the Supplier to withdraw such member of Staff from the Supplier’s provision of Services to UJ without delay.
- 6.5.10. The Supplier shall be obliged to ensure that Staff who no longer require a right of access to UJ’s property or another premises or project site or any part thereof for the normal performance of their Services shall immediately return all access cards, security codes and any other like UJ property to UJ.
- 6.5.11. The Supplier shall always act in good faith towards UJ. The Supplier undertakes to apply reasonable endeavours to promptly bring to UJ’s attention an act or omission of UJ or its Staff, which may impact upon the provision of the Supply. The Supplier also undertakes to apply reasonable endeavours to promptly bring to UJ’s attention an act or omission of the Supplier or its Staff which may impact upon the provision of the Supply.
- 6.5.12. The Supplier shall attend, and ensure the attendance of its Staff, at all meetings required by UJ or as set out in terms of an Agreement.
7. **UJ’s Duties**
- 7.1. UJ shall:
- 7.1.1. grant the Supplier reasonable access to site, data, information, equipment and facilities, as reasonably required by the Supplier to perform its obligations in an Agreement;
- 7.1.2. afford the Supplier, upon adequate notice, reasonable assistance as reasonably required to perform its obligations in an Agreement;
- 7.1.3. take all reasonable endeavours to 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 an Agreement;
- 7.1.4. take all reasonable endeavours to bring to the Supplier’s attention an act or omission of UJ or its Staff, which may impact upon its performance of its

7.1.5. provide the Supplier, upon request and at the appropriate times, with the technical information reasonably necessary for the Supplier to comply with its obligations in an Agreement.

7.2. All technical information shall always remain the property of UJ and shall be handed over or returned to UJ on demand. The Supplier shall bring to UJ's attention any omission or discrepancy occurring in the technical information, before or at the time of tendering or Supply. If, at any later stage, any ambiguity or discrepancy is discovered in the technical information the Supplier shall immediately refer the matter to UJ's Senior Manager: Supply Chain Management for their decision on the matter.

## 8. Subcontractors

- 8.1. The Supplier may not appoint any Subcontractors without the prior written approval of UJ and any such consent would be subject to the conclusion of, in UJ's sole opinion, satisfactory due diligence by UJ.
- 8.2. In the event that UJ consents to the appointment of a Subcontractor the provisions of clauses 8.3 and 8.4 applies.
- 8.3. Any Subcontract shall be recorded in writing and shall:
  - 8.3.1. impose on, and secure from, the Subcontractor obligations, liabilities, undertakings, warranties, acknowledgements and grants of rights equivalent to those imposed on and secured from the Supplier in an Agreement, which must be directly enforceable by UJ;
  - 8.3.2. include an undertaking from the Subcontractor in favour of UJ not to enter into any further Subcontract with any third party, which must be directly enforceable by UJ;
  - 8.3.3. include provisions, directly enforceable by UJ, granting UJ and its representatives:
    - 8.3.3.1. the same direct access to the premises, records, information and personnel of the Subcontractor as UJ has to the premises, records, information and personnel of the Supplier;
    - 8.3.3.2. the same auditing rights in respect of the Subcontractor's compliance with the requirements set out in an Agreement; and
    - 8.3.3.3. include provisions allowing termination of the Subcontract by the Supplier in accordance with clause 8.4.4 and a provision for automatic termination of the Subcontract in the event of, and at the same time as, the termination of an Agreement.
- 8.4. After any Subcontract has been entered into, the Supplier shall:
  - 8.4.1. within 14 (fourteen) days of the Subcontract having been entered into, provide UJ with a copy of the Subcontract;
  - 8.4.2. be responsible for the observance and performance by the Subcontractor of the relevant provisions of an Agreement, and shall be directly liable to UJ for any breach by the Subcontractor of any of the relevant provisions of an Agreement;
  - 8.4.3. notify UJ in the case of any breach of the Subcontract; and
  - 8.4.4. if the Subcontractor fails to perform or observe any of the relevant provisions of an Agreement, and if requested by UJ, immediately give the Subcontractor notice, specifying the breach complained of, and:

8.4.4.1. where the breach is not capable of remedy, terminate the Subcontract immediately; or

8.4.4.2. where the breach is capable of remedy, give notice that the Subcontract is to terminate 14 (fourteen) days from the date of the notice being given unless the Subcontractor has remedied the breach within that period.

8.5. UJ shall have the option, at its discretion, to make payment directly to such Subcontractor and deduct the amount from the Supplier's Contract Price where the Supplier fails to make payment to the Subcontractor for the provision of goods or services.

## 9. Contract Price and Payment

### 9.1. The Contract Price

- 9.1.1. Both Parties acknowledge that the Contract Price is intended to compensate the Supplier fully for the Supply.
- 9.1.2. The Supplier shall be deemed to have satisfied itself with regards to the sufficiency of its Contract Price for the Supply and such Contract Price shall remain fixed and firm for the duration of an Agreement. Accordingly, UJ will not be obligated to pay the Supplier any amounts in addition to those specifically described in an Agreement.
- 9.1.3. UJ shall pay the Supplier the Contract Price applicable to the Supply upon the proper fulfilment and against full compliance with all the Supplier's obligations under an Agreement.
- 9.1.4. Except as otherwise provided in the Acceptance Agreement, Supply-agreement or the Purchase Order, the Contract Price will:
  - 9.1.4.1. be in South African Rand;
  - 9.1.4.2. include VAT (where applicable) separately;
  - 9.1.4.3. include all taxes (including any export and import taxes), duties and trade discounts;
  - 9.1.4.4. include the cost of transportation, packing materials and containers;
  - 9.1.4.5. include all costs as set out in clause 9.1.6; and
  - 9.1.4.6. exclude any settlement discounts.
- 9.1.5. Other than as stated in an Agreement, UJ may demand, before payment is made, that the Contract Price computation be substantiated by documentary evidence.
- 9.1.6. If the Supply is 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 Contract Price. In this regard, the following further provisions are applicable:
  - 9.1.6.1. all rates are deemed to be fully inclusive of all the Supplier's Staff costs and expenses for rendering the Supply pursuant to an Agreement, including protective and safety clothing, mobilisation and demobilisation costs, compliance with the Applicable Law, 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;

- 9.1.6.2. 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; and
- 9.1.6.3. all hours for such Staff shall be recorded and authorised in strict accordance with UJ's time and attendance system.
- 9.2. Third party expenses specifically identified in an Agreement shall be treated as pass-through expenses in accordance with clause 9.3 to the extent that such third party expenses do not exceed the estimate therefor set forth in an Agreement. Unless authorised by UJ in Writing, any third-party expenses not so identified (including third party expenses excess of the estimate set forth in an Agreement and any expenses for which no estimate was set forth in an Agreement) shall be for the Supplier's account. The Supplier shall not incur any third-party expense as a pass-through expense without UJ's prior consent.
- 9.3. With respect to any expenses that are to be treated as a pass-through expense, the following shall apply:
- 9.3.1. 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 UJ 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 UJ;
- 9.3.2. the Supplier shall not apply a margin to or otherwise mark-up or charge an administration fee for pass-through expenses; and
- 9.3.3. the Supplier shall use commercially reasonable efforts to minimise the cost of the Supply provided to UJ on a pass-through expense basis, UJ reserves the right to (a) obtain such Supply directly from a third party; (b) designate the third party source for such Supply; (c) designate the particular Supply (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 Supply or to conduct a competitive procurement; and (e) review and approve the pass-through expense for such Supply before entering into a contract for such Supply.
- 9.4. Goods procured on a pass-through expense basis shall be acquired by the Supplier in UJ's name and UJ shall have all right, title and interest in such materials.
- 9.5. **Foreign Currency and Control Documents**
- 9.5.1. The Supplier must declare to the Senior Manager: Supply Chain Management, at the time of submission of an offer, any portion of the Contract Price that contains an amount related to imported Goods which is subject to exchange rate variation.
- 9.5.2. The Supplier shall furnish the following information:
- 9.5.2.1. the country of origin of such Goods;
- 9.5.2.2. the actual free on-board value of the Goods (not expressed as a percentage of the Contract Price); and
- 9.5.2.3. the bank's selling rate of exchange on which the price is based.
- 9.5.3. UJ 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.
- 9.5.4. The Supplier shall be responsible for any additional cost be incurred due to the Supplier defaulting in:
- 9.5.4.1. the submission of foreign currency with its offer;
- 9.5.4.2. in the timely provisioning of forwarded cover when requested to provide such;
- 9.5.4.3. the timely submission of commercial invoices in the foreign currency; or
- 9.5.4.4. the delivery date;
- 9.5.5. Where UJ 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 Senior Manager: Supply Chain Management with the original:
- 9.5.5.1. Custom stamped commercial invoices; and
- 9.5.5.2. Custom stamp bill of lading; and
- 9.5.5.3. Custom stamped bill of entry.
- 9.5.6. Should the Supplier is unable to submit originals of the documents mentioned in clause 9.5.5 to the Senior Manager: Supply Chain Management then the Supplier shall provide to the Senior Manager: Supply Chain Management (in a form approved by the Senior Manager: Supply Chain Management ) 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 UJ or an official of the South African Reserve Bank when required to do so.
- 9.5.7. The documents mentioned in clause 9.5.5 must be retained by the Supplier for a period of not less than 5 (five) years.
- 9.6. **Cost, Insurance and Freight ("CIF") and SA Port Charges**
- 9.6.1. CIF and SA Port Charges shall be fixed and firm and free of adjustment except when affected by statutory or rate of exchange variations.
- 9.6.2. 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 Senior Manager: Supply Chain Management.
- 9.6.3. Approval of claims for CIF and SA Port Charges variations will be confirmed by an amendment to an Agreement issued by the Senior Manager: Supply Chain Management.
- 9.6.4. Any claim for variations to CIF and SA Port Charges shall be submitted as soon as possible to the Senior Manager: Supply Chain Management, 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.
- 9.7. **Contract Price Adjustments**
- 9.7.1. Except as provided for in clause 9.7, the Contract Prices are fixed and firm and not subject to adjustment for the duration of an Agreement.
- 9.7.2. A Contract Price adjustment is subject to negotiation and agreement between the Parties, which will be regulated as follows:
- 9.7.2.1. The Supplier must furnish UJ with an application for a Contract Price adjustment, which must be received by the



