

General Provisions

1.	Appointment and Supply Arrangements		<ul style="list-style-type: none"> (ii) all drug and alcohol, safety, health and environment guidelines, rules and procedures provided to Palabora; (iii) all reasonable directions and orders given by Palabora's representatives; and (iv) Palabora's "Code of Conduct";
1.1	Palabora hereby appoints the Supplier to render services or supply products in accordance with the scope of work as described in Schedule () of this contract.		
1.2	The Supplier hereby accepts the appointment subject to the terms and conditions in this contract.		
1.3	the Supplier will in accordance with Schedule () and the terms of this contract:		
	(a) Provide the Services from Site to Delivery Point for the duration of this contract or within the Specified Period, as the case may be; and/or		(c) ensure that the Site is left secure, clean, orderly and fit for use;
	(b) Supply the Products ordered by Palabora to the Delivery Points during the Term or within the Specified Period, as the case may be		(d) ensure that its Personnel complete Palabora's safety induction and visitors site orientation programs before commencing work at the Site, this shall be done at the Supplier's cost; and
1.4	Palabora may, in writing:		(e) obtain at Supplier's own expense any necessary licences or permits for the supply of Services to Palabora.
	(c) nominate a further Site or an alternate Site; and/or	1.11	The Supplier acknowledges that Palabora does not guarantee any minimum level of availability of work for the entire duration of this Contract.
	(d) nominate a further Delivery Point and/or an alternate Delivery Point	1.12	The Supplier guarantees that it is aware or ought to be aware of any legislation and/or law that is relevant for purposes of the Supplier to fulfil its obligations under contract.
	for the provision of Services in terms of this Contract.	1.13	The Supplier guarantees that all the representations made by it are legit and verifiable, should there be a need, the Supplier shall, at no cost, cooperate with and assist Palabora to verify its standing and representation in terms of clauses 46.10 and 46.11 of this contract.
1.5	The Supplier will undertake all necessary actions as required to ensure an uninterrupted supply of Services or Products to Palabora.	1.14	The Supplier's performance under this contract shall be evaluated and assessed quarterly, after every three months, in accordance with the required performance standard which accord with this contract.
1.6	The Supplier will assume professional and technical responsibility for the performance of its services to Palabora.	1.15	The Supplier shall within 7 (seven) days of being informed of its failure to meet the performance standard of Palabora, inform Palabora in writing of the reason for its failure to perform. Thereafter the Supplier shall forthwith develop action timetables to address those areas of performance in which there was an adverse finding at no additional cost to Palabora.
1.7	The Supplier shall execute its services in accordance with the recognised professional standard employed by other Suppliers performing service of a comparable nature.	1.16	The Supplier shall strive to do all things reasonable during the term of this Contract, at no additional cost to Palabora, to comply with and/or improve its achievements of the performance standards of Palabora
1.8	The Supplier undertakes that the Product shall be delivered to the delivery point in its entirety and as collected.		
1.9	The Supplier will comply with Specific terms contained in this Contract.		
1.10	The Supplier must in supplying Services:		
	(a) use best endeavours not to interfere with any of the activities conducted by Palabora or the activities of any other person at the Site;		
	(b) comply with and ensure that their Personnel comply with:		
	(i) all applicable laws, regulations and industrial awards and agreements;		
2	Duration	2	Duration
2.1	This Contract shall commence on the Effective Date and shall subject to the rights of termination stipulated in this contract, it shall terminate unless renewed in terms of clause 2.2.	2.1	This Contract shall commence on the Effective Date and shall subject to the rights of termination stipulated in this contract, it shall terminate unless renewed in terms of clause 2.2.
2.2	There shall be no option to renew this Contract after expiry of the term, unless the Parties agree otherwise in writing.	2.2	There shall be no option to renew this Contract after expiry of the term, unless the Parties agree otherwise in writing.
3	Existing supply arrangements	3	Existing supply arrangements
3.1	The Supplier acknowledge that:	3.1	The Supplier acknowledge that:
	(a) supply arrangements may exist between Palabora and any other party, not a party in this Contract, in respect of the Services as at the Effective Date; and	3.2	Any current supply agreement between the Supplier and Palabora will be superseded by this contract with such agreements being terminated with effect from the day preceding the Effective Date.
	(b) Palabora does not have any obligation to the Supplier to seek to alter, modify or terminate any of the supply agreements referred to in clause 3.1 (a) .	3.3	Termination of any current supply agreements in accordance with clause 3.2 will be without prejudice to any rights of either party against the other which accrued prior to the time of termination or which otherwise relate to or may arise at any future time from any breach or non-observance of Obligations under those agreements which arose prior to the time of termination.
4	Price	4	Price
4.1	The Services will be supplied by the Supplier to Palabora for the Prices.	4.1	The Services will be supplied by the Supplier to Palabora for the Prices.
4.2	The Prices will:	4.2	The Prices will:
	(a) if a Price Adjustment Mechanism is specified under this contract, be adjusted in accordance with the Price Adjustment Mechanism; and	4.3	Unless this contract specifies otherwise, the Prices are inclusive of:
	(b) if a Price Adjustment Mechanism is not specified in this contract, be fixed for the Term.	4.3	(a) the costs of delivery by the Supplier to the relevant Delivery Point;
4.3	Unless this contract specifies otherwise, the Prices are inclusive of:	4.3	(b) the costs of services and
	(a) the costs of delivery by the Supplier to the relevant Delivery Point;	4.4	(c) VAT and all other Taxes.
	(b) the costs of services and	4.4	If VAT has application to any supply made by the Supplier under or in connection with this contract, and the
	(c) VAT and all other Taxes.		

