



UNIVERSITY OF THE
WITWATERSRAND,
JOHANNESBURG

DRAFT

MINOR WORKS AGREEMENT

CORE DRILLING OF BOREHOLE

entered into between and by

THE UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

and

CONTRACTOR DETAILS TO BE INSERTED

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1 PREAMBLE

- 1.1 The University has received funding from the International Continental Scientific Drilling Programme (“ICDP”) for the Bushveld Complex Drilling Project (“Project”) in the eastern limb of the Bushveld Igneous Complex (“BIC”) in South Africa. The Project involves drilling a single borehole up to a maximum depth of 2500m to gather information on the subsurface geology and aims to obtain high-quality core samples of the bushveld complex's critical, lower, and marginal zones to create a continuous vertical stratigraphic profile for scientific purposes.
- 1.2 The University will enter into a separate agreement with the Site Owner which will regulate the relationship including *inter alia* the University's access to the Site for purposes of the Project. The Site Owner is a third-party beneficiary to this Agreement and may enforce the provisions hereof as if it is a party hereto. The Contractor acknowledges, agrees and accepts that the Site Owner is entitled to impose certain conditions and/or obligations relating to the Contractor's access to the Site and provision of the Works.

2 APPOINTMENT

The University appoints the Contractor on a non-exclusive basis, to provide the Works described in Annexure B (Scope of Work). The Contractor accepts the appointment and therefore the Parties agree to bind themselves to the terms and conditions contained in this Agreement.

3 STRUCTURE OF THE AGREEMENT

- 3.1 This Agreement consists of:
- 3.1.1 The Terms and Conditions;
- 3.1.2 Annexure A: Contract Data;
- 3.1.3 Annexure B: Scope of Work; and
- 3.1.4 Annexure C: Pricing Schedule;
- 3.2 In the event of a conflict between the documents comprising this Agreement, such conflict will be resolved in accordance with the order of precedence (in descending order of priority) as follows:
- 3.2.1 In respect of all provisions (except those related to the Works):
- 3.2.1.1 The Terms and Conditions;
- 3.2.1.2 Annexure B: Scope of Work;
- 3.2.1.3 Annexure A: Contract Data; and then
- 3.2.1.4 Annexure C: Pricing Schedule.
- 3.3 In respect of the provisions detailing the Works:
- 3.3.1.1 Annexure B: Scope of Work;
- 3.3.1.2 Annexure C: Pricing Schedule;
- 3.3.1.3 Annexure A: Contract Data, and then
- 3.3.1.4 The Terms and Conditions.

4 INTERPRETATION OF THIS AGREEMENT

- 4.1 Any reference to any legislation is to such legislation as at the Signature Date and as amended, re-enacted, or substituted from time to time thereafter.
- 4.2 No provision of this Agreement constitutes a stipulation for the benefit of any person who is not a Party to this Agreement.
- 4.3 Any provisions of this Agreement which either expressly

or by their nature extend beyond the expiration or termination of this Agreement will survive such expiration or termination.

- 4.4 The Parties agree that the rule of construction that the Agreement will be interpreted against the Party responsible for the drafting of the Agreement, will not apply.
- 4.5 The clause headings in this Agreement have been inserted for convenience only and will not be taken into account in its interpretation.
- 4.6 Whenever this Agreement provides for approvals, consents or expressions of satisfaction by any one of the Parties, that Party may not unreasonably withhold or delay that approval, consent or expression of satisfaction.
- 4.7 At all times, the University and its engagements, including that with the Contractor as set out in this Agreement, are subject to the Rules.

5 DEFINITIONS

In this Agreement the following words have the meanings set out below and derivative words will have corresponding meanings:

- 5.1 “**Acceptance**” or “**Accepted**” or “**Accept**” means, in respect of the Works, confirmation in writing by the University that the agreed phases of the Works described in Annexure B (Scope of Work) have been successfully and correctly completed;
- 5.2 “**Acceptance Criteria**” means the criteria specifically outlined in Annexure B (Scope of Work) in terms of which the Works will be evaluated by the University for purposes of determining Acceptance;
- 5.3 “**Agreement**” means collectively, the:
- 5.3.1 The Terms and Conditions;
- 5.3.2 Annexure A: Contract Data;
- 5.3.3 Annexure B: Scope of Work;
- 5.3.4 Annexure C: Pricing Schedule; and
- 5.3.5 any other Annexures attached hereto;
- 5.4 “**Annexures**” means annexures to this Agreement;
- 5.5 “**Background Intellectual Property**” all Intellectual Property rights in existence before the Commencement Date, as well as Intellectual Property developed by a Party to this Agreement after its commencement and which does not fall within the scope of the definition of Foreground Intellectual Property;
- 5.6 “**Business Day**” means any day which is not a Saturday, Sunday, or official public holiday in the Republic of South Africa in terms of the Public Holidays Act 36 of 1994;
- 5.7 “**Commencement Date**” of this Agreement means the date specified in section 6 of Annexure A (Contract Data), notwithstanding Signature Date;
- 5.8 “**Commercially Reasonable Efforts**” means, with respect to the deliverables, the reasonable efforts used to deliver the deliverables in terms of this Agreement, as expeditiously and as cost-effectively as possible. This excludes:
- 5.8.1 taking any actions that would, individually or in the aggregate, cause the University to incur additional costs, or suffer any other detriment, out of reasonable proportion to the benefits accruing in

	terms of this Agreement;	5.17	"Defects Liability Period" means within a period of 30 (thirty) days from the date of issue of a Rehabilitation certificate/statement issued by the Site Owner, as extended as a result of any rectification works carried out during the Defects Liability Period;
5.8.2	changing the Party's business strategy;		
5.8.3	disposing of any significant assets of the Party;		
5.8.4	taking any action that would violate any law or order to which the Party is subject;	5.18	"Demobilisation Fee" means the expenses incurred to demobilise and to remove the equipment, materials, supplies and the like upon completion of the Works as described in Annexure B (Scope of Work);
5.8.5	disposing of any significant assets of the Party;		
5.8.6	taking any action that would violate any law or order to which the Party is subject;	5.19	"Disbursement" means reasonable out-of-pocket costs and expenses incurred by a Contractor in executing the Works which are:
5.8.7	taking any action that would imperil the Party's existence or solvency; or		
5.8.8	initiating any litigation or any dispute resolution mechanism.	5.19.1	charged to the University at cost price; and
		5.19.2	incidental to the execution of the Works.
5.9	"Completion" means the core drilling of the borehole(s) to the depth specified in the Scope of Work (Annexure B) in a manner that meets the requirements of the Agreement;	5.20	"Documentation" means the documentation, if any, required for the proper and effective use and/or implementation of the Works;
5.10	"Confidential Information" information that:	5.21	"Force Majeure Event" means the result of an act of god, flood, drought, earthquake, or another natural phenomenon; war (declared or undeclared); fire; acts of terrorism; public disaster; governmental enactment, rule, or regulation; or any other cause beyond a Party's reasonable control; excluding industrial action of whatever nature or cause (e.g. strikes, lockouts and similar);
5.10.1	relates to the Disclosing Party's past, present or future research, development, business activities, products, services, technical knowledge, and personal information regarding any person; and		
5.10.2	either has been identified in writing as confidential or is of such a nature (or has been disclosed in such a way) that it should be obvious to the other Party that it is claimed as confidential. (As used herein, the Party disclosing Confidential Information is referred to as the "Disclosing Party" and the Party receiving the Confidential Information is referred to as the "Receiving Party");	5.22	"Foreground Intellectual Property" means Intellectual Property created or developed by a Party in the course and scope, as a result of, and/or for the purpose of this Agreement;
5.11	"Contract Data" means Annexure A (Contract Data) setting out the specific data of this Agreement which is attached to the Terms and Conditions;	5.23	"Goods" means the fit-for-purpose goods described in Annexure B (Scope of Work) and all goods complementary and ancillary thereto to be provided in terms of this Agreement, and where relevant includes any Documentation supplied to aid the use of such goods;
5.12	"Contract Price" means the full amount of fees and Disbursements to be paid by the University to the Contractor for executing the Works, in accordance with the Agreement as set out in Annexure C (Pricing Schedule);	5.24	"Information Technology System(s)" means a Party's information and communication technology systems and services, including but not limited to hardware, servers, software, network, infrastructure, and any transmissions emanating from or entering the aforementioned;
5.13	"Contractor" means the Party detailed in section 5 of Annexure A (Contract Data);	5.25	"Intellectual Property" means intellectual capital embodied in any and all technical and commercial information, whether registered or not, including techniques, specifications and formulae, know-how, systems and processes, methodologies, trade secrets, undisclosed inventions, patents, utility models, trademarks, designs, copyright and plant breeders' rights;
5.14	"Counterfeit Goods" means any material, component, part, assembly, sub-assembly, product, and any other item forming part of the Works in which there is an indication by visual inspection, testing, or other information that it may be a copy or substitute made without legal right or authority or one whose material, performance, identity or characteristics have been misrepresented by the Contractor, manufacturer or a supplier in the Contractors supply chain;	5.26	"Key Personnel" means the Personnel who have the required and necessary skills, expertise, qualifications, knowledge, and experience and who are critical for the successful performance of the Works, as named in section 8 of Annexure A (Contract Data);
5.15	"Data Protection Legislation" means the following legislation:	5.27	"Milestone" means a predefined event or stage that signifies the successful completion and Acceptance of a deliverable and is described in the Scope of Work (Annexure B);
5.15.1	Protection of Personal Information Act 4 of 2013, as amended or substituted; and		
5.15.2	such other legislation that is or may be applicable to the protection of Personal Information in South Africa;	5.28	"Mobilisation Fee" means the expenses incurred to organise, assemble, and transport the equipment and materials to the Site before the commencement of the Works as described in Annexure B (Scope of Work);
5.16	"Defect" means any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defects in the Works, or any aspect of the Works, or the Rehabilitation which is not in accordance with the requirements of the Agreement;	5.29	"Party" or "Parties" means the University or the Contractor individually and collectively, as the context