- Senior Manager: Supply Chain Management not less than 2 (two) months prior to the proposed effective date of such adjustment ("**the Application**");
- 9.7.2.2. The Supplier may not furnish an Application more than once in a 12 (twelve) month period;
- 9.7.2.3. The Application must include a proposed revised contract price, together with all calculations and other substantiating documentary evidence as UJ may require;
- 9.7.2.4. UJ will consider and make a determination on the Application at its discretion. To the extent that the Application is accepted, a written amendment to the Agreement shall be concluded between the Parties in accordance with clause 4.3; and
- 9.7.2.5. UJ will not be obliged to accept any Adjustment and may in UJ's discretion be rejected without providing reasons.
- 9.7.3. If UJ accepts the Application then any Supply prior to the effective date of the Contract Price adjustment is deemed to have been delivered at the prior Contract Prices applicable.
- 9.7.4. Following any Contract Price adjustment, the Contract Price shall remain fixed and firm and free of adjustment for a further period of not less than 12 (twelve) months.
- 9.7.5. UJ shall be entitled at any time to call for competitive quotations from alternative suppliers and should a lower quotation be received from another supplier who is willing to enter into an agreement with UJ on terms similar to those contained in the Agreement, then:
- 9.7.5.1. UJ shall advise the Supplier that a lower quote has been received;
- 9.7.5.2. The Supplier shall then have the option to lower its quote and continue with the Agreement on the lower Contract Price; and
- 9.7.5.3. Should the Supplier and UJ fail to reach agreement within a reasonable period of time, then UJ shall be entitled to terminate the Agreement in whole or in part with 30 (thirty) days written notice to the Supplier.
- 9.8. Payment**
- 9.8.1. All invoices and statements are to reach UJ by no later than the 25<sup>th</sup> of each month in which the charges arose, which must be sent to UJ as follows:
- 9.8.1.1. Electronic invoice and statements must be sent to [apinvoices@uj.ac.za](mailto:apinvoices@uj.ac.za).
- 9.8.1.2. Hard copy and original invoices and statements may be delivered to 37 Nind Street, Doornfontein. Accounts Payable, Ground Floor Maropeng Building.
- 9.8.2. The Supplier shall submit invoices which correspond with the prices reflected in an Agreement. All invoices and statements submitted by the Supplier must include the complete contract and UJ issued Purchase Order numbers (where applicable).
- 9.8.3. UJ shall be entitled to stipulate, on reasonable written notice, invoicing standards applicable to any invoice issued by the Supplier to UJ.
- 9.8.4. UJ shall make payment to the Supplier of amounts that
- are due and payable:
- 9.8.4.1. outside the Financial Quarter of UJ, within 60 (sixty) days from date of receipt of a statement of account; and
- 9.8.4.2. within the Financial Quarter of UJ, on the first Working Day of the following month.
- 9.8.5. Irrespective of whether payments are made inside or outside the Financial Quarter, the Supplier shall remain responsible to provide their settlement or trade discounts.
- 9.8.6. UJ shall not be obliged to pay any invoice or demand for payment received more than 90 (ninety) days from the date of the completion of performance in terms of an Agreement.
- 9.8.7. The Supplier shall maintain complete and accurate records of and supporting documentation for the amounts billed to and payments made by UJ in accordance with the international financial reporting standards.
- 9.8.8. The Supplier agrees to provide UJ with any and all information with respect to each invoice as may be reasonably requested by UJ to verify accuracy and compliance with the provisions of an Agreement.
- 9.9. Set-off, interest and retention of monies**
- 9.9.1. UJ may set-off any amounts that are due and payable under an Agreement against such amount any amount that the Supplier is obliged to pay UJ whether under this Agreement or otherwise.
- 9.9.2. Interest will not be payable on late or delayed payments. Any disputed amount payable by UJ to the Supplier will not bear interest.
- 9.9.3. UJ may, in good faith, withhold any amounts that are in disputes, and shall in such circumstances pay the undisputed Contract Price when such payments are due under an Agreement.
- 9.9.4. All invoices shall be subject to 10% (ten percent) retention by UJ. 50% (fifty percent) of the monies so retained shall be released at the end of the duration of an Agreement and the remaining 50% (fifty percent) of the monies so retained will be released at the end of the Defect Liability Period.
- 9.10. Electronic Funds Transfer ("EFT")**
- 9.10.1. UJ confirms that all payments to the Supplier will be made by EFT and accordingly the Supplier agrees to provide:
- 9.10.1.1. UJ confirmation from the Supplier's bank of the Supplier's bank account details including the bank, branch and account number; and
- 9.10.1.2. UJ with an original of a cancelled cheque from the Supplier's bank account referred to above or original bank stamped Supplier current account details.
- 9.10.2. The Supplier warrants that the information provided to UJ in terms of clause 9.10.1 are correct, accurate and is without error.
- 9.10.3. The Supplier agrees that UJ's payment obligations in terms of the Agreement will fully have been discharged upon instructing its bankers to effect the transfer of the amount due to the Supplier.
- 9.10.4. The Supplier indemnifies UJ, its Staff and agents against any damages or claims of whatsoever nature which may be brought against any of them by the

Supplier or 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 this Agreement.

## 10. Insurance

- 10.1. The Supplier shall for the duration of an Agreement have and maintain in force sufficient insurance to cover for both its obligations and liabilities under an Agreement. Without limiting the generality of the aforesaid, the Supplier shall maintain the following minimum insurance cover for the duration of an Agreement:
  - 10.1.1. public liability insurance at an appropriate value;
  - 10.1.2. goods in transit insurance at an appropriate value;
  - 10.1.3. contractor's all risk/work insurance to the value of 110% of the value of the Supply where the Supplier is undertaking the Supply;
  - 10.1.4. professional indemnity insurance to the value of twice the design fee where the Supplier is providing design services;
  - 10.1.5. comprehensively insurance to cover of the Supplier's plant, material and equipment on an all-risk basis;
  - 10.1.6. Workmen's compensation insurance as required in terms of OHSA; and
  - 10.1.7. any additional insurance requirements that may be specified in the Supply-agreement, Acceptance Agreement or Purchase Order.
- 10.2. UJ shall have the right to insist on specific values of insurance or amend the types or values of insurance set out in clause 10.1 with reasonable notice to the Supplier.
- 10.3. The Supplier hereby indemnifies and holds UJ and its Staff harmless from and against any insurance claims and any liability attracted from UJ being named as co-insured under the insurance policies.
- 10.4. The Supplier shall, upon request, provide a copy of the insurance policy to UJ. In this regard:
  - 10.4.1. should the insurers dispute in whole or in part their liability for any reason, the Supplier shall have recourse against the insurers only; and
  - 10.4.2. there shall be no subrogation against UJ, its agents or representatives under these insurances, whether mentioned herein or not, and taken out by or maintained by the Supplier.
- 10.5. The Supplier should, on demand, furnish proof of its insurer's knowledge of the above undertaking.
- 10.6. Where hazardous goods are transported pursuant to an Agreement, 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.
- 10.7. UJ 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.

## 11. Indemnities

- 11.1. The Supplier hereby indemnifies and holds harmless UJ, its successors and assigns, and Staff from any and all Losses arising from or in connection with any claim or action arising

from:

- 11.1.1. any breach of Applicable Laws and Policies as a result of the wilful or negligent act or omission of the Supplier;
- 11.1.2. the Supplier's failure to observe or perform its obligations after the Effective Date under licenses for third party Intellectual Property or third-party service contracts;
- 11.1.3. an infringement of any third-party Intellectual Property or other proprietary rights, alleged to have occurred because of UJ's use of any Supply or other resources provided by the Supplier to UJ, or based upon performance of the Services by the Supplier;
- 11.1.4. the Supplier's failure to observe or perform any duties or obligations in accordance with any Applicable Law, license, authorisations and consents and certificate required for the provision of Supply by the Supplier to UJ;
- 11.1.5. the Supplier's insurance obligations pursuant to clause 10;
- 11.1.6. any breach by of the Supplier of its obligations or
- 11.1.7. the death or bodily injury of, or any illness contracted by any Staff, Client, business invitee, or business visitor or other person caused by the Supplier the wilful or negligent act or omission of the Supplier;
- 11.1.8. 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 wilful or negligent act or omission of the Supplier; and
- 11.1.9. any claim by any Staff, Client, business invitee, or business visitor or other person against UJ but resulting from a wilful or negligent act or omission of the Supplier in its capacity as an employer of any person.

## 12. Indemnity Procedures for Third Party Claims against UJ

- 12.1. UJ will notify the Supplier in Writing 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 UJ seeks indemnification pursuant to clause 11 ("Indemnification Notice"). The Indemnification Notice will include UJ's election to either:
  - 12.1.1. assume control of the defence or settlement of that claim;
  - 12.1.2. instruct the Supplier to assume control of the defence and/or settlement of that claim; or
  - 12.1.3. recommend to the Supplier that such claim not be defended or settled.
- 12.2. If UJ, in terms of clause 12.1, recommend that any claim not be defended or settled, the Supplier shall have the election, within 24 (twenty four) hours of the Indemnification Notice to either:
  - 12.2.1. pay the value of such claim to UJ; or
  - 12.2.2. defend or settle the claim, at the Supplier's expense, in which event the provisions of clause 12.3 shall apply.
- 12.3. If the Supplier, in terms of clause 12.1, is instructed by UJ to control the defence or settlement of a claim, it shall do so at its own cost and shall at all times comply with all of UJ's reasonable instructions and required actions relating to the defence and/or settlement of such claim. Under no circumstances will the Supplier without the prior written approval of UJ:
  - 12.3.1. make any admission or acknowledgment that would be

binding on or prejudicial to the interests of UJ; or

12.3.2. settle, compromise or cease to defend any such claim.

12.4. If UJ, in terms of clause 12.1, assumes control of the defence and/or settlement of a claim, the Supplier acknowledges that:

12.4.1. UJ will have sole control over such defence or settlement; and

12.4.2. UJ will be entitled to join the Supplier to any such proceedings, in which event the Supplier shall, in consultation with UJ, defend such proceedings at its own cost, and UJ's costs in defending or settling any such claim shall be for the Supplier's account.

12.5. The Supplier shall at all times be entitled, upon written notice to UJ, to participate in any such proceedings (including the right to instruct its own attorneys and/or counsel). Any costs or expenses in such participation shall be for the Supplier's account.

### 13. Confidentiality

13.1. The Parties acknowledge the significant importance of Confidential Information to each other and, where applicable, third-party proprietors of such information. The Parties recognise that either Party 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 an Agreement.

13.2. The Parties agree and undertake:

13.2.1. except as permitted by an Agreement, not to disclose or publish any Confidential Information in any manner, for any reason or purpose whatsoever without the prior written consent of each other and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the Parties to obtain the consent of such third party;

13.2.2. except as permitted by an Agreement, not to utilise, employ, exploit or in any other manner whatsoever without the prior written consent of each other and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the Parties to obtain the consent of such third party;

13.2.3. 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 Parties shall initiate, maintain and monitor internal security procedures reasonably acceptable to the Parties to prevent unauthorised disclosure by the Staff;

13.2.4. 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; and

13.2.5. to ensure that none of its or its sub-contractors', employees, agents or representatives (without limitation) take any photographs and or video recordings (in the broadest possible sense) of either Party premises, Supply or equipment.

