

<p>This document is used for an appointment of a natural person, legal entity, company, close corporation, trust etc. to provide services to the CSIR.</p>
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SUPPLIER AGREEMENT

entered into between

THE CSIR

A statutory council established in 1945, with continued existence under the Scientific Research Council Act, No 46 of 1988, as amended

("the **CSIR**")

and

THE PARTY WHOSE DETAILS ARE SET OUT IN ANNEXURE A

("the **Supplier**")

1 WHEREAS:

- 1.1 The CSIR has identified the need to task a suitably qualified supplier to provide certain Goods/Works and/or Services and/or services to the organisation, as more specifically defined under Clause **Error! Reference source not found.** below; and
- 1.2 The Supplier has - in compliance with the Preferential Procurement Policy Framework Act and the CSIR's procurement policy - been identified as such, and is willing and able to provide the Works on the terms and conditions as set out herein below.

NOW WHEREFORE THE PARTIES HEREBY RECORD AND AGREE AS FOLLOWS:

2 INTERPRETATION AND DEFINITIONS

- 2.1 In this Agreement, unless the context indicates otherwise, the following words will have the following meanings:
- 2.1.1 "**Adjustment Formula**" means the formula set out in **Annexure C** (*Details of Charges*) in respect of the escalation of charges;
- 2.1.2 "**Agreement**" means the agreement embodied by this document together with any annexures hereto;
- 2.1.3 "**Agreement Interest Rate**" means the publicly quoted prime overdraft rate of interest per annum, from time to time charged by the CSIR's primary bank, as certified by any manager of such bank, whose appointment and authority it shall not be necessary to prove, calculated daily and compounded monthly in arrears;
- 2.1.4 "**Applicable Law**" means any of the following, from time to time, to the extent it applies to a Party (including, as applicable, Affiliates and subcontractors of a Party), or the Works (including, the performance, delivery, receipt or use of the Works, as applicable and wherever occurring): (i) any statute, regulation, policy, by-law, ordinance or subordinate legislation (including treaties, multinational conventions and the like having the force of law);(ii) the common law; (iii) any binding court order, judgment or decree; (iv) any applicable industry code, policy or standard enforceable by law; or (v) any applicable direction, policy or order that is given by a regulator;
- 2.1.5 "**B-BBEE**" means broad-based black economic empowerment, as defined in the B-BBEE Act;
- 2.1.6 "**B-BBEE Act**" means the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, as amended;
- 2.1.7 "**B-BBEE Codes**" means the B-BBEE Codes of Good Practice on Broad-Based Black Economic Empowerment published in terms of section 9(1) of the B-BBEE Act;
- 2.1.8 "**Best Industry Practice**" means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a person skilled and experienced in providing the relevant Works (holding himself as being an expert in providing such relevant Works) seeking in good faith to fully comply with its contractual obligations;

- 2.1.9 "**Business Day**" means any day other than a Saturday, Sunday or proclaimed public holiday officially recognised as such in the Republic of South Africa;
- 2.1.10 "**Charges**" means the agreed rates / prices for the execution of the Works, which charges are set out in **Annexure "C"** (*Details of Charges*);
- 2.1.11 "**Commencement Date**" means the "Commencement Date" specified in the Contract Data;
- 2.1.12 "**Commercially Reasonable Efforts**" means taking such steps and performing in such a manner as a well-managed company (or other entity) would undertake where such company (or other entity) was acting in a determined, prudent, and reasonable manner to achieve the particular result for its own benefit provided always that such steps are within the reasonable control of the Party;
- 2.1.13 "**Compliant Tax Status**" means a tax status of compliant at the relevant date, as depicted on the central supplier database, the SARS' tax compliance Status system, or by valid tax clearance certificate obtained from SARS or from the SARS' tax compliance status system;
- 2.1.14 "**Confidential Information**" means any information received or obtained by the Parties: (i) as a result of entering into this Agreement; or (ii) in connection with the business of either of the Parties relating to this agreement, including, without limitations, any past, present or future research, development, business activities, commercial, financial, marketing, products, services, technical, or other data, know-how, trade-secrets or any other information of whatever nature in whatever form;
- 2.1.15 "**Contract Price**" means the full forecasted "Contract Price" and disbursements payable to the Supplier in consideration for the Works as set out in the Contract Data;
- 2.1.16 "**Contract Data**" means the information set out in **Annexure "A"** to this Agreement;
- 2.1.17 "**CSIR Representative**" means the "CSIR Representative" named in the Contract Data;
- 2.1.18 "**Demand Guarantee**" means an on-demand bank guarantee from a reputable South African financial institution approved by the CSIR, and in the form and on the terms approved by the CSIR;
- 2.1.19 "**Designated Employees**" means the employees of the Supplier who are entrusted by it with the duty to render any part, or the whole of, the Works for or on behalf of the Supplier;
- 2.1.20 "**Goods/Works and/or Services / Works and/or Services**" means the deliverables to be provided by the Supplier to the CSIR as described in the Scope of Works;
- 2.1.21 "**Initial B-BBEE Contributor Status Level**" means the B-BBEE contributor status level of the Supplier as at the Signature Date under the B-BBEE Act and/or the B-BBEE Codes, and as recorded in the Contract Data;
- 2.1.22 "**Intellectual Property**" means inventions, patent applications and patents; branding and trade marks, service marks, trade names and business names (whether or not registered); copyright and works of authorship; registered and unregistered designs; trade secrets and know-how; software and algorithms; databases and protectable collections of information; procedures, protocols and methodologies; domain names and web presence; advertising and promotional material; and all tangible and intangible representations and manifestations of such intellectual property;

- 2.1.23 "**Parties**" means the CSIR and the Supplier, and "**Party**" means any one of them as the context may require;
- 2.1.24 "**PoPI Act**" means the Protection of Personal Information Act, No 4 of 2013;
- 2.1.25 "**Preferential Procurement Policy Framework Act**" means Act No 5 of 2000, as well as the Preferential Procurement Regulations issued thereunder ('PPPFA');
- 2.1.26 "**Renewal Period**" means the "Renewal Period" as set out in Contract Data;
- 2.1.27 "**SARS**" means the South African Revenue Service;
- 2.1.28 "**Signature Date**" means the date of signature of this Agreement by the Party signing last in time;
- 2.1.29 "**Site**" means the place or places where the Works are to be executed;
- 2.1.30 "**Scope of Works**" means the "Scope of Works" set out in **Annexure B**, hereto;
- 2.1.31 "**Supplier Representative**" means the "Supplier Representative" named in the Contract Data;
- 2.1.32 "**Termination Date**" means the "Termination Date" recorded in the Contract Data;
- 2.1.33 "**Warranty Period**" has the meaning given thereto in Clause 24.3;
- 2.1.34 "**Works**" means the Goods/Works and/or Services, Contracted Services or ancillary deliverables to the provided by the Supplier to the CSIR;
- 2.1.35 "**VAT**" means value-added tax as may be levied in terms of the VAT Act; and
- 2.1.36 "**VAT Act**" means the Value-Added Tax Act, No. 89 of 1991.
- 2.2 The headings to the clauses in this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions of this Agreement.
- 2.3 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day is not a Business Day, in which case the last day shall be the next succeeding Business Day.
- 2.4 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention or the Party supporting the accuracy of the numerals over the words is able to prove, on a balance of probabilities, that the numerals are correct.
- 2.5 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 2.6 The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.

3 APPOINTMENT

- 3.1 The CSIR hereby appoints the Supplier on a non-exclusive basis to provide the Works to CSIR and the Supplier hereby accepts such appointment on the terms and conditions set out herein.
- 3.2 The Supplier specifically acknowledges and agrees that this Agreement does not establish an exclusive arrangement. Moreover, the CSIR is under no obligation to offer the Supplier a minimum number of orders or particular kinds or volumes of the Works and that the CSIR is entitled to engage any other third party to provide all or any of the Works.

4 COMMENCEMENT AND DURATION

- 4.1 This Agreement shall commence on the Commencement Date and shall terminate on the Termination Date, unless terminated earlier as provided for in this Agreement, subject to any Renewal Periods contemplated in the Contract Data (the “**Initial Period**”).
- 4.2 The CSIR shall have an option to extend the duration of the Agreement on the same terms and conditions as set out herein for the duration of the Renewal Period(s), following the expiration of the Initial Period. If the CSIR wishes to exercise such option, it shall do so by delivering a notice in writing to the Supplier at least 1 (one) month prior to the expiry of the Initial Period or the applicable Renewal Period if the Agreement is renewed.
- 4.3 To the extent that either Party has performed any act related to the provision of the Works by the Supplier to the CSIR prior to the Signature Date, such act shall be regulated by the relevant provisions of this Agreement.

