



STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

between

FOSKOR PROPRIETARY LIMITED

Registration no 1951/002918/07

("Foskor")

and

[SUPPLIER]

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1. Definitions and interpretation

1.1 In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

1.1.1 **"Affiliate"** means in respect of any person, any other person who, directly or indirectly Controls or is Controlled by, or is under common Control with such person;

1.1.2 **"Agreement"** means, this agreement, including the Annexes;

"Annexe" means an annexe attached to this Agreement;

1.1.4 **"Anti-Corruption & Sanctions Laws"** means (i) all Applicable Laws in connection with bribery and corruption, including, *inter alia*, the Prevention and Combating of Corrupt Activities Act, 12 of 2004, United States Foreign Corrupt Practices Act and the UK Corruption Law (the United Kingdom Bribery Act, 2010 and, in relation to any conduct prior to the Bribery Act, 2010 being brought into force, the United Kingdom Public Bodies Corrupt Practices Act, 1889, and the Prevention of Corruption Act, 1906); and for sanctions (ii) any trade, economic or financial sanctions, laws, regulations, embargos or other restrictions enforced, imposed and administered from time to time by a sanctions authority such as the U.S. Department of the Treasury's Office of Foreign Assets Control, the U.S. Departments of State or Commerce, the United Nations Security Council, the European Union, Switzerland or any other applicable sanctions authority) only to the extent that such laws are in fact applicable to the Parties;

1.1.3 **"Applicable Law"** means all laws, regulations, directives, statutes, subordinate legislation, civil codes, or common law of South Africa or any jurisdiction in which the Parties operate, from time to time, all judgments, orders, notices, instructions, treaties, decisions and awards of any court or competent authority or tribunal and all codes of practice having force of law, statutory guidance and policy notes in South Africa or any jurisdiction in which the Parties operate, from time to time;

1.1.4 **"Business Day"** means any day other than a Saturday, Sunday or gazetted national public holiday in South Africa;

1.1.5 **"Causal Event"** means –

- (i) a compromise, scheme of arrangement or composition by the Supplier with any or all of its creditors;
- (ii) liquidation of the Supplier, whether provisionally or finally or placement of the Supplier in judicial management or business rescue, whether provisionally or finally;
- (iii) a default or cessation, or a reasonable prospect of default or cessation (as the case may be), of the Supplier's normal line of business;
- (iv) the commission of any act or any omission which is an act of insolvency by an individual in terms of the Insolvency Act

of 1936, or the existence of circumstances which would allow for the winding up of the Supplier in terms of the Companies Act of 2008, and/or in terms of the Close Corporations Act of 1984, as the case may be;

(v) disposal by the Supplier of a material portion of its undertaking or assets; or

(vi) any Change of Control in respect of the Supplier.

1.1.6

"Change of Control"

means in relation to a Party ("**the first party**"), any event which results in a third party acquiring, or having the potential or right to acquire, the direct or indirect Control of the first party (but excluding any event which results in a third party acquiring, or having the potential or right to acquire, Control of a parent company having direct or indirect Control of the first party where such parent company has all of its equity shares listed on a recognised stock exchange). For the purposes of this definition, references of "Control" to 30% shall be deemed to be references to 50%;

"Commencement

Date"

means (i) where a specific commencement date is stated in the Letter of Award and such date falls on or after the Signature Date, such specified date; or (ii) where no specific commencement date is stated in the Letter of Award, or where the specified date falls before the Signature Date, the the Signature Date; or (iii) such other date as may be agreed in writing by the Parties after the Signature Date;

1.1.7

**"Confidential
Information"**

means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Party disclosing such information ("**Disclosing Party**") or which is provided or disclosed in confidence, and which the Disclosing Party or any person acting on behalf of the Disclosing Party may disclose or provide to the Party that receives such information ("**Receiving Party**") or which may come to the knowledge of the Receiving Party by whatsoever means. Without limitation, the Confidential Information of the Disclosing Party shall include the following even if it is not marked as being 'confidential', 'restricted' or 'proprietary' (or any similar designation): (i) information relating to the Disclosing Party's business activities, business relationships, products, services, processes, data, and Staff, including agreements to which the Disclosing Party is a party; (ii) information contained in or constituting or relating to the Disclosing Party's systems, machinery, hardware or software, networks, telecommunications services and facilities, including hardware or software in the possession of the Disclosing Party which is proprietary to a third party and associated material, and information or incidents concerning faults or defects therein; (iii) the Disclosing Party's technical, scientific, commercial, financial and market information

(including valuations and forecasts), methodologies, formulae and trade secrets; (iv) the Disclosing Party's architectural information, demonstrations, plans, designs, drawings, processes, process maps, functional and technical requirements and specifications and the data relating thereto; (v) Intellectual Property that is proprietary to the Disclosing Party or that is proprietary to a third party, including but not limited to data relating to the customers of the Disclosing Party; and (vi) business process outsourcing knowledge of the Disclosing Party and information relating to the Disclosing Party's current and existing strategic objectives, strategy documents and plans for both its existing and future information technology, processing, business processing and business process outsourcing;

1.1.8	"Contract Period"	means the period commencing on the Commencement Date and terminating on the Termination Date;
1.1.9	"Contract Price"	means the price payable by Foskop to the Supplier in respect of Goods supplied, as calculated in accordance with Annexe B;
1.1.10	"Control"	means in relation to any Party, (i) the holding or beneficial ownership of 30% or more of the voting rights in that Party; or (ii) the right or ability to direct or otherwise control or exercise 30% or more of the voting rights attaching to that Party's issued ordinary shares (or other like instruments), or the right or ability to direct or otherwise control or exercise the voting rights attaching to a participation interest of 30% or more in that Party; or (iii) the right or ability to appoint or remove 30% or more of the board of directors (or such other body legally representing such Party) or to appoint or remove individuals able to exercise 30% or more of the votes exercisable at the meetings of the board of directors of such Party; or (iv) the right or ability to direct, or cause the direction, or general management of, affairs of such Party, and the terms "Controls" and "Controlled" shall have a corresponding meaning;
1.1.11	"Corrupt Act"	means committing any offence under Anti-Corruption Law or offering, giving or agreeing to give Foskop or any organ of state any gift or consideration of any kind as an inducement or reward (i) for doing or not doing (or for having done or not done) any act in relation to the obtaining or performance of this Agreement or any other contract with Foskop or any organ of state; (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with any organ of state;
1.1.12	"CPI"	means the consumer price index in South Africa as quoted and published by Statistics South Africa;
1.1.13	"Data Protection Laws"	means Applicable Law relating to the protection and privacy of Personal Information, including the Protection of Personal Information Act, 2013;

