

AGREEMENT OF LEASE

between

TRANSNET SOC LTD

(Registration Number: 1990/000900/30)

A state owned company, duly incorporated in terms of the company laws of the Republic of South Africa and represented herein by the business division stipulated in Annexure "A"

(hereinafter referred to as the "Lessor")

and

(hereinafter referred to as the "Lessee")

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ANNEXURE “A” – COMMERCIAL TERMS

ANNEXURE “B” – LEASE PLAN

ANNEXURE “C” – DEBIT ORDER INSTRUCTION

ANNEXURE “D” – D1: SINGLE SURETY, D2: MULTIPLE SURETIES

SCHEDULE 1 – ADDITIONAL MAINTENANCE OBLIGATIONS

SCHEDULE 2 – BUSINESS PLAN/COMMERCIAL PROPOSAL & ENVIRONMENTAL MANAGEMENT PLAN

1. INTERPRETATION AND PRELIMINARY

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

1.1. words importing:

- 1.1.1. any one gender includes the other two genders;
- 1.1.2. the singular include the plural and *vice versa*; and
- 1.1.3. natural persons include created entities (corporate or unincorporated) and the state and *vice versa*;

1.2. the following terms shall have the meanings assigned to them hereunder and similar expressions shall have corresponding meanings:

- 1.2.1. “**Administration Fee**” means the amount specified in Annexure “A” that is payable by the Lessee to the Lessor in respect of the administrative arrangements attended to by the Lessor in relation to this Lease Agreement;
- 1.2.2. “**Ancillary Agreements**” means the ancillary agreements listed in Annexure A, which the Parties may conclude in respect of services that are ancillary to this Lease Agreement;
- 1.2.3. “**Annexure A**” means Annexure “A” to this Lease Agreement, being an annexure containing certain material commercial terms applicable to this Lease Agreement;
- 1.2.4. “**Annexure B**” means Annexure “B” to this Lease Agreement, containing a diagram of the Leased Premises, the Surrounding Property and/or the Common Areas, as the case may be;
- 1.2.5. “**Annexure C**” means if applicable, Annexure “C” to this Lease Agreement, containing the debit order instruction signed by the Lessee, where applicable;
- 1.2.6. “**Annexure D**” means if applicable, Annexure “D” to this Lease Agreement, containing the suretyship forms signed by the relevant third party standing surety for the Lessee;

- 1.2.7. **“BBBEE”** means broad-based black economic empowerment, as defined in the Broad-Based Black Economic Empowerment Act 53 of 2003;
- 1.2.8. **“BBBEE Target Plan”** means, if applicable, the plan (which forms part of the Business Plan/Commercial Proposal) that the Lessee intends implementing in respect of its BBBEE status, as more fully described in Schedule 2;
- 1.2.9. **“Beneficial Occupation Period”** means the period as defined in Annexure A during which the Lessee will have occupation of the Leased Premises as set out in Clause 7 below.
- 1.2.10. **“Business Day”** means any day other than a Saturday, Sunday or an officially recognised public holiday in the Republic;
- 1.2.11. **“Business Plan/Commercial Proposal”** means, if applicable, the Business Plan/Commercial Proposal described in clause 5 below and in Schedule 2, containing details regarding the various plans that the Lessor requires or that the Lessee proposes to implement in relation to the Leased Premises, including:
- 1.2.11.1. the BBBEE Target Plan;
 - 1.2.11.2. Volume Commitments;
 - 1.2.11.3. the Environmental Plan; and/or
 - 1.2.11.4. any other plan as may be required by the Lessor, from time to time.
- 1.2.12. **“Commencement Date”** means, notwithstanding the Signature Date, the commencement date stipulated in Annexure “A”, being the date on which this Lease Agreement commences, which date coincides with the commencement of the Beneficial Occupation Period, if applicable.
- 1.2.13. **“Common Areas”** means, if applicable, all amenities provided by the Lessor for the general use of the Lessee and other lessees (and/or their employees, clients, customers and other persons as may be agreed upon by the Parties, from time to time) on the Surrounding Property, as more fully described in Annexure “A” and

Annexure “B” including (but not limited to) the foyers, malls, arcades, passages, parking areas, entrances, exits, loading areas, landscape areas, interior and exterior stairways, toilets, yards, sidewalks, driveways, ramps and other amenities (as may be applicable) having regard to the nature of the Surrounding Property;

- 1.2.14. **“Confidential Information”** means any information disclosed by either Party to the other Party prior to the conclusion of this Lease Agreement, in terms of this Lease Agreement or otherwise in connection with this Lease Agreement;

- 1.2.15 **“Deposit”** means the Initial Deposit and, if applicable, the Periodic Deposit;

- 1.2.16 **“Dangerous Goods”** means Goods, including those Goods defined as Hazardous Substances, which have the potential to cause harm to persons, property or the environment or the potential to cause pollution or degradation of the environment as contemplated in the National Environmental Management Act 107 of 1998 (“NEMA”) or other relevant legislation.

- 1.2.17 **“Environment”** has the meaning set out in Section 1 of the National Environment Management Act 107 of 1998;

- 1.2.18 **“Environmental Management Plan”** means the plan that seeks to achieve a required end state, and describes how activities, that have or could have an adverse impact on the environment, will be mitigated, controlled and monitored;

- 1.2.19 **“Escalation Rate”** means the amount by which the Rental and the Operating Costs payable by the Lessee shall be increased each year for the duration of this Lease Agreement and any Rental Review Period, if applicable. The escalation rate during the initial period shall be the rate set out in Annexure “A”;

- 1.2.20 **“Expiry Date”** means the date upon which this Lease Agreement shall terminate, as stipulated in Annexure “A”;

- 1.2.21 **“Improvement”** means any addition, alteration or development on the Leased Premises;

- 1.2.22 **“Initial Deposit”** means the initial deposit specified in Annexure “A”, being based on the monthly rent payable in the final year of the Initial Period of this Lease Agreement;

- 1.2.23 **"Initial Period"** means the initial period specified in Annexure "A";
- 1.2.24 **"Law"** means any law applicable in the Republic of South Africa and includes, without limitation, any Act of Parliament, ordinance, by-law, statutory proclamation, regulation, the common law or other enactment, directive, policy or determination having the force of law;
- 1.2.25 **"Lease Agreement"** means this lease agreement together with any schedules and/or annexures attached hereto, by agreement between the Parties;
- 1.2.26 **"Lease Period"** means the fixed period commencing on the Commencement Date and expiring on the Expiry Date;
- 1.2.27 **"Leased Premises"** means the premises forming the subject matter of this Lease Agreement, as more fully described in Annexure "A" and illustrated in the diagram attached hereto as Annexure "B", but does not include the Surrounding Property or the Common Areas unless specifically included;
- 1.2.28 **"Lessee"** means the person leasing the Leased Premises under this Lease Agreement and identified in Annexure "A";
- 1.2.29 **"Lessee's Domicilium"** means the domicilium address elected by the Lessee and set out in Annexure "A";
- 1.2.30 **"Lessor"** means Transnet Limited (Registration Number: 1990/000900/30), a state owned company with limited liability, duly incorporated in accordance with the company laws of the Republic, which is represented herein by the business division stipulated in Annexure "A";
- 1.2.31 **"Lessor's Domicilium"** means the Principal address elected by the Lessor and set out in Annexure "A";
- 1.2.32 **"Lessor's Regulations"** means all regulations as may from time to time be prescribed and made available by the Lessor to the Lessee in accordance with this Lease Agreement;
- 1.2.33 **"Major Environmental Incidents"** an incident or sequence of incidents, whether immediate or delayed, that results or has the potential to result in widespread, long-term, irreversible significant negative impact on the environment and/or has a high risk of legal liability;

