

SUPPLY AND SERVICES AGREEMENT

Between

Institute of Mine Seismology
Registration number 2010/007290/07

And

Registration number.....

DATE 2019/06/19

PARTIES

INSTITUTE OF MINE SEISMOLOGY (registration number 2010/007290/07) of Equitania, Bredell Road, Somerset West, 7130, ("IMS")

and

THE CUSTOMER NAMED IN ITEM 1 OF THE KEY TERMS SCHEDULE ("Customer")

RECITALS

- A. The Equipment and the Software are designed to collect data with respect to seismic events.
- B. IMS has agreed to supply, deliver, install and commission the Equipment, and the Software, for the benefit of the Customer, on the terms of this Agreement
- C. IMS has also agreed to provide certain services to the Customer, in connection with the Equipment and the Software, on the terms of this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Interpretation

1.1 Definitions

In this Agreement, the following terms have the meanings set out below:

- "Additional Services" : has the meaning given to that term in clause 7.7.
- "Advisory Rates" : means the rates set out in the Key Terms Schedule, as varied from time to time in accordance with clause 15.2.
- "Advisory Services" : means the services described in Schedule E.
- "Advisory Services Fee" : means an amount calculated by reference to the Advisory Rates and the Advisory Services.
- "Advisory Services Finish Date" : has the meaning given to that term in the Key Terms Schedule.
- "Advisory Services Start Date" : has the meaning given to that term in the Key Terms Schedule.
- "Annual License Fee" : means the sum set out in the Key Terms Schedule.
- "Central Site" : means the Customer's central data collection computer or network of computers, at the location specified in the Key Terms Schedule.
- "Claim" : means, any action, suit, proceeding, claim or demand of any kind (including claims by third parties).
- "Customer Representative" : has the meaning given in clause 22.
- "Delivery Date" : means the date specified in the Key Terms Schedule.
- "Effective End Date" : has the meaning given in clause 9(c).
- "Effective Reinstatement Date" : has the meaning given in clause 9(f).

"Effective Variation Date"	:	has the meaning given in clause 15.2(b).
"Effective Withdrawal Date"	:	has the meaning given in clause 9(a).
"Enabling Software"	:	means GNU Public Licence (GPL) and open source computer software and includes all updates and new releases of that software provided to the Customer as set out in clause 7.10(a).
"Environmental Specifications"	:	means the environmental limits within which the Equipment is designed to operate, as set out in Schedule C.
"Equipment"	:	means the hardware and/or its features (including sensors) described in the Key Terms Schedule (including additions to and/or removals from, model conversions, machine elements or accessories and/or any components thereof) and, for the avoidance of doubt, includes the Third Party Equipment.
"Fault"	:	means, in respect of the Equipment or the Software, a defect in the Equipment or Software (as the case may be) which causes that Equipment or Software to fail to comply with its relevant Specifications.
"Installation, Commissioning and Training Fee"	:	means the fee specified in the Key Terms Schedule.
"Intellectual Property Rights"	:	means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trade marks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.
"Key Terms Schedule"	:	means the Schedule of key terms under this Agreement, being Schedule A.
"Law"	:	means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation.
"Liabilities"	:	means damages, Claims, losses, liabilities, costs and expenses of any kind.
"License"	:	has the meaning given to that term in clause 3 of this Agreement.
"License Term"	:	means the period set out in the Key Terms Schedule.
"Location"	:	means the place set out in the Key Terms Schedule at which Equipment shall be delivered pursuant to this Agreement.
"Maintenance Fee"	:	means an amount calculated by reference to the Maintenance Rates and the Supported Products.

"Maintenance Period"	:	means that period in respect of a Supported Product or other item, as is specified in the Key Terms Schedule for that Supported Product or other item, unless terminated earlier in accordance with this Agreement.
"Maintenance Rates"	:	means the rates set out in the Key Terms Schedule, as varied from time to time in accordance with clause 15.2.
"Maintenance Services"	:	means the services performed by IMS pursuant to clauses 7.1 to 7.6 with respect to the Supported Products.
"New Release"	:	means any improved, enhanced or modified version of the Software including functional changes to the Software, released by IMS after the date of this Agreement and which does not constitute an Update.
"Notice"	:	has the meaning given in clause 23.
"Other Withdrawal Date"	:	has the meaning given in clause 9(b).
"Personnel"	:	means employees, sub-contractors, agents and representatives involved in the performance of Maintenance Services, delivery and installation under clauses 4 or 5, commissioning and training under clause 6, or any Additional Services under this Agreement.
"Product"	:	means the Equipment, the Software and the Enabling Software.
"Purchase Price"	:	means the amount specified in the Key Terms Schedule.
"Reinstatement Fee"	:	has the meaning given in clause 9(h).
"Seismic Data Collection System"	:	means the system installed by IMS and the Customer (as the case may be) comprising the Equipment and the Software, designed to collect data on seismic events at the Sites.
"Sensor Site"	:	means a place set out in the Key Terms Schedule at which a sensor has been or shall be installed and connected to a seismometer pursuant to this Agreement.
"Service Centre"	:	means a centre established by IMS in connection with the provision of Technical Support to its customers as described in clause 7.4(a).
"Software"	:	means the computer software described in Schedule D and includes all Updates and New Releases of that software provided under the terms of this Agreement, but does not include any Enabling Software.
"Specifications"	:	means the specifications described or referred to in the Key Terms Schedule, as may be amended from time to time by IMS to incorporate new functionality provided in a New Release.
"Subcontractor"	:	means any agreement made between any corporate body, partnership or person and IMS for the execution of any part

of the Contract and which has been approved by the Commercial Manager in terms of clause 10 below

"Subcontract"	:	means any corporate body, partnership or person (other than IMS) to which or to whom any part of the Contract has been sub-let and which has been approved by the Commercial Manager in terms of clause 10 below
"Supported Hardware Platform"	:	is defined in the Key Terms Schedule, as may be amended from time to time by IMS in accordance with clause 7.6(b)(ii).
"Supported Products"	:	means the Products described as such in the Key Terms Schedule, as amended from time to time in accordance with clauses 8 and 9.
"Supported Equipment"	:	means the Equipment described as such in the Key Terms Schedule, as amended from time to time in accordance with clauses 8 and 9.
"Taxes"	:	means all taxes including income taxes, excise duties, stamp duties, customs duties, import/export taxes, payroll taxes, withholding taxes, government duties, charges and fees.
"Tax Invoice"	:	means a document provided in accordance with section 20 of the Value Added Tax Act, Act 89 of 1991, as amended.
"Technical Support"	:	means the Maintenance Services described in clause 7.4.
"Technical Support Fees"	:	means that portion of the Maintenance Fee attributable to the provision of Technical Support.
"Third Party Equipment"	:	means any equipment supplied by IMS to the Customer under this Agreement which is manufactured by a party other than IMS.
"Update"	:	means any software released by IMS after the date that the Software is purchased by the Customer, for the purpose of correcting known defects in the Software.
"Upfront License Fee"	:	means the sum set out in the Key Terms Schedule.
"Use"	:	means executing the Software on the Equipment under a Supported Hardware Platform and "first use" means the first occasion on which such Use occurs.
"Value added tax"	:	means the tax to be levied in terms of the Value Added Tax Act, Act 89 of 1991, as amended

1.2 Interpretation

Headings and recitals are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.