13.3. All Confidential Information disclosed by the one Party to the other or which otherwise comes to the knowledge of either Party, is acknowledged by the other Party:

13.3.1. to be proprietary to either Party or where applicable, the relevant third-party proprietor; and

13.3.2. not to confer any rights of whatsoever nature in such

Confidential Information on either Party.

13.4. The Parties 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 either Party use less than reasonable efforts to protect the confidentiality of the Confidential Information.

13.5. The Parties may at any time on written request to each other, require that the one Party immediately returns to the other Party any Confidential Information and may, in addition, require that the other Party 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.

13.6. Alternatively, the Parties shall, as and when required by each other on written request to each other, destroy all such Confidential Information and material and furnish each other with a written statement to the effect that the same has been destroyed. The Parties shall comply with any request in terms of this clause 13.6 within 7 (seven) days of receipt of such a request.

13.7. A Party may retain Confidential Information to the extent required by, and for the duration of, any Supply being provided in terms of an Agreement between the Parties, provided that the other Party has not waived performance of such Supply and subject to the right of the other Party to recover the Confidential Information at any time in terms of this clause 13.7.

13.8. The Parties shall ensure that their Staff who have access to Confidential Information, give a written undertaking in favour of the other Party in regard to the Confidential Information on substantially the same terms and conditions contained within an Agreement.

13.9. UJ may deny a Supplier Staff member access to its premises or prevent such member conducting any work in relation to the Supply on its premises or under UJ's direct control, should the Supplier not be in receipt of a signed undertaking from such member on such terms and conditions as determined by UJ. Each Party's failure to obtain receipt of the undertaking referred to in this clause 13.8 shall in no way detract from the other Parties' obligations in terms of this Agreement.

13.10. The Parties record that this clause 13 will not be applicable where the Parties disclose Confidential Information to attorneys or auditors, provided that such disclosure is reasonably required by the Parties for the purposes of conducting its business activities.

13.11. Nothing contained in an 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 Supply under an Agreement, provided that in doing so such Party does not disclose the other Party's 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.

13.12. The Parties shall comply with any confidentiality, copyright, patents and indemnity agreements of the other Party. Each employee of the Parties is required to sign any confidentiality, copyright, patents and indemnity agreements as may be required by the other Party.

13.13. The Parties shall keep each other indemnified against all losses and costs including legal costs as between attorney and client and all other expenses that the one Party may incur as a result of any action, proceeding or claim made against that Party resulting from any Intellectual Property infringement.

**14. Publicity**

- 14.1. Except as agreed beforehand in Writing or as may be required by the Applicable Law, neither party may make any public announcement or public disclosure with regard to an Agreement and will refrain from disclosing the existence and contents of an Agreement to any other party or authority or to the media.
- 14.2. Both Parties are responsible to ensure that its employees, agents, Contractors, Sub-Contractors and representatives comply with the provisions of this clause 14.
- 14.3. Non-adherence to this clause 14 by Supplier or its Staff, agents, Contractors, Sub-Contractors and representatives shall entitle UJ to cancel an Agreement forthwith, without prejudicing any other rights UJ may have in the Applicable Law.

**15. Data and processing of personal information**

- 15.1. The Supplier shall and hereby warrants that it shall, at all times, for the duration of an Agreement and (where applicable) thereafter:
  - 15.1.1. strictly adhere to the Protection of Personal Information Act 4 of 2013 ("POPIA"), and all other Applicable Laws and Policies relating to the protection, storage, handling, privacy, processing, and destruction of Personal Information.
  - 15.1.2. only process Personal Information where it is lawful and in a reasonable manner that does not infringe the processing conditions and privacy of the Data Subject;
  - 15.1.3. only process Personal Information with the express Written consent of UJ in order to:
    - 15.1.3.1. provide the Supply in terms of an Agreement;
    - 15.1.3.2. comply with an obligation imposed by Applicable Law; or
    - 15.1.3.3. where the processing protects the legitimate interests of the Data Subject.
  - 15.1.4. shall implement Best Industry Practice to ensure that its systems, processes, safeguards, IT or other infrastructure and physical security measures ("Safeguards") where Personal Information may be Processed, in order to comply with the minimum standard and security required by all Applicable Laws;
  - 15.1.5. shall regularly verify that the Safeguards are effectively implemented and keep record of such verification;
  - 15.1.6. shall update Safeguards continually in response to new risks or deficiencies in previously implemented safeguards;
  - 15.1.7. shall keep complete, accurate and up to date records and to give effect to a Data Subjects right to correct, request access to or object to the Processing of their Personal Information (where applicable); and
  - 15.1.8. shall take all necessary and appropriate measures in accordance with Best Industry Practice to (i) keep information up to date, (ii) destroy information according to Applicable laws and (iii) prevent the loss of, damage to or unauthorised destruction of Data and the unlawful access to or Processing of Data, and (iv) Process Personal Information in accordance with Applicable Laws.
- 15.2. The Supplier shall inform UJ as soon as reasonably possible in the event of any actual or suspected unlawful or unauthorised access, disclosure, copying, destruction or amendment to a Data Subject's Personal Information.
- 15.3. The Supplier shall be liable, and hereby indemnifies and holds

UJ harmless for and against any governmental, legislative or other fines, penalties or Losses resulting from the Supplier's breach of clause 15, POPIA and/or Applicable Legislation related to the processing of Data or Personal Information.

**16. Intellectual Property Rights**

- 16.1. The Supplier acknowledges and agrees that:
  - 16.1.1. all rights in and to UJ's and/or UJ's Client's Intellectual Property made available to the Supplier by UJ and/or UJ's Clients from time to time, vests and shall remain vested in UJ and that UJ is the owner thereof; and
  - 16.1.2. Unless agreed otherwise in an Acceptance Agreement or a Supply-agreement, UJ 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 an Agreement. The Supplier shall ensure that all the Supplier's employees are informed and agree that all Intellectual Property in and to such material vests in UJ.
- 16.2. To the extent that the title to material is not automatically vested in UJ:
  - 16.2.1. the Supplier hereby irrevocably assigns all right, title and interest in and to the material to UJ;
  - 16.2.2. the Supplier further undertakes, as and when requested by UJ, to execute all such instruments and to do all such things as may be necessary to vest copyright and ownership of such material in UJ and/or UJ's Client;
  - 16.2.3. if the Supplier fails to comply promptly with a request by UJ in terms of clause 16.2.2, the Supplier hereby unconditionally and irrevocably nominates and appoints UJ 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 clauses 16.1.2 and 16.2.
- 16.3. The Supplier acknowledges and agrees that UJ shall have the right to modify any of the Goods provided to UJ by Supplier, pursuant to an Agreement and the Supplier shall ensure that all the Supplier's employees are informed and agree that UJ has the right to modify such Goods. Any such modification will not relieve Supplier from any of its obligations as stated in an Agreement.
- 16.4. Save with the written consent of UJ, 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.
- 16.5. The Supplier shall not introduce into UJ's environment any third-party Intellectual Property for the continued duration of any Agreement or otherwise use such third-party Intellectual Property to provide the Services without first obtaining UJ's written consent thereto. To the extent that UJ grants such consent, the Supplier shall be responsible for obtaining a license on behalf of UJ and in UJ's name, to use such third-party Intellectual Property from the third party.

**17. Change Control**

- 17.1. The Supplier shall control and manage changes to the Supply, to the environment in which it provides the Supply, and that it maintains and supports as part of the Supply, in accordance with the change control requirements of UJ, current change management standards and procedures which includes the



documentation thereof and the submission of said documentation by the Supplier to UJ. The Supplier shall not take any action or make any decision which may:

- 17.1.1. have a material effect on UJ or equipment; or
- 17.1.2. adversely affect the performance of efficiency of, or charges for (including third party expenses) the Supply, without first:
  - 17.1.2.1. analysing the possible action or change and providing UJ with a change control report;
  - 17.1.2.2. providing UJ with a reasonable period of time to review the change control report; and
  - 17.1.2.3. obtaining UJ's consent to the proposed change. With respect to any change which may have an adverse effect on UJ or the Services, UJ may withhold its approval in its sole discretion.

17.2. The Supplier shall schedule changes to minimise disruption of UJ's normal business operations.

17.3. Until such time as any changes have been agreed by UJ in Writing, the Parties shall continue to perform their respective obligations in terms of an Agreement.

17.4. Changes shall be implemented in accordance with priorities designated by UJ.

## 18. Audits

18.1. The Supplier shall keep at its normal place of business detailed, accurate and up to date records and books of account showing all payments made by the Supplier in connection with this Agreement and the steps taken by the Supplier to comply with the Applicable Laws and Policies, in each case during the previous 7 (seven) years. The Supplier shall ensure that such records and books of accounts are sufficient to enable UJ to verify the Supplier's compliance with its obligations under this Agreement, including the Supplier's compliance of the ABC Laws.

18.2. The Supplier shall allow UJ, its auditors (including internal audit Staff and external auditors), as UJ may from time to time designate in Writing, on reasonable notice to the Supplier, but without notice in case of any reasonably suspected breach of any provision of this Agreement including clause 20, 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 Supply, to the Supplier Staff, and to hardware, software, data and records relating to the provision of the Supply for the purpose of performing audits and inspections of either the Supplier or any of its sub-contractors to:

- 18.2.1. verify the accuracy of the Supplier's charges and invoices;
- 18.2.2. verify the integrity of UJ's data and examine the systems that process, store, support and transmit that data;
- 18.2.3. examine the Supplier's performance of the Services or supply of the Goods;
- 18.2.4. provide to UJ's auditors and inspectors such assistance and co-operation as they may reasonably require, including installing and operating audit software. UJ 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
- 18.2.5. at any reasonable time, audit and perform a due diligence on the Supplier to ensure compliance of the

Supplier with applicable legislation, regulations, policies and procedures as well as undertakings regarding service delivery and B-BEE objectives.

18.3. UJ or its authorised representative shall have the right to conduct a due diligence at any time during the currency of an Agreement regarding compliance with, but not limited to, the following:

- 18.3.1. the terms and conditions of an Agreement;
- 18.3.2. all Applicable Laws and the Policies; and
- 18.3.3. undertakings regarding service delivery and BBBEE objectives.

18.4. The Supplier shall make available promptly to UJ 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 UJ.

18.5. Promptly after the issuance of any audit report or findings issued under clause 18.3 or 18.4, the Supplier and UJ 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.

