



## MASTER AGREEMENT

in respect of the provision of

**PHYSICAL SECURITY SERVICES FOR TRANSNET NATIONAL PORTS  
AUTHORITY (TNPA), AT THE PORT OF CAPE TOWN FOR A PERIOD OF TWENTY- FOUR (24) MONTHS**

entered into by and between

### **TRANSNET LIMITED**

Registration Number 1990/000900/06

A public company with limited liability and duly incorporated in compliance with the company laws of  
the Republic of South Africa

(hereinafter referred to as the "**Client**")

and

.....  
Registration Number \_\_\_\_\_

(hereinafter referred to as the "**Contractor**")

**Agreement Number** .....

**GENERAL TERMS AND CONDITIONS**

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**ANNEXURES TO THE AGREEMENT:**

Schedule A	Contractor details, commencement date & duration, addresses
SLA	Service Level Agreement ("Individual Agreement")
Annexure A	Work Documents (Annexure B - Site Specific Resource Requirement to the SLA)
Annexure B	SLA Performance Balanced Scorecard (annexure to the SLA)

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**WHEREAS** the Client desires to obtain the Security Services of professionally trained and duly qualified security officers from the Contractor to perform Security Services on the property of the Client and its operating divisions, and

**WHEREAS** the Contractor is willing and able to render these Security Services to the Client,

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

**1. INTERPRETATIONS AND DEFINITIONS**

**1.1. INTERPRETATIONS:**

- 1.1.1 Headings to clauses are inserted for convenience only and shall not be used in interpreting this Agreement.
- 1.1.2 Unless the context clearly indicates a contrary intention, an expression which denotes
  - 1.1.2.1 any gender includes the other gender;
  - 1.1.2.2 a reference to a natural person shall include a legal entity and vice versa; and
  - 1.1.2.3 the singular shall include the plural and vice versa.

**1.2 DEFINITIONS:**

- 1.2.1 “**ad hoc service**” means a temporary Security Service or for a specific purpose only;
- 1.2.2 “**Agreement**” means this document together with all the annexures hereto, the Tender documents and the Individual Agreement;
- 1.2.3 “**Authorised Officer**” means any person authorised by the owner of any public premises or any public vehicle to act in terms of the provisions of section 2 of the Control of Access to Public Premises and Vehicles Act, 53 of 1985;
- 1.2.4 “**Business Unit**” means an operating division of the Client;
- 1.2.5 “**Controlling Officer**” means the person, nominated by a Business Unit of the Client, as its delegated authority to represent the Client’s interests in relation to the Service(s) to be provided by the Contractor in terms of this Agreement. The Client’s Controlling Officer shall be responsible for all key decisions and directives as may be required from time to time with regard to the ongoing provision of such Services by the Contractor. The Controlling Officer shall include any other person designated by the Controlling Officer;

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- 1.2.6 “**Declaration Register**” means the written record at a Client Site of any item(s) which a visitor to the Site declares to have on his/her person, including laptops and cell phones, prior to being permitted access to the premises;
- 1.2.7 “**Deployment Area**” means any area within a Site which is identified and controlled by the Client where security officers will be deployed to render the Security Service;
- 1.2.8 “**Effective Date**” means the commencement date of the Security Service(s);
- 1.2.9 “**Incident**” includes but is not limited to any breach of security, unauthorised persons gaining access to the Site, unauthorised third party motor vehicles in the Site, bomb threats, suspicious persons or activity in or in the immediate vicinity of the Site, discovery of unattended and / or unknown and / or suspicious packages on the Site, breach of perimeter fencing at the Site, evidence of tampering with the Clients, equipment and security systems, theft and pilferage of Client’s property and/ or third party property, illegal possession of and/or smuggling of narcotic substances, firearms, counterfeit and any other illegal or contraband goods, loss or damage to or destruction of Client’s assets or property or third party property, hijacking or seizure of the Client’s property including but not limited to facilities, equipment, vehicles and buildings and / or any death or injury to a person resulting from any action in an attempt to execute an incident;
- 1.2.10 “**Individual Agreement**” means an Individual Service Level Agreement (SLA) entered into between the Client and the Contractor in respect of the Client’s Business Units;
- 1.2.11 “**ISPS Code**” means the International Ship and Port Facility Security Code, as enacted into South African Law by the Merchant Shipping (Maritime Security). Regulations, 2004;
- 1.2.12 “**LDV**” means a light delivery vehicle;
- 1.2.13 “**NKPA**” means the National Key Points Act, 102 of 1980;
- 1.2.14 “**NQF**” means National Qualifications Framework;
- 1.2.15 “**Parties**” mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 1.2.16 “**Party**” means either one of these Parties;
- 1.2.17 “**Persistent Minor Breach**” means 5 (five) consecutive occurrences, over a period of 6 (six) months, in respect of the same or similar minor breaches (as defined in the Individual Agreements) which relate to non-compliance and/or accumulation of penalties by the Contractor;

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- 1.2.18 “**PSIRA**” means the Private Security Industry Regulatory Authority;
- 1.2.19 “**SASSETA**” means the Safety & Security Sector Education and Training Authority;
- 1.2.20 “**security officer/s**” means the Contractor’s employees including but not limited to security guards (all grades), security supervisors, security inspectors and area managers;
- 1.2.21 “**Security Service(s)**” means one or more Security Services or activities as contemplated in the Private Security Industry Regulation Act;
- 1.2.22 “**Site**” means any Transnet area or premises where Security Services are required as determined by the Client;
- 1.2.23 “**Supervising Inspector**” means a shift supervisor (who is at least at a Grade B level) appointed by the Contractor as such;
- 1.2.24 “**Tax Invoice(s)**” has the meaning given to that term in the Value-Added Tax Act, 89 of 1991;
- 1.2.25 “**Termination Date**” means date of expiry of this Agreement;
- 1.2.26 “**Transtel**” means the Client’s telecommunication service provider;
- 1.2.27 “**VAT**” means Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991; and
- 1.2.28 “**Work Document**” means the annexure attached to the Contractor’s Individual Agreement detailing the Sites and the Deployment Area for which Security Services are required, related Security Services, resources and applicable rates.

## **2. THE SCOPE OF THE AGREEMENT**

- 2.1 This Agreement is an umbrella agreement for the provision of the Security Services at the Sites to be agreed upon between the Parties. The Contractor and the Client shall hereinafter enter into Individual Agreements in respect of Business Units of the Client for particular individual Sites where Security Services are to be provided under the terms and conditions of this Agreement together with any special conditions required by the Client and included in the Individual Agreement(s).
- 2.2 The Security Services to be provided by the Contractor are as outlined in the Request for Proposal (RFP) issued by the Client, and as specified in the Contractor’s Individual Agreement and Work Document, which shall form an integral part of the Individual Agreements.

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- 2.3 In the event of any conflict between the provisions of any Individual Agreement and this Agreement, the provisions of this Agreement shall take precedence. However, the Parties may agree that certain provision(s) of the Individual Agreement shall prevail over this Agreement.

### **3. COMMENCEMENT AND TERMINATION DATE**

Notwithstanding the date of signature of this Agreement, it shall commence on the Effective Date and shall continue to operate until the Termination Date as stated in Schedule A of this Agreement, unless terminated by the Client in terms of clause 30 (*Termination / Cancellation*) of this Agreement.

### **4. PRICE AND PAYMENT**

- 4.1 The amount payable by the Client to the Contractor in respect of the Security Services shall be in accordance with the Work Document and shall exclude Value Added Tax which shall be reflected separately on the Tax Invoices.
- 4.2 The Contractor shall, in the first week of each calendar month, submit to the Client an original Tax Invoice in respect of each Site (if applicable), to be certified by both the Contractor and the Client as correct, specifying the Security Service rendered during the previous calendar month and detailing the amount due and payable to the Contractor. The invoice must include full details of the pricing scheduled agreed as part of this agreement (individual line items).
- 4.3 Payment shall not be effected unless the Contractor submits credit notes with the Tax Invoices in respect of short-postings or non-compliance with any of the provisions of the Individual Agreement.
- 4.4 Payment for the Security Services shall be made by the Client to the Contractor within 30 (thirty) days from the date that the Tax Invoice is certified as correct, as envisaged in clause 4.2 above.
- 4.5 Notwithstanding the provisions of clause 4.2 above, should either of the Parties be of the view that underpayments or overpayments were made in respect of invoices paid in respect of the Security Services, it shall notify the other in writing of such underpayment or overpayment:
- 4.5.1 The Parties are entitled to conduct a reconciliation process before any amount is paid to a Party as a result of the underpayment or overpayment.
- 4.5.2 The payment or credit note resulting from the underpayment or overpayment shall be made within 30 (thirty) days after the Party has been notified of the underpayment or overpayment.

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- 4.6 Should the Client require additional Security Services on an ad hoc basis in terms of this Agreement, the Contractor shall provide such Security Services at the rates per shift as specified in the Work Document.
- 4.7 The rates tendered for armed security officers exclude firearms and ammunition, but shall include (SABS approved) bullet-proof vests for such security officers.
- 4.8 In the event of an increase in the Contractor's labour costs resulting from any statutory wage determination or provision binding the Contractor in respect of wages of security officers:-
- 4.8.1 the Parties shall negotiate such price increase;
- 4.8.2 should the Parties fail to agree on the increase, the sectoral determination by the Minister of Labour for the Private Security Industry shall determine the necessary increase in respect of the labour cost component only, and the said determination shall be final and binding on both Parties; and
- 4.8.3 the payment by the Client of any part of the contract price for any particular Security Service(s) rendered in respect of any particular Site or during any particular period does not constitute evidence or an admission by the Client that the Security Services have been satisfactory performed or during the required period and in accordance with this Agreement.