- (d) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause or schedule is a reference to a clause of or a schedule of this Agreement.
- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced except to the extent prohibited by this Agreement or that other agreement or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible or tangible form.
- (h) A reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it, and a regulation or statutory instrument issued under it.
- (j) A reference to Euro and € is to European currency.
- (k) Mentioning anything after *includes, including, for example,* or similar expressions, does not limit what else might be included.
- (l) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or any part of it.

2. Supply of Products and Services

IMS agrees to supply, and the Customer agrees to buy such of the following as are specified in the Key Terms Schedule:

- (a) the Equipment;
 - (b) the Software;
 - (c) the Maintenance Services (with respect to the Supported Products);
 - (d) the Advisory Services; and / or
 - (e) the Additional Services,
- on the terms of this Agreement.

3. Licence

- (a) In consideration of the payment by the Customer to IMS of the Licence Fee, IMS grants to the Customer for the applicable Licence Term a non-exclusive non-transferable and royalty free licence to use the Software as installed at the Central Site (the **Licence**) on and subject to the terms and conditions of this Agreement.
- (b) It is a condition of the Licence that the Customer uses the Software only on a single computer at any one time.
- (c) The Customer must not:
 - (i) use the Software or any part of it except as expressly authorised by this Agreement;
 - (ii) alter or remove any mark of ownership, copyright, patent, trade mark or other property right which is embodied in the Software or on the physical material in which the Software is stored when supplied to the Customer;

- (iii) modify the Software or merge all or any part of the Software with other programs without IMS's prior written consent;
 - (iv) reverse, disassemble, decompile or reverse engineer, or directly or indirectly allow or cause a third party to disassemble, decompile or reverse engineer the whole or any part of the Software or any locking or security device used or supplied with the Software or otherwise attempt to or allow any other party to attempt to obtain the algorithms by which the Software perform its functions,
 - (v) use the Software for commercial purposes other than provided for and expressly authorised by this Agreement
 - (vi) use this software with seismic data recorded by any other seismic monitoring system than the one owned by the Customer
- (d) IMS will supply to the Customer under the terms of this Agreement, both:
- (i) the Software; and
 - (ii) the Enabling Software,
- (e) The Customer acknowledges that:
- (i) the Intellectual Property Rights in the Enabling Software may not be owned or controlled by IMS; and
 - (ii) the Enabling Software is supplied by IMS to the Customer subject to the terms of the licences for the Enabling Software, as notified by IMS to the Customer at or prior to the time the Enabling Software is supplied.

4. Delivery of Products

- (a) IMS shall deliver the Products to the Location (or at such other place as the Customer may notify IMS in writing) by the Delivery Date and after payment was received in terms of clause 16.
- (b) Upon receipt of the Products by the Customer at the Location, the Customer shall provide IMS with a signed certificate of receipt of delivery in respect of the Products.
- (c) IMS may, without liability to it, defer the date upon which IMS shall deliver the Products to the Location by providing to the Customer a notice of deferral (a **Deferral Notice**) at least 7 days prior to the Delivery Date, provided that the deferred Delivery Date must still be within 60 days of the date of this Agreement.
- (d) If delivery is deferred by IMS for more than 120 days the Customer may cancel its order for the Products by providing IMS with written notice of such cancellation within 14 days of the date of the Deferral Notice. This Agreement will terminate on the date IMS receives a notice of cancellation pursuant to this clause.
- (e) The acceptance of the physical delivery, any documents, including delivery notes etc., shall not indicate the Customer's acceptance of the quality of the Product, but shall merely indicate that the product has been delivered to Site.

5. Installation

5.1 Installation

- (a) The Customer shall arrange for unpacking and placing of the Equipment at the Sensor Sites for installation of the Equipment.

- (b) The Customer shall be responsible for (and bear the cost of) the following matters at the Sensor Sites:
 - (i) provision of electricity and communication cables and other related cabling;
 - (ii) indication of north and south lines;
 - (iii) drilling and surveying of holes;
 - (iv) the labour and equipment required for preparation of the Sensor Sites for installation of the Equipment; and
 - (v) underground transportation,
 - in accordance with the specifications provided in writing by IMS to the Customer (which specifications IMS shall provide to the Customer prior to installation).
- (c) Subject to the Customer's compliance with clauses 5.1(a) and (b), IMS shall:
 - (i) supervise the installation of the Equipment at all Sensor Sites; and
 - (ii) install the Software and the Enabling Software on the hardware nominated by the Customer at the Central Site; and
 - (iii) test and commission the Equipment as set out in clause 6.
- (d) The hardware nominated by the Customer for the purpose of clause 5.1(c) must satisfy the minimum performance criteria (if any) set out in Schedule B.

5.2 Environment

- (a) The Customer shall maintain the Equipment in an environment which complies with the Environmental Specifications.
- (b) The Customer acknowledges that, unless specifically certified by the appropriate authority, the Equipment is not intrinsically safe within a gas laden explosive atmosphere.
- (c) The Customer also acknowledges that the Equipment should not be opened in an underground or open pit mine environment which may not comply with the Environmental Specifications.
- (d) The Customer acknowledges that the environmental specifications for Third Party Equipment (such as computers at the Central Site) are specified by the relevant third party, and agrees to maintain the Third Party Equipment in an environment which complies with these environmental specifications.

5.3 Access

- (a) The Customer shall grant to IMS full, free and safe access to the Location (including the Central Site) and the Sensor Sites on and from the date of this Agreement for the purpose of installing the Products and providing the Maintenance Services.
- (b) IMS shall ensure that, while accessing the Location and the Sensor Sites, its Personnel comply with such reasonable terms and conditions as the Customer Representative may, in the Customer Representative's sole discretion, determine (and from time to time amend), including, but not limited to, security and safety instructions and policies (copies of which the IMS engineer has signed acknowledgment of).
- (c) Notwithstanding any other provision of this Agreement and without prejudice to any other rights which the Customer may have, the Customer Representative is entitled to require, by written notice, the immediate removal from the Location or a Sensor Site of any of IMS's Personnel who the Customer Representative considers to be incompetent, engaging in improper conduct or

contravening the instructions of the Customer Representative referred to in clause 5.3(b), or the provisions of this Agreement or of any applicable Law.

- (d) IMS's provision of Maintenance Services is subject to it having access as described under clause 5.3(a).

6. Commissioning and Training

- (a) Following installation of the Equipment at the Sensor Sites and the Software at the Central Site, the Customer may request, in writing, that IMS commission the Seismic Data Collection System in accordance with clause 6(b).
- (b) As soon as practicable after a request is made by the Customer, IMS shall commission the Seismic Data Collection System by testing and ensuring (and demonstrating to the Customer) that the Equipment and the Software operate effectively as a Seismic Data Collection System.
- (c) IMS shall facilitate a training course for the Customer's personnel. The training course shall commence once commissioning has occurred pursuant to clause 6(b). The training course will cover, among other things, the use of the Equipment and the Software.

