

# General terms and conditions



## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless clearly inconsistent with or otherwise indicated by the context the following words and phrases shall have the meanings assigned to them hereunder and cognate expressions shall bear corresponding meanings:

1.1.1 **"Acceptance Test Procedure"** means the agreed criteria and process of measurement, examination and/or such other activities as set out in the Project Charter, required to verify that the Milestone and/or Deliverable meets the agreed requirements and/or specifications;

1.1.2 **"Agreement"** means the agreement contained in this document and any and all annexures or schedules to this Agreement which annexures and schedules shall form an integral part of this Agreement and to which the provisions, stipulations and conditions of the Agreement shall apply mutatis mutandis. Where there is conflict between any of the provisions, stipulations and conditions of the Agreement and that of any annexure or schedule, the provisions, stipulations and conditions of the Agreement shall take precedence;

1.1.3 **"Bench Time"** means the aggregate time of the MineRP personnel assigned to the performance of any Services under this Agreement and who are affected by a delay occasioned by the Client or a third party acting on behalf of the Client by (i) not providing access to a person, place or item timeously; or (ii) not providing the information required, in the format required; or (iii) not complying with this Agreement; or (iv) in any manner obstructing, hindering or not appropriately facilitating MineRP's performance of its obligations under this Agreement or by any combination of the foregoing;

1.1.4 **"Business Day"** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa, recognised as such under the Public Holiday Act, No. 36 of 1994;

1.1.5 **"Business Hours"** means the hours between 08:00 and 16:30 on any Business Day;

1.1.6 **"Client"** means the client as specified in the proposal. ;

1.1.7 **"Confidential Information"** means any information and data of a confidential or proprietary nature owned by a Party, including but not limited to, technical, business, financial, marketing and commercial information, software programs and source code and all documentation and manuals in respect of such software programs, information related to any service provider(s) of a Party, know-how, trade secrets, the contents of this Agreement, techniques and methodologies and all record bearing media (inclusive of samples) containing or disclosing such information and techniques, which are disclosed pursuant to the provisions of this Agreement;

1.1.8 **"Consultants"** means natural persons who perform Services in whatever capacity (whether they do so as employees, agents, sub-contractors, employees or agents of sub-contractors and/or independent consultants of MineRP);

1.1.9 **"Copyright"** means all rights of copyright whether existing now or in the future in and to MineRP's software including, without limitation, initial drawings, sketches, flow charts and designs and documentation relating thereto except as otherwise agreed in writing by the Parties;

1.1.10 **"Deliverable"** means, as applicable, the specific Service(s),

Equipment or Project(s) to be performed, supplied, or completed under a Statement of Work and/or Purchase Order;

1.1.11 **"Designated Representative"** means the person nominated by a Party to manage that Party's obligations in terms of this Agreement;

1.1.12 **"Equipment"** means, any equipment, product and/or component to be supplied by MineRP to the Client, as described in the relevant Statement of Work and/or Purchase Order;

1.1.13 **"MineRP"** means the company registered as MineRP Holdings (Proprietary) Limited, (Registration Number 2012/019140/07), a private company known as "MineRP" and duly registered and incorporated according to the company laws of the Republic of South Africa;

1.1.14 **"Intellectual Property"** means without limitation, any know-how, patents, Copyright, (including all Copyright in any designs and computer programs), registered design, trademark, service marks, designs, design rights, source codes, inventions and trade secrets, and other intellectual property of a similar character whether registered or capable of registration and all applications and rights to apply for the protection of any of the same anywhere in the world or other industrial or intellectual property, whether registered or not and whether or not capable of being registered and any application for any of the aforementioned;

1.1.15 **"Milestone"** means any milestone or major deliverable that must be reached in providing and/or implementing a Deliverable;

1.1.16 **"Parties"** means the Client and MineRP and "Party" shall mean either of them as the context may indicate;

1.1.17 **"Premises"** means the premises where Services must be rendered and/or Equipment must be supplied, as stipulated in the Statement of Work;

1.1.18 **"Project"** means the supply of Services and/or Equipment to result in a pre-defined final outcome through the achievement of various project milestones as described in the relevant Statement of Work and/or Purchase Order;

1.1.19 **"Project Plan"** means the formal document agreed by the Parties under which MineRP shall carry out the agreed Project within the agreed scope, quality, time, cost and resource constraints set out in the document which shall include among others a mission statement, background information, purpose, benefits, goals, objectives, assumptions and Parties' obligation; It further signifies means the document that describes the procedure for managing the Project, including the times, dates and frequencies of performance measurement or update meetings and the nature and frequency of performance reports in relation to the Project;

1.1.20 **"Project Schedule"** means the itemised outcome of the project plan, focusing on timelines, resources and sequencing of tasks to be performed in the execution of the project;

1.1.21 **"Provider Material"** means any Intellectual Property developed independently and/or owned by the Client as specified in the Statement of Work and/or Purchase Order;

1.1.22 **"Purchase Order"** means the Client's official written purchase order placed with MineRP by the Client for any Deliverable;