5 RELATIONSHIP OF THE PARTIES

- 5.1 Nothing in this Agreement shall be construed as constituting :
- 5.1.1 an employer/employee relationship between the Parties, nor shall it authorise the Supplier to incur any liability whatsoever on behalf of the CSIR, save to the extent expressly provided herein;
- 5.1.2 the Supplier as agent of the CSIR or granting any authority to the Supplier to give any warranties or representations of whatsoever nature on behalf of the CSIR;
- 5.1.3 a partnership, quasi-partnership, joint venture or association of any kind between the Supplier and the CSIR.
- 5.2 The Supplier (including its Designated Employees) shall not be entitled to receive, and the CSIR shall have no obligation to provide, health or life insurance, pension or other benefits, workers compensation or similar payments, nor shall the CSIR be responsible for the payment or withholding of income, employment or other taxes.

6 SUPPLIER’ S OBLIGATIONS IN RESPECT OF THE WORKS

- 6.1 The Supplier confirms that, as at the Commencement Date:
- 6.1.1 no application for its winding up is either pending or threatened;

- 6.1.2 no litigation, arbitration or administrative proceedings are pending or threatened against it which, if adversely determined, would have a detrimental effect upon its financial situation, business activities or its ability to render the Works;
- 6.1.3 it is fully experienced and properly qualified and equipped to perform the class and/or type of work constituting the Works; and
- 6.1.4 it has declared to the CSIR any breaches in its information security that it is aware of and which occurred during the two-year period preceding the Commencement Date, that would require, or have resulted in, notification to the Information Regulator in terms of section 22 of the PoPI Act.
- 6.2 The Supplier, in executing the Works:
- 6.2.1 shall (and shall procure that its Designated Employees, sub-contractors and agents) comply with Applicable Law, the Scope of Work, the terms of this Agreement, and the CSIR's policies that are applicable to the execution of the Works, to be provided to the Supplier on request.;
- 6.2.2 shall, at its own cost, attend such meetings as may reasonably be required by the CSIR from time to time;
- 6.2.3 shall comply with all reasonable instructions and directions in relation to the Works and/or this Agreement issued to the Supplier by the CSIR;
- 6.2.4 shall comply with the security and other applicable regulations and policies of the CSIR as may be in existence in all areas of operation of the CSIR as may be amended from time to time as and when communicated to it;
- 6.2.5 shall be liable for promptly checking and – at its cost - correcting any and all discrepancies, errors and/or omissions in any reports, computer data, drawings, specifications, personal information and/or other documentation originated or supplied by the Supplier and/or its sub-contractors;
- 6.2.6 shall inspect all materials and Works to be incorporated in and/or used for the Goods/Works and/or Services and shall conduct a continuous program of quality control for the Goods/Works and/or Services;
- 6.2.7 shall within seven (7) days of the CSIR's request, furnish it with documentary proof of such disbursements which the CSIR has in writing agreed to reimburse, if applicable;
- 6.2.8 assumes full responsibility for accounting to the appropriate authorities for Income Tax, VAT or any other moneys required to be paid by it in terms of taxation legislation;
- 6.2.9 shall at all times ensure that all Designated Employees are adequately skilled, trained, qualified and certified to carry out the Works; and
- 6.2.10 recognises that the CSIR may, by written notice, require it to replace any of the Designated Employees for any just cause, including, but not limited to, incompetence, misconduct, negligence or any failure to perform in accordance with the provisions of this Agreement and/or which detrimentally affects the CSIR's operations and/or the execution of the Works or any portion thereof in any way.

7 PROVISION OF THE WORKS

- 7.1 The Supplier shall provide the Works to the CSIR in accordance with this Agreement and the Scope of Works, and shall remedy any defects in the Works and/or replace any Goods/Works and/or Services or items of the Goods/Works and/or Services in accordance with the demands of the CSIR.
- 7.2 The Supplier will be responsible for the adequacy, stability and safety of the Works.

8 DEMAND GUARANTEE

- 8.1 The CSIR shall, at its sole discretion, elect whether to call on the Supplier to provide to it the Demand Guarantee, within 10 (ten) Business Days of the Signature Date, or such other time as the CSIR may require, in an amount equal to 10% (ten percent) of the Contract Price.
- 8.2 If the CSIR requires the Supplier to obtain the Demand Guarantee for its proper performance in terms of this Agreement, the Supplier shall, at its cost, obtain and provide to the CSIR the requested guarantee, which shall be valid until such time as the Works have been completed, or this Agreement has been terminated (whichever event is earlier). The terms of the Demand Guarantee shall stipulate that the CSIR will be entitled to claim under the Demand Guarantee in respect of a breach of any of the Supplier's obligations in terms of the Agreement.
- 8.3 In the event of the Demand Guarantee furnished in terms of the Agreement becoming unenforceable for any reason, including the insolvency of the third party issuing the Demand Guarantee, the Supplier will be obliged to procure the issue of a replacement guarantee, which will comply with the provisions of the Agreement.
- 8.4 The Supplier's failure to furnish the Demand Guarantee requested by the CSIR, strictly in accordance with the provisions of this Agreement, shall constitute a material breach of this Agreement, entitling the CSIR to cancel this Agreement forthwith and without notice, whereupon the Supplier shall have no further claim of any nature whatsoever against the CSIR and the CSIR shall be entitled to claim all and any damages it may have suffered as a result of such breach.

9 CHARGES

- 9.1 As consideration for the due, proper and punctual execution of the Works, the CSIR shall pay the Supplier the Charges, subject to the Contract Price.
- 9.2 The Charges shall [be exclusive of VAT] or any other similar locally imposed tax.
- 9.3 In the event that no Adjustment Formula is included in the Agreement, the parties will, 1 (one) month prior to the expiry of the Agreement, negotiate and attempt to agree an adjustment to the rates/prices for the renewal period/s, and in the event that the parties cannot agree, the Agreement will terminate upon expiry of the Initial Period.
- 9.4 The Charges are the total amounts payable by the CSIR to the Supplier in respect of the Works and include all and any further direct and indirect costs (whether foreseeable or not) that the Supplier may incur in the supply of the Works, including, but not limited to, transportation, delivery, storage, insurance, all taxes, duties, clearance charges and the like.

10 INVOICING AND PAYMENT

- 10.1 [On the last day of each month], the Supplier shall deliver original invoices to the CSIR in respect of the Works. The invoice must contain the following minimum information and/or be substantiated by the following documentation
- 10.1.1 amount due in respect of VAT;
 - 10.1.2 the Supplier's VAT registration number;
 - 10.1.3 the CSIR's VAT registration number;
 - 10.1.4 the supplier 's details;
 - 10.1.5 CSIR Clusters / Impact Areas / Research Group and Contact Person;
 - 10.1.6 CSIR's physical address;
 - 10.1.7 order number;
 - 10.1.8 name of project;
 - 10.1.9 tasks completed/deliverable description;
 - 10.1.10 provisional tax number, if applicable;
 - 10.1.11 date of completing relevant task; and
 - 10.1.12 such additional information and/or documentation as the CSIR may reasonably require from time to time.
- 10.2 Payment will take place within [45 (forty-five) days] after receipt by the CSIR of a duly prepared original invoice.
- 10.3 Notwithstanding anything to the contrary contained herein, no payment of the Charges will be made unless the Supplier has complied with all its obligations set out in this Agreement.
- 10.4 All payments shall be made by electronic funds transfer into the Supplier's bank account, initially being the account set out in the Contract Data.
- 10.5 The CSIR may set off any amounts due and payable by the Supplier pursuant to the terms of this Agreement against any amounts payable by the CSIR to the Supplier on any invoice. If the amounts payable by the Supplier to the CSIR exceed the amounts payable by the CSIR to the Supplier pursuant to an outstanding invoice under this Agreement, then, at the CSIR's option, the Supplier shall either issue a credit note for the net amount which the CSIR may set off against any other invoices rendered by the Supplier, or promptly pay the amount to the CSIR.
- 10.6 Payment under Clause 10 (*Invoicing and Payment*) will not constitute a waiver by the CSIR of its rights to subsequently challenge the quality and/or quantity, if applicable, of the Works. Accordingly, no sum paid by the CSIR nor any extension of time for completion of the Works granted by it shall detrimentally affect or prejudice its rights against the Supplier, or relieve the Supplier of its obligations for the due fulfilment of the Agreement, nor shall it be interpreted as approval of the Works or part thereof as executed.