	consideration payable or to be provided under or in connection with this Contract is expressly stated to be exclusive of VAT, the Supplier may, in addition to the consideration payable or to be provided for the supply, subject to issuing a Tax Invoice, recover from Palabora an additional amount on account of VAT, such amount to be calculated by multiplying the amount or consideration payable or to be provided by Palabora for the supply by the prevailing VAT rates.			
4.5	To the extent that any monies payable to Palabora under this contract are regarded as consideration for a supply made by Palabora, Palabora will be entitled to recover an additional amount from the Supplier for the relevant supply, being equal to the amount payable to Palabora multiplied by the prevailing VAT rate.			
4.6	If, during the Term the Supplier or its agents and/or dealers ("Supplier Entity") provides the Products and/or Services to a third party customer ("Customer") on a term or terms ("More Favourable Term") which, in Palabora's reasonable opinion, is or are more favourable to the Customer than the term or terms under this contract, then all amendments necessary to this contract so as to match the relevant More Favourable Term will be made. Such amendments will have effect on and from the date the More Favourable Term first applied to the Customer and the Supplier will make all necessary reimbursements and adjustments in favour of Palabora as are required to give effect to those amendments.			
4.7	For the purposes of clause 4.6 , the Supplier must:			
	(a) notify Palabora as soon as possible after it becomes aware of any More Favourable Term; and			
	(b) at the request of Palabora, allow an independent auditor, nominated by Palabora, to report to Palabora on the Supplier's compliance with clause 4.6			
5	Payment			
5.1	The Supplier will invoice Palabora, separately or independently, for Services rendered, which services shall be in accordance with Schedule (), scope of work, in this Contract.			
5.2	All Tax Invoices, Prices and payments must be stated and made in South African Rands.			
5.3	The invoice must be calculated by reference to the prices, fees or other amounts specified in the schedules to this Contract dealing with price and specifications.			
5.4	Palabora must make payment within 30 days from the receipt of the relevant Statement by the nominated Palabora representative, unless Palabora disputes any of the charges therein.			
		5.5	The invoices must be in a form acceptable to Palabora and must contain the following information:	
			(a) the number of the purchase order to which the invoice relates;	
			(b) a brief description of the Supply and/or services provided in the period covered by the invoice;	
			(c) any further verification or documentation in relation to the invoice as is reasonably required by Palabora such as time sheets and reimbursable costs.	
		5.6	If Palabora disputes any amount shown on the invoice it must notify the Supplier within 21 (twenty) days of receipt of the invoice and must pay any amounts not in dispute in accordance with Clause 5.4 , such a payment should not be construed as an admission of liability on disputed amounts.	
		5.7	If the Supplier discovers or is advised of any errors or exceptions in relation to any of its invoices, the Supplier and Palabora will jointly review the nature of the errors or exceptions, and the Supplier must, if appropriate, take prompt corrective action and adjust the relevant invoice or refund the overpayments.	
		5.8	Payment will be effected by bank transfer.	
		5.9	Palabora's liability towards the Supplier will be deemed to have been met when the bank transfer is made or payment is made.	
		5.10	The Supplier assumes the entire risk upon the bank transfer being made or upon receipt of payment.	
		5.11	The Supplier will ensure at all times that Palabora has the correct banking details in order to make payment by bank transfer.	
		5.12	If the Supplier fail to include an amount payable to it on an invoice, Supplier must notify Palabora of the claim within 30 days after delivery of such invoice. Any such claim not made within the 30 day period is deemed waived.	
		5.13	Without limiting any other remedy available to the Supplier, Palabora may deduct, set-off or withhold amounts due to Supplier for:	
			(a) payment of any liability for breach of the contract;	
			(b) the cost to remedy any non-compliant Services due to breach of warranty;	
			(c) an amount required to be deducted under any applicable laws; or	
			(d) any other amount payable to Palabora under the contract.	
		5.6	Supplier must make prompt payment of all debts or liabilities incurred by it in connection with this contract. Subject to applicable laws, by accepting payment, Supplier waives and releases all rights	
			to, and at Supplier's cost will obtain prompt removal of, any mechanics', materialmen's, mining or similar lien, hypothec or claim against Palabora or Palabora's assets, that then exist or that may arise with respect to the Services provided on or before the date of the relevant invoice. All payments to the Supplier, under this contract, are contingent on until the Supplier provide a proof of compliance with this Clause to Palabora upon request.	
		6	Warranties	
		6.1	The Supplier represents, warrants and undertakes that the Services:	
			(a) will be fit for purpose for which these types of Services are commonly acquired;	
			(b) will be performed with due care, skill and diligence;	
			(c) will be free from any errors, omissions or other defects for 18 months from completion of the Services; and	
			(d) will meet the relevant Standards.	
		6.2	The Supplier represents and warrants that there is and will be no claim to, or infringement of, any Intellectual Property Rights embodied in the Products and/or Services or arising out of the manufacture, sale or use of the Products and/or sale or use of the Services.	
		6.3	Without limitation to any other remedy available to Palabora under this contract or otherwise, if the Supplier is in breach of any of the Warranties, then the Supplier must, at the election of Palabora, and at the Supplier's cost (including all relevant transportation and labour costs), re-perform the Service to Palabora's satisfaction or Palabora direct a way to deal with whichever kind of a breach.	
		6.4	These Warranties are in addition to any other warranties that the Supplier may provide in respect of the Services, which warranties must not restrict or limit the Warranties set out above.	
		6.5	If the Supplier is unable or unwilling to provide the Services in accordance with this contract, Palabora may outsource such part of the Services from another party other than a party in this Contract, and the Supplier will be responsible for all incremental costs accrued to Palabora as a result of the Supplier's failure to provide the Services in terms of this Contract. The outsourcing shall be until Palabora is reasonably determined that the Supplier will resume with the performance of the relevant part of the Services and in accordance with this contract.	
		7	Termination	
		7.1	This contract will be deemed to commence on the Effective Date and will remain in force, unless terminated earlier pursuant to this contract, until the end of the Term.	