## **5. PROVISION OF SECURITY SERVICE(S)**

- 5.1 The Contractor shall:
- 5.1.1 provide all Security officers and supervision necessary for the proper, efficient and economic performance of the Security Service and shall ensure that such performance is carried out in such a way that it will enable the Client to secure its assets, infrastructure, employees and all the Client's authorised third parties within the Sites, third party property and information, details of which the Contractor has full knowledge of;
- 5.1.2 provide the necessary equipment as agreed to in writing between the Parties in accordance with the Individual Agreement and/or from time to time, which, at all times, shall be in good condition and working order, to enable Security officers to perform their duties in terms of this Agreement.
- 5.1.3 ensure that all of its security officers comply fully with the prescribed standard terms and conditions for all third parties entering the Client's Sites, the Client's operational and security procedures and policies, as they may be amended from time to time by the Client in its sole discretion, with the details all of which the Contractor hereby confirms that it is fully and effectively acquainted with;

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- 5.2 The Contractor shall provide the Security Service(s) to the Client as outlined in the Work Documents in respect of specific Sites referred to in the Individual Agreement.
- 5.3 The Contractor shall provide the necessary equipment as specified in the Individual Agreement, or as agreed in writing between the Parties from time to time, which, at all times, shall be clean and in good working order and good condition, including but not limited to firearms, handcuffs, batons, radios, pocket books, visitors' register, Declaration Register, lost and found register, occurrence books, pens, torches, wrist watches, reflector jackets and personal protective equipment to enable security officers to perform their duties in terms of this Agreement.
- 5.4 All original pages of books, registers or other documents used in the supply of the Security Service(s) shall immediately after they are full become the property of the Client, and shall be handed to the Client, against a signature recording receipt, for safe keeping and record purposes. The Client reserves the right to provide its own stationery to the Contractor for such use on its Sites.
- 5.5 The Contractor shall only increase or decrease the number of resources and quantities of equipment provided for in terms of this Agreement with prior written consent of the Controlling Officer, failing which the Client shall not be liable to pay the Contractor's costs for additional resources or equipment, and shall impose the necessary penalties resulting from the provision of insufficient resources or equipment as stipulated in clause 24 (*Penalties*) of this Agreement.
- 5.6 The Client may from time to time and in writing require ad hoc additional Security Service(s) from the Contractor under the same terms and conditions of this Agreement and where applicable in terms of the Individual Agreements.
- 5.7 The additional Security Services required in terms of clause 5.5 shall be provided for a period and within the time agreed upon by the Client and the Contractor.
- 5.8 The Contractor shall provide additional security officers within 2 (two) hours from the time of receipt of a written request for additional Security Services or within such other times as the Parties may agree from time to time.
- 5.9 Should operational requirements require amendments to the Security Services, the Controlling Officer may from time to time request in writing such amendments to the Security Services, as set out in the Work Document, which amendments shall be agreed and signed by both Parties.
- 5.10 The Contractor shall render the Security Service(s) in accordance with relevant legislation and in particular in accordance with the provisions of the Private Security Industry Regulation Act and the Code of Conduct for Security Service Providers published in terms of the said Act.

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- 5.11 In the event of the Controlling Officer not being satisfied with the performance of any of the security officers provided by the Contractor in terms of this Agreement, the Client shall notify the Contractor in writing to forthwith remove that security officer and provide an equivalently qualified and trained substitute. The Client shall furnish the reasons for its dissatisfaction to the Contractor in writing, provided the Parties shall keep these reasons confidential between themselves, unless agreed to the contrary in writing. The security officer so removed and replaced at the Client's request shall thereafter not be used for the provision of further Security Services to any other Business Unit of the Client.

## **6. PROVISION OF SECURITY OFFICERS AND OCCURRENCE OF INCIDENTS**

- 6.1 The security officers provided in terms of this Agreement for the duration of this Agreement, shall be registered with PSIRA and where applicable, with the National Key Points Secretariat as well, in terms of the NKPA and all other applicable laws.
- 6.2 Certified copies of the relevant certificates shall be submitted by the Contractor to the Client as proof of the security officers' registration with PSIRA and other relevant authorities, on or before the Effective Date.
- 6.3 The Client requires, as mandatory and material to this Agreement, that the Contractor provides current non-criminal clearances (automated fingerprint identification) for each and every security officer to be deployed by the Contractor to all Client Sites. In this regard the Contractor shall provide such certification on the following basis:
- 6.3.1 The only acceptable certification will be that which has been issued by an official service provider appointed by the SAPS for the provision of this service or by the SAPS.
- 6.3.2 Each certificate is valid for 12 (twelve) months only, whereafter it must be renewed prior to the expiry date of any such existing certification for a security officer.
- 6.3.3 All costs for the production of non-criminal clearance certificates shall be borne by the Contractor.
- 6.4 Should the Client so require, the Contractor shall also provide a current Commercial Clearance Certificate (credit check) to the Client, in respect of security officer(s) at a specific Site or in respect of a specific security officer. All costs for the production of commercial clearance certificates shall be borne by the Contractor.
- 6.5 The Contractor shall only employ and post South African citizens or persons who have permanent resident status in South Africa for the performance of Security Services in terms of this Agreement and in accordance with PSIRA requirements.

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- 6.6 When required to carry firearms by the Client, the Contractor shall only deploy such security officers required to carry firearms who are licensed to do so in terms of the Firearms Control Act, 60 of 2000.
- 6.7 The Contractor is responsible for the cost of the vetting of all its security officers required for duty at National Key Points and must price this Security Service accordingly. The number of security officers required can be found in the schedule of quantities. However, it is the Contractor's responsibility to have sufficient vetted security officers in reserve to replace other vetted security officers on short notice.
- 6.8 The Contractor is responsible for all its employees to be deployed to the Client's Sites in terms of this Agreement to undergo medical examinations which shall without limitation, include an eye examination by a registered optometrist and audiometric testing by a registered audiologist at the outset of the Agreement. This is to be finalised within the first month of the Agreement. The Client may withhold 10% (ten percent) of the monthly contract value for each month that the medical examinations have not been completed for all the Contractor's employees deployed in terms of this Agreement and the medical certificates/reports have been handed to the Controlling Officer of the Client.
- 6.8.1 Should the Contractor fail to complete the medical examinations as stipulated above prior the Agreement, the Contractor will be considered in breach of this Agreement, and the provisions of clause 29 (*Breach*) will apply.
- 6.8.2 Between the fourth last month and the second last (penultimate) month of the Agreement, an exit medical examination is to be carried out. The Contractor is to provide the Client with copies of all records (medical certificates/reports) as well as keeping such records for the prescribed period in law. 20% (twenty percent) of the final month's payment will be withheld until the Contractor has complied with this provision.
- 6.8.3 The Client reserves the right to monitor this process.
- 6.9 The security officers, at the Contractor's cost, shall be required to attend an induction course and any other training in terms of clause 8 (*Training of Security Officers*) of this Agreement.
- 6.10 The security officers shall perform their duties from Mondays to Sundays from 18:00 to 06:00 and/or from 06:00 to 18:00 or at such other times as may be required by the Client from time to time in respect of any particular Site.
- 6.11 The Contractor shall post the security officers for duty at Sites indicated by the Client. These nominated Sites may vary from time to time according to the operational requirements of the Client.

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- 6.12 The Contractor shall ensure that security officers report for duty at the required time and that the security officers remain at their posts for the agreed length of time, remaining vigilant, awake and alert whilst on duty.
- 6.13 The Contractor shall take adequate steps to test its security officers in order to ensure that the security officers whom it deploys at the Client's Sites are not under the influence of alcohol or a drug having a narcotic or other detrimental effect, failing which a penalty in terms of clause 24 (*Penalties*) of this Agreement shall be levied by the Client against the Contractor.
- 6.14 For the purpose of clauses 6.12 and 6.13 and any other relevant clauses, the Client shall be entitled to monitor the security officers in terms of clause 28 (*Monitoring and Testing of Security Officers*) of this Agreement.
- 6.15 The Contractor's Supervising Inspector posting the security officers per Site shall make an entry in the relevant Site occurrence book confirming the posting details of each security officer and confirming that the security officers are competent for duty and not under the influence of alcohol or a drug as contemplated in clause 6.13 above and thereafter confirm this in writing by inserting his or her name and surname in block letters and then append his or her signature against such entry. Failure to adhere to this procedure shall be construed as self-posting, and the Client shall be entitled to levy a penalty in accordance with the provisions of clause 24 (*Penalties*) of this Agreement.
- 6.16 The Contractor shall:-
- 6.16.1 on or before the Effective Date, furnish the Client in writing with the information, as the Client may direct, of all its security officers it intends to deploy at the Client's Sites in terms of this Agreement;
- 6.16.2 certify this information as being true and correct and shall, at all times during the term of this Agreement, be kept up to date by the Contractor. The Contractor shall confirm, on a monthly basis, the correctness of the information by issuing a certificate in this regard to the Client. This information shall be furnished both manually and in electronic format to the Client; and
- 6.16.3 advise the Client of any changes to the information given to the Client in terms of clause 6.16.1 above.
- 6.16.4 A detailed Site file for each employee will be maintained and kept on site by the contractor.
- 6.17 Should it be necessary to post a replacement officer onto a Site, the particulars of the security officer in question shall be provided, in writing, to the Client. Such replacement security officer shall comply with all the requirements that security officers are required to comply with, and the associated penalties in terms of clause 24 (*Penalties*) of this Agreement shall apply in the case of non-compliance.

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- 6.18 In the event of an Incident occurring at any Site where security officers are posted as contemplated in this Agreement, the Contractor shall be legally liable for any claims or damages incurred as a consequence of such Incident.
- 6.19 The Contractor shall provide the Client with a correct and accurate daily shift posting sheet, failing which the Client shall be entitled to levy penalties in terms of clause 24 (*Penalties*) of this Agreement. For the purposes of control the Client may register the security officers on its Time and Attendance System.
- 6.20 The Contractor shall be held liable for the loss of or damage to any of the client's security buildings and equipment where the contractor's guards are deployed and where these are in use. This can include, but not limited to guard tracking and/or monitoring system, electronic visitor registration handheld units, electronic access cards, etc.
- 6.21 Pursuant to clause 6.20 above, when such is damaged or lost, the Contractor shall immediately report such damage or loss to the Client in writing.
- 6.22 The client will provide the contractor with the full replacement or repair invoice and such cost shall form part of the credit notes for the month.

## **7 SUPERVISION OF SECURITY OFFICERS**

- 7.1 The Security Service shall be rendered by the security officers under the supervision of a competent and qualified Supervising Inspector, whose details shall be provided by the Contractor to the Client on or before the Effective Date of this Agreement or prior to the provision of the Security Service(s), as the case may be.
- 7.2 The Supervising Inspector shall be required to carry out proper supervision of the security officers by means of regular visits during their hours of duty, which shall be a minimum of two visits per Deployment Area per Site per shift. The purpose and outcome of the visits shall be agreed upon between the Contractor and the Client in the Individual Agreement.
- 7.3 The Contractor's Supervising Inspector shall:-
- 7.3.1 record such visits with a red ball-point pen in his or her occurrence book as well as in the pocket books of the security officers so visited;
  - 7.3.2 fully record all the findings made and also the steps taken to ensure compliance with the provisions of this Agreement; and
  - 7.3.3 ensure that his or her occurrence book is available, at all relevant times at the Site where the Security Service is provided, for purposes of inspection by the Client.
- 7.4 Subject to the requirements of the Client, the Contractor shall take command of as well as control of the deployment of security officers on a daily basis, at the Client's designated Sites, in order to ensure effective and uninterrupted protection of the assets of the Client.

