

DUBE TRADEPORT CORPORATION

Standard Terms and Conditions



SOUTHERN AFRICA'S PREMIER
AIR LOGISTICS PLATFORM

1. INTRODUCTION

- 1.1. These Standard Terms and Conditions (hereinafter referred to the "ST&C") are to be read with the Contract Data and Annexures that form a part of the Contract Data.

2. DEFINITIONS AND INTERPRETATION

- 2.1. Unless inconsistent with the context, words signifying any one gender will include the others, words signifying the singular will include the plural and vice versa and words signifying natural persons will include artificial persons and vice versa.
- 2.2. For the purposes of the Agreement, unless the context otherwise indicates, the following words will have the meanings ascribed to them: -
- 2.2.1 **Agreement** means this Standard Terms and Conditions read with the Contract Data, and includes the annexures listed in the Contract Data;
- 2.2.2 **Business day** means any day other than a Saturday, Sunday or South African Public Holiday;
- 2.2.3 **Calendar month** means one of the 12 months of the year from the 1st to the last day of such month;
- 2.2.4 **Commencement Date** is as per the Contract Data;
- 2.2.5 **Contract Data** refers to the contract document that sets out the specific conditions of contract and includes Annexures and which must be read with these ST&C.
- 2.2.6 **Contract Price** means the total fees and disbursements to be paid by DTPC to the Service Provider, as contained in Annexure 1 (Contract Price) of the Contract Data, and may be subject to escalation;
- 2.2.7 **Day** means a calendar day;
- 2.2.8 **DTPC** means the Dube TradePort Corporation, established under the KwaZulu-Natal Dube TradePort Corporation Act, No. 2 of 2010;
- 2.2.9 **Month** means a month calculated from a particular day in one month to the day before the day numerically corresponding to it in the following month;
- 2.2.10 **Parties** mean DTPC and the Service Provider collectively, and **Party** means any one of them;
- 2.2.11 **the Services** means the services to be undertaken by the Service Provider for DTPC, more fully described in the Contract Data Annexure dealing with the "Service Provider's Obligations";
- 2.2.12 **the Service Provider** means the Service Provider identified in the Contract Data;

- 2.2.13 **the Site** means the general location where the Services are to be performed for DTPC.
- 2.3. Whenever any number of days is prescribed, it excludes the first and includes the last day unless the last day falls on a Saturday, Sunday or South African public holiday in which case the last day will be the next succeeding business day.
- 2.4. Working hours are 06h00 to 17h00 on Monday to Friday and 06h00 to 14h00 on Saturdays and public holidays.
- 2.5. The annexures forming part of the Agreement are to be taken as mutually explanatory. In the event of any conflict or inconsistency the provisions contained in Contract Data will prevail.

3. DURATION

- 3.1. The Agreement will become effective on the Commencement Date as contained in the Contract Data.
- 3.2. The Service Provider will commence providing the Services for the period as contained in the Contract Data unless the Agreement is terminated earlier as per the Agreement.
- 3.3. The Agreement will terminate on the termination date as contained in the Contract Data, subject to the termination clauses contained in the Agreement.
- 3.4. DTPC may, in its sole discretion terminate the Agreement on 1 (one) months' written notice to the Service Provider.

4. SERVICES

- 4.1. Through the duration of the Agreement the Service Provider will provide the Services in accordance with the terms and conditions of the Agreement.
- 4.2. The Agreement establishes the overarching relationship between the Parties and specifies the scope of the Services to be provided by the Service Provider.
- 4.3. The Services will be provided at the Site.

5. OUT OF SCOPE SERVICES

- 5.1. Should either Party to the Agreement wish to amend the scope or nature of Services or any other aspect relating to the Services such party will request such changes in writing.
- 5.2. If requested by DTPC in writing, the Service Provider will submit proposals for varying the Services, which will include the Service Provider's proposals as to the additional scope of Services and Contract Price. The Service Provider will not be required to commence the additional Services until such time as DTPC has given its written approval of additional scope of services and Contract Price associated with the varied Services.

