



**Morupule Coal Mine**  
*Seam to Value*

# ENQUIRY DOCUMENT

**ENGINEERING**

**PREDICTIVE ANALYTICS PLATFORM  
SCOPE FOR MORUPULE COAL MINE**

**ENQUIRY NO: MCM-ENG-00-204-2602-CF-0**



**Morupule Coal Mine**  
*Seam to Value*

**ENQUIRY DOCUMENT**

**EMPLOYER'S REPRESENTATIVE**

Mr. Mothusi Makwape  
Morupule Coal Mine  
Along Serowe/ Palapye Road  
Private Bag 35  
Palapye  
Botswana  
Landline No.: +267 492 1373  
E-mail: [MMakwape@mcm.co.bw](mailto:MMakwape@mcm.co.bw)

**COMMERCIAL/FINANCIAL**

Mr. Motlhabani Tema  
Morupule Coal Mine  
Along the Palapye / Serowe Road  
P Bag 35  
Palapye  
Botswana  
Landline No.: +267 494 1343  
E-mail: [mtema@mcm.co.bw](mailto:mtema@mcm.co.bw)



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**Morupule Coal Mine**  
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**SECTION I**

**PART I**

**NOTES TO TENDERERS**

## 1. BACKGROUND

- Morupule Coal Mine (MCM) is a mining company established in 1973 to mine and unlock true value of coal for all stakeholders. The MCM business is at the heart of a prosperous future for Botswana with coal production contributing significantly to the economic development of Botswana. The Mine is owned by the Minerals Development Company Botswana (MDCB) a mining investment entity of the Government of Botswana. Morupule Coal Mine is located 7 km northwest of the urbanized village of Palapye (the fastest growing center outside the capital city of Gaborone), along the Serowe-Palapye national highway (A14). The company's vision is 'To be a partner of choice in the global coal transition'.

## 2. LOCATION

- Morupule Coal Mine is located 7 km northwest of the urbanized village of Palapye (the fastest growing center outside the capital city of Gaborone), along the Serowe-Palapye national highway (A14).

## 3. SCOPE OF WORK

- The tenderer to refer to attached scope of work

## 4. INVITATION TO TENDERERS

- Tenderers are advised to check the number of pages and contents of this document and if any doubt exists as to the full intent or meaning of any description, tenderers must notify the Employer at once and have the same clarified.
- Alterations, omissions or additions made to the text of the document by the bidder will be ignored and will not be considered as amendments to the documents.
- Tenderers may be required to attend a site visit which will be communicated with the bidders. All prospective tenderers are requested to inspect the site prior to submission of their proposal. Tenderers who do not attend the site inspection meeting will be rejected. All tenderers are requested to sign the Site inspection certificate as proof of attendance.
- Late Tenders will not be considered. Tenders will not be opened in public, nor will the Tender results be divulged.
- Tenders are to remain valid and open for acceptance for a period of 90 days after the Tender closing date and shall not be withdrawn during this period.
- The Employer does not bind itself to accept the lowest or any portion of any Tender.
- Tenders are to be submitted endorsed "**Tender for Morupule Coal Mine: PREDICTIVE ANALYTICS PLATFORM**"
- Enquiries related to this Request for Proposal should be sent by email to the following:

[MTenders@mcm.co.bw](mailto:MTenders@mcm.co.bw)

**NOTE TO TENDERERS: FAILURE TO SUBMIT THE REQUIRED INFORMATION AND COMPLETED ANNEXURES MAY RENDER THEIR TENDER LIABLE FOR REJECTION.**

- Tender Closing Date: **19 May 2026 @ 12:00 (Noon)**
- Enquiry No: **MCM-ENG-00-204-2602-CF-0**

**5. GENERAL REQUIREMENTS**

- Tenderers are required to provide profiles of their respective Company, Organization or Firm among other things, outlines the following:
- Name of the Company, Organization or Firm
- The Company, Organization or Firm's history in the industry, At least Three (3) reference letters, Purchase Order or Completion Letters if any
- To allow proper evaluation of Tenders, all Schedules contained in this Request for Proposal should be fully completed and signed where required. Tenders in which the detailed prices and/or particulars are not fully completed will not be considered.
- All costs relating to the preparation and submission of the Tender are to be borne by the Tenderer

**6. SHE REQUIREMENTS**

- **Safety Health and Environment (SHE) Plan**
- The Consultant shall ensure adherence to MCM SHE requirements pertaining to site rules and regulations and the applicable Fatal Risk Control Protocols
- The Consultant shall ensure adherence to the applicable legislation of the Republic of Botswana
- The Consultant shall come to site with a SHE plan for the scope of works they are contracted to perform. The documents should be included in the Tender Bid Document and should be updated as and when it is required as the work progresses, until contract completion.
- The SHE plan shall include:
  - Consultant's SHE policy
  - Proof of worker compensation insurance
  - Proof of medical insurance for the personnel (employees)
  - The risk assessment for the scope of works
  - Environmental aspects and impacts of all activities
  - List of Tasks, Job Risk Analysis and/or Safe Work Procedures for critical tasks
  - High risk machinery, tools; equipment maintenance plan and inspection registers

- List of personnel and their job titles
  - Statutory and company appointments
  - Competency profile of appointed personnel (CVs, certified copies of qualifications, copies of driver licenses, etc.)
  - Emergency Preparedness Action Plan
  - Waste Management Plan
- **Safety Health and Environment File**
- Prior to the start of works the Consultant must prepare a SHE file that contains the SHE plan. The file should be up-to-date and progressively updated during the project. Records for documentation include:
- Permits
  - Training records
  - Job Risk Analysis and Pre-Task Risk Assessments
  - Inspections, observations and audits
  - SHE talks, SHE meetings etc.
  - Fitness-for-duty certificates
  - Incident records
- The SHE file must be kept in the Consultant's site office with easy access for all interested parties.

### **Risk Assessments**

- Prior to the start of works the Consultant must perform a baseline risk assessment for the scope of works to identify the major risks associated with the work
- The risk assessment must identify potential unwanted events that can result in property damage, injury, illness and negative environmental impacts.
- The baseline risk assessment must be updated when major changes occur, and after incident investigations.
- The Consultant must identify the control measures for major risks, and the personnel responsible. When determining controls, the Consultant must apply the hierarchy of controls as follows:
- **Elimination:** Where possible, remove the hazard or the need to complete tasks at risk (e.g., eliminating toxic substances, hazardous equipment or processes that are not necessary).
- **Substitution:** Complete the task in a less hazardous location or manner (e.g., building as much of a structure on the ground in preference to at height).
- **Engineered Solutions:** Engineer or redesign the structure or equipment to reduce the hazard involved in the task (e.g., move valves from height to a lower level for

operation or install remote valve operation devices).

- Administration: Establish policies, procedures and work practices to reduce employees' exposure to risk (e.g., provide training, use warning signs, and reduce time spent in noisy areas).
- Personal Protective Equipment (PPE): The provision of personal protective equipment does not eliminate the hazard but only protects the individual from it. Such action will have to be coupled with training in the correct use of the equipment. PPE should be used only as a last resort.

## **7. REQUESTS FOR INFORMATION**

- Should the Tenderer require any part or parts of the RFP to be clarified or have any doubt about the meaning or intent of any of the provisions in this Invitation to Tender or identify any discrepancies or contradictions they must seek clarification as soon as possible within 5 days of before tender closing date.
- All clarification must be addressed via email to all cc'd
- Such requests for clarification are to be made in sufficient time to enable any interpretation or amendment to the Request for Proposal to be given without prejudice to the date for receipt of Tenders.
- The company shall be under no obligation to address any enquiries, complaints, requests for clarity or requests for interpretation sought or raised by individuals or entities who have not acquired the Request for Proposal documents from Morupule Coal Mine

## **8. AMENDMENTS TO THE REQUEST FOR PROPOSAL**

- At any time before the Date for submission of the proposals, Morupule Coal Mine may effect any modifications to issue amendments to the Request for Proposal documentation. Such amendments will as far as possible take due consideration of the remaining tender period and will be distributed by e-mail to all prospective Tenderers who have purchased or collected the Request for Proposal documents.