1.1.14	"Delivery Date"	means the date required by Foskor for the delivery of Goods, as set out in a Purchase Order;
1.1.15	"Foskor"	means Foskor Proprietary Limited, registration number 1951/002918/07, a private company incorporated in accordance with the laws of South Africa;
1.1.16	"Good Industry Practice"	means adherence to the standards, practices or methods and procedures and the exercise of that degree of skill, diligence, judgement, prudence and foresight which would reasonably and ordinarily be expected from time to time from an international skilled and experienced contractor or professional conducting any activity or any obligation of a Party in terms of this Agreement and complying with all Applicable Law;
1.1.17	"Goods"	means the goods to be supplied by the Supplier to Foskor as set out in Annexe A;
1.1.18	"Independent Expert"	means the person appointed in accordance with clause 11;
1.1.19	"Intellectual Property"	means all current and future intellectual property rights of any kind whatsoever and however embodied which may subsist or be capable of protection wheresoever in the world, including patents, trade marks, present and future rights of copyright, rights in and to designs, rights in and to inventions, topography rights, moral rights, rights in and to the Materials, rights in and to trade secrets, rights in and to trade names, business names, domain names and logos, the right to keep information confidential and private, rights in and to know-how, rights in and to databases (including rights of extraction), and all rights and forms of protection of a similar nature or having equivalent effect to any of them which may subsist or be capable of protection as at the Signature Date or thereafter wheresoever in the world, whether or not any of these is registered and including applications for any such rights or registration thereof, and any goodwill related to or arising from such rights, as well as the rights to sue any person for any present and/or past violation, infringement or misappropriation of any of the foregoing, "Intellectual Property Rights" shall have a corresponding meaning.
1.1.20	"Letter of Award"	means the letter of award issued by Foskor to the Supplier (and accepted by the Supplier) confirming the award of the contract for the supply of Goods on the terms and conditions set out in that letter of award and which may list essential terms which shall be incorporated into this Agreement;
1.1.21	"Loss"	means all claims, losses, damages, costs, charges, liabilities, penalties, interest, fines and expenses of whatsoever nature (including legal and other professional charges and expenses on an attorney and own client scale) together with any VAT thereon and "Losses" shall have a corresponding meaning;

1.1.22	"Parties"	means the parties to this Agreement, being Foskop and the Supplier, and "Party" shall mean any one of them;
1.1.23	"Personal Information"	has the meaning as defined in Data Protection Laws;
1.1.24	"Process"	has the meaning as defined in Data Protection Laws, "Processed" and "Processing" shall have corresponding meanings;
1.1.25	"Personnel"	means any employee, agent, consultant or independent contractor or other representative of a Party;
	"Policies"	the policies of Foskop, which may be amended from time to time, set out in Annexe [X];
	"Purchase Order"	means a written order for the supply of Goods issued by Foskop to the Supplier in accordance with 6, as amended by a Variation Instruction and confirmed by a Variation Confirmation;
1.1.26	"Rand" or "R"	means the South African Rand, the lawful currency of the South Africa;
1.1.27	"RFP"	means the Request for Proposal issued for a competitive tender process initiated by Foskop pursuant to which this Agreement is awarded;
1.1.28	"Signature Date"	means, when this Agreement has been signed by each Party (whether or not in counterpart), the latest of the dates on which this Agreement (or any counterpart) was signed by any Party;
	"Site"	means the place at which the Goods are to be delivered by the Supplier, as set out in the Purchase Order, which for purposes of this Agreement is [insert place];
1.1.29	"South Africa"	means the Republic of South Africa;
1.1.30	"Specifications"	means the specifications or standards (including any South African National Standards (SANS)) applicable to the Goods as set out in Annexe A;
1.1.31	"Standards"	has the meaning given to it in clause 4.2;
1.1.32	"Supplier"	means [●] Proprietary Limited, registration number [●], a [private] company incorporated in accordance with the laws of [South Africa];
1.1.33	"Surviving Provisions"	clauses 1, 3 and 19 to 24, and any other provisions of this Agreement which are expressed to continue in force after termination or which by necessary implication must continue after termination;
1.1.34	"Termination"	

- Date"** means the date specified in the Letter of Award, or if no such date is specified, [the date falling [X] months after the Commencement Date];
- 1.1.35 **"Variation Confirmation"** a written confirmation from Foskop to the Supplier confirming the amendment to a Purchase Order;
- 1.1.36 **"Variation Instruction"** a written instruction from Foskop to the Supplier to alter, amend, omit, add or otherwise vary a Purchase Order;
- 1.1.37 **"VAT"** value added tax levied in terms of the VAT Act; and
- 1.1.38 **"VAT Act"** the Value-added Tax Act, 89 of 1991.
- 1.2 In this Agreement:
- 1.2.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 1.2.2 words importing the masculine gender include the feminine and neuter genders and *vice versa*; the singular includes the plural and *vice versa*; and natural persons include artificial persons and *vice versa*;
- 1.2.3 references to a **"person"** include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 1.2.4 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 1.2.5 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
- 1.2.6 if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement or paragraph of any annex, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement;
- 1.2.7 if there is any conflict or inconsistency between the provisions contained in the main body of this Agreement and the provisions of the Annexes, then the provisions contained in the main body of this Agreement shall prevail;
- 1.2.8 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;
- 1.2.9 where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;

- 1.2.10 any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (ie *pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;
- 1.2.11 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;
- 1.2.12 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (ie the *eiusdem generis* rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.
- 1.3 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.
- 1.4 Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement (ie the *contra proferentem* rule), shall not apply.

2. Appointment and Relationship

- 2.1 Foskor appoints the Supplier to supply the Goods, which appointment the Supplier accepts, on the terms contained in this Agreement.
- 2.2 The relationship between the Parties is that of independent contractors. Nothing in this Agreement, whether express or implied, shall:
- 2.2.1 be construed as creating an employment or labour-broking relationship between the Parties;
- 2.2.2 be construed as creating a partnership, quasi partnership, joint venture or the like between the Parties and each of the Parties shall at all times be independent contracting parties;
- 2.2.3 constitute either Party as an agent or of any other Party; or
- 2.2.4 entitle any Party to bind or attempt to bind any other Party, or to represent to any third person that it has the authority to bind any other Party or to confer any obligation on any other Party.

3. Duration

- 3.1 This Agreement shall commence on the Commencement Date and shall endure until the Termination Date, unless terminated earlier in accordance with its provisions.
- 3.2 Unless otherwise provided for in this Agreement, this Agreement may be terminated by Foskor for any reason whatsoever, including without cause, upon giving the Supplier 30 (thirty) days written notice of termination, provided that any such termination shall not affect any other

Purchase Orders, or any rights or obligations that have accrued prior to the effective date of such termination.