1.1.23 **"Service Charges"** means the fee/s which MineRP shall charge the Client in respect of the Services to be provided as more specifically set out in the relevant Statement of Work and/or Purchase Order;

1.1.24 **"Services"** means the services to be rendered by MineRP to the Client, as described in the relevant Statement of Work and/or Purchase Order;

1.1.25 **"Statement of Work or Scope of Work"** means a written recordal of the specific terms agreed between the Parties, signed by or on behalf of both Parties and containing the information contemplated in Clauses 7.2, 8.2 and/or 9.2 below, as the case may be;

1.1.26 **"Steering Committee"** means the steering committee established for a Project;;

1.1.27 **"VAT"** means value-added tax levied in terms of the Value-added Tax Act, No. 89 of 1991, as amended or any other similar tax levied on the supply of goods and/or Services from time to time.

1.2 In this Agreement, (a) any reference to the singular includes the plural and vice versa; (b) any reference to natural persons includes legal persons and vice versa; and (c) any reference to a gender includes the other genders.

1.3 Where any number of days is prescribed in this Agreement same shall be reckoned exclusive of the first and inclusive 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.

1.4 Where appropriate, meanings ascribed to defined words and expressions in clause 1.1, shall impose substantive obligations on the Parties as provided for in the definition concerned.

1.5 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.

1.6 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.

1.7 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

1.8 Terms other than those defined within this Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in the information communication technology industry will be interpreted in accordance with their generally known meanings.

1.9 The use of the word **"including"** or **"includes"** followed by a specified example/examples shall not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule shall not be applied in the interpretation of such general wording or such specific examples.

1.10 The rule of construction that an agreement shall be interpreted against the Party responsible for the drafting or preparation of the agreement, shall not apply.

1.11 If any provision in the definition clause is a substantive provision conferring rights or imposing obligations on a Party, then notwithstanding that such provision is contained in this clause, effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.

1.12 The expiration or termination of this Agreement shall not affect those provisions of this Agreement which 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 the fact that the clauses themselves do not expressly provide for this.

1.13 A law shall be construed as any law (including common or customary law) or statute, constitution, decree, judgement, treaty, regulation, directive, by-law, order or any other legislative measure of any government, local government, statutory of regulatory body or court, as may be amended from time to time.

1.14 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

## 2. COMMENCEMENT AND DURATION

2.1 Unless otherwise cancelled or terminated in terms of any specific clause providing for such cancellation or termination, the Services shall be rendered during the period stipulated in the Statement of Work and /or Purchase Order.

## 3. ACCEPTANCE OF AGREEMENT AND CONFLICTING PROVISIONS

3.1 The provisions contained in this Agreement shall be deemed to have been accepted by the Client, on issuance of the relevant Statement of Work submitted by the Client to MineRP and/or on receipt of a Purchaser Order from the Client and irrespective of whether this Agreement has been signed by the Parties or not. Any terms or conditions, which may be contained in the Client's Statement of Work and/or Purchase Order or other such document(s), shall not be applicable to the Service to be provided by MineRP to the Client resulting from such Statement of Work and/or Purchase Order.

3.2 Should the Client in any way purport to attach any conditions which vary, amend or are in conflict with the provisions of this Agreement then notwithstanding anything to the contrary stipulated by the Client, the provisions of this Agreement shall prevail and be of full force and effect unless specifically agreed by MineRP in writing.

3.3 To the extent that the provisions of this Agreement may conflict with the provisions of any relevant Project Charter, Project Plan, Statement of Work or Purchase Order as the case may be, if it is primarily a technical or commercial conflict, the provisions of the relevant Project Charter, Project Plan, Statement of Work or Purchase Order in question shall take precedence and shall be given effect to accordingly by the Parties to the extent that it is legally possible. To the extent that the conflict is primarily of a legal nature, the provisions of this Agreement shall take precedence and shall be given effect to accordingly by the Parties to the extent that it is legally possible.

## 4. SERVICES

4.1 This clause 4 shall only apply to the Services rendered by MineRP.

4.2 Where MineRP renders the Services to the Client, the following minimum information shall be recorded in the relevant Statement of Work and/or Purchase Order, unless otherwise agreed

4.2.1 the Client's details;

4.2.2 the commencement date and duration of (including a termination date, if applicable) the Services;

4.2.3 a detailed description of the Services, including each Party's responsibilities in terms of this Agreement;

4.2.4 the Business Hours applicable to the Services;

4.2.5 a description of the premises at which the Services will be carried out;

4.2.6 if applicable, a clear description of each Milestone that must be reached in providing the Services, the date by which each Milestone must be reached, as well as the Acceptance Test Procedure that will be applied to verify whether each specific Milestone has been reached;

4.2.7 any agreed service level requirements;

4.2.8 the Service Charges charged by MineRP in respect of the Services;

4.2.9 reporting, monitoring and management requirements (if any); and

4.2.10 a description of the Client's Property.



4.3 All Services shall be performed at the designated premises as stipulated in the Statement of Work and/or the Purchase Order. The Client shall be obliged to grant MineRP access to the Premises to enable MineRP to render the Services.