## **9. MINOR DEPARTURES**

- The Tenderer shall fully comply with the requirements of the RFP.
- Tenderers may modify and withdraw Proposals at any time prior to the date for Submission of Proposal if notification of such withdrawal is received in writing prior to the Date for Submission.
- No departures shall be acceptable subject to prior approval.

## **10. COST OF PROPOSAL**

All costs and expenses incurred in any way associated with the development, preparation and submission of the proposal including but not limited to attendance of meetings, discussions and providing any additional information required will be borne entirely and exclusively by the Tenderer.

## **11. CONDITIONS OF TENDERING AND CONDITIONS OF CONTRACT**

- The tender shall be submitted in accordance with the Terms and Conditions of Contract specified in this Request for Proposal.
- Tender Proposals must be submitted in the English Language.
- The tenderer must indicate only material concerns regarding clauses as per the Terms and Conditions and submit Non-compliance with the Proposal. Non-material concerns will not be entertained.
- If no concerns are raised in the proposal, it will be deemed that the Tenderer is in agreement with the Term and Conditions.
- The Tenderer shall clearly state that there are no exceptions and deviations with the requirements and specifications of the RFP or alternatively detail all such exceptions and deviations if any.
- Proposals may not be submitted or sent to any other address as any Proposals received at another address will be disqualified and not be accepted
- Any company that decides not to submit a tender, after collecting and studying the tender documentation, is requested to communicate the reasons for withdrawal.

## **12. TENDER PREPARATION**

- All Tenders must be prepared in accordance with the instructions specified in these Request for Proposal documents.

## **13. PROPOSAL STRUCTURE**

**The following documentation must be submitted as part of the Proposal:**

## 14. ASSESSMENT AND EVALUATION

### Compliance

- On time tender submission (Date, time & place)
- Security issues (e.g. blacklisted, liquidated, etc.)
- Form of Offer – **signed and stamped**
- Valid tax Clearance certificate
- Certificate of Incorporation

### Technical evaluation

**Note that the criteria below will be used to assess technical responsiveness**

The Technical Evaluation will be weighed at 60%.

Item	Criterion	Description	Tender Specific Requirements	Weight
1	Relevant Experience	Evaluation of previous experience of the tenderer needs to be assessed in relation to the fields of expertise required to achieve the intended outcomes of the project. Recent experience is more valuable than historic experience.	1. Previous work experienced	20
			2. Number of years of doing similar work	5
2	Capability and Capacity	An assessment of the tenderer should be able to demonstrate its capability to bring the contract to a satisfactory conclusion by describing the methodology of approach to accomplish the project's required outcomes	1. Company Profile	5
			2. SHE Management plan, SHE Specifications	5
			3. General appreciation and sufficient understanding of the scope (Methodology)	15
			4. Project Timeline / General acceptability of project programme	5

3	Management and Technical Skills	Tenderer's organization of personnel with appropriate management skills together with effective management systems and methods appropriate to the successful management of the project.	1. Organogram / management structure for the contract	5
			2. Relevant qualification & experience.	20
4	Quality and Monitoring	Tenderers should demonstrate that they will be able to execute and hand over the project within acceptable quality standards.	Compliance with quality requirements	10
5	Equipment Evaluation	Tenderers should demonstrate they have the machinery and equipment needed to carry out the works.	Analytic equipment	10
<b>Total Score</b>				<b>100</b>

Minimum Technical Qualification Criteria shall be 60%. Companies that **do not** meet the 60% mark will NOT be evaluated for financial scoring.

### **Financial/ Commercial evaluation**

**Note that the criteria below will be used to assess financial responsiveness**

The Financial Evaluation will be weighed at 40%.

<b>General Contractual and Administrative Evaluation</b>			
Validity of Tenders & CEEP Performance Matrix  <i>Refer to CEEP Matrix below for scoring guide"</i>	Registration in Botswana	1. Company Licensed and Registered in Botswana	60
	Ownership	2. % Citizen Shareholding	
	Citizen Employment	3. Total number of Employees	
		4. % Citizens Employed	
		5. % Number of Citizens Earning more than P3,500.00	
	Buy Botswana	6. % Value Goods and/or Services Manufactured in Botswana	
	Contribution to CSI	7. % Value Contribution to Corporate Social Investment	
Capital Cost - (+/-) variance from the most competitive and reasonable price	Capital Cost - (+/-) variance from the most competitive and/or reasonable price	1. Capital Cost - (+/-) variance	40
<b>Total Score</b>			<b>100</b>

## CEEP Matrix

Registration in Botswana	Company Licensed and Registered in Botswana	0%	0
		100%	3
Ownership	% Citizen Shareholding	<25%	0
		25%<40%	2
		40%<75%	5
		75%<99%	8
		100%	10
Citizen Employment	<b>Total Citizen Employment</b> Total number of Employees	0 to 5	1
		5 to 20	2
		20 to 50	3
		50 to 100	4
		100+	5
		% Citizens Employed	<70%
	70%<80%		2
	80%<85%		3
	85%<90%		4
	90%+		6
	% Number of Citizens Earning more than P3,500.00	<70%	1
		70%<80%	2
		80%<85%	3
		85%<90%	4
		90%+	5
Buy Botswana	% Value Goods and/or Services Manufactured in Botswana	<15%	1
		15%<20%	2
		20%<25%	3
		25%<30%	4
		30%+	6
Contribution to CSI	% Value Contribution to Corporate Social Investment	0<0.2%	1
		0.2%<0.4%	2
		0.4%<0.6%	3
		0.6%<1%	4
		1%+	5

**Weighing for Technical and Financial Proposals:**

The overall assessment shall be weighted as follows:

- *Technical Proposals = 60%*
- *Financial Proposals =40%*

**Final Weighted Score:**

The assessed final weighted score will be calculated for each bid found to be admissible by using the tenderer's scores attained from the Technical Evaluation (Technical), the Financial Evaluation (Financial) in the following formula:

Total weighted score = Technical + Financial



**SECTION I**

**PART 2**

**CONTRACT AGREEMENT**

## CONTRACT AGREEMENT

This Agreement,

made the \_\_\_\_\_ day of \_\_\_\_\_ 2026

Between

### **MORUPULE COAL MINE PROPRIETARY LIMITED**

A company registered with limited liability in terms of the Companies Act Chapter 4:01  
having its registered offices along Serowe/ Palapye Road, Palapye, Botswana  
(hereinafter referred to as “*the Employer*”) of the one part,

and

.....  
A company registered in accordance with the laws of .....,  
..... having its registered offices

.....  
..... (hereinafter referred to as “*the Consultant*”) of the other part

**ENQUIRY NUMBER: MCM-ENG-00-204-2602-CF-0**

1.

1	2
3	4

**WHEREAS:**

The Employer desires that the Works and Services known **Predictive Analytics Platform** Scope for Morupule Coal Mine, near Palapye, Botswana, should be executed by the Consultant, and has accepted a tender (“*Consultant’s tender*”) by the Consultant for the performance of these Services.

