

**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

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

A private company, duly incorporated in terms of the company laws of the Republic of South Africa whose full details and representation appear in Annexure A.

(hereinafter referred to as the "Lessee")

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**ANNEXURE “B”**

**LEASE PLAN – DIAGRAM OF LEASED AREA**

**SCHEDULE 1**

**COMMERCIAL PROPOSAL – TENDER SUBMISSION \_\_\_\_\_**

**SCHEDULE 2**

**APPROVED LEASE AWARD LETTER**

**1. INTERPRETATION AND PRELIMINARY**

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

1.1. words importing:

1.1.1. any one gender includes the other two genders.

1.1.2. the singular includes the plural and *vice versa*; and

1.1.3. natural persons 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 Area, 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 surety in the form of a letter of self-funding;
- 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 Area, (if applicable).
- 1.2.10. “**Business Day**” means any day other than a Saturday, Sunday or statutory public holiday in the Republic of South Africa;
- 1.2.11. “**Business Plan/Commercial Proposal**” means, if applicable, the Business Plan/Commercial Proposal described in clause 5 below and in Schedule 1, containing details regarding the various plans that the Lessor requires or that the Lessee proposes to implement in relation to the Leased Area, 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. **“Change of Law”** will be any change of Law as well more fully described in clause 4.5;

1.2.13. **“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.

1.2.14. **“Confidential Information”** means any information that

1.2.14.1. relates to the contents of this Lease Agreement or relates to the business and affairs of a Party or its Affiliated Companies, employees, products, services, customers, contractors and other third parties conducting business with such Party or its Affiliated Companies and which is directly or indirectly disclosed to or acquired by the receiving Party or its Affiliated Companies,

- whether oral, graphic or written, or received
  - through electronic transmission, observation, meetings or otherwise, from the other Party;
- whether furnished before, on or after the date hereof;

1.2.14.2. is disseminated, summarized or otherwise used by way of notes, analyses, compilations, copies, extracts, reproductions, data, coding, memoranda, notes and other documents prepared by the receiving Party individually or jointly with the other Party or any of their respective directors, officers, employees, agents or advisers, including, without limitation, each Party’s Affiliated Companies (i.e. (i) any entity directly or indirectly, solely or jointly controlled by the Party, (ii) any entity directly or indirectly, solely or jointly controlling the Party, (iii) any entity directly or indirectly, solely or jointly controlled by the entities directly and/or indirectly, solely or jointly controlling the Party, (iv) any entity directly or indirectly minority owned by the Party where there is a legal

prerequisite under local law for local majority ownership and where the Party may instruct such local owner, and (vi) any entity majority owned by any entity forming part of \_\_\_\_\_ "Affiliated Company" and collectively "Affiliated Companies"), lawyers, accountants, consultants, bankers, financial advisers and any representatives of their advisers) (collectively "Representatives") based on or containing any of the information referenced under;

1.2.15 **"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;

1.2.16 **"Environment"** has the meaning set out in Section 1 of the National Environment Management Act 107 of 1998;

1.2.17 **"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;

1.2.18 **"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";

1.2.19 **"Expiry Date"** means the date upon which this Lease Agreement shall terminate, as stipulated in Annexure "A";

1.2.20 **"Improvement"** means any addition, alteration or development on the Leased Area;

1.2.21 **Deposit** means the deposit specified in Annexure "A", being based on the monthly rent payable in the final year of the Initial Period of this Lease Agreement;

- 1.2.22 "**Law**" means any law applicable in the Republic of South Africa and includes, without limitation, any Act of Parliament, ordinance, bylaw, statutory proclamation, regulation, the common law or other enactment, directive, policy or determination having the force of law;
- 1.2.23 "**Lease Agreement**" means this lease agreement together with any schedules and/or annexures attached hereto, by agreement between the Parties;
- 1.2.24 "**Lease Period**" means the fixed period commencing on the Commencement Date and expiring on the Expiry Date;
- 1.2.25 "**Leased Area**" means the area forming the subject matter of this Lease Agreement situated, as indicated in Annexure "\_\_\_", "Lease Plan";
- 1.2.26 "**Lessee**" means the Party leasing the Leased Area under this Lease Agreement and identified in Annexure "\_\_\_";
- 1.2.27 "**Lessee's Domicilium**" means the domicilium address elected by the Lessee and set out in Annexure "\_\_\_";
- 1.2.28 "**Lessor**" means Transnet SOC 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" or its successor in title;
- 1.2.29 "**Lessor's Domicilium**" means the Principal address elected by the Lessor and set out in Annexure "\_\_\_";
- 1.2.30 "**Lessor's Regulations**" means all regulations as may from time to time be made available by the Lessor to the Lessee in accordance with this Lease Agreement; said regulations will not supersede this agreement, nor will it impose undue cost and/or obligations on Lessee. The Lessor will notify the Lessee of any material regulations that will affect the viability and subsistence of the agreement and an amicable solution will be discussed in good faith between the parties