- 1.2.34 **“Main Agreement”** means this Lease Agreement but excluding the schedules and/or annexures forming part of this Lease Agreement;
- 1.2.35 **“Notice of Redevelopment Period”** means, if applicable, the notice of redevelopment period stipulated in Annexure “A”;
- 1.2.36 **“Notice of Repossession Period”** means, if applicable, the notice of repossession period stipulated in Annexure “A”;
- 1.2.37 **“Offer Period”** means, if applicable, the offer period stipulated in Annexure “A”, being the period during which the offer made by the Lessee to the Lessor, as evidenced through the Lessee’s signature of this Lease Agreement, remains open for acceptance by the Lessor;
- 1.2.38 **“Operating Costs”** means the monthly contribution by the Lessee towards the operating and/or maintenance costs of the Leased Premises, as specified in Annexure “A”;
- 1.2.39 **“Parties”** means the Lessor and the Lessee;
- 1.2.40 **“Party”** means either the Lessor or the Lessee, as the context may indicate;
- 1.2.41 **“Periodic Deposit”** means, if applicable, the adjusted Deposit that may become payable by the Lessee to the Lessor upon the commencement of each Rental Review Period;
- 1.2.42 **“Pollution”** has the meaning set out in Section 1 of National Environment Management Act 107 of 1998;
- 1.2.43 **“Property”** means the property defined in Annexure “A”;
- 1.2.44 **“Pro-Rata Share”** means, where the Leased Premises do not comprise the whole of the Property, the percentage figure arrived at by dividing the area of the Leased Premises by the leasable area of the whole of the Property. The Lessee’s Pro-Rata Share is as set out in Annexure “A”;
- 1.2.45 **“Refuse Removal Charges”** means the charges payable in respect of refuse removed from the Leased Premises, whether such services have been supplied by the local authority or the Lessor, as specified in Annexure “A”;

- 1.2.46 **"Rental"** means the rental payable by the Lessee to the Lessor, as set out in Annexure "A";
- 1.2.47 **"Rental Review Period/s"** means the rental review period/s, if applicable, stipulated in Annexure "A";
- 1.2.48 **"Republic"** means the Republic of South Africa;
- 1.2.49 **"Sewerage Removal Charges"** means the charges payable in respect of sewerage removed from the Leased Premises, whether such services have been supplied by the local authority or the Lessor, as specified in Annexure "A";
- 1.2.50 **"Schedule 1"** means, if applicable, the schedule attached to this Lease Agreement and marked "Schedule 1";
- 1.2.51 **"Schedule 2"** means, if applicable, the schedule attached to this Lease Agreement and marked "Schedule 2", to which the Lessee's Business Plan/Commercial Proposal is attached;
- 1.2.52 **"Signature Date"** means the date on which the last Party signing this Lease Agreement does so;
- 1.2.53 **"Specified Purpose"** means the specified purpose for which the Leased Premises shall be used as specified in Annexure "A"; which purpose shall be related or linked to the rail transportation business.
- 1.2.54 **"Surrounding Property"** means the property surrounding the Leased Premises, including (if applicable) the Common Areas, as more fully described in Annexure "A" and as illustrated in Annexure "B" to this Lease Agreement; and
- 1.2.55 **"Transport Agreement"** means the agreement which the Lessee had concluded alternatively intends to conclude (as the case may be) with Transnet, which regulates the legal relationship between the Parties for the provision of rail transport services, whereby the Lessee wishes to transport freight on Transnet's rail infrastructure from the point of placing to the handover point and vice versa.
- 1.2.56 **"VAT"** means value added tax, as defined in the Value Added Tax Act 89 of 1991;
- 1.3 any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;

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

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

2 LEASED PREMISES

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

3 LEASE AGREEMENT

- 3.2 For the sake of clarity, the Parties record that this Lease Agreement comprises:
- 3.1.1 the general terms and conditions set out in the Main Agreement;
 - 3.1.2 if applicable, the specific terms and conditions set out in Schedule 1;
 - 3.1.3 if applicable, the specific terms and conditions set out in Schedule 2;
 - 3.1.4 the key commercial terms set out in Annexure "A";
 - 3.1.5 the lease Plan set out in Annexure "B", and
 - 3.1.6 such other schedules and/or annexures attached hereto by agreement between the Parties.
- 3.2 In the event of any conflict with the provisions of the Main Agreement and/or any schedule and/or any annexure forming part of this Lease Agreement, the provisions of the schedules and annexures shall prevail.
- 3.3 It is specifically recorded that this Lease Agreement is entered into as a result of the Lessee having entered into a Transport Agreement with the Lessor. If a Transport Agreement has not already been concluded, the Lessee undertakes to conclude same within 3 months from Commencement Date.

4 DURATION OF LEASE AGREEMENT

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

5 BUSINESS PLAN/COMMERCIAL PROPOSALS

5.1 The Lessee is required to submit a Business Plan/Commercial Proposal to the Lessor. Such Business Plan/Commercial Proposal shall contain such information and documents as may be reasonably required by the Lessor, including but not limited to the following:

- 5.1.1 the full names, identity numbers and residential addresses of the persons exercising management control over the Lessee;
- 5.1.2 the full names, registration or identity numbers and registered business or residential addresses (as the case may be) of the persons or entities who beneficially, directly or indirectly, hold shares in the Lessee;
- 5.1.3 the Lessee's projected business cash flows, and its development and/or operational plans;
- 5.1.4 details of the Lessee's operation methodology including equipment to be used;
- 5.1.5 details of the Lessee's volume commitment to the business of the Lessor;
- 5.1.6 Annexure "C"
- 5.1.7 any additional information that the Lessor may reasonably require, from time to time, in accordance with the provisions of Schedule 2, if applicable.

5.2 The Business Plan/Commercial Proposal shall be used by the Lessor to determine whether or not to enter into this Lease Agreement and to monitor the activities of the Lessee.

5.3 The terms and conditions applicable to the monitoring of the Lessee's activities in terms of this clause 5 shall, if applicable, be contained in the Business Plan/Commercial Proposal which is an annexure to Schedule 2.

5.4 This Lease Agreement is subject to a Performance Review Period as set out in Annexure "A" wherein the terms of this Lease Agreement and the Lessee's Business Plan/Commercial Proposal in general and the Lessee's volume commitments in particular, will be reviewed to ensure compliance.

6 LESSOR'S POLICIES AND REGULATIONS

- 6.1 The Lessee acknowledges that it is fully aware of and conversant with the terms of the Lessor's Policies and Regulations and the implications thereof.
- 6.2 The Lessee shall conduct its business from the Leased Premises strictly in accordance with the Lessor's Policies and/or Regulations save to the extent that the Lessor's Policies and/or Regulations may be inconsistent with any law in which event the provision of such relevant law (as the case may be) shall apply.
- 6.3 The Lessor shall be entitled from time to time and by written notice to the Lessee to amend all or any of the Lessor's Policies and/or Regulations provided that such amendment shall be reasonable and shall apply generally to all leases of land and/or premises (including the Leased Premises) within the Surrounding Property.
- 6.4 The Lessee shall, from time to time upon being required to do so by the Lessor, meet with the Lessor and/or its duly authorised representative/s for the purpose of reviewing the extent to which the Lessor's Policies and/or Regulations are complied with by the Lessee, and shall generally provide the Lessor and its duly authorised representative/s with all documentation and with such assistance as they may reasonably require for that purpose. The Lessor shall be entitled to give the Lessee written notice of:
- 6.4.1 remedial measures to be undertaken by the Lessee in order to ensure that the Lessor's Policies and/or Regulations are complied with; and
 - 6.4.2 a reasonable time period within which such remedial measures are to be commenced and/or completed.
- 6.5 The failure by the Lessee to timeously implement any remedial measures of which it is notified in writing in accordance with the provisions of this clause 6 shall constitute a material breach by the Lessee of provisions of this Lease Agreement entitling the Lessor (in addition to and without prejudice to any other remedy available to the Lessor in terms of this Lease Agreement and/or at law) to claim proven damages from the Lessee or a penalty in an amount equal to 50% (fifty percent) of the monthly Rental payable by the Lessee for so long as such breach persists.
- 6.6 The Lessor shall be entitled (and on reasonable written notice to the Lessee) to require the Lessee to effect and implement such amendments to its Business Plan/Commercial Proposal, if applicable, as may from time to time be reasonably necessary in order to ensure that such Business Plan/Commercial Proposal complies with the Lessor's Policies and/or Regulations.

- 6.7 The Lessee shall have no claim against the Lessor arising from any loss or damage which it may suffer as a consequence of implementing any such amendments to its Business Plan/Commercial Proposal.

7 OCCUPATION AND BENEFICIAL OCCUPATION

- 7.1 In the event that the Leased Premises is not fit for trading as at the Commencement Date, the Lessor may (in its sole discretion) agree that, from the Commencement Date and for the duration of the Beneficial Occupation Period, the Lessee shall be entitled to use and enjoy the Leased Premises without having to pay Rental.
- 7.2 The Lessee acknowledges that it may suffer a certain amount of inconvenience in the event of any Improvements which the Lessor may be effecting in relation to the Leased Premises being incomplete and agrees that it shall have no claim against the Lessor for compensation or for any loss or damage which it may suffer as a result.
- 7.3 The Lessee shall be responsible for the payment of electricity, water and refuse removal charges in respect of the Leased Premises during the Beneficial Occupation Period.
- 7.4 Should the Beneficial Occupation Period not be applicable, the Lessee shall be given occupation of the Leased Premises on Commencement Date, however, this Lease Agreement shall commence on Commencement Date irrespective of whether the Lessee takes occupation or not on Commencement Date from which date Rental will be due and payable by the Lessee.

