



SUPPLIER GENERAL TERMS AND CONDITIONS

1. INTERPRETATION

For the purposes of this Agreement the following rules of construction shall apply, unless the context requires otherwise –

- 1.1 any reference to a person includes any individual, body corporate, unincorporated association or other entity recognised under any law as having a separate legal existence or personality;
- 1.2 a reference to any one gender shall include a reference to the other gender;
- 1.3 a reference to the singular shall include a reference to the plural and *vice versa*;
- 1.4 references in this Agreement to “**clauses**” and “**Annexures**” and “**Schedules**” are to clauses of, and Annexures and Schedules to, this Agreement;
- 1.5 if any conflict arises between the provisions contained in:
 - a) this Agreement; and/or
 - b) any other document supplied by the Supplier; and/or
 - c) any other document which is related to the subject matter of this Agreement,the provisions contained in this Agreement shall prevail;
- 1.6 a “**law**” shall be construed as any law (including common law), statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure or enactment of any government, local government, statutory or regulatory body or court and shall be deemed to include the rules and other requirements of any applicable stock exchange;
- 1.7 references to a statutory provision include any subordinate legislation made from time to time under that provision and references to a statutory provision include that provision as modified or re-enacted from time to time as far as such modification or re-enactment applies, or is capable of applying, to this Agreement or any transaction entered into in accordance with this Agreement;
- 1.8 any word and expression defined in any clause shall, unless the application of the word or expression is specifically limited to the clause in question, bear the meaning ascribed to the word or expression throughout this Agreement;
- 1.9 no rule of construction shall be applied to the disadvantage of a Party to this Agreement because that Party was responsible for, or participated in, the drafting and/or preparation of this Agreement or any part of it;
- 1.10 the use of the word “**including**” followed by a specific example(s) shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example(s);
- 1.11 unless otherwise provided, any number of days prescribed in this Agreement shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day;
- 1.12 where the day on or by which anything is to be done is not a Business Day, it shall be done on or by the first Business Day thereafter;
- 1.13 a reference to a document or agreement includes an amendment, supplement to, replacement or novation of that document;
- 1.14 references to “**writing**” or “**written**” includes any hand-written, typewritten, facsimile and/or email communications and includes any communication by way of a data message, unless use of a data message has been expressly excluded by the Parties

in writing in this Agreement;

- 1.15 if any provision in any definition or any other clause in this Agreement is a substantive provision conferring rights or imposing obligations on either Party, effect shall be given thereto as if it were a substantive provision set out in the body of this Agreement;
- 1.16 this Agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees, assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to either Party shall be deemed to include such Party's estates, heirs, executors, administrators, trustees, assigns or liquidators, as the case may be;
- 1.17 unless the context indicates otherwise, the following terms shall have the corresponding meanings:
 - 1.17.1 **Affiliate** means:
 - (a) with respect to any juristic person, any other person that, directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such person;
 - (b) with respect to any trust, any trustee or beneficiary of such trust, or any spouse, parent, legal guardian, child (whether step-child, biological child or adopted child) or sibling of any such trustee or beneficiary;
 - (c) with respect to any natural person, any spouse, parent, legal guardian, child (whether step-child, biological child or adopted child) or sibling of such natural person;
 - 1.17.2 **Agreement** means collectively these General Terms and Conditions, the Agreement Details, the Annexure(s) and any Schedules to the Annexures;
 - 1.17.3 **Agreement Details** means the agreement details stipulated on pages 2 and 3 of this Agreement;
 - 1.17.4 **Applicable Law** means any law applicable in the Territory;
 - 1.17.5 **BEE Act** means the South African Broad-Based Black Economic Empowerment Act, 2003, as amended from time to time (or any equivalent law applicable in the Territory);
 - 1.17.6 **BHBW's Materials** shall bear the meaning ascribed to that term in clause 4.1(k);
 - 1.17.7 **BHBW's Policies and Procedures** means all of BHBW's policies and procedures including, but not limited to, health, safety and environmental policies, all as may be amended by BHBW from time to time;
 - 1.17.8 **BHBW's Representative** means the person appointed by BHBW from time to time in terms of clause 11, and whose details are set out in the Agreement Details;
 - 1.17.9 **Business Day** means any day other than a Saturday, Sunday or public holiday in the Territory;
 - 1.17.10 **Business Hours** means the hours of 07h30 until 18h00 on a Business Day or such longer hours as the Parties may agree from time to time;
 - 1.17.11 **Claims** shall bear the meaning ascribed to that term in clause 9.1;
 - 1.17.12 **COIDA** means the South African Compensation for Occupational Injuries and Diseases Act, 1993, as amended from time to time (or any equivalent law applicable in the Territory);
 - 1.17.13 **Commencement Date** means the effective date of this Agreement as set out in

the Agreement Details;