18.6. The Supplier shall maintain a complete audit trail of all financial and non-financial transactions resulting from an Agreement as reasonably necessary to give effect to the provisions of this clause 18. The Supplier will maintain and provide UJ access upon request to the records, documents and other information that make up such audit trail until the later of:

- 18.6.1. 3 (three) years after expiration or termination of an Agreement;
- 18.6.2. all pending matters relating to an Agreement (e.g. disputes) are closed; or
- 18.6.3. such other period as is required by the Applicable Law.

## 19. Regulatory Requirements

19.1. The Supplier warrants that it is and will remain for the duration of an Agreement, fully cognisant of any relevant legislative or regulatory requirements and rulings of any competent authority that has jurisdiction over the provision of Supply under an Agreement.

19.2. 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 Supply.

19.3. The Supplier shall promptly identify and notify UJ 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 Supply, and should such changes occur then the Supplier and UJ shall co-operate to identify the impact of such changes on how the Supplier provides the Supply.

19.4. UJ shall remain responsible for communications with and participation in any governmental or regulatory body having jurisdiction over UJ, or any industry body in which UJ participates.

19.5. UJ shall consult with the Supplier regarding such matters to the extent UJ deems appropriate, and the Supplier shall make itself available for such consultation as reasonably required by UJ.

## 20. Applicable Laws and Specifically Bribery and Corruption

### 20.1. Corruption and Conduct of the Supplier

20.1.1. The Supplier acknowledges that the Applicable Laws

- apply to it and its subsidiaries and any director, officer, agent, employee, affiliate or other person associated with or acting on behalf of the Supplier or any of its subsidiaries and/or performing Services or providing Goods or otherwise rendering the Supply (in the widest sense possible) in connection with this Agreement, for the purposes of the subject matter of this Agreement.
- 20.1.2. The Supplier shall not and the Supplier shall procure that its subsidiaries and any director, officer, agent, employee, affiliate or other person associated with or acting on behalf of the Supplier or any of its subsidiaries performing Services or providing Goods in connection with this Agreement shall not:
- 20.1.2.1. use any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity or to influence official action;
  - 20.1.2.2. make any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds;
  - 20.1.2.3. under any circumstances offer, promise or make any gift, payment, loan, reward, inducement, benefit or other advantage, which may be construed as being made to solicit any favour, to any of UJ's directors, officers, agents, employees and/or affiliates;
  - 20.1.2.4. request, act, agree, receive, accept, offer, promise, give, induce or promote the acceptance or offering of a bribe, rebate, payoff, influence payment, kickback or other unlawful payment; (directly or indirectly, passively or actively), in any form whatsoever including but not limited to the gratuity, enticement, incentive, facilitation fee or gift;
  - 20.1.2.5. act in any manner in a way which would be reasonably regarded as:
    - 20.1.2.5.1. providing an unfair or undue or illegal advantage to the Supplier and/or its subsidiaries to retain or win business; or
    - 20.1.2.5.2. providing an unfair or undue or illegal advantage to the Supplier and/or its subsidiaries in conducting its business; and
  - 20.1.2.6. violate any provision of the Applicable Laws.
- 20.1.3. The Supplier shall:
- 20.1.3.1. conduct its businesses in compliance with the Applicable Laws and shall maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, compliance therewith;
  - 20.1.3.2. comply with any and all of UJ's Policies;
  - 20.1.3.3. at all times, act in good faith and in an ethical manner towards UJ and any other person or entity which the Supplier may come into contact while providing the Supply and shall to the maximum extent possible advise such persons that UJ has a zero tolerance against fraud and corruption and advise them of UJ's Fraud, Corruption and Ethics Hotline details; and
  - 20.1.3.4. immediately report to UJ (directly or on UJ's Fraud, Corruption and Ethics Hotline) any unethical, fraudulent or unlawful conduct which it becomes aware of as well as to the relevant authorities for the duration of this Agreement.
- 20.1.4. The Supplier further acknowledges that any information that is brought to UJ's attention and which information UJ is obliged to disclose in terms of applicable legislation to the appropriate authorities will be disclosed by UJ to the appropriate authorities. Any information so disclosed by UJ will not render UJ a whistle blower.
- 20.2. Representation on Compliance with Applicable Laws**
- The Supplier hereby represents and warrants that:
- 20.2.1. neither the Supplier nor any of its subsidiaries nor, to the Supplier's knowledge, any director, officer, agent, employee, affiliate or other person associated with or acting on behalf of the Supplier has or any of its subsidiaries:
    - 20.2.1.1. used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity or to influence official action;
    - 20.2.1.2. made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds;
    - 20.2.1.3. made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment;
    - 20.2.1.4. violated or is in violation of any provision of the ABC Laws;
    - 20.2.1.5. been convicted of any offence involving bribery, corruption, fraud or dishonesty;
    - 20.2.1.6. been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Applicable Laws;
    - 20.2.1.7. 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 the Supplier and any officer, agent, employee, affiliate or other person associated or acting on behalf of the Supplier has conducted its businesses in compliance with the Applicable Laws and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, compliance therewith.
  - 20.2.2. none of the directors, officers, agents, employees, affiliates or other persons performing providing the Supply with this Agreement is a foreign public official. If the Supplier becomes reasonably aware that a foreign public official may be involved, as previously mentioned, i.e. in the provision of the Supply in connection with this Agreement the Supplier shall immediately inform UJ thereof as to allow UJ to assess the situation fully. If UJ is reasonably of the option that any such relationship could be in breach of the Applicable Laws or be seen as being unethical. UJ shall be entitled to instruct the Supplier to terminate such business relationship forthwith.
  - 20.2.3. no foreign public official owns a direct or indirect

interest in the Supplier, or any person associated with it and no public official has any legal or beneficial interest in any payments made by UJ under this Agreement.

### 20.3. Notification and Cooperation

20.3.1. The Supplier shall immediately notify UJ in writing if at any time during the term of this Agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the representation set out in clause 20 at the relevant time, or has reason to believe that it has or any director, officer, agent, employee, affiliate or other person associated with or acting on behalf of the Supplier or any of its subsidiaries providing the Supply in connection with this Agreement has:

20.3.1.1. been subject to an investigation or prosecution which relates to an alleged breach of the Applicable Laws;

20.3.1.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment; and/or

20.3.1.3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person directly or indirectly connected with this Agreement has committed or attempted to commit a breach of the Applicable Laws or Relevant Policies.

20.3.2. If the Supplier makes a notification to UJ pursuant to clause 20.3.1, or if UJ otherwise becomes aware of any of the matters described in such clause and notifies them to the Supplier, the Supplier shall respond promptly to UJ's enquiries, co-operate with any investigation, and allow UJ to audit any emails, books, records, bank account information and/or any other relevant documentation in accordance with clause 18.

### 20.4. On-going Training

The Supplier undertakes that each member of its senior management and any director, officer, agent, employee, affiliates or other person associated with or acting on behalf of the Supplier providing the Supply in connection with this Agreement, shall receive training on compliance with the Applicable Laws at least once during every 12 (twelve) month period during the term of this Agreement.

### 20.5. Annual Certification

The Supplier shall contemporaneously with the signature of the Acceptance Agreement, and annually thereafter, certify to UJ in writing signed by an officer of the Supplier compliance with the ABC Laws by the Supplier and all persons associated with it or other persons who are providing any Supply in connection with this Agreement. The Supplier shall provide such supporting evidence of compliance as UJ may reasonably request.

### 20.6. Anti-Money Laundering and Combating the Financing of Terrorism

20.6.1. UJ 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, UJ will cooperate with all the relevant authorities and bodies, and the Supplier shall do the same.

20.6.2. It is a policy of UJ 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 UJ and the Supplier shall apply the same caution. UJ 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.

20.6.3. The Supplier shall not launder money or finance any terrorism and should the Supplier have cause to suspect that UJ might be or have been exposed to funds for which the source is doubtful, the circumstances must immediately be advised to the Senior Manager: Supply Chain Management of UJ.

20.6.4. UJ further reserves the right to investigate and/or report any doubtful/suspicious transactions to whichever authorities that may need to be so advised.

20.6.5. If there is a suspicion that an Agreement was entered into under dubious circumstance this Agreement (and any other agreement the Supplier may have with UJ) can be placed on hold, at the risk of the Supplier pending an investigation to UJ's satisfaction.

### 20.7. Indemnification

The Supplier indemnifies and holds UJ harmless on an after-tax basis from and against all and any Losses (including but not limited to any direct, indirect, special or consequential losses, loss of profit, loss of reputation and all interest and legal and other professional costs and expenses) suffered or reasonably incurred by UJ arising out of, or in connection with:

20.7.1. any breach or alleged breach of the Applicable Laws;

20.7.2. any breach of the provisions of this clause 20 by the Supplier; and/or

20.7.3. any breach of equivalent provisions in any Subcontract by any Subcontractor.

### 20.8. Material Breach

20.8.1. Breach of any provision of this clause 20 shall be deemed a material breach and UJ shall have the right to immediately terminate any and/or all of the Agreements on written notice to the Supplier, in which event such termination shall be without any liability and without prejudice to any claims which UJ may have for damages against the Supplier.

20.8.2. If UJ terminates this Agreement for breach of a provision of this clause 20 the Supplier shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.

### 21. Conflict of Interest

21.1. The Supplier undertakes that it shall not engage in practises or pursue interests which are in a Conflict of Interest with the interest of UJ and which could result in financial damage or loss being suffered by UJ, or UJ's reputation being harmed in the eyes of the business community or the public at large.

21.2. All Conflicts of Interest must be disclosed in Writing to UJ.

21.3. The Supplier shall inform its Staff of the contents of this clause 21 and shall ensure their adherence thereto.

21.4. The Supplier undertakes to disclose to UJ at the inception of the first 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 UJ.

21.5. The Supplier shall contemporaneously with the signature of the

Acceptance Agreement or the Supplier Application Form and/or the Effective Date of the Supply, and annually thereafter or as otherwise requested, certify to UJ in writing and signed by an officer of the Supplier, compliance with this clause 21 by the Supplier the declaration of Conflict of Interest provided by UJ.

## 22. Compliance by the Supplier

- 22.1. The Supplier hereby warrants to UJ that the Supplier is registered as an employer with, and in respect of, the following:
- 22.1.1. South African Revenue Services;
  - 22.1.2. Compensation Commission;
  - 22.1.3. Unemployment Insurance Fund;
  - 22.1.4. all and any applicable Bargaining Councils;
  - 22.1.5. skills development; and
  - 22.1.6. Employment Equity Registry.
- 22.2. 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 22.1 above.
- 22.3. The Supplier undertakes, at all times, to comply with the provisions of any collective agreements which may be binding on or become binding upon the Supplier and/or its Staff and/or UJ.
- 22.4. The Supplier shall provide UJ with copies of certificates of registration and/or prescribed forms or returns relating to each and every one of the items in 22.1 above, if requested to do so by UJ.
- 22.5. The Supplier shall submit to UJ 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 UJ.
- 22.6. The Supplier shall provide proof of its registration with the South African Revenue Services within 5 (five) days of the date of signature of the Acceptance Agreement and/or the Supplier Application Form and annually thereafter or as otherwise requested by UJ.