7. Maintenance Services

7.1 Maintenance of Supported Equipment

- (a) For the term of the applicable Maintenance Period, and in consideration of the payment by the Customer to IMS of the Maintenance Fee, IMS shall remedy any Faults in the Supported Equipment on and subject to the terms and conditions of this clause 7.
- (b) The Customer shall notify the Service Centre as soon as practicable after it becomes aware of a Fault affecting the Supported Equipment. The Customer must isolate the fault to a specific unit. The Customer must remove the unit from the network and deliver it to the Service Centre. The Customer must provide to IMS sufficient details of the Fault in order for IMS to remedy the Fault.
- (c) Subject to the Customer complying with its obligations under clause 7.1(b), IMS shall:
 - (i) remedy a Fault affecting any Equipment (other than Third Party Equipment) within a reasonable period (but in any event within 10 working days) of receiving from the Customer the relevant unit of the Equipment at the Service Centre pursuant to clause 7.1(b); and
 - (ii) use its reasonable endeavours to remedy any Fault affecting Third Party Equipment within a reasonable period of receiving from the Customer the relevant unit of Third Party Equipment at the Service Centre pursuant to clause 7.1(b). However, the Customer acknowledges that IMS does not represent, warrant or guarantee that it will be able to repair within a reasonable period such Faults.
- (d) If IMS is unable to comply with clause 7.1(c)(i) in respect of a Fault, it shall (as the Customer's sole and exclusive remedy in respect of such failure or Fault) refund to the Customer the moneys already paid by the Customer to IMS for Maintenance Services in respect of the Supported Equipment affected by the Fault.
- (e) IMS shall bear the costs associated with maintaining the Supported Equipment pursuant to this clause 7, provided that the Maintenance Fee shall be charged and duly paid for the provision of the Maintenance Services.
- (f) IMS shall maintain such levels of stock of spare parts and components as are reasonably necessary to provide the Maintenance Services.

- (g) IMS shall furnish to the Customer or for the Customer's benefit in repairing the Supported Equipment, replacement parts on an exchange basis. The replaced parts become the property of IMS.
- (h) IMS shall be required to be available to undertake Maintenance Services during normal working hours (08:00 to 17:00) on working days during the relevant Maintenance Period.

7.2 Responsibilities of the Customer

- (a) IMS is not responsible, and the Customer accepts full responsibility, for:
 - (i) communication cables at the Location, Central Site and the Sensor Sites;
 - (ii) Ethernet or other networks;
 - (iii) the provision of stable electrical power to the Equipment; and
 - (iv) damage caused to the Equipment (other than damage caused by the wrongful act or omission of IMS).
- (b) IMS shall not be obliged to repair any of the following forms of damage to the Supported Equipment or any Faults which arise from:
 - (i) damage to the seismic/non-seismic transducers;
 - (ii) damage caused by the Customer operating the Equipment in an environment which does not comply with the Environmental Specifications;
 - (iii) damage caused by the Customer operating the Third Party Equipment in an environment which does not comply with the environmental specifications for that Third Party Equipment as specified by the manufacturer of that Third Party Equipment;
 - (iv) damage caused by tampering, attempted repair by persons (other than IMS), misuse, vandalism, water, rock-falls, or other external causes; or
 - (v) damage caused by fires, storms, lightening, surges or faults in the power supply or acts of God.
- (c) IMS is not liable for any Liabilities suffered, sustained or incurred by the Customer or the Customer's Personnel arising from or attributable to any of the causes of damage set out in clause 7.2(b).
- (d) IMS shall only be responsible for maintenance of Supported Equipment maintained by the Customer in an environment which complies with the Environmental Specifications.
- (e) IMS shall be entitled, in addition to the Maintenance Fees, to charge the Customer for the time spent by IMS in attempting to diagnose or remedy any Fault which it transpires is caused by any of the matters referred to in clause 7.2(b).
- (f) The Customer acknowledges and agrees that IMS does not represent, warrant or guarantee the uninterrupted operation of the Equipment, the Software, the Enabling Software or the Seismic Data Collection System.

7.3 Maintenance of Third Party Equipment

- (a) IMS shall be entitled to charge the Customer the same or substantially the same cost for maintaining Third Party Equipment as that which a subcontractor would have charged to undertake such maintenance.
- (b) IMS may appoint a sub-contractor to maintain the Third Party Equipment.

7.4 Technical Support

For the term of the applicable Maintenance Period, and in consideration of the payment by the Customer to IMS of the Technical Support Fees, IMS shall provide technical support as follows:

- (a) IMS shall maintain a Service Centre which is able to assist 24/7/365 in the provision of technical support to the Customer via telephone, facsimile, electronic mail (e-mail) and remote login provided that the Customer must provide IMS with access to their network to enable IMS to provide technical support remotely;
- (b) IMS shall assist the Customer to isolate Faults and assist in Fault diagnosis on the Seismic Data Collection System; and
- (c) IMS shall maintain a suitably trained technical support group, which shall be available on a non-exclusive basis, to provide technical support to the Customer.

7.5 Non-IMS Enhancements and Upgrades

IMS may at its sole and absolute discretion provide maintenance for enhancements and upgrades to the Equipment and the Software not supplied to the Customer by IMS on and subject to the terms and conditions of clause 7.3.

7.6 Software Support and Updates and New Releases

- (a) IMS shall make available for the Customer on IMS's website Updates and New Releases as and when they become available.
- (b) IMS shall:
 - (i) maintain and operate a suitably trained software development team, and shall implement appropriate research and development for the purposes of producing Updates and New Releases;
 - (ii) maintain a software development environment for the Supported Hardware Platforms;
 - (iii) provide the Customer with at least 12 months written notice if IMS decides to discontinue support for a Supported Hardware Platform;
 - (iv) maintain a current version of the Software and all related products; and
 - (v) Maintain a backup system for recovery of the latest version of the source codes pertaining to the Software. The Customer shall be entitled to access the source codes for the Software if IMS ceases to offer maintenance or support services in respect of the Software in the ordinary course of its business. If the Customer gains access to the source codes for the Software under this clause, then it shall only be entitled to use the source codes to the extent necessary to rectify Faults in the Software during the remaining term of the Maintenance Period, and not otherwise.
- (c) The Customer shall record and promptly inform IMS of any requested enhancements relating to the Software. Enhancements may be performed by IMS at its sole discretion as Additional Services under clause 7.7.

7.7 Additional Services

- (a) The Customer may request that IMS provide additional services in relation to the maintenance of the Products other than the services referred to in clause 7.1 to 7.6 (the **Additional Services**).
- (b) IMS shall endeavour to perform any Additional Services requested by the Customer within a reasonable period of time of receiving the request.

- (c) The Maintenance Rates, as varied from time to time in accordance with clause 15.2, shall apply to any Additional Services performed by IMS.

7.8 Safety

IMS shall inform the Customer if, in IMS's reasonable opinion, the provision of particular Maintenance Services would involve a safety hazard. IMS shall not be required to provide Maintenance Services in such circumstances, and shall not be responsible for any Liabilities arising from a failure to provide Maintenance Services in such circumstances.

7.9 Damage by IMS

If a Product is damaged due to a wrongful act or omission of IMS or IMS's Personnel, IMS shall bear the cost of restoring the Product to the condition it was in (in terms of function) prior to the damage.

7.10 Enabling Software

- (a) IMS, in its sole discretion, may from time to time provide updated or replacement Enabling Software to the Customer, and the Specifications will be updated to incorporate this new or replacement Enabling Software.
- (b) The only services that IMS must supply to the Customer in relation to the Enabling Software are Updates to the Software to ensure that the Software operates in conjunction with the Enabling Software to the extent required for the Software to perform substantially in accordance with the Specifications.
- (c) The Customer may request that IMS provide services in relation to the Enabling Software in addition to those set out in paragraph (b). If IMS elects in its sole discretion to provide said services then they will be provided as Additional Services under clause 7.7.

8. Products Subject to Maintenance

- (a) The Supported Products are subject to Maintenance Services on the terms of this Agreement.
- (b) To the extent IMS supplies to the Customer and fits to a Supported Product, features, model conversions and components other than Supported Products, those features, model conversions and components will be deemed to be Supported Products for the purposes of clause 8(a).
- (c) The Customer must pay to IMS the Maintenance Fees in accordance with clause 15.1(d), in respect of features, model conversions and components which are deemed to be Supported Products pursuant to clause 8(b).