4.4 Services shall normally be performed during Business Hours only. Services shall only be performed outside Business Hours if: (i) the relevant Statement of Work and/or Purchase Order stipulates for a certain number of hours to be worked outside Business Hours; or (ii) the parties have agreed in writing that a certain number of hours should be worked outside Business Hours and a commensurate Purchase Order has been issued.

4.5 The cost of any overtime worked or travel time and subsistence incurred by MineRP's personnel in the provision of the Services shall be reimbursed by the Client to MineRP in accordance with the agreed procedures and rates as set out in the Project Charter.

4.6 If agreed to between the parties in the Statement of Work and/or Purchase Order, MineRP shall ensure that its personnel keep a detailed daily time sheet in MineRP's standard form.

4.7 All Services shall be performed in adherence to the agreed service levels, if any, prescribed in the Statement of Work and/or Purchase Order and shall in all respects comply at least with acceptable industry standards.

## **5. PROJECTS**

5.1 This clause 5 shall only apply in respect of Projects undertaken by MineRP pursuant to this Agreement. For the avoidance of doubt, where any particular Project also entails the supply of Equipment, the provisions of Clause 6 shall apply and where such Project also entails the licensing, support and maintenance of software, the provisions of Clause 7 shall apply.

5.2 The following information shall be recorded in the relevant Statement of Work and/or Purchase Order, unless otherwise agreed:

5.2.1 the Client's details;

5.2.2 the commencement date and duration of (including a termination date, if applicable) the Project;

5.2.3 a clear description of the Project and the final acceptance procedure that the Project as a whole will have to comply with;

5.2.4 a description of the Premises where the Project will be carried out;

5.2.5 if applicable, a clear description of agreed Milestones that must be reached in implementing the Project, the date by which each Milestone must be reached, as well as the Acceptance Test Procedure that will be applied to verify whether each specific Milestone has been reached;

5.2.6 the Service Charges payable to MineRP in respect of the Project as well as a payment schedule that links progress payments to specific Milestones (if applicable);

5.2.7 a Project Plan ;

5.2.8 a description of the Client's Property; and

5.2.9 the establishment and function of a Project steering committee on which both MineRP and the Client will be represented.

5.3 Any change, modification, variation or amendment (together "Amendments") to the Project Plan shall only be made and be of effect if the procedures to effect such Amendments set out in the Project Charter have been followed by the Parties.

## **6. EQUIPMENT**

6.1 This Clause 6 applies to the supply of Equipment (whether as part of

a Project or linked to the rendering of any Services).

6.2 The following information shall be recorded in the relevant Statement of Work and/or Purchase Order (together with the detail contemplated in Clause 4.2 and/or Clause 5.2 above, if applicable), unless otherwise agreed:

6.2.1 the Client's details;

6.2.2 a clear description of each item of Equipment and part number (if applicable);

6.2.3 the delivery (and, if applicable, installation) particulars;

6.2.4 if the Equipment is being installed, the agreed Milestones that must be reached in installing the Equipment, the date by which each Milestone must be reached, as well as the Acceptance Test Procedure that will be applied to verify whether each Milestone has been reached;

6.2.5 the Service Charges payable by the Client in respect of each item of Equipment;

6.2.6 the point at which the Client will be obliged to make payment of the Service Charges; and

6.2.7 a description of the Client's Property.

6.3 For all Equipment procured from third party suppliers and/or original equipment manufacturers, MineRP shall provide the standard warranty on such Equipment as given by the relevant third party suppliers and/or original equipment manufacturers.

6.4 In addition to the provisions of clauses 6.3, MineRP warrants that unless expressly stated to the contrary in any Statement of Work and/or Purchase Order:

6.4.1 the Equipment shall be new and unused at the time of delivery to the Client; and

6.4.2 the Equipment performs in accordance with the agreed functionality described in the Statement of Work and/or Purchase Order and, if applicable, the attached functional specification.

6.5 Risk in and to the Equipment to be delivered by MineRP to the Client, shall pass to the Client on delivery thereof.

6.6 Ownership in the Equipment shall in all instances remain vested in MineRP until payment in full has been received by MineRP. In no event shall the Client obtain any rights, title and ownership in any Provider Material.

## **7. SOFTWARE LICENCE, SUPPORT AND MAINTENANCE**

7.1 This clause 7 applies to the licensing, support and maintenance of MineRP's software (whether a standalone service, as part of a Project or linked to the rendering of any Services).

7.2 The following information shall be recorded in the relevant Statement of Work and/or Purchase Order (together with the detail contemplated in clauses 4.2, 5.2 and/or 6.2 above, if applicable), unless otherwise agreed:

7.2.1 the Client's details;

7.2.2 a clear description of the software to be licensed;

7.2.3 the Service Charges payable by the Client in respect of the software and related support and maintenance services; and

7.2.4 a description of the Client's Property.

7.3 MineRP and the Client shall enter into MineRP's standard master software licence and technical support agreement in respect of the



licensing, maintenance and support of the Software.