**THE EMPLOYER AND THE CONSULTANT AGREE** as follows:

1. In this Contract, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of the Contract, in the following order of precedence:
  - a) the Contract Agreement (including the Contract Data),
  - b) the Conditions of Contract,
  - c) the Schedules,
  - d) the Annexures,
  - e) the Confidentiality and Non-Discloser Agreement.
3. The Employer hereby appoints the Consultant as its independent Consultant to provide the Services at the Mine. The Consultant hereby accepts this appointment and agrees to provide the Services by virtue, and in terms of the provisions of this Contract.
4. The Accepted Contract Amount for the Services referred to in this Contract, shall be ..... ( ) exclusive of Value Added Tax.
5. Notwithstanding the Accepted Contract Amount, the Employer shall pay the Consultant, in consideration for the performance of the Services the Contract Price as calculated in accordance with the Contract.

1	2
3	4

**IN WITNESS** whereof the Parties hereto have signed this Contract in the presence of the subscribing witnesses:

**FOR AND ON BEHALF OF THE EMPLOYER, BEING DULY AUTHORISED TO DO SO:**

At: \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2026.

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**FULL NAMES**

\_\_\_\_\_  
**POSITION**

**AS WITNESSES (FOR THE EMPLOYER)**

1) \_\_\_\_\_

2) \_\_\_\_\_

**FOR AND ON BEHALF OF THE CONSULTANT, BEING DULY AUTHORISED TO DO SO:**

At: \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2026.

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**FULL NAMES**

\_\_\_\_\_  
**POSITION**

**AS WITNESSES (FOR THE CONSULTANT)**

1) \_\_\_\_\_

2) \_\_\_\_\_

3.

1	2
3	4



**Morupule Coal Mine**  
*Seam to Value*

**SECTION I**

**PART 2**

**ENQUIRY DATA**

## ENQUIRY DATA

1.	CONSULTANT's Representative	
2.	Address for communications  Employer:   Employer's Representative:   CONSULTANT:	Morupule Coal Mine Proprietary Limited  Physical Address: Along Serowe/ Palapye Road, Palapye, Botswana  Mr. Mothusi Makwape  E-mail – <a href="mailto:MMakwape@mcm.co.bw">MMakwape@mcm.co.bw</a>  Physical Address: Along Serowe/ Palapye Road, Palapye, Botswana
3.	Amount of performance security	[Tenderer to confirm and submit]
4.	Normal working hours	[Tenderer to confirm and submit]
5.	CONSULTANT's key personnel and CV's	[Tenderer to confirm and submit]
6.	Project Experience for the last five years	[Tenderer to confirm and submit]
7.	Company Profile	[Tenderer to confirm and submit]

1	2
3	4



**SECTION I**

**PART 3**

**CONDITIONS OF CONTRACT**

**GENERAL CONDITIONS OF CONTRACT**

## GENERAL CONDITIONS OF CONTRACT

### 1.0 GENERAL PROVISIONS

#### 1.1 Definitions

The following words and expressions shall have the meanings assigned to them except where the context otherwise requires:

- 1.1.1 “Accepted Contract Amount” means the amount recorded in clause 4 of the Contract Agreement – which amount may be adjusted under the terms of the Agreement.
- 1.1.2 “Agreed Compensation” means additional sums [Remuneration and Payment Schedule] which are payable under the Agreement.
- 1.1.3 “Agreement” means the terms and conditions comprising the documents listed in the Contract Agreement.
- 1.1.4 “Employer” means Morupule Coal Mine, who employs the Consultant, and legal successors to the Employer and permitted assignees, to perform the Services.
- 1.1.5 “Commencement Date” means the Letter of Acceptance Date, unless otherwise defined in the Agreement.
- 1.1.6 “Consultant” means the professional firm or individual named in the Contract Agreement, who is employed by the Employer to perform the Services.
- 1.1.7 “Contract Documents” means the Contract Agreement as well as all the documents listed therein.
- 1.1.8 “Country” means the Republic of Botswana.
- 1.1.9 “day” means a calendar day and a “year” means 365 days.
- 1.1.10 “Letter of Acceptance” means the letter of formal acceptance, signed by the Client, of the Consultant’s tender (if applicable)
- 1.1.11 “Local Currency” (LC) means the currency of the Country and “Foreign Currency” (FC) means any other currency.
- 1.1.12 “Party” means the Employer or the Consultant, and “Parties” means the Employer and Consultant collectively while “third party” means any other person or entity as the context requires.
- 1.1.13 “Project” means the project named in the Particular Conditions for which the Services are to be provided.

- 1.1.14 “Services” means the services defined in Annexure 1 [Scope of Services] and Annexure 2 [Design Criteria] to be performed by the Consultant in accordance with the Agreement.
- 1.1.15 “Time for Completion” means the time period stated for this purpose in the Particular Conditions”
- 1.1.16 “Works” means the permanent works (if any) to be executed (including the goods and equipment to be supplied to the Client) for the achievement of the Project.
- 1.1.17 “written” or “in-writing” mean hand-written, type-written, printed or electronically made, and resulting in a permanent un-editable record.

## 1.2 Interpretation

- 1.2.1 The headings in the Agreement shall not be taken into consideration in the interpretation of these Conditions.
- 1.2.2 The singular includes the plural and vice-versa where the context requires.
- 1.2.3 In the event of there being any conflict between any of the provisions contained in the Contract documentation the precedence of such documents shall be in the order prescribed in the Contract Agreement.
- 1.2.4 Words indicating one gender include all genders.
- 1.2.5 Provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing, and signed by both Parties.

### 1.3 Communications

Whenever provision is made for the giving or issue of any notice, instruction or other communication by any person, such communication shall be in writing, which notice, instruction or other communication shall not be unreasonably withheld or delayed.

The Tenderer shall be required, at his own cost, to attend regular meetings considered necessary by the Employer's Representative. Such meetings may include the following:

- (a) Progress meetings;
- (b) Design or technical meetings;
- (c) Commercial management meetings - more specifically handling all commercial and contractual issues;
- (d) Risk reduction meetings;
- (f) Inter contract liaison meetings; and

### 1.4 Governing Language and Law

1.4.1 The language of the Agreement is English.

1.4.2 The Agreement shall be governed, construed and interpreted in accordance with the law of the Republic of Botswana.

### 1.5 Changes in Legislation

If after the date of the Agreement the cost or duration of the Services is altered as a result of changes in or additions to the laws or regulations in any country in which the Services are required by the Employer to be performed the agreed remuneration and time for completion shall be adjusted accordingly.

### 1.6 Whole Agreement

The Contract Documents constitute the whole agreement between the Parties and no prior representation, and/or previous agreement, and/or representation, and/or previous agreement, and/or negotiations whether oral or written, which is not incorporated in the Agreement shall be of any force or effect. In addition, no representation or agreement or addendum varying, adding to, deleting or cancelling this Agreement shall be of any force or effect unless reduced to writing and signed by both Parties.

### 1.7 Waiver

No grant by either Party to the other of any indulgences, condonation, waiver or allowance shall, in respect of any specific event or circumstance other than in respect of which the grant was made, constitute a waiver of the rights of the grantor in terms of the Agreement or an estoppel of the grantor's right to enforce the provisions of the Agreement.

#### 1.8 Assignment

Neither the Employer nor the Consultant shall, without the written consent of the other, assign the Contract or any part thereof or any obligation under the Contract.

#### 1.9 Subcontracting

The Consultant shall not without the written consent of the Employer initiate or terminate any sub-contract for performance of all or part of the Services.

#### 1.10 Intellectual Property Rights

For the purposes of this clause, Intellectual Property means statutory and common law proprietary rights in respect of patents, designs, copyright, know how, confidential information, domain names, drawings, data and all other rights in respect of Intellectual Property compiled, created or prepared in execution of the Services to be performed in terms of the Agreement.