9. Withdrawal and Reinstatement

- (a) The Customer may specify that a Product is no longer a Supported Product for the purposes of this Agreement by providing to IMS written notice specifying the Product in respect of which the Customer no longer requires Maintenance Services and the date (the **Effective Withdrawal Date**) from which the Customer no longer requires Maintenance Services in respect of the Product, provided that:
 - (i) the notice is received by IMS no less than three months before the Effective Withdrawal Date; and
 - (ii) the Product in respect of which the Customer no longer requires Maintenance Services will have been a Supported Product on the terms of this Agreement for no less than one year on the Effective Withdrawal Date.

On and from the Effective Withdrawal Date, IMS shall have no obligation to provide Maintenance Services in respect of the relevant Product.

- (b) If IMS varies the Maintenance Rates pursuant to clause 15.2, and that variation affects the Maintenance Fee payable by the Customer in respect of a Supported Product, the Customer may specify that such a Product no longer be considered a Supported Product for the purposes of this Agreement by providing to IMS written notice specifying the Product in respect of which the Customer no longer requires Maintenance Services and the date (the **Other Withdrawal Date**) from which the Customer no longer requires Maintenance Services in respect of the Product. On and from the Other Withdrawal Date, IMS shall have no obligation to provide Maintenance Services in respect of the relevant Product. For the avoidance of doubt, the provisions set out in clauses 9(a)(i) and (ii) do not apply with respect to such a notice.
- (c) IMS may specify that a Product is no longer a Supported Product for the purposes of this Agreement by providing to the Customer written notice specifying the Product in respect of which IMS will no longer provide Maintenance Services and the date (the **Effective End Date**) from which IMS will no longer provide Maintenance Services in respect of that Product, provided that:
- (i) the notice is received by the Customer no less than three months before the Effective End Date; and
 - (ii) the Effective End Date is after the end of the period in respect of which IMS has last issued an invoice to the Customer for Maintenance Services in respect of the Product.

On and from the Effective End Date, IMS shall have no obligation to provide Maintenance Services in respect of the relevant Product.

- (d) If any Supported Product is subject to repair more than once in respect of the same or substantially the same Fault, where that Fault is attributable to the actions of an entity other than IMS or its Personnel (or Personnel authorised by IMS), IMS may specify that the Product will no longer be considered a Supported Product for the purposes of this Agreement by providing to the Customer one month's written notice specifying the particular Product in respect of which IMS will no longer provide Maintenance Services and the date from which IMS will no longer provide Maintenance Services in respect of the Product. On and from that date, IMS shall have no obligation to provide Maintenance Services in respect of the relevant Product. IMS will refund to the Customer the outstanding balance of any Maintenance Fees paid in advance by the Customer to IMS in respect of the Product.
- (e) If all the Products are no longer Supported Products under this clause 9, then this Agreement shall be deemed to be terminated on and from the date on which all the Products are no longer Supported Products on the terms of this clause 9.
- (f) The Customer may specify that a Product, in respect of which Maintenance Services have previously been withdrawn pursuant to clauses 9(a) or (b), be again considered a Supported Product for the purposes of this Agreement by:
- (i) providing to IMS written notice specifying the Product in respect of which the Customer requires Maintenance Services and the date (the **Effective Reinstatement Date**) on and from which the Customer requires Maintenance Services in respect of the Product; and
 - (ii) paying to IMS the Reinstatement Fee.
- (g) On and from the Effective Reinstatement Date, IMS shall provide Maintenance Services in respect of the relevant Product, provided that IMS has received from the Customer the relevant Reinstatement Fee.
- (h) For the purposes of this clause 9, "Reinstatement Fee" means the sum of:

- (i) an amount equal to the Maintenance Fees that, but for withdrawal of the Product pursuant to clause 9(a) or (b), would have been payable by the Customer to IMS in respect of the Product for the period between the Effective Withdrawal Date or the Other Withdrawal Date (as applicable) and the Reinstatement Date; plus
- (ii) an amount equal to 20% of the amount determined under clause 9(h)(i); plus
- (iii) an amount of interest calculated on the amount determined under clause 9(h)(i) at the prime overdraft rate charged by First National Bank of South Africa calculated daily in respect of the period between the Effective Withdrawal Date or the Other Withdrawal Date (as applicable) and the Reinstatement Date.

10. Sub Contracting

- (a) IMS shall not subcontract the whole of the Contract. IMS shall not subcontract any part of the Contract without the prior written consent of the Customer (which consent shall not be unreasonably withheld). IMS shall be responsible for the acts, errors, omissions, defaults and neglects of any Subcontractor, its agents, representatives or employees as fully as if they were the acts, errors, omissions; defaults or neglects of IMS, its agents, representatives or employees
- (b) The Customer agrees to grant access to a sub-contractor appointed by IMS pursuant to clause 10 (a), for the purpose of providing maintenance or advisory services, provided that the sub-contractor agrees to comply with the terms and conditions of access as specified by the Customer Representative, from time to time in accordance with clause 5.3(b).

11. Advisory Services

- (a) In consideration of the payment by the Customer to IMS of the Advisory Services Fee, IMS agrees to provide the Advisory Services to the Customer commencing on the Advisory Services Start Date and on the terms and conditions set out in this Agreement.
- (b) IMS shall:
 - (i) ensure that the Advisory Services are performed, and all materials and data requested by the Customer pursuant to this Agreement are prepared diligently, competently, with care and skill and in a proper and professional manner and in accordance with the terms of this Agreement;
 - (ii) use all reasonable endeavours to provide the Advisory Services in compliance with all relevant legislation and regulations;
 - (iii) keep adequate records of Advisory Services provided under this Agreement and, if requested to do so, provide to the Customer copies of those records and of all correspondence or other material arising from or relating to the provision of the Advisory Services; and
 - (iv) if an Advisory Services Finish Date is specified in the Key Terms Schedule, ensure that the Services have been completely provided by the Advisory Services Finish Date.
- (c) The Customer acknowledges and accepts that IMS is relying entirely on the data and information that the Customer provides to IMS for the purposes of providing the Advisory Services, and the Customer represents to IMS that such data and information is accurate, complete and sufficient to enable IMS to provide the Advisory Services. The Customer acknowledges and accepts that IMS has made no inquiry into the accuracy, sufficiency or completeness of such data and information.
- (d) Without limiting clause 12, the Customer acknowledges and accepts that

- (i) no warranty or representation, whether express or implied, is made by IMS regarding the prediction of seismic events;
- (ii) accordingly, any reliance on the Advisory Services to predict seismic events is neither authorised nor sanctioned by IMS in any way.

