

**TRANSNET**



*national ports  
authority*

**AGREEMENT OF LEASE**

between

**TRANSNET SOC Ltd**

(Registration Number: 1990/000900/30)

a state owned company, duly incorporated in terms of the company laws of the Republic of South Africa and acting through its operating division **Transnet National Ports Authority**

(hereinafter referred to as the "Lessor")

and

**THE LESSEE**

**(Registration Number: \_\_\_\_\_)**

(hereinafter referred to as the "Lessee")

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**ANNEXURES**

- A – Commercial Terms**
- B – TNPA Regulatory Universe**
- C – Diagram of Leased Premises**
- D – Suretyship**
- E – Bank Guarantee**

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## 1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof. Unless a contrary intention clearly appears:

- 1.1. words importing:
  - 1.1.1. any one gender includes the other two genders;
  - 1.1.2. the singular includes the plural and *vice versa*; and
  - 1.1.3. natural persons includes created entities (corporate or unincorporate) and the State and *vice versa*;
- 1.2. the following terms shall have the meanings assigned to them hereunder and similar expressions shall have corresponding meanings:
  - 1.2.1. "**Administration Fee**" means the amount specified in *Annexure "A"* that is payable by the Lessee to the Lessor in respect of the administrative arrangements attended to by the Lessor in relation to this Lease Agreement;
  - 1.2.2. "**Ancillary Agreements**" means the ancillary agreements listed in *Annexure "A"*, which the Parties may conclude in respect of services that are ancillary to this Lease Agreement;
  - 1.2.3. "**Annexure A**" means *Annexure "A"* to this Lease Agreement, being an annexure containing certain material commercial terms applicable to this Lease Agreement;
  - 1.2.4. "**Annexure B**" means *Annexure "B"* to this Lease Agreement, being the Lessor's Regulatory Universe which is applicable this Lease Agreement;
  - 1.2.5. "**Annexure C**" means *Annexure "C"* to this Lease Agreement, containing a diagram of the Leased Premises, the Surrounding Property and/or the Common Areas, as the case may be;
  - 1.2.6. "**Annexure D**" means, if applicable, the Suretyship attached to this Lease Agreement which must be signed by the surety/ies and marked "*Annexure D*";
  - 1.2.7. "**Annexure E**" means, if applicable, the Bank Guarantee attached to this Lease Agreement marked "*Annexure E*";
  - 1.2.8. "**BBBEE**" means broad-based black economic empowerment, as defined in the Broad-Based Black Economic Empowerment Act 53 of 2003;
  - 1.2.9. "**Beneficial Occupation Period**" means the beneficial occupation period, if applicable, as defined in *Annexure "A"*;

- 1.2.10. "**BBBEE Target Plan**" means the plan, (which may form part of the Business Plan) that the Lessee intends implementing in respect of its BBBEE status;
- 1.2.11. "**BOI**" means a Board of Inquiry, into any incident or occurrence affecting the employees and/or customers of the Lessee or damage in respect of the leased premises;
- 1.2.12. "**Business Day**" means any day other than a Saturday, Sunday or an officially recognised public holiday in the Republic;
- 1.2.13. "**Business Plan**" means, if applicable, the business plan described in clause 5 below, containing details regarding the various plans that the Lessor requires or that the Lessee proposes to implement in relation to the Leased Premises, including:
- 1.2.13.1. the BBBEE Target Plan;
- 1.2.13.2. the Environmental Plan; and/or
- 1.2.13.3. any other plan as may be required by the Lessor, from time to time.
- 1.2.14. "**Commencement Date**" means, notwithstanding the Signature Date, the commencement date stipulated in *Annexure "A"*, being the date on which this Lease Agreement commences, which date coincides with the commencement of the Beneficial Occupation Period, if applicable;
- 1.2.15. "**Common Areas**" means, if applicable, all amenities provided by the Lessor for the general use of the Lessee and other lessees (and/or their employees, clients, customers and other persons as may be agreed upon by the Parties, from time to time) on the Surrounding Property, as more fully described in *Annexure "A"* and *Annexure "C"* including (but not limited to) the foyers, malls, arcades, passages, parking areas, entrances, exits, loading areas, landscape areas, interior and exterior stairways, toilets, yards, sidewalks, driveways, ramps and other amenities (as may be applicable) having regard to the nature of the Surrounding Property;
- 1.2.16. "**Confidential Information**" means any information disclosed by either Party to the other Party prior to the conclusion of this Lease Agreement, in terms of this Lease Agreement or otherwise in connection with this Lease Agreement;
- 1.2.17. "**Deposit**" means the Initial Deposit and, if applicable, the Periodic Deposit;
- 1.2.18. "**Environmental Plan**" means the plan (which may form part of the Business Plan) in respect of the environmental measures that the Lessee intends implementing in relation to the Leased Premises;
- 1.2.19. "**Escalation Rate**" means, the rate at which the Rental payable by the Lessee shall be adjusted for the duration of this Lease Agreement and any Rental Review Period, if applicable, as set out in *Annexure "A"*;

- 1.2.20. "**Expiry Date**" means the date upon which this Lease Agreement shall terminate, as stipulated in *Annexure "A"*;
- 1.2.21. "**Improvement**" means any addition, alteration or development on the Leased Premises;
- 1.2.22. "**Initial Deposit**" means the initial deposit specified in *Annexure "A"*;
- 1.2.23. "**Initial Period**" means, if applicable, the initial period specified in *Annexure "A"*;
- 1.2.24. "**Law**" means any law applicable in the Republic of South Africa and includes, without limitation, any Act of Parliament, ordinance, by-law, statutory proclamation, regulation, the common law or other enactment, directive, policy or determination having the force of law;
- 1.2.25. "**Lease Agreement**" means this lease agreement together with any annexures attached hereto, by agreement between the Parties;
- 1.2.26. "**Lease Period**" means the fixed period commencing on the Commencement Date and expiring on the Expiry Date;
- 1.2.27. "**Leased Premises**" means the premises forming the subject matter of this Lease Agreement, as more fully described in *Annexure "A"* and illustrated in the diagram attached hereto as *Annexure "C"*; but does not include the Surrounding Property and the Common Areas;
- 1.2.28. "**Lessee**" means \_\_\_\_\_ under this Lease Agreement and identified in *Annexure "A"*;
- 1.2.29. "**Lessee's Domicilium**" means the address nominated by the Lessee for service of all legal documents and notices;
- 1.2.30. "**Lessor**" means Transnet SOC Ltd (Registration Number: 1990/000900/30), a state owned company, duly incorporated in accordance with the company laws of the Republic, which is represented herein by its operating division, Transnet National Ports Authority as stipulated in *Annexure "A"*;
- 1.2.31. "**Lessor's Domicilium**" means the address nominated by the Lessor for service of all legal documents and notices;
- 1.2.32. "**Lessor's Policies**" means, all policies and legislation as contained in TNPA's Regulatory Universe, as may from time to time be prescribed and made available by the Lessor to the Lessee in accordance with this Lease Agreement;
- 1.2.33. "**Main Agreement**" means this Lease Agreement but excludes the annexures forming part of this Lease Agreement;

- 1.2.34. "**Notice of Redevelopment Period**" means, if applicable, the notice of redevelopment period stipulated in *Annexure "A"*;
- 1.2.35. "**Notice of Repossession Period**" means, if applicable, the notice of repossession period stipulated in *Annexure "A"*;
- 1.2.36. "**Offer Period**" means the offer period stipulated in *Annexure "A"*;
- 1.2.37. "**Operating Costs**" means the monthly contribution by the Lessee towards the operating and/or maintenance costs of the Leased Premises, as specified in *Annexure "A"*;
- 1.2.38. "**Periodic Deposit**" means, if applicable, the adjusted Deposit referred to in clause 9.1.2 below, that may become payable by the Lessee to the Lessor upon the commencement of each Rental Review Period and on each occasion when the rental is escalated;
- 1.2.39. "**Refuse Removal Charges**" means the charges payable in respect refuse removal from the Leased Premises, whether such services have been supplied by the local authority or the Lessor, as specified in *Annexure "A"*;
- 1.2.40. "**Rental**" means the rental payable by the Lessee to the Lessor, as set out in *Annexure "A"*;
- 1.2.41. "**Rental Review Periods**" means the rental review periods, if applicable, stipulated in *Annexure "A"*;
- 1.2.42. "**Parties**" means the Lessor and the Lessee;
- 1.2.43. "**Party**" means either the Lessor or the Lessee, as the context may indicate;
- 1.2.44. "**Republic**" means the Republic of South Africa;
- 1.2.45. "**Sewerage Removal Charges**" means the charges payable in respect of sewerage removal from the Leased Premises, whether such services have been supplied by the local authority or the Lessor, as specified in *Annexure "A"*;
- 1.2.46. "**Signature Date**" means the date of signing of this Lease Agreement by the Party signing last in time, provided that both Parties sign this Lease Agreement;
- 1.2.47. "**Specified Purpose**" means the specified purpose for which the Leased Premises may be used as specified in *Annexure "A"*;
- 1.2.48. "**Surrounding Property**" means the property surrounding the Leased Premises, including (if applicable) the Common Areas, as more fully described in *Annexure "A"* and as illustrated in *Annexure "C"* to this Lease Agreement; and

- 1.2.49. **"VAT"** means value added tax, as defined in the Value Added Tax Act 89 of 1991;
- 1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;
- 1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in this clause 1, effect shall be given to it as if it were a substantive provision in the body of this Lease Agreement;
- 1.5. when any number of days is prescribed in this Lease Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in the Republic, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in the Republic;
- 1.6. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7. expressions defined in this Lease Agreement shall bear the same meanings in annexures to this Lease Agreement which do not themselves contain their own conflicting definitions;
- 1.8. reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s;
- 1.9. the use of any expression in this Lease Agreement covering a process available under the law of the Republic such as a winding-up (without limitation) shall, if any of the Parties to this Lease Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
- 1.10. where any term is defined within the context of any particular clause in this Lease Agreement, the term so defined, unless it is clear from the clause in question that such term has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Lease Agreement, notwithstanding that that term has not been defined in this clause 1;
- 1.11. the expiration or termination of this Lease Agreement shall not affect such of the provisions of this Lease Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.12. the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;

- 1.13. any reference in this Lease Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Lease Agreement and, if such Party is liquidated or sequestrated, be applicable to and binding upon that Party's liquidator or trustee, as the case may be;
- 1.14. the words "**include**", "**including**" and "**in particular**" shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s;
- 1.15. the words "**other**" and "**otherwise**" shall not be construed with any preceding words where a wider construction is possible.