4. Supply of Goods

4.1 Purchase Orders

- 4.1.1 Foscok may issue Purchase Orders to the Supplier at any time on or before the Termination Date, and all such Purchase Orders shall, *mutatis mutandis*, be governed by this Agreement.
- 4.1.2 No binding agreement shall arise between Foscok and the Supplier in respect of the supply of any Goods unless and until Foscok has issued a duly signed Purchase Order for such Goods.
- 4.1.3 This Agreement, read together with any Purchase Order issued by Foscok, constitutes the sole and exclusive basis upon which Foscok contracts with the Supplier, and no terms or conditions endorsed upon, delivered with, or contained in any quotation, acceptance, invoice, acknowledgement, delivery note, statement or other documentation from the Supplier shall form part of or be binding on Foscok unless expressly agreed to in writing and signed by a duly authorised representative of Foscok.
- 4.1.4 Each Purchase Order shall be regarded as a separate, indivisible Purchase Order and shall specify the Goods ordered, the Contract Price, Site and the Delivery Date.
- 4.1.5 In the event of any conflict between the terms of this Agreement and the terms of any Purchase Order, the terms of this Agreement shall prevail.
- 4.1.6 By fulfilling any Purchase Order, whether in whole or in part, the Supplier shall be deemed to have accepted this Agreement and the applicable Purchase Order, to the exclusion of all other terms or conditions.
- 4.1.7 The Supplier shall notify Foscok in writing within 5 (five) Business Days if it is unable to comply with any part of the Purchase Order and state the reasons therefor. If the Supplier does not notify Foscok as aforesaid, the Supplier shall be bound to supply the relevant Goods in accordance with the Purchase Order and on the terms of this Agreement.
- 4.1.8 If the Supplier is not able to comply with any part of a Purchase Order and supply the Goods stated therein, Foscok shall afford the Supplier the opportunity to supply Goods substantially similar to the Goods that it is unable to supply. The Supplier shall indicate within 3 (three) Business Days of receipt of such notification from Foscok whether it would be able to supply Goods substantially similar to the Goods and at what price. If so, Foscok shall amend the Purchase Order accordingly and the Supplier shall supply Goods substantially in accordance with the amended Purchase Order. If not, Foscok shall be entitled but not obliged to withdraw the Purchase Order in whole or in part.
- 4.1.9 Where Foscok withdraws a Purchase Order in whole or in part as contemplated in clauses 4.1.8, Foscok shall be entitled to procure Goods from a third-party supplier without prior notification to the Supplier. Where Foscok procures from such third party, the Contract Price shall be bench-marked as provided in Error! Reference source not found..

4.2 Compliance

The Suppliers shall supply the Goods in compliance with:

- 4.2.1 the Purchase Order;

- 4.2.2 the Specifications;
- 4.2.3 Applicable Law, Anti-Corruption and Sanctions Laws and Foskor Policies;
- 4.2.4 Good Industry Practice; and
- 4.2.5 the requirements of this Agreement,

("Standards").

4.3 **Delivery**

- 4.3.1 Goods ordered in terms of a Purchase Order shall be delivered by the Supplier to the Site, on or before the delivery date and in strict compliance with both the terms of this Agreement, and the instructions set out in the relevant Purchase Order.
- 4.3.2 To the extent that this Agreement and the relevant Purchase Order are silent on any aspect of delivery, the provisions of DDP Incoterms ® 2020 shall apply, *mutatis mutandis*.
- 4.3.3 Notwithstanding anything to the contrary contained in Incoterms ® 2020, Foskor shall be deemed to have taken physical delivery of the Goods, and risk in the Goods shall pass to Foskor, only once the Supplier has completed off-loading and stacking of the Goods at the Site,
- 4.3.4 Notwithstanding clauses 4.3.2 to 4.3.3, acceptance of the Goods by Foskor shall at all times be subject to inspection and testing upon physical delivery, and any physical delivery or payment shall not constitute acceptance or a waiver of Foskor's rights in respect of defective or non-conforming Goods. If the Goods do not comply with the Standards, Foskor may at its option and without prejudice to its rights under this Agreement or at law:
 - 4.3.4.1 reject delivery of such Goods in whole or in part;
 - 4.3.4.2 require the Supplier, at its own cost, to supply replacement Goods or make good any non-compliance; or
 - 4.3.4.3 accept the Goods at a reduced Contract Price as agreed between Foskor and the Supplier. In addition to the above remedies, Foskor may claim damages for any losses suffered as a result of the non-compliance. Foskor may also set-off any amounts owing by the Supplier to Foskor against any amounts payable to the Supplier under this Agreement.
- 4.3.5 The Supplier shall not be liable for any failure or delay in delivering all or some of the Goods (provided that the Supplier shall remain fully liable for any failure or delay relating to health, safety, environmental matters, or compliance with Applicable Law), if such failure, non-performance or delayed performance is solely caused by:
 - 4.3.5.1 the gross negligence of Foskor or its Personnel; or
 - 4.3.5.2 an instance of Force Majeure Event as contemplated in clause 20.

4.4 **Import Duty/Freight Cost**

- 4.4.1 To the extent that any import duty is payable under the Applicable Law in respect of the Goods ordered by Foskor pursuant to a Purchase Order, the Supplier shall be solely liable for the payment of such import duty, together with any related costs, penalties, interest and charges, to the relevant authority, and shall have no recourse whatsoever against Foskor in this regard.

- 4.4.2 All freight, carriage, transport, insurance, handling and related costs incurred or to be incurred in delivering the Goods ordered by Foskor pursuant to a Purchase Order to the Site shall be borne solely by the Supplier.

4.5 **Access**

- 4.5.1 Foskor shall provide the Supplier and its Personnel with non-exclusive access to the Site as required for delivery, subject to Foskor's access requirements and all applicable health, safety, environmental, and security ("**HSE**") policies and procedures.
- 4.5.2 Any failure by the Supplier or its Personnel to comply with Foskor's HSE requirements entitles Foskor, in its sole discretion, to suspend, revoke, or withhold access to the Site or remove non-compliant Personnel, with the Supplier bearing all associated costs.
- 4.5.3 The Supplier shall cooperate with Foskor's Personnel to avoid disruption or interference at the Site.
- 4.5.4 The Supplier shall be obliged to procure that its Personnel who no longer require the right of access to the Site or any part thereof shall immediately return all access cards, security codes and the like, as well as any other property belonging to Foskor.
- 4.5.5 The Supplier shall be liable to Foskor for any direct or indirect loss suffered by Foskor, its Personnel, or its clients arising from any negligence, theft, fraud, or other criminal act committed by the Supplier's Personnel, as proven on a balance of probabilities, while on Foskor's premises or property in connection with the performance of this Agreement. Upon written request, Foskor shall provide the Supplier with any available supporting information relating to such loss, at the Supplier's cost.

4.6 **Protection for Goods**

The Supplier must protect the Goods from loss or damage arising from any cause and ensure that the Goods are appropriately stored, packaged, handled and transported to the Site so as to prevent loss or damage while in transit or storage. The Supplier shall be liable for all Losses incurred by Foskor as a result of relevant Goods being packaged or described inappropriately. The Supplier shall also be liable for any delays in delivery caused by inadequate packaging, handling, or transportation arrangements.

4.7 **Documentation**

The Supplier shall provide Foskor from time to time with all relevant technical and safety information and documentation relating to:

- 4.7.1 the Goods;
- 4.7.2 the proper and safe handling, storage, [use and disposal] of the Goods;
- 4.7.3 any hazards associated with the Goods;
- 4.7.4 the conditions necessary to ensure that the substance will be safe and without risks to health when properly used;
- 4.7.5 the procedures to be followed in the event of an accident involving the Goods; and
- 4.7.6 any other information required to enable Foskor to prepare the necessary safe work procedures or other health and safety related documentation.