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## **8. TRAINING OF SECURITY OFFICERS**

- 8.1 The Contractor shall on or before the Effective Date provide the Client with necessary proof of the qualifications of and the training undergone by all the security officers, before the Client shall permit the Contractor to commence with the Security Service(s) and the deployment of its security officers.
- 8.2 Acceptable proof of qualification referred to in clause 8.1 shall be:-
- 8.2.1 An NQF or equivalent qualification or proof of relevant experience;
  - 8.2.2 **valid** registration certificate issued by PSIRA commensurate to the grade occupied;
  - 8.2.3 where applicable, NKPA registration;
  - 8.2.4 A valid commensurate DH level dog handler certificate for each officer required to perform this function.
  - 8.2.5 proof of SAPS issues Firearm competency certificate and or SASSETA training relating to firearms to be provided to the Client upon its specific request; and
  - 8.2.6 proof that the security officer has undergone ISPS Code training from an accredited or reputable institution, where applicable.
- 8.3 The Contractor shall ensure that its security officers undergo retraining/refreshers training as may be required by applicable legislation and/or every 6 (six) months in a particular year or at such intervals as may be agreed upon between the Contractor and the Client, from time to time.
- 8.4 All training and retraining requirements associated with this Agreement shall be for the account of the Contractor and shall be conducted by accredited training institutions.
- 8.5 Before any security officer commences with his or her duties in terms of this Agreement, he or she must attend an induction course, arranged by the Client, which is intended to acquaint each security officer with the safety requirements and operational environment at the Sites of the Client. The Contractor shall be responsible for the remuneration of its security officers during their attendance at such an induction course.

## **9. REMUNERATION OF SECURITY OFFICERS**

- 9.1 The Contractor shall acquaint itself with and shall give full effect to the provisions of all sectoral determinations made by the Minister of Labour for the Private Security Sector and/or statutory enactments which may be in force, affecting conditions of employment of the security officers during the term of the Agreement. The Contractor shall, when called upon to do so by the Client, produce proof showing that the provisions of such determinations are being complied with.

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- 9.2 Where any sectoral determination for the Private Security Sector or statutory enactment in operation at the Effective Date ceases to apply before the expiry of this Agreement and is not extended or substituted by another sectoral determination or statutory enactment, the Contractor shall continue to conform to the conditions of employment laid down in such lapsed sectoral determination or statutory enactment, unless otherwise agreed to by the Client in writing.
- 9.3 Where no sectoral determination for the Private Security Sector or statutory enactment exist at the Effective Date of this Agreement, the remuneration to be paid and the other terms and conditions to be provided by the Contractor to the security officers shall be fair and reasonable, provided that should a sectoral determination for the Private Security Sector or statutory enactment come into operation at any time during the term of the Agreement, the remuneration and conditions of employment stipulated under such sectoral determination for the Private Security Sector or statutory enactment shall apply to this Agreement from the date that such determination or enactment comes into operation.
- 9.4 When called upon to do so by the Controlling Officer, the Contractor shall produce proof that all remuneration due to its security officers has been paid and that all benefits, in accordance with any sectoral determination for the Private Security Sector, have been provided.
- 9.5 Where it is found that a Contractor is paying its security officers less than the prescribed remuneration, the Client shall be entitled to terminate this Agreement with immediate effect and shall further be entitled to claim damages suffered as a result of such termination. Where it is found that the Contractor is making unlawful deductions from the security officer/supervisor, the Client shall be entitled to terminate the Agreement with immediate effect and shall be further entitled to claim damages suffered as a result of such termination.
- 9.6 The Contractor undertakes that:-
- 9.6.1 it shall remain solely responsible for payment of all costs of the security officers, including but not limited to remuneration, bonuses, pension fund contributions, benevolent fund contributions, medical funds contributions and insurance premiums; and
- 9.6.2 it shall be responsible for the payment of, *inter alia*, all applicable taxes, charges, duties or fees assessed or levied in terms of any legislation e.g. Income Tax Act, the Compensation for Occupational Injuries and Diseases Act and the Private Security Industry Regulation Act, in respect of the security officers or as a result of the security officers being provided by the Contractor in terms of this Agreement and it shall, on request, furnish sufficient documentary proof to the Client that any of or all of these payments have in fact been made.
- 9.7 Should the contractor fail to provide documentary evidence as stipulated in clause 9.6.2, the Client shall be entitled to terminate the Agreement with immediate effect and shall be

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further entitled to claim damages suffered as a result of such termination.

- 9.8 On the anniversary of this Agreement the costs for the provision of transport will be reviewed, based on the average petrol price for the year in question, and any proposed adjustment in such costs shall be agreed by the Controlling Officer in writing. This will apply to the fuel portion only and the Contractor must identify this cost separately.
- 9.9 The Contractor acknowledges and agrees that the security officers whom it provides in terms of this Agreement are its own employees and not that of the Client. The Contractor further acknowledges and agrees that it does not act as a temporary employment service as contemplated in Section 198 of the Labour Relations Act, 66 of 1995.

## **10. IDENTIFICATION REQUIREMENTS**

- 10.1 The security officers shall at all relevant times comply with the identification requirements of the Client and as per the stipulations by PSIRA, including the display of an identity disc (with PSIRA registration number), tag or other device as agreed upon between the Parties.

- 10.2 Identification for the purpose of this Agreement shall include but is not limited to:-

10.2.1 a standard uniform, as agreed upon between the Parties, which shall consist of at least the following:

10.2.1.1 In the case of male security officers:-

- (i) security wear includes cap / beret, shirt, pants, socks, shoes / safety boots, belt, whistle, baton, handcuffs, the Contractor's insignia and adequate clothing for protection against inclement or cold weather, which includes a jersey, warm weather coat and a full-length rain suit, as and when required; and
- (ii) corporate wear of the Contractor, if so required by the Client, must include a blazer, tie, shirt, trousers, jersey, socks, shoes, belt, handcuffs, adequate clothing for protection against inclement weather and the Contractor's insignia, which must appear on the uniform as specified by the Client.

10.2.1.2 In the case of female security officers:-

- (i) Security wear includes hat / cap / beret, blouse, skirt or trousers, stockings, shoes / safety boots, whistle, baton, handcuffs, the Contractor's insignia and adequate clothing for protection against

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inclement or cold weather, which includes a jersey, warm weather coat and a full-length rain suit as and when required; and

- (ii) corporate wear of the Contractor, if so required by the Client, must include a blazer, tie, skirt, blouse, jersey, trousers, stockings, shoes, handcuffs, adequate clothing for protection against inclement weather and the Contractor's insignia, which must appear on the uniform as specified by the Client;

10.2.2 a reflector jacket in full compliance the provisions of the PSIRA regulations with the Contractor's name on the front and back, which is to be issued to all security officers, unless otherwise specified by the Client;

10.2.3 an umbrella for the protection from the elements to ensure continuous service to the client during adverse weather conditions.

10.2.4 bullet-proof vests (SABS approved) whenever security officers are issued with firearms, or if otherwise directed to do so by the Client.

10.3 For the purpose of clause 10.1, an identity disc, tag or other equipment prescribed by the Client shall at least contain the following information in respect of the Contractor's security officers:-

10.3.1 a recent colour photograph of the relevant security officer;

10.3.2 the name of the security officer on the identification badge must be visible and legible;

10.3.3 the identity number, PSIRA registration number and grade of the security officer; and

10.3.4 the name and logo of the Contractor.

## **11. PROVISION OF HANDHELD TWO-WAY RADIO SETS**

11.1 The Contractor shall provide handheld two-way radio sets which shall have an adequate range to ensure, as far as is practically possible, good communications between any two points within an area on the Site of the Client where the Service is provided.

11.2 The Contractor shall provide the Controlling Officer or his delegatee on or before the Effective Date with a diagram indicating the local communication network and call signs used by the Contractor during the term of this Agreement. Any changes in these networks or call signs shall forthwith be brought to the attention of the Controlling Officer in writing.

11.3 The handheld two-way radios shall at all times be in a good working condition and any dysfunctional or faulty radios shall be replaced at the Contractor's costs within 2 (two) hours of the security officer having reported such dysfunction or fault or the Contractor having

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discovered the fault or dysfunction. Failure to do so shall entitle the Client to impose a penalty against the Contractor as stipulated in clause 24 (*Penalties*) of this Agreement.

- 11.4 The Contractor shall at its own cost supply a radio base set, to be installed in the Security Control Room of the Client, as well as a diagram of the call signs, which shall enable direct communication between the Contractor's security officers and the Contractor's Security Control Room.
- 11.5 The Contractor shall take the necessary steps to prevent radio transmissions on or near the Client's premises to cause interference with, or block reception by, radio systems used by the Client or any other division or business units of the Client.
- 11.6 Under no circumstances shall the Contractor operate any radio equipment on the Client's premises without obtaining the prior written authority from TFR (Radio Signal Department), details of which shall be provided to the Contractor upon request.
- 11.7 Should the Contractor or any of its employees use any radio equipment on the Client's premises without such written authority, the Contractor shall be liable for any damage or loss suffered by the Client or any third party which is indirectly or directly attributable to the use of such radio equipment.
- 11.8 All radio equipment used by the Contractor in the performance of the Security Service must be licensed in terms of the provisions of the Independent Communications Authority of South Africa ("ICASA") for the area of operations.

**12. PROVISION OF DOGS** (when required by the Client)

- 12.1 Guard dogs shall only be of a specified breed (i.e. Doberman, Rottweiler or German Shepherd), which shall be duly trained to perform duties as a guard dog. Dogs shall be free of contagious diseases, certified as such by a registered veterinary surgeon. A certified copy of such certificate shall be made available to the Client, if the Contractor is requested to do so. Under no circumstances shall the Contractor provide any other breed of dog in terms of this Agreement unless prior written consent of the Controlling Officer has been obtained.
- 12.2 Guard dogs shall be trained to the required DH level to protect their handlers, to intercept perpetrators of crime and to be alert for intruders in their patrol areas. The guard dogs shall be required to be a deterrent to criminal elements and shall be trained to overcome obstacles such as steps, 1 (one) meter high walls and be able to crawl underneath low objects, such as the undercarriage of a train commensurate the client's requirements.
- 12.3 Guard dogs shall be trained to obey not more than one handler and shall only be under his/her control. Guard dogs shall at all times be under supervision of the handler whilst on duty.