8 SPECIFIED PURPOSE

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

9 DEPOSIT

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

- 9.1.1 the Initial Deposit which shall be payable on the Signature Date; and

- 9.1.2 if applicable, the Periodic Deposit, as agreed upon by the Parties from time to time, which shall be payable upon the commencement of any Rental Review Period.
- 9.2 The Lessor shall have the right to apply the whole Deposit, or a portion thereof, towards payment of any Rental, water and electricity charges, reinstatement costs and/or any other liability for which the Lessee is responsible in terms of this Lease Agreement. If any portion of the Deposit is so applied, the Lessee shall forthwith reinstate the Deposit to its original amount.
- 9.3 The Deposit or the balance thereof, as the case may be, shall be refunded by the Lessor to the Lessee:
- 9.3.1 after the Lessee has vacated the Leased Premises; or
 - 9.3.2 after all the Lessee's obligations to the Lessor in terms of this Lease Agreement have been fully discharged; and
 - 9.3.3 free of interest.
- 9.4 The deposit referred to in this clause 9 shall not be subject to VAT.

10 RENTAL

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

10.5 All amounts payable by the Lessee in terms of this clause 10 shall be subject to VAT.

11 METHOD OF PAYMENT

- 11.1 The Lessor shall be entitled to require the Lessee to effect payments of all amounts due under this Lease Agreement by means of an electronic funds transfer (EFT), , operating on an account held by the Lessee with a financial institution chosen by the Lessee. The Lessee shall not be permitted under any circumstances to settle any amount due in terms of this Lease Agreement by means of a cash payment.
- 11.2 Payment of any amount due under this Lease Agreement shall be deemed to have been made only when the relevant amount has been duly credited to the banking account of the Lessor.
- 11.3 All amounts payable by the Lessee to the Lessor in terms of this Lease Agreement shall be paid free of set-off and/or deduction, whether in respect of any bank or other charges.
- 11.4 In the event that the Lessee is liable to make payment of any charges to the Lessor in respect of refuse removal, sewerage removal, water and/or electricity, the Lessee acknowledges that such charges levied by the Lessor may vary from time to time and the Lessee shall be bound to pay such variable charges as invoiced by the Lessor.
- 11.5 In the event of the termination of this Lease Agreement prior to the Expiry Date, or prior to the expiry of any Rental Review Period, as the case may be, the Lessor shall have the right to claim immediate payment of all and any outstanding amounts owing to it and the Lessee shall be obliged to effect payment of the amount so claimed.
- 11.6 In the event of the Lessee disputing any charges on the invoice, it shall notify the Lessor of the disputed charges, and the Parties shall attempt to resolve the dispute before the disputed charge is paid by the Lessee. Notwithstanding the resolution of the disputed charge the Lessee shall be liable to pay the undisputed charge accordingly.
- 11.7 The lessee shall not be entitled to defer, withhold or adjust any payment due to the Lessor arising out of this Agreement;
- 11.8 If the Lessor at any time receives less than the full amount then due and payable to it under this Lease Agreement, the Lessor may allocate and apply such payment as follows notwithstanding any instruction from the Lessee:

- 11.8.1 firstly, in or towards payment or satisfaction of all costs, charges, expenses and liabilities, incurred and payments made by the Lessor, under or

pursuant to the Lease Agreement including without limitation, legal expenses on an attorney and own client scale, reinstatement costs and any costs incurred in enforcing any Security

11.8.2 secondly, in or towards payment of any accumulated and accrued interest in respect of the outstanding amount;

11.8.3 thirdly, in or towards outstanding accumulated arrears

11.8.4 fourthly, in or towards current rental.

12 ESCALATION RATE

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

13 RENTAL REVIEW

13.1 In the event that a Rental Review Period is applicable, the Parties agree that, 6 (six) months prior to the commencement of any Rental Review Period, they shall meet and endeavour to agree upon the Rental and Escalation Rate that will apply in that Rental Review Period.

13.2 Should the Parties not be able to agree upon the Rental and Escalation Rate in terms of clause 13.1 above, the Rental and Escalation Rate shall be determined by a registered Transnet approved valuer (or such other valuer as Transnet may appoint) and a valuer that the Lessee may appoint.

13.3 In the event that the two valuers referred to in clause 13.2 fail to reach agreement, within a period of 14 (fourteen) days from the date of referral thereto, the Rental and Escalation Rate shall be determined by an expert valuer mutually agreed upon by the Parties ("**External Valuer**").

13.4 In the event that Parties fail to agree on an Expert Valuer within 10 (ten) days after the expiry of the said 14 (fourteen) day period, the dispute shall be referred to the Chairman of the South African Institute of Valuers (or its successor) who shall appoint a valuer of at least 10 (ten) years standing for the purposes of determining the Rental and Escalation Rate ("**SAIV Valuer**").

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

14 ADDITIONAL CHARGES

- 14.1 The Lessee shall pay the following additional charges to the Lessor:

- 14.1.1 in the event that the Lessor supplies water and/or electricity to the Lessee (as may be applicable), the applicable water and/or electricity fees that may be charged by the Lessor to the Lessee, from time to time, in accordance with the provisions of clause 29.3 and clause 31 below;

14.1.2 the Sewerage Removal Charges;

14.1.3 the Refuse Removal Charges; and

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

14.2 The charges to be levied by the Lessor on the Lessee in terms of 14.1.2, 14.1.3 and 14.1.4 shall:

14.2.1 apply only where the Leased Premises comprise a portion of the whole of the Property, and

14.2.2 be the Lessee's Pro-Rata Share of such charges.

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

15 ADMINISTRATION FEE

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

16 USE OF LEASED PREMISES

16.1 The Lessee shall not:

- 16.1.1 vacate the Leased Premises or allow the Leased Premises to remain unused, unless the prior written consent of the Lessor is obtained, which consent shall not be unreasonably withheld.
- 16.1.2 store explosives, flammable goods or toxic substances or liquids on the Leased Premises, except in so far as such storage may be reasonably necessary for the conduct of its business and provided that the Lessee obtains the prior written consent of the Lessor and any other applicable authority, to store such items.
- 16.1.3 store or handle any Dangerous Good in excess of the prescribed maximum volume set out in Annexure "A". Should the Lessee wish to store or handle any Dangerous Good in excess of the prescribed maximum volume, they must first obtain the written consent of the Lessor.
- 16.1.4 use the Leased Premises for residential purposes or as sleeping quarters, unless the prior written consent of the Lessor, who may in its sole discretion give such discretion, is obtained;
- 16.1.5 do anything that detracts from the appearance of the Leased Premises and/or the Surrounding Property;
- 16.1.6 do or cause anything to be done which may cause a nuisance or inconvenience to the Lessor or to any other lessees or to occupants of adjoining properties; and
- 16.1.7 install any safe or heavy machinery (including automated teller machines) or equipment on the Leased Premises without the prior written consent of the Lessor, which consent may, in the Lessor's discretion, contain such conditions as the Lessor may determine.

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

alterations or repairs to the Leased Premises to comply with the requirements of any licensing authority.

17 USE OF COMMON AREAS

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

17.2 In the event that one of the lessees occupying the Common Areas contravenes any environmental requirements contained in the lease agreement or any additional environmental requirements further issued by the Lessor – where the lessor could not trace the culprit, a fine to be issued must be shared by all lessees occupying that particular Common Area. The portion of the fine payable by each individual lessee will be based on the amount of land rented by each individual;

17.3 In the event that the Common Area is damaged in whatsoever manner caused, the Lessee accepts that it shall be held jointly and severally liable for any such damage, unless the Lessee is able to prove that its operations did not the cause the damage.

18 LOADING AND UNLOADING OF GOODS

18.1 All loading, delivery and unloading of goods, merchandise, supplies and fixtures to and from the Leased Premises shall be done only at such times, in such areas and through such entrances as may be designated for the purpose by the Lessor and shall be subject to such rules and regulations as, in the discretion of the Lessor, are necessary for the proper administration of the Leased Premises and the Surrounding Property.

18.2 The Lessee shall ensure that its vehicles do not obstruct the free flow of traffic, the entrances or exits of any driveway or the pedestrian entrances to the Leased Premises and the Surrounding Property.