## 23. Black Economic Empowerment

### 23.1. BEE Status and Compliance

- 23.1.1. The Supplier warrants that it complies and will continue to comply with:
- 23.1.1.1. the Broad-Based Black Economic Empowerment Act, 2003 ("**BBBE Act**"); and
  - 23.1.1.2. the Broad-Based Black Economic Empowerment Codes of Good Practice issued by the Department of Trade Industry ("**DTI Code**").
- 23.1.2. The Supplier shall, within 21 (twenty-one) days after receipt of a written request from UJ, provide UJ with:
- 23.1.2.1. a current and valid broad based black economic ("**BBBEE**") verification certificate issued by auditors authorised by the Independent Regulatory Board for Auditors or a rating agency accredited by the South African National Accreditation Service, reflecting the Supplier's current black ownership level and BBBEE rating; and
  - 23.1.2.2. any additional verification of historically disadvantaged South African ownership levels (if required) to demonstrate compliance with the requirements and its

BBBEE ownership level of at least 51% ("**BBBEE Ownership Threshold**").

- 23.1.3. The Supplier shall for the duration of this Agreement:
- 23.1.3.1. maintain or improve the BBBEE Ownership Threshold;
  - 23.1.3.2. maintain (as a minimum) a level 4 or better BBBEE rating in accordance with the DTI Code;
  - 23.1.3.3. notify UJ in writing within 14 (fourteen) days of any occurrence which affects, will affect, or would be reasonably likely to affect its compliance with respect to the BBBEE Ownership Threshold and/or its BBBEE rating; and
  - 23.1.3.4. notify UJ in writing, within 30 (thirty) days of the occurrence, as to what steps have been and/or will be taken to restore its compliance with respect to the BBBEE Ownership Threshold and/or its BBBEE rating.
- 23.1.4. If the Supplier fails to comply with this clause 23.1, then the Parties may negotiate and agree on a future date within which the Supplier shall become compliant. If the Parties are unable to agree a date by which the Supplier shall be compliant or if the Contactor is non-compliant by the agreed date, then notwithstanding any other provision in this Agreement, UJ shall be entitled, without limiting any other right UJ may have under this Agreement or in law, to:
- 23.1.4.1. terminate the Agreement with immediate effect and without payment of any compensation to the Supplier (other than amounts due and payable under the Agreement at the date of termination); and
  - 23.1.4.2. claim any and all Losses it may have suffered or will suffer as a result of the Supplier's non-compliance with this clause 23.1.

### 23.2. Socio Economic Development Contributions

The Supplier shall comply with the socio-economic development contribution requirements of UJ which shall include, *inter alia*, the following:

- 23.2.1. the recruitment of semi-skilled and unskilled local residents from the local municipal area;
- 23.2.2. the subcontracting and development of skills transfer to identified BBBEE entities;
- 23.2.3. procuring commodities from identified BBBEE suppliers within the local municipal area; and
- 23.2.4. making measurable and meaningful contributions through its corporate social investment programme for the local municipal area.

## 24. Safety, Health and the Environment

### 24.1. General

- 24.1.1. The Supplier shall at all times for the duration of an Agreement, for the account of the Supplier, ensure that:
- 24.1.1.1. it complies with all relevant occupational health and safety legislation, including the OHS Act;
  - 24.1.1.2. every member of its Staff undergoes medical examinations as required by UJ; and



- 24.1.1.3. every member of its Staff completes an induction programme of UJ.
- 24.1.2. 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 the Supplier, its Staff, agents or places of work.
- 24.1.3. The Supplier shall fully comply with its responsibility in terms of the OHSA, including without limitation to, namely;
- 24.1.3.1. 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 OHSA, that ergonomic principles are considered and implemented during design, manufacture;
- 24.1.3.2. the attention of installers/erectors is drawn to their responsibilities in terms of the OHSA, 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
- 24.1.3.3. the attention of designers is drawn to their responsibilities in terms of the OHSA, namely –
- 24.1.3.3.1. any person who designs any article for use at a site must ensure, as far as reasonably practicable, that ergonomic principles are considered and implemented during design; and
- 24.1.3.3.2. 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 UJ's Staff are able to identify the hazards and assess the risks associated with correct operation, installation and erection of articles supplied.
- 24.1.4. Non supply of suitable information in certain clause 24.3 will be considered a material breach of an Agreement.
- 24.1.5. The Supplier shall at all times, and at its cost, comply with all rules and regulations, both statutory and domestic, regarding environmental management.

#### 24.2. Employer's SHE Policies and Security Requirements

The Supplier shall comply with and shall ensure that the Subcontractors and Supplier's Staff comply with:

- 24.2.1. all applicable health, safety and environmental laws and any Applicable Laws;
- 24.2.2. UJ's SHE Policies; and
- 24.2.3. UJ's security requirements.

#### 24.3. Operational Health and Safety Act

- 24.3.1. The Supplier acknowledges that the provisions of the OHSA apply to the Supply and accordingly undertakes to co-operate fully with UJ in ensuring on-going and consistent compliance with the provisions of the OHSA.
- 24.3.2. The Supplier shall ensure that:
- 24.3.2.1. all of the Supplier's Staff are appropriately trained, experienced and have been assessed to be competent and qualified to execute and complete the Supply;
- 24.3.2.2. all of the Supply is of a merchantable quality, fit for the purpose for which they are intended and comply with the provisions of Section 21 of the OHSA; and
- 24.3.2.3. any of the Supplier's Staff (to the extent required by UJ) accept statutory appointments in terms of the OHSA and that such appointed Supplier's Staff comply with all statutory obligations placed upon them in the execution of the Supply.
- 24.3.3. The Supplier is responsible for ensuring the proper assessment of risk and implementation of control measures in line with any minimum standards or specified processes applied by UJ to ensure that the Supply is consistently performed in a safe and workmanlike manner and to Best Industry Practices.
- 24.3.4. The Supplier shall, having identified all hazards and assessing the risk to which any person may be exposed as a result of the Supply, prepare appropriate standards and procedures setting out the manner in which the Supply can be performed safely. No Supply may commence on the Site until UJ has approved all relevant standards and procedures.
- 24.3.5. The Supplier shall, in the preparation of standards and procedures required for the Supply, have regard to other legislation which may inform best practice and the safe performance of any of the Supply. The Supplier must specifically consider the contents of the Construction Regulations to the OHSA and incorporate any obligations set out therein into the standards and procedure to be applied to the Supply.
- 24.3.6. The Supplier warrants that it and the Supplier's Staff shall:
- 24.3.6.1. adhere to all Applicable Laws (including all South African health and safety laws, as well as any instructions, directives and guidelines issued by the appropriate regulator ("**Health and Safety Laws**") and the reasonable directions of any supervisor or safety officer relating to the personal safety and health of the Supplier's Staff;
- 24.3.6.2. attend any inductions or other training that UJ may require from time to time;
- 24.3.6.3. attend any medical surveillance assessments required by UJ, from time to time, to determine whether the Supplier's Staff are fit to perform work on a mine and shall comply with any instructions, recommendations or findings made by UJ following such medical surveillance;
- 24.3.6.4. demonstrate and implement a personal awareness of and commitment to safety and health in all of their activities on the Site;

24.3.6.5. co-operate at all times in building a culture of uncompromising dedication to preserving, and shall exercise reasonable care to protect and promote, the health and safety of anyone on the Site, as well as anyone who may from time to time be on the Site; and

24.3.6.6. comply with the Health and Safety Laws and promote and pursue safe, healthy and environmentally sound working practices on the Site.

24.3.7. Where the OHSA is applicable to any part of the Supply, the Supplier agrees that it will enter into an agreement in terms of Section 37(2) of the OHSA with UJ, in terms of which arrangements and procedures will be agreed between the Parties to ensure that the Supplier complies with the OHSA. Accordingly, the Parties agree that the vicarious liability as set out in Section 37(2) of the OHSA does not apply as between the Supplier and UJ, to the extent permitted by the OHSA.

24.3.8. The Supplier shall permit UJ, or its designated internal audit representatives access to the Supplier's site / facilities and documents at intervals of at least 30 (thirty) days each, for the purpose of UJ conducting audits and verifying the Supplier's compliance with this clause and all applicable health and safety plans and Applicable Laws.

#### 24.4. Protection of the Environment

24.4.1. The Supplier shall take all necessary steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and any other aspect which is attributable to execution and completion of the Supply.

24.4.2. The Supplier shall ensure that emissions, surface discharges and effluent from the Supplier's activities do not exceed the values or thresholds prescribed by the applicable environmental laws and any other Applicable Laws.

#### 24.5. Hazardous Materials

24.5.1. The Supplier shall not bring, handle, store or use any Hazardous Materials on the Site, unless it obtains the prior written consent of UJ's appointed project manager. The Supplier shall remain solely responsible for the use, handling and storage of the Hazardous Materials, notwithstanding the consent of the UJ project manager.

24.5.2. Subject to clause 24.5.1, the Supplier shall, at its own cost:

24.5.2.1. establish a materials register that includes comprehensive safety data sheets for all Hazardous Materials used or stored on the Site in connection with the Supply and shall permit the UJ project manager to have access to such materials register;

24.5.2.2. visibly label and identify any Hazardous Materials brought onto the Site;

24.5.2.3. exercise the utmost care in the use, handling and storage of Hazardous Materials on the Site, by only allowing competent, trained and qualified Staff to handle the Hazardous Materials;

24.5.2.4. acquire its own drums and/or other containers for the appropriate storage, disposal or removal of the Hazardous Materials; and

24.5.2.5. perform any necessary clean-up or remediation work in relation to the Hazardous Materials brought onto the Site.

#### 25. Labour Relations & Legislation

25.1. The Supplier warrants to UJ 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 an Agreement.

25.2. Where the Supplier provides a Service to UJ 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 UJ, that no similar category is available locally and shall liaise with local interest groups in determining the availability of labour.

25.3. The Supplier shall make every endeavour to maintain sound labour relations and to prevent industrial action. The Supplier shall notify UJ at the earliest opportunity of any anticipated industrial action and shall, in the event of industrial action, co-operate with UJ in respect of the implementation and co-ordination of contingency plans, press liaison and evacuation of the Supplier's Staff from UJ's premises.

25.4. 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 an Agreement.

#### 26. Documentation

26.1. All documentation which requires the approval of UJ shall be submitted to UJ's Senior Manager: Supply Chain Management as stated elsewhere in an Agreement but otherwise within 14 (fourteen) days of the Effective Date.