## 2. **LEASED PREMISES**

The Lessor hereby lets to the Lessee, who hereby hires, the Leased Premises.

## 3. **LEASE AGREEMENT**

- 3.1. For the sake of clarity, the Parties record that this Lease Agreement comprises of:
  - 3.1.1. the general terms and conditions set out in the Main Agreement;
  - 3.1.2. the key commercial terms set out in *Annexure "A"*; and
  - 3.1.3. such other annexures attached hereto by agreement between the Parties.
- 3.2. In the event of any conflict with the provisions of the Main Agreement and/or any annexure forming part of this Lease Agreement, the provisions of the Main Agreement shall prevail.

## 4. **DURATION OF LEASE AGREEMENT**

This Lease Agreement shall commence on the Commencement Date irrespective of whether the Lessee has taken occupation or not, and shall subsist for the Lease Period unless terminated earlier either by mutual agreement between the Parties, or otherwise in accordance with the provisions of this Lease Agreement.

## 5. **BUSINESS PLAN**

- 5.1. In the event that the Lessee is required to submit a detailed Business Plan, such Business Plan shall be submitted to the Lessor prior to the Signature Date of this Lease Agreement and shall contain such information and documents as may be reasonably required by the Lessor, including:

- 5.1.1. the full names, identity numbers and residential addresses of the persons exercising management control over the Lessee, structure of the Lessee (including organogram);
- 5.1.2. the full names, registration or identity numbers and registered business or residential addresses (as the case may be) of the persons or entities who beneficially, directly or indirectly, hold shares in the Lessee;
- 5.1.3. the Lessee's projected business cash flows, up to date and most recent audited income statement which must be signed by the Lessee's auditors and shareholders, management accounts for the last 6 months, detailed balance sheet of the Lessee, letters of commitment from the bank, the Lessee's long and short term strategy, investments that will be injected into the property and development and/or operational plans;
- 5.1.4. details of the Lessee's operation methodology including equipment to be used;
- 5.1.5. any additional information that the Lessor may require, from time to time.
- 5.2. The Business Plan shall be used by the Lessor to determine whether or not to enter into this Lease Agreement , to monitor the activities of the Lessee and to decide whether or not to renew this Lease Agreement from time to time.
- 5.3. The terms and conditions applicable to the monitoring of the Lessee's activities in terms of clause 5.2 above shall, if applicable, be contained in an Annexure to this Lease.

## 6. **LESSOR'S POLICIES**

- 6.1. The Lessee acknowledges that:
  - 6.1.1. the Lessor conducts its business in accordance with, *inter alia*, the Lessor's Policies which is aligned to the TNPA Regulatory Universe; and
  - 6.1.2. it is fully aware of and conversant with the legislation which comprises the TNPA Regulatory Universe (*Annexure "B"*) and the implications thereof.
- 6.2. The Lessee shall conduct its business from the Leased Premises strictly in accordance with such legislation:
  - 6.2.1. if any provision of the Business Plan and/or such legislation imposes obligations or requirements which are more onerous on the Lessee and more beneficial for the Lessor than the corresponding provision contained in the Lessor's Policies, then the provisions of the Business Plan or relevant legislation (as the case may be) shall apply;

- 6.2.2. if any provision of the Business Plan and/or any legislation imposes obligations or requirements which are less onerous on the Lessee and beneficial to a lesser degree for the Lessor than the corresponding provision contained in the Lessor's Policies, then the relevant provision of the Lessor's Policies shall apply.
- 6.3. The Lessor shall be entitled from time to time and by written notice to the Lessee to amend all or any of the Lessor's Policies provided that such amendment shall be reasonable, in line with TNPA's Regulatory Universe and shall apply generally to all lessees of land and/or premises (including the Lessee) within the Surrounding Property.
- 6.4. The Lessee shall, from time to time upon being required to do so by the Lessor, meet with the Lessor and/or its duly authorised representatives for the purpose of reviewing the extent to which the Lessor's Policies are complied with by the Lessee, and shall generally provide the Lessor and its duly authorised representatives with all documentation and with such assistance as they may reasonably require for that purpose. The Lessor shall be entitled to give the Lessee written notice of:
- 6.4.1. remedial measures to be undertaken by the Lessee in order to ensure that the Lessor's Policies are complied with; and
- 6.4.2. a reasonable time period within which such remedial measures must commence and/or be completed.
- 6.5. The failure by the Lessee to timeously implement any remedial measures of which it is notified in writing in accordance with the provisions of clause 6.4 shall constitute a material breach by the Lessee of the provisions of this Lease Agreement entitling the Lessor (in addition and without prejudice to any other remedy available to the Lessor in terms of this Lease Agreement and/or at law) to claim proven damages from the Lessee or a penalty in an amount equal to 50% (fifty percent) of the monthly Rental payable by the Lessee for so long as such breach persists.
- 6.6. The Lessor shall be entitled (and on reasonable written notice to the Lessee) to require the Lessee to effect and implement such amendments to its Business Plan as may from time to time be reasonably necessary in order to ensure that such Business Plan complies with the Lessor's Policies.
- 6.7. The Lessee shall have no claim against the Lessor arising from any loss or damage which it may suffer as a consequence of implementing any such amendments to its Business Plan.

## 7. **OCCUPATION OF THE LEASED PREMISES**

The Lessee shall be given vacant occupation of the Leased Premises with effect from the Commencement Date.

8. **SPECIFIED PURPOSE**

The Leased Premises is let to the Lessee for the Specified Purpose only. The Lessee shall not use the Leased Premises for any other purpose whatsoever without the prior written consent of the Lessor, which consent may be withheld by the Lessor in its sole discretion.

9. **DEPOSIT**

9.1. The Lessee shall pay to the Lessor, the Deposit comprising:

9.1.1. the Initial Deposit which shall be payable on the Signature Date; and shall escalate as indicated in *Annexure "A"*; and

9.1.2. if applicable, the Periodic Deposit, as agreed upon by the Parties from time to time, which shall be payable upon the commencement of any Rental Review Period.

9.2. The Lessor shall have the right to apply the whole Deposit, or a portion thereof, towards payment of any Rental, Operating Costs, rates, water, sewerage and electricity charges, reinstatement costs and/or any other liability for which the Lessee is responsible in terms of this Lease Agreement. If any portion of the Deposit is so applied, the Lessee shall forthwith reinstate the Deposit to its original amount.

9.3. The Deposit or the balance thereof, as the case may be, shall be refunded by the Lessor to the Lessee:

9.3.1. after the Lessee has vacated the Leased Premises;

9.3.2. after all the Lessee's obligations to the Lessor in terms of this Lease Agreement have been fully discharged; and

9.3.3. once a take back inspection has been conducted between the Lessor and Lessee.

9.3.4. free of interest.

9.4. In lieu of paying the Deposit referred to in clause 9.1 above in cash, the Lessee may submit an unconditional bank guarantee for an equivalent amount in the form and as reflected in *Annexure "E"*, which bank guarantee shall be valid for the duration of this Lease Agreement as well as for at least 6 (six) months after termination/expiry of this Lease Agreement;

9.5. The deposit referred to in this clause 9 shall not be subject to VAT.

10. **RENTAL**

- 10.1. The Lessee shall pay to the Lessor the Rental, which shall increase, from time to time, in the manner contemplated in *Annexure "A"* by the Escalation Rate.
- 10.2. In addition to, but separately and distinctly from the Rental, the Lessee shall pay, where applicable:
- 10.2.1. the Operating Costs in respect of the Leased Premises on a monthly basis; and
- 10.2.2. such additional charges as may be specified in this Lease Agreement.
- 10.3. The Rental shall be due and payable by the Lessee to the Lessor in accordance with *Annexure "A"*.
- 10.4. In the event that the Rental and/or any other amounts are payable by the Lessee to the Lessor in terms of this Lease Agreement on a monthly basis, such amounts shall be paid by the Lessee in advance on or before the first Business Day of each calendar month.
- 10.5. All amounts payable by the Lessee in terms of this clause 10 shall be subject to VAT.

11. **METHOD OF PAYMENT**

- 11.1 The Lessor shall be entitled to require the Lessee to effect payments of all amounts due under this Lease Agreement by means of an electronic funds transfer operating on an account held by the Lessee with a financial institution chosen by the Lessee, provided that such financial institution is able to immediately transfer payment to the banking account of the Lessor. The Lessee shall ensure that it completes and signs the EFT Application which is made available by the Lessor to the Lessee, whereafter such Application will be processed by the Lessor.
- 11.2 The Lessee shall not be permitted under any circumstances to settle any amount due in terms of this Lease Agreement by means of a cash payment at the Lessor's offices.
- 11.3 Payment of any amount due under this Lease Agreement shall be deemed to have been made only when the relevant amount has been duly credited to the banking account of the Lessor.
- 11.4 All amounts payable by the Lessee to the Lessor in terms of this Lease Agreement shall be paid free of set-off and/or deduction, whether in respect of any bank or other charges.

11.5 In the event that the Lessee is liable to make payment of any charges to the Lessor in respect of refuse removal, sewerage removal, water and/or electricity, the Lessee acknowledges that such charges levied by the Lessor may vary from time to time and the Lessee shall be bound to pay such variable charges as invoiced by the Lessor.

11.6 In the event of the termination of this Lease Agreement prior to the Expiry Date, or prior to the expiry of any Rental Renewal Period, as the case may be, the Lessor shall have the right to claim immediate payment of all and any outstanding amounts owing to it and the Lessee shall be obliged to effect payment of the amount so claimed.

## **12 ESCALATION RATE**

The Rental payable by the Lessee to the Lessor and the Lessee's contribution to Operating Costs shall increase each year on the anniversary of the Commencement Date by applying the Escalation Rate (as provided for in *Annexure "A"*) to the preceding year's Rental and Operating Costs amount.

## **13 RENTAL REVIEW**

13.1 In the event that a Rental Period is applicable, the Parties agree that, 6 (six) months prior to the expiry of any Rental Review Period, they shall meet and endeavour to agree upon the Rental and Escalation Rate that will apply in that Rental Review Period. In the event that the Lessee is not forthcoming and/or delays and/or refuses to participate in such process and continues to do so for a period of 21 days from the initial request by the Lessor to participate in the Rental Review process, then the Rental and Escalation rate for such period as determined by the Lessor shall be final and binding upon the Lessee.