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- 12.4 The age of the guard dog shall not exceed 6 (six) years. If it is at any time during the term of this Agreement established by the Client that a guard dog, utilised in terms of this Agreement, is older than 6 (six) years the Contractor shall be requested to replace the dog within 2 (two) hours. Failure to do so shall entitle the Client to impose a penalty against the Contractor as stipulated in clause 24 (*Penalties*) of this Agreement.
- 12.5 Guard dogs shall at all times be properly kennelled, groomed and fed, in order to maintain them in a good state of health.
- 12.6 Guard dogs which are not capable of effectively carrying out the functions described above, shall be replaced within 2 (two) hours with other suitably trained guard dogs who shall be able to perform the functions required. Failure to do so shall entitle the Client to impose a penalty against the Contractor as stipulated in clause 24 (*Penalties*) of this Agreement.
- 12.7 The Contractor shall ensure that fresh water as well as equipment like leads, water bowls, choke chains and combs are available at all times and ensure that the premises are kept clear of dog faeces.
- 12.8 A qualified dog handler shall at all times handle guard dogs. A certified copy of the certificate indicating that the dog handler has successfully passed the training course in the effective handling of a guard dog, shall be made available to the Client where the Client deems it fit to do so.
- 12.9 The Contractor shall be liable for any damage or injury directly caused by the actions of a guard dog and/or its handler during the provision of the Security Services by the Contractor, such liability to be in terms of clause 25 (*Liabilities*) herein.
- 13. PROVISION OF HORSES** (when required by the Client)
- 13.1 Duly trained patrol horses shall be of a quality breed and shall be equipped with a bridle, saddle and rifle scabbard. Horses shall be in a fit and healthy condition and free of contagious diseases, certified thereto by a registered veterinary surgeon. A certified copy of such certificate shall be made available to the Client, should the Contractor be requested to do so.
- 13.2 It shall be the responsibility of the Contractor to make proper arrangements to adequately stable the horses and the stable facilities shall conform to the local authority's health requirements and other applicable legislation. The Client shall make the premises and Sites available for the stable facilities.
- 13.3 The Contractor shall submit a monthly veterinary report on all horses stating their condition and certifying them fit to execute the duties in terms of the Agreement.

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- 13.4 The Contractor shall be liable for any damage or injury directly caused by the actions of a patrol horse and/or the security officer (rider) during the provision of the Security Service by the Contractor, such liability to be in terms of clause 25 (*Liabilities*) herein.

**14. PROVISION OF ROAD MOTOR VEHICLES, MOTORCYCLES AND QUAD-BIKES**

- 14.1. When required by the Client, the Contractor shall provide comprehensively insured road worthy and licensed motor vehicle(s), licensed motorcycle(s) and/or licensed quad-bikes to the Client for roving patrol and security duties and/or prevention of Incidents.
- 14.2 The Contractor shall provide the required number of licensed motor vehicle(s), motorcycle(s) and/or quad-bikes with driver(s) within 1 (one) working day (or within such other time as the Parties may agree to from time to time), and only on receipt of an official written request from the Controlling Officer. Failure to do so shall entitle the Client to impose a penalty against the Contractor as stipulated in clause 24 (*Penalties*) of this Agreement. The Contractor shall not provide any additional motor vehicle(s), motorcycle(s) and/or quad-bike(s) and driver(s) without any written request from the Controlling Officer, failing which the Client shall not effect payment for the unauthorised Security Services rendered.
- 14.3 The motor vehicle(s), motorcycle(s) and/or quad-bike(s) and driver(s) shall be made available at such times as agreed upon from time to time between the Client and the Contractor.
- 14.4 The motor vehicle(s), motorcycle(s) and/or quad-bike(s) shall only be driven by drivers who hold valid, unendorsed and appropriate code licences and shall carry their driver's licence at all times on their person when driving the motor vehicle(s), motorcycle(s) and/or quad-bike(s).
- 14.5 The Contractor shall ensure that vehicle logbooks are kept with all vehicles and are completed correctly and fully on a per shift basis as proof before claiming any costs from the Client. The Client may at any given time request the Contractor to provide such logbooks for inspection purposes to the Client. Should such vehicle/motorcycle/quad-bike logbooks as requested be found not to be correctly and fully completed (updated), the Client may refuse payment of costs claimed in respect of the particular vehicle(s), motorcycle(s) or quad-bike(s) in question.
- 14.6 LDV's will not be of a lesser capacity than 2.000cc and will be "high-ride" vehicles with adequate ground clearance to ensure safe driving on service routes unless otherwise agreed with the Controlling Officer in writing.
- 14.7 Maintenance, servicing and mechanical repairs (hereinafter referred to as "maintenance") of the motor vehicle(s), motorcycle(s) and/or quad-bike(s), including all adjustments necessary to

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keep the motor vehicle(s), motorcycle(s) and/or quad-bike(s) in a roadworthy and operational condition shall be provided by the Contractor at its own cost.

- 14.8 Should any motor vehicle(s), motorcycle(s), and/or quad-bike(s) provided by the Contractor break down or be involved in an accident whilst patrolling within the relevant Sites in terms of this Agreement, the Contractor shall, if that motor vehicle(s), motorcycle(s) and/or quad-bike(s) cannot be repaired within 2 (two) hours or cannot proceed with its patrolling duties within 2 (two) hours, at its own costs, forthwith provide another motor vehicle(s), motorcycle(s) and/or quad-bike(s) to continue with its patrolling duty. Failure to do so within the said time frame shall entitle the Client to impose a penalty against the Contractor.
- 14.9 Pursuant to clause 14.8 above, the Contractor shall inform the Client within 2 (two) hours of any of its motor vehicles, motorcycles and quad-bikes patrolling in terms of this Agreement which has broken down or has been involved in an accident.
- 14.10 Maintenance records for the vehicles provided in terms of this Agreement shall be made available to the Client by the Contractor whenever such request is made by the Client.

**15. PROVISION OF FIREARMS** (when required by the Client)

- 15.1 The Contractor shall at all times ensure that the security officers are only issued with the types of firearms i.e. shotguns, revolvers, pistols, as expressly agreed upon in writing between the Parties in respect of any particular Site.
- 15.2 Automatic firearms shall not be used at any stage during the execution of this Agreement.
- 15.3 The following types of firearms shall be acceptable for use on the Client's Sites. The proposed use of any other brand of firearm must be approved by the Controlling Officer, in writing, prior to use thereof:

15.3.1 Shotguns: (12 bore pump action)

Atis	Beretta	Browning	CBC
Maverick	Mossberg	Remington	Winchester

15.3.2. Revolvers: 38 Special

Astra	Colt	Llama	Ruger
Rossi	Smith & Wesson	Taurus	

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15.3.3. Pistols: 9mm

Beretta	Browning	Colt	Liana
Glock	Ruger	Star	CZ75 (9mm P)
Taurus	Vector	Z88	CZ83 (9mm K)
Walther	Smith & Wesson		

- 15.4 A certificate of serviceability, which is valid for at least 12 (twelve) months and issued by a qualified gunsmith, shall accompany all firearms. Certificates shall be kept in a safe place on the Contractor's premises and be made available to the Client when requested thereto by the Client.
- 15.5 All firearms used by the Contractor on the Client's premises shall comply with the following specification:
- 15.5.1. Modifications: Firearms shall not be modified in any way.
- 15.5.2. Safety Catches: Safety devices fitted on firearms shall at all times be in a working condition.
- 15.5.3. Sights: Sights fitted on firearms shall at all times be in a good condition.
- 15.5.4. Slings: Shotguns shall at all times be fitted with proper slings and attachments.
- 15.5.5. Triggers: Triggers shall be in working order at all times.
- 15.5.6. Trigger-guards: Trigger-guards shall at all times be intact.
- 15.5.7. Shotguns: (12 bore pump action) For the purpose of this Agreement single shot shotguns are not authorised.
- 15.6 The Contractor shall provide the number of firearms as set out in the Work Document. Only firearms licensed in the name of the Contractor shall be permitted on the Client's Sites. Under no circumstances shall firearms, belonging to or licensed to another company, person or security officer, be used for the provision of Security Services in terms of this Agreement.
- 15.7 The Contractor guarantees that it is the licensed and lawful owner of all firearms which it issues to its security officers in terms of this Agreement and shall produce proof of ownership and its licences prior to the commencement of this contract and/or when required to do so by the Client.
- 15.8 The Contractor shall at all times ensure that all firearms issued to its security officers in terms of this Agreement are in a clean and working condition and are properly maintained.

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- 15.9 The Contractor shall at all times ensure that it adheres to the Client's policy directive on firearms and ammunition, a copy of which shall be provided upon request.
- 15.10 The Contractor shall at all times comply with the provisions of the Firearms Control Act, 60 of 2000 and the Regulations issued in terms thereof, and shall put the necessary measures in place to ensure that its security officers comply with the said provisions of the Act and Regulations.
- 16 PROVISION OF CELLPHONES OR GSM DEVICES** (when required by the Client)
- 16.1 GSM devices (Global System for Mobile Communication) with a limited dialling facility and cell phones provided by the Contractor shall be contract phones and not "pay as you go" or "private" cellphones. No cellphone utilised on Site shall have a capability to take photos, unless so specified by the Controlling Officer. The use of cellphones at certain Sites is prohibited. The Client shall advise the Contractor of these Sites.
- 16.2 Failure to comply with this clause shall entitle the Client to impose penalties against the Contractor in terms of clause 24 (*Penalties*) of this Agreement.
- 17. DUTIES OF THE CONTRACTOR**
- 17.1 The Contractor shall exercise the necessary care and diligence in fulfilling its obligations and rendering its Security Services in terms of this Agreement.
- 17.2 The Contractor shall ensure that the security officers provided in terms of this Agreement observe the Client's safety rules and regulations, operating methods, policies and procedures whilst providing the Security Services under this Agreement.
- 17.3 The Contractor undertakes that it shall, as soon as is practically possible, before the commencement of this Agreement, make all the relevant provisions of this Agreement known to all the security officers provided in terms hereof.
- 17.4 The Contractor shall require its security officers to attend and, if necessary, to testify in court proceedings, as well as in disciplinary and arbitration proceedings should the Client deem it necessary, provided that the Client has notified the Contractor within 48 (forty-eight) hours before the start of the proceedings that the presence and co-operation of the Contractor's security officer(s) is required by the Client. This requirement will survive termination of the Agreement for pending or outstanding cases existing at that time.
- 17.5 Pursuant to clause 17.4 above, should a security officer be required to testify during his/her shift, a replacement security officer of the same grade must be provided by the Contractor. The Client shall be liable for the costs of both these security officers.