As between the Parties, all rights, title and interest and copyright in and to any Intellectual Property, and other intellectual property rights in and to any and all documents prepared on behalf of the Employer by the Consultant in connection with the Agreement shall vest in the Client, upon full and final payment of all amounts owing to the Consultant in terms of the Agreement.

#### 1.11 Notices

Notices to be served under the Agreement shall be in writing and will take effect from receipt at the addresses stated in the Particular Conditions. Delivery can be by hand or facsimile message against a written confirmation of receipt or by registered post.

#### 1.12 Publications

The Consultant, either alone or jointly with others, shall not publish any material relating to the Services or the Project without the prior written approval of the Client.

#### 1.13 Conflict of Interest Corruption and Fraud

Notwithstanding any penalties that may be enforced against the Consultant under Botswana Law, the Employer will be entitled to terminate the Agreement in accordance clause 4.6.2 and the Consultant shall be deemed to be in breach of this Agreement if it is shown that the Consultant is guilty of:

- 1.13.1 offering, giving, receiving or soliciting anything of value with a view to influencing the behavior or action of anyone, whether a public official or otherwise, directly or indirectly in the selection process or in the conduct of the Agreement; or

- 1.13.2 misrepresentation of facts in order to influence a selection process or the execution of a Contract to the detriment of the Client, including the use of collusive practices intended to stifle or reduce the benefits of free and open competition.

#### 1.14 Confidentiality

- 1.14.1 The Consultant is deemed to have agreed to and shall at all times comply with the provisions contained in the Morupule Coal Mine Confidentiality and Non-Disclosure Agreement as attached hereto.
- 1.14.2 Unless otherwise provided for in the Agreement, and with the exception of those matters set out herein below, the Parties warrant that each shall keep confidential all matters relating to the Project, and that the Parties, their employees, agents and servants shall not divulge or disclose to any organization or any person any information, data, documents, secrets, dealings, transactions or affairs relating to or incidental to the Project.

1.14.3 The obligation of confidentiality shall not apply to the following: -

- 1.14.3.1 any matter generally available in the public domain otherwise than as a result of a breach of this clause;
- 1.14.3.2 any disclosure which may reasonably be required for the performance of that Party's obligations under the Agreement;
- 1.14.3.3 disclosure of information which is required by statute, regulation or any other law;
- 1.14.3.4 the provision of information to Consultants, Consultants, Sub-Consultants or suppliers for purposes of executing the Project, provided that the obligations of confidentiality herein shall be imposed mutatis mutandis upon such Consultants, Consultants, Sub-Consultants or suppliers in their respective contracts; and
- 1.14.3.5 the provision of information to any third person with the express written permission of the other Party.

## 2.0 THE EMPLOYER

### 2.1 Information

The Employer shall timeously provide to the Consultant, free of cost, all information that may be reasonably required for the provision of the Services. The Consultant shall be entitled to rely on the accuracy and completeness of such information furnished by or on behalf of the Client.

### 2.2 Decisions

The Employer shall give his decision on all matters properly referred to him in writing by the Consultant within a reasonable time so as not to delay the Services to be provided.

### 2.3 Equipment and Facilities

### 2.4 Employers Personnel

- 2.4.1 In consultation with the Consultant, the Employer shall at his own cost arrange for the selection and provision of personnel in his employment to the Consultant in accordance with Annexure 2 [Schedule of Personnel, Equipment, Facilities and Services of Others to be provided by the Client]. In connection with the provision of the Services such personnel shall take instructions only from the Consultant.
- 2.4.2 If the Employer cannot supply Employer's personnel for which he is responsible and it is agreed to be necessary for the satisfactory performance

of the Services, the Consultant shall arrange for such supply as an Additional Service.

## 2.5 Employer's Representative

- 2.5.1 The Employer shall appoint an Employer's Representative to carry out those duties delegated to him in terms of the Agreement and in addition shall monitor and report to the Employer on conformance by the Consultant with the provisions of the Agreement. In addition, the Employer's Representative shall be authorized to receive, on behalf of the Client, all notices, correspondence and other communications issued pursuant to the Agreement.
- 2.5.2 The Employer's Representative shall have no authority to relieve the Consultant of any of its duties, obligation or responsibilities under the Agreement or to amend any of the terms thereof.
- 2.5.3 All services to be provided by the Consultant shall be to the reasonable satisfaction of the Employer's Representative. In addition, the Employer's Representative may instruct the Consultant to:
  - 2.5.3.1 appoint additional personnel at no cost to the Employer where the Employer's Representative considers that the Consultant is not complying with the provisions of the Contract and/or to
  - 2.5.3.2 terminate the involvement of any person on the Contract where the Employer's Representative considers the presence of such person to be contrary to the interests of the Agreement and/or the Project.
- 2.5.4 No approval given by the Employer's Representative shall relieve the Consultant of its obligations under the Contract.
- 2.5.5 Where the Employer's Representative is required to determine value, quantities, cost or extensions of time he shall consult and endeavour to reach agreement with the Consultant and in all cases shall determine such matters fairly, reasonably and in accordance with the Agreement.
- 2.5.6 The Employer's Representative may from time to time delegate any of his duties to an assistant, and may at any time revoke any such delegation. Such delegation or revocation shall be in writing and shall not take effect until a copy of same has been delivered to both Parties.
- 2.5.7 Any determination, instruction, inspection, examination, test, consent, approval or other similar act by an assistant delegated in terms of clause 2.5.6 shall have the same effect as if it had been given by the Employer's Representative itself. However, in the event of the Consultant questioning or disputing any determination or instruction, given by the said assistant,

the Consultant may refer such matter to the Employer's Representative, who shall confirm, reverse or vary such determination or instruction.

## 2.6 Services of Others

The Employer shall at its cost arrange for the provision of services from others as described in Annexure 2 [Schedule of Personnel, Equipment, Facilities and Services of Others to be provided by the Client] and the Consultant shall co-operate with the suppliers of such services but shall not be responsible for them or their performance.

## 2.7 Payment of Services

The Employer shall pay the Consultant for the Services in accordance with clause 5 hereof.

## 3.0 THE CONSULTANT

### 3.1 Scope of Services

The Consultant shall perform Services relating to the Project. The Scope of Services to be provided are as stated in Annexure 1 [Scope of Services].

### 3.2 Normal, Additional and Exceptional Services

3.2.1 Normal Services are described as such in Annexure 1 [Scope of Services].

3.2.2 Additional Services are those described as such in Annexure 1 [Scope of Services] or which by written agreement of the Parties are otherwise additional to Normal Services.

3.2.3 Exceptional Services are those which are not Normal or Additional Services but which are necessarily performed by the Consultant in accordance with Clause 4.7.

### 3.3 Duty of Care and Exercise of Authority

3.3.1 The Consultant shall exercise reasonable skill, care and diligence in the performance of its obligations under the Agreement.

3.3.2 Where the Services include the exercise of powers to certify or exercise discretion in terms of a Contract between the Employer and any third party the Consultant shall act in accordance with that contract, but as an independent professional acting with reasonable skill, care and diligence.

### 3.4 Employer's Property

Anything supplied by or paid for by the Employer for the use of the Consultant shall

be the property of the Employer and where practical shall be so marked.