18.3 The Lessee shall not:

- 18.3.1 cause or permit its vehicles to be parked in the parking areas or the driveways on the Surrounding Property designated by the Lessor as customers' parking areas and driveways; and
- 18.3.2 place or permit any obstruction to be placed in or on the parking areas or driveways on the Surrounding Property designated by the Lessor as customer's parking areas or driveways.

19 LESSEE'S GENERAL OBLIGATIONS AND RESTRICTIONS

The Lessee:

- 19.1 shall not contravene or permit the contravention of any law, by-law or statutory regulation or the conditions of any licence, authorisation or permit relating to or affecting the occupation of the Leased Premises or the carrying on of the Lessee's permitted business therein, or which may expose the Lessor to any claim, action or prosecution;
- 19.2 shall not contravene any of the conditions of title under which the Lessor holds title to, nor any laws which the Lessor is required to observe by reason of its ownership of the Leased Premises;
- 19.3 shall not be entitled to withhold or delay payment of any moneys due by the Lessee to the Lessor in terms of this Lease Agreement by reason of the Leased Premises or any part thereof being in a defective condition or in a state of disrepair, or for any other reason whatsoever, save where such defective condition is as a direct result of a breach by the Lessor of its obligations in terms of this Agreement, and the provision of clause 37 of this agreement have been applied by the Lessee;
- 19.4 shall have no claims of any nature whatsoever against the Lessor in respect of any damage caused to the Lessee's stock-in-trade, furniture, equipment, installations, books, papers or other articles kept in the Leased Premises or any other damage or loss caused to or sustained by the Lessee in the Leased Premises whatsoever, whether as a result of water seepage or leakage wherever and howsoever occurring in the Leased Premises, or as a result of rain, hail, lightning, fire, riot or civil commotion.
- 19.5 shall have no claim of any nature whatsoever, whether for damages or a remission of rent, against the Lessor for any interruption in the supply of water, electricity, heating, air conditioning, lifts or any other service;

- 19.6 shall have no claim of any nature whatsoever against the Lessor for any accident, injury or damage caused to its representatives, employees, customers or invitees through or while using any portion of the Leased Premises, whether arising out of the negligence of the Lessor, the Lessor's servants or any other cause, other than wilful or grossly negligent acts on the part of the Lessor or its servants;
- 19.7 undertakes to make timeous application for any licences and/or any renewals thereof that are necessary for the conduct of its business in the Leased Premises and to furnish the Lessor with copies of such licences and/or renewals, as soon as may be reasonably possible thereafter; and
- 19.8 shall comply with the requirements of the approved Environmental Management Plan and any additional requirements issued by the Lessor from time to time, shall inform the Lessor of any incidents which may give rise to environmental pollution or any Major Environmental Incidents within 12 hours of the occurrence

20 EMERGENCY PLAN

- 20.1 In the event that the Lessor requires the Lessee to put in place measures in respect of or in connection with emergencies, the Lessor shall be entitled, upon written notice to the Lessee, to require the Lessee to submit to the Lessor a detailed emergency plan dealing with measures that the Lessee intends proposing in respect of or in connection with emergencies at the Leased Premises, which emergency plan shall be subject to the satisfaction of the Lessor in its sole discretion.
- 20.2 The Lessee undertakes to comply with the provisions of the emergency plan approved by the Lessor in terms of clause 20.1, including ensuring, *inter alia*, that:
- 20.2.1 the provisions of the emergency plan are implemented fully;
 - 20.2.2 the emergency plan complies with the provisions of any insurance policies in respect of the Leased Premises;
 - 20.2.3 the Lessor is duly notified of any failure by the Lessee (for whatever reason) to comply with any provision of the emergency plan; and
 - 20.2.4 the Lessor is duly notified of the occurrence of any emergency, whether or not such emergency may fall within the ambit of the emergency plan.

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

21 INSURANCE

21.1 The Lessor shall provide insurance cover for damage to the Leased Premises including any Improvement situated thereon (as at Commencement Date), for any perils normally covered by the insurance policies of the South African Special Risk Insurance Association and for any additional risks which the Lessor may, in its sole discretion, choose to take out insurance in respect of.

21.2 The Lessor shall obtain insurance cover from an insurer of its choice for any and all other reasonable commercial or other risk that may exist or arise in relation to the Leased Premises, or any Improvement to the Leased Premises or any use of the Leased Premises or any Improvement thereto, but which shall not include insurance for any risk in respect of and in connection with any movables owned by the Lessee situated in, on, or around the Leased Premises.

21.3 The Lessee will be liable for the Lessor's insurance excess amount as set out in annexure "A" which amount shall be subject to change from time to time.

21.4 The Lessee shall take out, at its own cost:

21.4.1 public liability insurance cover for an amount that will reasonably indemnify the Lessor against all claims arising out of the business which the Lessee conducts on the Leased Premises. The Lessor shall further approve an endorsement in respect of the Lessee's liability (which conforms to its activities in or on the Leased Premises)

21.4.2 contractors all risk insurance cover for any Improvement that is undertaken the Lessee on the Leased Premises, in respect of perils that are normally covered by insurance policies of this nature.

21.4.3 any other insurance as may be required by Law.

21.5 All insurances listed in this clause 21 must be taken out with a well-recognised and reputable insurer and must be taken out and become fully effective not later than 21 days after Commencement Date. The Lessee shall thereafter maintain and keep the insurance covers valid for the duration of this Lease Agreement.

21.6 If applicable, the Lessee shall pay on demand to the Lessor any increase in the insurance policy premiums payable by the Lessor to its insurer which result from any improvements that the Lessee has made to the Leased Premises.

21.7 The Lessee hereby indemnifies the Lessor against any loss or damage that the Lessor may incur (including but not limited to loss as a result of the claims by third parties against the Lessor) due to the Lessee not complying with the provisions of this clause 21.

21.8 Notwithstanding any other provision contained in this Lease Agreement, a failure by the Lessee to comply with any obligation under this clause 21 shall constitute a material breach of this Lease Agreement.

22 MAINTENANCE

22.1 Notwithstanding any additional maintenance obligations that may be imposed on the Lessee in this Lease Agreement (including any schedule to this Lease Agreement):

22.1.1 the Lessee shall keep and maintain the Leased Premises in good order and condition at its own cost to the satisfaction of the Lessor and, upon expiration or earlier termination of this Lease Agreement, shall deliver the Leased Premises to the Lessor in a good order and condition, fair wear and tear excepted;

22.1.2 the Lessee shall exercise reasonable care to prevent any blockage of sewers, water pipes or drains in, on or used in connection with the Leased Premises and shall remove at its own cost any obstruction or blockage in any sewer, water pipe or drain serving the Leased Premises exclusively and, where necessary, repair the sewer, water pipe or drain concerned;

22.1.3 in the event of the Lessee's failure to replace or make good or repair any item for which it is responsible in terms of this Lease Agreement and if it remains in default for a period of 7 (seven) days after written notice has been made or given by the Lessor calling upon it to replace or make good or repair such item, the Lessor shall be entitled, without prejudice to any other rights, to enter upon the Leased Premises and replace or make good or repair such items at the Lessee's cost;

22.1.4 in the event of a burglary or attempted burglary on the Leased Premises, the Lessee shall at its own cost arrange for the repair of any damage to the

Leased Premises caused by such burglary or attempted burglary to the satisfaction of the Lessor;

22.1.5 in the event that the Lessee causes any damage to the Leased Premises (including any Improvement) the Lessee shall, within 48 (forty eight) hours of it becoming aware of such damage, report such damage to the Lessor, in order to enable the Lessor to seek recourse from the relevant insurer. Notwithstanding the Lessee's compliance with this clause 22.1.5, the Lessee shall be responsible for the payment of any excess amount that may be applicable at the time of the occurrence that resulted in such damage; and

22.1.6 in the event that any civil and/or electrical maintenance is required to be undertaken at the Leased Premises, the Lessee shall, at its own cost, procure that such maintenance shall be performed by suitably qualified and registered specialists, to the satisfaction of the Lessor;.

22.2 The Lessor shall, subject to the provisions of clause 43 below, remain responsible for all structural repairs required to be effected to the Leased Premises and for the maintenance and upkeep of all Common Areas and/or Surrounding Property. It is expressly provided that (notwithstanding the foregoing) all structural repairs required to be effected by reason of:

22.2.1 the failure by the Lessee to comply with its maintenance obligations in terms of this clause 22; or

22.2.2 the improper use of the Leased Premises by the Lessee; or

22.2.3 damage caused by the Lessee and/or third parties,

shall be the responsibility of and shall be paid for by the Lessee.