- 7.2 Palabora may terminate this contract by giving the Supplier not less than 30 (thirty) days written notice if:
- (a) the Supplier fails to remedy a breach of a material term of this contract within 30 days of written notice of such breach;
 - (b) the other party becomes the subject of bankruptcy, liquidation or winding-up procedures or otherwise becomes insolvent; or
 - (c) the Supplier or any of its employees or subcontractors embarks in any form of Industrial Action on Palabora's premises or on any of the property deemed to be Palabora's private property and which may as a result of this action tarnish Palabora's name or reputation
- 7.3 Palabora may terminate this contract by giving the Supplier a written notice if:
- (a) the Supplier is unable or ceases for any reason whatsoever to conduct its normal line of business in the ordinary and regular manner; or
 - (b) the Supplier compromises or attempts to compromise generally with the Supplier's creditors; or
 - (c) any of the Supplier's assets are attached under writ of execution and the Supplier fails within 10(ten) Business Days of such attachment to take the necessary steps to have such attachment set aside and thereafter pursue such steps with due diligence; or
 - (d) any final and unappealable judgement against the Supplier in excess of R100,000.00 (one hundred thousand Rand) remains unsatisfied for a period of 10 (ten) Business Days; or
 - (e) the Supplier's members effectively resolve otherwise pursuant to a reorganisation, reconstruction or amalgamation to voluntarily wind up the Supplier; or
 - (f) the Supplier fails to timeously report an incidence or event contemplated in **clause 33** to Palabora; or
 - (g) the Supplier, or its Personnel fail to comply with any Health, Safety or Environmental regulations, which non-compliance presents, in the Palabora's reasonable opinion, a material threat to health, safety or the environment; or
- (h) the Supplier, without the prior consent of Palabora in writing:
 - (i) undergoes a reorganisation or reconstruction; or
 - (ii) amalgamates with or is acquired by or acquires another party,
 and as a result, in the opinion of Palabora, has or would have a conflict of interest with Palabora in continuing with this contract; or
 - (i) Palabora permanently or temporarily ceases its Product/s mining operations for any reason whatsoever; or
 - (j) in the sole discretion of Palabora, the product export market and/or prices are not financially viable.
- Termination under this sub-clause 7.3 shall be effective immediately upon receipt of the notice by the Supplier or any other reasonable date agreed between the parties.
- 7.4 Upon termination of this Contract, pursuant to any termination, the Supplier must:
- (a) provide Palabora with all information and co-operation to enable the personnel of the Palabora, or that of any other party nominated by Palabora to fully and effectively take over the performance of the Supply;
 - (b) co-operate with Palabora to facilitate a smooth, efficient and effective takeover of the performance of the Supply;
 - (c) return to Palabora any items issued to the Supplier by the Palabora during the Term; and
 - (d) take any other action relating to the termination of the Contract as Palabora may reasonably require.
- 7.5 The Supplier fails to comply with legislation and/or law that the Supplier ought to have known for purposes of fulfilling its obligations under this contract.
- 7.6 If this contract terminates, then the supply arrangements automatically terminates on the same date. If this contract is terminated, the only amounts recoverable by Supplier shall be limited to amounts due by Palabora to the Supplier for the Services actually provided prior to the date of the termination.
- 7.7 Termination will be without prejudice to any rights of either party against the other which accrued prior to the time of termination or which otherwise relate to or may arise at any future time from any breach or non-observance of Obligations under this contract which arose prior to the time of termination.
- 7.8 The Supplier acknowledges and agrees that the Warranties and Palabora's remedies survive termination of this contract.
- 7.9 Palabora reserves the right at any stage during the term of this agreement to test the market
- (a) to ensure just and fair prices are paid;
 - (b) should Palabora's requirements change; and
 - (c) if in Palabora's opinion the level of service/quality of goods does not meet with Palabora's requirements or approval.
- In such instances, the supplier may be given the opportunity to quote.
- If the supplier is given an opportunity to quote and be unsuccessful in its bid, the current Contract will be terminated with the supplier by giving 30 (thirty) days written notice.
- 8 Indemnities**
- 8.1 The Supplier acknowledges that if the Supplier enters onto any Site, it does so at its own risk. The Supplier must ensure that the Supplier's Personnel are also aware that they enter onto the Sites at their own risk.
- 8.2 The Supplier will indemnify (and will keep indemnified) Palabora from and against all liability, loss and/or damage of any kind whatsoever that Palabora suffers, sustains or incurs, arising directly or indirectly from:
- (a) the illness, injury or death of any of the Supplier's Personnel arising out of or in any way related to this contract;
 - (b) any personal injury, illness or death to any person or damage to any property (including Palabora's and any of Palabora's Personnel's) or any other loss or damage of any kind whatsoever caused or to the extent contributed to by:
 - (i) any breach by the Supplier of this contract; and/or
 - (ii) any negligent act or omission by the Supplier or its Personnel in connection with this contract; and/or
 - (iii) any non-compliance with applicable legislation or regulation.
 - (c) any claim made against Palabora by any of the Supplier's Personnel in respect of relevant legislation concerning income tax, workers compensation, annual leave, long service leave, prescription or any

- applicable award, determination or agreement of a competent industrial tribunal; and
- (d) any penalty imposed for breach of any applicable law in connection with the performance of any of the Services caused by any act or omission of the Supplier or the Supplier's Personnel.
- 8.3 Every exemption, limitation, defence, immunity, indemnity or other benefit contained in this contract or otherwise to which Palabora is entitled will be held by Palabora to the benefit of, and will extend to protect, Palabora's officers, employees and agents.
- 8.4 The Supplier's obligation to indemnify Palabora with respect to liability, loss or damage under **clause 8.2**, will be reduced to the extent that any such liability, loss or damage is directly caused by Palabora's negligence or wilful default.
- 9 Insurances**
- The Supplier must effect and maintain throughout the Term, at the Supplier's expense, the insurances as specified in Schedule () and in accordance with the provisions as set out in Schedule ().
- 10 Assignment**
- 10.1 Neither party may assign its rights under this contract without the prior written consent of the other party (which consent cannot be unreasonably withheld)
- 10.2 Notwithstanding Clause 10.1 above, the Palabora may assign all or any of its rights under this contract to any of its affiliates without the Supplier's consent.
- 11 Sub-Contracting**
- 11.1 If the Supplier delegates, sub-contracts or outsources any of the Supplier's Obligations under this contract at any time, the Supplier will remain liable to Palabora for the performance and discharge of the delegated and/or sub-contracted and/or outsourced Obligations under this contract.
- 11.2 The Supplier shall subcontract reputable subcontractor, relevant for the provision of services to Palabora in terms of this Contract unless a regard is due to **clause 46**.
- 11.3 It is the responsibility of the Supplier to timeously pay all amounts due to any appointed sub-contractor by the Supplier for the purposes of supplying providing any Service to Palabora.
- 11.4 If Palabora requires, the Supplier must procure that each subcontractor signs a duty of care letter in terms of which it:
- (a) undertakes to fulfil its obligations, arising out of any contractual relationship with the Supplier, directly to Palabora in the event that the Supplier is unable to fulfil any of its obligations in terms of any sub-contract;
- (b) warrants that it has the necessary skills and experience to carry out its appointment as a sub-contractor;
- (c) undertakes to perform its obligations and duties as a sub-contractor properly, efficiently and in accordance with a standard generally accepted in the Republic of South Africa and with the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced subcontractor seeking in good faith to comply with its contractual obligations and with all applicable legislation and laws, and engaged in the same type of undertaking and under the same or similar circumstances and conditions as those envisaged by the subcontract agreement;
- (d) undertakes to perform its duties at all times to Palabora's satisfaction in all material aspects;
- (e) warrants that it shall advise Palabora, in writing immediately, should it at any time, become aware of:
- (i) any deviation from the Specification; or
- (ii) any design or construction deficiencies; or
- (iii) any cost overruns and/or time delays,
- (f) warrants that it shall perform its duties with due diligence;
- (g) acknowledges that it has a duty of care to Palabora in relation to all of its duties and undertakes that it shall at all times give due regard to that duty of care.
- 12 Working Conditions**
- 12.1 The Supplier will comply with and cooperate with Palabora in putting into effect conditions including but not limited to, starting and quitting time, smoking regulations, check-in and check-out procedures, daily clean-up, and other working conditions which directly affect the Products and/or the Services and/or the Site.
- 12.2 The Supplier will comply with job site Health, Safety and Environmental regulations and conform to and be in full compliance with all laws and regulations applicable thereto. The Supplier will also ensure observance by the Supplier and the Supplier's Personnel of Palabora's rules applicable to the Site and to the Delivery Points.
- 12.3 Supplier and Supplier's Personnel shall provide the Products and/or the Services in the manner described in the contract or, where not so described, to the satisfaction of Palabora and in conformity with the applicable safety laws, including the Occupational Health and Safety Act, No. 72 of 1997, and the regulations framed thereunder. Where the Services are for the construction of a piece of work, including temporary works and day-works, the work shall be so constructed that when completed and properly operated for the purpose for which they have been constructed, the work will conform with the aforementioned legislation and shall be capable of safe and efficient operation and maintenance.
- 12.4 The Supplier confirms by entering into this contract that it is aware of its responsibilities in terms of all of the provisions of the Occupational Health and Safety Act, No. 85 of 1993 and the Mine Health and Safety Act, No 29 of 1996 which are in force on the Sites. The Supplier must ensure that the equipment and/or materials and/or Products supplied to Palabora are safe and without risk to health and safety when properly used. Furthermore, the Supplier must timeously advise Palabora in writing of any inherent danger and/or hazard arising from the storage, use or handling of the equipment and/or materials and/or Products.
- 12.5 If the presence of the Supplier or the Supplier's Personnel is required at a Site, the Supplier hereby warrants that the Supplier and its Personnel are covered in terms of the Compensation for Occupational Injuries and Disease Act, No. 130 of 1993. This cover shall remain in force to cover the presence of any such Supplier Personnel on the Site and the Supplier confirms that the cover will not lapse at any time during the Term.
- 12.6 Under the Minerals Act, No. 50 of 1991 a record must be kept, by Palabora, of the names and addresses of all Personnel working on the Site. The Supplier must comply with this requirement.
- 12.7 It is mandatory for the Supplier to maintain a register of all its Personnel engaged in risk work, pursuant to the Occupational Diseases in Mines and Works Act, No. 78 of 1973. Failure to comply with the Act may expose both the Supplier and Palabora to the payment of penalties. Compliance will therefore be rigidly enforced by Palabora.
- 12.8 In terms of the Occupational Diseases in Mines and Works Act, No. 78 of 1973, no person may perform risk work without a valid Certificate of Fitness issued by the Medical Bureau for Occupational Diseases. The Supplier is to comply in full with the provisions of this Act. If any of the Supplier's Personnel are not in possession of the proper Certificate of Fitness, it may be obtained at Palabora's clinic by the Personnel undergoing the proper