4.8 Risk and ownership

- 4.8.1 The title in the Goods shall pass to Foskor upon payment of the Contract Price for the Goods or on acceptance of the Goods when physically delivered by the Supplier to Foskor, whichever occurs first.
- 4.8.2 The Goods shall remain at the risk of the Supplier until physical delivery to Foskor is complete in accordance with clause 4.3.3, and until Foskor has accepted that the Goods are in accordance with the specifications of this Agreement and/or the Purchase Order.
- 4.9 For the avoidance of doubt, all obligations set out in this clause 4 shall apply equally to Goods manufactured, procured or supplied from within South Africa and to Goods imported from outside South Africa. To the extent that this Agreement or the relevant Purchase Order does not expressly regulate any aspect of delivery for imported Goods, the provisions of DDP Incoterms® 2020 shall apply, *mutatis mutandis*, subject always to the requirement that risk shall pass to Foskor only once the Supplier has completed off-loading and stacking of the Goods at the Site.

5. Variation Instructions

- 5.1 Foskor may, at any time after the issue of a Purchase Order, issue a Variation Instruction to the Supplier to alter, amend, omit, add to or otherwise vary the Goods ordered in terms of a Purchase Order, failing which the original Purchase Order shall apply.
- 5.2 On receipt of a Variation Instruction, the Supplier shall within 5 (five) Business Days submit to Foskor in writing:
- 5.2.1 a description of the Goods to be supplied which comply with the Variation Instruction;
- 5.2.2 any necessary amendment to the Contract Price (providing full particulars substantiating the additional or reduced cost); and
- 5.2.3 any revised Delivery Date.
- 5.3 If the relevant Supplier fails to comply with the provisions of 5.2:
- 5.3.1 the Supplier shall be deemed to have rejected the Variation Instruction;
- 5.3.2 Foskor may not proceed to issue a Variation Confirmation; and
- 5.3.3 the original Purchase Order shall continue to apply.
- 5.4 Foskor shall on receipt of the Supplier's written submission record the same in a Variation Confirmation which shall be sent to the relevant Supplier.
- 5.5 A Variation Instruction may only be carried out by the Supplier after receipt of a Variation Confirmation executed by Foskor.

6. Contract Price and Payment

- 6.1 In consideration for the Goods, Foskor shall pay the Supplier the Contract Price, as evidenced by valid tax invoices.
- 6.2 In respect of the Goods, the Contract Price shall be stated in the relevant Purchase Order and calculated in accordance with the rates and fees in Annexe B. The Contract Price shall be

inclusive of all costs, custom duties, taxes (other than VAT), charges or liabilities incurred by the relevant Supplier in supplying and delivering the Goods.

- 6.3 For contracts awarded in excess of one year, and unless the Parties agree in writing to any other agreed pricing escalation methodology, the Contract Price will escalate on each anniversary of the Commencement Date in accordance with CPI by applying the following formula:

$$\text{New Contract Price} = \text{current Contract Price (as per previous 12 months)} \times (1 + \% \text{CPI})$$

- 6.4 The Supplier shall be entitled to recover in addition to the Contract Price any sum in consequence of or arising from any duty or increase thereon imposed in terms of any Applicable Law.

- 6.5 The Supplier shall submit an original, correctly prepared tax invoice to Foskor in respect of the Goods supplied within 5 (five) Business Days after each delivery.

- 6.6 Each tax invoice shall be in Rand and shall be in a format approved by Foskor from time to time and shall include, as a minimum:

- 6.6.1 the relevant Purchase Order number insofar as it relates to supply of Goods;
- 6.6.2 the relevant Variation Instruction and Variation Confirmation number, if applicable;
- 6.6.3 the quantity of Goods supplied and the applicable Contract Price owed for the Goods supplied;
- 6.6.4 any adjustments to the Contract Price pursuant to the provisions of the Agreement;
- 6.6.5 the total VAT amount in Rand;
- 6.6.6 the Supplier's registered company name, registered address and VAT number; and
- 6.6.7 the Supplier's nominated bank details (including the name of the account holder, bank, branch, and account number),

failing which Foskor shall be entitled to withhold payment of the relevant tax invoice until such time as it has received an invoice which complies with the requirements of this clause 6.

- 6.7 The Supplier acknowledges that to the extent that this Agreement or any Purchase Order executed under this Agreement regulates the supply of the Goods to Foskor by the Supplier and which provides for pricing based upon pricing discounts or rebates or upon preferential pricing arising from the aggregation of supply, procurement or volumes by Foskor, then, and to that extent, Foskor shall be entitled to include within its supply, procurement or volumes, any volumes derived from its Affiliates. This clause 6.7 is subject to the further qualification that, where an Affiliate, which has benefited from such pricing discounts or rebates or preferential pricing, ceases to be an Affiliate, then Foskor shall not be entitled to include volumes derived from such former Affiliate following the cessation of the former Affiliate's status as an Affiliate in any further supply, procurement or volumes.

- 6.8 Subject to clauses 6.9 to 6.13, taxed invoices shall be paid by Foskor to the Supplier by way of electronic transfer and subject to Foskor's rights of set-off under this Agreement and Applicable Law into the Supplier's nominated bank account, within 30 days from receipt of such invoice.

- 6.9 The Supplier shall promptly provide any information reasonably required by Foskor in order to substantiate a tax invoice. In the event that any tax invoice or any supporting documentation is incomplete or incorrect, payment will be withheld until the receipt of the correct or complete tax invoice and supporting documentation by Foskor.
- 6.10 The Supplier shall promptly provide any information reasonably required by Foskor in order to enable the allocation of the Contract Price under this Agreement by legal entity, business unit, Site, client, or service type.
- 6.11 Foskor shall be entitled in good faith to dispute any tax invoice at variance with the relevant Purchase Order and/or this Agreement ("**Affected Invoice**") unless Foskor has given its prior written consent to such variation in accordance with clause 5. Foskor shall, within 7 (seven) days of receipt of the Affected Invoice, notify the Supplier, in writing, of such dispute, specifying:
- 6.11.1 the Affected Invoice;
 - 6.11.2 the specific amount in dispute; and
 - 6.11.3 the reasons or grounds for such dispute.
- 6.12 Upon receipt of Foskor's dispute notice, the Parties to the dispute will in good faith aim to resolve the dispute between the Parties within 10 (ten) Business Days of such dispute being notified by Foskor to the Supplier. Failing resolution, the provisions of clause 233 shall apply.
- 6.13 Foskor may, without prejudice to its other rights and remedies under this Agreement or at law, withhold payment of any disputed amounts which Foskor in good faith disputes are payable, provided that Foskor has notified the Supplier of such dispute within the period referred to in clause 6.11.
- 6.14 During the period of dispute of the Affected Invoice, the Supplier shall continue to supply the Goods to Foskor in accordance with the terms of this Agreement. The Parties shall endeavour to resolve the Affected Invoice timeously to ensure that no undue prejudice is suffered by either Party.