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- 17.6 The Contractor shall ensure that the security officers provided by the Contractor in terms of this Agreement:-
- 17.6.1 work shifts and/or overtime as and when required by the Client and agreed upon by the Parties from time to time, and in compliance with relevant legislation and/or sectoral determination for the Private Security Sector;
  - 17.6.2 are in a physically fit and mentally sound condition to perform their duties in terms of this Agreement;
  - 17.6.3 are continuously trained and retrained as prescribed by this Agreement or relevant legislation during the term of this Agreement;
  - 17.6.4 are subject to the code of conduct as agreed upon between the Parties on or before the Effective Date. Subject to the agreement of the Parties herein, this code of conduct may be amended from time to time; and
  - 17.6.5 comply with all the requirements of any applicable legislation.
- 17.7. The Contractor shall ensure that the security officers deployed at the Client's Sites in terms of this Agreement:-
- 17.7.1 daily sign on and off duty as required by the Parties in the Site's occurrence book and the security officer's pocket book. The pocket book must be signed by the Contractor's Supervising Inspector parading the security officers;
  - 17.7.2 when on duty and where the use of a firearm is required, be in possession of a bullet-proof vest, a certified copy of the firearm licence and a firearm permit issued in terms of the Firearms Control Act, 60 of 2000, as amended, and the Firearms Control Regulations issued in terms thereof;
  - 17.7.3 when issued with a firearm, comply with the Firearms Control Act, 60 of 2000 and the Firearms Control Regulations issued in terms thereof;
  - 17.7.4 when on duty, wear the uniform clothing in accordance with the provisions of this Agreement or Individual Agreement, including personal protective equipment as agreed upon between the Parties, which shall be provided by the Contractor at its own cost; and
  - 17.7.5 are fully aware of the Contractor's obligations with regard to the provision of Security Services in terms of this Agreement.
- 17.8 The Contractor shall on or before signature of this Agreement provide the Client with certified copies of its current grievance and disciplinary procedures.

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- 17.9 The Contractor will be required to accept responsibility in writing for the facilities and/or assets at a particular Site for which it has been contracted to provide Security Services in terms of this Agreement. It is therefore incumbent on the Contractor to survey (inspect) the respective Sites for which it has been contracted to provide Security Services in order to identify any existing damage ("Current Damage") prior to accepting responsibility for such a Site. This record of Current Damage (two originals) must be signed by the Contractor as well as by the Client. The one signed original should be handed to the Client's Controlling Officer. The Contractor shall be liable for any subsequent loss or damage to such facilities or assets.
- 17.10 The Contractor shall, before the commencement of this Agreement, and throughout the existence of this Agreement obtain and maintain at its own expense, insurances with an insurer approved in writing by the Client insuring itself against any and all loss which it may suffer arising out of or connected with the implementation of this Agreement. The Contractor shall obtain Public Liability Insurance, Security Liability insurance and Third Party Liability insurance cover for not less than R5,000,000.00 (five million) in respect of one Incident or a series of Incidents arising from the same cause and with an annual limit of cover not less than R30 000 000 (thirty million).
- 17.11 The Client reserves the right to inspect the Contractor's insurance policy documents, in relation to its obligations under clause 17.10 above and shall exhibit the relevant policies and premium receipts in respect of the insurance to the Controlling Officer, and shall provide copies of such policies and receipts to the Client, and, in the event of a dispute, shall bear the onus to prove that it has done so.
- 17.12 Should any single claim by any party exceed the amount of R5 000 000 (five million) covered by the Contractor's Liability Insurance Policy(s), the Contractor shall be liable for the difference between the actual amount claimed and the amount insured. Likewise it is recorded that in the event that the annual limit of cover is exceeded the Contractor shall be fully liable for any claims above those applicable limits.
- 17.13 The said insurance shall not be cancelled or materially changed, without prior written consent from the Controlling Officer.
- 17.14 The Contractor shall at all times comply with all the terms and conditions of any policy of insurance effected in terms of 17.10 and that it will not itself act or permit any act or omission that will or may have the effect of voiding or invalidating any policy of insurance or cover thereunder and shall implement the requirements thereof, and in particular (without limiting the

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generality of the foregoing and notwithstanding anything to the contrary in this Agreement contained), the Contractor shall:-

- 17.14.1 notify the Client promptly of the happening of an Incident or event in terms of this Agreement or any event which may give rise to a claim under any such policy of insurance;
- 17.14.2 render to the Client and/or the insurer whatever assistance may be necessary or required in connection with or arising out of any claims; and
- 17.14.3 notwithstanding anything contained to the contrary in this Agreement, it is specifically recorded that neither the Contractor nor the Client shall be precluded from instituting a claim against each other following an occurrence or event whether or not it is covered in terms of the insurance policy referred to in this clause.

17.15 The Contractor shall ensure that the security officers:-

- 17.15.1 co-operate with any member of the South African Police Service, the South African National Defence Force, the National Intelligence Agency or any other designated South African Government Security Agency in accordance with the provisions of Co-operation Agreements entered into between such entities and the Client; and
- 17.15.2 where no such Co-operation Agreements exist, the security officer shall allow a member of the security agencies mentioned in 17.13.1 above to enter any Site of the Client only when such a member produces valid proof to the satisfaction of the Authorised Officer of such member's official identification documentation.

## **18 COMPLIANCE WITH STATUTES**

18.1 The Contractor shall comply with all relevant legislation, including, but not limited to:-

- 18.1.1 the Private Security Industry Regulation Act, 2001, as amended;
- 18.1.2 the Private Security Industry Levies Act, 23 of 2002;
- 18.1.3 the National Key Points Act, 102 of 1980, as amended;
- 18.1.4 Basic Conditions of Employment Act, 75 of 1997;
- 18.1.5 the Compensation for Occupational Injuries and Diseases Act, 130 of 1993, as amended;
- 18.1.6 provincial ordinances and local authority by-laws, including all relevant regulations promulgated in terms thereof;

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- 18.1.7 the Occupational Health and Safety Act, 85 of 1993, as amended. The Contractor specifically undertakes to carry out its obligations in accordance with the requirements of and to comply with all requirements of the relevant legislation, including the appointment of officials. This will include monthly minutes of Health and Safety meetings that were conducted or a certification in which the Contractor confirms that such meetings did take place as per specific Sites in question;
- 18.1.8 the National Ports Act, 12 of 2005 and all enabling legislation;
- 18.1.9 the Firearms Control Act, 60 of 2000, as amended.
- 18.1.10 Criminal Procedure Act, 51 of 1977, as amended;
- 18.1.11 Control of Access to Public Premises and Vehicles Act, 53 of 1985, as amended;
- 18.1.12 Codes of Good Practice embodied in the Broad Based Black Economic Empowerment Act, 53 of 2003;
- 18.1.13 Independent Communications Authority of South Africa Act, 13 of 2000, as amended;
- 18.1.14 Security Officers Act, 1987, as amended;
- 18.1.15 Legal Succession to the South African Transport Services Act, 1989 (but excluding any tariff provided for in such Regulations);
- 18.1.16 the Income Tax Act, 58 of 1962; and
- 18.1.17 the Value-Added Tax Act, 89 of 1991.
- 18.1.1 any other legislation and regulations and/or in-house specific policies, procedures, NOSA guidelines that govern some of the Client's Business Units;
- 18.1.2 any other regulatory obligation such as the Railway Safety Regulation Act, 16 of 2002;
- 18.2 Compliance with all applicable legislation shall be entirely at the Contractor's cost.
- 18.4 The Contractor shall be liable for any breach by any one or more of its security officers, employees, servants, permitted agents, and contractors (independent or otherwise) of the provisions of clause 18 and hereby indemnifies and holds the Client harmless against all claims, loss or damage which the Client may suffer arising out of all such breaches.
- 19. ACCESS CONTROL**
- 19.1 In respect of Security Services provided on the property (Sites) of the Client that has been declared as National Key Points by the Minister of Defence, the Contractor shall at all times

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comply and enforce the provisions of the National Key Points Act, 102 of 1980, and its directive as well as the provisions of the Control of Access to Public Premises and Vehicles Act, 53 of 1985, as amended, and all other applicable legislation.

- 19.2 Where Security Services provided on the property of the Client that has been declared as a port in terms of the National Ports Act, 12 of 2005, the Contractor shall at all times comply and enforce the provisions of the Port Rules as well as the provisions of the Merchant Shipping (Maritime Security) Regulations, 2004 or any legislation that may replace it.
- 19.3 The Contractor must ensure that no person shall, without the permission of the Authorised Officer, enter any premises or any vehicle in respect of which a directive has been issued by the Client in terms of subsection (2)(b) of the Control of Access to Public Premises and Vehicles Act, 53 of 1985, as amended.
- 19.4 For the purpose of the granting of that permission an Authorised Officer may require that the person concerned shall:-
- 19.4.1 furnish his name, address and any other relevant information required by the Authorised Officer;
  - 19.4.2 produce proof of his identity to the satisfaction of the Authorised Officer;
  - 19.4.3 declare whether he has a firearm or any potential dangerous object in his possession, custody or under his control;
  - 19.4.4 declare what the contents are of any vehicle, suitcase, attaché case, bag, handbag, folder, envelope, parcel or container of any nature which he has in his possession or custody or under his control, and show those contents to the Authorised Officer;
  - 19.4.5 subject himself and anything which he has in his possession or custody or under his control to an examination by an electronic or other apparatus in order to determine the presence of any potential dangerous object; and
  - 19.4.6 in the case of premises or a vehicle or a class of premises or vehicles determined by the Minister of Safety and Security by Gazette, be searched by an Authorised Officer.
- 19.5 Where an Authorised Officer grants permission in terms of this clause, he may do so subject to conditions regarding the carrying or displaying of proof that the necessary permission has been granted, to visit a specific person, office or area, the duration of his presence on or in the premises or vehicle, the escorting of the person concerned while he is on or in the premises or vehicle, and such other requirements as he may consider necessary.
- 19.6 Subject to the provisions of the Trespass Act, 6 of 1959, an Authorised Officer shall at any time remove any person from any premises or vehicle if:-

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- 19.6.1 that person enters or enters upon the premises or vehicle concerned without the permission contemplated in this clause;
  - 19.6.2 that person refuses or fails to observe a condition contemplated in this clause; or
  - 19.6.3 the Authorised Officer considers it necessary for the safeguarding of the premises or vehicle concerned or the contents thereof or for the protection of the people therein or thereon.
- 19.7 The search of a female shall only be carried out by a female security officer in private, and should at all times be done in a courteous and dignified manner.
- 19.8 The security officers shall:-
- 19.8.1 co-operate with any member of the South African Police Service, the South African National Defence Force, the National Intelligence Agency or any other designated South African Government Security Agency in accordance with the provisions of Co- operation Agreements entered into between such entities and the Client; and
  - 19.8.2 where no such Co-operation Agreements exist, the security officer shall allow a member of the security agencies mentioned in 19.8.1 above to enter any Site of the Client only when such a member produces valid proof to the satisfaction of the Authorised Officer of such member's official identification documentation.