6. CONTRACT PRICE AND PAYMENT TERMS

- 6.1. In consideration for the provision of the Services DTPC will pay the Service Provider the Contract Price, determined on the basis set out in Annexure 2, which amount will include all the Service Provider's staff costs, all taxes, levies and other statutory deductions required by law, and will constitute the total and only amount to be paid to the Service Provider by DTPC.
- 6.2. The Service Provider may submit its invoices on completion and acceptance by DTPC of the Services performed and the total amount claimed by the Service Provider may not exceed the total contract price specified in this Annexure 2.
- 6.3. All amounts payable in terms of the Agreement will be payable monthly in arrears within 30 (thirty) calendar days of the Service being provided to DTPC, and after DTPC has received an accurate invoice from the Service Provider for the Services rendered.
- 6.4. All amounts payable in terms of the Agreement will be inclusive of value added tax at the prescribed rate, unless expressly stated otherwise and will be reflected separately.
- 6.5. DTPC will reimburse the Service Provider for Expenses incurred by the Service Provider on behalf of DTPC only where such Expenses were expressly authorised in advance by DTPC in writing. Such re-imbursements will be made within 30 (thirty) calendar days of receipt by DTPC of an accurate statement from the Service Provider detailing such disbursements and containing sufficient proof of such expenses.

7. SERVICE LEVELS

- 7.1. The Service Provider hereby undertakes to provide the Services in accordance with the specified Service Levels in the Agreement.
- 7.2. Should the Service Provider at any time fail to meet a specified Service Level the Service Provider must, without prejudice to other rights and remedies available to DTPC, provide all such additional resources as may be necessary to perform the Services in accordance with the specified Service Level as early as practicable thereafter.
- 7.3. If the Service Provider fails to provide any of the Services such failure in itself will constitute a Material Breach of the Agreement.
- 7.4. If the Service Provider fails to provide the Services in accordance with the specified Service Level and:
 - (a) such failure is not capable of being remedied;
 - (b) or such failure constitutes a material breach of the Agreement;
 - (c) or the Service Provider fails to comply with the provisions of clause 7.2 above within 7 (Seven) calendar days of receipt of a written request from DTPC;

then DTPC will immediately be entitled to exercise the remedies contemplated in clause 24, without prejudice to its rights to claim damages.

8. INDEMNITY AND LIABILITY

- 8.1. The Service Provider will keep DTPC, both during and after the Agreement, indemnified against all indirect, special or direct losses, damages, expenses, costs and claims, including, but not limited to, legal fees and expenses suffered by DTPC or any third party, where such loss, damages, expense or claim is as a result of any grossly negligent or intentionally wrongful action or omission, or breach by the Service Provider, its employees or agents.
- 8.2. Without limiting the foregoing the Service Provider hereby indemnifies DTPC and will hold DTPC harmless, against:-
- (a) any loss or damages which the Service Provider may suffer, or
 - (b) any claims lodged against DTPC by any third party arising out of or relating to any loss that such third party may suffer, as a result of the Service Providers gross neglect, arising out of:-
 - (i) personal injuries or the death of any person caused by the default of the Service Provider;
 - (ii) damage to any property caused by the default of the Service Provider.
- 8.3. DTPC will not be liable for any loss incurred by the Service Provider as a result of any unnecessary or irrelevant Services provided by the Service Provider, including Services provided after an extension has been granted, unless DTPC has specifically agreed thereto in writing.

9. INSURANCE

- 9.1. During the terms of the Agreement the Service Provider shall, at its own cost, maintain adequate Public Liability Insurance policies, and any other insurance as required. The Service Provider will inform the DTPC representative of any amendments or changes to it's policy

10. PERFORMANCE GUARANTEE

- 10.1. The Service Provider will obtain, at its own cost, a Performance Guarantee for the due fulfilment of any of its obligations in terms of the Agreement. The amount of the performance guarantee will be for a stipulated percentage of the value of the contract.
- 10.2. The Performance Guarantee must be issued by a registered reputable bank, financial institution or entity approved by DTPC (the guarantee), and must be delivered to DTPC within one month after the Parties sign the Agreement. The Service Provider shall ensure that the Performance Guarantee is valid and enforceable until it has executed and completed all Services to be provided by it under the Agreement, and

as provided for in clause 10.4 below. Should the Performance Guarantee lapse, become payable, or be cancelled for any reason it shall be reinstated and or renewed by the Service Provider for the stipulated percentage of the contract value with immediate effect.