7.4 The Client hereby agrees that all third party software is subject to the following general terms of use:

7.4.1 the Client's right to use the third party software is non-transferable;

7.4.2 the third part software may not be sub-licensed, distributed or sold; and

7.4.3 no part of the third part software may be decompiled, unbundled or copied.

7.5 Should the third part software be subject to its own terms and conditions of use, these conditions will take preference. It shall be the Client's responsibility to acquaint itself with any such terms and conditions and to ensure compliance with the same.

## **8. RESOURCES**

8.1 If the rendering of any Services (whether as part of a Project or otherwise) involves the provision of resources by MineRP to the Client, MineRP shall:

8.1.1 ensure that the resources who perform the Services are appropriately skilled, experienced and qualified to render the specific Services for which they are responsible;

8.1.2 notify the Client in writing and in advance of the names, details, qualifications and responsibilities of each resource who will be accessing the premises (unless the relevant detail is already recorded in the Statement of Work and or Purchase Order);

8.1.3 use its reasonable efforts to ensure that it has adequate staff and contractors available to ensure the uninterrupted supply of Services if any resource becomes ill, goes on leave, leaves the employment of MineRP or is otherwise unable to perform his Services.

8.2 The Client hereby acknowledges that in certain circumstances certain specialist skilled resources required for the performance of the Services may not be immediately available given the specific expertise required for those Services. In such circumstances, MineRP shall source such skilled resources from alternative sources or provide the necessary training to its existing personnel so as to ensure such personnel have the requisite skills and knowledge to perform the Services the cost of which shall be agreed with the Client prior to such sourcing or training by MineRP. In the event that MineRP sources such skilled resources from alternative sources or trains its existing personnel and the Client terminates the Agreement prior to the completion of the Services, the Client shall pay to MineRP all charges, fees and costs paid by MineRP as previously agreed with the Client in respect of that resource associated with sourcing or training that resource plus a penalty of 20% of the Service Charges.

8.3 If necessary, MineRP and the Client shall enter into MineRP's standard provision of resources agreement with respect to the resources.

## **9. SUB-CONTRACTORS**

9.1 MineRP shall be entitled to appoint sub-contractors to perform any of its obligations set out in the relevant Statement of Work and/or Purchase Order.

## **10. PRICE AND PAYMENT TERMS**

10.1 Unless otherwise agreed in the Project Charter, MineRP shall not commence providing the Services unless an order number is issued by the Client to MineRP for the Services as more particularly described in the Project Charter. The order number will be quoted on all invoices issued by MineRP in respect of the Services provided to the Client. In the event that the Client's internal processes does not permit it to issue such an order number then on signature of the Project Charter the Project Charter number will be treated by MineRP as an order number.

10.2 The Client shall make payment of the Service Charges to MineRP in respect of the Services rendered within 30 (thirty) days from date of invoice.

10.3 Unless otherwise stipulated, all charges stipulated in this Agreement shall exclude VAT. The Client shall pay the charges for the Services, together with VAT thereon, to MineRP in terms of the provisions of this clause 10.

10.4 Payment shall be made free of deduction, set-off or bank exchange by electronic transfer or by such other means as agreed into the bank account of MineRP. The banking details of MineRP are as follows:-

<b>Account Name</b>	MineRP Holdings (Pty) Ltd
<b>Bank</b>	ABSA Bank
<b>Branch</b>	CIBW Pretoria (Corporate Investment Bank and Wealth)
<b>Branch code</b>	63 20 05
<b>Account number</b>	40-7977-8953
<b>Account Type</b>	Current
<b>Swift Code</b>	ABSA ZA JJ

10.5 In the event that the Client disputes any amount invoiced by MineRP, the Client shall notify MineRP within 5 (five) Business Days from the date of receipt of the invoice of the amount invoiced that it so disputes. MineRP shall investigate the claim and should it be determined that the Client has a valid claim, a credit note shall be issued by MineRP within 1 (one) week of receipt of such claim. In the event of any dispute in this regard, the matter shall be referred to the chief executive officers of each of the Parties respectively (or their nominated representatives) for joint determination. If the chief executive officers are unable to resolve this matter within 14 (fourteen) days of it being referred to them, such dispute shall be referred to an independent practicing chartered accountant of not less than 5 (five) years standing for determination who shall act as an expert and not as an arbitrator and whose decision shall be final and binding on the Parties.

10.6 On determination of the dispute, any amount found owing by the Client to MineRP shall be paid by the Client to MineRP forthwith.

10.7 For the avoidance of doubt, that in the event of any dispute arising in respect of any invoice, the Client shall only withhold payment of the amount forming the subject matter of the dispute in the invoice concerned and shall pay the amount not in dispute on the due date therefore.

10.8 The Client shall be liable for payment of the lesser of the statutory maximum or 2% interest per month pro-rated on the overdue amount of any invoice.

10.9 Insofar as MineRP is unable to perform any Services in terms of this Agreement due to an act or omission of the Client or any third party under the Client's control all costs incurred by MineRP as a result thereof will be borne by the Client.