- dictates;
- 5.30 **"Personal Information"** means all information relating to an identifiable natural or juristic person as defined in the Protection of Personal Information Act 4 of 2013;
- 5.31 **"Personnel"** of a Party includes employees, directors, partners, agents, consultants, associates, contractors, sub-contractors, or other representatives of a Party;
- 5.32 **"Precincts"** means any premises owned by or which fall under the management and control of the University and/or any part thereof;
- 5.33 **"Rehabilitation"** means the restoration of the Site impacted by the Works back to a sustainable usable condition, as described in Annexure B (Scope of Work), and in accordance with the relevant legal framework including any standards and requirements set forth by the Site Owner;
- 5.34 **"Representative"** means the duly authorised person designated as such in section 9 of Annexure A (Contract Data);
- 5.35 **"Rules"** are the rules, regulations policies, procedures, practices and standing orders of the University, as amended from time to time;
- 5.36 **"Scope of Work"** means the detailed scope of work attached to this Agreement as Annexure B (Scope of Work);
- 5.37 **"Services"** means the fit-for-purpose services as described in Annexure B (Scope of Work) and all services complementary and ancillary thereto to be provided in terms of this Agreement, and where relevant includes any Documentation supplied to aid the use and/or implementation of such services;
- 5.38 **"Signature Date"** means the date on which this Agreement is signed by the last Party to do so;
- 5.39 **"Site"** means the area of property designated by the Site Owner at which the Works will be executed as more fully described in Annexure B (Scope of Work);
- 5.40 **"Site Rehabilitation Fee"** means the expenses as described in Annexure B (Scope of Work) for the Rehabilitation of the Site and as quoted in Annexure C (Pricing Schedule);
- 5.41 **"Site Owner"** means the owner of the site as described in Annexure B (Scope of Work);
- 5.42 **"Start Date"** means the date specified in Annexure B (Scope of Work) or Works Program or as otherwise agreed by the Parties in writing as the date upon which the Works will commence;
- 5.43 **"Steering Committee"** means the joint committee established by the Parties as more fully set out in clause 14 to oversee and manage the operational aspects of the Agreement;
- 5.44 **"Termination Date"** means the date specified in section 6 Annexure A (Contract Data) or 30 (thirty) days from the date of issue of a Rehabilitation certificate/statement issued by the Site Owner whichever occurs last;
- 5.45 **"Terms and Conditions"** means these terms and conditions contained in this document;
- 5.46 **"University"** means the University of the Witwatersrand, Johannesburg; a public higher education institution recognised as such in terms of the Higher Education Act 101 of 1997;
- 5.47 **"Works Program"** means a written document setting out the Contractor's timeline for executing the Works as more fully described in Annexure D and subject to clause 33.3 as amended from time to time, and mutually agreed upon in writing by the Parties;
- 5.48 **"Works"** means the works to be executed by the Contractor including the furnishing of equipment labour and the performance of the Services under the direction, supervision and control of the University (inclusive of any Personnel agent, consultant or subcontractor engaged by University to direct drilling operations) as more fully described in Annexure B (Scope of Work);
- 5.49 **"Variation Order"** means an alteration to the Scope of Work (Annexure B), in the form of an addition, substitution or omission, from the Works. These changes will be documented in the prescribed format outlined in Annexure E.; and
- 5.50 **"VAT"** means the value-added tax levied by the South African Revenue Services on the supply of goods and services in terms of the Value Added Tax Act 89 of 1991.
- 6 TERM**
- 6.1 This Agreement commences on the Commencement Date and terminates on the Termination Date unless terminated earlier as provided in this Agreement.
- 6.2 Notwithstanding the provisions of clause 6.1 above, the University may terminate this Agreement on 1 (one) month's written notice to the Contractor.
- 7 COMMENCEMENT AND COMPLETION OF WORKS**
- 7.1 The Works will only commence upon receipt from the Site Owner of all necessary approvals and authorisations, required for access to the Site and commencement of the Works as required by law.
- 7.2 Subject to clause 7.1 and unless otherwise agreed in writing by the Parties, the Contractor must use reasonable efforts to commence the Works on the Start Date and complete the Works on the Termination Date.
- 8 NATURE OF RELATIONSHIP**
- The Contractor will provide the Works to the University as an independent contractor. Nothing in this Agreement will be construed as creating any relationship of agency, employment, partnership, joint venture or similar relationship between the University and the Contractor and no expectation of any renewal of this Agreement is created.
- 9 RESPONSIBILITIES OF THE UNIVERSITY**
- 9.1 The University will, subject to the Rules:
- 9.1.1 provide the Contractor and its Personnel with such access to the Precincts and/or its Information Technology Systems (where applicable) and to the Site as may be reasonably necessary to allow the Contractor to fulfil its obligations in terms of this Agreement;
- 9.1.2 provide all permits, right-of-way, or right of ingress and egress that may be required to allow the Contractor to fulfil its obligations in terms of this Agreement;
- 9.1.3 in consultation with the Site Owner, photograph the Site before the Start Date, at regular intervals during the Works Program, after completion of the Works, and after Rehabilitation. These photographs will be provided to the Contractor;
- 9.1.4 receive information from the Contractor; and

9.1.5	pay the Contractor as provided for in clause 24 of this Agreement.		will be borne by the Contractor.
10	RESPONSIBILITIES OF THE CONTRACTOR	10.2	The Contractor will (and will ensure the same from its Personnel) at all times:
10.1	The Contractor must:	10.2.1	act in accordance with the lawful instructions of the University;
10.1.1	provide the Works which are fit for the purpose required by the University on time, within budget, with reasonable care and skill, and in accordance with Annexure B (Scope of Work);	10.2.2	display in its relationship and interaction with the University, the utmost of good faith;
10.1.2	supply of all required drilling and completion materials, including the maintenance of equipment appropriate stock levels on the applicable drilling unit(s);	10.2.3	not exceed the express or implied limits of the authority in terms of this Agreement;
10.1.3	must maintain a complete record of all activities carried out in terms of this Agreement and must submit the written reports to the University as described in the Scope of Work (Annexure B);	10.2.4	not perform its responsibilities in terms of this Agreement in a manner that would cause the University to be in violation of any applicable laws;
10.1.4	will confirm that the photographs provided by the University, referred to in clause 9.1.3, accurately depict the Site and the specific times specified in the clause. These photographs will be utilised solely for the purpose of Rehabilitation, which has been affected by the Works;	10.2.5	comply with the Rules;
10.1.5	assign Personnel who are sufficiently qualified and competent both in numbers and skill to provide the Works and ensure the due and proper performance of its obligations under this Agreement;	10.2.6	comply with the conditions of use of the Site.
10.1.6	designate a Representative, who will be responsible for liaising with the University's Representative at all times in respect of the provision of the Works and who will supervise the Personnel responsible for the delivery of the Works;	10.2.7	use Commercially Reasonable Efforts not to engage in activities which would detract it from the proper performance of its duties in terms of this Agreement; and
10.1.7	do all that is reasonably necessary within the course and scope of the Agreement to prevent or minimise the risk of loss or damage to University property, including its Information Technology System, the University's reputation and injury to persons;	10.2.8	ensure that it avoids any appointment or circumstances which may result in any conflict between its interests and those of the University.
10.1.8	co-operate and consult with other suppliers of the University, should it be necessary for purposes of ensuring the delivery of the Works in a seamless manner;	10.3	<u>Safety Obligations:</u>
10.1.9	exert all Commercially Reasonable Efforts in the normal course of operations and in the absence of any adverse ground conditions as set out in clause 10.10:	10.3.1	The Contractor must:
10.1.9.1	to free equipment that becomes jammed or stuck;	10.3.1.1	do all things reasonably necessary to ensure that the Works are executed in a manner that is safe and not likely to cause injury or illness to any person; and
10.1.9.2	to investigate any mechanical breakdown of the rig engine or other rig equipment, including but not limited to equipment that is stuck in the hole due to mechanical breakdown or other equipment failure and report its findings to the University as soon as practically possible.	10.3.1.2	perform all relevant functions and fulfil all relevant duties under the Mine Health and Safety Act 29 of 1996 ("MHSA") and where applicable with the Occupational Health and Safety Act 85 of 1993 ("OHSA") required of an employer or otherwise applicable to the role of the Contractor under the Agreement including notification of incidents as may be required under MHSA.
10.1.10	The Parties agree that the time spent, and techniques employed to resolve the issue must be determined in consultation with the University and the University reserves the right to determine when the stuck or jammed equipment is deemed irretrievable, economically unfeasible, and abandoned. If the jammed equipment is deemed unrecoverable under these circumstances, the cost associated with the operation hours spent on freeing such jammed or stuck equipment including but not limited to the equipment left stuck down-hole	10.4	Where any injury, property damage, accident or incident which is notifiable under any legal requirement occurs, the Contractor must:
		10.4.1	as soon as practicable, but in any event within 24 (twenty-four) hours, notify the University in writing of that injury, property damage, accident or incident; and
		10.4.2	provide the University with any further information requested by the University.
		10.5	The Contractor acknowledges that when performing its obligations under the Contract, its Personnel enter the Site they must comply with the applicable occupational health and safety policies and procedures as described in Annexure B (Scope of Work) and as prescribed in terms of the MHSA.
		10.5.1	The University may suspend the whole or part of the performance of the Parties' obligations under the Agreement following any breach by the Contractor of the MHSA or this clause which gives rise to circumstances which:
		10.5.1.1	present an actual or potential risk of life or serious injury; or
		10.5.1.2	are otherwise required to be notified under the MHSA.