23 RESPONSIBILITY FOR ELECTRICAL INSTALLATIONS

23.1 Notwithstanding any additional obligations that may be imposed on the Lessee in terms of this Lease Agreement (including any schedule to this Lease Agreement), the Lessee shall be responsible for:

23.1.1 the safety, safe use and maintenance of the electrical installations in the Leased Premises;

23.1.2 the safety of the conductors connecting the electrical installations to the point of supply; and

23.1.3 where the Lessee has made alterations or additions to the Leased Premises, procuring the issue of a valid certificate of compliance in respect of the electrical installations in the Leased Premises.

23.2 The Lessee shall be responsible for keeping and maintaining in good order and condition at its own cost the complete electrical installation on the Leased Premises, according to the terms and conditions contained in this Lease Agreement and any schedule.

23.3 The Lessee hereby indemnifies the Lessor against all claims, damages or losses of any nature whatsoever which the Lessor may sustain as a result of the Lessee failing to comply with any of its obligations under this clause 23.

24 SIGNAGE

24.1 All signage (including the content, appearance, location and manner in which such signage is affixed) to be displayed by the Lessee on or about the Leased Premises shall be subject to (and shall not be displayed without) the prior written approval of the Lessor and, if applicable, the provisions of any schedule to this Lease Agreement.

24.2 Without limiting the generality of clause 24.1 the Lessee shall not display any movable signage and/or advertising material on or about the Leased Premises without the prior written approval of the Lessor.

25 ACCESS TO THE LEASED PREMISES

25.1 Subject to any circumstances in which the Lessor may have to enter the Leased Premises in an emergency or in terms of an order of court, the Lessor and/or its duly authorised employees or agents may, upon giving the Lessee reasonable notice, enter upon and inspect the Leased Premises, and do all things necessary in order to enable the Lessor to ascertain, determine and ensure that there is strict compliance with the terms and conditions of this Lease Agreement (including without limitation, any schedule and/or annexure to the Lease Agreement), the Lessor's Regulations and any laws or regulatory requirements that may be imposed in respect of the Leased Premises.

25.2 The Lessee undertakes to afford the persons inspecting the Leased Premises in terms of this clause 25 with access to the Leased Premises and the Lessee's facilities for the purposes of such inspections.

- 25.3 The Lessor undertakes to ensure that the persons inspecting the Leased Premises in terms of this clause 25 will comply with all the safety and security stipulations of the Lessee whilst such persons are on the Leased Premises and/or have access to the Lessee's facilities. The Lessee undertakes in this regard to inform the Lessor of all such safety and security stipulations of the Lessee, within a reasonable period prior to the Lessee inspecting the Leased Premises.
- 25.4 The Lessee shall, under no circumstances, have any claim against the Lessor and/or the persons inspecting the Leased Premises in terms of this clause 25, for loss of beneficial occupation, loss of profits or otherwise.
- 25.5 It is specifically agreed that, save where such damage is caused by the wilful act or gross negligence of the Lessor, its employees or agents, neither the Lessor nor any employee or agent of the Lessor shall be responsible for any loss or damage to any property or for the death or injury of any person arising out of their activities in terms of this clause 25 and the Lessee indemnifies the Lessor and its employees and agents in this regard.

26 SECURITY

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

27 RODENT INFESTATION

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

29 SERVICES BY LESSOR OR RELEVANT AUTHORITY

29.1 The Lessee shall, save where the Lessee occupies only a portion of the Property, at his own cost, arrange with any government, regional, local or other lawful authority or any utilities provider for the supply of electricity and water, and of sewerage removal, refuse removal and other services that are not or, at the absolute discretion of the Lessor, will not be rendered by the Lessor to the Lessee, but which may be required in respect of any of the activities which are to be carried out in or on the Leased Premises.

Where the premises do not comprise the entire Property, the Lessor shall endeavour to supply a metered electrical connection point within the Leased Premises for use by the Lessee.

29.2 Notwithstanding the liability of the Lessee in terms of clause 29.1 above, the Lessee shall be required to make payment to the Lessor in accordance with the provisions of this Main Agreement, which payment shall be in respect of the Lessor's liability to any authority or to any utilities service provider, as the case may be, for the services contemplated in clause 29.1 above.

29.3 In the event that the Lessor elects to supply water, electricity, sewerage removal and/or refuse removal services to the Lessee, the Lessee shall be required to make payment to the Lessor of all costs and/or fees in connection with the availability and consumption of water and electricity, or the provision of sewerage removal and refuse removal services, in accordance with the provisions of this Lease Agreement.

30 SUPPLY OF ELECTRICITY BY THE LESSOR

30.1 In the event that the Lessor supplies electricity in terms of clause 29.3, the Lessor shall endeavour to maintain an efficient and continuous supply of electricity, but does not guarantee continuity of supply and the Lessee acknowledges that interruptions may take place at any time without prior notice to the Lessee.

30.2 The Lessor shall not be liable for any failure or accident or damage that may be caused or sustained directly or indirectly by reason of such failure or generally in relation to supply by the Lessor of electricity.

30.3 The electricity supply may only be used by the Lessee for its own purposes and at the Leased Premises.

30.4 Should the Lessee lease the entire Property, it shall be responsible for the payment of the electricity deposit required by the supply authority and shall pay the same on demand to the

supply authority. Should the Lessor be required to pay the deposit, the Lessee shall refund the Lessor on demand.

- 30.5 Should the electricity installations be damaged as a result of fire or from any other cause, the Lessee must, within 24 (twenty four) hours of it becoming aware of such damage, report such occurrence to the Lessor, irrespective of the nature of the incident and/or the amount involved. The Lessee shall, in addition, where such damage has been caused by an act of the Lessee, be responsible for any excess payable in respect of a claim that may arise in respect of any insurance policy taken out by the Lessor in this regard.
- 30.6 The Lessee shall pay for electricity in accordance with its consumption as measured by the electricity meter/s installed at the Leased Premises and at the prevailing rates and tariffs applicable from time to time. Should the Leased Premises not have a separate meter and should the Lessee request the installation of a separate meter or should the Lessor deem it necessary to install a separate meter, the installation costs and all other costs associated with the installation of such meter shall be paid by the Lessee.
- 30.7 If either Party to this Lease Agreement has reason to doubt the accuracy of any meter reading, it shall be entitled to request that the meter be tested. If it is found that the meter is registering correctly, the cost of such test shall be borne by the Party who requested the test to be carried out. For the purpose of this clause 30 the meter shall be deemed to be registering correctly if the relevant meter readings are accurate to within a 5% (five percent) tolerance.
- 30.8 If it is found that the meter is registering incorrectly it shall be assumed that the fault only arose after the last meter reading and the Lessee's account will not be retrospectively adjusted, save where the Lessee occupies only a part of the Property (and the meter is located outside the Leased Premises) and where the Lessee had previously advised the Lessor of the faulty meter and the Lessor had failed to rectify the faulty meter.
- 30.9 The meter/s recording the electricity consumed in accordance with this Lease Agreement shall be read by an authorised representative of the Lessor, and shall take place at such intervals as may be deemed appropriate by the Lessor. Where the readings are not done monthly the Lessee will be provided with an account based on its estimated consumption, with such account being adjusted from time to time on the basis of actual consumption.
- 30.10 Where the meter/s are located within the Leased Premises they shall be sealed by an authorised representative of the Lessor. If any unauthorised person interferes with such seals,

the Lessor shall have the right to disconnect and withhold the electricity supply until such time as the installation is inspected for defects.

30.11 The Lessor reserves the right to reasonably amend the rates and tariffs applicable to the supply of electricity from time to time, provided that the Lessee is given 1 (one) calendar month written notice to this effect and provided that the amended rates and tariffs are within the rates and tariffs set by the relevant authority.

30.12 The Lessee shall not interfere or cause any interruption in the electricity supply to any adjacent premises.

30.13 Should there be no meter installed to register the electricity consumed by the Lessee, the Lessor shall charge the Lessee its Pro-Rata Share of the costs of electricity consumed within the Property.

31 SUPPLY OF WATER BY THE LESSOR

31.1 In the event that the Lessor supplies water in terms of clause 29.3 above, the Lessor shall endeavour to maintain an efficient and continuous water supply, but does not guarantee continuity of supply and the Lessee acknowledges that interruptions may take place at any time without prior notice to the Lessee.