10.10 If any MineRP personnel are required to travel in order to perform the Services, and the cost of such travel has not been included in the Statement of Work and/or Purchase Order, MineRP shall be entitled to recover from the Client in accordance with the MineRP's then current travel policy and provided MineRP had obtained the Client's prior written approval to incur such travel costs.

## **11. OCCUPATIONAL HEALTH AND SAFETY**

11.1 The Client shall make available to MineRP copies of all safety, security, emergency, evacuation and health policies, rules and regulations



pertaining to the Client's premises.

11.2 MineRP shall ensure that all relevant MineRP personnel are aware of the contents of such policies, rules and regulations and adhere to such policies, rules and regulations.

11.3 MineRP shall at all times comply with the applicable provisions of the Occupational Health and Safety Act, No. 85 of 1993 ("OHSA") and to the extent applicable, with the provisions of the Mine Health and Safety Act, No. 29 of 1996.

11.4 If applicable, and unless otherwise agreed, MineRP shall supply all personal protective equipment and clothing, and other safety measures and equipment, as may be necessary in the circumstances in order to protect its personnel while they are at the Client's premises and all equipment, tools and materials brought onto the Client's premises for use by MineRP's personnel are in good working order and meet the requirements contemplated in the OHSA.

## **12. BENCH TIME**

12.1 Unless otherwise agreed in the Project Charter, the Client shall give MineRP 2 weeks' prior written notice if the possibility of Bench Time is foreseen. If the period of the Bench Time exceeds 2 weeks, MineRP may elect to initiate a Project freeze and shall re-allocate the MineRP personnel assigned to the Client. At the end of the Project freeze period, the Parties shall revise the existing Project Plan and agree in writing a revised Project Plan. The MineRP personnel assigned to the Client shall be re-deployed to the Client based on the agreed revised Project Plan and subject to their respective availabilities. If the foregoing conditions are not met and Bench Time is incurred at any time between the Project start and end dates, the Client shall be liable to pay 80 percent of the rates for the agreed MineRP personnel for the duration of the Bench Time.

12.2 Should MineRP elect not to impose a Project freeze then the Client shall be liable to pay 80 percent of the rates for the agreed MineRP personnel for the duration of the Bench Time.

12.3 Unless otherwise agreed in the Project Charter, in the event of any delay caused by the Client resulting in Bench Time, the Client acknowledges that it shall be solely responsible for reimbursing MineRP for such Bench Time. The reimbursement rate payable by the Client shall be 80 percent of the rates for the agreed personnel for the duration of the Bench Time. The charges for Bench Time incurred shall be payable by the Client within 30 (thirty) days from the date of MineRP's invoice for such Bench Time incurred

## **13. CONFIDENTIALITY**

13.1 None of the Confidential Information exchanged between the Parties pursuant to the Agreement shall be distributed, disclosed or disseminated in any way or form by the receiving Party to anyone except its own employees who have a reasonable need to know such Confidential Information, which shall remain the property of the disclosing Party.

13.2 The receiving Party shall treat Confidential Information with the same degree of care to avoid disclosure to any third party as is used with respect to the receiving Party's own information of like importance, which is to be kept confidential.

13.3 The obligations referred to in clauses 13.1 and 13.2 shall not apply, however, to any information which the receiving Party can demonstrate, is already in the public domain or becomes available to the public through no breach by the receiving Party; and/or was rightfully in the receiving Party's possession without obligation of confidentiality prior to receipt from the disclosing Party as proven by its written records; and/or can be proved to have been rightfully received by the receiving Party from a third party without obligation of confidentiality; and/or is independently developed by the receiving Party as proven by its written records; and/or is approved for release with prior written consent of the disclosing Party; and/or is required to be disclosed in order to comply with a judicial order or decree, provided the receiving Party has given the disclosing Party written notice of such request such that the disclosing Party has an

opportunity to defend, limit or protect such disclosure.

13.4 Nothing in this Agreement shall preclude MineRP from working with third parties, including sub-contractors, on developing products and Services similar to the products and Services contemplated in this Agreement. Subject to each party's obligations with respect to Confidential Information, either party may use any general learning, skills, or know-how or other Residual Information ("Residuals") for any purpose, provided that this right to Residuals does not represent a licence under any patents, copyrights or other intellectual property rights of the other party. For the purposes of this clause, "Residual Information" means any information retained in the unaided memory of any MineRP personnel who had access to the Client's Confidential Information.

13.5 The rights and obligations in terms of this clause 13 are divisible from the rest of the Agreement and shall remain of full force and effect notwithstanding termination of the Agreement for any reason whatsoever and shall continue to be effective for a period of 5 (five) years from the date of termination of the Agreement.

## **14. PUBLICITY**

Notwithstanding the provisions of clause 13, the Client hereby permits MineRP to make any public statement or comment in respect of business deals actually awarded to MineRP by the Client without first obtaining the Client's prior consent.