- 10.3. The Performance Guarantee does not abrogate DTPC's rights to claim the totality of damages due to it should the Service Provider breach the Agreement, and does not limit DTPC from recovering any damages in a greater amount than the value of the Performance Guarantee.
- 10.4. The Performance Guarantee shall come into operation on the Commencement Date and shall automatically terminate, whether or not returned to the guarantor, at the earlier of:
 - (a) a date agreed to in writing between DTPC and the Service Provider;
 - (b) 90 (ninety) days after the date of termination of the Agreement;
 - (c) when the maximum amount of the Performance Guarantee has been drawn down by virtue of a claim by DTPC;
 - (d) when a new Performance Guarantee has been delivered to DTPC in substitution of any existing Performance Guarantee.
- 10.5. DTPC may make multiple demands under the Performance Guarantee in any one year provided that the aggregate of the amounts demanded in that year shall not exceed the maximum amount stated in the Performance Guarantee.
- 10.6. DTPC may only enforce the Performance Guarantee to remedy a breach of the Agreement by the Service Provider, or to discharge any liability owing by the Service Provider to DTPC in terms of any indemnity contained in the Agreement, and only in respect of an amount equal to any damages suffered by DTPC due to such breach or liability. In the event of a breach of the Agreement or liability in terms of any indemnity by the Service Provider, DTPC shall send a notice to the Service Provider and the guarantor:
 - (a) notifying the Service Provider and the guarantor of the breach or liability giving rise to the right of enforcement of the Performance Guarantee; and
 - (b) requesting the Service Provider to remedy the breach or discharge the liability within 14 (fourteen) days of receipt of such notice or such longer period as may, in DTPC's discretion, be reasonable in the circumstances if the breach cannot be remedied or the liability discharged by the Service Provider within the 14 (fourteen) day period.

11. AUTHORISED REPRESENTATIVES AND SUB-CONTRACTING

- 11.1. In order to facilitate the smooth and effective provision of Services under the Agreement both DTPC and the Service Provider will nominate authorised representatives in the Contract Data Sheet.
- 11.2. The parties have designated the representatives as contained in the Contract Data Sheet to represent them in all matters arising from the Agreement and the Services to be performed thereunder
- 11.3. The Authorised Representative of each Party will be responsible to:-
 - (a) report to each other for the duration of the Agreement;
 - (b) bring unacceptable performance to the other Party's attention;
 - (c) meet regularly to review the relationship and to provide feedback regarding any specific requirements.
- 11.4. The Service Provider representative will have complete authority to receive instructions and to give information to DTPC on its behalf.
- 11.5. The Service Provider will not sub-contract or assign its obligations or benefits, under the Agreement without the written consent of DTPC. If such consent has been given the Service Provider may initiate or terminate any sub-contract for performance of all or part of the Services without DTPC's prior written consent.
- 11.6. In the event that the Service Provider is authorised to sub-contract certain services, the Service Provider acknowledges as follows:
 - (a) the Service Provider is prohibited from alleging any disclaimer with regard to the subcontracted portion of the services;
 - (b) the responsibilities of the Service Provider for services executed by the subcontractors hired by them is total;
 - (c) no clause of the agreements between the Service Provider and their subcontractors shall constitute a contractual bond between DTPC and the Service Provider, or between DTPC and the subcontractors of the Service Provider.

12. DTPC'S OBLIGATIONS

- 12.1. DTPC will, when requested to do so in writing, timeously give its decision on any matter in order not to delay the Service Provider in the performance of the Services.
- 12.2. Should DTPC become aware of any circumstance that may materially affect the scope, timing, feasibility or performance of the Services, it will immediately give the Service Provider notice thereof.

- 12.3. DTPC will co-operate with the Service Provider and will not interfere with or obstruct the proper performance of the Services.
- 12.4. DTPC will as soon as practicable:-
- (a) Provide the Service Provider ready access to the necessary sites;
 - (b) Designate in writing a person to act with its complete authority to give instructions for and to receive information on its behalf, which person will be appointed by DTPC;
 - (c) Provide all other relevant information.