	medical examination preparatory to obtaining a valid Certificate of Fitness. The cost of such medical examination will be for the Supplier's account.	14.3	obtain clearances for any cutting, welding or grinding, from Palabora or Palabora's designate before commencing any work in any area and if such work is carried out in any plant area other than in a workshop, the Supplier must have a fire extinguisher on hand;	16.8	ensure that all necessary clearances have been obtained. The removal of the Supplier's tools, plant, equipment, materials, from the Site will only be permitted when a "Gate Clearance" form signed by an authorised Palabora official, is produced at the gate.
13	Use of Palabora's equipment and material			16	General Safety Requirements
13.1	All equipment and material furnished by Palabora, shall be available for use by the Supplier at the Site from the Effective Date or such other date that Palabora may agree with the Supplier in writing. The Price shall include the use of such equipment and material, and any replacement thereof by similar equipment by the Supplier for the Term and for any extension of the Term, if any.	14.4	ensure that no "explosive" tools are used on the Site;	16.1	The Supplier may only use designated roadways and footpaths.
13.2	Palabora may, when requested by the Supplier, agree to the use by the Supplier during the Term of further equipment and/or material furnished by Palabora. In the event that such further equipment and/or material are used, Palabora will attempt to agree with the Supplier a suitable reduction of the Price payable. In the event that Palabora cannot reach agreement within 14 (fourteen) days of receipt by Palabora of the Supplier's proposal for a suitable reduction in the Price payable, then neither parties shall have recourse to any dispute resolution mechanism and Palabora shall not be obliged to furnish such materials or equipment to the Supplier.	14.5	as soon as possible on arrival, contact Palabora in order for Palabora to assist in setting up operations.	16.2	The Supplier may not enter designated unauthorised areas unless specifically authorised by Palabora to do so.
13.3	The Supplier will be responsible to receive, inspect, warehouse and retain custody of any equipment and material to be used or installed by the Supplier until it has been installed and/or used. The Supplier will have full responsibility for all equipment and materials, from the time of delivery to the time of acceptance thereof.	15	Admission to Areas (Persons and Vehicles)	16.3	The Supplier must give prior notice of any construction or maintenance work it wishes to carry out in any existing plant area to Palabora. The Supplier may not, while carrying out such work, interrupt operating plant services, including but not limited to, air, electricity, steam and/or water without the express permission and guidance of Palabora. Further, the Supplier may not work on any machinery or item unless it has been completely mechanically and electrically isolated and unless lockout procedures have been complied with. The Supplier must obtain permission from Palabora before the Supplier carries out any isolation of electric circuits.
13.4	The Supplier will inspect all deliveries of equipment and material furnished by Palabora in order to determine quantity discrepancies or in-transit damage. In the event of damage, it will be the Supplier's responsibility to obtain carrier inspection and a report of the damage.	15.1	Subject to the possession of the necessary permits, entry into the Site by the Supplier's Personnel (and Supplier's sub-contractors) and vehicles are limited to entries for legitimate purposes. The Supplier is responsible for permits issued to the Supplier's and/or the Supplier's Personnel and/or agents and/or sub-contractors and shall ensure the return thereof as soon as the holders are no longer required on the Site.	16.4	Any isolation shall only be carried out by an authorised electrician under the direct supervision of an electrical supervisor or a duly appointed electrician as the case may be.
13.5	For each delivery received, the Supplier will furnish Palabora with the original of the receiving report accompanied by packing lists and, where applicable, over-short-damage reports, and carrier's damage inspection reports. Any damage not reported at the time of receipt must be repaired or replaced by the Supplier, the costs of which will be for the Supplier's account. Freight car demurrage or truck standby charges will be for the Supplier's account.	15.2	Applications for entry permits are to be made to Palabora at least 24 (twenty four) hours before the relevant permits are required.	16.5	The Supplier must chain all gas cylinders to portable trolleys, in a vertical position.
		15.3	All persons entering the Site shall proceed directly to the Site and shall not loiter in any area or enter buildings or premises other than those in or upon which they are engaged. Any person found loitering or in any area or building other than the Site will be removed immediately, and may have the permit taken away and be refused further access to the Site.	16.6	The Supplier is warned that drinking any form of alcohol on the Site is strictly prohibited and that any person found either drinking or under the influence of alcohol on the Site will immediately be removed from the Site and the Supplier will be required to remove such person permanently from their activities on the Site.
		15.4	Persons under the influence of intoxicants or drugs are prohibited from the Sites and no intoxicants, narcotics, firearms, ammunition or cameras may be taken into a Site.	16.7	Any of the Supplier's Personnel who disobey any work, safety and health rule may be removed from the Site at Palabora's sole discretion and not permitted to return.
		15.5	Traffic signs, rules and regulations at the Site are to be strictly observed. Failure to observe such requirements could lead to the offending person being forbidden entry to the Site. All normal traffic rules also apply on the Site unless superseded by Palabora's traffic signs, rules or regulations.	16.8	Any of the Supplier's Personnel whom Palabora in its sole discretion considers to be guilty of theft, wilful trespass in an unauthorised area, malicious damage to property, intoxication and similar serious offences, may be removed from the Site, and any damage or loss shall be made good at the Supplier's expense.
		15.6	All persons when on the Site shall, if called upon by any person authorised by Palabora, submit to being searched either as regards their persons, their possessions or any vehicle in which they may be travelling. Supplier shall ensure that its Personnel utilised for the purposes of this contract agree to the requirements hereof.		
14	Permission to Work	15.7	Before the Supplier starts any work on the Site, the Supplier must first obtain clearances from Palabora in respect of work on electric cables, sewerage, water and air supply, bush clearance, and, in the case of work in the precincts of a production department of Palabora, a plant clearance. The Supplier must check with Palabora before starting work on the Site and	17	Safety Measures
	The Supplier must:			17.1	The Supplier must not:
14.1	prior to commencement of any "on site" work at Palabora report to Contract Management Centre;			(a)	leave lying in any roadway, railway or path, any plant, material or equipment which might endanger persons using such roadway, railway or path;
14.2	obtain all necessary work permits from the Palabora before commencing to deliver the Products and/or provide the Services at the Site;				