10.6	<u>Sustainable Procurement:</u>		otherwise agreed by the University.
10.6.1	The Contractor acknowledges that the University supports ethical and environmentally, socially, and economically sustainable procurement practices, (" Sustainability Objectives ") and acknowledges its support of the Sustainability Objectives.	10.7.1.4	give the University full particulars in writing of the mode, place of manufacture, source of supply and the performance capacities of materials, or other information, about the materials used in executing the Works, where the University makes a request in writing (acting reasonably) for such particulars or information.
10.6.2	The Contractor agrees to use reasonable endeavours to conduct its business and supply the Goods and/or Services in a manner which seeks to support the Sustainability Objectives, which endeavours may include:	10.7.1.5	ensure that the equipment, plant, materials, and supplies:
10.6.2.1	preparing and implementing policies to seek to support the Sustainability Objectives, including providing training to its Personnel regarding such policies;	10.7.1.5.1	is not damaged in any way;
10.6.2.2	implementing practices which seek to reduce the environmental impact of the Contractor's activities, including but not limited to:	10.7.1.6	at all times including during construction and dismantling, complies with all applicable safety regulations and legislation and has been inspected for safety and technical purposes by a duly qualified person;
10.6.2.2.1	reducing emissions;	10.7.1.7	is insured and protected from damage. The University will not be liable for any loss or damage, howsoever arising, of the equipment utilised by the Contractor or anyone acting for or on its behalf at the Site or in transit from or to the Site.
10.6.2.2.2	adopting greener energy solutions;	10.7.1.8	The Contractor will at all times be liable and responsible for and agrees to defend, indemnify and hold the University harmless from damage to or destruction of the Contractor's equipment, plant, materials, and supplies regardless of how such damage or destruction occurs.
10.6.2.2.3	adopting environmentally sustainable design; and		
10.6.2.2.4	reducing wastage.		
10.6.2.3	providing employment or training opportunities to individuals with a disability or experiencing disadvantage;		
10.6.2.4	supporting local community groups and local community development initiatives;	10.8	<u>Security:</u>
10.6.2.5	promoting fair workplace practices;	10.8.1	The Contractor will comply with any reasonable security requirements of the Site Owner as may be required for the execution of the Works. The Contractor will be responsible for providing any additional security services as determined by the Site Owner, subject to the pricing outlined in Annexure C (Pricing Schedule).
10.6.2.6	promoting workplace health;		
10.6.2.7	using services and purchasing products that are efficient to operate and have low operating and maintenance costs.		
10.6.3	The Contractor agrees to provide the University with any information that can reasonably be provided relating to the measures adopted by the Contractor in pursuit of the Sustainability Objectives.	10.8.2	To ensure seamless integration of the security operations on the Site, the Contractor will enter into an agreement with the Site Owner's security services provider for the provision of security services on Site as may be necessary, and at all times will work in consultation and co-operation with the Site Owner's security personnel.
10.6.4	The Contractor agrees to undertake reasonable due diligence and monitoring of its supply chain on an ongoing basis to ensure that materials and services required for the supply of the Goods and/or Services to the University are supplied from sustainable sources.	10.8.3	The Contractor will, at its own expense, be responsible for all security measures (including fencing and security personnel) at the Site, at all times and will be responsible for ensuring the security of all facilities, materials, plant, equipment, tools, other resources/supplies and infrastructure within the Site, including all facilities, equipment, materials and infrastructure installed, used, owned or controlled by the Contractor and/or any of the Contractor's Personnel, including all facilities, equipment, materials and infrastructure installed, used, owned or controlled by the University.
10.7	<u>Equipment, Plant, Materials and Supplies:</u>		
10.7.1	The Contractor must:		
10.7.1.1	provide, operate, and maintain all materials, labour, plant, equipment, tools and other resources/supplies necessary for executing the Works, unless otherwise agreed in writing by the Parties; and	10.8.4	The Contractor acknowledges that access to the Site may be controlled by means of temporary fencing or barriers and the use of access control staff. Security operations may also include searches of any person, vehicle, package, container or equipment entering the Site. Notwithstanding anything to the contrary contained herein, the Site Owner shall be entitled at all times during and after the construction to monitor the security measures adopted by the Contractor.
10.7.1.2	ensure that all such items used or supplied in connection with the Works comply with legal requirements and are fit for their usual and intended purpose.		
10.7.1.3	ensure that all materials used in the execution of the Works must be consistent with the nature and character of the Works, be of a kind that is suitable for their purpose and comply with the Contract and any relevant standards unless		

- 10.9 Nothing contained in this Agreement shall prevent the Site Owner from conducting its normal security activities (or such increased security activities as it may from time to time deem necessary) on the Site. Such activities may include *inter alia* control of access and egress on the Site and the enforcement of the Site Owner's conditions of use or other applicable rules.
- 10.10 Ground Conditions, Stuck Equipment and Cost Allocation:
- 10.10.1 If, during the drilling of the borehole, the Contractor encounters ground conditions that may reasonably be thought to cause jamming of its equipment in the hole, and if, in the Contractor's reasonable opinion, such ground conditions may result in difficulties, including the potential loss of equipment, the Contractor must within 24 (twenty-four) hours notify the University in writing:
- 10.10.1.1 of the details of the adverse ground conditions/circumstances;
- 10.10.1.2 all risks associated with the drilling and/or the equipment as a result of the adverse ground conditions;
- 10.10.1.3 any consequent delays to the Works or possible damage to the equipment;
- 10.10.1.4 all necessary precautions to ensure that equipment does not become jammed or stuck.
- 10.10.2 The University will review the written notification and reserves the right to instruct the Contractor within 48 (forty-eight) hours of receipt of the Contractor's notice referred to above whether or not it must continue with the drilling
- 10.10.3 The Contractor undertakes not to proceed with the drilling until it has received the University's instructions as set out in clause 10.10.2.
- 10.10.4 If despite the written notification referred to in clause 10.10.1, the University instructs the Contractor in writing to continue drilling, the University will bear any costs associated with the delay caused as the result of the adverse ground conditions to the Works as well as any costs of the damaged or unrecoverable equipment calculated on the replacement value (i.e., the net present value) or cost price whichever is lesser.
- 10.10.5 If the Contractor fails to:
- 10.10.5.1 notify the University as set out in clause 10.10.1 of the adverse ground conditions; or
- 10.10.5.2 take the precautions referred to in clause 10.10.1.4; and
- proceeds with drilling, reaming, or casing the hole, the Contractor will bear the costs of delays resulting from attempts to recover stuck equipment, as well as the costs of any equipment that becomes unrecoverable and subsequently abandoned in the hole.
- 10.11 The University reserves the right to include additional responsibilities and obligations as may be necessary and that are specified by the Site Owner and that are deemed necessary for the Service Provider to fulfil its obligations under this Agreement. The Service Provider agrees to comply with these requirements as issued by the University acting through the Site Owner. The Parties agree that these responsibilities and obligations will be reduced to writing as provided for in clause 33.3.
- 11 PERSONNEL**
- 11.1 The Parties will each nominate a Representative responsible for the overall management, execution, and oversight of this Agreement, who will:
- 11.1.1 on reasonable notice, consult with each other on matters relating to the Agreement;
- 11.1.2 engage with each other to ensure that day-to-day decisions and approvals with respect to the Agreement are made timeously;
- 11.1.3 oversee the contract management of the Agreement including oversight of the activities and responsibilities of the Personnel and Key Personnel;
- 11.1.4 accept and acknowledge all notices and correspondence relating to the Agreement; and
- 11.1.5 ensure that any administrative or compliance-related matters required in terms of this Agreement are carried out or completed timeously.
- 11.2 The Site Owner will in terms of the MHSA, be deemed to be an employer in its own right with duties prescribed in the MHSA.
- 11.3 The Contractor must nominate the following competent Key Personnel in terms of the MHSA who will be appointed by the Site Owner's 3(1)a manager ("Manager") as follows:
- 11.3.1 2(6)(1) subordinate manager ("Site Manager") to assist in the control, management and direction of the Works;
- 11.3.2 2(9)(2) Supervisor (drill site supervisor) to assist in enforcing such observations of the regulations; and
- 11.3.3 2.17.1 Safety Officer; and/or
- 11.3.4 the safety representatives as may be necessary/
- 11.4 The Contractor must inform the University of the names of its Representative, Personnel and/or Key Personnel authorised to provide the Works within 2 (two) Business Days of receipt of a request from the University. The University may object on reasonable grounds to any such person assigned. Upon receipt of such objection, the Contractor must immediately assign alternative Personnel to act on its behalf.
- 11.5 The Contractor acknowledges that the provision of Key Personnel and a Representative by the Contractor, as specified in the Agreement, is critical to the Agreement.
- 11.6 If any of the Contractor's Key Personnel are unavailable at any time, the Contractor may provide a reasonable substitute, provided the Parties agree that such a substitute is suitable for the intended position.
- 11.7 The University will not be liable to the Contractor for any delay or failure to provide the Works either at all or in a timely manner, where such delay or failure is attributable to a breach by the Contractor resulting from non-fulfilment by the Contractor of its obligations under this clause 11.
- 11.8 The Contractor accepts full responsibility for its Personnel's actions and will ensure that such actions at no time place the Personnel or property, including the Information Technology Systems, and the reputation of the University in danger.
- 12 SUB-CONTRACTING**
- 12.1 The Contractor acknowledges that the University prefers to contract directly with the Contractor.

12.2	The Contractor must not sub-contract any of its responsibilities or obligations in terms of this Agreement, without the prior written consent of the University in consultation with the Site Owner in each instance. Such consent does not relieve the Contractor of any of its obligations. The Contractor remains responsible to the University for the fulfilment of its obligations and responsibilities in terms of this Agreement and it is responsible for the acts and omissions of its sub-contractor as if such are the acts and omissions of the Contractor.	13.2.3	it is a member of all professional and other bodies as may be required by applicable legislation and/or relevant industry regulations pertaining to its business and such membership is current and valid and will be maintained for the duration of the Agreement;
12.3	Notwithstanding the provisions of clause 12.1, in order to ensure the success of the Work and to ensure beneficial community engagement, the Contractor is encouraged to sub-contract a portion of the Work to service providers, vendors or contractors. The Contractor must ensure that the process referred to in clause 12.2 is followed and identified by the University acting through the Site Owner.	13.2.4	it holds, and will hold throughout this Agreement, all licences, certificates, permits, consents, approvals, and authorities required to perform its obligations pursuant to this Agreement;
12.4	The Contractor must ensure that any guarantees, warranties, or other undertakings given by a sub-contractor are transferable to the University and warrants that such guarantees will, on notice from the University, be transferred to the University.	13.2.5	in fulfilling its obligations under this Agreement, it will not infringe the intellectual property rights of any third party;
12.5	The Contractor must ensure that each sub-contractor complies with all the terms of this Agreement as if it was the Contractor.	13.2.6	it will comply with all applicable legislation in performing its obligations pursuant to this Agreement, including but not limited to:
12.6	If the University consents to the Contractor entering into a sub-contract in terms of clause 12.2 the provisions of this Agreement will be applicable <i>mutatis mutandis</i> to the contract between the Contractor and such sub-contractor.	13.2.6.1	the Compensation for Occupational Injuries and Diseases Act 140 of 1993 ("COIDA"). The Contractor will, upon request by the University, produce written proof of its registration and good standing with the Compensation Commissioner, as defined in the COIDA;
12.7	The Contractor hereby warrants and undertakes that its sub-contractors will comply with and will not breach any obligations of the Contractor in terms of the Agreement and that all the provisions of the Agreement relating to any sub-contractor will be expressly reflected in the sub-contracts.	13.2.6.2	MHSA The Contractor acknowledges that the prevention of accidents, safety performance and adherence to sound and safe work standards and best practices are essential requirements of this Agreement. Accordingly and without derogating from the generality of its obligations in terms of this Agreement, the Contractor will, while on the Precincts (if applicable) and while on the Site, strictly adhere to all applicable safety and health requirements of statutes, ordinances, by-laws and regulations as well as the MHSA undertakes to:
12.8	In the event of the Contractor utilising the services of a sub-contractor, the University will make payment directly to the Contractor as per clause 24 and the Contractor agrees that liability and responsibility for any payment due to the sub-contractor will lie with the Contractor and no third party will be entitled to seek payment directly from the University for the Works to the University.	13.2.6.2.1	sign an agreement with the Site Owner to regulate its legal responsibilities and liabilities arising from the Works regarding occupational safety, health and environmental management;
12.9	The Contractor will stand as surety and co-principal debtor with any of its appointed sub-contractors for the due fulfilment of its obligations.	13.2.6.2.2	comply with any lawful reasonable instructions issued by the Manager to prevent injuries, ill-health, loss of life or damage of any kind from occurring at the Site in the course and scope of performing its obligations in terms of this Agreement; and
12.10	Any breach by the sub-contractor of the terms of this Agreement will be deemed to be a breach by the Contractor.	13.2.6.2.3	procure that all work will be performed, and all equipment will be used in accordance with the provisions of the MHSA and any Regulations issued in terms of the MHSA;
13	WARRANTIES	13.2.6.3	OHSA (where applicable);
13.1	The persons signing this Agreement on behalf of a Party expressly warrant their authority to do so.	13.2.6.4	the applicable legislation as set out in Annexure B (Scope of Work);
13.2	The Contractor warrants and represents that:	13.2.6.5	the Basic Conditions of Employment Act 75 of 1997 ("BCEA");
13.2.1	it has full power and authority to accept its appointment as set out in clause 1 and perform its obligations pursuant to this Agreement.	13.2.6.6	the Labour Relations Act 66 of 1995 ("LRA");
13.2.2	it has the necessary skills, qualifications expertise, financial resources, Personnel, capacity, knowledge, experience, resources, equipment, and infrastructure to provide the Works as required in terms of this Agreement;	13.2.6.7	the Data Protection Legislation; and
		13.2.6.8	all taxation legislation in respect of any taxes and levies which the government of the Republic of South Africa or any other authority may from time to time impose or increase. Where applicable, unless the Contractor can