**20. BROAD BASED BLACK ECONOMIC EMPOWERMENT & DEVELOPMENT PROGRAMME ("BBBEE")**

- 20.1 The Contractor shall provide the Client with its written commitment to a Broad Based Black Economic Empowerment and Development Program, clearly stipulating, action plans and objectives together with a schedule indicating the expected quarterly progress toward the promotion of BBBEE. The Contractor's contributions shall be grouped into the following two categories:
- 20.1.1 Primary commitment can be defined as the direct contribution to:-
    - 20.1.1.1 supporting and assisting BBBEE security firms to establish themselves in the security industry; or
    - 20.1.1.2 the assumption of mentorship over newly established BBBEE security firms to help and guide them to become autonomous independent firms; or
    - 20.1.1.3 the development and training of black security officers in managerial skills, etc; or
    - 20.1.1.4 enabling employees to become stakeholders in the company; or

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- 20.1.1.5 the provision of medical, pension and/or provident fund benefits, housing, etc. to black employees; or
- 20.1.1.6. the development and training of own officers in respect of a formal development program.
- 20.1.2 Secondary commitment can be defined as the indirect contribution to:-
  - 20.1.2.1 support BBBEE suppliers of stationery, uniform clothing, office furniture, etc. by the purchase of equipment from them; or
  - 20.1.2.2 to assist and guide new BBBEE entrepreneurs toward establishment of their own businesses; or
  - 20.1.2.3 to make a positive effort to uplift the disadvantaged communities in the fields of educational training, sport and general social upliftment.
- 20.2 The Contractor's performance shall be monitored on a continuous basis by the Client and should the Client be of the opinion that the Contractor does not comply with its commitment as aforesaid in terms of this Agreement, it shall be considered to be an irremedial breach of this Agreement in which event the Client reserves the right to terminate this Agreement with immediate effect as is provided for herein.

## **21. MEETINGS**

- 21.1 The Contractor shall assign officers to attend weekly meetings with the Client's Controlling Officer or his delegate at the Sites agreed upon between Parties to discuss the matters relating to the provision of the Security Service(s), including but not limited to performance related matters on the dates agreed to between Parties from time to time.
- 21.2 The members of the Contractor who attend the weekly meetings must have the delegated power to make decisions and sign off deviations which will have financial implications for the Contractor. The Contractor shall be bound by such decisions agreed upon with the assigned officer(s) of the Contractor.
- 21.3 A managing member or director of the Contractor shall be required to attend monthly meetings with the Client's Controlling Officer or his delegate on the date to be agreed on between the Parties, to discuss matters relating to the execution of Security Services and the administration of the Agreement, including but not limited to the performance by the Contractor of the Security Service(s) in terms of this Agreement.

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- 21.4 The Client shall take and retain the minutes of these meetings, which shall be signed by both Parties and made available to the Contractor. In recording these minutes, the Client may make use of a recording device.

## **22. REPORTING OF INCIDENTS AND WEEKLY REPORTS**

- 22.1 All Incidents, events or accidents involving the death of or injury to any person or loss of or damage to any of the Client's property, including any criminal offence committed on the premises of the Client, shall forthwith be reported by the Contractor to the local police station and the Client after each Incident, event or accident has come to the attention of the Contractor. A detailed written report of all such Incidents, events or accidents shall be presented to the Client within 12 (twelve) hours after the Incident, event or accident.
- 22.2 A list of names and contact details of the Client's Controlling Officers to whom the said Incidents, events or accidents shall be reported, shall be furnished to the Contractor on or before the commencement of this Agreement.
- 22.3 Salient facts of all incidents, events or accidents on the Client's premises shall be recorded immediately after the occurrence thereof in the occurrence book. Subject to the provisions of clause 5.3 (*Provision of Security Services*), occurrence books for this purpose shall be made available by the Contractor at its own cost for the premises and shall remain available for inspection by the Client at any time in a prearranged office or enclosure on the premises.
- 22.4 The pages of the occurrence book and the security officer's pocket book shall be numbered consecutively by the Contractor when implemented, and no pages shall be removed by any person for any reason whatsoever.
- 22.5 A weekly detailed written report in respect of each Site shall be submitted to the Client's security manager during the agreed weekly meetings. The report shall include full details of any Incidents, events or accidents, which occurred during the preceding week; reports as may be requested by the Client in the duty list; details of routine inspection visits, and any other information relating to the security situation on the Site(s).
- 22.6 Notwithstanding anything to the contrary in this Agreement, the Client may also, should it deem it necessary, request the Contractor to submit a detailed written report in respect of any Incident.

## **23. TELEPHONES AND HOUSING OF CONTRACTOR'S EMPLOYEES**

- 23.1 The Client shall make arrangements for the housing of the Contractors security officers at offices or suitable structures at all Sites. Under no circumstances shall the housing for the

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Contractor's security officers be provided or erected on the property of the Client by the Contractor, unless the Client has expressly requested this and the Controlling Officer's prior written approval has been obtained. The Contractor may enter into a lease agreement with the Client for the leasing of accommodation for the security officers for purposes of rendering the Security Services.

- 23.2 Should the Client at any time during the term of this Agreement make available to the Contractor any facility to house security officers, horses and/or guard dogs, the Contractor shall, at its own cost maintain and keep such facility during the term of this Agreement in a clean, tidy and sanitary condition and shall at the termination of this Agreement for whatsoever reason, reinstate any such facility to the same condition in which it was when handed to the Contractor, fair wear and tear excepted.

## **24. PENALTIES**

- 24.1 The Client shall be entitled to impose/levy penalties against the Contractor should the Contractor be in breach of certain provisions of this Agreement. Such penalties shall be deducted from the monthly amount due to the Contractor by the Client, after the Contractor has been notified of such penalties.

- 24.2 Notwithstanding the provision of this penalty clause, the Client shall:-

24.2.1 not be precluded from exercising its right to terminate the Agreement in the event of Persistent Minor Breach; and

24.2.2 not be precluded from claiming damages from the Contractor, should damages be suffered by the Client or any third party as a result of any conduct or failure on the part of the Contractor or any of its employees.

- 24.3 Should it at any time during the term of this Agreement or at any time thereafter be determined that security officers of a lower grade than required or with inadequate training or with no training at all are being provided:-

24.3.1 all payments in respect of such lower graded security officers made to the Contractor shall forthwith be recovered from the time the lower grade or untrained security officers was/were supplied; and

24.3.2 the Client shall be entitled to terminate the Agreement forthwith: and

24.3.3 the Client shall not remunerate the Contractor for the time the inadequately trained security officers were deployed on the Client's premises.

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24.4 In the event of security officers being provided without standard uniform or such standard uniform is incomplete and / or unclean or is in a deteriorating condition:-

24.4.1 1 (one) shift penalty for the security officer will be deducted per security officer per such Incident; and

24.4.2 repeat or persistent breach of this clause shall entitle the Client to terminate this Agreement.

24.5 The Client shall conduct a risk assessment and rate the likelihood of Incidents, events or accidents, the consequences to the Client of Incidents, events or accidents at all Sites and allocate a rating of Low (L), Medium (M) or High (H). Such ratings shall be recorded in the Individual Agreement not later than during the first month of the Agreement. The following respective penalties shall apply to the Sites for non-compliance of the obligations of the Contractor in terms of this Agreement:

ITEM	PENALTY			
	L	M	H	Frequency
The security officer is on duty without a contracted GSM device or contracted cell phone or this is not in working condition One communication device per post is required.	R50	R75	R 150	Per Incident
Possession of private cell phone by a security officer whilst on duty. if the officer uses the device for non-work-related issues. The Disciplinary process to be used to manage instead of Penalty applied to manage?				Disciplinary Process
The security officer is on duty without a pocket book and pen	R50	R75	R 150	Per Incident
Pocket book of a security officer written up in advance, Pocket book not written up hourly				Disciplinary Process
The security officer is on duty without an identity disc	R50	R75	R 150	Per Incident
The security officer is on duty without any instrument to determine time or such instrument is not in working condition Each post needs one instrument to determine time.	R50	R75	R 150	Per Incident
The security officer on duty must have a flashlight fit for purpose.	R50	R75	R 150	Per Incident
The security officer on duty needs a spotlight fit for purpose where a Patrol vehicle is not equipped with a spotlight.	R50	R75	R 150	Per Shift

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ITEM	PENALTY			
	L	M	H	Frequency
The security officer is without a hand-held communication device and/or this is not fit for purpose.	R50	R75	R 150	Per Incident
A vehicle is without a fit for purpose communication device.	R50	R75	R 150	Per Incident
A security officer is on duty without a SABS approved bullet-proof vest where applicable and as required per the scope of work	R250	R350	R 700	Per Incident
A security officer (required to carry a firearm) is on duty without a serviceable firearm or has a firearm without appropriate ammunition where applicable and as required per the scope of work	R250	R350	R 700	Per Incident
Possession of private firearm by security officer whilst on duty	Use legislation and not penalty route to address.			
Vehicle not as specified / un-roadworthy / inoperable / unavailable	R250	R350	R 700	Per Incident
Motorbike or quad-bike not as specified / un-roadworthy / inoperable / unavailable	R250	R350	R 700	Per Incident
Dogs required as per the scope of work and statutory requirements is not provided submission or non-submission of veterinarian reports as required.	R250	R350	R 700	Per Incident
Guard tracking / monitoring system inoperable	R250	R350	R 700	Per Incident
Self posting and/or no parade or inspection of a security officer	R250	R350	R 700	Per Incident
Late posting of a security officer	R250	R350	R 700	Per Incident
Late submission or non submission of BBBEE report. Late submission or non submission of progress report	Report to HQ Contracts Manager			
Late submission or non submission of Heath & Safety minutes	Issue of Non-Conformances			
Site Supervising Inspector fails to visit site as per scope of work	R50	R75	R 150	Per Incident
Non attendance of weekly meeting by the Contractor	Report to HQ Contracts Manager			
Non attendance of monthly meetings by managing member or director of the Contractor	Report to HQ Contracts Manager			

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ITEM	PENALTY			
	L	M	H	Frequency
Unavailability of, and non-submission or late submission of any relevant documentation, sheets, feedback reports on the occurrence of an incident as well as the failure to complete or keep all relevant documents up to date.	R100	R150	R 300	Per Incident
Security officer sleeping on duty (Low multiple post High = one man site)	R250	R500	R 1000	Removal from site
Security officer under the influence of alcohol/drugs/intoxicating substance	R250	R500	R 1000	Removal from site
Security officer/s absent from duty/no security officer deployed				No payment of service
Security Officer failing to verify Identification prior to entry of any individual	R250	R500	R 1000	Per Incident
Failure to lock a gate or open a gate when SOPS state it to be locked	R250	R500	R 1000	Per Incident
Deploying a member without induction and clearance in terms of the SLA and seeking PSO or authorised PSO deputy approval	R250	R500	R 1000	Per Incident
Failure to make a report on damage to security infrastructure or incomplete report resulting in the offender escaping liability	R250	R500	R 1000	Per Incident
Not carrying out a proper hand over as stated in SOPS	R250	R350	R 700	Per Incident

24.6 In addition to the above and in the event of the following security officers not being posted or posted late or being absent from his/her place of duty after being posted or under the influence of alcohol or drugs or found sleeping on duty the following penalties shall apply which shall be deducted by the Client from the fees payable to the Contractor, as set out in the Work Document.