## **15. INTELLECTUAL PROPERTY RIGHTS**

15.1 All Intellectual Property Rights including, but not limited to, software, materials, copyright, trademarks, trade names, registered design, service marks, patent rights, trade secrets and know how or other industrial or Intellectual Property rights relating to any products owned by a Party, its agents, vendors, suppliers and/or subcontractors, and the software used to implement such products, shall at all times remain the sole property of such Party, its agents, vendors, suppliers and/or subcontractors.

15.2 Notwithstanding anything to the contrary contained herein, a Party shall not acquire any right, title or interest in and to any software, derivative works, trade secrets, copyright, patents and other intellectual proprietary rights of the other Party or the other Party's agents, vendors, suppliers and/or subcontractors to which it is granted use and/or access in terms of or for the purposes of this Agreement.

15.3 Neither Party shall in any manner alter, use or effect the display of the respective Intellectual Property rights (and disclaimers) of the other Party, its agents, vendors, suppliers and/or subcontractors, without the prior written approval of the other Party, vendor, supplier or subcontractor or permit any other person to use or sub-license such Intellectual Property rights.

15.4 All right, title and interest in and to any new invention, discovery, customization or improvement and all derivative or adoptive developments and materials in terms of or pursuant to this Agreement by MineRP or MineRP's agents, vendors, suppliers and/or subcontractors (including all Intellectual Property rights relating to such developments), shall vest in MineRP. Neither Party shall represent to any third party that it has any right, title and interest in and to any such intellectual property.

15.5 All documentation provided by MineRP to the Client in the performance of the Services and which is proprietary and confidential to a third party shall remain the property of such third party.

## **16. CLIENT'S TOOLS AND PROPERTY**

16.1 Materials, including without limitation designs, documentation, data, Provider Material or other property, furnished to MineRP by the Client or paid for by the Client in connection with this Agreement (collectively "Client's Property") shall be kept to the extent possible separate from other materials, tools or property of MineRP or held by MineRP.

16.2 MineRP shall use its best efforts to maintain and protect the Client's Property until it is returned to the Client. Upon the Client's request or



upon termination of this Agreement, MineRP shall deliver all of the Client's Property to the Client in good conditions, normal wear and tear excepted, at the Client's expense. In the event of non-payment by the Client, the Client hereby agrees that MineRP has the right to withhold the Client's Property until any outstanding payments are paid in full by the Client.

#### **17. MineRP EQUIPMENT**

17.1 MineRP shall retain ownership of the MineRP Equipment and nothing in this Agreement shall transfer ownership thereof or be deemed to transfer such ownership. In the event where the premises where the MineRP Equipment is stored or utilised belongs to a party other than the Client, the Client undertakes to advise the owner of the premises of the presence of the MineRP Equipment and, more particularly, the retention of ownership in the MineRP Equipment by MineRP to the exclusion of the landlord's lien. The Client agrees that MineRP shall be entitled to receive the landlord's details from the Client in order to enable MineRP to advise the landlord of MineRP's reservation of ownership should MineRP wish to do so.

17.2 MineRP shall at all times be and remain the owner of the MineRP Equipment. It is the intention of the Parties that the MineRP Equipment is and shall at all times remain movable. Where the MineRP Equipment has been installed in any manner whatsoever at the Premises or any other premises, the Parties agree that the MineRP Equipment shall not become part of the Premises or any other Premises by operation of accession and the Client shall procure and furnish to MineRP a written waiver of accession from any person(s) onto whose property the MineRP Equipment has been placed or attached. MineRP shall at all times retain the right to remove the MineRP Equipment from the Premises or any other Premises.

17.3 For the purposes of this clause 17, "MineRP Equipment" means all apparatus, machinery, facilities, materials and other things of whatsoever nature required to carry out the Services but excludes Equipment or Client's Property.

#### **18. FORCE MAJEURE**

18.1 Neither Party shall be liable for any failure to fulfil any of their obligations under this Agreement insofar as such failure is due to force majeure, for which purpose force majeure shall include but not be limited to all events beyond the control of the Party claiming force majeure which cannot be foreseen, or if foreseeable cannot reasonably be avoided, which occur after the Effective Date and that prevents or hinders the carrying out of the obligations of the Party claiming force majeure, and without limitation shall include acts of God (the elements), acts of nature, war (whether declared or not), blockage, embargo, boycott, revolution, invasion, insurrection, riot, civil commotion, mob violence, sabotage, strikes, lock-outs, epidemics, quarantine or other reasons.

18.2 The Party affected by the force majeure ("Affected Party") shall notify the other Party, within 5 (five) Business Days from the date on which the occurrence or expected occurrence of the force majeure comes to the notice of the Affected Party and provided that the Affected Party is able to provide such notice of the force majeure event and the nature, extent and anticipated duration of the force majeure. If the Affected Party fails to notify the other Party as aforesaid, the Affected Party shall not be entitled to rely on the force majeure provision in this document.

18.3 The Affected Party shall use its best endeavours to obviate or remove the results of the force majeure in the shortest time practicable and shall, in any event, not refrain from the due performance in terms of the Agreement of such of its obligations as may remain unaffected by the force majeure.