- 1.2.31 **“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;
- 1.2.32 **“Main Agreement”** means this Lease Agreement but excluding the schedules and/or annexures forming part of this Lease Agreement;
- 1.2.33 **“Notice of Redevelopment Period”** means, if applicable the notice period of redevelopment stipulated in Annexure “A” given by the Lessee to the Lessor for Improvements to the Leased Area;
- 1.2.34 **“Notice of Repossession Period”** means, if applicable, the notice of repossession given by the Lessor to the Lessee stipulated in Annexure “A” upon material breach or termination of the Lease Agreement after all remedial Dispute Resolution measures has been exhausted;
- 1.2.35 **“Operating Costs”** means the monthly contribution by the Lessee towards the operating and/or maintenance costs of the Leased Area, as specified in Annexure “\_\_\_”;
- 1.2.36 **“Parties”** means the Lessor and the Lessee;
- 1.2.37 **“Party”** means either the Lessor or the Lessee, as the context may indicate;
- 1.2.38 **“Pollution”** has the meaning set out in Section 1 of National Environment Management Act 107 of 1998;
- 1.2.39 **“Property”** means the property defined in Annexure “\_\_\_”;
- 1.2.40 **“Pro-Rata Share”** means, where the Leased Area do not comprise the whole of the Property, the percentage figure arrived at by dividing the area of the Leased Area by the leasable area of the whole of the Property. The Lessee’s Pro-Rata Share is as set out in Annexure “\_\_\_”;
- 1.2.41 **“Refuse Removal Charges”** means the charges payable in

respect of refuse removed from the Leased Area,  
whether such services have been supplied by the local authority or the  
Lessor, as specified in

Annexure

“ \_\_\_ ”,

1.2.42 **“Rental”** means the rental payable by the Lessee to the Lessor, as set out in  
Annexure “ \_\_\_ ”;

1.2.43 **“Rental Review Period/s”** means the rental review period/s, if  
applicable, stipulated in Annexure “ \_\_\_ ”;

1.2.44 **“Republic”** means the Republic of South Africa;

- 1.2.45 **“Sewerage Removal Charges”** means the charges payable in respect of sewerage removed from the Leased Area, whether such services have been supplied by the local authority or the Lessor, as specified in Annexure “\_\_\_”;
- 1.2.46 **“Schedule 1”** means, if applicable, the schedule attached to this Lease Agreement and marked “Schedule 1”, to which the Lessee’s Business Plan/Commercial Proposal is attached;
- 1.2.47 **“Schedule 2”** means, if applicable, the schedule attached to this Lease Agreement and marked “Schedule 2”;
- 1.2.48 **Signature Date**” means the date on which the last Party signing this Lease Agreement in time ;
- 1.2.49 **“Specified Purpose”** means the specified purpose for which the Leased Area shall be used as specified in Annexure “\_\_\_”; which purpose shall be directly related or linked to the rail transportation business and movement of freight on TRIM’s rail network;
- 1.2.50 **“Surrounding Property”** means the property surrounding the Leased Area, as more fully described in Annexure “\_\_\_” and as illustrated in Annexure “\_\_\_” to this Lease Agreement;
- 1.2.51 **“TRIM”** means Transnet Rail Infrastructure Manager an Operating Company, a division of Transnet;
- 1.2.52 **“Transport Agreement”** means the agreement which the Lessee or its customer is obliged to conclude with a provider of rail transport services, which agreement will regulate the legal relationship between the Lessee and the rail transport provider rendering rail transport services, which the Lessee wishes to transport freight on TRIM’s rail infrastructure from the Leased Area to the destination provided for in the agreement as well as the transportation of any return freight or return of the rolling stock to the Leased Area. The Lessee may develop the capacity to perform its own rail transportation in compliance to legislation and the conditions for applying and the award of slots by TRIM, in which case there will be no need to conclude a separate Transport Agreement but the requirement to have a Transport Agreement must be in place as required under the Lease Agreement;

- 1.2.53 **“TRIM”** means Transnet Rail Infrastructure Manager, a division of Transnet which may in the future be corporatized as a separate legal entity and will then become the Lessor under this Lease Agreement;
- 1.2.54 **“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 AREA**

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

## **3 LEASE AGREEMENT**

3.1 For the sake of clarity, the Parties record that this Lease Agreement comprises:

- 3.1.1 the general terms and conditions set out in this Lease 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 "\_\_\_";

3.1.5 the Lease Plan set out in Annexure “\_\_\_”, 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 this Lease 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 to ensure that rail traffic  
flow is optimized as reflected in the Transport Agreement required in terms of Clause  
1.2.52. If a Transport Agreement has not already been concluded, the Lessee undertakes  
to conclude such Transport Agreement within 3 (three) months from Commencement  
Date.

#### **4 THE REQUIREMENT OF A TRANSPORT AGREEMENT**

4.1 The Parties record that the Lessee or its customer is obliged to enter into a Transport Agreement  
with an approved provider of rail transport services, which Transport Agreement must be  
concluded no later than 3 (three) months prior to the Commencement Date or the Lessee must  
have the capacity to provide transport service no later than 3 (three) months prior to the  
Commencement Date and provided that all legislative requirements and conditions for access  
and to obtain a slot as set out in the Network Statement published by TRIM are complied with.

4.2 In the event that no rail operating company has been granted the right to a slot on the designated  
rail section by the time that the Lessee or its customer is obliged to conclude the Transport  
Agreement, the Lessee is free to conclude a Transport Agreement with any rail operating  
company that meets the criteria to take up slots at the time the Rail Transport Agreement must be  
in place :

#### **5 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.

#### **6 BUSINESS PLAN/COMMERCIAL PROPOSALS**

6.1 The Lessee has submitted Tender Proposal \_\_\_\_\_ to the Lessor. This Tender Proposal  
contained information and documents as may be reasonably required by the Lessor,  
including but not limited to the following:

6.1.1 the full names, identity numbers and residential addresses of the persons exercising management control over the Lessee;

6.1.2 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;

6.1.3 the Lessee's projected business cash flows, and its development and/or operational plans in respect of the Leased Premises as set out in the Business Plan/Commercial Proposal submitted as part of the Tender Proposal \_\_\_\_\_;

6.1.4 details of the Lessee's operating methodology including equipment to be used to ensure efficacy of operations;

6.1.5 details of the Lessee's volume commitment to the business of the Lessor in relation to the capacity allocated by virtue of slots and actual performance against allocated slot capacity;

6.1.6 Schedule 1; and

6.1.7 any additional information that the Lessor may reasonably require, from time to time, in accordance with the provisions of Schedule 1, if applicable.