26.2. To the extent applicable, the Supplier will before the Effective Date of an Agreement deliver to UJ 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 an Agreement and if no such specifications are stipulated then to Best Industry Practices. All designs shall be signed by a Pr. Eng. (professional engineer) unless this requirement is specifically waived by UJ in Writing

26.3. To the extent that an Agreement is terminated for whatsoever reason, then the Supplier hereby grants to UJ 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.

#### 27. Force Majeure

27.1. Failure on the part of a Party") to perform in terms of or comply with the provisions of an Agreement shall not be deemed to be a breach of an Agreement by the Affected Party, insofar as such failure is due to a Force Majeure (the "Affected Party").

27.2. If the Affected Party is by reason of a Force Majeure prevented from fulfilling its obligations under an Agreement, the Affected Party shall immediately notify the other Party in Writing thereof. Such notice shall stipulate:

27.2.1. the cause, nature and extent of the event or circumstances;

27.2.2. the expected duration of the circumstances or event; and

27.2.3. the extent to which the performance of the Affected Party will be affected.

27.3. The Parties shall then promptly confer within 5 (five) days with

a view to dealing with the matter in a cost-effective basis.

- 27.4. To the extent that the Affected Party is prevented to perform its obligations in terms of an Agreement due a Force Majeure, the Affected Party shall for the duration of Force Majeure 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.
- 27.5. The Affected Party shall within 5 (five) days of its Written notice to the other Party in terms of clause 27.2, 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 an 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.
- 27.6. Until the other Party has made its decision referred to in clause 27.3 above, and if the other Party has decided not to terminate an Agreement, as aforesaid, the following provisions shall apply:
- 27.6.1. the Affected Party shall make every effort to mitigate the effect on the other Party of its failure or omission to perform fully; and
- 27.6.2. the Affected Party shall keep the other Party fully informed about the situation.
- 27.7. To the extent that the Affected Party is prevented a Force Majeure to comply fully with its obligations in terms of an 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.
- 27.8. In the event that the period of the Force Majeure exceeds an uninterrupted period of 30 (thirty) days, either Party may terminate the affected Agreement.
- 27.9. The Supplier accepts that by failing to give notice to UJ in terms of clause 27.3 or to provide a proposal setting out how the Supplier will overcome the circumstances per clause 27.5 or to mitigate the effects per clause 27.6.1, the Supplier waives its defence to a rely on a Force Majeure and accepts that it will accordingly not be paid for days not worked.

## 28. Breach

- 28.1. The Parties agree that withholding of disputed charges of the Contract Fee in terms of clause 9.9.3 shall not constitute a breach of an Agreement.
- 28.2. If the Supplier either:
- 28.2.1. commits a breach of an Agreement and fails to remedy such breach within 14 (fourteen) days of receiving a notice to do so; or
- 28.2.2. commits a material breach of an Agreement and fails to immediately remedy such upon receiving notice to do so,
- then, in addition to any other rights and remedies that UJ may have in terms of an Agreement or otherwise, UJ may elect to:

- 28.2.3. claim specific performance from the Supplier;
- 28.2.4. cancel the Agreement in whole or in part;
- 28.2.5. terminate any other agreements or any other existing contracts that the Supplier has entered into with UJ;
- 28.2.6. claim damages from the Supplier; or
- 28.2.7. proceed with any combination of the above or as UJ may be entitled in law.

## 29. Termination

- 29.1. In addition to clause 28, UJ shall be entitled, but not obliged, to immediately terminate the Agreement in whole or in part on written notice to the Supplier, in the following circumstances:
- 29.1.1. an Insolvency Event occurs in respect of the Supplier;
- 29.1.2. 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 Supply and which failure or breach UJ, in its sole discretion, considers to be detrimental to UJ for sound business reasons,
- 29.1.3. the Supplier fails to fulfil any of its BBEE obligations contemplated in clause 23;
- 29.1.4. as permitted in terms of clauses 6.2.4, 9.7.5.3, 20.8.1, 23.1.4, 27.8 or as may be otherwise expressly permitted in these ST&Cs;
- 29.1.5. the Supplier has misrepresented itself in its tender submissions; or
- 29.1.6. during the currency of an Agreement UJ's operations are, in UJ's reasonable opinion, curtailed for any reason.
- 29.2. Notwithstanding any other provision, UJ may terminate an Agreement 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. UJ shall have no liability to the Supplier with respect to a termination in terms of clause 29.2.
- 29.3. If it is found that termination of an Agreement under clause 29 is not a proper termination under the applicable clause, then such termination shall be deemed to be a termination for convenience under this clause 29.3 and the Supplier shall have no further claims of whatsoever nature against UJ as a result of such termination.
- 29.4. Any right of termination exercised in terms of an Agreement shall not impact any claims or rights that UJ may have against the Supplier, and:
- 29.4.1. UJ shall have no liability towards the Supplier (including any claim for damages) with respect to such a termination;
- 29.4.2. UJ shall be entitled to re-tender the Supply or award a contract to an alternate Supplier based on a tender evaluation; and
- 29.4.3. UJ may, at its election, immediately terminate any and/or all agreements or other contracts that the Supplier with UJ and the Supplier shall have no claim against UJ of whatsoever nature as a result thereof.

## 30. Limitation of Liability

- 30.1. Notwithstanding anything to the contrary set forth in an Agreement:
- 30.1.1. the Supplier shall be liable to UJ for any Losses;
- 30.1.2. The Supplier shall remain fully liable for any Losses

arising out of:

- 30.1.2.1. fraud;
- 30.1.2.2. deliberate default;
- 30.1.2.3. fraudulent misrepresentation;
- 30.1.2.4. bodily injury or death to any person;
- 30.1.2.5. commits a breach of clause 20; and
- 30.1.2.6. any warranty claim or the correction of a Defect.

30.2. To the extent permitted by the Applicable Law, UJ shall not be liable to the Supplier for any special, indirect, incidental and/or consequential damages arising from the Losses, and UJ's liability in shall always be limited to the Contract Price for duration of the Agreement.

### 31. Mediation and Arbitration

31.1. Notwithstanding clauses 31.2 to 31.4, all matters, disputes and allegations related to or in connection with fraud, corruption, and/or a breach of ABC Laws or Applicable Sanctions shall be referred to the Magistrate's Court to be resolved by litigation. The Parties hereby consent to the jurisdiction of the Magistrates' Court in terms of section 45 read with section 28 of the Magistrates' Court Act of 1944 as amended.

31.2. Subject to clause 31.1, should any dispute or claim between the parties (other than those listed in clause 31.1) arising out of this Agreement ("**Dispute**") the Parties shall attempt to resolve such a Dispute in good faith and within a reasonable time. Any Dispute that is not resolved by the Parties' managing directors (or their nominated representatives) shall be referred to a mediator agreed upon between the Parties, upon notice by any Party in Writing.

31.3. If the Parties are unable to either:

- 31.3.1. agree on a mediator within 7 (seven) days; or
  - 31.3.2. resolve the Dispute by way of mediation, within 28 (twenty-eight) days of the Dispute having been raised in Writing,
- then, either Party may submit the Dispute to and decided by arbitration in Terms of clause 31.4.

31.4. Arbitration shall:

- 31.4.1. be in English and conducted in Johannesburg, South Africa;
- 31.4.2. be governed in terms of the Arbitration Act 42 of 1965;
- 31.4.3. take place accordance with the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa in force from time to time; and
- 31.4.4. the arbitration award shall be final and binding on the Parties.

31.5. Notwithstanding the provisions set out in clause 31, a Party may approach the Court for interim urgent relief.

### 32. DOMICILIUM AND NOTICES

32.1. 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:

32.1.1. UJ:

For general communication and notices under this agreement, the Supplier must address such notices as follows:

Attention: Dr Joe Manyaka

Email: jmanyaka@uj.ac.za

Physical Address: Cnr Kingsway and University Roads, Auckland Park, 2092.

A copy of all legal notices must also be sent to: the Office of the General Counsel at UJ at the following address: University of Johannesburg, 1st Floor, Madibeng Building, Auckland Park Kingsway Campus, Cnr Kingsway and University Roads, Auckland Park, 2006

32.1.2. Supplier:

The address indicated in either the Acceptance Agreement, Supply-agreement or Purchase Order.

32.2. 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; mail or e-mail as specifically provided for herein. In this regard, a notice, request, demand and determination under an Agreement:

32.2.1. delivered by hand shall be deemed duly given when delivered by hand during UJ 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

32.2.2. delivered by electronic mail, shall be deemed duly given when mailed in a properly addressed envelope to a responsible person at the addressee's *domicilium* 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.

32.3. The Parties may amend their *domicilium* address as set out in clause 32.1, by providing the other Party notice of the changed address in Writing.

32.4. 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 10.

32.5. Communications in traditional letter format may be transmitted as .pdf attachments by the Parties and other contractual role players one to the other Party by e-mail.

### 33. Costs

Each Party will bear and pay their own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of an Agreement.

### 34. Cession and Delegation

34.1. UJ may freely cede its rights and delegate its obligations to any company or entity within the UJ group or association without the Written consent of the Supplier.

34.2. The Supplier may not cede its rights or delegate its obligations under an Agreement to any other party without the Written consent of UJ, which approval will not be unreasonably withheld. This notwithstanding, the Supplier shall not for the duration of an Agreement cede or in any way transfer to any person its right, title and interest in and to any existing or future book debts of its business at any time,



Initial here:



except with Written consent of UJ.

such third parties retained by UJ comply with the Supplier's reasonable confidentiality requirements.

### 35. General

- 35.1. The Agreement is the full agreement between the Parties regarding the subject matter and supersedes and replaces any and all agreements or undertakings between the Parties in relation to the Agreement's subject matter.
- 35.2. Any amendments to the ST&Cs must be in Writing and signed by the Parties, and where applicable comply with any other express requirements set out in the ST&Cs (including clauses 4.3, 17 and 36.4).
- 35.3. 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 an Agreement, and no single or partial exercise of any right by any Party under an 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 an 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.
- 35.4. Notwithstanding the manner in which clauses and provisions of the Agreement have been grouped together or linked grammatically, severable from each other, and should a clause or provision be found to be unenforceable due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, such a clause or clause will be severed from the Agreement and the remaining provisions and clauses of an Agreement shall remain of full force and effect. The Parties declare that it is their intention that an Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 35.5. All of the Agreements 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 the Applicable Law.
- 35.6. The Supplier expressly and irrevocably waives any and all liens which may, but for the provisions of the Supply, have applied in respect of UJ's property.