### 3.5 Supply of Personnel

- 3.5.1 The provision of personnel shall be subject to the Statutes, Ordinances, Laws, Regulations and By-laws in force from time to time and no personnel shall be brought onto the Employer's property by the Consultant without first obtaining the necessary visas or work permits or passports from the appropriate Authorities.
- 3.5.2 All costs incurred by the Consultant in obtaining the required permits as well as any costs incurred as a result of having failed to comply with the said Authorities requirements shall be for the Consultant's account.
- 3.5.3 The Consultant's attention is directed to the requirements of the Employment of Non-Citizens Act (CAP 47:02) and the Immigration Act (CAP 25:04).
- 3.5.4 The Consultant shall be responsible for the return of foreign personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Consultant shall similarly be responsible for making the appropriate arrangements for their return for burial.
- 3.5.5 The personnel who are proposed by the Consultant to work in the Country shall be subject to acceptance by the Employer with regard to their qualifications and experience; such acceptance shall not be unreasonably withheld.
- 3.5.6 Where the Employer requires the Consultant to nominate key Personnel in Annexure 6 hereto, such Personnel shall not be removed from the Project without the Employer's express permission. Substituted Personnel shall have equivalent qualifications and experience.

### 3.6 Consultant's Representative

- 3.6.1 The Consultant shall appoint a Consultant's Representative who shall give of his whole time to directing the execution of the Services to be provided by the Consultant in terms of the Agreement. In addition, the Consultant's Representative shall be authorized to receive, on behalf of the Consultant, all notices, instructions, consents, approvals, certificates, determinations, correspondence and other communications issued pursuant to the Agreement.
- 3.6.2 The Consultant shall not revoke the appointment of the Consultant's Representative without the prior consent of the Employer's Representative.
- 3.6.3 The Consultant's Representative may from time to time delegate any of his duties to any competent person, and may at any time revoke any such

delegation. Such delegation or revocation shall be in writing and shall not take effect until the Employer's Representative has received prior notice signed by the Consultant's Representative, specifying the powers, functions and authority being delegated or revoked.

### 3.7 Changes in Personnel

3.7.1 If it is necessary to replace any of the personnel provided by the Consultant, the Consultant shall arrange for replacement by a person of comparable competence as soon as reasonably possible.

3.7.2 The cost of such replacement shall be borne by the Consultant except where the replacement is requested by the Client, and in such case:

3.7.2.1 the request shall be in writing stating the reasons for it; and

3.7.2.2 the Employer shall bear the cost of replacement unless it is agreed that misconduct or inability to perform satisfactorily is accepted as the reason for the replacement by the Consultant;

### 3.8 Co-operation with Others

The Consultant may be required to perform the Services in conjunction with any other Consultants or specialists who are providing services to the Project and he may make recommendations to the Employer in respect of such appointments for certain parts of the Project. In such case the Consultant shall only be responsible for his own performance and the performance of his Sub-Consultants or specialists who have specifically been appointed by the Consultant to assist him with the Services to be provided under this Agreement.

### 3.9 Statutory Obligations, Notices Fees and Charges

3.9.1 The Consultant shall at all times conform in all respects with the provisions of any Act of Parliament, Regulations, Bye-law of any Local or any other Statutory Authority or other Enactment having the force of law which may be applicable to the performance of its obligations under the Agreement and shall indemnify, and keep indemnified the Client, against damages that it may suffer as a result of any breach by the Consultant, its agents or employees, including any hired labour, of any such Act, Regulation, Bye-law or other Enactment and including all legal costs on the attorney and Employer scale which may be payable as a result of any claims or proceedings in respect of the Agreement.

3.9.2 The Consultant shall be responsible for payment of all costs, taxes, duties, levies and charges arising out of compliance with such laws and regulations.

- 3.9.3 The Consultant shall be liable for and shall indemnify the Employer against any claim arising out of the Consultant's non-compliance with any laws and regulations applicable to the execution of this Agreement.

### 3.10 Progress Meetings

- 3.10.1 The Consultant shall arrange and attend meetings with the Employer and/or its representatives at the request of the Client, but not less frequently than once every month during the currency of the Agreement, in order to monitor the progress of the Services to be provided.
- 3.10.2 The purpose of the meetings is also to raise and address matters of concern to the Client, and/or the Consultant. The Consultant shall be responsible for chairing the meetings, taking minutes and distributing minutes within one week of the date of each meeting.

### 3.11 Safety Procedures

At all times the CONSULTANT shall: -

- 3.11.1 comply strictly with the Employer's Site Rules and Regulations from time to time in force, a copy of which is deemed to be incorporated into and shall be read as part of the Agreement;
- 3.11.2 be responsible for the safety and welfare of all its employees and shall comply to all relevant safety requirements;
- 3.11.3 familiarize himself with all the Employer's domestic regulations, policies and procedures and all legislative or statutory requirements with regard to the health and safety of the Consultant's employees Employer – inductions and medical examinations being obligatory;
- 3.11.4 ensure that all his personnel are fully briefed with regards to all relevant Mine Policies and Safety Procedures and that all personnel have attended the Mine's induction procedure;
- 3.11.5 ensure that all personnel sign their acceptance of these procedures and regulations – which signed documents are to be kept in a register which is to be made available at all times for inspection;
- 3.11.6 at its own cost provide all of its employees with all necessary safety equipment, namely, safety boots, hard hats, overalls etc. and will at all times adhere to the Mine standards as well as the Employer's Site Rules and Regulations, including his Sub-Consultants and their employees, the Botswana Government Safety Regulations in particular, the Mines, Quarries, Works and Machinery Regulations and their latest revisions;
- 3.11.7 be responsible for the discipline of its employees and shall, at the Employer's request, remove from the site any incompetent or undesirable employees;

### 3.12 Security

The Consultant shall at all times remain responsible for the security of his own equipment. In addition, the Consultant shall fully acquaint himself and strictly comply with all the Employer's security regulations particularly with regard to personnel, plant, material and equipment entering or leaving the Employer's property.

### 3.13 Health and Safety

The Consultant is responsible for the safety and welfare of its employees and Sub-Consultants employed on the Project and shall provide medical facilities as such facilities shall only be provided for by the Employer under special circumstances.

The Consultant's attention is directed to the requirements of the Factories Act (CAP 44:01), the Mines, Quarries, Works and Machinery Act (CAP 44:02), as amended, its Regulations and the Site Rules and Regulations of the Employer shall at all times be adhered to by the Consultant, his employees and his Sub-Consultants.

Medical attention provided for the Consultant's employees and hygiene standards thereof must be of a standard acceptable to the Client.

In the event of any of the Consultant's employees becoming ill or injured on the Employer's property, through any cause whatsoever including assault, the Employer reserves the right to arrange for such medical, surgical and hospital services as he considers necessary and the Consultant undertakes and agrees to pay all expenses thereby incurred.

All the Consultant's personnel employed on the Employer's property in connection with this Agreement shall be under the control of the Client, who shall have the right to submit them to a medical examination on arrival at the property, and/or subsequently, and if absent from work through sickness, at the Consultant's expense. The Consultant will not be compensated for the time his employees spend undergoing the required medicals, the cost of which is deemed to be included in the accepted Contract price.

### 3.14 Records of Consultant's Personnel and Equipment

The Consultant shall, in terms of The Mines, Quarries, Works and Machinery Regulations 1978 or the latest revision chapter 44.02, render returns of all persons in their employ on site which returns shall be submitted to the Employer's Representative at the end of each month.

In addition, no Statement submitted to the Employer's Representative for payment in terms of Clause 5 will be processed by the Employer unless such Statement is accompanied by a copy of the monthly labour return referred to above.

### 3.15 Key Personnel

The Consultant shall furnish the Employer and the Employer's Representative with a list of addresses and telephone numbers of key personnel in the Consultant's organization who may be contacted in any emergency both during and outside normal working hours.

### 3.16 Protection of the Environment

The Consultant's attention is directed to Employer's SHE Policy a copy of which is appended to the Agreement.

The Consultant shall comply with all requirements, stipulations and the like of any Environmental Impact Assessment undertaken and/or issued in respect of the Project and/or the Works, to the extent applicable to it and the Services.