	provide the University, on reasonable request by the University, with satisfactory proof that it is not an employee or personal Contractor, as defined in the Fourth Schedule to the Income Tax Act 58 of 1962, the University may withhold employee's tax from the remuneration payable by the University to the Contractor in terms of this Agreement in accordance with the rates prescribed by the Income Tax Act at the entire risk and cost of the Contractor. The Contractor must immediately, and in any event, before accepting any payments from the University, notify the University of any change of fact or circumstance that affects or may affect the University's liability to deduct the employee's tax from payments made in terms of the Income Tax Act. For these purposes "taxation" includes SITE and PAYE, VAT, all other forms of duties or taxation, taxation in respect of any assessment of taxation and any penalties or interest;		of 1 (one) month from the Commencement Date for the purpose of discussing the implementation of the Works;
		14.4.2	It is hereby recorded that, during the first meeting of the Steering Committee:
		14.4.2.1	it will be determined how and when the parties will report to the Steering Committee on progress made with the Works;
		14.4.2.2	the Steering Committee will convene monthly meetings but may meet more frequently if required to do so, to discuss the progress of the Works, to address any delays, changes or unforeseen matters that may come to light. Any party may convene a meeting by giving at least 14 (fourteen) Business Days' notice in writing to the other parties. Meetings may be conducted in person or by means of telephonic conferencing or other electronic communication platforms;
13.2.7	it has not committed an act of insolvency as contemplated in section 8 of the Insolvency Act 24 of 1936;	14.4.2.3	the University will chair a meeting of the Steering Committee and will provide a secretariat for the meetings. The secretariat will distribute the appropriate agenda for the meeting at least 48 (forty-eight) hours prior to the proposed meeting and will keep full minutes of each and every meeting and distribute same to the individual members of the Steering Committee within 1 (one) week after every such meeting;
13.2.8	it is and must remain throughout the duration of the Agreement, the employer of all individuals who may work for the Contractor in providing the Works, and the Contractor will be solely responsible for the remuneration, insurance, and other obligations in respect of its Personnel.		
13.3	The Contractor warrants that, before entering into the Contract, it had been provided with access to, and inspected the Site, and that it has carried out its own enquiries to establish, understand and satisfy itself as to the state of the Site, all risks and contingencies associated with the Site existing as at the Commencement Date.	14.4.2.4	meetings of the Steering Committee will be minuted and distributed.
		14.4.3	<u>Voting:</u>
		14.4.3.1	Operational matters relating to the Works will be decided by means of a simple majority. The Steering Committee will use its best endeavours to reach its decisions by consensus.
13.4	A breach of any of the undertakings and/or warranties as set out in this Agreement will be deemed to be a material breach of the Agreement the University may, subject to the provisions of clause 25, terminate the Agreement without prejudice to any of the University's rights.	14.4.3.2	All Steering Committee members must indicate any conflict of interest or declaration of interest at the agenda point allocated.
13.5	The warranties contained in this Agreement are in addition to any other express, implied and/or statutory warranties applicable to the Works.	14.4.3.3	The chairperson of the Steering Committee has an ordinary vote but must in addition exercise a casting vote in the event of an equality of votes on any matter.
14	STEERING COMMITTEE		
14.1	The Parties will establish a Steering Committee which will consist of at least 2 (two) senior representatives from the University, the Contractor and the Site Owner. The parties have the discretion to increase the number of members by written agreement between them. The parties have the right to remove and replace its representatives on the Steering Committee at any time on prior written notice to the other parties.	14.4.3.4	Decisions may be made by using the round-robin method of discussion. A resolution or decision of the members of the Steering Committee, obtained on a round-robin basis and signed by all persons entitled to attend a Steering Committee meeting, will be valid and effective as if it had been adopted by a duly convened meeting of the Steering Committee. Unless the contrary is stated therein, any such resolution will be deemed to have been passed on the day on which it was signed by the members of the Steering Committee last signing it.
14.2	The Parties will notify each other of the names of their nominated representatives on the Steering Committee within 14 (fourteen) Business Days of signature hereof and will advise the other parties in writing of a change in such appointment, temporary or otherwise, as may occur from time to time.	14.4.3.5	The presence of at least one representative of each of the parties will constitute a quorum for any Steering Committee meeting. If the absence of a principal representative, such representative must be represented by an alternate (proxy) who will be entitled to the same rights and privileges as the principal representative. Additional representatives of the parties may be invited to participate in a
14.3	The Steering Committee may only make recommendations for consideration by the University on matters pertaining to the implementation of the Works.		
14.4	<u>Meetings of the Steering Committee:</u>		
14.4.1	The Steering Committee must meet within a period		

- Steering Committee meeting but will have no voting rights.
- 14.4.3.6 Should no quorum be present at a specific Steering Committee meeting, and/or at the time when a specific decision is taken and minuted such quorum no longer exists due to one or more representatives leaving the meeting, such meeting and/or decision, as the case may be, will be postponed for at least 7 (seven), but not more than 21 (twenty-one) Business Days, at which postponed meeting the representatives' parties attending, will form a quorum. All proposals, feedback, guidelines, and input emanating from the Steering Committee meeting pertaining to the Works will be submitted to the Contractor who will ensure its implementation.
- 14.5 **Responsibilities of the Steering Committee:**
- 14.5.1 The Steering Committee will, subject to the Rules have the following functions, inter alia to:
- 14.5.1.1 oversee, facilitate, manage and monitor the operational implementation of the Works and take any remedial action if and when necessary;
- 14.5.1.2 review the progress of the Works/Works Program submitted to it for approval, evaluate and develop the feasibility of a proposed course of action and make recommendations to the Parties for the implementation thereof and provide advice on the improvement of the delivery of the Works;
- 14.5.1.3 review and consider the reports on the implementation and progress of the Works;
- 14.5.1.4 approve and certify correct the minutes of previous Steering Committee meetings;
- 14.5.1.5 keep a record in safe custody of the signed (or latest if not yet signed) version of this Agreement, and all amendments thereto, if any; and
- 14.5.1.6 do whatever else may be necessary to give full and proper effect to and to achieve the objectives of this Agreement.
- 15 ACCEPTANCE TESTING**
- 15.1 All deliverables under this Agreement will be subject to Acceptance Testing:
- 15.1.1 as set out in Annexure B (Scope of Work);
- 15.1.2 that may be reasonably directed in writing by the University, to establish the compliance of materials, workmanship and the Works with the Agreement.
- 15.2 The Contractor will at its cost provide the University with such materials and facilities reasonably necessary to conduct the Acceptance Testing.
- 15.3 If the Contractor unreasonably withholds or delays any Acceptance Testing procedures, the University will have the exclusive right, but not the obligation, to cancel this Agreement or claim damages, in order to safeguard its interests and protect its reputation.
- 16 DEFECTS LIABILITY PERIOD**
- 16.1 The Contractor must rectify any Defects notified to the Contractor by the University in writing during the Defects Liability Period within a reasonable time, but no later than 30 (thirty) days from the date that notice of the
- Defect was given by the University, at the Contractor's expense.
- 16.2 If the Contractor fails to rectify a Defect in accordance with clause 16, the University may rectify the Defect and the costs of it doing so will be monies due from the Contractor to the University. To avoid doubt, the University may recover such amounts from the Contractor either on demand from the Contractor or by deducting such amount from any amount owed by the University to the Contractor.
- 17 PRECINCTS, SITE, AND PROPERTY**
- 17.1 All Personnel, guests, invitees, or any other persons acting on behalf of the Contractor may only be allowed access to the Precincts (if applicable) and the Site for the purposes of fulfilling the Contractor's obligations under the Agreement, and for no other purpose, without prior written consent of the University.
- 17.2 Whenever any of the Contractor, its Personnel or any person acting on its behalf are present on the Precincts (if applicable) or Site, the Contractor will at its own cost ensure that such person(s) comply with all applicable Rules and the conditions of use of the Site including but not limited to:
- 17.2.1 Health and safety regulations and inductions and medicals as specified by the Site Owner.
- 17.2.2 the carrying of weapons, which is strictly prohibited;
- 17.2.3 the wearing of identification tags and the possession and use of access cards, which is required at all times whilst on the Precincts (if applicable) or Site;
- 17.2.4 occupational health, safety, and emergencies practices and protocols;
- 17.2.5 the security of and the protection of persons and property thereon;
- 17.2.6 the driving and parking of vehicles;
- 17.2.7 the utilisation of the amenities and facilities;
- 17.2.8 the prohibition or restriction of activities and practices which are actually or potentially detrimental to the interests of the University;
- 17.2.9 any reasonable instructions received from the University; and
- 17.2.10 any and all other applicable requirements prescribed by the University from time to time.
- 17.3 Where applicable, the Contractor will pay to the University any charges levied by the University and/or the Site Owner for the use or purchase of identification tags, access cards, and vehicle parking permits.
- 17.4 The University may require the Contractor to effect the immediate removal from the Precincts (if applicable) and the Site of any Personnel of the Contractor if the University on reasonable grounds deems it in the best interests of the University that such person is removed. The Contractor will ensure that such a person does not return to the Precincts (if applicable) and the Site. Removal by the Contractor of such person(s) will not be a ground for any relaxation of the Contractor's obligations under the Agreement.
- 17.5 The University acting through the Site Owner reserves the right, at any given time and without prior warning, to search any or all of the Contractor's movable property which includes but is not limited to vehicles, baggage and containers entering or exiting the Precincts (if