13.2 Should the Parties not be able to agree upon the Rental and Escalation Rate in terms of clause 13.1 above, the Rental and Escalation Rate shall be determined by a registered Transnet approved valuer or a valuer registered with the South African Council for the Property Valuers Profession ("**SACPVP**"), which shall be determined at the sole discretion of the Lessor.

13.3 In the event that the dispute is referred to the SACPVP, the Council shall provide 3 (three) names of Valuers, each of at least 10 (ten) years standing who are registered with the SACPVP and have been practising in the same locality as the Leased Premises, for the purposes of determining the Rental and Escalation Rate. The Parties would then need to agree on which one of the three Valuers to select. If the parties are unable to agree on which of the 3 (three) valuers to select, then such determination shall be made at the sole discretion of the Lessor.

- 13.4 Forthwith following the appointment of the SACPVP Valuer, each Party shall submit a written Rental estimate and a written Escalation Rate (both of which shall not be lower than the current rental and Escalation Rate) estimate to such valuer, together with any information supporting such estimate.
- 13.5 The SACPVP Valuer will act as an expert (and not as an arbitrator) and, within 30 (thirty) days after being appointed, will determine the Rental and the Escalation Rate for the Leased Premises for the relevant Rental Review Period, which determination shall be reduced to writing and shall be binding upon the parties.
- 13.6 The costs of the SACPVP Valuer shall be borne equally by the Parties.
- 13.7 Notwithstanding anything to the contrary contained in this Lease Agreement, pending the determination of the Rental and the Escalation Rate applicable during any Rental Review Period, the Lessee shall continue to pay Rental equal to the Rental which prevailed in the month immediately prior to the dispute referred to in this clause 13 arising, escalated at the Escalation Rate stipulated in *Annexure "A"* until such determination is made. Thereafter, if applicable, the Lessee shall on demand pay any additional amount it would have had to pay in respect of the period from the date of the dispute arising to the end of the month during which the determination is made.
- 13.8 For the sake of clarity, the Rental payable during any period after a dispute has been declared in terms of this clause 13, shall not at any stage be less than the Rental payable prior to such dispute arising.
- 13.9 Any Rental and Escalation Rate determination in terms of this clause 13 shall, in the absence of manifest error, be final and binding on the Parties and shall apply until the next Rental Review Period, if applicable. In addition, the Lessee shall increase the amount of its Deposit in proportion to the increase in Rental, forthwith following the date of determination of such Rental, the Periodic Deposit.

#### **14 ADDITIONAL CHARGES**

- 14.1 The Lessee shall pay the following additional charges to the Lessor:
- 14.1.1 in the event that the Lessor supplies water and/or electricity to the Lessee, the applicable water and/or electricity fees that may be charged by the Lessor to the Lessee, from time to time, in accordance with the provisions of clauses 30 (*Services by Lessor or Relevant Authority*), 31 (*Supply of Electricity by the Lessor*) and 32 (*Supply of Water by the Lessor*) below;
- 14.1.2 the Sewerage Removal Charges;
- 14.1.3 the Refuse Removal Charges; and

14.1.4 any other taxes, levies, assessment rates or charges payable by the Lessor or which may hereafter become payable by the Lessor to a local authority or utilities provider in respect of the Leased Premises, whether in accordance with the provisions of this Lease Agreement or otherwise.

14.2 If at any time during the currency of this Lease Agreement, the charges in respect of taxes, levies, assessment rates, sewerage removal, refuse removal or any other charges payable by the Lessor, are increased, the Lessee shall pay an additional amount equal to such increases from the date on which such increases became effective.

## **15 ADMINISTRATION FEE**

The Lessee shall on the Signature Date of the Lease Agreement by the Lessee, pay to the Lessor the Administration Fee as set out in *Annexure "A"*.

## **16 USE OF LEASED PREMISES**

16.1 The Lessee shall not:

16.1.1 vacate the Leased Premises or allow the Leased Premises to remain unused, unless the prior written consent of the Lessor is obtained;

16.1.2 store explosives, flammable goods or toxic substances or liquids on the Leased Premises, except in so far as such storage may be reasonably necessary for the conduct of its business and provided that the Lessee obtains the prior written consent of the Lessor to store such items;

16.1.3 use the Leased Premises for residential purposes or as sleeping quarters, unless the prior written consent of the Lessor is obtained and such consent shall be determined solely at the Lessors discretion;

16.1.4 do anything that detracts from the appearance of the Leased Premises and/or the Surrounding Property;

16.1.5 do or cause anything to be done which may cause a nuisance or inconvenience to the Lessor or to any other lessees or to occupants of adjoining properties; and

16.1.6 install any safe or heavy machinery (including automated teller machines) or heavy equipment or other material on any floor, other than at ground level where there is no basement or parking area below, on or in the Leased Premises without the prior written consent of the Lessor, which consent may, in the Lessor's discretion, contain such conditions as the Lessor may determine. In such cases, the Lessor shall provide the Lessee with the floor loading capacity of the applicable building.

- 16.2 The Lessee undertakes to obtain, maintain and renew all licenses, permits or other necessary consents to conduct its business on or from the Leased Premises. The Lessor does not warrant that the Leased Premises are fit for the purposes for which it is let or that the Lessee will be granted a license in respect of the Leased Premises for conducting its business, or that any license will be renewed and the Lessor shall not be responsible to do any work or make any alterations or repairs to the Leased Premises to comply with the requirements of any licensing authority.

## **17 USE OF COMMON AREAS**

The Common Areas shall at all times be subject to the exclusive control and management of the Lessor, and the Lessor shall have the right from time to time to establish, modify and enforce by written notice to the Lessee and other lessees on the Surrounding Property rules and regulations with respect thereto and generally to do or perform such other acts in and to the Common Areas as the Lessor, in exercising good business judgement, believes are necessary in order to improve the convenience and manner in which the Common Areas are used by the Lessee and other lessees, their officers, agents, employees and customers.

## **18 LOADING AND UNLOADING OF GOODS**

- 18.1 All loading, delivery and unloading of goods, merchandise, supplies and fixtures to and from the Leased Premises shall be done only at such times, in such areas and through such entrances as may be designated for the purpose by the Lessor and shall be subject to such rules and regulations as in the discretion of the Lessor are necessary for the proper administration of the Leased Premises and the Surrounding Property.
- 18.2 The Lessee shall ensure that its vehicles do not obstruct the free flow of traffic, the entrances or exits of any driveway or the pedestrian entrances to the Leased Premises and the Surrounding Property.
- 18.3 The Lessee shall not:
- 18.3.1 cause or permit its vehicles to be parked in the parking areas or the driveways on the Surrounding Property designated by the Lessor as customers' parking areas and driveways; and
- 18.3.2 place or permit any obstruction to be placed in or on the parking areas or driveways on the Surrounding Property designated by the Lessor as customer's parking areas or driveways.

## **19 LESSEE'S GENERAL OBLIGATIONS AND RESTRICTIONS**

The Lessee:

- 19.1 shall not contravene or permit the contravention of any law, by-law or statutory regulation or the conditions of any licence relating to or affecting the occupation of the Leased Premises or the carrying on of the Lessee's permitted business therein, or which may expose the Lessor to any claim, action or prosecution;
- 19.2 shall not contravene any of the conditions of title under which the Lessor holds title to the Property, nor any laws which the Lessor is required to observe by reason of its ownership of the Leased Premises;
- 19.3 shall not be entitled to withhold or delay payment of any monies due by the Lessee to the Lessor in terms of this Lease Agreement by reason of the Leased Premises or any part thereof being in a defective condition or in a state of disrepair, or for any other reason whatsoever;
- 19.4 shall have no claims of any nature whatsoever against the Lessor in respect of any damage caused to the Lessee's stock-in-trade, furniture, equipment, installations, books, papers or other articles kept in the Leased Premises or any other damage or loss caused to or sustained by the Lessee in the Leased Premises whatsoever, whether as a result of water seepage or leakage wherever and howsoever occurring in the Leased Premises, or as a result of rain, hail, lightning, fire, riot or civil commotion or by reason of the negligence of the Lessor's employees;
- 19.5 shall have no claim of any nature whatsoever, whether for damages or a remission of rent, against the Lessor for any interruption in the supply of water, electricity, heating, air conditioning, lifts or any other service;
- 19.6 shall have no claim of any nature whatsoever against the Lessor for any accident, injury or damage caused to its representatives, employees, customers or invitees through or while using any portion of the Leased Premises, whether arising out of the negligence of the Lessor, the Lessor's servants or any other cause, other than wilful or grossly negligent acts on the part of the Lessor or its servants; and
- 19.7 undertakes to make timeous application for any licences and/or any renewals thereof that are necessary for the conduct of its business in the Leased Premises and to furnish the Lessor with copies of such licences and/or renewals, as soon as may be reasonably possible thereafter;
- 19.8 shall ensure that as far as is reasonably possible all vehicles entering and exiting the Leased Premises or the Surrounding Property shall be organised and regulated so as to avoid traffic congestion. In particular, no vehicles shall be permitted to park or queue outside the Leased Premises or the Surrounding Property;
- 19.9 shall be required to obtain the prior written consent of the Lessor, in the event that it becomes necessary to rezone the Leased Premises in order to

enable the Lessee to conduct its business, such consent shall be in the absolute discretion of the Lessor, who may withhold same without giving any reason therefor;

19.10 shall submit an updated and valid BBBEE certificate from an authorised verification agency annually to the Lessor; and

19.11 shall ensure that it maintains at least a Level 4 BBBEE status for the duration of this Lease and must notify the Lessor in the event that its BBBEE status reaches above Level 4 and must provide reasons for the change in BBBEE status. Upon receipt of such notification, the Lessor shall at its sole discretion determine the manner in which the matter shall be dealt with, including termination of Lease due to non-compliance with the Lessor's BBBEE requirements.

## **20 EMERGENCY PLAN**

20.1 In the event that the Lessor requires the Lessee to put in place measures in respect of or in connection with emergencies, the Lessor shall be entitled, upon written notice to the Lessee, to require the Lessee to submit to the Lessor a detailed emergency plan dealing with measures that the Lessee intends proposing in respect of or in connection with emergencies at the Leased Premises, which emergency plan shall be subject to the satisfaction of the Lessor in its sole discretion.