11 DISPUTE OF INVOICES

- 11.1 If an invoice is identified by the CSIR as incorrect, then the Supplier shall, at the CSIR's election: (i) issue a corrected invoice; or (ii) issue a credit note to the CSIR and forthwith refund to the CSIR the overpayment (if any); or (iii) make a correction on the invoice for the month following the month in which the incorrect invoice was issued. If (ii) or (iii) applies the Supplier shall calculate the credit note or invoice correction (as the case may be) on the basis that interest calculated at the Agreement Interest Rate shall accrue in favour of the CSIR for the number of days from the date of the CSIR's payment to the date of the refund (in the case of (ii) and the date of the payment of the corrected invoice (in the case of (iii)) (assuming a 365-day year). The CSIR shall not be liable to pay interest on undercharged amounts, if any.
- 11.2 The CSIR may withhold payment of charges that the CSIR disputes in good faith (or, if the disputed charges have already been paid, the CSIR may withhold an equal amount from a later payment), including disputes in respect of an error in an invoice or an unpaid amount.
- 11.3 If any dispute contemplated in Clause 11.2 is resolved or determined in favour of the Supplier, the CSIR shall pay any amounts withheld in terms of Clause 11.2 to the Supplier, within 30 (thirty) days from date on which the dispute was resolved or determined.

12 DELIVERY AND PACKAGING

- 12.1 The Supplier shall deliver the Works to the CSIR at the Site, or such other place as may be designated by the CSIR in writing from time to time.
- 12.2 On delivery of the Goods/Works and/or Services by the Supplier to the Site, the CSIR shall execute a delivery notice, acknowledging receipt of the Goods/Works and/or Services. The CSIR's signature (or that of its representative) given on any delivery note or other documentation presented for signature in connection with delivery of the Goods/Works and/or Services, is evidence only that certain Goods/Works and/or Services have been received. In particular, it shall not be evidence that the correct quantity of Goods/Works and/or Services has been delivered or that the Goods/Works and/or Services delivered are in good condition or of the correct quality.
- 12.3 The delivery of the Goods/Works and/or Services shall only be deemed to have occurred when the CSIR actually accepts the Goods/Works and/or Services in question and has duly executed an acceptance certificate in respect of the Goods/Works and/or Services.
- 12.4 All Goods/Works and/or Services must be adequately and securely packed in such a manner as to prevent damage in transit.
- 12.5 Unless otherwise stipulated in the Agreement, the Charges will be deemed to include the cost of all packing materials and containers, which will become the property of the CSIR.
- 12.6 The Supplier must identify each and every package, bundle, bag, carton, container or article by means of either suitable labels securely attached thereto or indelible painting thereon, with a description of the Goods/Works and/or Services, name of the Supplier, name of the CSIR, Agreement number, and net mass of contents (where purchased by mass).

13 QUALITY ASSURANCE

- 13.1 The Supplier hereby warrants, represents and undertakes in favour of the CSIR that:

- 13.1.1 it shall execute the Works under this Agreement:
 - 13.1.1.1 in a cost-effective manner and timely manner, the Supplier acknowledging that time is of the essence in terms of the execution of the Works to the CSIR; and
 - 13.1.1.2 in a manner which ensures that the CSIR receives “value for money”,
- 13.2 the Works provided under this Agreement:
 - 13.2.1 conform in all respects with the Scope of Works, and have been manufactured, inspected, tested and supplied in accordance therewith;
 - 13.2.2 comply with Applicable Laws;
 - 13.2.3 are up-to-date and reliable;
 - 13.2.4 comprise new and unused materials of the most suitable grade;
 - 13.2.5 are fit for the purposes for which they are being acquired by the CSIR; and
 - 13.2.6 the workmanship is of the best quality and in accordance with Best Industry Practice.

14 OWNERSHIP AND RISK

- 14.1 The Goods/Works and/or Services supplied shall be and remain at the sole risk of the Supplier and the Supplier shall be responsible for and bear all and any costs whatsoever arising from or in respect of all losses of and damages to such Goods/Works and/or Services and/or destruction thereof, until such Goods/Works and/or Services are supplied to the CSIR, whereupon risk of such loss, damage and/or destruction shall pass to the CSIR.
- 14.2 Ownership of the Goods/Works and/or Services supplied shall pass to the CSIR upon delivery or payment therefor (whichever occurs first), and the Supplier hereby expressly waives any lien or any claim to a lien of any nature, in respect of such Goods/Works and/or Services upon the passing of ownership as aforesaid. Such passing of ownership shall be without prejudice to any right of subsequent rejection of the Goods/Works and/or Services supplied by the CSIR.
- 14.3 Signature of a delivery notice by a representative of the CSIR shall not prevent the CSIR from claiming that the Goods/Works and/or Services were short-supplied, incorrectly supplied or delivered late and all the CSIR's rights in this regard are strictly reserved.
- 14.4 Where the Goods/Works and/or Services or any part thereof are to be supplied by a third party:
 - 14.4.1 the Supplier must ensure that ownership in and to the Goods/Works and/or Services or any part thereof passes to the Supplier from such third party upon delivery to, or upon payment therefor by the CSIR to the Supplier, whichever is the earlier;
 - 14.4.2 the CSIR will not be entitled or obliged, to pay such third party directly in respect of the Goods/Works and/or Services or any item thereof;
 - 14.4.3 where the Supplier is sequestrated or liquidated, and the CSIR has paid the Supplier for the Goods/Works and/or Services or any part thereof at the time of such insolvency or liquidation, but the Supplier has failed to pay the third party in respect thereof, the Supplier indemnifies the CSIR against any claim that can be made by the third party.

15 DELAY DAMAGES

If any Works are not delivered / executed on or before the delivery dates stipulated in the Scope of Works (“**the Delivery Dates**”), or where the Works do not conform in a material respect to the terms of this Agreement, the Supplier shall pay to the CSIR an amount equal to 1,5% (one and a half per centum) of the value of the Works in question, as delay damages for such default, for every day which shall elapse between the Delivery Dates and the dates of actual delivery of the Works in question, subject to a limit equal to 10% (ten per centum) of the value of the Contract Price. The CSIR may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or which become due to the Supplier.

16 HEALTH AND SAFETY PROCEDURES

- 16.1 The Supplier shall, and shall procure that its Designated Employees, subcontractors and agents shall:
- 16.1.1 comply with all the CSIR’s policies, including in particular the safety, health and security policies from time to time;
 - 16.1.2 comply with all Applicable Laws pertaining to health and safety in respect of the Works; and
 - 16.1.3 use Commercially Reasonable Efforts to ensure that the provision of the Works at the Site does not cause any unnecessary obstruction or hazard to the CSIR, its Designated Employees, agents and any third parties.
- 16.2 The Supplier shall consider itself “*Customer*” for the purposes of any Applicable Laws and shall not consider itself under the supervision or management of the CSIR with regard to compliance therewith.
- 16.3 The Supplier shall ensure that all statutory appointments are made and that all appointees fully understand their responsibilities and are trained and competent to execute their duties.
- 16.4 The CSIR shall have the right to: (i) suspend the provision of the Works whenever safety violations or conditions are observed which could jeopardise the well-being of personnel and/or the safety of equipment at the CSIR’s premises; and/or (ii) request that the Supplier immediately attends to the rectification of such safety violation(s). The expense of any suspension of the Works shall be for the Supplier’s account.
- 16.5 The CSIR shall be entitled to terminate this Agreement on 10 (ten) Business Days’ prior written notice if the Supplier fails to correct the observed violation or condition as requested by the CSIR in terms of Clause 16.4.