18.4 The performance of the obligations of the Affected Party shall, subject to clause 17.5, be suspended for the duration of the force majeure, which shall be deemed to commence only upon the date of written notice by the Affected Party to the other Party. Upon cessation of the force majeure, this Agreement shall again become fully operative and the Affected Party shall immediately resume its performance.

18.5 If the suspension of performance continues for more than 30 (thirty) consecutive days, then either Party may summarily terminate this Agreement by written notice to the other Party, prior to the cessation of the force majeure, but the non-affected Party shall not be entitled to claim damages against the Affected Party as a result of the delay or failure in the performance of any obligations arising from this Agreement due to or resulting from the force majeure.

#### **19. WARRANTY**

19.1 The Parties warrant to each other that they have and shall in future comply at its own expense with all laws, regulations, by-laws and requirements of local or other authorities relating to this Agreement.

19.2 Save as is specifically mentioned to the contrary in this Agreement, no other representations or warranties have been made or given by either Party to the other and each of the Parties acknowledges and declares that they have entered into this Agreement without relying in any way upon any representations made by or on behalf of the other Party, save only to the extent that such representations are repeated and incorporated in this Agreement as express terms.

#### **20. NON-SOLICITATION**

20.1 The Client shall not, for the duration of this Agreement and for a period of 12 (twelve) months from the termination of this Agreement, for any reason whatsoever, either for the Client or as agent for any concern in which the Client has an involvement or as a representative of any other party and whether directly or indirectly employ and/or solicit to employ, induce or procure any MineRP employee or contractor to terminate his/her employment or contract with MineRP, and/or to become employed or associated with the Client or any other concern, including without limitation any concern in which the Client has an involvement, whether directly or indirectly through any third party.

20.2 Should the Client be in breach of the provisions of clause 19.1, the Client shall pay to MineRP within 30 (thirty) days of receipt of notice to that effect, an amount equal to 40 (forty) percent of the individual's total annual cost to company or such other fee as the Parties may otherwise agree in writing, by way of compensation for the cost of recruitment and training associated with the replacement of such individual.

#### **21. RELATIONSHIP OF THE PARTIES**

21.1 The relationship of the Parties shall be governed by the terms of this Agreement and nothing contained in this Agreement shall be deemed to constitute a partnership, joint venture or the like or agency or employer employee relationship between them. Neither Party shall by reason of the actions of the other Party incur any liability on behalf of the other Party or in any way pledge or purport to pledge the other Party's credit or assets or incur any personal liability as a co-partner to any third party and neither Party shall be entitled to represent or hold out to any third party that the relationship between the Parties is that of a partnership, joint venture or the like as aforesaid.

#### **22. LIMITATION OF LIABILITY**

22.1 Notwithstanding any other stipulation to the contrary contained in this Agreement, neither Party shall be liable for any indirect, special, incidental or consequential damages of any kind whether caused contractually or delictually and whether caused directly or indirectly.

22.2 The Client agrees that the total amount of MineRP's liability to the Client in any way arising out of the performance of the Services and whether in contract, delict or breach of statutory duty or other otherwise shall during the terms of this Agreement not exceed in aggregate an amount equal to the aggregate amount paid by the Client to MineRP as Service Charges.

22.3 A Party shall not be liable for damages, losses or claims in respect of its failure to perform its obligations in terms of this Agreement to the extent that such failure is due to any default or omission by any other third party not under the direction or control of such Party.



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22.4 The above sets out the Client's exclusive remedies and MineRP's entire liability howsoever arising in respect of any Services provided or agreed to be provided hereunder.

### **23. BREACH**

23.1 Should any Party ("Defaulting Party") commit a breach of any provision of this Agreement and fail to remedy such breach within 14 (fourteen) days of receiving written notice from the other Party ("Aggrieved Party") requiring the Defaulting Party to do so, then the Aggrieved Party shall be entitled, without prejudice to its other rights in law, to claim specific performance of all of the Defaulting Party's obligations whether or not due for performance or to cancel this Agreement, in either event without prejudice to the Aggrieved Party's right to claim damages.

23.2 Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision.

23.3 The rights to terminate this Agreement given by this clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

### **24. TERMINATION**

24.1 The Client may, at any time, give written notice to terminate a Statement of Work for a Minor Enhancement or Project. For an assignment planned to exceed three months, notice shall not be less than one month prior to the date of termination; for an assignment of less than three month's duration, notice shall not be less than two weeks prior to the date of termination;

24.2 Upon notice of termination, the MineRP may be requested, at any time during the notice period, to cease any work that is in progress and submit such deliverables to the Client as may be completed at that time. MineRP will return all materials provided by the Client or products created by MineRP during the performance of the Project services and paid for by the Client;

24.3 In the absence of specific termination clauses included in the agreed Work Request for a particular Project or Minor Enhancement, the client will only pay for work delivered or fir resources committed to the assignment up until the date of project termination, which MineRP is unable to allocate elsewhere at a similar margin or to terminate, without prejudice, prior to the date of termination.