20.2 The Lessee undertakes to comply with the provisions of the emergency plan approved by the Lessor in terms of clause 20.1, including ensuring, *inter alia*, that:

20.2.1 the provisions of the emergency plan are implemented fully;

20.2.2 the emergency plan complies with the provisions of any insurance policies in respect of the Leased Premises;

20.2.3 the Lessor is duly notified of any failure by the Lessee (for whatever reason) to comply with any provision of the emergency plan; and

20.2.4 the Lessor is duly notified of the occurrence of any emergency, whether or not such emergency may fall within the ambit of the emergency plan.

20.3 The Lessee hereby acknowledges that the provisions of this clause 20 shall not in any way derogate from any other duties or responsibilities that the Lessee may, from time to time, incur in respect of emergencies.

20.4 The Lessee shall be obliged to co-operate fully in respect of any BOI instituted by the Lessor, which co-operation shall include but is not limited to:

20.4.1 The submission of all relevant reports and documentation in respect of any incident within the Port as requested by the Lessor;

- 20.4.2 Ensuring that all relevant personnel attends every session of the BOI which it is required to attend and to which employees are invited.

## **21 INSURANCE**

The Lessor shall provide insurance cover for damage to the Leased Premises including any Improvement situated thereon, for any perils normally covered by the insurance policies of the South African Special Risk Insurance Association and which the Lessor may, in its discretion, chose to take out insurance in respect of.

- 21.1 The Lessor shall obtain insurance cover from an insurer of its choice for any and all other reasonable commercial or other risk that may exist or arise in relation to the Leased Premises, or any Improvement to the Leased Premises or any use of the Leased Premises or any Improvement thereto, but which shall not include insurance for any risk in respect of and in connection with any moveables owned by the Lessee situated in, on, or around the Leased Premises.
- 21.2 The Lessor shall obtain contractors all risk insurance cover for any Improvement that is undertaken by the Lessor or the Lessee on the Leased Premises, in respect of perils that are normally covered by insurance policies of this nature.
- 21.3 The Lessee shall obtain contractors all risk insurance cover for any Improvement that is undertaken by the Lessee on the Lease Premises, in respect of perils that are normally covered by insurance policies of this nature.
- 21.4 The Lessee shall take out, at its own cost public liability insurance cover, including an endorsement in respect of the Lessee's liability (which conforms to its activities in or on the Leased Premises) and shall keep the same valid for the duration of this Lease Agreement and for such amounts as will reasonably indemnify the Lessee against all claims arising out of the business which the Lessee conducts on the Leased Premises.
- 21.5 If applicable, the Lessee shall pay on demand to the Lessor any increase in the insurance policy premiums payable by the Lessor to its insurer which results from any improvements that the Lessee has made to the Leased Premises.
- 21.6 The Lessee shall furnish the Lessor with proof of any payments that it may have made in respect of the premiums payable under the insurance policies referred to in this clause 21, and proof of any renewal of such insurance policies, as and when such events occur.
- 21.7 The Lessee warrants that it shall not do, or omit to do, anything or keep in or on the Leased Premises (including any Improvement on the Leased Premises) anything or allow anything to be done in or to the Leased Premises (including any Improvement on the Leased Premises) contrary to any of the terms of the insurance policies taken out in relation to the

Leased Premises or which may render such insurance policies void or voidable and the Lessee shall comply in all respects with the terms and conditions of any such insurance policies.

- 21.8 The Lessee hereby indemnifies the Lessor against any loss or damage that the Lessor may incur (including but not limited to loss as a result of the claims by third parties against the Lessor) due to the Lessee not complying with the provisions of this clause 21.
- 21.9 Notwithstanding any other provision contained in this Lease Agreement, a failure by the Lessee to comply with any obligation under this clause 21 shall constitute a material breach of this Lease Agreement.

## **22 MAINTENANCE**

- 22.1 Notwithstanding any additional maintenance obligations that may be imposed on the Lessee in this Lease Agreement:
- 22.1.1 the Lessee shall keep and maintain the Leased Premises in good order and condition at its own cost to the satisfaction of the Lessor and, upon expiration or earlier termination of this Lease Agreement, shall deliver the Leased Premises to the Lessor in a good order and condition, fair wear and tear excepted;
- 22.1.2 the Lessee shall exercise great care to prevent any blockage of sewers, water pipes or drains in, on or used in connection with the Leased Premises and shall remove at his own cost any obstruction or blockage in any sewer, water pipe or drain serving the Leased Premises exclusively and, where necessary, repair the sewer, water pipe or drain concerned;
- 22.1.3 in the event of the Lessee's failure to replace or make good or repair any item for which he is responsible in terms of this Lease Agreement and if it remains in default for a period of 7 (seven) days after written notice has been made or given by the Lessor calling upon it to replace or make good or repair such item, the Lessor shall be entitled, without prejudice to any other rights, to enter upon the Leased Premises and replace or make good or repair such items at the Lessee's cost;
- 22.1.4 in the event of a burglary or attempted burglary on the Leased Premises, the Lessee shall at his own cost arrange for the repair of any damage to the Leased Premises caused by such burglary or attempted burglary to the satisfaction of the Lessor;
- 22.1.5 in the event of any damage to the Leased Premises (including any Improvement) the Lessee shall, within 24 (twenty four) hours of it becoming aware of such damage, report such damage to the Lessor, in order to enable the Lessor to seek recourse from the relevant insurer. Notwithstanding the Lessee's compliance with this clause 22.1.5, the Lessee shall be responsible for the payment of any excess amount that may be applicable as the time of the occurrence that resulted in such damage; and

- 22.1.6 in the event that any civil and/or electrical maintenance is required to be undertaken at the Leased Premises, the Lessee shall, at its own cost, procure that such maintenance shall be performed by suitably qualified and registered specialists, to the satisfaction of the Lessor;
- 22.1.7 the Lessee shall be responsible for and shall at its own cost and expense maintain (and where applicable, replace) all airconditioning and heating systems serving the Leased Premises.
- 22.2 The Lessor shall, subject to the provisions of clause 43 (*Improvements by Lessor*) below, remain responsible for all structural repairs required to be effected to the Leased Premises and for the maintenance and upkeep of all Common Areas and/or Surrounding Property. It is expressly provided that (notwithstanding the foregoing) all structural repairs required to be effected by reason of:
- 22.2.1 the failure by the Lessee to comply with its maintenance obligations in terms of this clause 22; or
- 22.2.2 the improper use of the Leased Premises by the Lessee; or
- 22.2.3 damage caused by the Lessee and/or third parties,
- shall be the responsibility of and shall be paid for by the Lessee.

## **23 RESPONSIBILITY FOR ELECTRICAL INSTALLATIONS**

- 23.1 Notwithstanding any additional obligations that may be imposed on the Lessee in this Lease Agreement, the Lessee shall be responsible for:
- 23.1.1 the safety, safe use and maintenance of the electrical installations in the Leased Premises;
- 23.1.2 the safety of the conductors connecting the electrical installations to the point of supply; and
- 23.1.3 procuring the issue of a valid certificate of compliance in respect of the electrical installations in the Leased Premises.
- 23.2 The Lessee shall be responsible to keep and maintain in good order and condition at its own cost the complete electrical installation on the Leased Premises, according to the terms and conditions contained in this Lease Agreement.
- 23.3 The Lessee hereby indemnifies the Lessor against all claims, damages or losses of any nature whatsoever which the Lessor may sustain as a result of the Lessee failing to comply with any of its obligations under this clause 23.

## **24 WAYLEAVE**

- 24.1 Wayleaves through the Property for existing and future utilities, such as gas, water, electricity, sewerage and drainage, telecommunications and fuel supply, shall be granted by the Lessee to the Lessor if reasonably required by the Lessor at any stage during the course of this Agreement. Without derogating from the generality of the foregoing, the Lessee shall allow the Lessor or its subcontractors to lay, maintain, repair and use such underground services on or across the Property as will not interfere with or diminish the Lessee's rights to use the Property, without becoming liable to pay any compensation to the Lessee or to grant any reduction in rent.
- 24.2 The Lessee shall not interfere with or take any action which is detrimental to the efficient supply of utilities to neighbouring areas or any premises within the Port or do or allow anything to be done that would render the laying, maintenance, repair and use of utilities within the Property or the supply thereof to neighbouring areas or any premises within the Port impracticable.
- 24.3 In the event that the exercise by the Lessor of its rights in terms of clause 24.1 results in damage to the Terminal Infrastructure or Equipment or any improvements made or assets of the Lessee, then the Lessor undertakes to compensate the Lessee for the reasonable costs of repairing such damage.
- 24.4 Wayleaves through the Port outside the Property for existing and future utilities, such as gas, water, electricity, sewerage and drainage, telecommunications and fuel supply or piperacks to the Property will be granted by the Lessor to the Lessee, if, in the reasonable discretion of the Lessor, required by the Lessee, necessary at any stage during the course of this Agreement.

## **25 SIGNAGE**

- 25.1 All signage (including the content, appearance, location and manner in which such signage is affixed) to be displayed by the Lessee on or about the Leased Premises shall be subject (and shall not be displayed without) the prior written approval of the Lessor.
- 25.2 Without limiting the generality of clause 25.1 the Lessee shall not display any movable signage and/or advertising material on or about the Leased Premises without the prior written approval of the Lessor.

## **26 ACCESS TO THE LEASED PREMISES**

- 26.1 Subject to any circumstances in which the Lessor may have to enter the Leased Premises in an emergency or in terms of an order of court, the Lessor and/or its duly authorised employees or agents may, upon giving the Lessee reasonable notice, enter upon and inspect the Leased Premises, and do all things necessary in order to enable the Lessor to ascertain, determine and ensure that there is strict compliance with the terms and conditions of this Lease Agreement (including without limitation, any annexure to the Lease Agreement), the policies of the Lessor and any laws or regulatory requirements that may be imposed in respect of the Leased Premises.
- 26.2 The Lessee undertakes to afford the persons inspecting the Leased Premises in terms of this clause 26 with access to the Leased Premises and the Lessee's facilities for the purposes of such inspections.
- 26.3 The Lessor undertakes to ensure that the persons inspecting the Leased Premises in terms of this clause 26 will comply with all the safety and security stipulations of the Lessee whilst such persons are on the Leased Premises and/or have access to the Lessee's facilities. The Lessee undertakes in this regard to inform the Lessor of all such safety and security stipulations of the Lessee, within a reasonable period prior to the Lessee inspecting the Leased Premises.
- 26.4 The Lessee shall, under no circumstances, have any claim against the Lessor and/or the persons inspecting the Leased Premises in terms of this clause 26, for loss of beneficial occupation, loss of profits or otherwise.
- 26.5 It is specifically agreed that where such damage is caused by the wilful act or gross negligence of the Lessor, its employees or agents, neither the Lessor nor any employee or agent of the Lessor shall be responsible for any loss or damage to any property or for the death or injury of any person arising out of their activities in terms of this clause 26 and the Lessee indemnifies the Lessor and its employees and agents in this regard.