17 CONFIDENTIALITY

The Receiving Party undertakes and agrees: -

- 17.1 to use the Disclosing Party’s Confidential Information only to give effect to the Disclosing Purpose;
- 17.2 to hold in strict confidence and not to publish or disclose to any unauthorised third parties any of the Confidential Information of the Disclosing Party without the prior written consent of the Disclosing Party;

- 17.3 to use the same degree of care (and in any event not less than reasonable care) to safeguard the confidentiality of the Disclosing Party's Confidential Information that it uses to protect its own information of like kind;
- 17.4 to limit any disclosure of such Confidential Information only to those of its employees and professional advisors who have a specific need –to- know to access such Confidential Information and either entered into a written agreement which impose, or are otherwise bound by the same restrictions as those imposed upon it by virtue of this agreement;
- 17.5 not to disclose or reveal to any third party, whomsoever, either the fact that discussions or negotiations are taking, or have taken, place between the Parties; the content of any such discussions, or other facts relating to the Disclosing Purpose.
- 17.6 The Party receiving the Confidential Information ("**Recipient Party**") shall not be liable to the Party disclosing the Confidential Information ("**Disclosing Party**") for disclosure of Confidential Information received under this Agreement where:
- 17.6.1 such Confidential Information is part of the public domain;
- 17.6.2 such Confidential Information is subsequently lawfully obtained by the Recipient Party from a third party who is established as a lawful source of the information, without breach of this Agreement by the Recipient Party;
- 17.6.3 such Confidential Information was known by the Recipient Party prior to its disclosure by the Disclosing Party and such prior knowledge can be proven by the Recipient Party;
- 17.6.4 the Disclosing Party has provided its prior written consent to the disclosure of such Confidential Information;
- 17.6.5 Confidential Information which the Recipient Party is obliged to disclose in terms of a court order, subpoena , other legal process and/or regulation . (In the event, however, that the Recipient Party is required by legal process to disclose any of the Confidential Information, covered by this Clause 1 (*Confidentiality*), it shall provide the Disclosing Party with prompt notice of such requirement so as to enable the Disclosing Party to seek a protective order or waive compliance with the provisions of this clause. In the event that a protective order or other remedy is obtained, the Recipient Party shall use all reasonable efforts to ensure that only the Confidential Information covered by such order or other remedy is disclosed. Whether or not a protective order or other remedy is obtained or the Disclosing Party has waived compliance with the provisions of this Agreement, the Recipient Party shall take all reasonable steps to ensure that only that portion of the Confidential Information that it is legally required to disclose is so disclosed.)
- 17.6.6 on termination of this agreement, to act with the Disclosing Party's Confidential Information in accordance with a Notice delivered to it by the Disclosing Party, and if no such Notice is delivered to the Recipient, to destroy the Disclosing Party's Confidential Information in a similar manner to which it would destroy its own Confidential Information.
- 17.7 on termination of this agreement, to act with the Disclosing Party's Confidential Information in accordance with a Notice delivered to it by the Disclosing Party, and if no such Notice is delivered to the Recipient, to destroy the Disclosing Party's Confidential Information in a manner prescribed by the law.

18 TAX STATUS OF THE SUPPLIER

- 18.1 The Supplier hereby undertakes in to maintain a Compliant Tax Status for the duration of this Agreement.
- 18.2 The CSIR hereby reserves the right, notwithstanding anything to the contrary contained in this Agreement, to verify the Supplier's tax status from time to time. The Supplier, accordingly, hereby authorises the CSIR to verify the its tax status on the central supplier database or on the SARS' tax compliance status system.

19 B-BBEE STATUS OF SUPPLIER

- 19.1 The Supplier hereby undertakes to maintain a B-BEE contributor status level of not less than its Initial B-BBEE Contributor Status Level for the duration of this Agreement, in acknowledgement of the fact that such rating is fundamental to its engagement by the CSIR. The Supplier undertakes to notify the CSIR immediately if there are any changes to its Initial B-BBEE Contributor Status Level.
- 19.2 The Parties hereby agree that any failure on the part of the Supplier to maintain at least its Initial B-BBEE Contributor Status Level at any time during the term of this Agreement shall constitute a breach of this Agreement, pursuant to which the CSIR may exercise its rights in terms of Clause 29 (*Breach, Termination and Damages*).

20 PROTECTION OF PERSONAL INFORMATION

- 20.1 The Party(ies) undertake(s) to: -
- 20.1.1 comply with the provisions of POPIA as well as all applicable legislation as amended or substituted from time to time;
- 20.1.2 treat all Personal Information strictly as defined within the parameters of POPIA;
- 20.1.3 process Personal Information only in accordance with the consent it was obtained for, for the purpose agreed, any lawful and reasonable written instructions received from the applicable Responsible Party and as permitted by law;
- 20.1.4 process Personal Information in compliance with the requirements of all applicable laws;
- 20.2 secure the integrity and confidentiality of any Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss, damage, unauthorised destruction, access, use, disclosure or any other unlawful processing of Personal Information;
- 20.2.1 not transfer any Personal Information to any third party in a foreign country unless such transfer complies with the relevant provisions of POPIA regarding transborder information flows; and
- 20.2.2 not retain any Personal Information for longer than is necessary for achieving the purpose in terms

of this Agreement or in fulfilment of any other lawful requirement.

- 20.3 The Party(ies) undertake(s) to ensure that all reasonable measures are taken to:
- 20.3.1 identify reasonably foreseeable internal and external risks to the Personal Information in its possession or under its control;
 - 20.3.2 establish and maintain appropriate security safeguards against the identified risks;
 - 20.3.3 regularly verify that the security safeguards are effectively implemented;
 - 20.3.4 ensure that the security safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
 - 20.3.5 provide immediate notification to the Responsible Party if a breach in information security or any other applicable security safeguard occurs; provide immediate notification to the Responsible Party where there are reasonable grounds to believe that the Personal Information has been accessed or acquired by any unauthorised person;
 - 20.3.6 remedy any breach of a security safeguard in the shortest reasonable time and provide the Responsible Party with the details of the breach and, if applicable, the reasonable measures implemented to address the security safeguard breach;
 - 20.3.7 provide immediate notification to the Responsible Party where either party has, or reasonably suspects that, Personal Information has been processed outside of the purpose agreed to or consented to;
 - 20.3.8 provide the Responsible Party, upon request, with all information of any nature whatsoever relating to the processing of the Personal Information for the purpose in terms of this Agreement and any applicable law; and
 - 20.3.9 notify the CSIR, if lawful, of receipt of any request for access to Personal Information, in its possession and relating to the CSIR.
- 20.4 The CSIR reserves the right to inspect the Personal Information processing operations, as well as the technical and organisational information security measures employed by the contracting Party to ensure compliance with the provisions of this Clause.
- 20.5 Upon fulfilment of the obligations to process any Personal Information, the responsible Party shall cease processing such Personal Information and, at the election of the CSIR, return all such Personal Information and any copies thereof to the CSIR or destroy such Personal Information and certify to the CSIR that it has done so, subject to any applicable legislation which requires the responsible

Party to retain such Personal Information.

20.6 The provisions of Clause 4 shall survive the termination of this Agreement, regardless of cause, in perpetuity.

21 INTELLECTUAL PROPERTY

21.1 Intellectual Property

21.1.1 All CSIR Intellectual Property vests exclusively in the CSIR, and shall remain vested exclusively in the CSIR, unless agreed otherwise between the Parties in writing.

21.2 Supplier Intellectual Property

21.2.1 The Supplier will retain ownership of any Intellectual Property developed by it prior to the Commencement Date, and/or outside the scope of the Works, however - to the extent that such Intellectual Property is incorporated into the results or deliverables due hereunder, it hereby grants the CSIR a perpetual, royalty-free, transferable license to use, and sub-licence, such Intellectual Property on a non-exclusive basis.

21.3 Intellectual Property resulting from the performance of the Works

21.3.1 All Intellectual Property resulting from the performance of the Works ("**Works IP**") will be disclosed to and belong to and be the absolute and exclusive property of the CSIR. Insofar as the Works IP does not automatically vest in the CSIR by operation of law, the Supplier hereby makes over and assigns to the CSIR all right, title and interest in and to the Custom IP, which transfer, making over and assignment the CSIR hereby accepts.

21.3.2 The Supplier undertakes that it shall:

21.3.2.1 inform the CSIR, in writing, upon the inception of and/or improvements made to any Intellectual Property;

21.3.2.2 at no time disclose any such Intellectual Property or improvement or any information relating thereto to any unauthorised third party without the prior written consent of the CSIR;

21.3.2.3 furnish the CSIR upon request with such information or assistance in regard to any Intellectual Property or improvement as may be required for the optimum utilisation and application thereof.

21.3.3 The Supplier hereby waives all moral rights in all works which are or may become eligible for copyright under the laws of the Republic of South Africa and which arise directly from or incidental to the Works and shall, to the extent that such moral rights do not, by operation of law, vest in the Supplier, procure the waiver thereof. The Supplier further grants to the CSIR the sole and exclusive right to alter and adapt the copyrighted works for the CSIR's own purposes.