<p>(b) park any vehicle or off-load any plant, material or equipment within a minimum distance of 2.5 metres from the centre of a railway track;</p> <p>(c) place any wire or guy rope across a roadway, railway or path without providing adequate warning of or protection against such obstacle;</p> <p>(d) leave any excavation in a roadway, railway or path without providing adequate warning of or protection against such obstacle.</p>	<p>21.3 The Supplier must keep demarcated areas surrounding all firefighting equipment completely clear. The Supplier must further keep clear all access roads and aisles running between materials stacked in open areas or in buildings to provide necessary access by firefighting personnel and appliances.</p> <p>21.4 The Supplier is obliged to make the positioning of fire hydrants and "break glass" warning devices on the Site known to all Personnel. The Supplier shall not use fire hydrants as a water supply for building operations or the provision of any Services. If any of the Supplier's Personnel is not familiar with the operations of a fire extinguisher, the Supplier must notify Palabora's safety officer who will then demonstrate its use. The seal of any fire extinguisher shall not be broken except in the event of a fire and a written report shall be submitted to Palabora when any extinguisher is used. Anyone who intentionally damages any fire equipment will be prosecuted.</p>	<p>carry out all electrical work in accordance with all applicable Electrical Installation Regulations including Government Notice R2270.</p>
<p>17.2 Palabora may stop:</p> <p>(a) the delivery of any Product; or</p> <p>(b) the provision of any Services; or</p> <p>(c) any work, or use of any plant, materials or equipment by the Supplier,</p> <p>which Palabora in its sole discretion considers to be unsafe.</p>		
<p>18 Work in Elevated Areas</p> <p>The Supplier must ensure that all ladders are properly secured before use. The Supplier will ensure that ladders are in good condition, safe and are correctly used and further ensure that all ladders or scaffold planks are to an acceptable design. The Supplier must use roof ladders when working on roofs and shall ensure that when working on exposed or elevated positions, safety harnesses and life lines are worn.</p>		
<p>19 Working in confined spaces</p> <p>The Supplier may not enter any confined space as described in Palabora's definition, unless a HIRA has been conducted, an emergency procedure is in place, and all the Supplier's employees have been trained in working in confined spaces and applicable emergency procedures.</p> <p>Work can only commence once the responsible Palabora area supervisor has issued a "Permit to Work".</p>		
<p>20 Work performed underground</p> <p>Furthermore to all the generic safety requirements mentioned in this contract, before the Supplier can proceed underground, it is necessary for the Supplier and its employees to undergo an underground safety induction, which includes rescue pack training and emergency evacuation procedures.</p>		
<p>21 Fires</p> <p>21.1 "No Smoking" provisions on the Site shall be strictly observed.</p> <p>21.2 Fires shall be reported to Palabora's security office immediately. All persons shall obey legitimate instructions from any duly appointed official should an emergency condition arise while they are on a Site. If Palabora's fire alarm</p>		
<p>22 Flammable Liquids</p> <p>22.1 The Supplier shall timeously inform Palabora in writing if the Supplier wishes to introduce flammable liquids to a Site.</p> <p>22.2 No ordinary combustibles shall be stored within 10 (ten) metres of any designated area or room on the Site that contains highly flammable materials.</p>		
<p>23 Electricity and Electrical Fittings</p> <p>23.1 No unauthorised person shall tamper with electrical plant, appliances or fittings on the Site. Should an electrical appliance require attention a qualified electrician shall be called upon to do the necessary repairs or adjustments.</p> <p>23.2 Should the Supplier require power for portable tools, welding plant, etc., and if a supply is available, such equipment shall be connected only to the standard outlets provided and such connections shall be made by a qualified electrician and shall be connected via a suitable earth leakage unit. The Supplier shall not make any connection into any power supply circuit unless it has been authorised to do so by Palabora.</p> <p>23.3 Before any electrical equipment is connected to Palabora's power supply, the Supplier must first obtain approval from Palabora for the connection and operation of such equipment. The Supplier must use electric tools, equipment, cables and plugs that are in a safe working condition and shall have them inspected by the official designated by Palabora. The Supplier will not use trailing leads without adequate protection. The Supplier must</p>		
<p>24 Lifting Equipment</p> <p>The Supplier must not leave loads suspended from lifting equipment unattended.</p>		
<p>25 Fitness to Work & Medical Treatment</p> <p>25.1 The Supplier's Personnel will be required to have Fitness to Work tests carried out prior to the commencement of work on site where the Supplier's Personnel may be exposed to health hazards.</p> <p>25.2 The Supplier's Personnel will be required to obtain an Exit Medical Examination after the completion of work on site where the Supplier's Personnel may be exposed to health hazards.</p> <p>25.3 In the event of any of the Supplier's Personnel being admitted for treatment or receiving attention at Palabora's clinic and/or first aid station, the Supplier will be liable for the payment of all costs incurred. Accounts rendered in respect of such costs shall be payable promptly.</p>		
<p>26 Protection of the Environment</p> <p>26.1 The Supplier is advised that Palabora's entire property is a game reserve. Supplier is cautioned that during the Term and any extension thereof, the Supplier and the Supplier's Personnel' activities arising out of this contract may not disturb or damage the environment in any way whatsoever and/or cause any threat to the plant, animal and bird life therein. In the event that any envisaged activities by either the Supplier or any of the Supplier's Personnel might potentially disturb the environment, the Supplier must obtain prior written consent from Palabora as Palabora may be required to obtain prior written approval for the Supplier's activities from the necessary authorities.</p> <p>26.2 If the Supplier disregards this instruction the Supplier will be required to make good any damages that Palabora may suffer or, at Palabora's election, be subjected to a penalty not exceeding R100,000.00 (One hundred thousand Rands) which shall be regarded as liquidated damages.</p>		
<p>27 Reporting of Accidents</p> <p>27.1 The Supplier must notify Palabora immediately of all accidents and provide facilities for Palabora to carry out any investigations Palabora may deem necessary.</p> <p>27.2 The Supplier must report all injuries to Palabora.</p>		
<p>28 Community Engagement</p> <p>28.1 The Supplier recognises that the Palabora encourages development for indigenous people and local communities and in the performance of the contract, the Supplier undertakes to endeavour to identify and</p>		