## 4.0 COMMENCEMENT, COMPLETION, VARIATION AND TERMINATION

### 4.1 Effective Date

The Agreement is effective from the date of the Letter of Acceptance/ kick-off meeting date.

### 4.2 Commencement and Completion

The Services shall be commenced on the Commencement Date, shall proceed in accordance with the Time Schedule in the Proposal [Time Schedule for Services], and shall be completed within the Time for Completion, subject to extensions in accordance with the Agreement.

### 4.3 Variations

4.3.1 The Employer may order variations to the Services in writing or may request the Consultant to submit proposals, including the time and cost implications, for variations to the Services.

4.3.2 The incorporation into the Agreement of any variations to the Services ordered by the Client, including any increase in the Consultant's fees and reimbursable costs, shall be agreed in writing between the Consultant and the Client.

### 4.4 Delays

If the Services are impeded or delayed by the Employer or his Consultants so as to increase the scope, cost or duration of the Services:

- 4.4.1 the Consultant shall inform the Employer of the circumstances and probable effects;
- 4.4.2 the increase in scope and/or costs shall be regarded as an Additional Service;
- 4.4.3 the time for completion of the Services shall be increased accordingly; and
- 4.4.4 the Consultant shall not be liable to Employer for any such delay or failure to render the Services either at all or in a timely manner.

#### 4.5 Changed Circumstances

If circumstances arise for which neither the Employer nor Consultant is responsible and which make it irresponsible or impossible for the Consultant to perform in whole or in part the Services in accordance with the Agreement, he shall promptly dispatch a notice to the Client.

In these circumstances:

- 4.5.1 if certain Services have to be suspended, the time for their completion shall be extended until the circumstances no longer apply plus a reasonable period not exceeding 42 days for resumption of them; and
- 4.5.2 if the speed of performing certain Services has to be reduced, the time for their completion shall be extended as may be made necessary by the circumstances.

#### 4.6 Abandonment, Suspension or Termination

- 4.6.1 The Employer may suspend all or part of the Services or terminate the Agreement by notice of at least 30 days to the Consultant who shall immediately make arrangements to stop the Services and minimize further expenditure.
- 4.6.2 If the Employer considers that the Consultant is without good reason not discharging his obligations, he can inform the Consultant by notice stating the grounds for the notice. If a satisfactory reply is not received within 14 days the Employer may, by further notice, terminate the Agreement provided that such further notice is given within 35 days of the Employer's former notice.
- 4.6.3 After giving at least 14 days' notice to the Client, the Consultant may by a further notice of a least 42 days terminate the Agreement, or at his discretion without prejudice to the right to terminate, may suspend or continue suspension of performance of the whole or part of the Services: -

- 4.6.3.1 when 28 days after the due date for payment of an invoice he has not received payment of that part of it which has not by that time been contested in writing, or
- 4.6.3.2 when Services have been suspended under either Clause 4.5 or Clause 4.6.1 and the period of suspension has exceeded 182 days.

#### 4.7 Exceptional Services

- 4.7.1 Upon the occurrence of circumstances described in Clause 4.6 or abandonment or suspension or resumption of Services or upon termination of the Agreement otherwise than under the provisions of Clause 4.6.2 any necessary work or expense by the Consultant extra to the Normal and Additional Services shall be regarded as Exceptional Services.
- 4.7.2 The performance of Exceptional Services shall entitle the Consultant to extra time necessary for their performance and to payment for performing them.

#### 4.8 Rights and Liabilities of Parties

- 4.8.1 Termination of the Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
- 4.8.2 After termination of the Agreement the provisions of Clause 6.3 shall remain in force.

### 5.0 PAYMENT

#### 5.1 Payment to the Consultant

- 5.1.1 The Employer shall pay the Consultant for the Services in accordance with this Agreement and with the details stated in Annexure I [Remuneration and Payment], and shall pay for any Additional Services at rates and prices which are given in or based on those in Annexure I [Remuneration and Payment] so far as they are applicable but otherwise as are agreed in accordance with Clause 4.3.
- 5.1.2 Unless otherwise agreed in writing the Employer shall pay the Consultant in respect of Exceptional Services
  - 5.1.2.1 as for Additional Services for extra time spent by the Consultant's personnel in the performance of the Services, and
  - 5.1.2.2 the net cost of all other extra expense incurred by the Consultant.
- 5.1.3 Where the Employer has required the Consultant to appoint selected Consultants as the Consultant's Sub-Consultants, fees owed to those sub-

Consultants shall be due to the Consultant in addition to the Consultant's own fees.

## 5.2 Time for Payment

5.2.1 The Consultant shall submit monthly statements / invoices complete with all supporting documentation thereto to the Employer by the end of the month following the month in which the Services were rendered. Thereafter the Employer shall make payment by no later than the 28th day of the month following that in which the statement / invoice in question was submitted.

5.2.2 If the Consultant does not receive payment by the due date in terms of clause 5.2.1 he shall be paid Agreed Compensation at the rate defined in the Particular Conditions on the sum overdue reckoned from the due date for payment of the invoice until the actual date on which payment is received. Such Agreed Compensation shall not affect the rights of the Consultant stated in Clause 4.6.3.

## 5.3 Currencies of Payment

The currencies applicable to the Agreement are those stated in Annexure I [Remuneration and Payment Schedule].

## 5.4 Disputed Invoices

If any item or part of an item in an invoice submitted by the Consultant is contested by the Client, the Employer shall give notice with reasons of his intention to withhold payment and shall not delay payment on the remainder of the invoice. Clause 5.2.2 shall apply to all contested amounts which are finally determined to have been payable to the Consultant.

## 5.5 Independent Audit

5.5.1 The Consultant shall maintain up-to-date records which clearly identify relevant time and expense and shall make these available to the Employer on reasonable request

5.5.2 Except where the Agreement provides for lump sum payments, not later than twelve months after the completion or termination of the Services, the Employer can, at notice of not less than 7 days, require that a reputable firm of accountants nominated by him audit any amount claimed by the Consultant by attending during normal working hours at the office where the records are maintained.

## 5.6 Withholding Tax

“The Employer shall deduct tax from all Consultant / Consultant / Supplier as stipulated in the Income Tax Act of Botswana, as amended, and the Double Taxation Agreements in place between the Republic of Botswana and various other countries, as amended. The mentioned tax will be deducted by the Employer from the total invoice value at rates not exceeding those stipulated in clauses 5.6.1, 5.6.2 and 5.6.3 and shall be forwarded to the Commissioner of Taxes, Gaborone. The rates stipulated in clauses 5.6.1, 5.6.2 and 5.6.3 may be varied by the Employer in accordance with amendments to the Income Tax Act of Botswana and / or the Double Taxation Agreements in place between the Republic of Botswana and various other countries and such variation of rate shall be at the sole discretion of the Employer and shall require no prior notice to the Consultant / Consultant / Supplier.