6.2 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.

6.3 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 1.

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

## **7 LESSOR'S POLICIES AND REGULATIONS**

7.1 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 as it relates to the Lease Agreement and any other ancillary matters relating to the business relationship between the Parties.

- 7.2 The Lessee shall conduct its business from the Leased Area 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.
- 7.3 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 Area) within the Surrounding Property. Said Policies and/or Regulations will not supersede this Agreement, nor will it impose undue cost and/or obligations on Lessee. The Lessor will notify the Lessee of any material regulations that will affect the viability and subsistence of the Agreement, and an amicable solution will be discussed in good faith between the parties.
- 7.4 The Lessee shall, from time to time upon being required to do so by the Lessor, meet with the Lessor and/or its duly authorized 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 authorized 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:
- 7.4.1 reasonable remedial measures to be undertaken by the Lessee in order to ensure that the Lessor's Policies and/or Regulations are complied with; and
  - 7.4.2 a reasonable time period within which such remedial measures are to be commenced and/or completed.
- 7.5 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 7 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.
- 7.6 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.

7.7 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.

## **8 OCCUPATION AND BENEFICIAL OCCUPATION**

8.1 In the event that the Leased Area is not fit for trading or conducting its primary business objectives as at the Signature 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 Area at a reduced rental as set out in Annexure “\_\_” under Beneficial Occupation Rental.

8.2 The Lessee indemnifies the Lessor against any loss or damage that may be suffered, whether directly or indirectly, by the Lessee's occupation of the Leased Area provided such loss or damage was not caused by the negligent or willful acts or omissions of the Lessor or its servants.

8.3 The Lessee shall be responsible for the payment of electricity, water and refuse removal charges in respect of the Leased Area from signature Date for the duration of the Beneficial Occupation Period.

8.4 Should the Beneficial Occupation Period not be applicable, the Lessee shall be given occupation of the Leased Area on Signature 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.

## **9 SPECIFIED PURPOSE**

The Leased Area are let to the Lessee for the Specified Purpose only. The Specified Purpose is set out in Annexure “\_\_”. The Lessee shall not use the Leased Area 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. The Leased Area shall be used to generate capacity for rail transportation of freight as appose to increasing transportation of freight by road. The Leased Area shall be utilised to support service delivery and to enable local economic development and transformation. This may include activities that serve as enablers for rail operations, as well as non rail related local business development initiatives.

## **10 DEPOSIT**

10.1 The Lessee shall pay to the Lessor, the Deposit;

10.2 Should the Lessee be in breach of the Lease Agreement, the Lessor shall have the right to apply the whole Deposit, or a portion thereof, towards payment of any Rental, water,sewage 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 within the month the next Rental amount is due and payable in terms of Annexure “\_\_\_”.

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

10.3.1 after the Lessee has vacated the Leased Area; or

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

10.3.3 free of interest.

10.4 The deposit referred to in this clause 10 shall not be subject to VAT.

## **11 RENTAL**

11.1 The Lessee shall pay to the Lessor the Rental, which shall increase from time to time in the manner contemplated in Annexure “\_\_\_” by the Escalation Rate.

11.2 In addition to, but separately and distinctly from the Rental, the Lessee shall pay, where applicable:

11.2.1 the Operating Costs in respect of the Leased Area on a monthly basis; and

11.2.2 such additional charges as may be specified in this Lease Agreement.

11.2.3 Any charges for services provided by local municipality to the Leased Area from Date of Beneficial Occupation to Commencement of the Lease Period.

11.3 The Rental shall be due and payable by the Lessee to the Lessor on a monthly basis, in accordance with Annexure “- \_\_\_”.

11.4 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.

11.5 All amounts payable by the Lessee in terms of this clause 11 shall be subject to VAT.

## **12 METHOD OF PAYMENT**

12.1 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). 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.

12.2 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.

12.3 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.

12.4 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.

12.5 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.

12.6 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 any undisputed portion of the charges on the invoice accordingly.

12.7 The lessee shall not be entitled to defer, withhold or adjust or set off any payment due to the Lessor arising out of this Agreement;

12.8 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:

12.8.1 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

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

12.8.3 thirdly, in or towards outstanding accumulated arrears

12.8.4 fourthly, in or towards current rental.

### **13 ESCALATION RATE**

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

### **14 RENTAL REVIEW**

14.1 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 endeavor to agree upon the Rental and Escalation Rate that will apply in that Rental Review Period.

14.2 Should the Parties not be able to agree upon the Rental and Escalation Rate in terms of clause 14.1 above, the Rental and Escalation Rate shall be determined by a registered property valuator approved by both Parties, In the event that the Parties cannot reach agreement, the Transnet approved independent valuator ( shall be appointed, the cost of which shall be shared equally between the Parties.

14.3 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 14 arising, escalated at the Escalation Rate stipulated in Annexure “\_\_\_”, 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.

14.4 For the sake of clarity, the Rental payable during any period after a dispute has been declared in terms of this clause 14, shall not at any stage be less than the Rental payable prior to such dispute arising.

14.5 Any Rental and Escalation Rate determination in terms of this clause 14 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, together with the Periodic Deposit.