- 36.2. Without limiting the generality of the Supplier's obligation to perform the Supply in accordance with any service levels and/or Specifications, the Supplier shall as soon as practicable notify UJ if an act or omission of a third party may cause the Supplier a problem in providing or delaying the Supplier's provision of the Supply. Should UJ become aware of any such act or omission, it shall as soon as practicable, notify the Supplier, by Written notice, of such occurrence.
- 36.3. The Supplier shall, on the Written order of UJ, suspend the progress or alter the request for the Supply or any part thereof for such time or times and in such manner as UJ may consider necessary and shall, during such suspension or alteration, properly protect and secure the Supply so far as is necessary in the opinion of UJ. The extra cost (if any) in giving effect to UJ's instructions under this clause shall be borne and paid by UJ unless such suspension of alteration is:
  - 36.3.1. due to a Supplier breach, failure or otherwise caused by the Supplier;
  - 36.3.2. due a Force Majeure set out in clause 27;
  - 36.3.3. otherwise provided for in an Agreement, provided that the Supplier shall be entitled to recover any such extra cost unless having given notice in Writing to UJ of its intention to claim within 7 (seven) days of UJ's order or instruction; and
  - 36.3.4. if the progress of the Supply or any part thereof is suspended on the written order of UJ for more than 90 (ninety) days, the Supplier may serve a Written notice on UJ requiring permission, within 28 (twenty-eight) days from receipt thereof, to proceed with the provision of Supply or that part thereof in regard to which progress is suspended.
- 36.4. An Agreement shall be subject to changes by additions, deletions or revisions thereto by UJ. 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.
- 36.5. Except as otherwise provided in an Agreement, the Supplier shall be responsible for providing the facilities, Staff and other resources as necessary for the Supplier to provide the Supply in accordance with the service levels.

## PART B: TERMS AND CONDITIONS FOR THE SUPPLY

### 36. Supply

- 36.1. At UJ's election, UJ may perform itself (or any part thereof) or retain third parties to supply any of the Supply provided that UJ shall:
  - 36.1.1. by written notice to the Supplier, advise the Supplier of such election; and
  - 36.1.2. pay the Supplier for Supply in terms of any existing Agreement. In this regard:
    - 36.1.2.1. the Supplier shall co-operate with UJ or third parties providing any Supply; and
    - 36.1.2.2. where third parties require access to the Supplier Confidential Information (excluding financial information) to provide the Supply, the Supplier shall be entitled to require that

### 37. Time for Completion

- 37.1. Within 14 (fourteen) days of the Effective Date or any other dates that may be mutually agreed between the Supplier and UJ, the Supplier shall submit a programme to UJ for approval. The programme shall be in a form acceptable to UJ incorporating agreed key dates and showing the order in which the Supplier proposes to provide the Supply. Approval by UJ of the programme shall not relieve the Supplier of any of its duties or responsibilities under any Agreement.
- 37.2. After the programme has been submitted to and approved by UJ, the Supplier shall adhere to the order of procedure and method stated therein unless the Supplier obtains the permission in Writing of UJ to vary such order or method. UJ may, however, at its discretion and during the progress of an Agreement, direct that the Supplier vary the order in which the Supplier proposes to provide the Supply and the Supplier shall update the programme accordingly.
- 37.3. Should it at any time during the progress of any Agreement become evident to UJ that the execution of an Agreement is not in accordance with the programme approved or as varied in terms of the above, UJ may direct the Supplier to take such



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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 UJ in terms of this clause shall, unless it can be shown that the delay was caused by reasons attributable to UJ, be for the Supplier's account.

### 38. Extension of Time for Completion

- 38.1. If, by reason of any cause attributable to UJ, the Supplier has been delayed in the completion of an Agreement, the Supplier may within a reasonable period but no later than 14 (fourteen) days after becoming aware of the cause, submit or request an extension of time to UJ for UJ's consideration.
- 38.2. UJ may grant to the Supplier such extension of time as necessary to complete an Agreement. UJ shall grant or refuse the extension within 14 (fourteen) days failing which the Supplier shall be entitled to, on 14 (fourteen) days written notice to UJ, refer the matter for dispute resolution in terms of clause 31.
- 38.3. The terms and conditions of any extension of time granted shall be confirmed by means of a Written amendment to an Agreement issued by UJ's Senior Manager: Supply Chain Management and signed by the Parties.

### 39. Variations

UJ's Senior Manager: Supply Chain Management shall have power, by notice in Writing, to direct the Supplier to alter, amend, omit, add to or otherwise vary any of the Supply supplied. Any approved variation to an Agreement will be enforced by an official amendment to an Agreement, issued by UJ's Senior Manager: Supply Chain Management.

### 40. Support and Maintenance Services

- 40.1. Where the Supplier provides a Service to UJ relating to support or maintenance of any item in terms of an Agreement, the following terms shall, unless otherwise agreed, apply to such Services:
  - 40.1.1. 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 goods/items in such a manner as to ensure the supported/maintained items' continued compliance with their specifications; and
  - 40.1.2. UJ shall be responsible for requesting the assistance of the Supplier with regard to any faults or failures in the supported/maintained items.
- 40.2. The manner in which the Supplier shall provide the support Services shall be specified in each Agreement 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, and where same is not specified, the Supplier shall comply with SANS, the Applicable Laws and/or Best Industry Practices.
- 40.3. 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 UJ of same and irrespective of the source of the problem, recommend appropriate methods for resolving same and provide UJ with future avoidance advice as well as undertaking any necessary preventative measures to minimise

recurrence of the problem.

- 40.4. 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 UJ'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 UJ's generally accepted procedures and at UJ's expense.
- 40.5. 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 UJ's premises until their return by the Supplier to UJ's premises.
- 40.6. 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 UJ in Writing, all spare or replacement parts or components supplied under an Agreement in respect of supported/maintained items which:
  - 40.6.1. 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
  - 40.6.2. if not under warranty, shall be either new or refurbished.

### 41. Supply Performance Standards

The Supplier shall ensure that the Supply (including all workmanship) and all products, materials, documentation, tools and equipment used or required for the rendering of the Supply, comply with UJ's quality assurance processes, SANS, the Applicable Laws, Best Industry Practices and other general requirements as there may be from time to time.

### 42. Specifications and Service Levels

- 42.1. Notwithstanding the fact that an Agreement may not contain any Specifications, the Supplier is required to perform the Services with promptness, diligence and courtesy and the Supplier shall at all times execute the Supply in a professional manner and in accordance with the Best Industry Practices.
- 42.2. An Agreement may set forth the quantitative and qualitative service levels and specifications by which the Supplier's performance of the Services is to be measured.
- 42.3. The Supplier recognises that its failure to meet the Specifications may have a material adverse impact on the business and operations of UJ and that the damage from the Supplier's failure to meet any Specification may not be susceptible to precise determination. Accordingly, in the event that the Supplier fails to meet a Specification, then in addition to any other non-monetary and monetary remedies available to UJ, UJ may elect, in lieu of pursuing other remedies, to recover a penalty determined by reference to each Agreement as liquidated damages.
- 42.4. In the event UJ is entitled to a penalty under an 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 UJ elects to impose a penalty, UJ's payment of the Supplier's invoice shall be net of such penalty and shall be in addition to any claim for damages that UJ may have in law.

- 42.5. If the Supplier fails to meet any Specifications, the Supplier shall:
- 42.5.1. investigate and report on the root causes of the problem;
  - 42.5.2. promptly correct the problem and begin meeting the Specifications;
  - 42.5.3. advise UJ, as and to the extent requested by UJ, of the status of remedial efforts being undertaken with respect to such problems; and
  - 42.5.4. take appropriate preventive measures so that the problem does not recur.
- 42.6. Where Specifications are provided for in an Agreement, the Supplier shall be responsible for monitoring and measuring its performance of the Supply against the Specifications. It is recorded that UJ is entitled to reasonable access to all data in the Supplier's possession relating to Specifications and the performance as provided for in an Agreement.

### 43. Quotations

- 43.1. Prior to supplying any Supply in terms of an Agreement, the Supplier shall furnish UJ with a detailed written quotation upon which shall be stated an all-inclusive price for such Supply and where applicable, the technical specifications and/or plans of the Supply and the details as to the date until which such quotation shall be open for acceptance by UJ. 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, other risks and Supplier risk allowances ("float") together with all additional obligations included in an Agreement (such as insurance, testing etc.). Where a written quotation does not state a date of expiry, it shall be open for acceptance by UJ for a period of 90 (ninety) days following its receipt by UJ.
- 43.2. Notwithstanding acceptance of a written quotation, the delivery and/or installation of any Supply, or any other act or omission on the part of UJ relating to the Supply which form the subject matter of any quotation, neither Party shall acquire any rights or obligations, other than as specified in clause 43.1, unless and until both Parties have concluded an Agreement for the provision of such Supply.

### 44. Leasing of Goods

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

- 44.1. any Goods leased to UJ by the Supplier shall be listed in a schedule to be annexed to an Agreement in terms of which such Goods are leased. Such schedule shall contain the following information regarding each and every item of such Goods:
- 44.1.1. an appropriate description of the Goods, preferably including an asset identification number;
  - 44.1.2. the monthly rental payable in respect of that item of Goods; and
  - 44.1.3. the useful life of that item of Goods expressed in months and measured from the first day of the month immediately following the month in which such Goods are accepted by UJ. Each item of Goods listed in such schedule shall be leased independently and upon the terms and conditions set forth in 44.2 for a period being the useful life therefore as stated in such schedule, and for the rental specified in such schedule.

- 44.2. any lease contemplated in clause 44.1 is subject to the following terms and conditions, UJ shall:

- 44.2.1. at all times keep the Goods under its control and shall take reasonable care in the use of the Goods and shall protect same from loss and damage;
  - 44.2.2. only use the Goods for the purpose for which it was intended;
  - 44.2.3. 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;
  - 44.2.4. 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;
  - 44.2.5. not do anything which may cause damage to the Goods;
  - 44.2.6. take reasonable steps to ensure that all restrictions on the use of the Goods that are imposed by any law are observed by UJ and its Staff; and
  - 44.2.7. not modify the Goods otherwise than in accordance with the provisions of an Agreement.
- 44.3. any item listed in a schedule shall be subject to a lease as referred to in clause 44.1 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.
- 44.4. any lease may only be terminated by Written agreement and signed by the Parties, by expiration or by UJ where UJ 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;
- 44.5. should an Agreement be terminated then all leases of Goods in terms of an Agreement shall terminate as of the effective date of any termination of an Agreement; and
- 44.6. 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 UJ's premises and thereafter neither Party shall have any liability whatsoever under such lease.

### 45. Loan Equipment

- 45.1. No lien over any Loan Equipment shall be established in favour of the Party in possession of such Loan Equipment.
- 45.2. The Party in possession of the Loan Equipment shall be entitled to retain such Loan Equipment for such use as shall be 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:
- 45.2.1. take proper and diligent care of such Loan Equipment;
  - 45.2.2. mark all items owned by UJ uniquely;
  - 45.2.3. 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

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45.2.4. 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 and for the full replacement value thereof on a first loss basis. 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 45.