12. Intellectual Property Rights

12.1 Third Party Rights

- (a) Subject to clauses 12.1(b) and (e), IMS will defend and settle, at IMS's expense, any Claim by a third party that the use by the Customer of the Software supplied by IMS infringes the Intellectual Property Rights of the third party, and pay any damages finally awarded by a court of competent jurisdiction in respect of such a Claim provided that the Customer complies with clause 12.1(c).
- (b) Clause 12.1(a) shall not apply to any infringement to the extent the infringement results from:
 - (i) infringement of Intellectual Property Rights of a third party in relation to Enabling Software or other software which is not supplied to the Customer by IMS;
 - (ii) the observance by IMS of a requirement stipulated by the Customer in the formulation of the Software and which is not known by IMS at the time of installation of the Software to be an infringement of the Intellectual Property Rights of a third party;
 - (iii) the use of the Software other than as permitted by this Agreement;
 - (iv) any modification of the Software made by the Customer (other than as expressly authorised by IMS);
 - (v) the use of the Software in conjunction with any software or other materials not supplied by IMS (and which are not specified in the minimum system requirements supplied by IMS); or
 - (vi) use of a version of the Software at any given time other than the then latest version of the Software made available to the Customer by IMS under this Agreement.
- (c) The Customer must give IMS prompt written notice of any Claim made against the Customer in relation to any of the matters covered by clause 12.1(a), provide IMS with sole authority to defend and settle the Claim, and co-operate fully with IMS, in responding to any such Claim. IMS shall reimburse the Customer for its reasonable costs of complying with such obligations.
- (d) In the event that any Claim is successfully made against IMS or the Customer resulting from an infringement of the Intellectual Property Rights of a third party (or a binding order is made preventing the use of the Software on a permanent or temporary basis or IMS reasonably considers that is likely to occur), IMS may at its own discretion and expense either:
 - (i) take all reasonable steps to procure for the Customer the right to use the Software (or the relevant part of the Software) for the purpose for which it was intended;
 - (ii) replace the Software (or the relevant part of the Software) with material which does not infringe or violate the third party's Intellectual Property Rights;
 - (iii) modify the Software (or the relevant part of the Software) to avoid infringement or violation of the third party's Intellectual Property Rights; or
 - (iv) in the event that IMS is not able to achieve (i), (ii) or (iii), reimburse the Customer the moneys already paid by the Customer to IMS in connection with the Software (or the relevant part of the Software).
- (e) Notwithstanding anything to the contrary in this Agreement, IMS shall not be liable for any Liabilities that the Customer may incur as a result of any Claim made against the Customer resulting from an

infringement of the Intellectual Property Rights of a third party arising out of or caused by the Customer's modification of the Products, or the Customer's combination, operation, or use of the Products with any other products, data, software, or equipment not provided or approved by IMS.

12.2 Ownership and Copyright

- (a) The Customer acknowledges that IMS or its licensors remain the owner of all Intellectual Property Rights in the Software and that nothing in this Agreement prevents, limits or restricts IMS's or its licensors' subsequent use or exploitation of its Intellectual Property Rights in the Software or Enabling Software.
- (b) The Customer may copy the Software solely for backup purposes and no other copying of the Software may occur without the prior written consent of IMS.
- (c) Subject to the above, and for the avoidance of doubt, it is specifically recorded that the processes and methodologies used by IMS in the provision of the services belong to IMS and that the contents of the configuration management database and the Customer databases that are specific to the Customer, shall belong to Customer; and provided any intellectual property and procedures that Customer may develop will belong to Customer, to the extent that such are not developed using any IMS intellectual property or confidential information

13. Representations and Warranties

- (a) IMS warrants that, to its knowledge:
 - (i) the Products (including the Enabling Software to the extent required for the Enabling Software to perform as set out in clause 7.10(b)) perform substantially in accordance with the Specifications, under normal Use and service; and
 - (ii) the media on which the Software is supplied is free from defects in materials and workmanship.
- (b) The warranty in clause 13(a) shall apply:
 - (i) to the Software for a period of 90 days from first Use; and
 - (ii) to the Equipment for a period of 365 days from the date of delivery to the Customer under clause 4.
- (c) IMS warrants that, to its knowledge it has title to the Products (excluding the Enabling Software) supplied under this Agreement and has the right to grant the Licence under clause 3.
- (d) Except as expressly set out in this Agreement, all terms, conditions, warranties, representations, undertakings, promises and statements (whether express, implied, written, oral, collateral, statutory or otherwise) in connection with the Products (including in respect of the quality or fitness of the Products for any particular purpose) are excluded to the maximum extent permitted by Law and, to the extent they cannot be excluded, the customer releases IMS from all Liability in relation to them to the maximum extent permitted by Law.
- (e) Without limiting any other provision of this Agreement, the Customer acknowledges and agrees that:
 - (i) no warranty or representation, whether express or implied, is made by IMS regarding the capability of the Products to predict seismic events or to detect every seismic event;
 - (ii) any reliance on the Products to predict seismic events or to detect every seismic event, or any use of the Products for any purpose other than to collect data on seismic events, is neither authorised nor sanctioned by IMS in any way; and

- (iii) any reliance on the Products to predict seismic events or to detect every seismic event or any use of the Products for any purpose other than to collect data on seismic events is potentially seriously dangerous and may result in loss of life or in serious injury to person or in serious damage to property.
- (f) The Customer indemnifies IMS against any Liabilities arising from or attributable to the use by the Customer of the Products for a purpose other than to collect data on seismic events.
- (g) IMS is not liable to the Customer for any Liabilities caused by or arising from or attributable to the use by the Customer of the Products for a purpose other than to collect data on seismic events, and the Customer releases IMS from all Claims which it may have or claim to have or but for this release might have had against IMS arising from or attributable to the use by the Customer of the Products for a purpose other than to collect data on seismic events.

14. Indemnities and insurance

- (a) The Customer indemnifies IMS against all Liabilities that IMS suffers, sustains or incurs as a result of or arising from any breach by the Customer of its obligations under this Agreement.
- (b) IMS indemnifies the Customer against all liabilities that Customer suffers, sustains or incurs as a result of or arising from any breach by IMS of its obligations under this Agreement, which liability is limited to the value of services rendered in that particular calendar year.
- (c) IMS shall maintain:
 - (i) liability insurance for an amount of not less R20 million;
 - (ii) professional liability insurance for an amount of not less than R20 million; and
 - (iii) workers compensation insurance (including employers liability).
- (d) The Customer must take out:
 - (i) general and products liability insurance to cover liability to third parties for loss or damage to property and death or injury to any person for an amount of not less than R20 million; and
 - (ii) any other insurance which is required by law.
- (e) The insurer and terms of the policy are subject to IMS's approval which must not be unreasonably withheld or delayed.
- (f) Each policy must be maintained until IMS has received from the Customer all moneys due and payable by the Customer to IMS under this Agreement and, if requested by IMS, the Customer must provide IMS with a certificate of currency.

15. Prices and Charges

15.1 Purchase Price and Fees

- (a) The Customer shall pay to IMS the Purchase Price in respect of the supply, under the Agreement, of:
 - (i) the Equipment; and
 - (ii) the Software,in accordance with clause 16.

- (b) The Customer shall pay the Upfront Licence Fee or the Annual Licence Fee (as applicable) in accordance with clause 16. Neither the Upfront Licence Fee nor the Annual Licence Fee is refundable for any reason.
- (c) The Customer shall pay to IMS the Installation, commissioning and Training Fee in accordance with clause 16.
- (d) The Customer shall pay to IMS the Maintenance Fee, in respect of the supply of the Maintenance Services, in accordance with clause 16.
- (e) IMS shall calculate the Maintenance Fee by reference to the Maintenance Rates and the Supported Products.
- (f) The Customer shall pay to IMS the Advisory Services Fee in respect of the supply of the Advisory Services in accordance with clause 16.
- (g) IMS shall calculate the Advisory Services Fee by reference to the Advisory Rates and the Advisory Services.