## **15 ADDITIONAL CHARGES**

15.1 The Lessee shall pay the following additional charges to the Lessor:

15.1.1 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;

15.1.2 the Sewerage Removal Charges;

15.1.3 the Refuse Removal Charges; and

15.1.4 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 Area, whether in accordance with the provisions of this Lease Agreement or otherwise.

15.2 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:

15.2.1 apply only where the Leased Area comprise a portion of the whole of the Property, and

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

15.3 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.

## **16 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 "\_\_\_".

## **17 USE OF LEASED AREA**

17.1 The Lessee shall not:

17.1.1 vacate the Leased Area or allow the Leased Area to remain unused, unless the prior written consent of the Lessor is obtained, which consent shall not be unreasonably withheld or delayed.

17.1.2 store explosives, flammable goods or toxic substances or liquids on the Leased Area, 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 in terms of applicable legislation, to store such items.

17.1.3 store or handle any Dangerous Goods 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, which consent may be denied in the sole and absolute

discretion of the Lessor or consent may be given subject to conditions stipulated by the Lessor in writing which will form part of the Lease Agreement.

17.1.4 use the Leased Area for residential purposes or as sleeping quarters, unless the prior written consent of the Lessor, who may in its sole discretion give such consent and which consent may be subject to conditions stipulated by the Lessor and thereafter form part of the Lease Agreement;

17.1.5 do anything that detracts from the appearance or negatively impact the appearance of the Leased Area and/or the Surrounding Property;

17.1.6 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 or the public.

17.1.7. undertake any form of mining, prospecting, drilling, quarrying, excavation, or any activity related to the extraction of minerals or natural resources on, under, or within the Leased Land, unless prior written consent of the Lessor has been obtained and all requisite approvals, permits, licences, and authorisations have been duly secured from the relevant authorities

17.1.8. redeveloped, upgraded, or demolished unless prior written consent of the Lessor and relevant regulatory authorities

17.1.9. undertake activities that activities that may tarnish the image and reputation of Lessor are strictly prohibited. These include, but are not limited to adult entertainment establishments, nightclubs, taverns, and other related activities whether legal or illegal.

17.2 The Lessee undertakes to obtain, maintain and renew all licenses, permits or other necessary consents to conduct its business on or from the Leased Area. The Lessor does not warrant that the Leased Area is fit for the purposes for which it is let or that the Lessee

will be granted a license in respect of the Leased Area for conducting its business, or that any license will be renewed or re-issued and the Lessor shall not be responsible or be held liable to do any work or make any alterations or repairs or study or assessment to the Leased Area to comply with the requirements of any licensing authority to enable the authority to issue a license or approval or authorization to the Lessee.

- 17.3 The Lessee shall not be entitled to be awarded slots to transport freight because of this Agreement and shall not be able to cancel the Agreement based on the non-award of Slots to itself or any transport operator rendering transportation services. The allocation of slots shall be in strict compliance to applicable legislation and the conditions set out in the Network Statement for the application and allocation of slots.

## **18 USE OF COMMON AREAS**

- 18.1 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.

- 18.2 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 or those responsible for the contravention, a fine to be issued must be shared by all lessees occupying that particular Common Area and the Lessor shall be responsible for the portion allocated. The portion of the fine payable by each individual lessee will be based on the amount of land rented to each lessee;

- 18.3 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 cause the damage or contribute to the damage in any way whatsoever.

## 19 LOADING AND UNLOADING OF FREIGHT

19.1 All loading, delivery and unloading of freight shall be done in such a manner as to have the least possible impact on the Surrounding Property and in accordance with applicable national, provincial and municipal laws and regulations.

19.2 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 Area and the Surrounding Property. The Lessee shall be liable for any loss or damage that may arise from the Loading or Unloading of freight within the Leased Area and indemnifies the Lessor against any claims that may arise in relation or connected to such activities

## 20 LESSEE'S GENERAL OBLIGATIONS AND RESTRICTIONS

The Lessee:

20.1 Shall comply with applicable laws relating to its business and business operations and shall not contravene or permit the contravention of any law, by-law or statutory regulation or the conditions of any license, authorization or permit relating to or affecting the occupation of the Leased Area or the carrying on of the Lessee's permitted business therein, or which may expose the Lessor to any claim, action or prosecution or loss or damage or reputational harm;

20.2 Compliance:

20.2.1 Each Party represents and undertakes that in the performance of this Agreement, it and all of its affiliates, directors, officers or sub-contractors will comply in all material respects with all applicable laws, rules, regulations or similar instruments including relating to anti-corruption, competition law and foreign trade controls (export controls and sanctions laws of the UN, the EU and US or other relevant regulator).

20.2.2 For the purposes of clarity:

- a. Neither Party will give, promise or attempt to give or approve the giving of anything of value to any person, for illegal purposes or for improperly obtaining or retaining business.
- b. Neither Party shall deal, or cause the other Party to deal, with any person or entity in respect of transactions prohibited by foreign trade controls, except with the other Party's prior written consent; or which could damage the other Party's commercial or other reputation interests, even if not in violation of any foreign trade controls.