31.2 The Lessor shall not be liable for any failure or accident or damage that may be caused or sustained directly or indirectly by reason of such failure or generally in relation to supply by the Lessor of water.

31.3 The water supply supplied by the Lessor may only be used by the Lessee for its own purposes and in relation to the Leased Premises. The Lessee uses the water at its own risk and the Lessor is not responsible should the quality of the water deteriorate, the pressure weakens or the water be unsuitable for human consumption.

31.4 The Lessee shall pay for water in accordance with its consumption as measured by the water meter/s installed at the Leased Premises and at the prevailing rates and tariffs applicable from time to time. Should the Leased Premises not have a separate meter and should the Lessee request the installation of a separate meter or should the Lessor deem it necessary to install a separate meter, the installation costs and all other costs associated with the installation of such meter shall be paid by the Lessee.

31.5 If it is found that the meter is registering incorrectly it shall be assumed that the fault only arose after the last meter reading and the Lessee's account will not be retrospectively

adjusted, save, where the Lessee occupies only a part of the Property (and the meter is located outside the Leased Premises) and where the Lessee had previously advised the Lessor of the faulty meter and the Lessor had failed to rectify the faulty meter.

- 31.6 If either Party to this Lease Agreement at any time has reason to doubt the accuracy of the meter readings, it shall be entitled to request that the meter be tested. If it is found that the meter is registering correctly, the cost of such a test shall be borne by the Party who requested the test to be carried out. For the purpose of this clause 31 the meter shall be deemed to be registering correctly if the relevant meter readings are accurate within a 5% (five percent) tolerance.
- 31.7 The meter/s recording the water consumed in accordance with this Lease Agreement shall be read by an authorised representative of the Lessor, which meter readings can take place at such intervals as may be deemed appropriate by the Lessor. Where the readings are not done monthly the Lessee will be provided with an account based on its estimated consumption, with such account being adjusted from time to time on the basis of actual consumption.
- 31.8 The meter/s shall be sealed by an authorised representative of the Lessor. If any unauthorised person interferes with such seals, the Lessor shall have the right to disconnect and withhold the water supply until such time as the installation is inspected for defects.
- 31.9 The Lessor reserves the right to reasonably amend the rates and tariffs applicable to the supply of water from time to time, provided that the Lessee is given 1 (one) calendar month written notice to this effect and provided that the amended rates and tariffs are within the rates and tariffs set by the relevant authority..
- 31.10 The Lessee shall not interfere or cause any interruption in the water supply to any adjacent premises.
- 31.11 Should there be no meter installed to register the water consumed by the Lessee, the Lessor shall charge the Lessee its Pro-Rata Share of the costs of water consumed within the Property

32 CESSION, SUBLETTING AND OCCUPATION

32.1 The Lessee shall not:

32.1.1 cede, assign or delegate any of its rights or duties under this Lease Agreement;

32.1.2 sublet the Leased Premises or any part thereof; or

32.1.3 place anyone else in occupation of the Leased Premises or any part thereof,

on any conditions whatsoever or for any reason whatsoever, without the Lessor's prior written consent, which consent may be given by the Lessor in its sole discretion.

33. RELAXATION OR NOVATION OF LEASE AGREEMENT

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

34. INDEMNITY

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

34.2. The Lessee hereby indemnifies the Lessor and each of the Lessor's employees and representatives against any claim of any nature whatsoever which may be made against the Lessor or any such employee or representative by any of the Lessee's servants, employees, agents, invitees, customers, dependants and/or contractors arising out of any event or cause of any action referred to in clause 34.1 above unless same is attributable to the negligence or wilful misconduct of the Lessor or its employees or representatives.

35. **LIMITATION OF LIABILITY**

The Lessor's liability to the Lessee for any reason whatsoever in terms of this Lease Agreement will be limited to the contract value of the Lease Agreement.

36. **CHANGE IN LAW**

36.1. Notwithstanding any other provision contained in this Lease Agreement, if the coming into force, adoption, amendment or repeal of any Law ("**Legal Event**") shall make it unlawful or impossible for the Lessor to comply with its obligations contained herein or shall result in the continuation of this Lease Agreement being economically unfeasible or imposing unreasonable hardship on the Lessor, then in each such event the Lessor shall be entitled to give the Lessee written notice ("**Specified Notice**") no later than 6 (six) months following the Legal Event, calling on the Lessee to enter into negotiations with the Lessor in terms of clause 36.2.

36.2. Within 7 (seven) days following receipt by the Lessee of the Specified Notice, the Parties shall meet and in good faith endeavour to negotiate terms and conditions to be included in the Lease Agreement in order to accommodate the Law concerned.

36.3. If, within 14 (fourteen) days following receipt by the Lessee of the Specified Notice, the Parties fail to negotiate or are otherwise unable to agree in writing on terms and conditions to accommodate the Legal Event concerned, to the satisfaction of the Lessor, this Lease Agreement shall immediately terminate and the provisions of clause 39.3 shall apply *mutatis mutandis*.

37. **BREACH OF CONTRACT**

37.1. Should the Lessee:

37.1.1. fail to pay any amount due by the Lessee in terms of this Lease Agreement to the Lessor on due date; or

- 37.1.2. commit any material breach of this Lease Agreement;
- 37.1.3. commit any other breach of any term of this Lease Agreement, whether such breach goes to the root of this Lease Agreement or not, and fail to remedy that breach within a period of 7 (seven) Business Days (or such longer period as may be reasonably required) after the giving of written notice to that effect by the Lessor; or
- 37.1.4. fail to comply, within a particular Performance Review Period, with the provisions of the Lessee's Business Plan/Commercial Proposal and / or volume commitments as set out in annexure "A"
- 37.1.5. fail to conclude a Transport agreement within the time provided;
- 37.1.6. commit 2 (two) or more breaches of any of the terms of this Lease Agreement (whether the same term has been breached or not), within any 3 (three) month period during the term of this Lease Agreement; or
- 37.1.7. commit any act of insolvency or be placed under business rescue;

then on the happening of any such event, the Lessor shall be entitled, without prejudice to any other rights which he may have under this Lease Agreement or at common law:

- 37.1.8. to claim specific performance; or
 - 37.1.9. to cancel this Lease Agreement on written notice thereof to the Lessee and claim immediate repossession of the Leased Premises; or
 - 37.1.10. to remedy such breach and recover the total cost incurred by the Lessor in doing so from the Lessee, who shall be obliged to pay the amount thereof to the Lessor forthwith; or
 - 37.1.11. to treat the Lessee's tenancy thereafter as a monthly tenancy, terminable by the Lessor on 1 (one) month's prior written notice to the Lessee.
- 37.2. Should the Lessor be in breach of any of its obligations under this Lease Agreement, and fail to remedy such breach within a period of 7 (seven) days after receipt of a written notice requiring it to do so, or within such longer period as may be reasonably necessary if such 7 (seven) day period is not sufficient, then the Lessee shall, without prejudice and in addition to any other remedy it may have, be entitled to claim specific performance from the Lessor or cancel this Lease Agreement.

37.3. While the Lessee remains in occupation of the Leased Premises and irrespective of any dispute between the Parties, including but not being limited to, a dispute as to the Lessor's right to terminate this Lease Agreement:

37.3.1. the Lessee shall continue to pay all amounts due to the Lessor in terms of this Lease Agreement on the due dates for such payments;

37.3.2. the Lessor shall be entitled to recover and accept such payments;

37.3.3. the acceptance by the Lessor of such payments shall be without prejudice to and shall not in any manner whatsoever affect the Lessor's right to terminate this Lease Agreement or to any damages whatsoever; and

37.3.4. the Lessee shall, in addition to any other damages or compensation due, be liable for any cost incurred by the Lessor in order to find a new lessee and shall remain liable for the Rental, Operating Costs and all other charges in terms of this lease until the new lessee's lease agreement commences.

38. **INTEREST**

38.1. Should one party ("the default party") fail to make any payment due in terms of this Lease Agreement on or before the due date, the Defaulting Party shall be liable for the payment of interest for the outstanding amount, compounded monthly and calculated from due date a rate of 200 (two hundred) basis points above the prime rate of the bank designated by the Lessor, in its sole discretion, from time to time ("the Bank"). The aforementioned rate shall change, from time to time, on the same date as the prime rate changes. A certificate containing details of the applicable prime rate(s) for any appropriate period, signed by a person professing to be a manager of any branch of the Bank, and submitted by the Lessor during any legal proceedings, shall be accepted as prima facie proof as to the correctness of the contents thereof by the Lessee and it agrees to the submission and admissibility of such certificate during any legal proceedings arising from this Lease Agreement.