15.2 Variation of Maintenance Rates and Advisory Rates

- (a) Subject to clauses 15.2(b), (c) and (d), IMS may, at its sole discretion, vary the Maintenance Rates or the Advisory Rates.
- (b) At least three months prior to the date on which IMS intends that the variation in Maintenance Rates or Advisory Rates take effect (the **Effective Variation Date**), IMS must provide the Customer with a notice (a **Variation Notice**) setting out the revised Maintenance Rates or Advisory Rates (as the case may be) which IMS intends shall apply from the Effective Variation Date and specifying the Effective Variation Date.
- (c) A variation to the Maintenance Rates or the Advisory Rates shall apply to all Maintenance Services or Advisory Services (as the case may be) provided by IMS to the Customer on and from the Effective Variation Date.
- (d) IMS may not vary the Maintenance Rates or the Advisory Rates for a period of 12 months following:
 - (i) the date of this Agreement; and
 - (ii) the Effective Variation Date specified in the Variation Notice.

15.3 Variation due to Customer's reconfiguration of Products

If the Customer changes the configuration of Products supplied to it, IMS may vary the Maintenance Rates at its sole discretion provided that IMS must notify the Customer in writing of a proposed adjustment at least 30 days prior to the effective date of the adjustment.

16. Invoices and Payment

- (a) IMS shall render an upfront invoice to the Customer for the Purchase Price and the Upfront Licence Fee or the Annual Licence Fee (as applicable) prior to the supply of each of the Equipment and the Software by IMS to the Customer pursuant to this Agreement.
- (b) During the Licence Term, IMS shall render an invoice to the Customer in respect of the Annual Licence Fee (if applicable) on each anniversary of the date of the invoice rendered pursuant to clause 16(a).
- (c) IMS shall render an invoice to the Customer in respect of the Installation, commissioning and Training Fee within 30 days of commissioning under clause 6(b).

- (d) The Customer shall notify IMS whether the Customer wishes to be invoiced by IMS on a monthly, quarterly or annual basis in respect of the Maintenance Fee and the Advisory Services Fee (as applicable). IMS shall render invoices in advance in respect of the Maintenance Fee and the Advisory Services Fee (as applicable) accordingly.
- (e) Invoices must contain a brief description of the Products, Maintenance Services and Advisory Services (as applicable) provided in the period covered by the invoice and must state the Purchase Price, the Maintenance Fee and the Advisory Services Fee (as applicable) in respect of the period covered by the invoice.
- (f) The Customer must pay to IMS the amount shown on an invoice rendered pursuant to clause 16(a), (b) (c) or (d) on receipt of the invoice.
- (g) Interest at the prime overdraft rate charged by First National Bank of South Africa, plus 2% per annum, calculated daily, shall be payable by the Customer to IMS in the event of late payment of any amounts due pursuant to this Agreement.
- (h) All payments required to be made to IMS by the Customer pursuant to this Agreement must be made in full, free of commission or any other charges, by bank transfer for credit of IMS's account, the details of which are as follows:
 - (i) Account No: 62811123877 (US\$ account)
 - (ii) Branch code : 200610
 - (iii) Bank: First National Bank, Cnr of Plein and Andringa Street, Stellenbosch.
 - (iv) Swift Code: FIRNZAJJ
- (i) IMS invoices shall separately state the VAT, where applicable.

17. Title

Title to the Products supplied to the Customer under this Agreement remains with IMS until IMS receives from the Customer full payment for the Products. For the avoidance of doubt, this does not transfer any Intellectual Property Rights to the Customer.

18. Termination

18.1 Termination for Breach

- (a) If the Customer fails to pay any amount when due and payable or commits any other breach of its obligations under this Agreement, and fails to remedy the breach within fourteen days from the date of receipt of a written notice from IMS calling upon it to remedy the breach, then IMS may, without prejudice to any other rights which it may have, terminate this Agreement immediately.
- (b) If IMS breaches any of its obligations under this Agreement and fails to remedy the breach within 14 days from the date of receipt of a written notice from the Customer calling upon it to remedy the breach, then the Customer may, without prejudice to any other rights which it may have, terminate this Agreement immediately.

18.2 Termination by giving a Period of Notice

Either Party may elect to terminate the Contract, either altogether or in part, by giving a minimum period of ninety (90) days prior written notice to the other Party.

18.3 Prior Rights

The termination of this Agreement under clauses 4(d), 9(e), 18.1 and 21 is without prejudice to any rights and liabilities of the parties that accrued prior to such termination.

19. Value Added Tax

19.1 VAT

- (a) If an amount payable under the Agreement by IMS is calculated by reference to or otherwise relates to a cost, expense or other Liability incurred by the Customer, then the Liability shall be reduced by the amount of any Input VAT in respect of the Liability. The Customer shall be assumed to be entitled to claim full Input VAT unless it demonstrates that its entitlement is otherwise prior to the date on which the payment must be made.
- (b) If VAT is payable on a supply made under, by reference to or in connection with this Agreement, the party providing the consideration for that supply must pay the amount of VAT payable in respect of that supply as additional consideration. This clause does not apply to the extent that the consideration for the supply is expressly stated to be VAT inclusive.

19.2 Other Taxes and Charges

The Customer shall pay all taxes, charges, fees and other amounts due in respect of the Agreement or any payment made by IMS to the Customer under the Agreement.

20. Confidentiality

- (a) Each party agrees that it use all reasonable endeavours to ensure that it and its Related Bodies Corporate and their respective Personnel shall keep confidential, both during and after the term of the Agreement, all information which:
 - (i) consists of any of the commercial secrets of the other party; or
 - (ii) consists of any other information of a confidential nature belonging to, or connected with, the other party and its activities, and designated by such party as confidential;and shall not disclose any such information to any third party without the prior written consent of the other party except as required by any applicable law or government regulations or as may be necessary to establish or assert rights under this Agreement, and provided that each party may disclose the Agreement on a confidential basis to its public accountant, attorneys and financial advisors or lenders.
- (b) Neither party shall be required to keep confidential any information which is, or becomes publicly available, is independently developed by either party outside the scope of the Agreement, or is rightfully obtained from third parties. In addition, neither party shall be required to keep confidential any concepts or techniques relating to information processing submitted or developed by personnel of IMS or jointly by personnel of both IMS and the Customer.

21. Force Majeure

- (a) Neither party shall have any claim against the other for any failure of the other party to carry out its obligations (other than an obligation to pay) under this Agreement as a result of any act of force

majeure which shall include, but not be limited to, any strike, lockout, shortage of labour or materials, fuel shortage, delays in public transport, internet traffic disruptions, power disruptions, sanctions, riot, sabotage, terrorism, political or civil disturbance, act of war, any act of state or government or any other event of cause which is beyond the reasonable control of either party.

- (b) If any obligation of either party is delayed by any of the causes referred to in clause 21(a), the period for the carrying out of the obligations shall be extended for such periods as may be reasonable in the circumstances. If, however, the extended period continues for a period of three months, either party shall be entitled, by giving written notice to the other party, to terminate this Agreement immediately.
- (c) If any obligation of a party is delayed by force majeure, the party shall give the other party written notice, setting out the nature of the cause and estimated duration.

22. Customer Representative

- (a) For the purposes of this Agreement, "Customer Representative" means the person identified in the Key Terms Schedule and, if no person is identified in the Key Terms Schedule, means:
 - (i) where the Equipment is to be used at or near a mine of the Customer, the relevant mine manager or assistant mine manager; and
 - (ii) in all other circumstances, the person appointed by the Customer as representative of the Customer for the purposes of this Agreement, by notice in writing to IMS, as soon as practicable after the date of this Agreement,in either case, acting as the authorised agent and representative of the Customer.
- (b) The Customer Representative shall be entitled to designate by written notice to IMS, any other suitably authorised person to perform such functions of the Customer Representative under this Agreement as the Customer Representative may stipulate in such notice, and such notice may be varied or revoked at any time in a further notice.

23. Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be addressed and delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this Agreement:

to IMS:
Institute of Mine Seismology
Equitania,
Bredell Road
Somerset West
Attention: JJP Franken
Email: Kobus.franken@imseismology.org

and

to the Customer:
Customer Representative as per contact
details in the Key Terms Schedule.

shall be taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it shall be taken to have been duly given or made at the commencement of business on the next day in that place.

24. Status of IMS

For the purposes of the Agreement, IMS is an independent contractor and will not act as, or be regarded as, an agent or employee of the Customer, and IMS and its Personnel will not be entitled to any benefits which would ordinarily accrue to any employee of the Customer by virtue of their status as an employee.

25. Entire Agreement

This Agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct and prior agreements and understanding between the parties in connection with its subject matter.

26. Vienna Convention

The application of the United Nations Convention on Contracts for the International Sale of Goods to the Agreement, or the incorporation of any of its provisions in the Agreement, is excluded in all respects.

27. Assignment

Neither party can assign, charge, encumber or otherwise deal with any of its rights or obligation under the terms of this Agreement without the prior written consent of the other party, which consent shall not be reasonably withheld.

28. Amendment

This Agreement may be amended only by another agreement executed by all the parties.

29. No Waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Agreement does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

30. Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. Any such prohibition or unenforceability does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

31. Governing Law and Jurisdiction

This Agreement is governed by South African law. Each party submits to the jurisdiction of courts exercising jurisdiction there, and waives any right to claim that those courts are an inconvenient forum.

32. Cession

IMS shall not cede or assign any or all of its rights and obligations in terms of this agreement without the prior written consent of the Customer, which may be withheld in its sole and absolute discretion.

33. Dispute Resolution

The Parties shall attempt in good faith to promptly resolve any dispute or claim arising out of or relating to the Contract through negotiations between the respective designated representatives of the parties, who failing to reach an acceptable resolution may escalate the matter to relevant senior executives of each Party.

Should the procedure as described in the clause above fail and a dispute remains unresolved, either party may submit the dispute to the Arbitration Foundation of South Africa.

Nothing contained in this clause will preclude either party from obtaining intermediate relief on an urgent or other basis from a court of competent jurisdiction, pending the decision of the arbitrator(s).

34. Staff and Labour

- (a) **Labour Laws**
IMS shall comply with all the relevant labour laws applicable to IMS's personnel, including laws relating to their employment, health and safety, welfare, immigration and emigration and shall allow them all their legal rights.
- (b) IMS will be required to submit proof of compliance and/or registration, including proof of payment of levies, in terms of the following Acts, in respect of all employees, within a period of 14 (fourteen) days of receipt of the Contract document, failing which the Contract can be cancelled:
 - (i) Basic Conditions of Employment Act, Act 75 of 1997;
 - (ii) Unemployment Insurance Act, Act 63 of 2001;
 - (iii) Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993; and
 - (iv) Occupational Diseases in Mines and Works Act, Act 78 of 1973
- (c) IMS shall require its employees to obey all applicable laws including but not limited to those concerning safety at work.
- (d) **IMS's General Obligations**
 - (i) IMS shall, with due care and diligence, execute and complete the Works and remedy any defects therein in accordance with the provisions of the Contract to the satisfaction of the Customer. When complete, the Works shall be fit for the purpose for which the Works are intended as defined in the Contract.
 - (ii) IMS shall be responsible for the adequacy, stability and safety of all Site operation and methods of construction and of all the Works. IMS shall, whenever required by the

Customer, submit details of the arrangements and methods which IMS proposes to adopt for the execution of the Works. No significant alterations to these arrangements and methods shall be made without the Customer having been previously notified in writing by IMS.

Key Terms Schedule (Schedule A)

Item 1: Customer

Item 2: Products and Services to be supplied

[Indicate which of the following is to be supplied under this Agreement]

Equipment and Software ___Y___

Installation and commissioning ___Y___

Maintenance Services ___Y___

Advisory Services ___Y___

Additional Services ___N___

Item 3: Purchase Price for Equipment and Software

1. CABLE SPECIFICATIONS:

- Conductor count: 8 (4 twisted-pairs)
- Conductor area: 0.5 mm²
- Conductor type: Stranded, tinned copper
- Pair colouring: Red/Blue, Yellow/Green, White/Black, Brown/Purple
- Pair shielding: Individual and overall shielding
- Jacketing material: Flame retardant, halogen free compound
- Jacketing colour: Yellow
- Armouring: None

PLEASE NOTE:

- Prices are quoted on Ex Works from our factory in Somerset West, South Africa based on Incoterms 2010. Prices exclude transport charges from our warehouse, export clearance, freight charges up to destination, import duty (if applicable) and VAT at destination, all these charges will be for the customer's account.
- First 8 Syn/S licences are free-of-charge, although normal software maintenance charges apply.

Item 4: Installation, commissioning and Training Fee

PLEASE NOTE:

- The price quoted for installation, commissioning and inductions includes 1 system engineer, 16 days on-site (128 hours), air-travel from Cape Town to Accra, Ghana, travel time and documentation.
- Please note that the return air tickets are quoted at current rates, which is subject to fluctuations and can increase without prior notice, the increase being for the customer's account. Air-travel from Accra to the mine site, travel to and from the airport, as well as local travel in Ghana, accommodation and subsistence are not included in the above quotation; it is the customer's responsibility to provide this, and it will be for the customer's account.
- Time on-site is only an estimate and the actual time spent on-site will be recouped at USD 120.00 per hour after submission of a Site Visit Report.

Item 5: Advisory Services

Advisory Rates

: See below

Advisory Services Start Date

: From date of commissioning

Please note

- Cloud Storage of Seismic Data is included in the advisory service
- The number of events used for calculating the service fee is an estimate. The actual activity rate in the preceding quarter will be used for calculating the cost of the service for the subsequent quarter.

- The above assumes real-time data link to IMS, if none is available an extra administration fee will be levied
- The price quoted above is based on an average of 25% of recorded events being accepted with about 12 P- or S-picks per event. The remaining events are rejected (e.g. due to noise triggers) or marked as blasts. The above parameters are an estimate while the invoice will depend on the actual classification break down and number of picks used in processing.

Item 6: Maintenance Rates

(a) Maintenance of Equipment

Maintenance of Equipment shall be charged as follows:

- New generation of equipment, i.e., sold after 1 January 2012, will be maintained at 5% p.a. (five per centum per annum) of the value of equipment following the initial one year warranty period. Thereafter this rate increases by 0.5% per calendar year.
- Previous generations of equipment (PS, MS, QS and GS) will be maintained at 5% p.a. (five per centum per annum) of the equipment value for the 1st year starting 1 January 2012. Thereafter this rate increases by 0.5% per calendar year.

(b) Maintenance of Software

Maintenance of Software shall be charged at 10% p.a. (ten per centum per annum) of the value of the Software.

(c) Technical Support

Technical Support for the Equipment (including the Third Party Equipment) and the Software shall be charged at: 5 % p.a. (five per centum per annum) of the value of the Equipment and the Software.

(d) Additional Services

Additional Services shall be charged at the rates which IMS may from time to time notify the Customer in writing.