22 INDUSTRIAL ACTION

- 22.1 The Supplier hereby undertakes to the CSIR, to: (i) take all steps necessary to prevent any industrial action, such as strikes, lock-outs and the likes, which may or will impact on the ability of the Designated Employees to execute the Works under this Agreement, from taking place, and where necessary, to resolve, with the prior consultation of the CSIR, such industrial action within a reasonable period; (ii) during the term of this Agreement, to consult with the CSIR before undertaking any negotiations with the Designated Employees, or their representative trade unions, on any matters that may impact the CSIR; and (iii) when called on by the CSIR, to take all steps necessary to assist the CSIR avoid any reputational, operational or financial harm, or any other harm that the CSIR may suffer or incur as a result of, arising from, or connected with any industrial action taken by the Designated Employees, as against the Supplier, or the CSIR, or any lock-outs enforced by the Supplier as against the Designated Employees.
- 22.2 The Supplier hereby indemnifies the CSIR against all and any liability, losses, claims, damages, injury, costs, and/or expenses of any nature that the CSIR may incur as a result of, arising from, or in connection with any omissions, actions, steps or otherwise taken by the Supplier, the Designated Employees, or third parties, in the event of a strike or lock-out.

23 INSURANCE

- 23.1 Without limiting the Supplier's liability in connection with the Agreement or otherwise, the Supplier shall, at its own expense and for the duration of this Agreement, maintain appropriate insurance coverage with a reputable insurer, against all risks of whatsoever nature associated with the discharge of its obligations contemplated in this Agreement, such that the CSIR is adequately insured and will be fully indemnified for any costs, claims or damages which may arise in terms of this Agreement.
- 23.2 The Supplier shall, when called upon, submit to the CSIR:
- 23.2.1 evidence that the insurance described in this clause has been effected; and
- 23.2.2 copies of the policies for the insurances described in this clause.
- 23.3 The Supplier shall comply with the conditions stipulated in each of the insurance policies. The Supplier shall keep the insurers informed of any relevant changes to the performance of its obligations herein and ensure that insurance is maintained in accordance with this clause.
- 23.4 The Supplier shall not make any material alteration to the terms of any insurance policy without the prior approval of the CSIR.
- 23.5 If the Supplier fails to effect and keep in force any of the insurances it is required to effect and maintain under the Agreement, or fails to provide satisfactory evidence and copies of policies in accordance with this sub-clause, the CSIR may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage, pay the premiums due and set-off such payment against amounts payable to the Supplier, or claim such amounts from the Supplier directly.
- 23.6 Nothing in this clause limits the obligations, liabilities or responsibilities of the Supplier under the Agreement or otherwise. Any amount not insured or not recovered from the insurers or any

deductible payable shall be borne by the Supplier in accordance with these obligations, liabilities or responsibilities.

- 23.7 The Supplier shall be liable for any excess payments relating to insurance claims instituted by the CSIR as a result of any loss or damage incurred by the CSIR due to an act or omission (whether intentional, negligent (including gross negligence) or otherwise) on the part of the Supplier.

24 GENERAL WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

24.1 The Supplier hereby warrants, represents and undertakes in favour of the CSIR that, as at the Commencement Date:

24.1.1 it shall execute the Works and all its duties and obligations arising in terms of this Agreement in accordance with: (i) the Best Industry Practice; (ii) the CSIR policies; and (iii) any other standards and directives issued by the CSIR from time to time. Without derogating from the generality of the foregoing, the Supplier shall assign performance of the Works to personnel having the skills, experience and expertise, capacity and knowledge required to render the Works;

24.1.2 it shall not engage in any activities that would detract from the proper performance of its obligations and duties under this Agreement;

24.1.3 it shall use its reasonable endeavours to avoid any material conflict between its interests and those of the CSIR and, where such conflict is unavoidable, will disclose the details of such conflict to the CSIR;

24.1.4 it shall at all times act in good faith and in the best interests of the CSIR in all of its dealings with the CSIR and any third parties;

24.1.5 it shall be adequately and competently staffed to render the Works on the terms of this Agreement;

24.1.6 it shall read and familiarise itself with the CSIR's policies and all other relevant material furnished by the CSIR in regard to rules, procedures and methodologies of the CSIR from time to time;

24.1.7 it has the necessary power and legal capacity to enter into and perform its obligations under this Agreement and all matters contemplated herein;

24.1.8 it has taken all necessary corporate and/or internal action to authorise the execution and performance of this Agreement;

24.1.9 the provisions of the Agreement are and shall remain legally binding on the Supplier and the obligations imposed on it pursuant to this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their terms;

24.1.10 the execution of the Agreement and performance of its obligations hereunder does not and shall not:

24.1.10.1 contravene any Applicable Law; or

24.1.10.2 contravene any provision of its constitutional documents; or

24.1.10.3 conflict with, or result in a breach of any of the terms of, or constitute a default under any agreement or other instrument to which it is a party, or any licence or other authorisation to which it is subject, or by which it or any of its property or revenues are bound,

so as to prevent it from performing its obligations under this Agreement.

- 24.2 The Supplier hereby warrants that all information provided by the Supplier to the CSIR in relation to this Agreement or the Works shall be accurate in all respects.
- 24.3 The Supplier hereby warrants any Goods/Works and/or Services supplied for a period of 12 (twelve) months from the date of delivery of the Goods/Works and/or Services ("**the Warranty Period**") unless the Parties agree otherwise in writing.
- 24.4 Each of the warranties and representations given by the Supplier in terms this Clause 24 (*General Warranties, Representations and Undertakings*) (or elsewhere in this Agreement) shall:
- 24.4.1 be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other word/s in this Agreement;
- 24.4.2 continue and remain in force notwithstanding the completion of the transactions contemplated in the Agreement; and
- 24.4.3 be deemed to be material and to be a material representation inducing the CSIR to enter into this Agreement.
- 24.5 It is recorded and agreed that the CSIR has entered into this Agreement on the strength of the warranties and undertakings it has received from the Supplier and on the basis that such warranties and undertaking will, unless otherwise specifically stated, be correct on the Commencement Date.
- 24.6 A breach by the Supplier of any warranty, representation or other provision of Clause 24 (*General Warranties, Representations and Undertakings*) or any express or implied warranty or representation contained elsewhere in this Agreement, shall be a material breach of this Agreement which shall confer on the CSIR the right, in its sole discretion, to utilise any remedy it may have in law or created in this Agreement for the enforcement of the CSIR's rights, including termination in terms of Clause 29 (*Breach, Termination and Damages*).

25 INDEMNITY

- 25.1 Without prejudice to any of the rights of the CSIR arising from this Agreement, the Supplier hereby indemnifies and holds the CSIR and its directors, servants, employees, agents, advisors, representatives, contractors and any other person for whom the CSIR may be liable in law (each an "**Indemnified Party**") harmless against any and all loss, liability, damage, injury, costs (including attorney-own-client costs), claim, fine, penalty, interest or expense of whatsoever nature or howsoever arising which may be incurred or sustained by, threatened against, or imposed on any Indemnified Party by reason of or pursuant to: (i) the breach by the Supplier (or any of its employees agents, contractors and/or consultants) of any of the provisions of this Agreement; (ii) the breach by the Supplier (or any of its employees, agents, contractors and/or consultants) of any law or legislation which relates to the Supplier's obligations in terms of this Agreement; and (iii) any claim made against the CSIR in respect of any liability, loss, damage, injury, cost or expense sustained by any Indemnified Party or by any third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises as a consequence of a breach or negligent performance or failure or delay in performance by the Supplier of any of its obligations in terms of the Agreement.
- 25.2 The Indemnified Party shall be deemed to have suffered a loss equivalent to the amount of any loss, liability, damage, injury, cost, claim, fine, penalty, interest or expense against which it is indemnified in terms of Clause 25.1 (an "**Indemnified Claim**").