	encourage opportunities which benefit indigenous people and local communities wherever possible.			
28.2	The Supplier shall notify Palabora well in advance of any planned meetings or happenings that may affect the indigenous people and local communities.			
29	Supplier's Storage Area			
29.1	When a storage area is made available at the Site for the Supplier's use in terms of the contract, the following conditions shall apply thereto:			
(a)	unless instructed to the contrary in writing by Palabora no temporary buildings may be erected by the Supplier within three metres of any security fence;			
(b)	no plant, equipment, materials, vehicles or other items may be stored or parked within three metres of any security fence;			
(c)	suitable fire fighting equipment, to the approval of Palabora, shall be supplied and installed by the Supplier in the said storage area.			
30	Scrap and Refuse Removal			
	The Supplier must not allow scrap and refuse arising from the provision of the Products and/or Services to accumulate anywhere on the Site. The regular removal of rubble and scrap is the Supplier's responsibility. The Supplier may however request the use of Palabora's services for this purpose at a charge to be agreed. The availability of this service shall not release the Supplier of its obligation to keep the Site clear and tidy. It should be noted that all scrap is the property of Palabora and that all monies received by the Supplier in respect of the sale of any scrap is to be paid over to Palabora immediately once it is received by the Supplier together with full substantiating documentation.			
31	Non Contract Work			
	No work outside the scope of the contract (e.g. repairing of vehicles, etc.) may be carried out on the Site without the prior consent of Palabora.			
32	Accommodation			
	No living accommodation will be available at the Site or will be supplied by Palabora for any of the Supplier's Personnel.			
33	Transparent Business Relations			
33.1	Palabora requires that its business be conducted in a transparent and ethical manner.			
33.2	Palabora requires that all suppliers and supplier's employees conduct their business in terms of "The Palabora Way", which can be found on Palabora website – www.Palabora.co.za			
33.3	The Supplier must disclose to Palabora, either at the time of entering into this contract, or at the time that the Supplier first becomes aware, of:			
		(a)	any financial interest that any of Palabora's Personnel or their immediate families have, whether directly or indirectly, in the Supplier's business; and/or	
		(b)	any improper gift, bribery, fraud or unethical business practice of which the Supplier is aware and relating to this contract.	
33.4	The Supplier must notify Palabora of any incidence relating to this clause in writing and by way of Palabora's fraud hotline at 080 086 4472.			
34	Intellectual Property			
34.1	Palabora retains the Intellectual Property Rights in:			
		(a)	Palabora's Technical Materials; and	
		(b)	any Technical Materials created by the Supplier in supplying the Products and/or Services.	
34.2	The Supplier will assign to Palabora all Intellectual Property Rights in any Technical Materials created by the Supplier for Palabora in supplying the Products and/or Services.			
34.3	The Supplier will indemnify and hold Palabora harmless from and against all claims, damages, losses and liabilities, or assertion of liabilities, arising out of any actual or alleged infringement of Intellectual Property Rights of any third party arising out of or in relation to the Services and Products or this contract.			
35	Relationship of parties			
	Nothing in this contract is or will be taken as constituting the relationship of partners or joint venturers between the parties or otherwise sharing risks or rewards or constituting any party the agent or representative of the other party.			
36	Restraint			
36.1	Neither Palabora nor the Supplier shall at any stage during the Term and for a period of two years after termination of this contract, make any offers of employment to any Personnel who are or have been employed by the other party and have been involved in the execution of this contract.			
36.2	The aforementioned restraint shall not be applicable in the event where the prior written approval to make such an offer has been obtained from the party who is or has been the employer of such Personnel.			
37	Restraint of trade			
37.1	The Supplier will not during the Term and for a period of 1 year from the date of termination of the contract, without Palabora's prior written consent, in any capacity whatsoever including, without limitation, in the capacity of proprietor, partner, director, employee, consultant, contractor, financier, agent, representative, assistant, or member of			
				a close corporation or company, be engaged in, concerned, associated or involved with any business, operation or commercial venture, by direct or indirect means, whether for reward or not, which has as its principal concern or activity any aspect of Palabora's business. It is agreed that such restraint shall only be enforceable on the Supplier in respect of the skills and knowledge which have been directly learned, received or obtained as a result of the Supplier's association with Palabora.
37.2	This restraint shall apply in the Republic of South Africa and to the territories of Namibia, Botswana, Swaziland, Zimbabwe, Lesotho, Angola and Mozambique.			
37.3	Notwithstanding the manner in which these undertakings have been linked together, grouped or headed, each of the above undertakings constitutes a separate and independent undertaking severable from each other in respect of:			
		(a)	the period of the restraint;	
		(b)	the area to which the restraint applies;	
		(c)	the capacities in which the Supplier is restrained; and	
		(d)	the types of activity covered by the restraint.	
37.4	Should any of the provisions in this clause for any reason be declared invalid or unenforceable, the remaining provisions shall not be invalidated but shall continue to be and remain in full force and effect.			
38	Confidentiality			
38.1	Each party undertakes that it will not, either during the Term or at any time thereafter, disclose to any person any confidential information of or relating to the other party of which it has become possessed as a result of this contract or the negotiations preceding this contract including, but not limited to, the terms of this contract.			
38.2	Nothing in this contract prohibits disclosure of information which:			
		(a)	is in the public domain;	
		(b)	after disclosure to a party becomes part of the public domain otherwise than as a result of the wrongful act of that party;	
		(c)	is received from a third party provided that it was not acquired directly or indirectly by that third party from a party to this contract; or	
		(d)	is required to be disclosed by law or any government or governmental body, authority or agency having authority over a party.	
38.3	A party may disclose the other party's confidential information on a "needs to know basis":			