## **27 SECURITY**

- 27.1 The Lessee shall be entitled to establish and maintain such security measures (including access control) as it may deem necessary to ensure or promote security on or about the Leased Premises. Such security measures shall comply with every applicable law.
- 27.2 It is expressly provided that the Lessor shall have no responsibility to provide security services in connection with the Leased Premises and the Lessor shall have no liability whatsoever to the Lessee and/or any third party arising from any breach or failure of any security measures implemented by the Lessee.

## **28 RODENT INFESTATION**

- 28.1 Should any evidence of rodent infestation be found, the Lessee should at its own cost arrange for the proper disinfection of the Leased Premises.
- 28.2 The Lessee shall notify the Lessor if and when the Leased Premises are to become unoccupied, and should the Lessor deem it necessary to disinfect the Leased Premises, the Lessee shall render all assistance required by the Lessor to effect such disinfections, and the Lessee shall be liable for the cost thereof, but only in as much as it relates to the Leased Premises and/or the Lessee's proportional share of the Common Areas, if applicable.

## **29 ENVIRONMENTAL**

Where the Leased Premises are not used for retail or office use:

- 29.1 The Lessee may immediately after the Signature Date procure that the Leased Premises are inspected by a suitably qualified environmental expert nominated by it (which environmental expert shall be reasonably approved of by the Lessor) in order to determine if any environmental pollution and/or contamination exists on or about the Leased Premises and/or if any remedial measures are to be undertaken in terms of any law relating to the conservation and/or preservation of the natural environment ("**environmental law**") or otherwise ("**baseline study**"). The Lessee shall furnish the Lessor with a copy of the baseline study immediately upon completion thereof.
- 29.2 If the baseline study reflects the existence of any such pollution or contamination then the Lessor shall be responsible for such remedial measures as are required to be undertaken.
- 29.3 If the Lessee fails to procure a baseline study to be undertaken within 3 (three) months after the Commencement Date then the land and Leased Premises shall be deemed to have been free of pollution and contamination as at the Commencement Date.
- 29.4 The Lessee will be responsible for any pollution and contamination which it may cause or effect to the Leased Premises after the Commencement Date, for which purpose the baseline study (if any) shall be prima facie evidence of pollution and/or contamination existing as at the Commencement Date. The Lessee shall:
- 29.4.1 not later than the Expiry Date cause such remedial measures as may be necessary and/or required in terms of any environmental law to be taken; and
- 29.4.2 indemnify the Lessor against any loss or damage (including remediation costs, fines, enforcement actions and the like) which the Lessor may suffer as a consequence of the Lessee having polluted or contaminated the Leased Premises and/or any neighbouring properties in any way.

- 29.5 The Lessee shall immediately after the Signature Date provide the Lessor with an environmental management plan in respect of the Leased Premises and the use thereof by the Lessee. Such Environmental Plan shall comply with every applicable environmental law and regulatory standard and shall address the following:
- 29.5.1 pollution prevention;
  - 29.5.2 waste management;
  - 29.5.3 impact management;
  - 29.5.4 preventative and/or remedial measures to be undertaken;
  - 29.5.5 such other matters as the Lessor may in its discretion direct.
- 29.6 The Lessor may in its sole and absolute discretion:
- 29.6.1 upon receipt of an Environmental Plan; and/or
  - 29.6.2 at any time during the Lease Period,  
on written notice to the Lessee require a comprehensive environmental site assessment to be undertaken in respect of the Leased Premises and the use thereof by the Lessee ("**site assessment**").
- 29.7 Such site assessment shall include:
- 29.7.1 an analyses of the bio-physical, social, cultural, economic, aesthetic and technological impact (including such other impacts as the Lessor may in its sole discretion direct) of the Leased Premises and the use thereof; and
  - 29.7.2 preventative and/or remedial measures to be undertaken to minimise such impacts.
- 29.8 The site assessment shall be undertaken at the cost and expense of the Lessee by suitably qualified environmental experts and other professional consultants as may be reasonably approved of by the Lessor.
- 29.9 The Lessee shall, without limiting any other similar or corresponding obligation contained elsewhere in this Lease Agreement, comply strictly with every Environmental Plan and site assessment including in particular all preventative and remedial measures that may be identified therein.
- 29.10 The Lessee shall allow the Lessor and its duly authorised representatives access to the Leased Premises and shall furnish them with such reasonable assistance as may be necessary to enable them to determine the extent to which the Lessee has complied with its obligations in terms of this clause, or has failed to do so. The Lessor shall be entitled at any time to give the Lessee written notice of:

- 29.10.1 remedial measures to be undertaken by the Lessee in order to ensure compliance with its obligations in terms of this clause; and
- 29.10.2 reasonable time periods within which such remedial measures are to be commenced with and/or completed.
- 29.11 The failure by the Lessee to timeously comply with notice given by the Lessor to the Lessee in terms of clause 29.10 shall constitute a material breach of this Lease Agreement.
- 29.12 Without limitation by inference from any other provision contained in this Lease Agreement the Lessee shall generally comply with every environmental law and shall not do anything or omit to do anything on or about the Leased Premises and/or its surrounds that will or is likely to pollute or contaminate the environment or any part thereof.
- 29.13 The Lessor may in its sole and absolute discretion by written notice exempt the Lessee from any or all of the provisions of this clause. Any such exemption shall not be construed as to limit the obligations of the Lessee in terms of any environmental law.

### **30 SERVICES BY LESSOR OR RELEVANT AUTHORITY**

- 30.1 The Lessee shall, save where the Lessee occupies only a portion of the Property, at his own cost, arrange with any government, regional, local or other lawful authority or any utilities provider for the supply of electricity and water, and of sewerage removal, refuse removal and other services that are not or, at the absolute discretion of the Lessor, will not be rendered by the Lessor to the Lessee, but which may be required in respect of any of the activities which are to be carried out in or on the Leased Premises.
- 30.2 Where the premises do not comprise the entire Property, the Lessor shall endeavour to supply a metered electrical connection point within the Leased Premises for use by the Lessee.
- 30.3 Notwithstanding the liability of the Lessee in terms of clause 30.1 above, the Lessee shall be required to make payment to the Lessor in accordance with the provisions of this Main Agreement, which payment shall be in respect of the Lessor's liability to any authority or to any utilities service provider, as the case may be, for the services contemplated in clause 30.1 above.
- 30.4 In the event that the Lessor elects to supply water, electricity, sewerage removal and/or refuse removal services to the Lessee, the Lessee shall be required to make payment to the Lessor of all costs and/or fees in connection with the availability and consumption of water and electricity, or the provision of sewerage removal and refuse removal services, in accordance with the provisions of this Lease Agreement.

## **31 SUPPLY OF ELECTRICITY BY THE LESSOR**

- 31.1 In the event that the Lessor supplies electricity in terms of clause 30.4, the Lessor shall endeavour to maintain an efficient and continuous supply of electricity, but does not guarantee continuity of supply and the Lessee acknowledges that interruptions may take place at any time without prior notice to the Lessee.
- 31.2 The Lessor shall not be liable for any failure or accident or damage that may be caused or sustained directly or indirectly by reason of such failure or generally in relation to supply by the Lessor of electricity.
- 31.3 The electricity supply may only be used by the Lessee for its own purposes and at the Leased Premises.
- 31.4 Should the Lessee lease the entire Property, it shall be responsible for the payment of the electricity deposit required by the supply authority and shall pay the same on demand to the supply authority. Should the Lessor be required to pay the deposit, the Lessee shall refund the Lessor on demand.
- 31.5 Should the electricity installations be damaged as a result of fire or from any other cause, the Lessee must, within 24 (twenty four) hours of it becoming aware of such damage, report such occurrence to the Lessor, irrespective of the nature of the incident and/or the amount involved. The Lessee shall, in addition, be responsible for any excess payable in respect of a claim that may arise in respect of any insurance policy taken out by the Lessor in this regard.
- 31.6 The Lessee shall pay for electricity in accordance with its consumption as measured by the electricity meter/s installed at the Leased Premises and at the prevailing rates and tariffs applicable from time to time. Should the Leased Premises not have a separate meter and should the Lessee request the installation of a separate meter or should the Lessor deem it necessary to install a separate meter, the installation costs and all other costs associated with the installation of such meter shall be paid by the Lessee.
- 31.7 If either Party to this Lease Agreement has reason to doubt the accuracy of any meter reading, it shall be entitled to request that the meter be tested. If it is found that the meter is registering correctly, the cost of such test shall be borne by the Party who requested the test to be carried out. For the purpose of this clause 31 the meter shall be deemed to be registering correctly if the relevant meter readings are accurate within a 5% (five percent) tolerance.
- 31.8 If it is found that the meter is registering incorrectly it shall be assumed that the fault only arose after the last meter reading and the Lessee's account will not be retrospectively adjusted.

- 31.9 The meter/s recording the electricity consumed in accordance with this Lease Agreement shall be read by an authorised representative of the Lessor, and shall take place at such intervals as may be deemed appropriate by the Lessor. Where the readings are not done monthly the Lessee will be provided with an account based on its estimated consumption, with such account being adjusted from time to time on the basis of actual consumption.
- 31.10 The meter/s shall be sealed by an authorised representative of the Lessor. If any unauthorised person interferes with such seals, the Lessor shall have the right to disconnect and withhold the electricity supply until such time as the installation is inspected for defects.
- 31.11 The Lessor reserves the right to reasonably amend the rates and tariffs applicable to the supply of electricity from time to time, provided that the Lessee is given 1 (one) calendar month written notice to this effect and provided that the amended rates and tariffs are within the rates and tariffs set by the relevant authority.
- 31.12 The Lessee shall not interfere or cause any interruption in the electricity supply to any adjacent premises.
- 31.13 Should there be no meter installed to register the electricity consumed by the Lessee, the Lessor shall charge the Lessee its Pro-Rata Share of the costs of electricity consumed within the Property.
- 31.14 The Rental in relation to the Leased Premises shall be inclusive of the Pro-Rata share costs of electricity consumed until such time as a separate meter is installed.