- c. Each Party has established processes and maintains policies and procedures to prevent violation of Clause.
- 20.3 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 Area;
- 20.4 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 Area 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;
- 20.5 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, plant, machinery, equipment, installations, books, papers or other articles kept on the Leased Area or any other damage or loss caused to or sustained by the Lessee in the Leased Area whatsoever, whether as a result of water seepage or leakage wherever and howsoever occurring in the Leased Area, or as a result of but not limited to rain, hail, lightning, fire, riot or civil commotion unless such damage or loss are caused by the negligent or willful acts or omissions of the Lessor;
- 20.6 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 access or any other service unless such damage or loss are caused by the negligent or willful acts or omissions of the Lessor or breach of any obligation in terms of this Lease Agreement by the Lessor;
- 20.7 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 Area, other than willful or negligent acts or omissions on the part of the Lessor or its servants acting in the course and scope of their employment with the Lessor;
- 20.8 undertakes to make timeous application for any licenses and/or any renewals thereof that are necessary for the conduct of its business on the Leased Area and to furnish the

Lessor with copies of such licenses and/or renewals, as soon as may be reasonably possible thereafter; and

20.9 shall comply with the requirements of the approved Environmental Management Plan, shall inform the Lessor of any incidents which may give rise to environmental pollution or any Major Environmental Incidents within 24 (twenty-four) hours of the occurrence. Should an Environmental Law applicable to the operation of Leased Area arise, the parties shall meet and discuss the adherence of said Environmental Law.

## 21 EMERGENCY PLAN

21.1 In the event that the Lessor requires the Lessee to put in place measures in respect of or in connection with emergencies or responses to emergencies which is imposed by the Lessee as business continuity activity or as a result of legislative obligations, 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 to implement in respect of or in connection with emergencies at the Leased Area, which emergency plan shall be to the satisfaction of the Lessor in its sole discretion and compliant to applicable regulatory requirements.

21.2 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:

21.2.1 the provisions of the emergency plan are implemented fully;

21.2.2 the emergency plan complies with the provisions of any insurance policies in respect of the Leased Area;

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

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

21.3 The Lessee hereby acknowledges that the provisions of this clause 21 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.

## **22 INSURANCE**

22.1 The Lessee shall provide insurance cover for damage to the Leased Area including any Improvement made or 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 Lessee may, in its sole discretion, choose to take out insurance in respect of and to mitigate the risk of loss or damage.

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

22.2.1 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 Area. The Lessor shall further approve an endorsement in respect of the Lessee's liability (which conforms to its activities in or on the Leased Area)

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

22.2.3 any other insurance as may be required by Law.

22.3 All insurances listed in this clause 21 must be taken out with a well-recognized and reputable insurer and must be taken out and become fully effective on the Commencement Date. The Lessee shall thereafter maintain and keep the insurance covers valid for the duration of this Lease Agreement.

22.4 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.

## **23 MAINTENANCE**

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

23.1.1 the Lessee shall keep and maintain the Leased Area 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 Area to the Lessor in a good state and condition, fair wear and tear accepted;

23.1.2 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 Area and shall remove at its own cost any obstruction or blockage in any sewer, water pipe or drain serving the Leased Area exclusively and, where necessary, repair the sewer, water pipe or drain concerned to state and condition acceptable to the Lessor;

23.1.3 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 21 (twenty one) 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 Area and replace or make good or repair such items at the Lessee's cost;

23.1.4 in the event of a burglary or attempted burglary in the Leased Area, the Lessee shall at its own cost arrange for the repair of any damage to the Leased Area caused by such burglary or attempted burglary to the satisfaction of the Lessor;

23.1.5 in the event that the Lessee causes any damage to the Leased Area (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 23.1.5, 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

23.1.6 in the event that any civil and/or electrical maintenance is required to be undertaken at the Leased Area, 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.

23.2 The Lessor shall, subject to the provisions of clause 43 below, remain responsible for all structural repairs required to be affected to the Leased Area 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 affected by reason of:

23.2.1 the failure by the Lessee to comply with its maintenance obligations in terms of this clause 23; or

23.2.2 the improper use of the Leased Area by the Lessee; or

23.2.3 any damage howsoever caused by the Lessee and/or third parties,

shall be the responsibility of and shall be paid for by the Lessee immediately upon receipt of the invoice for such damage or repairs from the Lessor.

## **24 RESPONSIBILITY FOR ELECTRICAL INSTALLATIONS**

24.1 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:

24.1.1 the safety, safe use and maintenance of the electrical installations in the Leased Area;

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

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

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

24.3 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 24.

## 25 SIGNAGE

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

25.2 Without limiting the generality of clause 25.1 the Lessee shall not display any movable signage and/or advertising material on or about the Leased Area without the prior written approval of the Lessor, which shall not unreasonably withhold or delayed.

## 26 ACCESS TO THE LEASED AREA

26.1 Subject to any circumstances in which the Lessor may have to enter the Leased Area in an emergency or in terms of an order of court, the Lessor and/or its duly authorized employees or agents may, upon giving the Lessee reasonable notice, enter upon and inspect the Leased Area, 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 Area.

26.2 The Lessee undertakes to afford the persons inspecting the Leased Area in terms of this clause 26 with access to the Leased Area and the Lessee's facilities for the purposes of such inspections.

26.3 The Lessor undertakes to ensure that the persons inspecting the Leased Area in terms of this clause 26 will comply with all the safety and security stipulations of the Lessee whilst such persons are on the Leased Area 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 Area.

26.4 The Lessee shall, under no circumstances, have any claim against the Lessor and/or the persons inspecting the Leased Area in terms of this clause 26, for loss of beneficial occupation, loss of profits or otherwise.

26.5 It is specifically agreed that, save where such damage is caused by the willful act or gross negligence of the Lessor, its employees or agents acting in the course and scope of their employment, neither

the Lessor nor any employee or agent of the Lessor shall be responsible for any loss or damage to any property or for the death or injury of any person arising out of their activities in terms of this clause 26 and the Lessee indemnifies the Lessor and its employees and agents in this regard in respect of any claim arising in contract or delict.