- applicable) and the Site.
- 17.6 No gatherings by the Contractor's Personnel will be allowed in the Precincts (if applicable) and Site.
- 17.7 The Contractor agrees that it will not remove any property of whatever nature from the Precincts (if applicable) or Site without the prior written permission of the University.
- 18 DOCUMENTATION**
- 18.1 The Contractor will provide the University with all applicable Documentation concerning the Works.
- 18.2 The University must have the right to copy, reproduce and generally use the Documentation for the purpose as set out in this Agreement.
- 18.3 The right to copy, reproduce and use the Documentation referred to in clause 18.2 will also extend to the University's sub-contractors and third-party suppliers provided that such use is required for the purposes of providing services to the University.
- 19 CONFIDENTIALITY**
- 19.1 The Parties acknowledge that in terms of this Agreement, they may have access to each other's Confidential Information. Each of the Parties agrees that neither it nor any of its Personnel will at any time disclose or use, directly or indirectly, any Confidential Information of the other Party unless the Receiving Party first obtains written consent from the Disclosing Party or unless required by law or the lawful order of a court or governmental agency to do so. In this event, the Receiving Party will immediately give written notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other remedy from the court or governmental agency.
- 19.2 Each of the Parties will with respect to the Confidential Information:
- 19.2.1 will ensure that all reasonable security measures, and at least the same steps that it takes for the purposes of protecting its own proprietary and Confidential Information, are taken in order to safeguard the other Party's proprietary and Confidential Information from unauthorised access or use;
- 19.2.2 inform its Personnel of the confidentiality restraint set out in this clause 19 and ensure that they are subject to the same confidentiality undertaking;
- 19.2.3 restrict disclosure of Confidential Information to its Personnel who have a need to know such Confidential Information in order to provide the Works;
- 19.2.4 ensure that its Personnel exercise care appropriate for the protection of the Confidential Information;
- 19.2.5 upon request by the Disclosing Party promptly deliver any and all records containing Confidential Information which is in the possession or control of the Recipient, and its Personnel.
- 19.3 Except as expressly provided to the contrary elsewhere in this Agreement, the Parties will not acquire any proprietary or any other rights to any of the other Party's Confidential Information.
- 20 INTELLECTUAL PROPERTY**
- 20.1 The ownership of rights in and to all Background Intellectual Property will be and remains unaffected by this Agreement.
- 20.2 Foreground Intellectual Property in the Works, including but not limited to all specific documentation, manuals, designs, reports and plans specifically created or developed by the Contractor in the course and scope of this Agreement is owned by the University.
- 20.3 Unless otherwise agreed, where such Foreground Intellectual Property incorporates the Contractor's Background Intellectual Property, the Contractor hereby grants to the University (including its third-party Contractors) a royalty-free, perpetual, non-exclusive licence to perform any lawful act, including the right of use of the Contractor's Background Intellectual Property.
- 20.4 The Contractor agrees to execute any documents or take any other actions as may reasonably be necessary, or as the University may reasonably request in writing, to perfect the University's ownership of the Foreground Intellectual Property.
- 20.5 Any sub-contract the Contractor enters into in relation to this Agreement must contain a condition that the sub-contractor agrees to assign to the University all rights in any Foreground Intellectual Property created by it for the purposes of this Agreement.
- 20.6 The Contractor will not use the University's names, trademarks, logos or other Intellectual Property in publicity releases, publications, advertising materials or in any other manner, without the prior written consent of the University in each instance.
- 20.7 The Contractor will not use, register, or attempt to register any trademarks, company, business or trading names or domain names which are identical, similar to or incorporate the University name, trademarks, and logos, without the University's prior written consent; and
- 20.8 The Contractor acknowledges and accepts that it will not acquire, nor claim, any right, title, or interest in or to the University name and logos or the goodwill attaching to them by virtue of this Agreement.
- 21 DATA PROTECTION**
- 21.1 In performing its obligations under this Agreement, the Parties will:
- 21.1.1 comply with the provisions of the Data Protection Legislation insofar as it is applicable to this Agreement;
- 21.1.2 not process Personal Information for any purpose other than that which may be required to perform their obligations under this Agreement and ensure that such processing will not place either Party in breach of any Data Protection Legislation.
- 21.2 The Contractor will:
- 21.2.1 only act on the express instructions of the University in collecting, processing, and utilising any Personal Information (and for the avoidance of doubt, this Agreement will constitute such instructions);
- 21.2.2 not disclose or otherwise make available any Personal Information to any third party other than authorised Personnel or sub-contractors who require access to such Personal Information strictly in order for the Contractor to carry out its obligations pursuant to this Agreement, and ensure that such Personnel and any other persons that have access to the Personal Information are bound by appropriate and legally binding confidentiality and non-use obligations in relation to the Personal Information.

- 21.3 The Contractor must be responsible for establishing and maintaining an information security programme that is designed to:
- 21.3.1 ensure the security and confidentiality of all Personal Information and any University information (including any back-ups, where applicable) by the use of encryption for such information at transit and rest;
- 21.3.2 protect against any anticipated threats or hazards;
- 21.3.3 protect against unauthorised access to, disclosure or use of any University information;
- 21.3.4 ensure the proper separation of information belonging to the University from any third-party information;
- 21.3.5 where appropriate, ensure the proper disposal of information belonging to the University;
- 21.3.6 preserve the integrity of any information belonging to the University and prevent the corruption, destruction, or loss of such information at all times; and
- 21.3.7 ensure that all sub-contractors of the Contractor, if any, comply with the provisions of this clause 20.8.
- 21.4 The Contractor must report to the University orally and confirm in writing any actual and/or suspected breaches such as security incidents, unauthorised access, or disclosure of Confidential and/or Personal Information immediately upon discovery of the unauthorised disclosure but in no event more than 2 (two) days after the Contractor reasonably believes there has been such unauthorised use or disclosure.
- 21.5 Where the Contractor (including the Contractor's Personnel) is given access (whether direct or remote) to any University Information Technology Systems under or in connection with the Agreement, the Contractor will (and must ensure that the Contractor's Personnel):
- 21.5.1 comply with the Rules, requirements, or other instructions of the University or, where applicable, the University's third-party suppliers, regarding the use of such University Information Technology Systems;
- 21.5.2 only use the University Information Technology Systems in connection with the proper delivery of the Works;
- 21.5.3 not permit any other individual or entity to access the University Information Technology Systems;
- 21.5.4 upon the University's request, immediately cease access to and use of any University Information Technology Systems and return all University Information Technology Systems (and associated documentation) to the University; and
- 21.5.5 not reverse engineer, deconstruct, decompile, deactivate, or disable any University Information Technology Systems or introduce any viruses or other similar code, or take any other action that would cause any damage or harm to any Information Technology Systems of the University.
- 22 RECORDS AND AUDIT**
- 22.1 The Contractor must keep and maintain both during the term of the Agreement and for up to 5 (five) years following termination or expiry of the Agreement, full and accurate records of its performance of the Agreement.
- 22.2 The Contractor must on request afford the University, the University's auditors, or its duly authorised representatives such access to those records as may be required in connection with the Agreement.
- 23 PENALTIES**
- 23.1 If the Contractor fails to meet any of the obligations contained in the Agreement, the Contractor will be liable to compensate the University for penalties as stipulated in Annexure C (Pricing Schedule), if applicable.
- 23.2 To the extent that any provision of the Agreement is considered to be, or qualifies as, a penalty stipulation in terms of the Conventional Penalties Act 15 of 1962, as amended:
- 23.2.1 the Agreement will not be construed or interpreted in such a way as entitling the University to recover both damages and the penalty;
- 23.2.2 the University will be entitled to recover damages in lieu of the relevant penalty;
- 23.2.3 the University will not be obliged to accept defective or delayed performance by the Contractor; and
- 23.2.4 the Contractor acknowledges and agrees, having taken account of the prejudice that will be suffered by the University, that the penalty stipulation is fair and equitable in the circumstances.
- 24 FINANCIAL TERMS**
- 24.1 Contract Price:**
- 24.1.1 The Contract Price is set out in Annexure C (Pricing Schedule).
- 24.1.2 The Contractor must submit a valid monthly tax invoice to the University for payment, accompanied by all necessary supporting documents.
- 24.1.3 The University will pay the Contractor within 30 (thirty) days from the date of such invoice.
- 24.1.4 Unless otherwise agreed in writing by the Parties, the Contract Price will not be subject to adjustment for rise and fall in costs.
- 24.1.5 The Contractor is not entitled to payment for any Disbursements not included in Annexure C (Pricing Schedule) unless prior written notice of the Disbursement was provided to the University and the University approved the Disbursement in writing.
- 24.1.6 The University's payment to the Contractor should not be construed as evidence of the actual value of work performed, nor should it be deemed an admission of liability or an indication of satisfactory execution of any Works. For the avoidance of doubt, the University retains the right to rectify any errors in previous payments through subsequent payments, if necessary.
- 24.2 Mobilisation Fee:**
- 24.2.1 Upon the successful completion of mobilisation (as set out in clauses 24.2.2 and 24.2.3), the Mobilisation Fee will be reimbursed to the Contractor in a single lump sum payment and this reimbursed amount will cover all costs and Disbursements reasonably incurred by the Contractor in mobilising, loading out, and modifying (if necessary) the equipment to safely and efficiently execute the work, as specified by the University.
- 24.2.2 Mobilisation of the drilling equipment will be considered complete only when all mandatory