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

39. TERMINATION OF LEASE AGREEMENT

- 39.1. The Lessor shall be entitled to affix on the Leased Premises “TO LET” notices during the 6 (six) month period immediately preceding the Expiry Date of this Lease Agreement.
- 39.2. The Lessor shall be entitled to exhibit, on behalf of any new lessee of the Leased Premises any notices required in connection with any application for a licence to carry on a business in the Leased Premises during the 1 (one) month period immediately preceding the Expiry Date of this Lease Agreement.
- 39.3. The Lessor shall inspect the Leased Premises during the 6 month period immediately preceding the Expiry Date. The Lessor shall further furnish the Lessee with a notice during such time period, setting out *inter alia* the expiry date of the Lease Agreement, the outcome of the inspection of the Leased Premises and any maintenance or rehabilitation that needs to be done by the Lessee on the Leased premises, prior to the Expiry Date.
- 39.4. Without derogating from the above, the Parties categorically agree that, in the event of the Lessee having entered into a Transport Agreement with the Lessor, the Lessor shall have an irrevocable election to terminate the Lease Agreement upon the date of termination or expiry or cancellation of the Transport Agreement, whichever is applicable, provided that such date arises before termination of this Lease Agreement. In such event, the Lessee agrees that it shall not hold the Lessor liable for any damages occasioned by such early termination.
- 39.5. Upon expiry or earlier termination of this Lease Agreement (for whatever reason) the Lessee shall immediately vacate the Leased Premises and restore possession of the Leased Premises to the Lessor in a good order and condition, fair wear and tear excepted. The costs related to restoring the Leased Premises in terms of this clause 39, shall be for the Lessee’s account.

40. VACANT POSSESSION

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

41. **HOLDING OVER**

41.1. If the Lessee should, after the expiration or earlier termination of this Lease Agreement, remain in occupation of the Leased Premises without having negotiated and signed a new Lease Agreement, then:

41.1.1. the Rental, Operating Costs and other charges paid by the Lessee in the final month of this Lease Agreement, plus an escalation calculated at the Escalation Rate prevailing in the final month of this Lease Agreement, which shall be payable by the Lessee to the Lessor at dates and times stipulated by the Lessor, or if the Lessor does not do so, then the Lessee shall pay at the intervals that prevailed in this Lease Agreement;

41.1.2. the other terms and conditions of this Lease Agreement shall, mutatis mutandis, remain applicable to the Lessee.

41.1.3. the Lessee shall continue to pay the increased Rental, Operating Costs and other charges due to the Lessor in terms of this Lease Agreement on the due dates;

41.1.4. the Lessor shall be entitled to recover and accept such payments;

11.13.1 the acceptance by the Lessor of such payments shall be without prejudice to, and shall not in any manner whatsoever affect the Lessor's right to proceed with eviction of the Lessee or any other claims and remedies available to the Lessor and shall not be construed in any manner as being a new lease agreement between the Lessor and the Lessee; and

41.1.5. the recovery and acceptance by the Lessor of those payments shall be without prejudice to, and shall not in any manner whatsoever affect, the Lessor's right to any claims and remedies available to it.

41.2. Payments made to the Lessor in terms of this clause 41, shall be regarded as amounts paid by the Lessee on account of loss and/or damage sustained by the Lessor as a result of the holding over by the Lessee of the Leased Premises.

41.3. No relaxation or indulgence which the Lessor may show to the Lessee shall in any way prejudice any of its rights hereunder and, in particular, no acceptance by the Lessor of Rental, Operating Costs or other charges after the due date shall preclude it from exercising any right enjoyed by it hereunder by reason of any subsequent payment not being made strictly on due date.

41.4. Unless otherwise stated by the Lessor, acceptance of any Rental, Operating Costs or other charges or payment shall in no way whatsoever prejudice or operate as a waiver, rescission or abandonment of any termination or right of termination.

42. IMPROVEMENTS BY LESSEE

42.1. The Lessee shall not be entitled to commence with any Improvement at the Leased Premises unless the Lessee has obtained the necessary regulatory approval, the Lessee has furnished the Lessor with written proof of such approval together with any other information that may be requested by the Lessor and the Lessee has obtained the prior written consent of the Lessor to construct such Improvements, which consent may be given by the Lessor in its sole discretion and may be subject to such conditions that the Lessor may impose, from time to time.

42.2. The Lessee acknowledges and agrees that the Lessor shall accept no responsibility for any Improvement constructed by the Lessee in terms of this clause 42, notwithstanding any consent that the Lessor may grant the Lessee in terms of clause 42.1 above, or any inspection of the Leased Premises by the Lessor in terms of clause 25 above.

42.3. The Lessee undertakes to abide by all lawful directions of the Lessor relating to precautionary measures that are necessary to protect the Leased Premises and/or Surrounding Property during the construction of any Improvement by the Lessee in terms of this clause 42.

42.4. Lessor may require the Lessee to remove, immediately after the Expiry Date, any movable Improvements effected by the Lessee to the Leased Premises and to reinstate the Leased Premises to its original condition and to make good all damage occasioned by such removal.

42.5. Should the Lessee choose to leave all movable Improvements, the parties agree that the Lessor will not compensate the Lessee for the value (if any) of the Improvements undertaken by the Lessee and that the Lessee shall have no lien over the Improvements.

42.6. Should the Lessee choose to leave all Improvements, the parties agree that, should the Lessee wish to renew this Agreement, the rental payable during such renewal period shall be the market rental for the Leased Premises including any value that may be attributable to the Improvements effected by the Lessee.

42.7. The Lessee hereby indemnifies and holds the Lessor harmless against any loss or damage, howsoever arising, which the Lessor may suffer (including, but not limited to, any claim made by any third party against the Lessor) arising out of or in connection with any Improvement undertaken in terms of this clause 42.

43. IMPROVEMENTS BY LESSOR

- 43.1. The Lessor may at any time effect such Improvements to the Leased Premises as it may deem fit provided that it shall use its reasonable endeavors to minimise disruption to the Lessee's business.
- 43.2. The Lessee shall not be entitled to any damages or compensation for any loss, damage or inconvenience suffered by the Lessee as a result of any Improvements made to the Leased Premises by the Lessor in accordance with the provisions of this clause 43.

44. REPOSSESSION OF LEASED PREMISES

- 44.1. If at any time after the Initial Period, the Leased Premises or any portion thereof, shall be required for the Lessor for strategic operational purposes, the Lessor may (notwithstanding any provision in this Lease Agreement to the contrary) after having given the Lessee written notice of not less than the Notice of Repossession Period, enter upon the whole or any portion of the Leased Premises or retake possession of the same for such purposes as aforesaid, free of any right, title or interest which the Lessee may have in respect of the Leased Premises.
- 44.2. Should the Lessor exercise its right in terms of clause 44.1, the Lessee shall be entitled to remove such machinery, plant and ancillary equipment from the repossessed Leased Premises or portion thereof.
- 44.3. In the event of the Lessor retaking possession of a portion of the Leased Premises only the Rental and Operating Costs payable from the date of repossession shall be reduced pro-rata by an amount bearing the same ratio to the Rental and Operating Costs that were payable prior to the repossession as the repossessed area bears to the whole area hereby leased.
- 44.4. Notwithstanding anything to the contrary in this clause 44 it is agreed that should the Lessor seek to retake possession of a portion only of the Leased Premises, but such repossession interferes substantially with the Lessee's use and enjoyment of the Leased Premises or has the effect of rendering the Leased Premises substantially unsuitable for the purpose of the Lessee's business, the Parties shall:
- 44.4.1. meet and, in good faith, endeavour to agree upon compensation (if any) that may be payable in respect of such repossession; and
- 44.4.2. in the event that Parties are unable to reach agreement in terms of clause 44.4.1 above, the dispute shall be resolved in terms of clause 51 below.

- 44.5. The provisions of this clause 44 shall not be applicable during the Initial Period.
- 44.6. If at any time during the Initial Period the Lessor is of the view that the Property is no longer operationally relevant to it, the Lessor commits to use its best endeavours to find alternative suitable property for the Lessee to utilise for the purpose of its business.
- 44.7. Should the Lessee not find the alternative property to not be suitable for the purpose of its business, the Lessee may elect to cancel the Lease Agreement by giving the Lessor reasonable notice.
- 44.8. Should the Lessor exercise its right in terms of clause 44.7:
- 44.8.1. the Lessee shall be entitled to remove such machinery, plant and ancillary equipment from the repossessed Leased Premises or portion thereof.
 - 44.8.2. neither party shall be entitled to claim compensation from the other.