## **27 SECURITY**

27.1 The Lessee shall be entitled to establish or implement and maintain such security measures (including access control) as it may deem necessary to ensure or promote security on or about the Leased Area. Such security measures shall comply with every applicable law at all times.

27.2 It is expressly provided that the Lessor shall have no responsibility to provide security services in connection with the Leased Area and the Lessor shall have no liability whatsoever to the Lessee and/or any third party arising from any breach or failure of any security measures implemented by the Lessee.

## **28 RODENT INFESTATION**

28.1 Should any evidence of rodent infestation be found, the Lessee should at its own cost arrange for the proper disinfestation of the Leased Area.

28.2 The Lessee shall notify the Lessor if and when the Leased Area is to become unoccupied, and should the Lessor deem it necessary to disinfest the Leased Area, 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 Area.

## **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 Area.

Where the premises do not comprise the entire Property, the Lessor shall endeavor to supply a metered electrical connection point within the Leased Area 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 endeavor 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 or loss 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 Area.

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 Area

and at the prevailing rates and tariffs applicable from time to time. Should the Leased Area 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 registered 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 Area) 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 authorized 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 accounts being adjusted from time to time based on actual consumption.
- 30.10 Where the meter/s are located within the Leased Area they shall be sealed by an authorized representative of the Lessor. If any unauthorized 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 31.3 above, the Lessor shall endeavor to maintain an efficient and continuous water supply, but does not guarantee continuity of supply and the Lessee acknowledges that interruptions to the supply 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 Area. 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 Area and at the prevailing rates and tariffs applicable from time to time. Should the Leased Area 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 Area) 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 registered 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 authorized 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 authorized representative of the Lessor. If any unauthorized 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, subject to approval from the Lessor, which will not be unreasonably withheld, may drill for water, to support operations on Leased Property. All relevant Health and Safety regulation will be followed during and after installation.
- 31.11 The Lessee shall not interfere or cause any interruption in the water supply to any adjacent premises.
- 31.12 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 Area or any part thereof; or

32.1.3 place anyone else in occupation of the Leased Area or any part thereof, on any conditions

whatsoever or for any reason whatsoever, without the Lessor's prior written consent, which shall not be unreasonably withheld or delayed.

### 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, 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.

No relaxation or indulgence which the Lessee may permit the Lessor shall in any way prejudice the Lessee's rights in terms of this Lease Agreement.

### 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 negligent or willful acts or omissions of the Lessor or breach by the Lessor of the Lease Agreement 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 patent defect in the Leased Area, or from any fire in or on the Leased Area, or any theft from the Leased Area, or by reason of the Leased Area 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*.

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, dependents 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 breach of this Lease Agreement, negligent or willful acts or omissions of the Lessor or its employees or representatives acting in the course and scope of their employment with the Lessor.

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 Lessee's committed investment in terms of the lease Agreement.

36. **CHANGE IN LAW**

36.1. Should any fundamental or material changes in the Law come into effect that will affect this Lease Agreement parties will find an amicable resolution.

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; and fail to remedy such breach within a period of 30 (thirty) Business Days after the written receipt to that effect by the Lessor; or

37.1.2. 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 fails to remedy that breach within a period of 30 (thirty) Business Days (or such longer period as may be reasonably required) after receipt of a written notice from the Lessor to remedy such breach; or

37.1.3. fail to comply, within a particular Performance Review Period, with the provisions of the Lessee's Commercial Commitments as set out in annexure "\_\_\_"; and fail to remedy such breach within a period of 30 (thirty) Business Days after the written receipt to that effect by the Lessor; or

37.1.4. fail to conclude a Transport agreement within the time period provided; or

37.1.5. commit any act which, if it were a natural person, would constitute an act of insolvency; or

37.1.6. 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:

37.1.7. to claim specific performance; or

37.1.8. to remedy such breach and recover the total cost incurred by the Lessor in doing so from the Lessee, who shall be obliged to pay the reasonably necessary amount incurred to remedy such breach to the Lessor forthwith;

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 30 (thirty) days after receipt of a written notice requiring it to do so, or within such longer period as may be reasonably necessary if such 30 (thirty) 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, claim proven damages from the Lessor or cancel this Lease Agreement.

37.3. While the Lessee remains in occupation of the Leased Area 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 or limit or prejudice the Lessor to enforce any other right it may have in law; and

## 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 a reputable South African 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 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, the Lessee hereby accepts liability for and undertakes to pay on demand to the Lessor all reasonably necessary 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 Area "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 Area any notices required in connection with any application for a license or permit or authorization to carry on a business in the Leased Area during the 1 (one) month period immediately preceding the Expiry Date of this Lease Agreement.

39.3. The Lessor shall inspect, taking into account the Lessee's reasonable security requirements, the Leased Area during the 6 (six) 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 Area and any maintenance or rehabilitation that needs to be done by the Lessee on the Leased Area, prior to the Expiry Date.

39.4. Without derogating from the above, the Parties categorically agree that, in the event of the Lessee or its customer having entered into a Transport Agreement as defined in clause 1.2.52 with a rail transport service provider, 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, and fail to remedy such breach within a period of 30 (thirty) Business Days after the written receipt to that effect by the

Lessor. 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 Area within 30 (thirty) calendar days and restore possession of the Leased Area to the Lessor in a good state and condition, fair wear and tear excepted. The costs related to restoring the Leased Area in terms of this clause 39, shall be for the Lessee's account.