	inspections, as required by the University acting through the Site Owner, have been conducted.		directed in writing by the University.
24.2.3	The drilling equipment must receive written approval from the University for use on the designated work before mobilisation can be deemed complete.	24.5.3	On condition that the University is satisfied that the Contractor has:
		24.5.3.1	met its requirements in terms of clauses 24.5.1 and 24.5.2;
24.3	Demobilisation Fee:	24.5.3.2	provided the Works in accordance with the provisions of Annexure B (Scope of Work) and the University has Accepted the Works; and
24.3.1	The Demobilisation Fee will be reimbursed to the Contractor in a single lump sum payment upon the successful completion of operations and this fee will encompass all costs and Disbursements incurred by the Contractor for the demobilisation of the drilling equipment, as well as any other items and Personnel belonging to the Contractor, from the Site. These costs should include, but not be limited to, insurance expenses, dismantling charges, packing fees, transportation costs, and the return of the equipment and personnel to their respective home base, whether within the country of operation or elsewhere.	24.5.3.3	provided Works that are fit for the purpose for which they were procured, of suitable quality and within budget as set out in Annexure C (Pricing Schedule); and
		24.5.3.4	the University has approved the payment of the amounts reflected on an invoice in writing, the University will settle the invoice within 30 (thirty) days after presentation.
24.3.2	The demobilisation process for the drilling equipment will be considered as complete solely upon the written Acceptance by the University, on condition that the following requirements without limitation are fulfilled:	24.5.4	In order to ensure efficient financial transactions, the University will notify the Contractor in the event of any discrepancies or disagreements regarding invoices. The University and the Contractor will work collaboratively to resolve such issues and once mutually resolved, the University shall promptly make payment for the undisputed amount. In the event that the University and the Contractor are unable to reach a resolution regarding the disputed invoice, the matter will be referred to in accordance with the provisions of clause 32.
24.3.2.1	The drill unit has been properly rigged down and transported away from the drill site.		
24.3.2.2	The drill site, workshop, and office site have undergone full Rehabilitation.	24.5.5	The Contract Price, including those charges, damages and penalties described in this Agreement, to be paid by or retained from the Contractor may, at the University's option, be set off against any amounts due and payable by the University to the Contractor.
24.3.2.3	All required actions and activities, as stipulated in the Agreement, have been duly completed and successfully closed out.		
24.4	Site Rehabilitation Fee:	24.5.6	Subject to the provisions of clause 24.5.3, the University will effect payment by direct or electronic deposit into the nominated account of the Contractor, stipulated on its invoice.
24.4.1	The Contractor expressly acknowledges and agrees that the University will retain and withhold R 200,000.00 (Two Hundred Thousand Rand) of the total Contract Price as security until the Site has been completely Rehabilitated and a Rehabilitation certificate/statement is issued by the Site Owner. It is hereby agreed that this amount will only be released to the Contractor upon the complete fulfilment of all obligations in terms of this Agreement.	24.5.7	Where applicable and in the event of the Contractor's Personnel become involved in any strike, stay-away or other action, where no, or only partial service is rendered, the Contract Price for the period concerned will be adjusted accordingly and the Contractor must present revised invoices for payment at the end of the month in which the partial or no service, as the case may be, was rendered.
24.4.2	The reimbursement of the Site Rehabilitation fee will be made in a single lump sum payment upon the successful completion of all activities required to Rehabilitate the drill site, and upon the issue of a Rehabilitation certificate/statement by the Site Owner.	24.5.8	The Contractor agrees that the University will deduct from the amount due by it in terms of this Agreement, or any other amount that it is required by law to deduct.
24.5	Administration Process:		
24.5.1	The Contractor will be responsible for ensuring that all supporting documents have received prior approval from the University and are appropriately attached to the invoice. Payment shall be made solely upon submission of invoices by the Contractor.	25 BREACH AND TERMINATION	
24.5.2	The Contractor must provide the University with a detailed itemised invoice specifying:	25.1	Should a Party commit a material breach of the Agreement, then the aggrieved Party will be entitled to require the defaulting Party to remedy the breach within 7 (seven) Business Days of delivery of a written notice requiring it to do so, or within any other reasonable period agreed to between the Parties.
24.5.2.1	the amount due to the Contractor as referred to in clause 24.1.2 including a detailed breakdown of such amounts and an accompanying description;	25.2	If the defaulting Party fails to remedy such breach within the period specified in the breach notice, the aggrieved Party will be entitled to cancel this Agreement and to claim damages, alternatively to claim immediate specific performance of the defaulting Party's obligations. The foregoing is without prejudice to such other rights as the aggrieved Party may have in law.
24.5.2.2	any other information reasonably required by or		

<p>25.3 If the Contractor fails to comply with the terms of the Agreement, the University will be entitled, without prejudice to any of its rights in terms of this Agreement or in law to withhold all payments due and payable to the Contractor until such time as the Contractor has provided the Works to the satisfaction of the University.</p>	<p>26.3 The Contractor hereby indemnifies the University:</p>	<p>arising out of any damage to property or death or injury to any person, in the course and scope of providing the Works and/or for any act or omission by the Contractor and/or its Personnel and/or agents.</p>
<p>25.4 The University will be entitled to terminate this Agreement with immediate effect, should the Contractor:</p>	<p>26.3.1</p>	<p>or damage sustained by any Personnel in the course or scope of that individual's employment and whilst being on the University Precincts. Save where such injury, loss or damage is caused by the gross negligence and wilful misconduct of the University or its Personnel;</p>
<p>25.4.1 be placed under compulsory or voluntary winding-up or business rescue, to the extent permitted by applicable law; or, being a natural person, commit an act of insolvency, or be provisionally or finally sequestered; or</p>	<p>26.3.2</p>	<p>against all claims of whatsoever nature and howsoever arising which may be made against the Contractor and/or the University by any Personnel of the Contractor for any injury (whether physical, disease, psychological or otherwise) or loss or damage sustained by that Personnel member in the course or scope of that Personnel's employment and whilst being on the Precincts,</p>
<p>25.4.2 suffer any judgement to be obtained against it and allow such judgement to remain unsatisfied or fail to apply for the rescission thereof within a period of 10 (ten) Business Days from the time the judgement was obtained; or</p>	<p>26.3.3</p>	<p>in respect of all actions, proceedings, liabilities, claims, damages costs and expenses arising out of the acts and/or omissions of its Personnel, guests, invitees, or any other person acting on behalf of the Contractor; and</p>
<p>25.4.3 do or suffer any act or thing whereby the University's rights or interest may be prejudiced, or which might cause the University to suffer any loss or damage.</p>	<p>26.3.4</p>	<p>from any liability arising from:</p>
<p>25.5 On termination or expiry of the Agreement for any reason, the Contractor must:</p>	<p>26.3.4.1</p>	<p>any breach of laws or regulations by the Contractor which is directly applicable to providing the Works;</p>
<p>25.5.1 immediately deliver to the University the Works whether or not then complete and return all University information (together with all copies thereof). Until they have been returned or delivered, the Contractor will be solely responsible for their safekeeping and will not use them for any purpose not connected with this Agreement; and</p>	<p>26.3.4.2</p>	<p>any breach of labour legislation, including but not limited to the BCEA, the LRA, the Employment Equity Act No. 55 of 1998, and payment of any contributions in terms of the Unemployment Insurance Act No. 30 of 1966 and payment of any subscription to any relevant Bargaining Council that has or might have jurisdiction, as well as compliance with any Collective Contract concluded by such Bargaining Council;</p>
<p>25.5.2 if so, required by the University, subject to the applicable fees as agreed between the Parties in writing, assist the University with the seamless transition of providing the Works to an incoming supplier. All applicable terms and conditions of this Agreement will apply to such transition services.</p>	<p>26.3.4.3</p>	<p>any breach of environmental legislation (where applicable);</p>
<p>25.6 Upon termination of the Agreement, the Contractor will only be entitled to be paid for the Works provided on a <i>quantum meruit</i> basis and will not have any claim of any nature whatsoever against the University for any additional consideration and/or related payments which would have been payable had the Works have been provided in full in terms of the Agreement.</p>	<p>26.3.4.4</p>	<p>any breach of the Data Protection Legislation and the provisions of clause 20.8 above;</p>
<p>25.7 If the University terminates this Agreement as provided for hereunder, the University's sole liability to the Contractor, and the Contractor's sole and exclusive remedy, is payment for the Works received that have been completed and Accepted by the University before the date of termination. The University may also require the Contractor to transfer title and deliver to the University any or all property produced or procured by the Contractor to perform this Agreement.</p>	<p>26.3.4.5</p>	<p>any breach of the Income Tax Act;</p>
<p>26 LIMITATION OF LIABILITY</p>	<p>26.3.4.6</p>	<p>work-related injury or death caused by the Contractor including payment of any contributions or compensation as a result of any injury sustained by any Personnel of the Contractor in terms of the COIDA and compliance with all safety regulations in terms of the MHSA;</p>
<p>26.1 Without limiting any other obligation of the Contractor under this Agreement or otherwise, the Contractor must do all that is commercially reasonably necessary within the course and scope of this Agreement to prevent or minimise the risk of loss or damage to property, University data/information and Personal Information, the University's reputation, and injury to persons.</p>	<p>26.3.4.7</p>	<p>any claim by a third party that the Contractor infringes upon its proprietary intellectual property rights or any other rights;</p>
<p>26.2 The Contractor will be liable for any loss of, or damage to, its, and/or the University's property or any financial loss suffered by it, and/or the University or for claims</p>	<p>26.3.4.8</p>	<p>the Contractor's failure and/or refusal to meet the payment of any levies, contributions, or subscriptions to the applicable institutions in terms of any legislation;</p>
<p></p>	<p>26.3.4.9</p>	<p>against all claims in respect of any loss directly or indirectly caused by or arising out of or in connection with the discharge of any pollutant or waste material including any motor oil, lubricant, fuel, paint, solvent, garbage or other material (solid, liquid or gaseous), equipment or item dumped, spilt or leaked from any</p>