13.SERVICE LEVEL AUDIT

- 13.1. The Service Provider will at all times keep full and accurate records of all Services provided pursuant to the Agreement and will retain such records for the currency of the Agreement. Upon termination of the Agreement such records must be provided to DTPC upon request
- 13.2. DTPC may conduct audits during the currency of the Agreement in order to determine whether the Service Provider is providing the Services in accordance with the provisions of the Agreement and the specified service levels.
- 13.3. The Service Provider must participate in a Service Level audit if requested to do so, and must provide DTPC or its representatives with information, documentation, and access to personnel, premises and records as may be reasonably required by DTPC in order to conduct the Service Level audit.

14.SERVICE PROVIDER'S OBLIGATIONS AND WARRANTIES

- 14.1. The Service Provider warrants that it will, at all times during the currency of the Agreement:-
- (a) possess and have the right to use, knowledge, sufficient expertise and all equipment necessary to enable it to provide the Services at the agreed Service Levels;
 - (b) use and adopt reasonable professional techniques and standards and provide the Services with due care, skill and diligence;
 - (c) employ suitably qualified and trained personnel to provide the Services in terms of the Agreement;
 - (d) observe all relevant statutes, by-laws and associated regulations, standards of professional conduct and industry norms established in relevant South African national standards published in terms of the Standards Act of 2008 or standards recommended by professional associations.

- 14.2. The Service Provider will execute the Services and carry out all the obligations arising from the Agreement with reasonable skill, care and due diligence, and will exercise efficiency and economy in the performance of the Services.
- 14.3. The Service Provider will, in the provision of the Services, have due regard to DTPC's operational requirements and will not do, or permit to be done, anything which may negatively impact on DTPC's operational requirements.
- 14.4. The Service Provider will be proactive in reporting any matters, which come to light, which may impact on the business continuity or operations of DTPC. Without detracting from the generality of this statement, the Service Provider will:-
- (a) Without delay inform DTPC of all incidents or accidents which occur at any of the Sites which involve the Service Provider's personnel;
 - (b) Record all incidents or accidents;
 - (c) Co-operate fully with DTPC in analysing and investigation of such incidents or accidents;
 - (d) Implement the necessary corrective action to prevent a re-occurrence of the incident or accident.
- 14.5. The Service Provider will be required to attend meetings with regard to the provision of the Services as stipulated by DTPC.

15.PENALTIES

- 15.1. If the Service Provider fails to perform the services specified in the agreement, DTPC shall, without prejudice to its other remedies under the contract, impose penalties as per the Contract Data Sheet.
- 15.2. DTPC may also consider exercising the remedies contemplated in clause 24.

16.REGULATIONS AND STATUTES

- 16.1. The Service Provider will, in the provision of services:-
- (a) observe and comply with all relevant provisions of all applicable legislation and regulations; and;
 - (b) without detracting from the generality of the above statement ensure that it and its personnel comply fully with all relevant legislation.
- 16.2. It is recorded that through the duration of the Agreement, DTPC may implement control procedures and policies, and the Service Provider undertakes to comply fully with any such procedures and policies, including any Permit to Work procedures and Health and Safety procedures and security procedures implemented by it. DTPC will notify the Service Provider in writing of such policies and procedures.

- 16.3. The Service provider will ensure that it and its personnel will at all times comply fully with any safety, fire, emergency, disaster recovery plan and security procedures and policies applicable on site, it being recorded that DTPC will provide the Service Provider with a copy of the safety instructions related to each site.
- 16.4. Should DTPC at any time believe that any member of the Service Provider's personnel is failing to comply with any such procedures or policies, DTPC will be entitled to deny such personnel member access to the relevant Site and require the Service Provider to replace such person without delay.
- 16.5. During the execution of the Services the Service Provider undertakes to comply with all legal requirements imposed on it in respect of Occupational Health, Safety and the Environment, including both statutory and Common Law provisions and the Service Provider will bear all risk, responsibility and liability in this regard.

17. PROVISION OF SERVICES IN A REASONABLE MANNER

- 17.1. The Service Provider will ensure that the Services are provided with minimum interference to the business operations of DTPC, its employees and/ or visitors.

18. SERVICE REPORTS

- 18.1. The Service Provider will submit reports to DTPC as per the Contract Data Sheet.