40. **VACANT POSSESSION**

40.1 At the Signature Date of the Lease Agreement, the Lessee may proceed to clear the Leased Area at its own cost. The Lessor will have no claim on any movable and/or immovable property removed and/or recycled and/or destroyed during the Beneficial Occupation Period on the Leased Area.

40.2 At the termination of this Lease Agreement the Lessee agrees that it will give up vacant possession of the Leased Area to the Lessor. Should the Lessee not hand over the Leased Area in a vacant state, all costs and losses incurred by the Lessor in obtaining vacant possession of the Leased Area 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 Area 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;

41.1.5. 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

41.1.6. 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 holdover by the Lessee of the Leased Area.

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 Area 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 reasonably 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 Area 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 Area 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 Area and to reinstate the Leased Area to its original condition and to make good all damages 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 or claim in respect of 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 Area 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. The liability for any and all improvements shall solely be for the account of the Lessee.

#### 43. **IMPROVEMENTS BY LESSOR**

43.1. The Lessor may at any time effect such Improvements to the Leased Area as it may deem fit provided that it shall use its reasonable endeavors to minimize 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 Area by the Lessor in accordance with the provisions of this clause 43.

#### 44. **REPOSSESSION OF LEASED AREA**

44.1. If at any time after the Initial Period, the Leased Area 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 Area or retake possession of the same for such purposes as aforesaid.

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 Area or portion thereof at its own cost and within the period stipulated in the Notice of Repossession Period.

44.3. In the event of the Lessor retaking possession of a portion of the Leased Area 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. Should the Lessor seek to retake possession of the whole or a portion of the Leased Area, but such repossession interferes substantially with the Lessee's use and enjoyment of the Leased Area or has the effect of rendering the Leased Area substantially unsuitable for the purpose of the Lessee's business, the Parties shall:

44.4.1. meet and, in good faith, endeavor 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 or Second Period.

45. **REDEVELOPMENT**

The Lessee, upon giving notice of not less than the Notice of Redevelopment Period to the Lessor, if the Lessee wishes to redevelop or alter the Surrounding Property or any part thereof or to incorporate it into any scheme of redevelopment involving the Leased Area.

46. **OWNERSHIP OF IMPROVEMENTS FOLLOWING TERMINATION**

Any Improvements of a permanent nature made to the Leased Area shall accede to the land and the ownership thereof shall vest in the Lessor upon termination on the Lease Agreement, which the Lessor hereby accepts at its own risk and indemnifies the Lessee against any liability arising therefrom, without any compensation whatsoever being payable by the Lessor to 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 Area 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 Area 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 Area require specific and/or additional fire protection measures to be undertaken or implemented (which may include Improvements to the Leased Area) then:

48.1.1. the Lessor shall be entitled, in its sole discretion, to give the Lessee written notification of reasonable 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 or any insurance provision and requirement applicable to the Lessor and/or

Lessee. Should the Lessee fail to undertake and implement the measures required and this impacts the insurance provisions of the Lessor's and/or the Lessee's insurance requirements, the Lessee shall be liable for any and all losses or damages that may result because of its failure to introduce the required measures as contemplated under clause 48.1.

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 Area, 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 Area take place, the Lessee shall have no claim whatsoever against the Lessor, unless the cause or nature of such damage or destruction is due to the breach of any obligation in terms of this Lease Agreement or the negligent or willful acts or omissions of the Lessor. The Lessee shall be entitled, within 90 (ninety) days after such damage or destruction, to decide whether or not to terminate this Lease Agreement and shall notify the Lessor of its decision in writing within such a period. Should the Lessee not notify the Lessor of its decision within such period, it shall be deemed to have elected to not terminate this Lease Agreement.

49.2. Either party can elect to institute the Dispute Resolution process following good faith talks to resolve the matter of damages following good faith negotiation before termination of the agreement.

49.3. Should the Lessee elect to terminate this Lease Agreement, the Lessor shall have no claim of any nature whatsoever against the Lessee 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.

49.4. Should the Lessee elect not to terminate this Lease Agreement:

49.4.1. the Lessee shall reinstate the Leased Area, at its own cost as soon as is reasonably possible;

49.4.2. 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 Area;

49.4.3. the Lessee shall re-take beneficial occupation from time to time of any part of the Leased Area 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

49.4.4. 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 Area.

49.5. Should any portion (but not the whole) of the Leased Area be damaged or destroyed by any cause whatsoever, the Lessee 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 Lessor of its decision in writing within such period. Should the Lessee not notify the Lessor of its decision within such period, it shall be deemed to have elected to not terminate this Lease Agreement.

49.6. Should the Lessee elect not to terminate this Lease Agreement, then

49.6.1. 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.

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

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

49.7. In the event that the total or partial destruction is caused by any willful act or omission of either party, then (notwithstanding the provisions of this clause 48) the aggrieved party shall not be able to invoke the above protections and shall be liable to the aggrieved party for the full sum of damages sustained by it as a result of the aforesaid willful 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 endeavor to resolve the dispute by negotiation.

51.2. If the Dispute has not been resolved by such negotiation within 90(ninety) 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 Area are situated where practical or in Johannesburg.

51.4. Notwithstanding anything to the contrary contained in this clause 51, either Party shall be entitled to apply for 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 Confirmation of Self-Funding to the Lessor. Letter of Self-Funding contained in Annexure "D".

53. **COSTS**

Each party shall bear its own costs in relation to this Lease Agreement, including costs payable in connection with any renewal or extension of this Lease Agreement.