- 25.3 The Indemnified Party shall notify the Supplier in writing of an Indemnified Claim, and the surrounding facts in respect thereof, as soon as is reasonably possible after the Indemnified Party has become aware of such Indemnified Claim, to enable the Supplier to take steps to contest it.
- 25.4 The Supplier shall be entitled within 5 (five) Business Days of the receipt of written notice under Clause 25.3 to elect in writing to contest (which shall include an appeal) an Indemnified Claim in the name of the Indemnified Party and shall be entitled to control the proceedings in regard thereto, provided that the Supplier indemnifies the Indemnified Party against all and any costs (including attorney and own-client-costs) which may be incurred by or awarded against the Indemnified Party as a consequence of the Supplier's defence of the Indemnified Claim. The Indemnified Party shall be entitled to require the Supplier to give reasonable security for the payment of such costs prior to the Supplier taking any steps to contest the Indemnified Claim. If the Indemnified Party and the Supplier are unable to agree upon the nature or amount of such security, the amount shall be determined by –
- 25.4.1 any third party agreed upon by the Indemnified Party and the Supplier within 10 (ten) Business Days of them failing to agree on the amount of the security; and
- 25.4.2 failing agreement of the identity of the third party referred to in Clause 25.4.1, by the Registrar of the High Court of South Africa in accordance with the uniform rules of the High Court of South Africa as soon as reasonably possible after the period in Clause 25.4.1 expires.
- 25.5 The Supplier shall pay to the Indemnified Party the amount of an Indemnified Claim forthwith after receipt of the notification referred to in Clause 25.3 unless the Supplier contests the Indemnified Claim in terms of Clause 25.4, in which case the Supplier shall pay to the Indemnified Party the amount of the Indemnified Claim forthwith after any final judgement or order is granted against the Indemnified Party, provided that in those circumstances where -
- 25.5.1 an Indemnified Claim is contested and despite such contest the Indemnified Claim is payable in law, the Supplier shall pay to the Indemnified Party the amount of the Indemnified Claim as soon as it is payable; and
- 25.5.2 the Supplier does not proceed with the contest of the Indemnified Claim in a diligent manner, the Indemnified Party shall be entitled to require the Supplier to pay the amount of the Indemnified Claim in question in trust to the CSIR's attorneys, pending the outcome of the contest or the Indemnified Party shall be entitled to require the Supplier to give proper and adequate security therefore, and in that event the provisions of Clause 25.4 shall apply *mutatis mutandis*.
- 25.6 Save as expressly provided in this Clause 25 (*Indemnity*), the Indemnified Party will not be obliged to procure that the Supplier contests an Indemnified Claim.
- 25.7 This Clause 25 (*Indemnity*) constitutes a *stipulatio alteri* in favour of each Indemnified Party, which shall be capable of acceptance by any one or more of them at any time.

26 DEFECTS LIABILITY

- 26.1 The Supplier shall, at the request of the CSIR, and on such date and time, as may be agreed to between the Parties in writing (taking into consideration the necessity of any repairs, replacement or remedy to any Goods/Works and/or Services), but in any event, not later than 30 (thirty) days after the CSIR has made such request to the Supplier, at the sole discretion of the CSIR, either:
- 26.1.1 remedy all defects or damages to any Goods/Works and/or Services; or

- 26.1.2 replace any damaged or defective Goods/Works and/or Services; or
- 26.1.3 credit the Supplier for any defective or damaged Goods/Works and/or Services, during the Warranty Period.
- 26.2 All work referred to in this Clause 26 (*Defects Liability*) will be executed by the Supplier at its own cost, unless the necessity for such remedying of defects or damage is due to an act or omission on the part of the CSIR.
- 26.3 If the Supplier fails to remedy any defect or damage or replace any Goods/Works and/or Services or components thereof which require replacement, within a reasonable time, the CSIR may, at its sole discretion carry out the work itself or have the work carried out by others in a reasonable manner and at the Supplier's risk and cost, or replace the Goods/Works and/or Services or components in question.

27 RIGHT TO AUDIT

Upon the written request of the CSIR, the Supplier shall permit an independent, reputable auditing company appointed by the CSIR to have access during normal business hours to the records of the Supplier, as may be reasonably necessary to verify the adherence by the Supplier to the terms of this Agreement for any calendar year ending not more than 24 (twenty four) months prior to the date of such request. Costs for such audit shall be paid by the CSIR, unless the audit has detected a material inaccuracy in the relevant records, in which case the cost of the audit will be for the account of the Supplier.

28 REPORTING

If so required by the CSIR, the Supplier shall submit a written progress report to the CSIR on a frequency to be agreed to by the Parties in Annexure "B".

29 BREACH, TERMINATION AND DAMAGES

- 29.1 Should either of the Parties ("the defaulting Party") commit a breach of any of the terms and conditions of this Agreement, and remain in default for a period of seven (7) days after receipt by it of a written notice from the other Party ("the innocent Party") calling for such breach to be remedied, the innocent Party shall be entitled - without prejudice to any other rights it may have in terms of this Agreement or in law - to cancel this Agreement or claim specific performance, and claim any damages it has suffered or may suffer as a result of such breach, as well as all legal costs incurred by it on the scale as between attorney and own client.
- 29.2 Either Party may terminate this Agreement at any time by giving to the other ("the defaulting Party") notice of such termination if:
- 29.2.1 the defaulting Party is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory liquidation or in business rescue or under receivership or under the equivalent of any of the foregoing;
- 29.2.2 a final and unappeasable judgement against the defaulting Party remains unsatisfied for a period of fourteen (14) days or more after it comes to the notice of the management of the defaulting Party;

- 29.2.3 the defaulting Party makes any arrangement or compromise with its creditors generally, or ceases, or threatens to cease, to carry on business.
- 29.3 The CSIR may at any stage prior to the Termination Date terminate this Agreement for convenience, upon giving the Supplier thirty (30) days' written notice of its intention to so terminate the Agreement.
- 29.4 In the event of a termination of this Agreement under the provisions of Clause 29.3 above, the CSIR's sole liability towards the Supplier shall be for payment in respect of the Works completed and/or approved disbursements incurred up to the effective date of such termination.

30 LIMITATION OF LIABILITY

- 30.1 The CSIR's total liability under this Agreement for all claims brought against it under this Agreement for damages, whether in delict or based on this Agreement, and for all legal, accountancy and other costs, fees and expenses incurred by the Supplier in seeking to enforce its rights in respect of such claims shall not exceed an amount equal to the Contract Price (the "**Cap**"). For the avoidance of doubt, the Supplier shall not be entitled to claim for any amounts in excess of the Cap under this Agreement, save in respect of circumstances where there has been fraud or wilful misconduct or breach of confidentiality and breach under the provisions of PoPIA.
- 30.2 The Parties shall not be liable to each other for any indirect or consequential loss or damage, including, but not limited to, loss of profit, revenue, anticipated savings, business transactions or goodwill.
- 30.3 Nothing in this Agreement shall be construed as relieving the Supplier of its common law duty to mitigate its loss

31 EXCUSED PERFORMANCE

- 31.1 The Supplier shall notify the CSIR upon becoming aware that the Supplier has failed to perform, or is reasonably likely to fail to perform one or more of its obligations under this Agreement (a "Dependency").
- 31.2 The CSIR's failure to perform any of its obligations under this Agreement (including a failure to perform an obligation within the timeframes (if any) required under this Agreement) shall be excused (and consequently the CSIR shall not be liable for any penalties specifically arising thereof) if and to the extent that:
- 31.2.1 such failure by the CSIR would not have occurred but for the Supplier's failure to perform its Dependencies; and
- 31.2.2 such failure by the Supplier directly and materially adversely affects the CSIR's ability to perform under this Agreement.
- 31.3 To the extent any delay in performance by the CSIR is excused under Clause 31.2, the deadlines (if any) for its performance shall be extended for a reasonable period of time as agreed between the Parties to accommodate the delay actually and reasonably caused by the Supplier's failure to perform a Dependency in accordance with this Agreement. To the extent that the CSIR would incur actual costs as a result of such an extension (e.g. accommodation costs, travelling costs, etc.), the Supplier and the CSIR shall cooperate in good faith to ascertain such costs and the Supplier shall reimburse the CSIR for such actual costs incurred.

32 SUBCONTRACTING

- 32.1 The Supplier shall not subcontract (nor permit anyone to perform) any part of the provision of the Works without the CSIR's prior written consent. If the CSIR consents to any subcontracting as aforesaid, then the Supplier shall be deemed to have guaranteed the due, punctual and proper performance of the subcontractor or third party in question and the Supplier shall procure that the subcontractor concerned is bound by the provisions of this Clause 32.1 which shall apply to such subcontractor *mutatis mutandis*.
- 32.2 Notwithstanding anything to the contrary contained in this Agreement, where the Supplier has failed to make payment of any amounts that are due and owing to a subcontractor in respect of the Works, the CSIR will be entitled, but not obliged, to pay such outstanding amounts in whole (or in part) to the subcontractor directly to avoid an interruption to the provision of the Works or any part thereof, and thereafter may elect (in its sole discretion) to either -
- 32.2.1 claim repayment from the Supplier of the amounts paid by the CSIR to the subcontractor; or
- 32.2.2 set-off the amounts paid by the CSIR to the subcontractor against any amounts due by the CSIR to the Supplier in terms of this Agreement.
- 32.3 The Supplier may not sub-contract more than 25% of the value of the Works to any other enterprise/ third party that does not have an equal or higher BBBEE Contributor Status Level than itself, unless the portion of the Works so to be sub-contracted is sub-contracted to an exempted micro enterprise that has the capability and ability to execute such sub-contract. (For purposes of this clause, 'exempted micro enterprise' shall mean any enterprise/third party with an annual turnover of less than R10 million.) The Supplier must ensure that all warranties, guarantees and other undertakings given by the Supplier under this Agreement shall apply equally to any sub-contractor and be enforceable by the CSIR.
- 32.4 The Supplier may not sub-contract the processing of any personal information to any other enterprise / third party that is not contractually bound to treat the personal information in accordance with the POPI Act.
- 32.5 No sub-contracting by the Supplier shall in any manner divest it of its responsibility to comply with its obligations under or in connection with this Agreement and/or for delivery of the Works.