45. **REDEVELOPMENT**

The Lessor may cancel this Lease Agreement without the payment of any compensation to the Lessee, upon giving notice of not less than the Notice of Redevelopment Period to the Lessee, if the Lessor wishes to redevelop or alter the Surrounding Property or any part thereof or to incorporate it into any scheme of redevelopment involving the Leased Premises, provided that this clause 45 shall not be applicable during the Initial Period.

46. **OWNERSHIP OF IMPROVEMENTS FOLLOWING TERMINATION**

- 46.1. Any Improvements of a permanent nature made to the Leased Premises shall accede to the land and the ownership thereof shall vest in the Lessor without any compensation whatsoever being payable by the Lessor to the Lessee.
- 46.2. Notwithstanding the provisions of clause 46.1 above, the Lessor shall have the right to:
- 46.2.1. either retain or, at its sole and unfettered discretion, to order the Lessee, at the Lessee's sole cost, to remove from the Leased Premises any such Improvement; or
 - 46.2.2. in the event that the Lessee fails to comply with an order from the Lessor to remove (or cause to be removed) from the Leased Premises any such Improvement within a reasonable time period, to effect such removal and to thereafter claim for the cost of such removal from the Lessee.

47. PLANT, MACHINERY AND ANCILLARY EQUIPMENT

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

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

47.2.1. in a good, proper and workmanlike manner; and

47.2.2. in accordance with the requirements of every applicable law.

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

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

48. FIRE PROTECTION MEASURES

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

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

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

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

48.3. The Lessee shall have no claim against the Lessor if it fails to notify the Lessor of any fire protection measures to be undertaken and/or if any such measures, if undertaken, subsequently prove to be inadequate. The provisions of this clause 48 are imposed strictly for the benefit of the Lessor and do not confer any rights of whatever nature upon the Lessee.

48.4. The Lessee indemnifies the Lessor against:

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

48.4.2. any claim of whatever nature that may be brought against the Lessor by any third party, arising from or in connection with any fire occurring on or about the Leased Premises, whether or not the Lessee has complied with all or any of its obligations arising from this clause 48.

49. **DAMAGE AND DESTRUCTION**

49.1. Should any damage to, or destruction of, the whole of the Leased Premises take place, the Lessee shall have no claim whatsoever against the Lessor, irrespective of the cause or nature of such damage or destruction. The Lessor shall be entitled, within 30 (thirty) days after such damage or destruction, to decide whether or not to terminate this Lease Agreement and shall notify the Lessee of its decision in writing within such period. Should the Lessor not notify the Lessee of its decision within such period, it shall be deemed to have elected to terminate this Lease Agreement.

49.2. Should the Lessor elect or be deemed to have elected to terminate this Lease Agreement, the Lessee shall have no claim of any nature whatsoever against the Lessor as a result of such termination, but shall not be liable for the payment of Rental, Operating Costs or other charges from the date of such damage or destruction.

49.3. Should the Lessor elect not to terminate this Lease Agreement:

49.3.1. the Lessor shall reinstate the Leased Premises, at its own cost as soon as is reasonably possible;

49.3.2. the Lessee shall not be liable for the payment of Rental, Operating Costs or other charges for as long as it is deprived of beneficial occupation of the Leased Premises;

49.3.3. the Lessee shall re-take beneficial occupation from time to time of any part of the Leased Premises which has been reinstated and the provisions of this Lease Agreement shall *mutatis mutandis* apply to such occupation and the Lessee shall

make payment of the Rental, Operating Costs or other charges and other payments in terms of this Lease Agreement on a *pro rata* basis; and

49.3.4. the period of this Lease Agreement shall, at the option of the Lessee, be extended by the period during which the Lessee is deprived of beneficial occupation of the whole of the Leased Premises.

49.4. Should any portion (but not the whole) of the Leased Premises be damaged or destroyed by any cause whatsoever, the Lessor shall be entitled within 30 (thirty) days after such damage or destruction, to decide whether or not to terminate this Lease Agreement and shall notify the Lessee of its decision in writing within such period. Should the Lessor not notify the Lessee of its decision within such period, it shall be deemed to have elected to terminate this Lease Agreement.

49.5. Should the Lessor elect not to terminate this Lease Agreement, then

49.5.1. the Rental, Operating Costs or other charges payable by the Lessee shall be reduced *pro rata* to the extent of infringement upon the Lessee's right of beneficial occupation.

49.5.2. the Lessor shall repair the damaged or destroyed portion of the Leased Premises at its own cost as soon as is reasonably possible; and

49.5.3. the Lessee shall have no claim whatsoever against the Lessor irrespective of the cause or nature of such damage or destruction.

49.6. In the event that the total or partial destruction is caused by any wilful act or omission of the Lessee, then (notwithstanding the provisions of this clause 48) the Lessee shall not be able to invoke the above protections and shall be liable to the Lessor for the full sum of damages sustained by it as a result of the aforesaid wilful act or omission.

50. JURISDICTION OF COURT

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

51. **DISPUTE RESOLUTION**

- 51.1. Subject to any other dispute resolution procedure provided for in law, should any dispute or claim arise between the Parties (**"the Dispute"**) concerning this Lease Agreement, the Parties shall endeavour to resolve the dispute by negotiation.
- 51.2. If the Dispute has not been resolved by such negotiation within 10 (ten) Business Days, then either Party shall have the right to submit the Dispute to arbitration to be administered by the Arbitration Foundation of Southern Africa (**"AFSA"**) or its successor, upon such terms as agreed between the Parties and the secretariat of AFSA, or failing such agreement, upon such terms as determined by the secretariat of AFSA.
- 51.3. Unless otherwise agreed in writing by both Parties, any such arbitration in terms of this clause 51 shall be held in the magisterial district within which the Leased Premises are situated.
- 51.4. Notwithstanding anything to the contrary contained in this clause 51, either Party shall be entitled to apply for and if successful, be granted, an interdict from any competent court having jurisdiction.

52. **SURETYSHIP**

In order to secure the obligations of the Lessee in terms of this Lease Agreement, the Lessor may require the Lessee, on the Signature Date, to deliver to the Lessor a deed of suretyship which must, as far as possible, comply with the provisions contained in Annexure "D".

53. **COSTS**

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

54. **ADDRESS OF SERVICE**

- 54.1. For the purposes of this Lease Agreement, including the giving of notices and the serving of legal process:
- 54.1.1. the Lessor chooses the Lessor's Physical address as its address of service; and
- 54.1.2. the Lessee chooses the Lessee's Physical address as its address of service

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

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

54.3.1. be delivered by hand; or

54.3.2. be sent by prepaid registered post; or

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

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

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

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

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

55. **CONFIDENTIALITY**

Notwithstanding the cancellation or termination of this Lease Agreement, neither Party shall, at any time after the conclusion of this Lease Agreement, disclose to any person or use in any manner whatsoever any of the other Party's Confidential Information or disclose the existence or contents of this Lease Agreement, provided that:

55.1. the receiving Party may disclose the other Party's Confidential Information and the existence and contents of this Lease Agreement to, and permit the use thereof by, its employees, representatives and professional advisors to the extent strictly necessary for the purpose of implementing or enforcing this Lease Agreement or obtaining professional advice or conducting its business. The Parties agree that any disclosure or use by any such employee, representative or advisor of such Confidential Information for any other purpose shall constitute a breach of this clause 55 by the Lessee;

55.2. the provisions of this clause 55 shall cease to apply to any Confidential Information of any Party which:

55.2.1. is or becomes generally available to the public other than as a result of breach by either Party of its obligations in terms of this clause 55;

55.2.2. is also received by the receiving Party from a third party who did not acquire such Confidential Information subject to any duty of confidentiality in favour of the other Party; or

55.2.3. was known to the receiving Party prior to receiving it from the other Party.

56. **SEVERABILITY**

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

57. **AGENT'S COMMISSION**

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

58. **STIPULATIO ALTERI**

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

59. **GOVERNING LAW**

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

60. **SIGNING OF LEASE AGREEMENT**

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

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

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

61. **WHOLE AGREEMENT**

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

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

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

Signed at _____ on this _____ day of _____ 20____

As witnesses:

For the Lessor

1. _____

Name: _____

Designation: _____

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

2. _____

Signed at _____ on this _____ day of _____ 20____

As witnesses:

1. _____

2. _____

For the Lessee

Name:

Designation:

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