45.3. The Party in possession of the Loan Equipment must 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.

#### 46. Licensing Services

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

46.2. Insofar as Reserve Bank approval is required in terms of clause 46.1, then the Supplier must provide all necessary documentation and information to UJ, as UJ may reasonably require and request from the Supplier, in order for the appropriate approvals to be obtained.

46.3. UJ 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.

#### 47. Risk and Ownership in Goods

47.1. Unless specifically agreed to the contrary in an Agreement, the risk in Goods to be provided shall remain with the Supplier until delivery and offloading of such Goods has been affected and the Goods have been received by UJ or its agent specified in the relevant Agreement at the point of delivery stated in the relevant Agreement or if incomplete Supply, on completion of same.

47.2. Unless specifically agreed to the contrary in an Agreement, the title to the Goods, free of all liens or encumbrances shall pass to UJ at the earlier of:

47.2.1. fully payment thereof; or

47.2.2. the incorporation thereof into equipment or Supply.

47.3. Delivery of Goods to UJ shall be as evidenced in such manner as may be agreed by the Parties in the relevant Agreement and in the absence of such agreement, as evidenced by UJ's signature to the Supplier's delivery note. This clause 47 shall not be construed as limiting any of UJ's rights in terms of clause 50, and the Supplier shall bear all liability, for any latent or patent Defect identified during acceptance testing by UJ.

#### 48. Supplier Testing

48.1. Prior to presenting any Supply or any other deliverable to UJ to carry out acceptance testing (but at least 30 (thirty) days prior to doing so), the Supplier shall submit to UJ 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 UJ including the supply of samples to fully test the supply.

48.2. If the Supplier is responsible for installation and/or implementation and/or Commissioning of any Supply or deliverables under an Agreement the Supplier shall implement and/or install and/or Commission such Supply and deliverables and verify that the Supply or deliverables have been properly implemented.

48.3. The pre-acceptance and Defect testing plan and any other testing required under clause 48 shall be sufficiently rigorous to identify any Defects that are reasonably discoverable.

48.4. The Supplier shall promptly remedy any deficiencies and Defects identified during such pre-acceptance and Defect testing and retest the Supply or deliverables in accordance with clause 48 to verify that the Defect has been successfully remedied and that there are no other Defects. The Supplier shall repeat this testing and remedial process until the pre-acceptance testing required under this clause 48.3 is accomplished without revealing any deficiencies and Defects.

48.5. Except as otherwise specified in an Agreement, the Supplier shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Supplier shall agree, with UJ, the time and place for the specified testing of any Supply.

48.6. UJ may vary the location or details of specified tests or instruct the Supplier to carry out additional tests. If these varied or additional tests show that the tested Supply is not in accordance with an Agreement, the costs shall be borne by the Supplier, notwithstanding other provisions of an Agreement.

48.7. UJ shall give the Supplier not less than 24 (twenty-four) hours' notice of UJ's intention to attend to the tests.

48.8. The Supplier shall promptly forward to UJ duly certified reports of the tests.

#### 49. Inspection

49.1. UJ shall at all reasonable times be entitled to inspect the Supply at the premises of the Supplier and/or its sub-contractors. The Supplier shall make the necessary arrangements for UJ's access to any Supply. Failure to inspect any Supply shall in no way impair UJ's rights under the Applicable Law or those set out in an Agreement, nor deemed to constitute acceptance by UJ of any Supply, notwithstanding UJ's opportunity to inspect the Supply or the substantiality or ease of discovery of the Defect or non-conformity.

49.2. The Supplier shall give notice to UJ whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. UJ shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Supplier that UJ does not require to do so. If the Supplier fails to give the notice, he shall, if and when required by UJ, uncover the work and thereafter reinstate and make good, all at the Supplier's cost.

#### 50. Quality Control

50.1. On the date as stipulated in an Agreement but if no such date is stipulated then at least 30 (thirty) days prior to the date on which the Supplier is scheduled to deliver any Supply to or other deliverables, the Supplier shall develop and present to UJ



- for its review and approval an appropriate set of acceptance criteria for UJ's use in the acceptance testing of such items based on SABS-ISO requirements.
- 50.2. Each Agreement shall identify typical moderate to high-risk items requiring the application of a quality management system, in the absence of other agreed criteria Best Industry Practices shall be applied.
- 50.3. The Supplier shall present to UJ for its review and approval the acceptance criteria sufficiently in advance of its presentation to UJ of the items so that UJ 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 meet UJ's requirements, and provide its comments to the Supplier.
- 50.4. If UJ does not approve the acceptance criteria, UJ 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.
- 50.5. The Supplier shall as soon as is practicable:
- 50.5.1. revise the acceptance criteria to address UJ's concerns, resubmit to UJ the acceptance criteria for UJ's review and approval; or
  - 50.5.2. where appropriate, furnish UJ with a written explanation of the applicable acceptance criteria to UJ's satisfaction.
- 50.6. The acceptance criteria shall be fully documented by the Supplier and shall, as a minimum, require:
- 50.6.1. that the items/Supply do not contain any Defects;
  - 50.6.2. that the items satisfy UJ's stated business needs based upon functional and technical specifications in respect thereof as defined in the Specification or an Agreement as of the later of the Effective Date of the applicable Agreement and the date that UJ 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;
  - 50.6.3. that UJ has successfully completed an audit; if same is required by UJ;
  - 50.6.4. the timeframes applicable for acceptance testing by UJ of the item; and
  - 50.6.5. that where the Supplier is the designer of the Supply, the Supplier must ensure compliance with the relevant provisions of specifically the OHSA and all Applicable Laws including furnishing UJ with all required manuals and risk assessments in respect of the Supply. The Supplier is to take cognisance of his responsibility in terms of Section 10 of the OHSA.
- 50.7. The Supplier shall provide technical specifications and procedures including test parameters based on the original equipment manufacturer's specifications for approval by UJ. The Supplier shall obtain prior approval from UJ for amendments due to continuous improvement.
- 50.8. The Supplier acknowledges that each item of Supply or other deliverables provided to UJ requires formal acceptance by UJ, which can only be accomplished in accordance with this clause 50. Upon successful completion of all requirements described in clause 48 and clauses 50.1 to 50.6, the Supplier shall present the Supply to UJ at the location designated by UJ for acceptance testing.
- 50.9. UJ shall commence acceptance testing of the Supply or other deliverables as soon as practical following delivery thereof.
- 50.10. Acceptance testing shall determine whether the delivered items operate in accordance with their specifications and complies with the acceptance criteria, where applicable.
- 50.11. During acceptance testing, the Supplier shall assist UJ, to the extent necessary and reasonable, in conducting the acceptance testing and respond to any queries relating to the items within a reasonable time.
- 50.12. The Supplier shall be entitled at any time after the expiry of the period referred to in clause 50.20, to deliver written notice to UJ requiring UJ to identify any part of any deliverable items which contains any Defects and to provide a documented example of the fault in question. Should UJ fail to comply with any such notice within 7 (seven) days of receipt thereof, UJ shall be deemed to have accepted the item.
- 50.13. Notwithstanding any previous test or certification, if UJ discovers a Defect, UJ shall reasonably inform the Supplier in Writing thereof.
- 50.14. UJ may instruct the Supplier, at no charge to UJ, within 24 (twenty-four) hours of receiving UJ'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, to:
- 50.14.1. remove (from the Site) and replace any Supply which is Defective,
  - 50.14.2. remove and re-execute any other work which is Defective, and
  - 50.14.3. execute any work which is urgently required for the safety of the Supply or property or persons, whether because of an accident, unforeseeable event or otherwise.
- 50.15. the Supplier shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under clause 50.14.3
- 50.16. If the Supplier fails to comply with the instruction, UJ shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Supplier would have been entitled to payment for the work, the Supplier shall pay to UJ all costs arising from this failure.
- 50.17. Upon correction of the Defect, the Supplier shall repeat the process described in clause 48.1 and resubmit the corrected Supply to UJ for acceptance testing.
- 50.18. Following acceptance testing, if UJ does not accept the item it shall give the Supplier written notice of its rejection (including a written and sufficiently detailed description of the Defect 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 UJ may in its sole discretion elect to:
- 50.18.1. 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
  - 50.18.2. accept the item with its Defects, in which event the charges with respect to such Supply or other deliverable shall be equitably reduced to reflect the presence of such Defects; or
  - 50.18.3. without limiting the generality of UJ's right to terminate any Agreement for cause under clause 28.1, terminate the portion of the Agreement without liability by written notice to the Supplier, in which case the Supplier shall, at UJ's request, refund to UJ all amounts paid by UJ to the Supplier in terms of the applicable portion of the Agreement whereupon the

Supplier shall be entitled to remove the items from UJ's premises. Such refund shall be made within 14 (fourteen) days of receiving UJ's notice.

50.19. For the purposes of this clause 50, an upgrade, enhancement or modification to supported/maintained items shall be subject to acceptance testing.

50.20. Subject to the full co-operation by the Supplier and the number and severity measure/serious nature of the Defect identified by UJ during the acceptance testing process, UJ shall use reasonable endeavours to complete the acceptance testing and accept or reject the Supply subject to testing.

#### 51. Defect Liability Period for the Supply

51.1. The Supplier shall make good, at its cost, and within such period as UJ may stipulate, any Defects in the Supply 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 36 (thirty six) months from the actual date of delivery of the Goods or rendering of the Services or the period stated in each Agreement being the Defect Liability Period whichever is the longer.

51.2. If the Supplier repairs or replaces or re-performs any part of the Supply the terms of the above clause shall apply to such repairs or replacements or re-performs from the date so repaired or replaced.

51.3. Nothing in this clause 51 shall derogate from the Supplier's liability at common law for patent or latent defects or Defects.

#### 52. Packaging

Unless otherwise specified in an 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 UJ. The Supplier shall be liable for any loss or damage due to inadequate packing.

#### 53. 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 UJ are accompanied by the relevant hazardous chemical data sheets or any other such documentation as may be requested by UJ from time to time.

#### 54. Warranty Maintenance

54.1. 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 UJ 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.

54.2. Without relieving the Supplier from any of its obligations, the Supplier irrevocably and unconditionally authorises UJ to, at the Supplier's costs and behalf, repair and maintain the Goods should the Supplier not be able to comply with clause 54.1.

54.3. Any payment due by the Supplier resulting from any actions taken by UJ in terms of clause 54.2 shall either be set-off by UJ against any monies due and owing to the Supplier from this or any other Agreement, alternatively (at UJ's sole option) be paid by the Supplier within 30 (thirty) days from date of repair or maintenance.