- 5.6.1 In respect of contracts for construction operations which include erection, demolition, installation or assembly, site preparation, drilling or road works, 3% of the total invoice value will be deducted by the Employer and forwarded to the Commissioner of Taxes. Such deduction of tax is applicable to all Consultant / Contractor / Supplier, whether such Consultant / Contractor / Supplier are resident or non-resident in the Republic of Botswana.
- 5.6.2 In respect of contracts for the provision of services, tax will be deducted by the Employer and forwarded to the Commissioner of Taxes at a rate of:
  - 5.6.2.1 0% of the total invoice value in the case of Consultant / Consultant / Supplier providing services who are registered in the Republic of Botswana and provide such services from a Permanent Establishment (as defined in the respective Double Taxation Agreements between the Republic of Botswana and various countries) in the Republic of Botswana
  - 5.6.2.2 7.5% of the total invoice value in the case of Consultant / Consultant / Supplier providing services who are registered in France and the United Kingdom;
  - 5.6.2.3 10% of the total invoice value in the case of Consultant / Contractor / Suppliers providing services who are registered in the Republic of South Africa, Seychelles and Barbados, and;
  - 5.6.2.4 15% of the total invoice value in the case of Consultant / Contractor / Supplier providing services who are registered in Sweden, Namibia and Mauritius and all non-treaty countries.
- 5.6.3 In respect of contracts in terms of which royalties are payable, tax will be deducted by the Employer from the total gross amount of royalties payable and forwarded to the Commissioner of Taxes at a rate of:

- 5.6.3.1 0% of the total gross amount of royalties payable to Consultant / Contractor / Supplier resident in the Republic of Botswana;
- 5.6.3.2 10% of the total gross amount of royalties payable to Consultant / Contractor / Supplier resident in the Republic of South Africa, Barbados, France, Namibia, Seychelles, and the United Kingdom; and
- 5.6.3.3 12.5% of the total gross amount of royalties payable to Consultant / Contractor / Supplier resident in Mauritius; and
- 5.6.3.4 15% of the total gross amount of royalties payable to Consultant / Contractor / Supplier who are resident in Sweden and non-treaty countries.
- 5.6.4 It is the responsibility of the Consultant / Contractor / Supplier to provide proof to the Employer that the Consultant / Contractor / Supplier operates a Permanent Establishment in the Republic of Botswana and the Employer shall, in its sole discretion, decide whether a de facto Permanent Establishment is operated by the Consultant / Contractor / Supplier in the Republic of Botswana.
- 5.6.5 It is the responsibility of the Consultant / Contractor / Supplier to provide proof to the Employer that the Consultant / Contractor / Supplier is a resident of the Republic of Botswana, and the Employer shall, in its sole discretion, decide whether the Consultant / Contractor / Supplier is a de facto resident of the Republic of Botswana.
- 5.6.6 In all instances where Tax is deducted by the Client, the Employer will provide a certificate detailing the Contract number, Consultant / Contractor / Supplier and the amount of tax deducted in the prescribed form.
- 5.6.7 The Double Taxation Agreements in effect between the Republic of Botswana and various other countries provide in varying degrees and to various extents for the recovery of tax imposed in the Republic of Botswana from the tax authorities in those countries. It is always the sole responsibility of the Consultant / Contractor / Supplier to:
  - 5.6.7.1 Determine whether a Double Taxation Agreement exists between the Republic of Botswana and the country in which the Consultant / Contractor / Supplier is registered and / or resident and keep abreast of the terms of such Double Taxation Agreement and any amendments thereto; and
  - 5.6.7.2 Determine the manner in which income derived by the Consultant / Contractor / Supplier from the Republic of Botswana is taxed in the country in which the Consultant / Contractor / Supplier is

registered and / or resident and keep abreast of any changes in such manner of taxation; and

5.6.7.3 Determine the manner in which income derived by the Consultant / Contractor / Supplier from the Republic of Botswana is taxed in the Republic of Botswana and keep abreast of any changes in such manner of taxation.

5.6.8 The Consultant / Contractor / Supplier shall be responsible to provide the Employer with a directive from the Commissioner of Taxes as support for any deviation in the withholding tax rates set out above requested by the Consultant / Contractor / Supplier.

## 6.0 LIABILITIES

### 6.1 Liability of the Parties

6.1.1 Neither Party shall be liable to the other for loss of profit or other special damages unless such loss of profit or other special damages was expressly contemplated at the time of entering into the Agreement.

6.1.2 In the event of the Employer having a claim against the Consultant, the Employer shall be entitled to set off such claim against any amounts due to the Consultant, or to deduct same from any security held by the Client, notwithstanding that such claim may be un-liquidated.

### 6.2 Compensation

If it is considered that either party is liable to the other, compensation shall be payable only on the following terms:

6.2.1 Such compensation shall be limited to the amount of reasonably foreseeable loss and damage suffered as a result of such breach, but not otherwise.

6.2.2 In any event, the amount of such compensation will be limited to the amount specified in clause 6.4.

### 6.3 Duration of Liability

Neither the Employer nor the Consultant shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on him before the expiry of the relevant period stated in the Particular Conditions, or such earlier date as may be prescribed by law.

### 6.4 Limit of Compensation

6.4.1 The maximum amount of compensation payable by either party to the other in respect of liability under this Agreement is limited to the amount stated in the Particular Conditions. This limit is without prejudice to any Agreed

Compensation specified under Clause 5.2.2 or otherwise imposed by the Agreement.

6.4.2 Each Party agrees to waive all claims against the other in so far as the aggregate of compensation which might otherwise be payable exceeds the maximum amount payable.

6.4.3 If either Party makes a claim for compensation against the other Party and this is not established, the claimant shall entirely reimburse the other for his costs incurred as a result of the claim.

## 6.5 Indemnity

So far as the law governing this Agreement permits, the Employer shall indemnify the Consultant against the adverse effects of all claims including such claims by third parties which arise out of or in connection with the Agreement including any made after the expiry of the period of liability referred to in Clause 6.3, except insofar as they are covered by the insurances arranged under the terms of Clause 7.

## 6.6 Exceptions

Clauses 6.4 and 6.5 do not apply to claims arising:

6.6.1 from deliberate default or reckless misconduct, or

6.6.2 otherwise than in connection with the performance of obligations under the Agreement.

## 7.0 INSURANCE

The CONSULTANT agrees to arrange and keep in force professional indemnity insurance cover in respect of the Services provided under this Agreement to the extent of the liability under clause 6.4 until the time at which that liability shall cease in terms of clause 6.4. The insurance cover may alternatively be provided by means of an equivalent performance bond.

## 8.0 SETTLEMENT OF DISPUTES

8.1 The Parties shall seek to resolve in good faith any dispute or difference arising between them in respect of any matter connected with this Agreement and may not initiate any further proceedings until either Party has, by written notice to the other, declared that such negotiations have failed.

8.2 Any such dispute or claim, which cannot be settled between the Parties, may be referred to by the Parties, without legal representation, to mediation by a single mediator. The mediator shall be selected by agreement between the Parties and, failing such agreement, shall be nominated by the Chairman of the Association of Arbitrators of Southern Africa. The cost of the mediation shall be born equally between the Parties.

- 8.3 If either Party were unwilling to agree to mediation or be dissatisfied with the opinion expressed by the mediator or should the mediation fail then such Party may refer the dispute to arbitration by a single arbitrator to be mutually agreed upon or, failing agreement, to be nominated by the Chairman of the Association of Arbitrators of Southern Africa. The Arbitration shall be in terms of the Rules for the Conduct of Arbitrations (“Rules”) as published by the said Association of Arbitrators. Referral to arbitration under this clause shall take place within three months of the date of notice from either party declaring that the settlement negotiations under clause 8.1 have failed, or, if mediation is agreed on, within three months of the date of the mediator’s opinion or the date upon which the mediator declares that the mediation has failed. Claims not brought within the time periods set out herein will be deemed to be waived.
- 8.4 The said Rules shall be those Rules current at the date of declaration of the dispute.
- 8.5 All reference in the said Rules to South African Arbitration Legislation shall be deleted and substituted by the applicable Arbitration Act of Botswana or any amendment thereto.