33 GOVERNING LAW

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed and enforced according to and governed by the laws of the Republic of South Africa.

34 DISPUTE RESOLUTION

- 34.1 In recognising the duty under the provisions of Chapter 4 (four) of the Intergovernmental Relations Framework Act, read together with the Practice Guide: Guidelines For Effective Conflict Management, to avoid intergovernmental disputes, the Parties undertake to make every reasonable effort to resolve any such dispute in good faith so as to (i) avoid intergovernmental disputes when exercising their statutory powers or performing their statutory functions; and (ii) settle intergovernmental disputes without resorting to judicial proceedings.
- 34.2 Thus, a Party to this Agreement claiming that a dispute has arisen must within 21 (twenty one) days of the date on which the dispute is said to have arisen, give written notice to the other Parties to the dispute specifying the nature of the dispute.
- 34.3 Within 7 (seven) days of receipt of the notice, representatives of the Parties must meet with each other and endeavour in good faith to settle the dispute by informal negotiations.
- 34.4 If within 14 (fourteen) days of the dispute occurring it has not been resolved through informal negotiations the Parties shall participate in good faith in a mediation conducted by a facilitator appointed for this purpose by the parties or, if they are not able to agree on a facilitator, appointed by a designated third party.
- 34.5 The mediation will be conducted according to the directions of the facilitator and the Parties will respond to all reasonable directions and requests of the facilitator in attempting to resolve the matters in dispute.
- 34.6 In the event that the mediation has not resolved to the dispute within 21 (twenty one) days of its commencement the Parties shall submit the dispute to arbitration to be conducted by an arbitrator appointed for this purpose by the Parties or, if they are not able to agree on an arbitrator, appointed by the designated third party. The arbitrator shall not be the same person who conducted the mediation.
- 34.7 The arbitration shall be conducted according to the directions of the facilitator and the Parties will comply with all reasonable directions and requests of the facilitator. The facilitator will give a reasonable decision, with reasons, which will be binding on the Parties.
- 34.8 The costs of the mediation and arbitration will be shared equally by the Parties, unless directed otherwise by the mediator or arbitrator.

35 DISPUTE RESOLUTION

- 35.1 In the event of a dispute arising from this Agreement, the party declaring such dispute will notify the other party in writing of the existence and nature thereof.
- 35.2 Recognising the duty under the provisions of section 40 (1) of the Intergovernmental Relations Framework Act to avoid intergovernmental disputes, the parties undertake to make every reasonable effort to resolve any such dispute in good faith so as to (i) avoid intergovernmental disputes when exercising their statutory powers or performing their statutory functions; and (ii) settle intergovernmental disputes without resorting to judicial proceedings.
- 35.3 Within ten business Days of receipt of the notification as envisaged under clause [...] above, the parties undertake to, in good faith, meet to seek an amicable resolution to the dispute through

negotiations under the guidance of their respective legal teams, with the view of obtaining such a resolution within the period of a further 15 business days.

- 35.4 In the event of such negotiations failing to resolve the dispute, the dispute will be elevated to a member of each of parties' respective Executive Management or his/her duly designated and authorised representative for mediation purposes.
- 35.5 Should the mediation proceedings fail to resolve the dispute within 15 business days of such referral, either party may declare a formal intergovernmental dispute in accordance with the provisions of section 42 of the Intergovernmental Relations Framework Act.
- 35.6 This clause is a separate, divisible agreement from the rest of this Agreement and shall remain in effect even if the Agreement terminates, is nullified, or cancelled for any reason or cause."

36 DISPUTE RESOLUTION AND ARBITRATION

- 36.1 Should the Parties fail to resolve their dispute with 14 (fourteen) days from the date on which the dispute was declared by either Party, the aggrieved Party may if deems necessary refer the dispute for arbitration as provided for below.
- 36.2 Save in respect of those provisions of this Agreement which provide for their own remedies (such as expert determination), any dispute (including any controversy or claim) which arises in regard to this Agreement, or out of or pursuant to this Agreement (including with respect to the formation, breach, termination or invalidity hereof) (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), and remains unresolved for a period of 14 (fourteen) days after being declared by a Party, shall be submitted to and decided by arbitration in accordance with this Clause **Error! Reference source not found.** (*Arbitration*).
- 36.3 There shall be 1 (one) arbitrator who shall, if the question in issue is:
- 36.3.1 primarily an accounting matter, an independent chartered accountant with suitable experience as a chartered accountant;
- 36.3.2 primarily a legal matter, a practising attorney or advocate with at least 15 years' appropriate experience; or
- 36.3.3 any other matter (including without limitation, technical matters), a suitably qualified person;

or failing agreement by them within 5 (five) days after the arbitration has been demanded, at the request of either of the Parties to the arbitration, shall be nominated by the Arbitration Foundation of Southern Africa, whereupon the Parties to the arbitration shall forthwith appoint such person as the arbitrator. If that person fails or refuses to make the nomination, or if any such office does not exist, either Party to the arbitration may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.

- 36.4 The arbitrator shall, subject to the provisions of this clause, have the sole, fullest and freest discretion with regard to the proceedings, save that the arbitrator shall be obliged to give his/her award in writing fully supported by reasons and shall adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.
- 36.5 The arbitrator shall have the power to give default judgment if either Party to the arbitration fails to make submissions on due date and/or fails to appear at the arbitration.

- 36.6 The arbitrator shall be competent to rule on his/her own jurisdiction, including with respect to the existence or validity of this Clause **Error! Reference source not found.** (*Arbitration*). The arbitrator's authority to determine his/her own jurisdiction does not affect a competent court's authority to determine the arbitrator's jurisdiction, but any application to court on any such matter shall not affect the continuation of the arbitration proceedings, save and to the extent that a court otherwise orders.
- 36.7 The arbitral award shall be final and binding on the Parties to the arbitration.
- 36.8 The Parties to the arbitration shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.

The provisions of this Clause **Error! Reference source not found.** (*Arbitration*) are severable and shall remain in effect even if this Agreement is terminated for any reason.

37 RESTRICTION AND /OR DATABASE OF RESTRICTED SUPPLIERS

- 37.1 In accordance with National Treasury Regulations, CSIR may restrict companies or persons (including shareholders, members, trustees, partners and/or directors) from future business with all organs of state, for a period not exceeding 10 years. No Bid will be awarded to an entity whose name appears on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Supplier.
- 37.2 CSIR reserves the right to withdraw an award, or cancel some or all contracts concluded with a Supplier if it is established, at any time, that they have been restricted with National Treasury by another government institution.
- 37.2.1 This will depend on the seriousness of the misconduct, breach and/or the strategic importance of the Goods/Works and/or Services/Services.
- 37.3 A supplier or contractor to CSIR may not subcontract any portion of the contract to a restricted entity or person/s.
- 37.4 Grounds for such restriction include but are not limited to:
- 37.4.1 Failure to honour an awarded contract, even after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
- 37.4.2 Failure to execute or perform the deliverables (in whole or partially) according to the agreed scope or specification (Poor Performance) or for breaching a condition of the contract;
- 37.4.3 Collusive bidding;
- 37.4.4 Acting in a fraudulent manner;
- 37.4.5 Misrepresentation of facts;
- 37.4.6 Fronting or providing false information regarding B-BBEE status level of contributor, local production and content, or any other matter required in terms of the Preferential Procurement Regulations;
- 37.4.7 Failure to declare sub-contracting arrangements;

- 37.4.8 Offering or giving bribes to CSIR staff.
- 37.4.9 Causing CSIR damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor; and/or
- 37.4.10 Litigating against CSIR in bad faith.