Charges for Maintenance Services do not include travel expenses incurred by IMS in connection with the provision of Maintenance Services under this Agreement. The Customer will reimburse IMS the cost of all such travel expenses within a reasonable period of IMS providing the Customer with documentation evidencing the expense.

Item 7: Maintenance Period

Item	Maintenance Period
Equipment	Start: 12 months after date of delivery

Software	Start:	From date of commissioning
Technical Support	Start:	From date of commissioning

Commencement of the Maintenance Period shall take place as stated above, irrespective of date of signature of this Agreement. Maintenance shall, continue for an indefinite period or until any party gives three months notice to the other.

Item 8: Location, Sensor Sites and Delivery Date

Item 9: Licence

Licence Term: *In perpetuity or annual licence fee (as applicable – see schedule D)*

Item 10: Central Site

Item 11: Supported Hardware Platforms

Synapse

The IMS software is fully supported under the following operating systems. For these systems IMS has the full development environment and the software is compiled daily.

Hardware	Operating System
i686	Ubuntu Linux 10.04+ (x86_64)

The minimum hardware specification is a quad-core i5 or i7 machine with at least 16GB of RAM.

Trace and Vantage/Jdi

The Seismological Processing software (Trace) and 3D Visualisation and Interpretation software (Vantage/Jdi) is fully supported under the following operating systems. For these software IMS has the full development environment and the software is compiled daily.

Hardware	Operating System
i686	Ubuntu Linux 10.04+ (x86_64), Windows Vista (64-bit), Windows 7 (64-bit)

The minimum hardware specification is a quad-core i5 or i7 machine with at least 16GB of RAM.

Item 12: Specifications of Equipment and Software

N/A

Item 13: Customer Representative

Item 14: Products subject to Maintenance Services

Schedule B

Minimum Performance Criteria (Central Site)

1. IMS Synapse Server Specification

The requirements in the following table apply to the Synapse Server PC. Please note that the raiding of hard drives on the server PC is recommended.

Component	Minimum	Recommended
CPU	64-bit	64-bit
Processor	Quad-core	Quad-core
RAM	16GB	32GB
Ethernet Ports	2 x 1Gb	2 x 1Gb
Serial Port	0	2
Hard Drives	1 x 1TB (non-continuous recording)	2TB (non-raided) OR 2 x 2TB (raided)
DVD Drive	1	1
3-Button Mouse	1	1
Monitor for Installation	15 inch	19 inch
Optional Graphics Card (if running Trace, Vantage etc.)	NVidia or ATI 3D card with 512MB memory	NVidia or ATI 3D card with 1GB memory
Operating System	Linux(Ubuntu and SuSE)	Linux(Ubuntu)

Schedule C

Environmental Limits

Temperature: between 0°C and 55°C.

Humidity: up to 100%. The underground units are splash proof, but not waterproof when installed in the enclosure supplied and installed by IMS.

Shock: up to 1g.

Vibration: continuous vibration less than 0.1g.

Electrical:

- all equipment must be properly grounded to a professionally installed earthing system, complying with all applicable codes
- where equipment requires a mains (AC) power supply:
 - continuous sinusoidal power with an RMS voltage of between 96V and 253V, and a frequency of between 50Hz and 60Hz, *or* as stated in official IMS specification sheets and/or product markings
 - a professionally installed, type 2, surge protection device (SPD) as defined by, and compliant with, the IEC 61643-1:2001 standard, must be present between supply and equipment
- where equipment requires a DC supply:
 - as stated in official IMS specification sheets and/or product markings
 - if the DC supply is derived from AC, a professionally installed, type 2, surge protection device (SPD) as defined by, and compliant with, the IEC 61643-1:2001 standard, must be present between supply and equipment
- if the DC supply is a battery, the negative terminal should be properly grounded to the above mentioned earthing system

Schedule D

The Licence

Software licensed in perpetuity

- Synapse
- SynServ

Software licensed annually

- Trace
- Vantage
- Ticker3D
- SynDBS

Schedule E

ADVISORY SERVICE – SCOPE OF WORK

Full System Admin scope of work:

Each working day the seismic system will be checked by IMS via the secure internet link. Timing, power or communication problems of devices will either be referred to the customer or IMS technical support. The status of all seismic sensors, network timing, communications and power will be summarised and compiled into a report which will be emailed to the customer each (South African) working day. The report will also contain a loss of sensitivity map, where loss of event detection sensitivity relative to the maximal sensitivity of the network is plotted, highlighting areas most affected. The content of the report will be based on data of the previous working day. Customers may choose to be automatically notified via email and/or SMS message and/or automated voice calls as soon as a certain percentage of sites in the system go down or the situation deteriorates. SMS messages and voice calls are limited to reasonable use, emails are unlimited.

Processing of Seismic Data

Our most commonly selected processing option is 24/7 processing of seismic data to extract event locations and source parameters, including radiated seismic energy, seismic potency & inferred stress drops. Processed events are typically (95% of the time) returned to the mine within 1 hour of recording the event. However, large seismic events are prioritized for processing and are typically returned to the mine within ten minutes of recording the event (95% of the time).

The cost of processing is based on two factors, namely event classification and arrival picking. The classification of events as “noise” or “blast” is typically quick and therefore has a low cost. Picking of body wave arrivals on seismograms for acceptable seismic events is more complex, therefore the cost is based on the number of picks used in locating the accepted event. The fewer the seismograms in a particular seismic event, the quicker it is to process the event and thus the lower the cost.

Quality of the seismic data is important for any seismic analysis. To this end IMS aim for a high degree of quality by combining on-line and off-line quality controls. During processing a number of checks, such as degree of polarisation of the arrivals, events inside blast time and signal to noise ratio checks on picks are undertaken. Then, within a few days, 10% of the data undergoes further quality controls by a senior processor and include checking of outlier events based on physical parameters, such as Wadati analysis. After all these checks, events which fail our quality controls are reprocessed.

Options for next working day processing (lower service level) or for higher precision processing (higher service level) are available. Please contact us for further information regarding these options.

Standby seismologist (24/7)

An experienced seismologist is available for emergency requests and consultations by phone and e-mail (e.g. verification of large seismic events, quick reviews of anomalous seismic activity).

Weekly reporting

Weekly pdf reports, including system performance (status of sensors, power, timing, communication of seismometers), seismic data and analysis (seismic event locations, time distribution of seismic events, seismic source parameters, large seismic event listing, seismicity vs production when available) and comments. The reports are generated manually by an experienced seismologist. The location and source parameters of large events and outliers are checked.

A one quarter (three month) notice period is required for cancellation of this out-sourcing relationship.

Cloud Storage of Seismic Data

The amount of data used for calculating the service fee is an estimate assuming the minimum commitment of 500GB stored for 1 year. The actual data volume used in the preceding quarter will be used for calculating the cost of the service for the subsequent quarter at USD 0.12 per GB (or part thereof) per month.

- Data transferred over the Internet and verified by IMS according to ISO9001 procedures
- Secure web-site access to the data in order for customer to check data integrity as often as required
- Low volume data restore carried out using the usual IMS data transfer mechanisms
- High volume data restore using couriered hard disks (separate charges apply)
- Data stored on redundant, fault-tolerant servers in climate-controlled fire-proof vault
- Customizable data storage strategy: e.g. all data, last N events, last N GB or last N days

EXECUTED as an agreement.

SIGNED by
for and on behalf of

in the presence of:

On thisday of20....

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Institute of Mine Seismology

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Position

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Witness
Name (printed):

SIGNED by
for and on behalf of

in the presence of:

On thisday of20....

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Customer

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Position

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