**Part B**

**PARTICULAR CONDITIONS OF CONTRACT**

**Part B**

**PARTICULAR CONDITIONS OF CONTRACT**

A. Reference to clauses in the General Conditions

Clause No.		
I.	<b>General Provisions</b>	
I.1.5	The Commencement Date is	TBA
I.1.13	The Project is	Predictive Analytics Platform Scope for Morupule Coal Mine
I.1.15	The Time for Completion is	As per attached Schedule of Services
I.1.1	<b>Notices</b>	7 days
	Employer's address	Morupule Coal Mine Along Serowe/ Palapye Road P/ Bag 35 Palapye Botswana
	Telephone number	+267 492 0281/ +267 494 1280

	Facsimile number	Not required
	Consultant's address	
	Telephone number	
	Facsimile number	
	Agreed methods of electronic transmission	E-mail, provided that communications shall be attached to each e-mail as a .pdf document
5.	<b>Payment</b>	30 Days from date of Invoice
5.2.2	Agreed Compensation for overdue payment	Not applicable
6.	<b>Liability</b>	
6.3	Duration of Liability	5 Years
	Reckoned from	Date of alleged breach
6.4	Limit of Compensation	Accepted Contract Amount

## B Additional Clauses



**Morupule Coal Mine**  
*Seam to Value*

**SECTION 2**

**SCHEDULES**

## SCHEDULES

No.	Schedule
1.	Schedule of Rates – Schedule to be issued by Tenderer
2.	Schedule – Programme to be issued by Tenderer
3.	Schedule – Insurances to be issued by Tenderer
4.	



**Morupule Coal Mine**  
*Seam to Value*

**SECTION 3**

**ANNEXURES**

## ANNEXURES

The following annexures are provided by the Employer:

Annexure	Description	Remarks
1	Predictive Analytics Platform Scope for Morupule Coal Mine	Scope of Works
2		
3		
4		



## **SECTION 4**

### **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**NON-DISCLOSURE AND ANTI CORRUPT PRACTICES UNDERTAKING**

**TO**

**MORUPULE COAL MINE (MCM)**

IN RESPECT OF TITLE:.....AT  
MCM

I/We  
.....

Of.....  
.....

Represented  
by.....

In his/her capacity  
as.....

duly authorized do hereby and herewith:

- 1.0 Acknowledge that I am/we are aware that, in respect of the invitation to tender issued out by MCM the course of tendering and negotiation for award of a Contract and/or other pre-contract periods I/We shall receive or have access to or obtain confidential information as defined in paragraph 4.0 herein, disclosed to me/us, or that such information shall come to my/our knowledge.
- 2.0 Undertake for and on behalf of myself/ourselves and my/our Consultants, advisors, partners, members, associates, employees, suppliers, sub-suppliers, agents and sub-agents (as applicable), whether permanent or temporary, to make every effort to hold in trust and confidence all confidential information received and not to use, pass on, publish, disclose or in any manner make available any such confidential information to anyone whether or not the tender was successful and whether or not a Contract was awarded pursuant thereto, without the prior written consent of MCM.
- 3.0 Undertake, on request by MCM, to produce to it a Non-Disclosure Undertaking in terms similar to this undertaking executed by each of my/our Consultants, advisors, partners, members, members, associates, employees, suppliers, sub-suppliers, agents and sub-agents (as applicable), whether permanent or temporary.
- 4.0 Agree that for the purposes hereof “confidential information” shall mean:
  - 4.1 all information disclosed to me/us or which comes to my/our knowledge, directly or indirectly as a result of my/our receiving or having received any invitation to tender for any ENQUIRY or attending or having attended any discussion relative to the negotiation for the award of and execution of any Contract pursuant

thereto whether or not the negotiations are successful and whether or not the Contract is awarded or executed;

but subject at all times that the aforesaid provisions, shall not include information which:

4.1.1 at the time it was disclosed, was already known to me/us or was public knowledge, or thereafter became public knowledge other than through my/our default, or

4.1.2 became known to me/us, without restriction as to its use and disclosure, from a third party with valid title thereto, or

4.1.3 was or is developed by or known to me/us and any of my/our Consultants, advisors, partners, members, associates, employees, suppliers, sub-suppliers, agents or sub-agents, either before or subsequent to the disclosure of such information to me/us or such Consultants, partners, associates, employees, suppliers, sub-suppliers, agent or sub-agent having no knowledge of the content of such disclosure.

5.0 Undertake to disclose such confidential information only to those of my/our Consultants, advisors, partners, members, associates, employees, suppliers, sub-suppliers, agents or sub-agents, whether permanent or temporary, who require knowledge of such information to enable the carrying out of any work directly or indirectly connected with the tendering for negotiation for award of and execution of any contract.

6.0 Undertake to refrain from using commercially, technically or otherwise confidential information without the prior written consent of MCM.

7.0 Undertake to report to MCM any unauthorized disclosure, actual or threatened, of any confidential information that I/we may become aware of and to co-operate with MCM in taking such action as may be deemed to be appropriate in the circumstances.

8.0 Declare that I/we have read and understood the contents and provisions of this undertaking and that any breach of confidentiality by myself/ourselves and/or my/our Consultant's, advisors, partners, members, associates, employees, suppliers, sub-suppliers, agents or sub-agents, whether permanent or temporary, shall be a breach thereof by us, shall cause irreparable harm and give rise to claim by the injured party and/or MCM against us, and we will be liable to compensate such injured party and/or for all loss, liability, damages or expenses arising out of or which may be attributable to:-

8.1 any intentional or negligent disclosure of confidential information; and/or

- 8.2 any unauthorized use of confidential information.
- 9.0 With the exception of liability for death or personal injury, or loss resulting from fraud, or any other liability for which restriction or exclusion is prohibited by law, the liability of Consultant for the aggregate of all claims arising out of or in connection with this Agreement in respect of breach of Contract or breach of duty or fault or negligence or otherwise (collectively referred to herein as "fault") shall be:
  - 9.1 no more than that proportion of the loss or damage (including interest and costs) suffered by the Client, which is ascribed to Consultant by a court or arbitrator of competent jurisdiction allocating a proportionate responsibility to Consultant having regard to the contribution to the loss or damage in question by the Employer or any other person based upon relative degrees of fault; it being a term of this Agreement that the provisions of the Arbitration Act 06:01, will apply to all claims between the Parties and "fault" and "loss" or "damage" as used herein shall respectively be deemed to fall within the meanings of "fault" and "damage" as contained in Arbitration Act 06:01, provided that for the purposes of assessing the contribution to the loss and damage in question of any other person pursuant to the preceding wording, it is agreed that no account shall be taken of any limit imposed or agreed on the amount of liability of such person by any agreement (including any settlement agreement) made before or after the loss and damage in question occurred; and;
  - 9.2 limited to the total Fees paid by the Employer to Consultant pursuant to such SOW as at the date on which the claim arises;
- 10.0 Undertake not to use any intellectual property rights belonging to MCM without MCM's written permission.
- 11.0 Acknowledge that I/we am/are cogniscent of the fact that MCM does not tolerate corrupt practices, and accordingly undertake that I/we shall not at any time, whether before, during or after the tender or award of contract, offer any inducement (whether in cash or otherwise) gift or hospitality or make any promise of inducement, reward, gift or hospitality to any representative, employee, board or committee of MCM in an attempt to influence a decision in respect of the tender or any aspect of the ENQUIRY that may be awarded pursuant to the tender in my/our favour.

THUS, DONE AND SIGNED BY .....AT  
.....

THIS..... DAY OF .....

In the presence of the undersigned witnesses.

- 1. ....  
Witness
- 2. ....  
Witness



**SECTION 4**

**ADDITIONAL REQUIREMENTS**

## **ADDITIONAL REQUIREMENTS**

The following additional requirements must be provided by the Tenderer as a minimum:

<b>Annexure</b>	<b>Description</b>	<b>Remarks</b>
1	Consultant's project experiences of similar nature - past five (5) years	
2	Consultant's key personnel and CV's	
3	Company Profile	
4	Any additional information proposed	