	container, vessel or plant or equipment or any other harm to the environment, which is directly or indirectly caused by any act or omission whatsoever of the Contractor or any Contractor's personnel; and/or		nature and cause of the stoppage or delay.
26.3.4.10	costs incurred by the University in connection with the enforcement of this clause 26.	28.2	The Contractor undertakes to employ must take all Commercially Reasonable Efforts to minimise the impact and duration of such stoppage or delay.
26.4	The Parties record that the University has insured itself against the acts and omissions of persons acting on its behalf within the course and scope of the University's business. The University's maximum liability will be limited, whether for a single or multiple events, to the extent of its insurance cover herein.	28.3	If the stoppage or delay is caused by a Force Majeure Event, the Contractor must adhere to the provisions of clause 28.4.
26.5	Notwithstanding anything to the contrary contained in this Agreement, neither the University nor the Contractor will be liable to the other for any indirect or consequential loss or damages, including without limitation loss of profit, revenue, anticipated savings, business transactions, goodwill or other contracts, whether arising from the negligence or breach of this Agreement by the University or the Contractor.	28.4	If the stoppage or delay is caused by the Contractor through fault or negligence, the University may, at its option, grant a reasonable extension of time for performance or seek remedies as provided for in this Agreement or under applicable laws. The Contractor will bear any additional costs directly resulting from such stoppage or delay.
27	INSURANCE	29	VARIATION ORDERS
27.1	The Contractor warrants that it has and will maintain the following insurance cover which includes indemnities for the liabilities in clause 26 and which adequately insures against all the liabilities imposed by this Agreement to the satisfaction of the University's insurance brokers, for the duration of this Agreement:	29.1	The Contractor must submit a request for a Variation Order in writing to the University within 5 (five) days from the time the that it becomes aware of the circumstances giving rise to the request for the Variation Order.
27.1.1	insurance covering its liability to any Personnel, as contemplated in COIDA;	29.2	The University will consider the request for a Variation Order where the Contractor is able to justify to the University that the request is due to unforeseeable circumstances beyond the Contractor's control. A lack of knowledge of the University's requirements or of the effort and materials required to perform the Work will not constitute a valid basis for a Variation.
27.1.2	Contractors All Risks (CAR) Insurance;	29.3	If the University is satisfied that the Contractor's request for a Variation Order is justifiable and in the best interest of the Works, and approves the request for a Variation Order, the Variation Order must be reduced to writing and signed by the Parties.
27.1.3	Public/Contractors Liability Insurance;	29.4	If a Variation Order is not signed by the University's duly authorised Representative such Variation Order is not binding on the University.
27.1.4	Delay In Start-Up (DSU) or Completion Insurance;	29.5	All costs associated with Variation Orders will be calculated in accordance with the prices agreed to and reflected in Annexure C (Pricing Schedule).
27.1.5	general insurance which includes but is not limited to motor vehicle, defective workmanship, professional indemnity, products and equipment liability, environmental impairment, bodily injury and death, and property damage (including but not limited to structural damage);	30	FORCE MAJEURE
27.1.6	any other insurance cover deemed necessary by the University's insurers that will adequately make provision for any possible losses and/or claims arising from its, Personnel and/or omissions on the University.	30.1	In the event of any failure, interruption, or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party (the "Affected Party") must promptly notify the other Party in writing specifying:
27.2	Where applicable, the Contractor must ensure that any sub-contractors also maintain adequate insurance having regard to their obligations under this Agreement.	30.1.1	the nature of the Force Majeure Event;
27.3	The Contractor agrees to provide a certificate of proof of the insurance as set out in clause 27.1, a copy of the policy itself as well as any further documentation as may be reasonably be requested by the University.	30.1.2	the anticipated delay in the performance of obligations;
27.4	Should the Contractor fail to effect and/or keep in force to the satisfaction of the University and its insurance brokers any of the insurances it is required to effect and maintain under this Agreement or fails to provide satisfactory evidence and/or copies of policies in terms of clause 27.3, this action would constitute a material breach by the Contractor.	30.1.3	the action proposed to minimise the impact of the Force Majeure Event;
28	STOPPAGES AND DELAYS		and the Affected Party will not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party, provided always that the Affected Party will use all reasonable efforts to minimise the effects of the same and will resume the performance of its obligations as soon as reasonably possible after the removal of the cause.
28.1	If a stoppage or delay occurs during the drilling of the borehole or sample recovery phase or extraction from the core, the Contractor must within 24 (twenty-four) hours notify the University in writing regarding the	30.2	If the Force Majeure Event continues for 42 (forty-two) Business Days either Party may terminate at 7 (seven) Business Days' notice.
		30.3	In circumstances where a Party is an Affected Party, it will be relieved from any obligation to make payments under this Agreement save to the extent that payments

are properly due and payable for obligations actually fulfilled in accordance with the terms and conditions of this Agreement.

31 ADDRESSES AND NOTICES

- 31.1 The Parties choose as their *domicilia citandi et executandi* for the purpose of giving or serving any notice (other than communication of day-to-day operational matters in relation to the rendering of the Works) the addresses set out in section 10 of Annexure A (Contract Data).
- 31.2 For purposes of this clause 31, the word "notice" will include a notice regarding a dispute, demand, breach, renewal, or termination.
- 31.3 All notices given in terms of this Agreement will be in writing and any notice given by any Party to another (the "addressee") which:
- 31.3.1 is delivered by hand between the hours of 09h00 and 17h00 on any Business Day to the addressee's physical *domicilium* for the time being, will be deemed to have been received by the addressee on the first Business Day after the date of delivery. Delivery outside the said hours will not constitute proper delivery;
- 31.3.2 is mailed by pre-paid registered mail from an address within the Republic of South Africa to the postal *domicilium* address for the time being, will be deemed to have been received by the addressee on the 10th (tenth) Business Day after the date of such despatch;
- 31.3.3 is delivered by email to the addressee's e-mail *domicilium*, will be deemed to have been received by the addressee only once the addressee has acknowledged receipt thereof in writing, with an automatic "read receipt" not constituting acknowledgement of an e-mail for purposes of this clause 31.3.3.
- 31.4 Either Party will be entitled, from time to time, by giving written notice to the other, to vary its *domicilium* to any other physical and postal address within South Africa and any other e-mail address.

32 SETTLEMENT OF DISPUTES

- 32.1 Each Party will inform the other in the event of any perceived or potential dispute occurring.
- 32.2 Within a period of 14 (fourteen) days after the date on which a dispute arises ("**Dispute Date**") the Parties' Representatives or Directors will meet to discuss the dispute and will endeavour to resolve the dispute amicably. Each Party undertakes at such meeting to make full disclosure to the other of all information and records relating to the dispute.
- 32.3 If the Parties are unable to resolve the dispute amicably within 30 (thirty) days from the Dispute Date, either Party may refer the dispute to the University's Vice-Chancellor or his nominee representative and the Contractor's Chief Executive Officer or this duly appointed nominee, who will use their best endeavours to resolve the dispute.
- 32.4 If the individuals referred to in clause 32.3 are unable to resolve the dispute within a period of 30 (thirty) days after it had been referred to them, either Party may submit the matter for mediation. The Parties will refer the matter for mediation to a mediator appointed by agreement between the Parties, or, failing agreement, to a mediator appointed by the Chairman of the Bar Council of South Africa on written request by either

Party. The costs of mediation will be borne by the Parties equally. The determination by the mediator will be final and binding and must be carried into effect by the Parties.

- 32.5 If the mediator is unable to resolve the dispute or difference to the mutual satisfaction of the Parties, the Parties will submit to the jurisdiction of the South Gauteng Local Division of the High Court of South Africa in regard to such dispute or difference.
- 32.6 Nothing in this clause 32 will preclude any Party from seeking urgent interim relief from a court of competent jurisdiction.

33 GENERAL PROVISIONS

- 33.1 **Governing Law.** This Agreement is governed by the laws of the Republic of South Africa and any disputes will be subject to the provisions of clause 32 without giving effect to any conflict of laws.
- 33.2 **Entire Agreement**
- 33.2.1 This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and the Parties waive the right to rely on any alleged express provision not contained in the Agreement.
- 33.2.2 This Agreement will prevail over, cancel, and supersede all terms and conditions, whether written, oral, or implied, not contained in this Agreement which the Contractor may seek to incorporate in the Agreement in whatsoever manner. In particular, the Contractor's standard terms and conditions (including but not limited to any quotations, invoices, or standard supplier contracts) will not apply to this Agreement.
- 33.3 **Variation and Cancellation**
- 33.3.1 The provisions of the Agreement may be varied from time to time by agreement of the Parties, provided that no such variation will be effective unless in writing and signed by or on behalf of each of the Parties.
- 33.3.2 No amendment, variation, or consensual cancellation of this Agreement, including an amendment to this clause 33.3, and no settlement of any disputes arising under this Agreement, will be binding unless recorded in writing and signed by the Parties.
- 33.3.3 For the purposes of this clause 33.3, "writing" will 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; as amended or substituted.
- 33.4 **No Representations.** No Party may rely on any representation, which allegedly induced that Party to enter into this Agreement unless the representation is recorded in this Agreement.
- 33.5 **Indulgences**
- 33.5.1 If either Party at any time breaches any of its obligations under this Agreement, the aggrieved Party:
- 33.5.1.1 may at any time after that breach exercise any right that became exercisable directly or indirectly as a result of the breach unless the aggrieved Party has expressly elected in writing or by clear and unambiguous conduct, amounting to more than mere delay, not to

	exercise the right. In particular, acceptance of late performance will be provisional only, and the aggrieved Party may still exercise that right during that period;	33.13	Successors in title. Without prejudice to any other provision of this Agreement, any successor in title, including any executor, heir, liquidator, judicial manager, curator, or trustee, of a Party will be bound by this Agreement.
33.5.1.2	will not be estopped (i.e., precluded) from exercising its rights arising out of that breach, despite the fact that it may have elected or agreed on one or more previous occasions not to exercise the rights arising out of any similar breach or breaches.	33.14	Change Control. If at any time while this Agreement is in force the major portion of the assets of the Contractor is disposed of or the majority shareholding or the business of the Contractor is transferred or there is a change of management control of the Contractor, the Contractor will notify the University forthwith, giving details, whereupon the University will be entitled but not obliged to terminate the Agreement forthwith without payment to the Contractor of any damages whatsoever resulting from such termination.
33.6	Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute a single instrument. By signing this Agreement electronically, the Parties agree to the acceptance of the terms and conditions of this Agreement as if it was physically signed by them by hand and in writing.	33.15	Integrity, Transparency and Fair Business Practice.
33.7	Waiver. No extension of time or waiver or relaxation of any of the provisions of this Agreement will operate as an estoppel against any Party in respect of its rights under this Agreement, nor will it operate to preclude such Party from exercising its rights strictly in accordance with this Agreement.	33.15.1	The Contractor is required to submit to the University, annually, a valid B-BBEE certificate issued by a South African National Accreditation System (“SANAS”) accredited B-BBEE verification agency; or a Sworn Affidavit in the case of the Contractor is an Exempted Micro Enterprise (“EME”) or in the case of the Contractor being a greater than or equal to 51% (fifty-one per cent) Black Owned Qualifying Small Enterprise (“QSE”).
33.8	Assignment, cession, and delegation.	33.15.2	In instances where a QSE or an EME has black/black women ownership that is held through a trust, an employee share ownership programme/scheme or a broad-based ownership scheme, the University reserves the right to request proof of compliance of such a programme/scheme/trust with the requirements of the Code Series 100 of the Broad-Based Black Economic Empowerment Act and Codes of Good Practice as amended from time to time. The proof of compliance must be in the form of an ownership verification certificate issued by a SANAS-accredited B-BBEE verification agency.
33.8.1	The Contractor must not cede, assign, or delegate any of its rights, responsibilities, or obligations to any other party, including subcontractors, without the prior consent of the University. If such consent is given to the Contractor, the Contractor is deemed to have bound itself as surety and co-principal debtor with the third party for the due performance by the third party of all its obligations in terms of the Agreement.	33.15.3	The Contractor undertakes to notify and provide full details to the University in the event that there is:
33.8.2	The University may cede its rights or delegate its obligations to any other party.	33.15.3.1	a negative change to the Contractor’s B-BBEE rating, which is less than its B-BBEE status was at the time of its appointment, including the impact thereof;
33.8.3	On termination of the Agreement for any reason whatsoever, and without prejudice to any of its other rights, the University may be entitled to take cession of any sub-contracts from the Contractor and enforce any such sub-contracts.	33.15.3.2	a corporate or internal restructure or change in control of the Contractor which has impacted, or is likely to impact, negatively on the Contractor’s B-BBEE rating.
33.9	Remedies. No remedy conferred by this Agreement is intended to be exclusive of any other remedy that is otherwise available under any law. Each remedy will be cumulative and in addition to every other remedy given under this Agreement or any existing or future law. The election of any one or more remedies by one of the Parties will not constitute a waiver by such Party of the right to pursue any other remedy.	33.15.4	The Contractor must issue the notice and relevant details required in clause 33.15.1 within 30 (thirty) days from the date the event occurred.
33.10	Costs. The Parties will each pay their own costs of negotiating, drafting, preparing, and implementing this Agreement.	33.15.5	The University reserves the right to, in its sole discretion, call upon the Contractor to provide details regarding its shareholding, management, and related information in order to verify that the Contractor is not engaging in fronting practices or other practices that are designed to circumvent the B-BBEE Act and the South African Department of Trade and Industry Codes of Good Practice.
33.11	Severance. If any provision of this Agreement, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby and the Parties will endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision.	33.15.6	Should there be any negative change to the Contractor’s B-BBEE rating and should the Contractor fail to comply with its reporting obligations in terms of clause 33.15.3, the University reserves the right to terminate this Agreement with immediate effect.
33.12	Survival of Rights, Duties and Obligations. Termination of this Agreement for any cause will not release a Party from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination.	33.15.7	The Contractor must immediately notify the