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 Domicilium as its *domicilium citandi et executandi*; and

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

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

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

54.3.1. be delivered by hand; or

54.3.2. be sent by courier; or

54.3.3. be sent by 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 courier: on the Business Days after courier confirmed delivery; and

54.4.3. if sent by 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 receiving Party will inform those members of its employees, Representatives and professional advisors to whom it has disclosed the other Party's Confidential Information in accordance with this Clause 55.1, that it is confidential, procure that they comply with this Clause 55 as if they were a party to it, and be responsible for any employees, Representatives and professional advisors' breach of this Agreement.

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 the receiving Party of its obligations in terms of this clause 55;

55.2.2. lawfully becomes available to the receiving Party after the time of disclosure from another source

55.2.3. was lawfully in the possession of the receiving Party prior at the time of disclosure.

55.3. In the event that the receiving Party is required to disclose any of the Confidential Information to any court of competent jurisdiction, or any competent judicial, governmental, supervisory or regulatory body or by the laws or regulations of any country with jurisdiction over its affairs, then the receiving Party will provide the other Party with prompt notice of such requirement, limit the disclosure to the extent legally allowable, and take reasonable measures to protect such information from further disclosure.

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 favor 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 of South Africa.

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 Area 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 authorized 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 authorized representatives.

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

**As witnesses:**

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

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

**For the Lessor**

\_\_\_\_\_

Name:

Designation:

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

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

**As witnesses:**

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

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

**For the Lessee**

\_\_\_\_\_

Name:

Designation:

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

**ANNEXURE "A" – COMMERCIAL TERMS LEASED AREA AND OTHER  
PROPERTY**

Leased Area	_____, Depicted in Annexure ____
Surrounding Property	See Annexure ____
Common Areas	N/A
<b>INFORMATION REGARDING PARTIES</b>	
Lessor Division entering into the Lease Agreement	TRIM (Transnet Rail Infrastructure Manager), a division of Transnet SOC LTD Registration Number 1990/000900/30
Lessee	_____ Registration (_____)
Lessee's Address of service	_____ _____ _____ _____ _____
Lessor's Address of service	_____ _____ _____ _____

<b>R ELEVANT TIME PERIODS</b>	
Commencement Date	_____
Expiry Date	_____
Initial Period	_____
Rental Review Period/s	_____
Performance Review Period/s	Formal lease review conducted bi-annually Performance will be measured against Commercial Commitments as per Schedule 1 (Business Plan/ Commercial Proposal – Tender Submission _____)
Beneficial Occupation Period	_____
<b>USE OF THE LEASED AREA</b>	
Specified Purpose	_____ _____
Dangerous Goods (Prescribed maximum volume for the storing and handling)	_____ _____ _____

<p>Environmental Management plan</p>	<p>The parties agree that the environmental management plan requested from the Lessee at the inception of this Lease Agreement is based on the volume commitment, commodity to be handled and the size of the land given to the Lessee. Should the volumes be increased, or the commodity be changed or the land operated on increase in size at any given time during the Lease Period, the Lessee understands that there might be a need to acquire authorizations for the activity undertaken on site – and therefore an application has to be lodged with the relevant authorities retrospectively.</p> <p>Should a fine be issued due to non-conformance, it would be for the Lessee's account.</p>
<p><b>PAYMENTS</b></p>	
<p>Rental</p>	<p>R _____</p>
<p>Escalation Rate</p>	<p>Annual Escalation of CPI + ___% (three percent) per annum</p>
<p>Operating Costs</p>	<p>Any applicable costs such as water, sewerage, refuse &amp; electricity payable by Lessee.</p>
<p>Pro-Rata Share</p>	<p>N/A</p>
<p>Initial Deposit</p>	<p>___ (___) months' rental calculated</p>
<p>Administration Fee</p>	<p>R _____</p>

Insurance	The Lessee shall be responsible to insure the Leased Land, and any additional investment made on Leased Land
Payment method: Direct Debit or Electronic Fund Transfer	Electronic Funds Transfer
<b>DEVELOPMENT OF THE LEASED AREA</b>	
Committed Investment amount to upgrade the Leased Area	As per _____ Commercial Proposal in bid submission (See Schedule 1). It is understood that due to time lapse from submission of the tender document to start date of the lease, the 01 <sup>st</sup> year indicated in the original investment plan will be taken as the first year of this lease, i.e. 2025 , and the same investment trajectory envisaged in the original plan will then be followed based on ____ being the
	first year of investment plan.
Investment Objective	As per _____ Commercial Proposal in bid submission (See Schedule 1)
Investment consequence	Any improvement, as a result of the above investment, to the Leased Area will become the sole and exclusive property of the Lessor and will be subject to the provisions set out in the Lease Agreement relating to improvements to the Leased

Special Termination Condition	The Lessor reserves the right to terminate the Lease Agreement in the event the Lessee fails to deliver on the commitments made in the Commercial Proposal (See Schedule 1)
Notice of Redevelopment Period from Lessee to Lessor	N/A
Notice of Repossession Period from Lessor to Lessee	_____ (____) calendar months
<b>KEY PERFORMANCE INDICATORS</b>	
As per _____ Commercial Proposal in bid submission (See Schedule 1)	
<b>SPECIAL CONDITIONS</b>	
TRIM reserves the right to terminate the lease agreement, after Dispute Resolution process has been followed, should _____ fail to deliver on commitments made as per _____ Commercial Commitments stated above.	
<b>OTHER AGREEMENTS / DOCUMENTS</b>	
Suretyship agreement	_____
Parking facilities let (if applicable)	_____

Parking Rental (if applicable)	_____
Turnover Rental Percentage (If applicable)	_____

ANNEXURE \_\_\_\_ - LEASE PLAN