7. Order of Precedence

- 7.1 In the event of any conflict, inconsistency or ambiguity between the provisions of the documents forming this Agreement, the following order of precedence shall apply (with the first listed taking priority):
- 7.1.1 the Letter of Award;
 - 7.1.2 the Purchase Order;
 - 7.1.3 the Specifications;
 - 7.1.4 the requirements of this Agreement;
 - 7.1.5 the RFP; and
 - 7.1.6 the Supplier's bid response to the RFP.

- 7.2 The RFP and the Service Provider's bid response to the RFP form integral parts of this Agreement. Any breach by the Service Provider of its obligations under the RFP or its bid response shall constitute a breach of this Agreement, provided that, in the event of any direct conflict between the terms of the RFP, the bid response, and this Agreement, the terms of this Agreement shall prevail.

8. Warranties and undertakings

- 8.1 The Supplier warrants as follows to Foskor as at the Signature Date and at all times during the Contract Period that:
- 8.1.1 it is a company, duly incorporated under the laws of South Africa and that it has the power to own its assets and carry on its business as it is being conducted;
 - 8.1.2 it has the power and has taken all necessary corporate action to authorise the entry into, performance and delivery of this Agreement and the transaction contemplated herein;
 - 8.1.3 the Agreement constitutes legal, valid and binding obligations;
 - 8.1.4 it shall comply with all Applicable Laws;
 - 8.1.5 it shall obtain and maintain all relevant permits, licences and other approvals or authorisations necessary for the supply and delivery of the Goods;
 - 8.1.6 conduct itself in a professional manner and in accordance with Good Industry Practice;
 - 8.1.7 comply with Foskor's Policies, procedures, rules and regulations at the Site, including any environmental, health and safety and management plans;
 - 8.1.8 it has the necessary resources, facilities, personnel, skills, expertise and experience to perform its obligations under this Agreement;
 - 8.1.9 it shall, if applicable, maintain its manufacturing and storage facilities in good working order and condition for the purposes of the supply of the Goods terms of this Agreement, and shall ensure that its facilities comply with all Applicable Laws at all times;
 - 8.1.10 it has an adequate number of personnel available, and the personnel are appropriately trained, experienced and qualified, to perform the Supplier's obligations under this Agreement;
 - 8.1.11 the Goods shall be:
 - 8.1.11.1 free of all liens, claims, hypothecs and other encumbrances;
 - 8.1.11.2 compliant with the Standards;
 - 8.1.11.3 reasonably acceptable to Foskor;
 - 8.1.11.4 will be fit for the specific purpose communicated by Foskor to the Supplier and for the general purpose for which such Goods are ordinarily used;
 - 8.1.11.5 usable and durable for a reasonable period of time.
 - 8.2 Foskor warrants to the Supplier at the Signature Date and at all times during the Contract Period that:

- 8.2.1 it is a company, duly incorporated under the laws of South Africa and that it has the power to own its assets and carry on its business as it is being conducted;
- 8.2.2 it has the power and has taken all necessary corporate action to authorise the entry into, performance and delivery of this Agreement and the transaction contemplated herein;
- 8.2.3 the Agreement constitutes legal, valid and binding obligations; and
- 8.2.4 it shall comply with all Applicable Laws.
- 8.3 Each warranty in this clause 8 is:
 - 8.3.1 a material representation of fact inducing the relevant Party to enter into this Agreement;
 - 8.3.2 a continuing representation and warranty and shall survive the termination of this Agreement; and
 - 8.3.3 a separate warranty and in no way limited or restricted by any reference to, or inference from, the terms of any other warranty or by any other provision in this Agreement.

9. Indemnity by the Supplier

The Supplier indemnifies Foskop against all Losses of whatsoever nature suffered or incurred by Foskop under contract, delict, breach of duties (statutory or otherwise) or any other basis and howsoever arising as a result of:

- 9.1 the fraud, wilful default or gross negligence of the Supplier and/or its Personnel;
- 9.2 the relevant Supplier or its Personnel breaching or failing to comply (or Foskop being held liable or deemed to have breached or failed to comply as a direct result of a breach or failure by the Supplier) with any Applicable Law and/or Anti-Corruption Laws,

except to the extent that the loss, damage, liability, cost or expense is directly attributable to the fraud, wilful default or gross negligence of Foskop.

10. Limitation of liability

- 10.1 The Supplier shall supply and deliver the Goods in a manner which minimises risk to Foskop, its property and Foskop's Personnel from harm, loss or damage.
- 10.2 Foskop shall not in any manner whatsoever be liable to the Supplier in respect of any Losses which may be suffered and/or incurred by the Supplier arising from or in connection with the supply and/or delivery of Goods, or in any other way related to this Agreement, except to the extent that such Losses are due to the fraud, wilful default or gross negligence of Foskop or, or to the extent such Losses arise from the Supplier's material breach of this Agreement or failure to comply with the Standards.
- 10.3 Under no circumstances will any Party be liable to any other Party for any indirect, consequential, special, incidental or punitive damages or for any loss of profits or loss of business.

11. Independent Expert determination

- 11.1 Any dispute arising out of, or in connection with (i) the Service Price Book, (ii) whether any Deliverable under a Scope of Work has been achieved or (iii) The Service Provider shall

comply with the provisions set out in this clause, provided that the Parties shall, within [15] Business Days of the occurrence of such a dispute, attempt to resolve such dispute via a meeting of the appropriate executives of each Party before referring the matter for resolution by an Independent Expert in terms of this clause 31.

- 11.2 The Independent Expert shall be [●].
- 11.3 If the Parties fail to agree on an Independent Expert within [10] Business Days after the determination has been demanded, the Independent Expert shall be nominated, at the request of either of the Parties by the Registrar of the Arbitration Foundation of Southern Africa ("AFSA"). If the Registrar fails or refuses to make the nomination, either Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 11.4 The Parties agree that the Independent Expert may in its reasonable discretion determine such other procedures to assist with the conduct of the determination as it considers appropriate, including (to the extent it considers necessary) instructing professional advisers to assist it in reaching its determination.
- 11.5 The Independent Expert shall act as an expert and not as an arbitrator. The Independent Expert's determination shall be given in writing and shall be final and binding on the Parties and shall not, save in the case of manifest error (which may be corrected by the Independent Expert) be referred to arbitration or any court. Either of the Parties ("**applicant**") may apply to court for the decision of the Independent Expert to be made an order of court, in which event the other of them shall give such assistance as shall be required to do so at the cost of the applicant.
- 11.6 The Parties shall be entitled to make submissions to the Independent Expert and will provide (or procure that others provide) the Independent Expert with all such assistance and documents as the Independent Expert may reasonably require for the purpose of reaching a decision. Each Party shall with reasonable promptness supply each other with all information and give each other access to all documentation as the other Party reasonably requires to make a submission under this clause 11.
- 11.7 The Independent Expert's fees and any costs it properly incurs in arriving at its determination (including any fees and costs of any advisers appointed by the Independent Expert) shall be borne by the Parties in such proportions as the Independent Expert may direct.