19. SERVICE PROVIDER'S PERSONNEL

- 19.1. The Service Provider will:-
- (a) employ suitably qualified and trained personnel, including sub-contractors, to provide the Services in terms of the Agreement.
 - (b) be responsible for providing all reasonable and relevant training of its personnel to ensure the safe and professional provision of the Services.
 - (c) through proper planning ensure the continuity in its personnel to enable it to provide the Services in accordance with the provisions of the Agreement.
 - (d) provide DTPC upon request with full details regarding the Service Provider's personnel who will be involved in the provision of the Services, including the capacity in which such personnel will be employed, references, identification documents and employment history of such personnel.
 - (e) satisfy itself as to the references and integrity of each member of its personnel who are employed in the provision of the Services.
 - (f) take appropriate disciplinary action against its personnel upon reasonable written request from DTPC and will remove such personnel from the site provision of the Services if reasonably justified pursuant to such disciplinary action. In such cases the Service Provider will provide a suitable and acceptable replacement as soon as reasonably practicable at the expense of the Service Provider.

- (g) The Service Provider will take all reasonable measures to ensure that all the personnel involved in the performance of the Services to DTPC comply with all relevant legal requirements.

20. FRAUDULENT AND UNLAWFUL ACTIVITY

- 20.1. Should DTPC reasonably suspect any fraudulent or other unlawful activity by the Service Provider or its personnel, DTPC, its auditors or their respective authorised agents will have the right:-
 - (a) to request the immediate removal of personnel suspected of involvement from the site/s in question.
 - (b) to request immediate access to the personnel, premises and records to conduct an investigation.
- 20.2. The Service Provider will fully cooperate with DTPC in any investigation conducted under the Agreement.
- 20.3. Should any investigation find that the Service Provider has knowingly or negligently been involved in any fraudulent or unlawful activity, or has knowingly or negligently allowed its personnel to be involved in such activity, such involvement will constitute a material breach of the Agreement and DTPC will be entitled to:-
 - (a) terminate the provision of the Services or any part thereof forthwith on written notice to the Service Provider, without prejudice to DTPC right to claim damages or to exercise any other remedies; or
 - (b) demand that the Service Provider take the steps contemplated in clause 20.4(b).
- 20.4. Should such investigation find that the Service Provider's personnel were/are involved in any fraudulent or unlawful activity without the knowledge of the Service Provider and in circumstances where the Service Provider could not reasonably have been aware of such activity, the Service Provider will:-
 - (a) take all steps required to remedy the situation and to ensure that appropriate processes and procedures are put in place to ensure that such situation does not arise in future;
 - (b) remove all personnel who were proven to be involved in such activities from the Sites in question and provide a suitable and acceptable replacement as soon as reasonably practicable at the expense of the Service Provider.
- 20.5. Any of the following actions by the Service Provider or any of its personnel will constitute a material breach of the Agreement:-
 - (a) Offering DTPC (including its representatives) any kind of inducement (including bribery) in respect of the Agreement;

- (b) Accepting any inducement (including bribery) from any supplier of goods and services in respect of Services under the Agreement.
- 20.6. In the performance of obligations under the Agreement, the Service Provider and its agents and employees will comply with all applicable laws, rules, regulations and orders of any applicable jurisdiction.
- 20.7. The Service Provider hereby represents, warrants and covenants that neither it nor its employees, agents or representatives will receive nor offer, pay or promise to pay either directly or indirectly, anything of value to a public official in connection with any business opportunities which are the subject of the Agreement. Furthermore, the Service Provider will notify DTPC immediately in writing with full particulars in the event that the Service Provider receives a request from any public official requesting illicit payments.
- 20.8. If it is shown that the Service Provider is in breach of the provisions of this clause the Service Provider will be deemed to have breached the Agreement, and notwithstanding any penalties or other sanctions to which the Service Provider may be subject to, DTPC will be entitled to terminate the Agreement forthwith.

21. ASSIGNMENT

- 21.1. The Service Provider may not assign, in whole or in part, its obligations to perform under the Agreement, except with DTPC's prior written consent.