<p>(a) to its legal and other advisers in order to advise the disclosing party in relation to its rights, Obligations and commercial exposure under this contract;</p> <p>(b) to any officers or employees of the disclosing party; or</p> <p>(c) to any agents or consultants of the disclosing party, provided that prior to such disclosure the disclosing party ensures that the relevant agent or consultant is bound by the clause 38 confidentiality Obligations.</p>	<p>41.2 If the dispute is not resolved by the parties in accordance with clause 41.1 within the time specified in that clause, then either party may, in its sole discretion, initiate court proceedings.</p> <p>41.3 Notwithstanding the existence of a dispute, each party must continue to perform its Obligations under this contract, unless the dispute relates to termination under this contract.</p> <p>41.4 A party may commence court proceedings relating to any dispute arising under this contract at any time where that party seeks urgent or interim declaratory or injunctive relief.</p>	<p>and substantially affects the commercial intention of this contract, the Party not claiming relief under this clause 44 shall have the right to terminate this contract upon written notice to the other party.</p>
<p>38.4 Except as required by any applicable law or regulatory requirement or as otherwise permitted by this contract, no party may make any public announcements or disclosures as to this contract, or otherwise in relation to the subject matter of this contract, without the prior written consent of the other party.</p>	<p>42 Notices</p> <p>42.1 A notice, approval, consent or other communication in connection with this contract must be:</p> <p>(a) in writing;</p> <p>(b) marked to the attention of the person nominated by the respective parties for the receipt of notices; and</p> <p>(c) delivered personally or sent by facsimile to the address specified in this contract or to the last known address of the addressee.</p>	<p>45 Fraud</p> <p>45.1 If anytime during the duration of this contract, Palabora in its reasonable discretion determines based on prima facie evidence that the Supplier has in respect of this contract:</p> <p>(a) acted dishonestly and/or in bad faith;</p> <p>(b) has made intentional or negligent misrepresentation to Palabora, whether in any negotiations preceding the conclusion of, or in the execution of this contract.</p> <p>45.2 Then Palabora will be entitled by giving 30 (thirty) days written to the Supplier for termination of this contract.</p> <p>45.3 Upon termination referred to in clause 45.2 above Palabora shall be entitled, in addition to all other remedies available to it, to recover from the Supplier all damages it has suffered by virtue of Supplier's fraudulent conduct.</p> <p>45.4 If, at any time of such termination referred to in clause 45.2 above Palabora is indebted to the Supplier for any amounts whatsoever, Palabora shall be entitled to withhold payment in respect thereof for a period of 3 (three) months from the date of termination in order to determine any damages suffered by Palabora.</p>
<p>38.5 If requested by the disclosing Party in writing, whether prior to or after the expiration or earlier termination of the contract, the receiving Party must promptly deliver to the disclosing Party all confidential information in its (or any of its Personnel's) custody, possession or control.</p>	<p>It is incumbent on the sender of a letter or facsimile to ensure that the intended recipient received a letter or facsimile. The sender must ensure that the recipient acknowledges receipt within two days of receipt of the letter.</p> <p>43 Governing Law and Jurisdiction</p> <p>43.1 This contract and the transactions contemplated by this contract are governed by the laws of Republic of South Africa.</p> <p>43.2 The Parties submit to the South Gauteng High Court (Local Division) of the High Court of South Africa.</p>	<p>46 Miscellaneous</p> <p>46.1 This contract may only be varied in writing signed by all parties to this contract.</p> <p>46.2 A right, power or remedy ("Right") can only be waived in writing and signed by the party granting the waiver, and:</p> <p>(a) a single or partial exercise of a Right does not prevent a further exercise of that or other right; and</p> <p>(b) failure or delay in exercising a Right does not prevent its exercise.</p> <p>46.3 If the whole or any part of a provision of this contract is void, unenforceable or illegal in a jurisdiction the contract will remain otherwise in full force apart from such provision which will be deemed to be severed for that jurisdiction.</p> <p>46.4 This contract may be signed in counterparts.</p> <p>46.5 In the event of any inconsistency between the terms as set out in the body of this contract and any terms as may be set out in an attachment, annexure or schedule, request for proposal document then the terms as set out in the body of this contract prevail to the extent of any such inconsistency.</p> <p>46.6 This Contract is not exclusive. Notwithstanding the signing of this Contract, Palabora reserves the right to procure services of any kind or nature and/or similar services rendered by the</p>
<p>38.6 The clause 38 confidentiality Obligations survive termination of this contract.</p>	<p>44 Force majeure</p> <p>44.1 Despite any other provision of this contract to the contrary, no party need act if it is impossible to do so owing to any cause beyond its reasonable control (including, without limitation, war, riot, natural disaster, or law taking effect after the date of this contract). The non-performing party agrees to notify the other promptly after it determines that it is unable to act.</p> <p>44.2 No party has any responsibility or liability for any loss or expense, suffered or incurred by any other party as a result of its not acting for so long as the impossibility under clause 44 continues. However, the non-performing party agrees to make reasonable efforts to avoid or remove the cause of non-performance and agrees to continue performance under this contract promptly when the causes are removed.</p> <p>44.3 In the event that the force majeure event continues for longer than 60 days</p>	
<p>39 Costs</p> <p>39.1 Each party must bear its own costs arising out of the negotiation, preparation and execution of this contract.</p>		
<p>40 E-Commerce</p> <p>39.1 The Supplier must be committed to conducting the Supplier's business with Palabora by way of electronic commerce – that is, the Supplier must be able to furnish the Supplier's catalogue of goods, products and services, including the Products and Services, in electronic form and have the capacity to accept orders from, and send relevant invoices to, accept payment from and participate in "reverse" auctions held by Palabora electronically ("E-commerce").</p> <p>39.2 Each party must bear its own costs for changes to its business systems when moving to the use of E-commerce.</p>		
<p>41 Dispute Resolution</p> <p>41.1 Subject to clause 41.4, the parties must before resorting to court proceedings, refer any dispute under or relating to this contract between the Supplier/s and Palabora, including, without derogating from the generality hereof, its application, breach, interpretation, validity, termination or cancellation, or any matter arising out of its application, breach, interpretation, validity, termination or cancellation, initially to a representative nominated by Palabora and a representative</p>		