SECURITY OFFICIAL	PENALTY
Shift Supervisor	R500 per Incident
National Key Point Security Officer	R500 per Incident

24.7 Notwithstanding any other provision of this Agreement, the penalty deduction shall be limited to a maximum of 50% (fifty percent) of the monthly contract value payable to the Contractor in respect of any particular Site.

24.8 The Parties may identify additional breaches in the Individual Agreement and determine applicable penalties.

24.9 Any penalty imposed in terms of this clause 24 shall be offset against the invoiced (vatable)

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amount, as declared in the Contractor's Tax Invoice, to which the penalty has attached, and the VAT payable by the Client to the Contractor shall be calculated on the invoiced amount less the service-related penalty imposed.

## 25. LIABILITY

- 25.1 The Contractor shall at all times be held strictly liable and accepts responsibility for all damage of whatsoever nature (including consequential and special damage) due to any acts or omissions of its security officers, servants, agents, assigns, contractors and sub-contractors in the provision of the Security Services provided in terms of this Agreement..
- 25.2 The Contractor shall at all times be held strictly liable and accepts responsibility for all and any loss or damage to or caused by any road motor vehicles, equipment or other material used by the Contractor in respect of the Security Service provided in terms of this Agreement.
- 25.3 The Contractor shall at all times be vicariously and strictly liable for all the acts and/or omissions of security officers whether acting in the course and within the scope of their duties and employment with the Contractor or not and wherever they may be. The Contractor shall also be liable for losses or damages arising out of the behaviour or action of the guard dogs and patrol horses being deployed on the Client's Site.
- 25.4 The Contractor irrevocably and unconditionally undertakes to indemnify and keep the Client indemnified and holds the Client harmless against, and, in respect of, all and any loss or damage incurred by the Client as a result of, arising out of or connected with any failure, act or omission or breach of this Agreement by the Contractor or any of its employees, security officers, employees, servants, agents, assigns, contractors or sub-contractors or occurring during or as a result of the provision by the Contractor of the Security Service. The absolute obligation of the Contractor to indemnify the Client on a full indemnity basis against all claims shall include but not be limited to: -
- 25.4.1 any damage or loss to the Client's property, whether moveable or immovable;
  - 25.4.2 loss of property belonging to the Client;
  - 25.4.3 liability in respect of any loss or damage to property, whether movable or immovable, belonging to third parties;
  - 25.4.4 liability in respect of lost property belonging to third parties;
  - 25.4.5 liability arising out of any unlawful act committed by the Contractor or its employees during the process of rendering a Security Service; and
  - 25.4.6 liability in respect of the death, unlawful arrest, injury, illness or disease of any person, should the damage, loss, unlawful arrest, death, injury, illness or disease referred to above be attributable to or arise out of the Security Services that are being or have been rendered by the Contractor in terms of this Agreement.

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**26. ADVERTISING AND TRADING**

- 26.1 The Contractor is prohibited from advertising or publishing in any of its promotional documents or brochures the fact that it is a Contractor to the Client, unless the prior written authority of the Client's General Manager of Corporate Communication is obtained. The Client reserves all advertising rights on its own premises.
- 26.2 Neither the Contractor nor any of the security officers provided by it in terms of this Agreement shall during the term of this Agreement be entitled to conduct any business or to offer any article for sale or distribute any article free of charge on premises of the Client.

**27. INTIMIDATION**

- 27.1 It is the intention of both Parties that the security officers provided in terms hereof shall, as far as practically possible, not fail to carry out their duties as a result of any form of intimidation. Should the Contractor suspect intimidation of its security officers, it shall take prompt action in conjunction with the South African Police Service to remedy the situation.
- 27.2 Such action shall, if deemed necessary by the Client, include immediate replacement of the security officers involved.
- 27.3 The Contractor shall forthwith notify the Client of any form of intimidation to which its security officers may be subjected.

**28. MONITORING AND TESTING OF SECURITY OFFICERS**

- 28.1 The Client shall be entitled to monitor the movements or activities of the security officers while on duty, either electronically or otherwise, without giving prior notice, written or otherwise, to the security officer or the Contractor.
- 28.2 The Contractor shall ensure that security officers to be posted on Sites agree in writing to the right of the Client to monitor their activities without their knowledge whilst on duty. Such consent shall be made available to the Client before the security officer commences his/her duties in terms of this Agreement.
- 28.3 The Client shall be entitled to conduct breathalyser tests or any other tests that may be necessary to establish that the security officers comply with the provisions of this Agreement. The Contractor shall ensure that the security officers are informed of this clause and that the necessary consents are obtained and provided to the Client before any security officer commences his or her duties in terms of this Agreement.

**29. BREACH**

- 29.1 In the event of the Contractor failing to promptly commence performance of any obligation for which it is liable, or failing to carry out such obligation, partially or fully, without delay, the Client

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shall be entitled to appoint an alternate Contractor to perform such obligation. Should the Client exercise the right to do so at any stage, it shall also be entitled to claim and recover

all damages and costs incurred thereby (directly or indirectly) from the Contractor, who hereby undertakes to pay such damages and costs to the Client upon demand.

- 29.2 In the event of either Party to this Agreement committing a breach of any provision of this Agreement ("the defaulting Party"), excluding clause 5.1 and the defaulting Party fails to remedy such breach within 48 (forty-eight) hours after having received written notice from the other Party ("the aggrieved Party") to remedy such breach, the aggrieved Party shall be entitled to terminate this Agreement, immediately, by notice in writing to the defaulting Party.
- 29.3 Without derogating from the provisions of clause 29.2, and in addition thereto, in the event of the Contractor for any reason committing a breach of the provisions of clauses 5.1 of this Agreement and failing to remedy such breach within 12 (twelve ) hours after having received written notice from the Client calling upon it to rectify such breach, the Client shall be entitled to terminate this Agreement, immediately, by notice in writing to the Contractor.
- 29.4 Should the Contractor's PSIRA's certificate for any reason whatsoever be suspended, revoked, set aside by an appropriate authority or competent person, for any reason whatsoever, or should the Contractor's competence to render the Security Service be terminated, or diminished in a material manner, such suspension, revocation, setting aside, termination or diminution shall be deemed to be a breach of this Agreement and shall entitle the Client to terminate the Agreement forthwith.
- 29.5 Should the Contractor's firearm licence and competency certificate for any reason whatsoever be suspended, revoked or set aside by an appropriate authority or competent person or should the Contractor's competence to render the Security Services for any reason whatsoever be diminished in a material manner, such suspension, revocation, setting aside or diminution shall be deemed to be a breach of the Agreement and shall entitle the Client to terminate the Agreement forthwith.
- 29.6 Should the Contractor's insurance(s) for any reason whatsoever be suspended, revoked, set aside or terminated by its insurance service provider, such suspension, revocation, setting aside or termination shall be deemed to be a breach of this Agreement and shall entitle the Client to terminate the Agreement forthwith.
- 29.7 Should the Contractor act in conflict with or fail to comply with any statutory provision, regulation, by-law, rule or programme or policy or procedure that has a direct bearing on the Security Service(s), such action or failure shall be deemed to be a breach of this Agreement and shall entitle the Client to terminate the Agreement forthwith.
- 29.8 Should the Client incur any losses, including but not limited to theft of the Client's property, theft of the Client's third party property, fraud and or any other criminal activities that are to the

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detriment of the Client, at any of the Sites where the Contractor is performing the Security Service, such action shall be deemed to be a breach of this Agreement and shall entitle the Client to terminate the Agreement forthwith.

29.9 Notwithstanding anything contained to the contrary in this Agreement, the Client may terminate this Agreement at any time by giving written notice to the Contractor of such termination if :

29.9.1 the Contractor is, other than for the purposes of reconstruction or amalgamation, placed under voluntary or compulsory liquidation, provisionally or finally, or under provisional or final judicial management, or under receivership or under any of the equivalent of any of the a foregoing;

29.9.2 a final and unappealable judgment against the Contractor remains unsatisfied for a period of 21 (twenty-one ) days or more after it comes to the notice of the board of directors of the Contractor;

29.9.3 the Contractor makes any arrangements or composition with all or some of its creditors, or ceases or threatens to cease carrying on business;

29.9.4 the Contractor makes any material incorrect or untrue statement or representation to the Client in connection with any information furnished by it in respect of this Agreement, or, without limitation, in the tender documents preceding the conclusion by the Parties of this Agreement, then upon the occurrence of any 1 (one) or more of such events, the Client may without prejudice to any other rights it may have against the Contractor, elect to immediately terminate this Agreement forthwith by written notice of such termination to the Contractor.

29.10 Notwithstanding anything to the contrary contained in this Agreement, and in addition to all of its other rights, the Client shall also be entitled to cancel this Agreement, if any event or series of events occurs (whether or not caused by any reasons whatsoever outside the control of the Contractor or the Client) which, in the reasonable opinion of the Client might have a material or adverse effect on the performance of the Security Service or the operations of Client at any Site, whether or not as contemplated in this Agreement.

29.11 Notwithstanding anything to the contrary contained in this Agreement, and in addition to all of its other rights, the Client shall also be entitled to cancel this Agreement, in whole or in part, (as it in its sole discretion may determine) in the event that the Contractor colludes with any other party in respect of any tender submitted to the Client.

29.12 Notwithstanding anything to the contrary in this Agreement, in the event of security officers and/or employees of the Contractor being in any way involved in theft, bribery, fraud and/or any other criminal activities or misconduct that are to the detriment of the Client (e.g. theft of the Client's property), either while on or off duty, then this shall be considered to be an irremediable breach of this Agreement in which event the Client shall have the right to terminate this Agreement with immediate effect. Such termination by the Client shall not be

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considered to be a dispute as intended in clause 31 (*Arbitration*) and shall not form the subject of any arbitration.

29.13 In the event of strike action being embarked upon by the employees of the Contractor, the Contractor shall immediately advise the Client of the strike action. The employees of the Contractor shall not be allowed onto the premises of the Client for any purposes other than the rendering of Security Services in terms of this contract. The Contractor shall be responsible for the removal of any of its employees from the premises of the Client, and the costs thereof, in the event of its (the Contractor's) employees conducting any activities on the premises of the Client other than the rendering of Security Services in terms of this Agreement. The Contractor shall immediately replace any striking employees with suitably qualified employees so that the operations of the Client are not disrupted in any way. Any additional costs that arise as a result of the aforementioned replacement labour shall be for the account of the Contractor. Failure to comply with this provision shall constitute a material breach and the Client shall be entitled to terminate this Agreement with immediate effect. In the event of the Client incurring any losses or damages as a result of the strike action, the Contractor shall be liable for the payment of the aforementioned losses and/or damages.

29.14 Notwithstanding anything stipulated under clause 24 (*Penalties*) the Client reserves the right to terminate this Agreement without notice in the event of a Persistent Minor Breach by the Contractor.