22. CONFIDENTIALITY

- 22.1. Neither party ("**Receiving Party**") nor its staff, representatives or agents may disclose any confidential information relating to the Services, or the business or operations of the other party or any other information which by its nature or content is identifiable as confidential and/or proprietary to the party disclosing such information ("**Disclosing Party**") and/or any third party ("**Confidential Information**") to any third-party without the prior written approval of the Disclosing Party, and the Receiving Party will keep confidential all Confidential Information and only use Confidential Information for the purposes contemplated in this Agreement and/or activities related to the Services. Receiving Party may disclose the Confidential Information only to its staff, representatives, agents or professional advisors and then only such persons to whom such disclosure is reasonably necessary, provided that such persons are bound by general confidentiality undertakings no less stringent than that contained in this Agreement.
- 22.2. The obligations of Receiving Party pursuant to the provisions of this Agreement shall not apply to the extent that such information:
- (a) is known to or in the possession of Receiving Party prior to disclosure thereof by Disclosing Party;
 - (b) is or becomes publicly known, otherwise than pursuant to a breach of this Agreement by Receiving Party;

- (c) is developed independently by Receiving Party in circumstances that do not amount to a breach of the provisions of this Agreement and without reference to the Confidential Information of Disclosing Party;
- (d) was received by Receiving Party from a third party who is entitled to disclose same free of restriction and without obligation to Disclosing Party; or
- (e) is disclosed by Receiving Party to satisfy the order of a court of competent jurisdiction or to comply with provisions of any law or regulations in force from time to time, provided that in these circumstances, Receiving Party shall advise the Disclosing Party in writing prior to such disclosure (unless otherwise prohibited from doing so) to enable the Disclosing Party to take whatever steps it deems necessary to protect its interest in this regard.

22.3. Receiving Party shall, at Disclosing Party's option, destroy (including extracting from any computer or similar devices) or return the Confidential Information on written demand by Disclosing Party.

23.AUTHORITY

23.1. The Service Provider acknowledges that neither it, nor any of its employees, permitted sub-contractors or agents have the authority to represent DTPC in any capacity whatsoever, and the Service Provider nor its employees, or agents will be entitled to conclude any obligation or to bind DTPC to any obligation, or to sign any document on behalf of DTPC.

24.BREACH

24.1. If:-

- (a) a party commits any breach of the terms of this Agreement which is incapable of being remedied, or
- (b) a party commits any other breach of the terms of this Agreement and fails to remedy that breach within 14 (fourteen) days after the date of a written notice requiring that it be remedied, provided that no such notice shall be necessary in the case of a second or subsequent breach of the same term; or
- (c) a party so consistently breaches the terms of this Agreement as to justify the other party in holding that a defaulting party's conduct is inconsistent with an intention or an ability to carry out such terms; or
- (d) a party allows any judgment against and known to a party to remain unsatisfied for a period of 14 (fourteen) days or longer; or
- (e) a party commits an act of insolvency within the meaning of section 8 of the insolvency Act. No. 24 of 1936, or any replacement legislation therefor;

then non-defaulting party shall have the right, but shall not be obliged, to cancel this Agreement either as an alternative to a claim for specific performance or upon the abandonment of such a claim.

- 24.2. The exercising by any party hereto of any right conferred by the foregoing provisions of this clause will be without prejudice to any claims of such party hereunder then accrued or to any other right or remedy of such party.

25. NON SOLICITATION

- 25.1. Subject to clause 25.2 below, for the duration of this Agreement and for 12 (twelve) months thereafter, neither party shall, directly or indirectly, employ, solicit or offer employment to any employee of the other party who is or was employed or involved in the provision of the Services, nor shall it solicit, entice, encourage or persuade any such employee to terminate his/her employment with the other party.
- 25.2. Clause 25.1 does not apply to employees of either party who have applied for a position with the other party through the following of the other party's normal recruitment processes.

26. GOOD FAITH

- 26.1. In the implementation of the Agreement, the parties will observe the utmost good faith and they warrant in their dealings with each other, that neither will do anything nor refrain from doing anything, which might prejudice or detract from the rights or interests of the other party.