	Supplier from any other party other than the parties in this Contract which Palabora may in its sole discretion deem appropriate.		other person for any liability, damage or loss (including any incidental, special, indirect damages, cost or loss) the Supplier or any other person suffers, sustains or incurs, arising from any error, inaccuracy, incompleteness or other defect in the Relevant Information;		47 Compliance with Broad-Based Black Economic Empowerment Legislation
46.7	The Supplier acknowledges and agrees that:				47.1 the Supplier undertakes to assist Palabora to comply with the procurement provisions contained in the Codes of Good Practice on Broad-Based Black Economic Empowerment ("BBBEE") issued in terms of section 9(1) of the Broad Based Black Economic Empowerment Act 53 of 2003.
	(a) in entering into this contract, the Supplier did not, and does not, except to the extent expressly stated in this contract, rely on any representation, warranty, term, condition or conduct which may have been made by Palabora, or any person purporting to act on behalf of Palabora;		(b) matters referred to in the Relevant Information may cease to be accurate or complete, and any forecast or other quality of statements included in the Relevant Information may not prove to be correct; and		47.2 Without limiting the Supplier's obligation in terms of this clause 46, the Supplier shall:
	(b) the Supplier has had the opportunity to make, and have made, all necessary and independent inquiries in relation to all matters relevant to the entry into this contract; and		(c) the Relevant Information has not been independently verified and Palabora, its directors, officers, advisers, employees and agents are not under any liability to the Supplier, or to any other person, for any liability, damage or loss (including any incidental, special, indirect damage, cost or loss) that the Supplier or any other person suffers, sustains or incurs, whether for any representation contained in the Relevant Information or any omission from the Relevant Information or for any error, inaccuracy, incompleteness or other defect in the information it contains.		46.3.1 maintain and/or improve its BEE ratings;
	(c) except as otherwise set out in this contract, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, are hereby (to the maximum extent permitted by law) excluded by Palabora - and Palabora hereby disclaims all liability in relation to these (to the maximum extent permitted by law).				46.3.2 to subcontract BEE entities or communities for the provision of services;
					46.3.3 to partner or create joint ventures with local entities and transfer skills to the local communities;
					46.3.4 provide Palabora with annual updates on the Supplier's status in respect of BBBEE compliance requirements and confirmation that Supplier has maintained or improved its BEE rating;
					46.3.5 provide Palabora with annual update on its progress in respect of joint venture and confirmation that skills are have been transferred;
46.8	Without limitation to clause 46.7, the Supplier acknowledges and agrees that:				46.3.6 do the necessary means to participate in promoting the economic unity of the nation and equal opportunity in the economic market by making skill development programs accessible to the historically disadvantaged people;
	(a) neither Palabora, nor any person purporting to act on behalf of Palabora:	46.9	References in any Indemnity to "losses, damages and/or costs" includes lawyers' fees and disbursements, on an attorney and own client basis.		
	(i) have provided any guarantee to the Supplier that Palabora will make any minimum level of purchases or necessarily acquire any or all of the Products and Services from the Supplier;	46.10	Palabora reserves its right to audit or verify the Supplier's standing and/or representations made to Palabora for purposes of entering into this contract. This process, audit and verification, can be ensued at any time during the subsistence of this contract.	46.3.7	advise Palabora if Supplier's BEE rating changes materially from the BEE Rating as at the effective date within a period 2 (two) weeks from the date on which the event giving rise to the material change in the BEE Rating occurred;
	(ii) have made any representation or warranty, whether express or implied, as to the accuracy or completeness of information contained in the Request for Proposal or any other materials or documents which may have been provided to the Supplier in connection with the invitation under the Request for Proposal to submit a response or any subsequent discussions or negotiations ("Relevant Information"); and	46.11	Should Palabora find that the Supplier misled Palabora through its representations Palabora shall be entitled to terminate this contract with immediate effect.	46.3.8	advise Palabora if the joint venture relationship changes materially from the intended objective;
		46.12	This contract constitutes the entire agreement of the parties about the subject matter, and:	46.3.9	advise Palabora, in the event of an adverse change, within a period of 1 (one) month from the date on which the event giving rise to the adverse change in the joint venture occurred, what steps have and/or will be taken by the Supplier to restore the original relationship.
	(iii) will be liable in any way to the Supplier or any		(a) any previous agreements, understandings and negotiations on that subject matter cease to have any effect; and		
			(b) any additional terms not set out in this contract do not, and will not, form part of the contract between Palabora and the Suppliers.		
				46.4	failure to comply with this clause 46 shall constitute a material breach of the provisions of this contract and Palabora

reserve the right to terminate this contract in terms of **clause 7**.

- 46.5 the Supplier acknowledges and warrants that it has read and is fully conversant with and will comply, where applicable to it, with the BBBEE Legislation.

48 Interpretation

- 47.1 In this contract unless the contrary intention appears:
- (a) a reference to "**this contract**" is a reference to this Supply Contract and all of the schedules attached hereto.
 - (b) a reference to this contract or another instrument includes any variation or replacement of either of them;
 - (c) the singular includes the plural and vice versa;
 - (d) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
 - (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and assigns;
 - (f) when any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding Business Day;
 - (g) a reference to a recital, annexure, attachment or schedule is a reference to a recital, annexure, attachment or schedule to this contract, and a reference to this contract includes a recital, annexure, attachment or schedule;
 - (h) a reference to a third person or a third party is a reference to a person who is not a party to this contract; and
 - (i) a reference to "ZAR", "Rand" or "R" is a reference to **South African** currency.
- 47.2 Headings are inserted for convenience and do not affect interpretation of this contract.

48 Defined Terms

The following words have these meanings in this contract unless the contrary intention appears:

Business Day means a day other than a Saturday, Sunday or a public holiday in South Africa.

Clause means a clause of the terms and conditions of this Contract.

"Combined Unit Effectiveness" relates to an Item and is the average of the Unit Effectiveness for all the Units shown for that Item.

Delivery Points means the delivery point/points for Palabora as specified in this contract.

Drug and Alcohol Policy means any drug and alcohol policy implemented by Palabora at the Mine and which may include provisions for random tests in respect of the abuse of drugs or alcohol;

Effective Date means the effective date of this contract as specified in this contract.

Environmental Licence means any licence, currently in force, granted under the Environmental Protection Act to carry out the operation of the Mine;

Indemnities mean the indemnities provided by the Supplier in favour of Palabora under this contract.

Intellectual Property Rights means all rights as conferred by law, equity and statute in relation to inventions, designs, patents, databases, trademarks, service marks, logos, get up, styles, circuit layouts, copyright, trade secrets and all other such rights, and all other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967.

Mine means the area of land subject to mining leases.

More Favourable Term is defined in **clause 4.6**.

Obligations means obligations, undertakings and duties, express and implied and **Obligated** has a corresponding meaning.

Palabora means Palabora Copper (Pty) Limited, a public company incorporated with limited liability in terms of the laws of the Republic of South Africa with Registration Number 1956/02134/06 and that conducts business at 1 Copper Road, Phalaborwa.

Personnel mean employees, agents, contractors and subcontractors.

Prices means the prices for the Products and/or Services as specified in this contract.

Price Adjustment Mechanism means the price adjustment mechanism as specified in this contract.

Products means magnetite, copper, Vermiculite and/ or the product as specified in this contract.

Rate means a rate for services or parts payable by Palabora to the Supplier.

Relevant Information is defined in **clause 46.8(a)(ii)**.

Request for Proposal means the document of that name as specified in this contract.

Safety Management Plan means any safety management plan developed by PALABORA for the operation of the Mine and which may contain provisions relevant to "fitness for life", control of drug and alcohol abuse as well as regular checking of the blood lead levels of all employees;

Schedule means a schedule to this Contract.

Services means the services as specified in this contract.

Site means the site/sites at which Palabora undertakes its operations, as specified in this contract or as amended (by nominating a further site or removing a current site at which Palabora conducts operations) in **clause 1.4**.

Specific Terms means site specific terms, as are specified in this contract.

Specifications means the specifications in relation to the Product as specified in this contract.

Specified Period means the period so specified in this contract.

Standards means the standards in relation to the Services as specified in this contract.

Supplier means the party/parties identified as such in this contract, and who is responsible for the provision of the Services to Palabora in terms of this contract or in terms of any purchase.

Taxes or Tax means any and all sales, use, personal, property, real property, value added, goods and services, consumption, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever (other than taxes on Palabora's net income), together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any government, governmental, semi-governmental or other relevant authority or otherwise payable on or in respect of the supply by the Supplier of the Services to Palabora.

Tax Invoice has the meaning it has in the VAT Act.

Technical Materials includes plans, designs, drawings, engineering, information, data, specifications, reports, accounts, records and any other material that may be specified in this contract.

Term means the term as specified in this contract.

VAT has the meaning it has in the VAT Act.

VAT Act is the Value Added Tax Act, No 89 of 1991.

Warranties mean the warranties, representations and undertakings provided by the Supplier under this contract.