12. Insurance

- 12.1 The Supplier shall procure and maintain the following insurance cover:
 - 12.1.1 ***[Insert relevant insurance required to be procured by Supplier]*** with a limit of not less than R[●] per incident; and
 - 12.1.2 third party liabilities insurance with a limit of not less than R[●] per incident.
- 12.2 The Supplier shall, upon request by Foskor, produce proof:
 - 12.2.1 of the existence of the insurance policy contemplated in this clause 11;
 - 12.2.2 that all premiums are being paid in accordance with the relevant insurance policy; and
 - 12.2.3 that such insurance policies are in full force and effect.

- 12.3 If, in the reasonable opinion of Foskop, the amount of insurance cover is not adequate, the Supplier shall increase the amount of insurance cover as required by Foskop from time to time.

13. Status Meetings

- 13.1 The Parties agree to have at least [1 (one)] in-person meeting per month during the term of this Agreement, during which meeting a duly appointed representative of each Party shall be present.
- 13.2 The Parties may, upon prior written agreement, dispense with the requirement to have meetings in-person and may elect to have such meetings virtually instead.
- 13.3 The Parties agree that neither Party shall be entitled to any compensation for attending, and preparing for, such meetings.

14. Sub-contracting

- 14.1 The Supplier may not sub-contract its obligations under this Agreement without the prior written consent of Foskop, which consent may be withheld in Foskop's sole discretion.
- 14.2 In the event that Foskop grants its written consent, the Supplier shall not be released from any of its obligations in terms of this Agreement. The Supplier shall be responsible for the acts and omissions of its sub-contractors and the agents, employees and workmen of such sub-contractors as fully as if they were the acts and omissions of the Supplier.
- 14.3 The Supplier shall procure compliance with the terms of this Agreement by any such subcontractor, including for clarity clauses 15, 166, and 7, notwithstanding any consent by the Foskop to such subcontracting.

15. Intellectual Property Rights

- 15.1 All rights, title, ownership, and interest in and to any materials and Intellectual Property Rights which belong to a Party and/or its licensors (as the case may be), shall at all times remain the sole property of such Party and/or its licensors (as the case may be).
- 15.2 A Party shall not, by virtue of this Agreement, obtain or claim any right, title, or interest in or to the other Party's Intellectual Property.
- 15.3 Each Party acknowledges that (i) the other Party is the proprietor of their Intellectual Property and that the use thereof in terms of this Agreement shall incur for the benefit of such Party; and (ii) where any improvements, developments, and/or advancements to a Party's Intellectual Property are made pursuant to the terms of this Agreement, then the ownership in such improvements, developments and/or advancements shall vest in such Party.
- 15.4 A Party shall not, during the currency of this Agreement or thereafter, –
- 15.4.1 cause to be done or omit to do, any act or thing contesting or in any way impairing or tending to impair any part of the other Party's right, title, and interest in and to that Party's Intellectual Property;
- 15.4.2 to the extent possible in law, directly or indirectly register (or apply for the registration of) any Intellectual Property Rights relating to the other Party's Intellectual Property;
- 15.4.3 dispute or assist any third party in disputing the validity of any of the other Party's Intellectual Property;
- 15.4.4 claim or seek to obtain any proprietary right in respect of the other Party's Intellectual Property;

- 15.4.5 use, modify, copy, translate or otherwise reproduce the other Party's Intellectual Property or any part thereof, or make these available to any third parties; and/or
- 15.4.6 adapt, develop, create any derivative work from, reverse engineer, decompile, disassemble, or carry out any act otherwise restricted by copyright or other Applicable Law relating to the other Party's Intellectual Property.

16. Confidentiality and Non-Disclosure

- 16.1 Each Party shall keep confidential and shall not disclose to any person any Confidential Information. The Receiving Party undertakes and agrees that –
 - 16.1.1 the disclosing Party's Confidential Information is proprietary to the disclosing Party;
 - 16.1.2 the terms of this Agreement do not confer any rights of whatsoever nature in such Confidential Information on it; and
 - 16.1.3 it shall not exploit, commercialise, or otherwise make use of the disclosing Party's Confidential Information in any manner not expressly provided for in this Agreement or necessary for the performance of this Agreement.
- 16.2 Each of the Parties agrees to keep all Confidential Information confidential and to disclose it only to their respective officers, directors, Personnel, and professional advisors who have a need to know the Confidential Information, are aware that the Confidential Information should be kept confidential, are aware of the receiving Party's undertaking in relation to such information in terms of this Agreement, and have been directed by the Receiving Party to keep the Confidential Information confidential (a "**Permitted Recipient**"). The Parties acknowledge and agree that they shall be liable for any breach of this clause 16.2 by such a Permitted Recipient.
- 16.3 The Disclosing Party may at any time on written request to the Receiving Party require that the Receiving Party returns to the Disclosing Party any Confidential Information. Alternatively, the Receiving Party shall, as and when required by the Disclosing Party on written request, destroy all such Confidential Information. The return and destruction provisions of this clause 16.3 shall not apply to Confidential Information that the Receiving Party is required by Applicable Law to preserve or that is related to or the subject of a formal dispute between the Parties, provided that in such circumstances, the Receiving Party shall only retain the relevant Confidential Information for as long as is necessary and shall as soon as the period required by Applicable Law has expired, or the formal dispute has been resolved, immediately thereafter comply with the provisions of this clause 16.3. The Receiving Party shall comply with any request in terms of this clause 16.3 within 10 Business Days of receipt of such request.
- 16.4 Confidential Information does not include any information which –
 - 16.4.1 is required to be disclosed by the provisions of Applicable Law, or during any court proceedings, or by the rules or regulations of any regulator or stock exchange, it being agreed that the Party required to make such disclosure shall, as far as reasonably possible and subject to Applicable Law, limit the extent of such disclosure and consult with the other Party prior to making such disclosure;
 - 16.4.2 is in the public domain at the time learned by or communicated to the Receiving Party through no fault of the receiving Party;
 - 16.4.3 is obtained by the Receiving Party from a third party lawfully in possession of such information and not subject to a contractual or fiduciary relationship to the provider of the Confidential Information; and/or
 - 16.4.4 is already known to the Receiving Party or is independently derived by the Receiving Party without reference to the Confidential Information.
- 16.5 The Receiving Party shall notify the Disclosing Party immediately if it learns or has reason to

believe that any person who has had access to the Disclosing Party's information from or through the Receiving Party has taken or intends to take any action which would be in breach of this Agreement.

- 16.6 Neither Party shall issue any public document relating to or connected with or arising out of this Agreement (save for any announcement or document which is required to be given, made or published in terms of Applicable Law or under the rules and regulations of a regulatory authority) without obtaining the prior written approval of the other Party. In the case of a release, announcement or document which is required to be given, made or published in terms of Applicable Law, the Party liable to give, make or publish the same shall give to the other Party as much advance notice thereof as is reasonable and legally permitted in the circumstances together with drafts or a copy thereof as soon as it is at liberty so to do.
- 16.7 The provisions of this clause 16 are severable from the rest of the Agreement and shall survive the expiry or termination of this Agreement for whatever reason.