### **30. TERMINATION AND CANCELLATION**

30.1 Notwithstanding anything to the contrary contained in this Agreement, and in addition to all of its other rights, the Client shall also be entitled to cancel this Agreement, in whole or in part, (as it in its sole discretion may determine) upon 30 (thirty) days' written notice given by the Client to the Contractor, without assigning any reason for such action. Such termination by the Client shall not form the subject of any arbitration or review and shall be binding upon the Contractor who shall have no claim of any nature, howsoever arising, against the Client out of such termination.

### **31. HARBOUR REGULATIONS AND NATIONAL PORTS ACT**

31.1 The Harbour Regulations applicable to the Ports which were promulgated in terms of the Legal Succession to the South African Transport Services Act, 1989 (but excluding any tariff provided for in such Regulations), are deemed to form part of this Agreement and in the event of a conflict between such Regulations and this Agreement, the Regulations shall take precedence. In the event of the these Harbour Regulations being repealed and replaced by Port Rules enacted in terms of the National Ports Act, 12 of 2005 (the "Act"), then such Port Rules will be applicable.

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31.2 In terms of the Act, the National Ports Authority (Pty) Limited is the successor-in-title to the National Ports Authority ("the NPA"), now known as Transnet National Ports Authority ("TNPA"), and the Client is deemed to be holder of a licence to provide Port services or to operate Port facilities.

31.3 All the rights and obligations of the TNPA under this Agreement will accordingly be transferred, when appropriate, and as is required by law to the National Ports Authority (Pty) Limited and the Client shall continue to operate the Port facilities, subject to the Act.

## **32 CONTRACTOR'S EMPLOYEES / NO EXPECTATION OF EMPLOYMENT**

32.1 The Contractor undertakes irrevocably in favour of the Client that it will do whatever is necessary to ensure that none of its employees who are employed in any way, directly or indirectly in connection with the performance of the Security Service, will have any entitlement to, or expectation of, further employment on or in connection with any of the work which forms the subject matter of this Agreement beyond the termination (for any reason whatsoever) of this Agreement.

32.2 In addition to the recourse that the Client has against the Contractor for a breach of any one or more of the provisions of this Agreement by the Contractor, the Client shall also have a claim against the Contractor for any breach by it of the provisions of clause 32.1. The Contractor accordingly hereby indemnifies the Client and holds it harmless against all claims, of whatever nature and howsoever arising, as well as all legal costs incurred as a result of such claims (including all costs incurred on the scale as between attorney and client ), which may be made against the Client by any one or more of the Contractor's employees and/or independent contractors, and specifically, but without derogating from the generality thereof, any and all claims made against the Client arising from or connected with the employment of such of the Contractor's employees and/or independent contractors who were employed by the Contractor immediately prior to the termination, for any reason whatsoever, of this Agreement, or the termination of such employment at any stage for any reason.

## **33. ARBITRATION**

Subject to any other provision in this Agreement to the contrary, should any dispute arise between the Parties in connection with or which in any way relates to:-

- 33.1. the implementation of this Agreement;
- 33.2. the interpretation or application of the provisions of this Agreement;
- 33.3. the respective rights and obligations of the Parties in terms of or arising out of this Agreement or its breach or termination;
- 33.4. the rectification, termination or cancellation, whether in whole or in part of this Agreement;
- 33.5. any documents furnished by the Parties pursuant to the provisions of this Agreement; or

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- 33.6. any matter affecting the interests of the Parties in terms of this Agreement, that dispute may, upon the agreement by both Parties, be referred to and be determined by arbitration in terms of this clause, provided that a cancellation of the Agreement as provided for in clause 30 (*Termination / Cancellation*) shall not be considered to be a dispute for the purpose of this clause and shall not form the subject of any arbitration;

then the dispute shall be resolved in accordance with the rules of the Arbitration Foundation of South Africa ("AFSA") by a single arbitrator agreed between the Parties.

#### **34. NOTICES AND DOMICILIUM**

- 34.1 The Client chooses as its *domicilium citandi et executandi* the address in Schedule "A", for all purposes arising out of or in connection with this Agreement at which address all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered.
- 34.2 The Contractor chooses as its *domicilium citandi et executandi* the address in Schedule "A" (which shall not be a post office box or poste restante) for the same purposes.
- 34.3 A Party may change the addresses referred to above by giving the other Party notice in writing of the new address (which shall not be a post office box or poste restante).

Any notice given in terms of this Agreement shall be in writing and shall:-

- 34.3.1 if delivered by hand, be deemed to have been received by the addressee 1 (one) day after the date of delivery;
- 34.3.2 if posted by prepaid registered post, be deemed to have been received by the addressee 10 (ten) days after dispatch; or
- 34.3.3 if transmitted by facsimile or electronic mail, be deemed to have been received by the addressee 1 (one) day after dispatch.
- 34.4 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from the other, including by way of electronic media, shall be adequate written notice or communication to such Party.

#### **35. WHOLE AGREEMENT**

This Agreement shall constitute the whole Agreement between the Parties as to the subject matter hereof and no agreement, representation or warranty between the Parties other than set out herein shall be binding on the Parties.

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**36. VARIATION**

No addition to, amendment, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by the Parties.

**37. RELAXATION**

No latitude, extension of time or other indulgence which may be given or allowed by one Party to the other Party in respect of the performance of any obligation hereunder or the enforcement of any right arising herefrom and no single or partial exercise of any right by such former Party shall under any circumstance be construed to be an implied consent by such Party or operate as a waiver of, a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or stop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision thereof.

**38. IMPOSSIBILITY OF PERFORMANCE**

- 38.1 Should any of the obligations of either Party become objectively impossible of performance, such Party shall be exempted from its obligations under this Agreement if the circumstance that renders performance impossible was unforeseeable with reasonable foresight at the time of contracting and unavoidable with reasonable care at the time of its occurrence by the Party concerned and such Party displays reasonable care and diligence in attempting to avoid the consequences thereof.
- 38.2 Such exemption shall however operate only to the extent that the performance of the obligations of such Party is rendered objectively impossible and only for the period during which the relevant circumstance prevails. Notice of such circumstances shall be given to the other Party in writing without delay.

**39. CESSION OR DELEGATION**

- 39.1 Neither Party shall cede or delegate any right or obligation under this Agreement nor enter into any sub-contract of whatever nature for the execution thereof or part thereof without the prior written consent of the other.
- 39.2 Should the Contractor be desirous to cede and/or assign any right or obligation in terms of this Agreement to a third party or enter into a sub-contract in respect of the execution hereof, the Contractor shall forthwith supply the Controlling Officer with such information as may be requested and required by the Client to enable it to make a decision.

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39.3 The Contractor shall during the term of this Agreement not be allowed to proceed with any of the following matters before the prior written consent of the Client's Acquisition Council has been obtained:-

39.3.1 any transfer of any amount of shares of the Contractor;

39.3.2 any change in the composition of the Contractor;

39.3.3 any change in the ownership of the Contractor; or

39.3.4 any material changes in the constitution, memorandum, and articles of association or similar document providing for the creation, formation or incorporation of the Contractor, which consent shall not be unreasonably withheld.

39.4 The appointment of any subcontractor shall not relieve the Contractor from any liability or obligation under this Agreement and the Contractor shall be responsible for the acts, defaults and neglects of such subcontractor as fully as if they were the act, defaults or neglects of the Contractor.

#### **40. INSOLVENCY**

Should the Contractor commit any act of insolvency or being a natural person be sequestrated or assign, surrender or attempt to assign or surrender his estate or being a partnership be dissolved, or be liquidated or placed under judicial management or be wound up (whether provisionally or finally), no payments due and payable from that date shall be made by the Client to the Contractor directly, but only to the liquidator, trustee or judicial manager of the estate, as the case may be.

#### **41. REPRESENTATION OR AGENCY**

Notwithstanding the provisions of this Agreement, the security officers and other Contractor's representatives shall not for any purpose be deemed to be the employees of the Client.

#### **42. RULE OF CONSTRUCTION**

A rule of construction may not disadvantage a Party just because that Party was responsible for the preparation of this Agreement or any part of it.

#### **43. CONFIDENTIALITY**

43.1 The Parties undertake that all information which each has or obtains at any time relating to the other, including but not limited to technical, commercial and security-related information, which

.....  
Respondent's signature

.....  
Date & company stamp

is not available on request to the general public or to which they become privy to in the course of the exercise:-

43.1.1 shall be kept confidential and shall not be disclosed by such Party, or by its officers, employees, independent contractors or agents, to any third party; and

43.1.2 shall not directly or indirectly be used by such Party, or by its officers, employees and agents for its own benefit or the benefit of any third party.

43.2 The Contractor shall, on demand from the Client, use its best endeavours to obtain written secrecy undertakings in the form reasonably specified by the Client, from any approved agent or subcontractor of the Contractor or any employee of the Contractor.

43.3 The provisions of this confidentiality clause shall survive the cancellation or termination of this Agreement for any reason, and shall remain binding on the Parties for a period of 5 (five) years after termination of this Agreement for any reason whatsoever.

signature of this Agreement.

**44. SIGNATURE**

The signatories to this Agreement hereby warrant that they have the proper and full authority to sign this Agreement on behalf of the Parties and each shall without delay produce an appropriate resolution to such effect, if and when called upon to do so by the other.

**45. SEVERABILITY**

Each clause of this Agreement shall be severable, the one from the other, and if any clause is found to be defective or unenforceable for any reason by any competent court, then the remaining clauses shall be and continue to be of full force and effect and binding upon the Parties.

**46. WAIVER**

No waiver on the part of either Party of any rights arising from a breach of any provision of this Agreement will constitute a waiver by the indulgent Party of its rights in respect of any subsequent breach of any other provision of this Agreement by the other Party.

.....  
Respondent's signature

.....  
Date & company stamp

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2008

**AS WITNESSES:**

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

For and on behalf of:

**TRANSNET LIMITED**

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

NAME AND DESIGNATION OF SIGNATORY  
WHO WARRANTS THAT HE IS DULY  
AUTHORISED THERETO

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2008

**AS WITNESSES:**

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

For and on behalf of:

.....

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

NAME AND DESIGNATION OF SIGNATORY  
WHO WARRANTS THAT HE IS DULY  
AUTHORISED THERETO

.....  
Respondent's signature

.....  
Date & company stamp

**SCHEDULE "A"**

Full name of the Contractor (Company):

\_\_\_\_\_

Registration Number of the Contractor (Company):

\_\_\_\_\_

Commencement Date and time of this Agreement (Effective Date/Time):

\_\_\_\_\_

Duration of this Agreement:

\_\_\_\_\_

Expiry date and time of this Agreement: \_\_\_\_\_

Physical Address of the Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(which shall also be the *domicilium citandi et executandi* of the Contractor)

Physical Address of the Client:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(which shall also be the *domicilium citandi et executandi* of the Client)

.....  
Respondent's signature

.....  
Date & company stamp