## **32 SUPPLY OF WATER BY THE LESSOR**

- 32.1 In the event that the Lessor supplies water in terms of clause 30.4 above, the Lessor shall endeavour to maintain an efficient and continuous water supply, but does not guarantee continuity of supply and the Lessee acknowledges that interruptions may take place at any time without prior notice to the Lessee.
- 32.2 The Lessor shall not be liable for any failure or accident or damage that may be caused or sustained directly or indirectly by reason of such failure or generally in relation to supply by the Lessor of water.
- 32.3 The water supply supplied by the Lessor may only be used by the Lessee for its own purposes and in relation to the Leased Premises. The Lessee uses the water at its own risk and the Lessor is not responsible should the quality of the water deteriorate, the pressure weakens or become unsuitable for human consumption.

- 32.4 The Lessee shall pay for water in accordance with its consumption as measured by the water meter/s installed at the Leased Premises and at the prevailing rates and tariffs applicable from time to time. Should the Leased Premises not have a separate meter and should the Lessee request the installation of a separate meter or should the Lessor deem it necessary to install a separate meter, the installation costs and all other costs associated with the installation of such meter shall be paid by the Lessee on demand.
- 32.5 In the event of any meter at any time registering incorrectly or ceasing to register at all, the consumption of water shall for the period during which the meter was registering incorrectly or not registering, be based on the average consumption recorded for the 3 (three) preceding months.
- 32.6 If it is found that the meter is registering incorrectly or ceasing to register at all, the consumption of water for the period during which the meter was registering incorrectly or not registering, shall be based on the average consumption recorded for the 3 (three) preceding months.
- 32.7 If it is found that the meter is registering incorrectly it shall be assumed that the fault only arose after the last meter reading and the Lessee's account will not be retrospectively adjusted.
- 32.8 If either Party to this Lease Agreement at any time has reason to doubt the accuracy of the meter readings, it shall be entitled to request that the meter be tested. If it is found that the meter is registering correctly, the cost of such a test shall be borne by the Party who requested the test to be carried out. For the purpose of this clause 32 the meter shall be deemed to be registering correctly if the relevant meter readings are accurate within a 5% (five percent) tolerance.
- 32.9 The meter/s recording the water consumed in accordance with this Lease Agreement shall be read by an authorised representative of the Lessor, which meter readings can take place at such intervals as may be deemed appropriate by the Lessor. Where the readings are not done monthly the Lessee will be provided with an account based on its estimated consumption, with such account being adjusted from time to time on the basis of actual consumption.
- 32.10 The meter/s shall be sealed by an authorised representative of the Lessor. If any unauthorised person interferes with such seals, the Lessor shall have the right to disconnect and withhold the water supply until such time as the installation is inspected for defects.
- 32.11 The Lessor reserves the right to reasonably amend the rates and tariffs applicable to the supply of water from time to time, provided that the Lessee is given 1 (one) calendar month written notice to this effect and provided that the amended rates and tariffs are within the rates and tariffs set by the relevant authority.

- 32.12 The Lessee shall not interfere or cause any interruption in the water supply to any adjacent premises.
- 32.13 Should there be no meter installed to register the water consumed by the Lessee, the Lessor shall charge the Lessee its Pro-Rata Share of the costs of water consumed within the Property.
- 32.14 The Rental in relation to the Leased Premises shall be inclusive of the Pro-Rata Share of water consumed until such time as a separate meter is installed.

### **33 CESSION, SUBLETTING AND OCCUPATION**

- 33.1 The Lessee shall not:
- 33.1.1 cede, assign or delegate any of its rights or duties under this Lease Agreement;
- 33.1.2 sublet the Leased Premises or any part thereof; or
- 33.1.3 place anyone else in occupation of the Leased Premises or any part thereof, on any conditions whatsoever or for any reason whatsoever, without the Lessor's prior written consent, which consent will be determined by the Lessor in its sole discretion.

### **34 RELAXATION OR NOVATION OF LEASE AGREEMENT**

No relaxation or indulgence which the Lessor may permit the Lessee shall in any way prejudice the Lessor's rights in terms of this Lease Agreement and, in particular, no acceptance by the Lessor of Rental or any other payment after due date (whether on one or more occasions), nor any other act or omission by the Lessor, including the rendering of accounts after due date, shall preclude or stop the Lessor from exercising any of its rights in terms of this Lease Agreement. Unless otherwise notified in writing by the Lessor to the Lessee, receipt of any Rental or other payment by the Lessor shall in no way whatsoever prejudice or operate as a waiver, rescission or abandonment of any cancellation effected or right of cancellation acquired prior to such receipt. The Lessor shall be entitled, in its sole discretion, to apportion any amounts received from the Lessee towards the payment of any cause, debt or amount owing by the Lessee to the Lessor.

## **35 INDEMNITY**

35.1 The Lessee shall not have any right, remedy or claim of any nature whatsoever against the Lessor for any loss, damage (whether general, special or consequential), expense or injury which may be suffered by the Lessee, directly or indirectly, arising out of or relating to this Lease Agreement, irrespective of whether or not such loss, damage, expense or injury shall have been caused by the negligence of the Lessor or any person for whose acts or omissions the Lessor is vicariously liable. Without derogating from the generality of the foregoing, the Lessor shall have no liability to the Lessee in respect of any such loss, damage, expense or injury which may be suffered by the Lessee by reason of any latent or patent defect in the Leased Premises, or from any fire in or on the Leased Premises, or any theft from the Leased Premises, or by reason of the Leased Premises or any part thereof being in or falling into a defective condition or state of disrepair, or as a result of any particular repair not being effected by the Lessor either timeously or at all, or arising out of *vis major* or *casus fortuitus*, or arising out of any act of omission of any other lessee of premises of which the Leased Premises might form part or due to a change of the Leased Premises' facade, appearance or any other feature thereof, or arising in any manner whatsoever out of the use of the Leased Premises by any person.

35.2 The Lessee hereby indemnifies the Lessor and each of the Lessor's employees and representatives against any claim of any nature whatsoever which may be made against the Lessor or any such employee or representative by any of the Lessee's servants, employees, agents, invitees, customers, dependants and/or contractors arising out of any event or cause of any action referred to in clause 35.1 above.

## **36 LIMITATION OF LIABILITY**

Notwithstanding any other provision contained in the Lease Agreement, the Parties agree that, in the event of the Lessor being liable to the Lessee in terms of this Lease Agreement (for any reason whatsoever) the liability of the Lessor shall be limited to no more than 3 (three) month's Rental, calculated at the time when such liability arose.

## **37 CHANGE IN LAW**

37.1 Notwithstanding any other provision contained in this Lease Agreement, if the coming into force, adoption, amendment or repeal of any Law ("**Legal Event**") shall make it unlawful or impossible for the Lessor to comply with its obligations contained herein or shall result in the continuation of this Lease Agreement being economically unfeasible or imposing unreasonable hardship on the Lessor, then in each such event the Lessor shall be entitled to give the Lessee written notice ("**Specified Notice**") no later than 6 (six) months following the Legal Event, calling on the Lessee to enter into negotiations with the Lessor in terms of clause 37.2.

- 37.2 Within 7 (seven) days following receipt by the Lessee of the Specified Notice, the Parties shall meet and in good faith endeavour to negotiate terms and conditions to be included in the Lease Agreement in order to accommodate the Law concerned.
- 37.3 If, within 14 (fourteen) days following receipt by the Lessee of the Specified Notice, the Parties fail to negotiate or are otherwise unable to agree in writing on terms and conditions to accommodate the Legal Event concerned, to the satisfaction of the Lessor, this Lease Agreement shall immediately terminate and the provisions of clause 40.3 (*Termination of Lease Agreement*) shall apply *mutatis mutandis*.

### **38 BREACH OF CONTRACT**

- 38.1 Should the Lessee:
- 38.1.1 fail to pay any amount due by the Lessee in terms of this Lease Agreement to the Lessor on due date; or
  - 38.1.2 commit any material breach of this Lease Agreement;
  - 38.1.3 commit any other breach of any term of this Lease Agreement, whether such breach goes to the root of this Lease Agreement or not, and fail to remedy that breach within a period of 7 (seven) Business Days after the giving of written notice to that effect by the Lessor; or
  - 38.1.4 commit 2 (two) or more breaches of any of the terms of this Lease Agreement (whether the same term has been breached or not), within any 3 (three) month period during the term of this Lease Agreement;
  - 38.1.5 commit any act of insolvency; or
  - 38.1.6 fail to co-operate in the BOI by not providing any information as requested by the Lessor and further failing to attend any BOI instituted or commissioned by the Lessor.
- then on the happening of any such event, the Lessor shall be entitled, without prejudice to any other rights which he may have under this Lease Agreement or at common law:
- 38.1.7 to cancel this Lease Agreement on written notice thereof to the Lessee and claim immediate repossession of the Leased Premises; or
  - 38.1.8 to remedy such breach and recover the total cost incurred by the Lessor in doing so from the Lessee, who shall be obliged to pay the amount thereof to the Lessor forthwith; or
  - 38.1.9 to treat the Lessee's tenancy thereafter as a monthly tenancy, terminable by the Lessor on 1 (one) month's prior written notice to the Lessee.

- 38.2 Should the Lessor be in breach of any of its obligations under this Lease Agreement, the Lessee shall be entitled to deliver written notice to the Lessor to rectify such breach within 10 (ten) Business Days (or such longer period as may be reasonably required) after giving written notice to that effect by the Lessee. Under no circumstances will the Lessee be able to claim cancellation of this Lease Agreement as a remedy for a breach by the Lessor. Furthermore, any claim that may be made by the Lessee against the Lessor in terms of this clause 38.2 shall be limited by the terms of clause 36 (*Limitation of Liability*) of this Lease Agreement.
- 38.3 While the Lessee remains in occupation of the Leased Premises and irrespective of any dispute between the Parties, including but not limited to, a dispute as to the Lessor's right to terminate this Lease Agreement:
- 38.3.1 the Lessee shall continue to pay all amounts due to the Lessor in terms of this Lease Agreement on the due dates for such payments;
- 38.3.2 the Lessor shall be entitled to recover and accept such payments;
- 38.3.3 the acceptance by the Lessor of such payments shall be without prejudice to and shall not in any manner whatsoever affect the Lessor's right to terminate this Lease Agreement or to any damages whatsoever; and
- 38.3.4 the Lessee shall, in addition to any other damages or compensation due, be liable for any cost incurred by the Lessor in order to find a new lessee and shall remain liable for the Rental, Operating Costs and all other charges in terms of this Lease until the new lessee's lease agreement commences.