17. **Data Privacy and Protection**

- 17.1 Each Party agrees to comply with its obligations under Data Protection Laws in respect of any Personal Information it Processes pursuant to the exercise of its rights and performance of its obligations under this Agreement.
- 17.2 Where the Supplier is an operator or processor of Personal Information in respect of which Foscort is the controller or responsible party, the Supplier shall comply with those Data Protection Laws that apply to it in its capacity as operator or processor and shall procure that its subcontractors (including sub-processors) comply with Data Protection Laws.
- 17.3 Each Party must immediately notify the other Party in the event that there is any actual or threatened non-compliance with or breach of any applicable Data Protection Laws.
- 17.4 Without derogating from the generality of the foregoing, the Supplier must –
- 17.4.1 have all notices, consents and lawful bases in place as are prescribed by Applicable Law to enable the lawful Processing of Personal Information in terms of this Agreement;
 - 17.4.2 Process any Personal Information that is shared with it or that comes into its possession for the purposes of the implementation of this Agreement only;
 - 17.4.3 treat any Personal Information that is shared with it or that comes into its possession as confidential; and
 - 17.4.4 secure the integrity and confidentiality of any Personal Information that is shared with it or that comes into its possession by taking appropriate reasonable technical and organisational measures to prevent loss of, damage to, or unauthorised destruction of Personal Information and unlawful access to or Processing of such Personal Information.
- 17.5 The Supplier shall take reasonable measures to –
- 17.5.1 identify all reasonably foreseeable internal and external risks to the Personal Information in its possession or under its control;
 - 17.5.2 establish and maintain appropriate safeguards against the risk identified;
 - 17.5.3 regularly verify that the safeguards are effectively implemented; and
 - 17.5.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 17.6 The provisions of this clause 17 are severable from the rest of the Agreement and shall survive the expiry or termination of this Agreement for whatever reason.

18. **Good Industry Practice**

- 18.1 The Supplier acknowledges and hereby confirms that it does not have any interest which actually constitutes or may potentially constitute a conflict of interest relating to its obligations under this Agreement, including the provision of the Goods, except as has been disclosed to and acknowledged by Foscort prior to the Signature Date.
- 18.2 The Supplier undertakes that it shall not and will ensure that its Personnel will not pay any fees, commission, or grant favours, rebates, benefits, advantages; including gifts, entertainments, hospitality of more than nominal value to employees or agents of Foscort contrary to Foscort's policy on gifts, hospitality and sponsorship, and anti-corruption policies, including in contravention of the Anti-Corruption Laws.
- 18.3 The Supplier undertakes not to:
- 18.3.1 violate any Anti-Corruption and Sanction Laws, or undertake or cause to be undertaken any Corrupt Act;
- 18.3.2 request any action, inaction or service by a third party that would violate any Anti-Corruption and Sanctions Laws or constitute a Corrupt Act; and
- 18.3.3 receive, agree or attempt to receive the benefits of or profits from a crime or any Corrupt Act or agree to assist any person to retain the benefits of or profits from a crime or any Corrupt Act.
- 18.4 The Supplier agrees to notify Foscort of any activity in the course of the conclusion or execution of this Agreement, or in the procurement process preceding this Agreement, that it or any of its Personnel reasonably suspects (i) to be a Corrupt Act, or (ii) to breach any Foscort Policy. The Supplier undertakes to ensure its Personnel are familiar with all Policies, which may be amended from time to time. The Supplier agrees to cooperate with Foscort on the investigation of every fraudulent activity or Corrupt Act in relation to this Agreement and to implement such corrective measures as Foscort may direct to address any fraudulent activity or Corrupt Act.
- 18.5 Foscort shall have the right to request and consider records and documents, upon giving the Supplier at least 10 (ten) days' prior notice, and to interview such persons as it may deem necessary to confirm compliance by the Supplier with the above provisions.
- 18.6 Other than the right of termination of this Agreement, which Foscort reserves to exercise in the event of breach of any of the above provisions, Foscort also reserves the right (i) to recover Losses it may suffer as a result of the breach of the above provisions; (ii) to institute disciplinary proceedings against the Supplier, which may result in the Supplier being restricted from doing business with Foscort and/or with any organ of state for up to 10 (ten) years; and (iii) to apply a temporary restriction on new contracts being awarded to the Supplier while any such disciplinary proceedings are ongoing. Any such disciplinary proceedings are subject to Foscort's internal procedures and do not constitute a dispute for the purposes of clause 233 of this agreement.

19. **Change of Control**

Foscort may terminate this Agreement in the event of an acquisition, directly or indirectly, by (i) a direct competitor of Foscort; and/or (ii) a company which Foscort is prohibited from doing business with and such restriction has been communicated to the Supplier prior to any Change of Control in the Supplier or any of its subsidiary companies or any other company in which the Supplier has a shareholding and which is involved in the implementation of this Agreement.

20. **Force Majeure**

- 20.1 No Party shall be liable to the other Party for any Losses incurred or suffered by that Party because of delays or defaults in performance under this Agreement caused by circumstances beyond its reasonable control, whether foreseeable or not, and without its fault or negligence, including but not restricted to acts of God, perils of navigation, floods, fire, war (declared or

undeclared), hostilities, executive or administrative orders or acts of either general or particular application of any government or of any officer or agent acting under the authority of such government, blockade, labour disturbance, strikes, riot, quarantine restrictions, pandemic, epidemic, earthquakes, load shedding, power failures/outages or expropriation ("**Force Majeure Event**").

- 20.2 If a Party is prevented from fulfilling its obligations under this Agreement by reason of Force Majeure Event, the Party so prevented shall without delay notify the other Party in writing to that effect. The Parties shall then promptly meet with a view to reducing or mitigating the effects of the Force Majeure Event.
- 20.3 A Party who alleges the existence of a Force Majeure Event shall have the burden of proving the existence thereof.
- 20.4 A Party who, because of a Force Majeure Event, fails to perform in whole or in part its obligations under this Agreement, shall use its reasonable commercial endeavours to mitigate the effect of its failure or omission to perform in full and shall continue to perform its obligations as far as reasonably possible and practical to do and, upon the cessation of the Force Majeure Event, notify the other Party of such cessation in writing without delay.
- 20.5 If for reasons of a Force Majeure Event, a Party is unable, notwithstanding that Party's efforts to remove or circumvent the causes of the Force Majeure Event, to perform all or any of its obligations hereunder and such non-performance continues for more than 45 consecutive days after the Force Majeure Event has been brought to the attention of the other Party in terms of clause 20.2, then the other Party shall be entitled to terminate this Agreement by way of written notice to the other Party to that effect and no Party will have any claim against the other arising out of such termination.