	University during the subsistence of this Agreement upon becoming aware of any changes in circumstances which may give rise to a conflict of interest.	33.15.17	Either Party desiring to issue a news release or advertisement or another form of media publicity in relation to this Agreement must obtain the written consent of the other Party prior to the release of such publicity, which written consent will not be unreasonably delayed or withheld.
33.15.8	The Contractor agrees that it will immediately provide to the University such information as may be requested by the University for the purposes of checking for conflicts of interest, and the Contractor warrants that such information so provided will in each instance be complete and accurate in all respects.	33.15.18	The Contractor (and its Personnel) undertakes and agrees that for the duration of this Agreement and after the termination thereof:
		33.15.18.1	not to make any disparaging remarks, derogatory statements, or any other comments privately or publicly about the University via any social media site or any other platform; and
33.15.9	Should it be deemed by the University that a conflict of interest concern exists or has come into existence in relation to the Agreement, the University and the Contractor must take all reasonable commercial steps necessary to attempt to resolve such conflict of interest concern.	33.15.18.2	to immediately remove any reference to the University of whatsoever nature that the Contractor or its Personnel have made via any social media site or any other platform.
33.15.10	Where it is not reasonably possible to so resolve such a conflict of interest concern, the University will in its sole and absolute discretion be entitled to terminate this Agreement, in which event the Contractor will not have any claim whatsoever against the University of any nature.	33.16	Survival of Provisions. Clauses 13.2.6, 16, 19, 20, 21, 22, 26, 27, 32, 33.1 and 33.15 of this Agreement will survive termination.
		33.17	Good Faith. Each of the Parties undertakes with each of the others to do all things reasonably within its power which are necessary or desirable to give effect to the spirit and intent of this Agreement.
33.15.11	The Contractor agrees that in connection with the Works to be provided under this Agreement:		
33.15.11.1	To comply with all applicable laws and regulations in the Republic of South Africa regarding anti-bribery and corruption; not to offer, promise, give, request, accept or receive bribes, including facilitation payments;		
33.15.11.2	To disclose immediately all bribes, offers of bribes or suspicions of bribery or corruption regarding this Agreement;		
33.15.12	The Contractor represents and warrants that it has policies and procedures in place consistent with acceptable industry standards, for the avoidance, mitigation, detection, and disposition of Counterfeit Goods to ensure that none of the Services and/or Goods furnished under this Agreement are Counterfeit Goods.		
33.15.13	The Contractor warrants that only new, unused, authentic, genuine, and legitimate items must form part of the Goods supplied to the University.		
33.15.14	The Contractor represents and warrants that at the Commencement Date that neither the Contractor nor its Personnel, its sub-contractors, or other persons associated with it, including but not limited to its own suppliers:		
33.15.14.1	has been convicted of any criminal offence; and		
33.15.14.2	having made reasonable enquiries, to the best of its knowledge and belief, has not been or is not the subject of any investigation, inquiry or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.		
33.15.15	The Contractor must notify the University by written notice as soon as it becomes aware of any breach of this Agreement.		
33.15.16	The Parties agree that a breach by the Contractor of any of its obligations or warranties under clause 33.15 is a material breach of this Agreement, irrespective of the level of financial loss, deprivation of benefit or exposure to liability to which such breach would or potentially would give rise.		

ANNEXURE A: CONTRACT DATA

1. SIGNATORIES

For the University	
Signature(s)	
Full Name(s)	
Capacity	
Signature Date	
Place	

For the Contractor	
Signature(s)	
Full Name(s)	
Capacity	
Signature Date	
Place	

2. INTRODUCTION

2.1. This Annexure A (Contract) Data is made pursuant to the Terms and Conditions concluded between the University and the Contractor.

3. DEFINITIONS AND INTERPRETATION

3.1. In this Annexure A (Contract Data), unless the context otherwise requires, terms used but not defined in this Annexure A: Contract Data will have the meanings given to them in the Terms and Conditions.

4. CLASSIFICATION AND TYPE OF AGREEMENT

4.1. To be inserted.

4.2. No form of exclusivity has been conferred on the Contractor nor volume or value guarantee granted by the University.

5. CONTRACTOR DETAILS

Full Registered Name:	To be inserted
Registration Number:	To be inserted
Country of Incorporation:	To be inserted

6. TERM AND TERMINATION

6.1. Term

Commencement Date:	To be inserted, notwithstanding the Signature Date
Termination Date:	To be inserted
Contract Term:	To be inserted years

7. DETAILS OF INSURANCE COVER

To be inserted

8. CONTRACTOR'S KEY PERSONNEL

Full Name & Position	Contact Details	Area of Responsibility
Name: To be inserted Position: To be inserted	Mobile: To be inserted Email: To be inserted	To be inserted
Name: To be inserted Position: To be inserted	Mobile: To be inserted Email: To be inserted	To be inserted

9. REPRESENTATIVES

Details	University	Contractor
Name:	To be inserted	To be inserted
Position:	To be inserted	To be inserted
Tel:	To be inserted	To be inserted
Email:	To be inserted	To be inserted

10. DOMICILIUM CITANDI ET EXECUTANDI

10.1. Address for Operational Correspondence

The University	
Marked for the attention of:	To be inserted
Electronic mail address:	To be inserted
Physical Address:	To be inserted

The Contractor	
Marked for the attention of:	To be inserted
Electronic mail address:	To be inserted
Physical Address:	To be inserted

10.2. Address for the Service of Legal Documents

The University	
Marked for the attention of:	Director Legal Services
Electronic mail address:	To be inserted
Physical Address:	5th Floor, Room 5006A, Solomon Mahlangu House East Campus, Braamfontein, Johannesburg 2050

The Contractor	
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Marked for the attention of:	To be inserted
Electronic mail address:	To be inserted
Physical Address:	To be inserted

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ANNEXURE B: SCOPE OF WORK

To be inserted

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ANNEXURE C: PRICING SCHEDULE

1. ESTIMATED CONTRACT PRICE

The Parties hereby acknowledge and agree that the estimated and projected value of this Agreement is [insert agreed amount] including VAT ["Contract Price"]. The Parties further agree that the Contract Price represents the maximum limit and ceiling for all financial obligations and liabilities arising under this Agreement, unless otherwise expressly provided for in the Terms. Any increase in the Contract Price beyond the initially agreed amount will be subject to the terms and conditions set forth in this Agreement.

2. DETAILED PRICING SCHEDULE / BILL OF MATERIALS

To be inserted

3. PENALTIES

If the Contractor fails to fulfil any of its responsibilities, as set out in this Agreement, and does not remedy such failure despite being called upon by the University to do so in terms of clause 25, the University is entitled to impose a penalty equal to 10 (ten) hours per day or part thereof x the "Standing Time" rate [as set out above in section 2 | Annexure C (Pricing Schedule)], per day, and per event that the Contractor is and remains in breach of its responsibilities. Under such circumstances, the University may withhold payment until proper performance is achieved; or choose to retain payments due for selected portions of the Works; or seek damages from the Service Provider in addition to the penalty described in this clause 23 and any other rights in terms of this Agreement.



ANNEXURE D: WORKS PROGRAM

To be inserted

DRAFT

ANNEXURE E: VARIATION ORDER

1 INTRODUCTION

- 1.1 The University and the Contractor entered into a Minor Works Agreement for core drilling of a borehole ("**Main Agreement**") on [insert date].
- 1.2 This Variation Order is made pursuant to the terms of the Main Agreement.

2 DEFINITIONS AND INTERPRETATION

In this Variation Order, unless the context otherwise requires, terms used but not defined in this Variation Order will have the meanings given to them in the Main Agreement.

3 REPRESENTATIVES OF THE PARTIES

3.1 The representatives of the Parties under this Variation Order are as follows:

3.1.1 For the University:

Name:	
Position Held:	
Contact Details [Mobile, Telephonic and E-mail Address, Physical Address]:	

3.1.2 For the Contractor:

Name:	
Position Held:	
Contact Details [Mobile, Telephonic and E-mail Address, Physical Address]:	

4 NATURE AND DETAILS OF VARIATION

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5 FINANCIAL & ACCOUNTING

5.1 Subject to the provisions contained in the Main Agreement, the following fees will apply:

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Signed on behalf of the University: _____

Name: _____

Designation: _____

Date: _____

Place: _____

Signed on behalf of the Contractor _____

Name: _____

Designation: _____

Date: _____

Place: _____

DRAFT