## **39 INTEREST**

- 39.1 Should the Lessee fail to make any payment due in terms of this Lease Agreement on or before the due date, the Lessee shall be liable for the payment of interest on the outstanding amount, compounded monthly and calculated from the due date at a rate of 100 (one hundred) basis points above the prime rate of the bank designated by the Lessor, in its sole discretion, from time to time ("**the Bank**"). The aforementioned rate shall change, from time to time, on the same date as the prime rate changes. A certificate containing details of the applicable prime rate(s) for any appropriate period, signed by a person professing to be a manager of any branch of the Bank, and submitted by the Lessor during any legal proceedings, shall be accepted as prima facie proof as to the correctness of the contents thereof by the Lessee and it agrees to the submission and admissibility of such certificate during any legal proceedings arising from this Lease Agreement.

39.2 In the event of the Lessee failing to pay any amount due to the Lessor, or committing any other breach of the terms and conditions embodied in this Lease Agreement, which results in the Lessor being obliged to instruct its legal advisors or attorneys to collect any such amount, or call upon the Lessee to rectify such breach, or to proceed against the Lessee for any reason, the Lessee hereby accepts liability for and undertakes to pay on demand to the Lessor all collection charges and other legal costs of the Lessor calculated on an attorney and own client basis.

39.3 A certificate signed by a financial manager, director, company secretary, credit manager or internal accountant of the Lessor shall be prima facie proof of the amount of any indebtedness owing by the Lessee to the Lessor at any time and of the fact that the due date of payment of the whole or, as the case may be, any portion of that amount has arrived.

#### **40 TERMINATION OF LEASE AGREEMENT**

40.1 The Lessor shall be entitled to affix on the Leased Premises "TO LET" notices during the 6 (six) month period immediately preceding the Expiry Date of this Lease Agreement.

40.2 The Lessor shall be entitled to exhibit, on behalf of any new lessee of the Leased Premises any notices required in connection with any application for a licence to carry on a business in the Leased Premises during the 1 (one) month period immediately preceding the Expiry Date of this Lease Agreement.

40.3 Upon expiry or earlier termination of this Lease Agreement (for whatever reason) the Lessee shall immediately vacate the Leased Premises and restore possession of the Leased Premises to the Lessor in a good order and condition, fair wear and tear excepted. The costs related to restoring the Leased Premises in terms of this clause 40, shall be for the Lessee's account.

#### **41 VACANT POSSESSION**

At the termination of this Lease Agreement the Lessee agrees that it will give up vacant possession of the Leased Premises to the Lessor. Should the Lessee not hand over the Leased Premises in a vacant state, all costs incurred by the Lessor in obtaining vacant possession of the Leased Premises shall be for the account of the Lessee.

## **42 IMPROVEMENTS BY LESSEE**

- 42.1 The Lessee shall not be entitled to commence with any Improvement at the Leased Premises unless the Lessee has obtained the necessary regulatory approval, the Lessee has furnished the Lessor with written proof of such approval together with any other information that may be requested by the Lessor and the Lessee has obtained the prior written consent of the Lessor to construct such Improvements, which consent may be given by the Lessor in its sole discretion and may be subject to such conditions that the Lessor may impose, from time to time.
- 42.2 The Lessee acknowledges and agrees that the Lessor shall accept no responsibility for any Improvement constructed by the Lessee in terms of this clause 42, notwithstanding any consent that the Lessor may grant the Lessee in terms of clause 42.1 above, or any inspection of the Leased Premises by the Lessor in terms of clause 26 (*Access to Leased Premises*) above.
- 42.3 The Lessee undertakes to abide by all lawful directions of the Lessor relating to precautionary measures that are necessary to protect the Leased Premises and/or Surrounding Property during the construction of any Improvement by the Lessee in terms of this clause 42.
- 42.4 Unless the Lessor otherwise agrees in writing, the Lessee shall not be entitled to remove any Improvement from the Leased Premises. Notwithstanding the foregoing the Lessor may require the Lessee to remove, immediately after the Expiry Date, any Improvements effected by the Lessee to the Leased Premises and to reinstate the Leased Premises to its original condition and to make good all damage occasioned by such removal.
- 42.5 Should the Lessor require the Lessee to leave all Improvements, the parties agree that the Lessor will not compensate the Lessee for the value (if any) of the Improvements undertaken by the Lessee and that the Lessee shall have no lien over the Improvements.
- 42.6 The Lessee hereby indemnifies and holds the Lessor harmless against any loss or damage, howsoever arising, which the Lessor may suffer (including, but not limited to, any claim made by any third party against the Lessor) arising out of or in connection with any Improvement undertaken in terms of this clause 42.

## **43 IMPROVEMENTS BY LESSOR**

- 43.1 The Lessor may at any time effect such Improvements to the Leased Premises as it may deem fit provided that it shall use its reasonable endeavors to minimise disruption to the Lessee's business.

43.2 The Lessee shall not be entitled to any damages or compensation for any loss, damage or inconvenience suffered by the Lessee as a result of any Improvements made to the Leased Premises by the Lessor in accordance with the provisions of this clause 43.

#### **44 REPOSSESSION OF LEASED PREMISES**

44.1 If at any time after the Initial Period, the Leased Premises or any portion thereof, shall be required for the Lessor for any purpose whatsoever, the Lessor may (notwithstanding any provision in this Lease Agreement to the contrary) after having given the Lessee written notice of not less than the Notice of Repossession Period, enter upon the whole or any portion of the Leased Premises or retake possession of the same for such purposes as aforesaid, free of any right, title or interest which the Lessee may have in respect of the Leased Premises.

44.2 Should the Lessor exercise its right in terms of clause 44.1 the Lessee shall be entitled to remove such machinery, plant and ancillary equipment from the repossessed Leased Premises or portion thereof.

44.3 In the event of the Lessor retaking possession of a portion of the Leased Premises, only the Rental and Operating Costs payable from the date of repossession shall be reduced pro-rata by an amount bearing the same ratio to the Rental and Operating Costs that was payable prior to the repossession as the repossessed area bears to the whole area hereby leased.

44.4 Notwithstanding anything to the contrary in this clause 44 it is agreed that should the Lessor seek to retake possession of a portion only of the Leased Premises, but such repossession interferes substantially with the Lessee's use and enjoyment of the Leased Premises or has the effect of rendering the Leased Premises substantially unsuitable for the purpose of the Lessee's business, the Parties shall:

44.4.1 meet and, in good faith, endeavour to agree upon compensation (if any) that may be payable in respect of such repossession; and

44.4.2 in the event that Parties are unable to reach agreement in terms of clause 44.4.1 above, the dispute shall be resolved in terms of clause 51 (*Dispute Resolution*) below.

44.5 The provisions of this clause 44 shall not be applicable during the Initial Period.

## **45 REDEVELOPMENT**

The Lessor may cancel this Lease Agreement without the payment of any compensation to the Lessee, upon giving notice of not less than the Notice of Redevelopment Period to the Lessee, if the Lessor wishes to redevelop or alter the Surrounding Property or any part thereof or to incorporate it into any scheme of redevelopment involving the Leased Premises, provided that this clause 46 shall not be applicable during the Initial Period.

## **46 OWNERSHIP OF IMPROVEMENTS FOLLOWING TERMINATION**

46.1 Any Improvements made to the Leased Premises shall accede to the land and the ownership thereof shall vest in the Lessor without any compensation whatsoever being payable by the Lessor to the Lessee.

46.2 Notwithstanding the provisions of clause 46.1 above, the Lessor shall have the right to:

46.2.1 either retain or, at its sole and unfettered discretion, to order the Lessee, at the Lessee's sole cost, to remove from the Leased Premises any such Improvement; or

46.2.2 in the event that the Lessee fails to comply with an order from the Lessor to remove (or cause to be removed) from the Leased Premises any such Improvement within a reasonable time period, to effect such removal and to thereafter claim for the cost of such removal from the Lessee.

## **47 PLANT, MACHINERY AND ANCILLARY EQUIPMENT**

47.1 The Lessee may, with the prior written consent of the Lessor, which consent shall not be unreasonably withheld or delayed, install on the Leased Premises all such plant, machinery or ancillary equipment as it may reasonably require in relation to its business.

47.2 The Lessee's plant, machinery or ancillary equipment shall be installed:

47.2.1 in a good, proper and workmanlike manner; and

47.2.2 in accordance with the requirements of every applicable law.

47.3 Should the Lessee fail to remove or to complete the removal of any machinery, plant or ancillary equipment upon expiry or earlier termination of this Lease Agreement, the Lessee shall forfeit the right to undertake such removal and shall have no right to claim compensation in respect of such machinery, plant or ancillary equipment, provided that the Lessor may in its sole discretion require the Lessee to undertake or complete such removal. Should the Lessee fail to comply with this requirement, the Lessor may undertake the removal and may dispose of all machinery, plant or ancillary equipment so removed and may recover the cost of such removal and disposal from the Lessee.

47.4 Should the Lessee remain in occupation of the Leased Premises unlawfully after expiry of this Lease Agreement for the purpose of removing any machinery, plant or ancillary equipment, the Lessee shall be liable for the payment of Rental, Operating Costs and all other charges in terms of this Lease Agreement in respect of such period of occupation as well as compensation for any damage or loss suffered by the Lessor as a result thereof.

## **48 FIRE PROTECTION MEASURES**

48.1 If, in the reasonable discretion of the Lessor, the nature of the Lessee's operations on or about the Leased Premises require specific and/or additional fire protection measures to be undertaken or implemented (which may include Improvements to the Leased Premises) then:

48.1.1 the Lessor shall be entitled, in its sole discretion, to give the Lessee written notification of the measures to be undertaken and implemented; and

48.1.2 the Lessee shall as soon as reasonably possible implement such measures.

48.2 The provisions of this clause 48 are in addition and without prejudice to the requirements of any local or competent authority in terms of any law with regard to fire protection measures.

48.3 The Lessee shall have no claim against the Lessor if it fails to notify the Lessee of any fire protection measures to be undertaken and/or if any such measures, if undertaken, subsequently prove to be inadequate. The provisions of this clause 49 are imposed strictly for the benefit of the Lessor and do not confer any rights of whatever nature upon the Lessee.