21. Breach and Termination

- 21.1 Should a Party commit
 - 21.1.1 a material breach of this Agreement and, provided the breach in question is capable of remedy, fails to remedy such breach within 10 (ten) Business Days of notice thereof from the aggrieved Party; and/or
 - 21.1.2 a material breach of this Agreement that is not capable of being remedied,

then the aggrieved Party shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement or in terms of Applicable Law, then the aggrieved Party shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement or in terms of Applicable Law, to terminate this Agreement and/or any obligations hereunder (in whole or in part) upon written notice to the defaulting Party, without prejudice to any claims which the aggrieved Party may have for damages against the defaulting Party or otherwise in terms of Applicable Law. In any event, the defaulting Party shall be liable to the aggrieved Party for all Losses incurred by it or resulting from the defaulting Party's breach.
- 21.2 Foscort may immediately terminate this Agreement in relation to the Supplier if:
 - 21.2.1 the Supplier breaches clause 15; or
 - 21.2.2 a Causal Event occurs in respect of the Supplier.
- 21.3 The Supplier may immediately cancel this Agreement in relation to Foscort if Foscort takes steps to deregister itself, or is deregistered, or place itself, or is placed, in liquidation, whether voluntary or compulsory and whether provisionally or finally.

22. Consequences of termination

- 22.1 Upon termination or expiry of this Agreement in whole or in part for any reason whatsoever:
- 22.1.1 Foskor shall settle any undisputed outstanding tax invoices in respect of Goods supplied by the Supplier;
 - 22.1.2 the Supplier shall fulfil Purchase Orders placed with it prior to the Termination Date; and
 - 22.1.3 each Party shall
 - 22.1.3.1 cease all use of the other Party's Confidential Information and/or Intellectual Property; and
 - 22.1.3.2 upon demand return to the other Party or otherwise dispose of, as such other Party may require, all Confidential Information and/or Intellectual Property of the other Party.
 - 22.2 Any cancellation or termination of this Agreement shall not affect the Surviving Provisions which shall remain in full effect.
 - 22.3 The termination of this Agreement shall be without prejudice to any rights that have accrued to a Party as at the Termination Date, including without limitation the right to claim damages.

23. Dispute resolution

23.1 separate, divisible agreement

- 23.1.1 This clause is a separate, divisible agreement from the rest of this Agreement and shall:
- 23.1.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that any such issue shall at all times be and remain subject to arbitration in terms of this clause; and
 - 23.1.1.2 remain in effect even if the Agreement expires or terminates for any reason whatsoever.

23.2 disputes subject to arbitration

Save as may be expressly provided for elsewhere in this Agreement for the resolution of particular disputes, any dispute arising out of or in connection with this Agreement or the subject matter of this Agreement shall be decided by arbitration as set out in clause 23.2.1.

23.2.1 appointment of arbitrator

- 23.2.1.1 The Parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of the Arbitration Foundation of Southern Africa ("**AFSA**"). If agreement is not reached within 10 (ten) days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.

23.2.1.2 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment, and a copy shall be furnished to the other Party who may, within 5 (five) days, submit written comments on the request to the addressor of the request.

23.2.2 **venue and period for completion of arbitration**

The arbitration shall be held in Johannesburg and the Parties shall endeavour to ensure that it is completed within [90] days after notice requiring the claim to be referred to arbitration is given.

23.2.3 **Arbitration Act - rules**

The arbitration shall be held in English and governed by the Arbitration Act, 1965, or any replacement Act and shall take place in accordance with the Commercial Arbitration Rules of AFSA.

23.2.4 **arbitrator's decision**

23.2.4.1 The decision of the arbitrator shall, in the absence of manifest error, be final and binding on the Parties and shall not be subject to appeal unless otherwise agreed in writing between the Parties.

23.2.4.2 The arbitrator's decision may be made an order of court at the instance of any Party to the arbitration.

23.3 **Urgent relief**

Proceedings in terms of this clause 23 shall not be construed to prevent the Parties from instituting formal proceedings in any court of competent jurisdiction to obtain timely interim or urgent relief and/or for judgment in relation to a liquidated claim.

23.4 **Continued performance**

Each Party agrees to continue performing its obligations under the Agreement while any dispute is being resolved.

24. **Miscellaneous matters**

24.1 **addresses**

24.1.1 The Parties choose the following addresses at which written notices in connection with this Agreement may be delivered, and the Parties choose the following physical addresses at which documents in legal proceedings in connection with this Agreement may be served (ie their *domicilia citandi et executandi*):

24.1.2 in the case of Foskor to:

address : Hertford Office Park, Building K
2nd Floor
90 Bekker Road
Vorna Valley
Midrand
Gauteng

email : roganim@foskor.co.za

and marked for the attention of Ms Rogani Moodley (Vice President – Legal, Risk and Compliance)

24.1.3 in the case of [Supplier] to:

address : [●]
[●]
[●]

email : [●]

and marked for the attention of [●]

24.1.4 A Party may at any time change that Party's *domicilium* by notice in writing, provided that the new *domicilium* consists of, or includes, a physical address at which process can be served.

24.1.5 Any notice given in connection with this Agreement shall be valid and effective only if in writing, in English, and if delivered by hand, courier or e-mail.

24.1.6 A notice given as set out above shall be deemed to have been duly given:

24.1.6.1 if delivered, on the date of delivery or if such date is not a Business Day, on the next Business Day; or

24.1.6.2 if sent by email, on the date that the email is transmitted (or if such date is not a Business Day, on the next Business Day), except that any email transmitted after 17h:00 shall be deemed to have been received on the following Business Day; and

24.1.6.3 the person on whom notice is served is not absent on leave or business.

24.2 A written notice or communication actually received by a Party shall be an adequate service of such written notice or communication to that Party notwithstanding that the notice or communication was not sent to or delivered or served at that Party's chosen address in this clause 24.4.

24.3 **entire contract**

This Agreement contains all the provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement. Without derogating from the generality of the foregoing, no terms and conditions appearing on the Supplier's invoices, delivery notes or other documentation shall be of any force and effect.

24.4 **no stipulation for the benefit of a third person**

Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (ie a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.

24.5 no representations

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement unless the representation is recorded in this Agreement.

24.6 variation, cancellation and waiver

No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

24.7 indulgences

The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

24.8 cession and delegation

A Party may not cede any or all of its rights and/or delegate any or all of its obligations under this Agreement without the prior written consent of the other Party.

24.9 applicable law

This Agreement is to be governed, interpreted and implemented in accordance with the laws of South Africa.

24.10 jurisdiction of South African courts

The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg), for any proceedings arising out of or in connection with this Agreement and which are not subject to arbitration. In particular, any Party shall be entitled to approach the court for urgent interim relief pending the referral of the dispute to arbitration (or pending the finalisation of the arbitration proceedings) or for an order for the enforcement of any arbitration award made.

24.11 costs

Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

24.12 signature in counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

24.13 independent advice

Each of the Parties hereby respectively agrees and acknowledges that:

- 24.13.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

24.13.2 each provision of this Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

24.14 **good faith**

The Parties shall at all times act in good faith towards each other and shall not bring any of the other Parties into disrepute.

[Signature page follows]

Signed at _____ on _____ 2025

Witness _____ for **FOSKOR PROPRIETARY LIMITED**

1. _____
duly authorised and warranting such authority

2. _____

Signed at _____ on _____ 2025

Witness _____ for **[SUPPLIER]**

1. _____
duly authorised and warranting such authority

2. _____

Annexe A

Contract Price

Annexe B

Goods and Specifications

[Note: To be populated.]