38 KEY PERSONNEL, DOMICILIA AND NOTICES

- 38.1 The Parties assign the responsibility for the co-ordination and implementation of the Agreement to the CSIR Representative and the Supplier Representative respectively. :
- 38.2 Either Party shall be entitled to change its representative by giving written notice of its intention to do so to the other, provided that such change shall not take effect less than 2 (two) Business Days after dispatch of such notice.
- 38.3 The Parties hereby choose as *domicilium citandi et executandi* for all purposes in terms under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), those addresses set out in the Contract Data.
- 38.4 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing, but it shall be competent to give notice by email.
- 38.5 Any Party shall be entitled to change any of the addresses (physical, email, postal or otherwise) chosen as its *domicilium citandi et executandi* to any other address, provided that if that Party changes its physical address, its substituted address must be in South Africa, by giving written notice of its intention to do so to the other Party, provided that such change shall not take effect *vis-à-vis* that addressee on the 10th (tenth) Business Day from the receipt of the notice by the addressee..
- 38.6 All legal notices, including notice of breach to be given by hand by the Parties to each other in terms hereof, shall be given to the aforesaid *domicilium citandi et executandi* by delivery thereto, or if by posting by prepaid registered mail to the above postal addresses.
- 38.7 If a notice to a Party is:
 - 38.7.1 delivered by post, unless and until the contrary is proved, the notice shall be deemed to have been received by the other Party, on the seventh (7th) day after such posting.
 - 38.7.2 delivered by hand to a responsible person during ordinary business hours, at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery;
 - 38.7.3 sent by telefax transmission, unless and until the contrary is proved, the notice shall be deemed to have been received on the date and time of successful transmission confirmed in print; or
 - 38.7.4 sent by email to its chosen email address stipulated in the Contract Data shall be deemed to have been received on the date of despatch (unless the contrary is proved).
- 38.8 Notwithstanding anything to the contrary herein contained, a written notice or communication (including e-mail) actually received by a Party shall (provided that, in the case of a Party that is not a natural person, the notice or communication is actually received by a director or duly authorised representative (in the case of a company), member (in the case of a close corporation) or trustee (in

the case of a trust)) be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

39 FORCE MAJEURE

- 39.1 If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement, including but not limited to, by reason of strike, lock-out, fire, explosion, floods, riot, war, accident, acts of God, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control, pandemics, epidemic, endemic, outbreak, or any other cause or contingency beyond its foreseeable control, the Party so affected shall be relieved of its obligations hereunder during the period that such event and its consequences continue, but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damages either general, special or consequential which the other Party may suffer due to or resulting from such delay or failure, provided always that written notice shall forthwith be given of any such inability to perform by the affected Party by no later than [5 (five)] Business Days after the start of the force majeure event.
- 39.2 For the avoidance of doubt, this Agreement, or the affected part of it, shall be suspended for the period during which the force majeure event continues and the time for performance of an obligation so suspended, shall be extended accordingly. The Party not claiming force majeure shall not be obliged to comply with reciprocal obligations to those obligations suspended in the period during which the force majeure subsists.
- 39.3 Either Party invoking *force majeure* shall, within 5 (five) Business Days of the termination of the *force majeure* event give written notice thereof to the other Party.
- 39.4 An event of *force majeure* will not relieve a party from any obligation which arose before the occurrence of the *force majeure* event.
- 39.5 Should such *force majeure* continue for a period of more than 90 (ninety) days then either Party shall be entitled forthwith to cancel this Agreement in respect of any obligations still to be performed hereunder.

40 GENERAL

- 40.1 This document and its annexures contain the entire agreement between the Parties in regard to the subject matter thereof, and neither Party shall be bound by any undertaking, representation or warranty not recorded herein.
- 40.2 No alteration, variation, addition or agreed cancellation of this Agreement, including this clause shall be of any force or effect unless reduced to writing and signed by the Parties.
- 40.3 No indulgence, leniency or extension of time, which either Party ('the grantor') may grant or show to the other shall operate as a waiver, or shall in any way prejudice or preclude the grantor from exercising any rights or remedies which it would otherwise have.
- 40.4 If any clause or term of this Agreement should be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

- 40.5 The Supplier shall not sell, assign, cede, transfer or hypothecate any of its rights under this Agreement, nor delegate any of its obligations or duties hereunder to any third party, unless such assignment /delegation is approved in advance by the CSIR in writing.
- 40.6 Neither Party is, by virtue of this Agreement, authorised to use the name, logo(s) or trademarks of the other in connection with any advertising, publicity, marketing or promotional materials or activities, or for any other purpose whatsoever, without the prior written consent of the other Party. (For purposes of this clause, the Supplier also recognises that, under the provisions of section 15 (1) of the Merchandise Marks Act, No. 17 of 1941, the use of the abbreviation of the name of the Council for Scientific and Industrial Research, "WNNR" and CSIR, is prohibited in connection with any trade, business, profession or occupation or in connection with a trade mark, mark or trade description applied to Goods/Works and/or Services, other than with the consent of the CSIR.)
- 40.7 Both Parties shall pay their own costs relating to the preparation, negotiation and settlement of this Agreement.
- 40.8 None of the provisions of this Agreement shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.
- 40.9 The provisions of clauses 2(*Interpretation and Definitions*), 17(*Confidentiality*), 20 (*Protection of Personal Information*), 21 (*Intellectual Property and Copyright*), 29(*Breach, Termination and Damages*) and **Error! Reference source not found.**(*Arbitration*) shall survive, in perpetuity, the termination or expiry of this Agreement.

41 EXECUTION IN COUNTERPARTS

- 41.1 This Agreement may be executed in more than one counterpart, each of which shall be deemed to constitute an original and which taken together shall constitute one and the same Agreement.
- 41.2 For the avoidance of doubt, the exchange by the Parties of each Party's respective executed counterpart via email or facsimile shall constitute valid execution of this Agreement.

SIGNED at this day of 20.....

AS WITNESSES:

1.
.....
For the CSIR

2.
.....
Full Names
.....
Capacity (duly authorised)

SIGNED at this day of 20.....

AS WITNESSES:

1.
.....
For the Supplier

2.
.....
Full Names
.....

ANNEXURE "A": CONTRACT DATA

Project Name	
SUPPLIER'S DETAILS	
Supplier's Name	
Supplier's Registration Number	
Supplier's Domicilium Details	Physical Address:
	Telefax Number:
	E-mail:
	Attention:
Supplier's VAT Registration Number	
Tender Reference Number	
Supplier Representative	
SUPPLIER'S B-BBEE CONTRIBUTOR STATUS LEVEL	
Initial B-BBEE Contributor Status Level	
SUPPLIER'S BANKING DETAILS	
Bank	
Branch	
Branch Code	
Account Holder	
Account No.	
Reference	
MATERIAL DATES	
Commencement Date	
Completion Date	
Completion Date and Renewal Period	<ol style="list-style-type: none"> 1. The CSIR shall be entitled to renew the Agreement for a period of 12 months; and 2. thereafter for a further period of 12 months.
CSIR'S DETAILS	
CSIR's Domicilium Details	Physical Address: Meiring Naude Road, Brummeria 0184

	Postal Address: P.O. Box 395, Pretoria, 0001
	Telefax Number: (012) 841 4724
	E-mail Address:
	Attention: Manager: Legal Services: The CSIR
Site Information	Address:
CSIR's Representative	
MISCELLANEOUS	
Contract Price	

ANNEXURE "B" – SCOPE OF WORKS

1 BACKGROUND AND DETAILS OF THE PROJECT

2 SCOPE OF WORK

3 DELIVERABLE SCHEDULE

<u>Milestone/Deliverable</u>	<u>Initiation Date</u>	<u>Completion Date</u>

4 REPORTING

If so required by the CSIR, the Supplier shall submit a written progress report to the CSIR by the on a frequency to be agreed to by the Parties in Annexure "A" executive summary (if required);

- 4.1 activities completed during current reporting period per discipline;
- 4.2 activities in progress during current reporting period per discipline;
- 4.3 activities to be undertaken during next reporting period per discipline;
- 4.4 areas of concern;
- 4.5 updated or revised programme and progress details as described above (if applicable);
- 4.6 recovery plan (when applicable);
- 4.7 man-hour progress including original budget vs actual vs forecast man-hours and cost;
- 4.8 cost report including cash flow forecast;
- 4.9 lists of deviations / variations – claims register and correspondence register; and
- 4.10 actions taken or to be taken to minimise or negate changes.

ANNEXURE "C" – DETAILS OF CHARGES

TABLE 1: GOODS/WORKS AND/OR SERVICES CHARGES

Goods/Works and/or Services	Quantity	Unit Price (ZAR)	Discount Structure	Total Charge	Total Incl. VAT

TABLE 2: CONTRACTED SERVICE CHARGES

Service	Measurement	Rate	Discount Structure	Total Charge	Total Incl. VAT

TABLE 3: ESCALATION OF CHARGES / ADJUSTMENT FORMULA

ESCALATION OF CHARGES