48.4 The Lessee indemnifies the Lessor against:

48.4.1 any loss or damage that may be suffered by the Lessor; and/or

48.4.2 any claim of whatever nature that may be brought against the Lessor by any third party,

arising from or in connection with any fire occurring on or about the Leased Premises, whether or not the Lessee has complied with all or any of its obligations arising from this clause 48.

## **49 DAMAGE AND DESTRUCTION**

- 49.1 Should any damage to, or destruction of, the whole of the Leased Premises take place, the Lessee shall have no claim whatsoever against the Lessor, irrespective of the cause or nature of such damage or destruction. The Lessor shall be entitled, within 30 (thirty) days after such damage or destruction, to decide whether or not to terminate this Lease Agreement and shall notify the Lessee of its decision in writing within such period. Should the Lessor not notify the Lessee of its decision within such period, it shall be deemed to have elected to terminate this Lease Agreement.
- 49.2 Should the Lessor elect or be deemed to have elected to terminate this Lease Agreement, the Lessee shall have no claim of any nature whatsoever against the Lessor as a result of such termination, but shall not be liable for the payment of Rental, Operating Costs or other charges from the date of such damage or destruction.
- 49.3 Should the Lessor elect not to terminate this Lease Agreement:
- 49.3.1 the Lessor shall reinstate the Leased Premises, at its own cost as soon as is reasonably possible;
- 49.3.2 the Lessee shall not be liable for the payment of Rental, Operating Costs or other charges for as long as it is deprived of beneficial occupation of the Leased Premises;
- 49.3.3 the Lessee shall re-take beneficial occupation from time to time of any part of the Leased Premises which has been reinstated and the provisions of this Lease Agreement shall *mutatis mutandis* apply to such occupation and the Lessee shall make payment of the Rental, Operating Costs or other charges in terms of this Lease Agreement on a *pro rata* basis; and
- 49.3.4 the period of this Lease Agreement shall, at the option of the Lessee, be extended by the period during which the Lessee is deprived of beneficial occupation of the whole of the Leased Premises.
- 49.4 Should any portion (but not the whole) of the Leased Premises be damaged or destroyed by any cause whatsoever, the Lessor shall be entitled within 30 (thirty) days after such damage or destruction, to decide whether or not to terminate this Lease Agreement and shall notify the Lessee of its decision in writing within such period. Should the Lessor not notify the Lessee of its decision within such period, it shall be deemed to have elected to terminate this Lease Agreement.
- 49.5 Should the Lessor elect not to terminate this Lease Agreement, then

- 49.5.1 the Rental, Operating Costs or other charges payable by the Lessee shall be reduced *pro rata* to the extent of infringement upon the Lessee's right of beneficial occupation;
- 49.5.2 the Lessor shall repair the damaged or destroyed portion of the Leased Premises at its own cost as soon as is reasonably possible; and
- 49.5.3 the Lessee shall have no claim whatsoever against the Lessor irrespective of the cause or nature of such damage or destruction.
- 49.6 In the event that the total or partial destruction is caused by any wilful act or omission of the Lessee, then (notwithstanding the provisions of this clause 49) the Lessee shall not be able to invoke the above protections and shall be liable to the Lessor for the full sum of damages sustained by it as a result of the aforesaid wilful act or omission.

## **50 JURISDICTION OF COURT**

The Lessee hereby consents to the jurisdiction of the Magistrates' Court for the purpose of any proceedings in terms of or incidental to this Lease Agreement, provided that either Party, may in its discretion institute proceedings in any division of the High Court having jurisdiction and in that event the costs shall be determined on the scale applicable to the High Court.

## **51 DISPUTE RESOLUTION**

- 51.1 Subject to any other dispute resolution procedure provided for in this Main Agreement, should any dispute or claim arise between the Parties ("**the Dispute**") concerning this Lease Agreement, the Parties shall endeavour to resolve the dispute by negotiation.
- 51.2 If the Dispute has not been resolved by such negotiation within 5 (five) Business Days, then the Lessor shall have the right to submit the Dispute to arbitration to be administered by the Arbitration Foundation of Southern Africa ("**AFSA**") or its successor, upon such terms as agreed between the Parties and the secretariat of AFSA, or failing such agreement, upon such terms as determined by the secretariat of AFSA.
- 51.3 Unless otherwise agreed in writing by both Parties, any such arbitration in terms of this clause 51 shall be held in the magisterial district within which the Leased Premises are situated.
- 51.4 Notwithstanding anything to the contrary contained in this clause 51, either Party shall be entitled to apply for and if successful, be granted, an interdict from any competent court having jurisdiction.

51.5 This clause 51 constitutes an irrevocable consent by each of the Parties to any proceedings in terms hereof, is severable from the rest of the Lease Agreement and shall, notwithstanding the termination of the Lease Agreement, remain in full force and effect.

## **52 SURETYSHIP**

If required in terms of *Annexure "A"* for the purposes of securing the obligations of the Lessee in terms of this Lease Agreement, the Lessor may require the Lessee, on the Signature Date, to deliver to the Lessor a deed of suretyship which must comply with the provisions of *Annexure "D"*.

## **53 COSTS**

Any incidental and other costs in relation to this Lease Agreement, including costs payable in connection with any renewal or extension of this Lease Agreement, shall be borne by the Lessee and shall be paid upon demand.

## **54 DOMICILIUM**

54.1 For the purposes of this Lease Agreement, including the giving of notices and the serving of legal process:

54.1.1 the Lessor chooses the Lessor's Domicilium as its domicilium citandi et executandi; and

54.1.2 the Lessee chooses the Lessee's Domicilium as its domicilium citandi et executandi.

54.2 A Party may at any time change its domicilium by notice in writing, provided that the new domicilium is in the Republic and consists of, or includes, a physical address at which process can be served.

54.3 Any notice given in connection with this Lease Agreement shall:

54.3.1 be delivered by hand; or

54.3.2 be sent by prepaid registered post; or

54.3.3 be sent by fax or e-mail, to the domicilium chosen by the Party concerned.

54.4 A notice given as set out above shall be deemed to have been duly given, unless the contrary is proved:

54.4.1 if delivered by hand: 1 (one) Business Day after delivery;

54.4.2 if sent by post: 14 (fourteen) Business Days after posting; and

- 54.4.3 if sent by fax or e-mail: on the Business Day following the day on which it was transmitted.

## **55 CONFIDENTIALITY**

- 55.1 Notwithstanding the cancellation or termination of this Lease Agreement, neither Party shall, at any time after the conclusion of this Lease Agreement, disclose to any person or use in any manner whatsoever any of the other Party's Confidential Information or disclose the existence or contents of this Lease Agreement, provided that:
- 55.1.1 the receiving Party may disclose the other Party's Confidential Information and the existence and contents of this Lease Agreement to, and permit the use thereof by, its employees, representatives and professional advisors to the extent strictly necessary for the purpose of implementing or enforcing this Lease Agreement or obtaining professional advice or conducting its business. The Parties agree that any disclosure or use by any such employee, representative or advisor of such Confidential Information for any other purpose shall constitute a breach of this clause 56 by the Lessee;
- 55.1.2 the provisions of this clause 55 shall cease to apply to any Confidential Information of any Party which:
- 55.1.2.1 is or becomes generally available to the public other than as a result of breach by either Party of its obligations in terms of this clause 55;
- 55.1.2.2 is also received by the receiving Party from a third party who did not acquire such Confidential Information subject to any duty of confidentiality in favour of the other Party; or
- 55.1.2.3 was known to the receiving Party prior to receiving it from the other Party.

## **56 SEVERABILITY**

Should any provision of this Lease Agreement (including any annexures) become unenforceable, such provision shall be severed from this Lease Agreement and the remaining provisions shall be of full force and effect.

## **57 AGENT'S COMMISSION**

The Lessee warrants that no agent was the effective cause of this Lease Agreement and indemnifies the Lessor against any claim for commission by any agent who may claim to have been the effective cause of this Lease Agreement.

**58 STIPULATIO ALTERI**

No part of this Lease Agreement shall constitute a *stipulatio alteri* in favour of any person who is not a Party to this Lease Agreement.

**59 GOVERNING LAW**

This Lease Agreement shall be governed by and construed in accordance with the laws of the Republic.

**60 SIGNING OF LEASE AGREEMENT**

60.1 The signing of this Lease Agreement by or on behalf of the Lessee shall constitute an offer to hire the Leased Premises on the terms and conditions contained in this Lease Agreement, which offer shall remain irrevocable for a period commencing on the date of receipt of the signed offer to hire and shall be available for acceptance by the Lessor for the duration of the Offer Period.

60.2 Signing by or on behalf of the Lessor shall constitute its acceptance of the offer. The Lessor shall, however, notify the Lessee of the acceptance of the offer although such notification shall not be construed as acceptance.

60.3 No lease agreement shall exist between the Lessor and Lessee until this Lease Agreement has been duly signed by or on behalf of the Lessor.

**61 ANCILLARY AGREEMENTS**

61.1 The Parties wish to record that they intend entering into the Ancillary Agreements listed in *Annexure A* in order to regulate services that are ancillary to this Lease Agreement.

61.2 The Parties agree that the terms and conditions of any Ancillary Agreement shall, in so far as this is possible, correspond with the terms and conditions contained in this Lease Agreement, in particular the provisions dealing with the period of the Ancillary Agreements.

61.3 In the event of any conflict between the provisions of this Lease Agreement and/or any Ancillary Agreement, the provisions of this Lease Agreement shall prevail.

**62 WHOLE AGREEMENT**

62.1 This Lease Agreement (including all annexures attached to this Lease Agreement) contains the entire agreement between the Parties hereto and no conditions, warranties or representations made by any Party shall be of any force and effect, unless it is in writing and signed by both the Lessee and Lessor.

62.2 No officer, agent or representative of either Party shall have any authority to make representations, statements or warranties that are not expressed herein, unless the same are made in writing and signed by a duly authorised person. No waiver by any Party of any of the terms of this Lease Agreement, or of a breach of any of the provisions thereof, shall be deemed to be a waiver thereafter of any such terms or of any succeeding breach.

62.3 No amendment, addition or cancellation of this Lease Agreement shall be of any force or effect unless it is reduced to writing and signed by the Parties or their duly authorised representatives.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_

**As witnesses:**

**For the Lessor**

1. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ who warrants that he/she is duly authorised to sign this Lease Agreement

**Name:**

2. \_\_\_\_\_

**Designation:**

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_

**As witnesses:**

**For the Lessee**

1. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ who warrants that he is duly authorised to sign this Lease Agreement

**Name:**

2. \_\_\_\_\_

**Designation:**