27. NOTICES AND ADDRESSES FOR SERVICE

- 27.1. Unless otherwise specified any notice or communication in terms of the Agreement:
- (a) must be in writing to be effective;
 - (b) must be sent by hand, telefax or prepaid registered post to the addresses/telefax numbers contained in the Contract Data Sheet
- 27.2. Either party may change its address/telefax number to any other address/telefax number within South Africa. Such change will only take effect upon receipt or deemed receipt of such notice by the other party.
- 27.3. Any notice or communication will:
- (a) if delivered by hand during business hours to the person apparently in charge
 - (b) of the premises selected by the addressee for the delivery of notices, be deemed to have been received on the date of delivery;
 - (c) if sent by prepaid registered post to the selected address, be deemed to have been received 14 (fourteen) days after posting;
 - (d) if telefaxed to the selected telefax number, be deemed to have been received on the first business day following the date of transmission; and
 - (e) if sent by email to the selected email address, be deemed to have been received on the first business day following the date of transmission.

- 27.4. Any written notice or communication, which has actually been received by a party, will be regarded as sufficient notice even if it has not been sent in the manner or to the address/telefax number/email address provided for above.

28. GENERAL PROVISIONS

- 28.1. If, after the date of signature of the Agreement, the cost or duration of the Services are altered as a result of changes in, or additions to any statute, regulation or by-law, or in the requirements of any authority having jurisdiction over any matter relating to the Services, then the agreed remuneration and time for completion may be adjusted by the Parties, upon agreement, in order to reflect such changes.
- 28.2. The Agreement will be governed by and construed according to the law of South Africa, and any litigation arising from the Agreement must be instituted in a South African Court having jurisdiction.
- 28.3. This is the whole Agreement between the parties containing all of the express provisions agreed on by the parties with regard to the subject matter hereof.
- 28.4. No party may rely on any representation, which allegedly induced that party to enter into the Agreement, unless the representation is recorded herein.
- 28.5. The rule of interpretation that, in the event of ambiguity, the agreement be interpreted against the party that drafted the agreement, will not apply in interpreting the Agreement.
- 28.6. No agreement varying, adding to, deleting from or cancelling the Agreement, including this clause, and no waiver of any right under the Agreement will be effective unless in writing and signed by or on behalf of the parties.
- 28.7. No relaxation by a party of any of its rights in terms of the Agreement at any time will prejudice or be a waiver of its rights (unless it is a signed written waiver) and it will be entitled to exercise its rights thereafter as if such relaxation had not taken place.
- 28.8. The Agreement may be signed by the parties in any number of counterparts, each of which will be deemed to be an original, but all of which will together constitute one and the same Agreement.
- 28.9. If any provision of the Agreement is, or becomes, invalid or unenforceable, it will be severable from the rest of the Agreement, which will continue to be binding on the parties.
- 28.10. Headings of clauses are inserted for the purpose of convenience only and must be ignored in the interpretation of the Agreement.
- 28.11. The Agreement will bind the parties and their respective successors in title.

29. SETTLEMENT OF DISPUTES

- 29.1. In the event of any dispute between the Parties arising from the Agreement the Party wishing to declare the dispute will deliver to the other Party a written notice, which sets out:
- (a) A brief description of the nature of the dispute, including the amount involved, if any, and the date on which the dispute arose; and
 - (b) The relief sought.
- 29.2. Within 14 (fourteen) days from the date of delivery of a notice of the dispute, the Parties will attempt to settle such dispute by negotiation conducted in good faith among those representatives of each Party with the appropriate decision-making authority.
- 29.3. If such individuals are unable to reach agreement within the said 14 (fourteen) day period, or such longer period as they may agree, the dispute will be referred to arbitration by a single arbitrator to be nominated by the Arbitration Foundation of Southern Africa (AFSA).
- 29.4. In all respects the arbitration will be conducted in accordance with the rules, requirements and procedures determined by AFSA.
- 29.5. The arbitration will be held in Durban.
- 29.6. The Parties record that a non-refundable administration fee is payable on demand by AFSA, which fee will be paid equally by the Parties.
- 29.7. Any award, including an award for costs, made by the arbitrator will be final and binding upon the Parties and will be carried into effect by them and made an order of any competent court.
- 29.8. The procedures in this clause will not prevent either Party from obtaining appropriate relief on an urgent basis from a competent court pending the decision of the arbitrator.
- 29.9. This clause is severable from the rest of the Agreement and will therefore remain in effect even if the Agreement is terminated.

30. COSTS

- 30.1. Each party will bear and pay any costs incurred by it in connection with the negotiation, drafting and signature of the Agreement.