24.4 Termination of a Project or Services does not affect the overall implementation of other agreements nor cause the provisions of larger contracts of which this engagement might be a part or outcome to be unilaterally applied;

24.5 On termination, expiration or cancellation of this Agreement, the Parties shall immediately return to the other Party all of the other Party's Confidential Information and records and property and all information including any material contained in any electronic retrieval system or database obtained by a Party from the other Party directly or indirectly, whether in tangible or intangible form and as a result of this Agreement which a Party may have in its possession or under its control.

### **25. DISPUTE RESOLUTION**

25.1 Any dispute which may arise between the Parties shall first be determined at the level of the Designated Representatives. If the dispute cannot be resolved within 7 (seven) days of such dispute being referred to the Designated Representatives, it shall be referred for determination to the chief executive officers of the Parties respectively (or their nominated representatives) for joint determination and if the dispute cannot be resolved amongst them within 7 (seven) days of such dispute being referred to them then it shall be referred for determination in accordance with the provisions of the remainder of this clause 24.

25.2 Notwithstanding clause 22.1, save in respect of those provisions of the Agreement which provide for their own remedies which would be

incompatible with arbitration, a dispute which arises in regard to: the interpretation of; the carrying into effect of; any of the Parties' rights and obligations arising from; the termination or purported termination of or arising from the termination of or the rectification or proposed rectification of this Agreement, or out of or pursuant to this Agreement, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), shall be submitted to and decided by arbitration.

25.3 That arbitration shall be held with only the Parties and their representatives present in Johannesburg, South Africa.

25.4 It is the intention that the arbitration shall, where possible, be held and concluded in 21 Business Days after it has been demanded. The Parties shall use their best endeavours to procure the expeditious completion of the arbitration.

25.5 Save as expressly provided in this Agreement to the contrary, the arbitration shall be subject to the arbitration legislation for the time being in force in South Africa.

25.6 The arbitrator shall be an impartial admitted attorney whether practising or non-practising of not less than 15 (fifteen) years standing appointed by the Parties or, failing agreement by the Parties within 10 (ten) days after the arbitration has been demanded, at the request of any of the Parties shall be nominated by the President for the time being of the Law Society of the Northern Provinces (or its successor body in Gauteng). If that person fails or refuses to make the nomination, any Party 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.

25.7 The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.

25.8 The arbitrator shall be obliged to give his award in writing fully supported by reasons, unless otherwise mutually agreed to by the Parties in writing.

25.9 The provisions of this clause are severable from the rest of this Agreement and shall remain in effect even if this agreement is terminated for any reason.

25.10 The arbitrator shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration.

### **26. NOTICES**

26.1 Any notice to be served on either Party by the other Party shall be delivered by hand or sent by prepared recorded delivery or registered post to the address of the relevant Party shown on the cover page of this Agreement or by facsimile transmission and shall be deemed to have been duly received by the addressee on the date of delivery received by the addressee if delivered by hand or within seventy-two (72) hours of posting or twenty-four (24) hours if sent by facsimile transmission to the correct facsimile number of the addressee (with correct answerback).

26.2 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of telex or facsimile transmission shall be adequate written notice or communication to such Party.

### **27. MISCELLANEOUS**

27.1 Save as is specifically mentioned to the contrary in this Agreement, no other representations or warranties have been made or given by either Party to the other and each of the Parties acknowledges and declares that they have entered into this Agreement without relying in any way upon any representations made by or on behalf of the other Party, save only to the extent that such representations are repeated and incorporated in this Agreement as express terms.



27.2 MineRP represents that it has taken out sufficient civil and professional insurance with a first rank insurance company to cover bodily injury and property damages arising out of or relating to the performance of the Services under this Agreement that are directly ascribable to MineRP and MineRP's personnel.

27.3 This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreement, representations or warranties between the Parties other than those set out herein are binding on the Parties. This Agreement supersedes any prior oral or written agreements, commitments, proposals, quotations, understandings or communications with respect to the subject matter of this Agreement.

27.4 Neither Party is entitled to cede, delegate, assign or in any other manner dispose of any of its rights or obligations in terms of this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

27.5 Each Party warrants to the other Parties that it has power, authority and legal right to sign and perform this Agreement and that this Agreement has been duly Authorised by all necessary actions of its directors and constitutes valid and binding obligations on it in accordance with the terms of this Agreement. Each person signing this Agreement for and on behalf of a Party hereto hereby warrants in his personal capacity that he is duly authorised by such Party to do so.

27.6 No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives. For the purposes hereof, a "written document" shall exclude any written document that is in the form, either wholly or partly, of a data message as defined in the Electronic Communications and Transactions Act, 25 of 2002, and "signed" shall mean a signature executed by hand with a pen and without any electronic process or intervention.

27.7 No latitude, extension of time or other indulgence which may be given or allowed by any Party to any other Party in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement; and no single or partial exercise of any right by any Party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this

Agreement, or stop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

27.8 Each Party shall pay its own cost of negotiating, drafting, preparing and implementing this Agreement and any annexures to it.