- 1.17.14 **Confidential Information** means any and all information and/or technical data which has been and/or may be disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") whether verbally, in writing or otherwise and whether before and/or during the term of this Agreement, including, but without being limited to, information relating to the Disclosing Party's products, services, developments, inventions, processes, designs, product specifications, plans, drawings, customers, pricing and all other data whether of a financial, technical, labour related, marketing, administrative or accounting nature; but excluding any information:
- a) which now or hereafter becomes, through no act or omission on the part of the Receiving Party, generally known or available to the public;
 - b) which was acquired by the Receiving Party before receiving such information from the Disclosing Party and without restriction as to use or disclosure;
 - c) which is rightfully furnished to the Receiving Party by a third party without restriction as to use or disclosure;
 - d) that the Receiving Party can demonstrate was independently developed by it without a breach of any obligation of confidentiality; or
 - e) which is disclosed by the Receiving Party in order to comply with any order of a court of competent jurisdiction or the provision of any law or regulation in force from time to time; provided always that the Receiving Party shall have advised the Disclosing Party in writing prior to such disclosure in order to enable the Disclosing Party to take such steps as it deems necessary to protect its interests in such information; and provided further that the Receiving Party shall disclose only that portion of the information which it is legally required to disclose and shall use its best endeavours to protect the confidentiality of any information so disclosed;
- 1.17.15 **Contributor Level** means the Supplier's Broad Based Black Economic Empowerment ("**BBBEE**") contributor level achieved in terms of the Department of Trade and Industry's Codes of Good Practice on BBBEE, as at the Signature Date;
- 1.17.16 **Control** when used with respect to any person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "**controlling**", and "**controlled**" have meanings correlative to the foregoing. Without derogation from the foregoing, a person shall be deemed to control another person if such first person can exercise more than 50% (fifty per cent) of the voting rights or other voting equity interests of such other person;
- 1.17.17 **Customer** shall bear the meaning ascribed to that term in Annexure A;
- 1.17.18 **Deliverables** shall bear the meaning ascribed to that term in Annexure A;
- 1.17.19 **End User** shall bear the meaning ascribed to that term in Annexure B;
- 1.17.20 **General Terms and Conditions** means this Agreement excluding the Agreement Details and any Annexures and Schedules to the Annexures;
- 1.17.21 **Goods** shall bear the meaning ascribed to that term in Annexure A and/or Annexure B, as the case may be;
- 1.17.22 **Governing Law** means the governing law stipulated in the Agreement Details;
- 1.17.23 **Indemnified Parties** shall bear the meaning ascribed to that term in clause 9.1;
- 1.17.24 **Initial Period** means the initial period of this Agreement as set out in the

Agreement Details;

- 1.17.25 **Intellectual Property Rights** means all the intellectual property rights owned by the Disclosing Party pertaining to the Goods and/or the Services and/or the Transportation Services including, but not limited to, patents, rights to inventions, copyright and related rights, trade marks, trade secrets, trade dress, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- 1.17.26 **Insolvency Event** means, in respect of any person the occurrence of any one and/or more and/or all of the following:
- (a) it is, (or admits inability) or becomes unable to pay its debts as they fall due, or it is (or admits to being) insolvent, or files any application or action for relief under any insolvency, reorganisation or moratorium law with the object of it being wound up, liquidated, or placed under curatorship, or placed under any business rescue proceedings, receivership, administrative receivership or administration, as applicable in its jurisdiction, whether provisionally or finally and whether compulsory or voluntary; and/or
 - (b) any proceedings are started or steps are taken or instituted against it (but excluding any such steps or proceedings which are frivolous or have no prospect of success), for a liquidation order or provisional liquidation order to be made in relation to it or for its winding-up, dissolution or reorganisation or for the appointment of a judicial manager, trustee, liquidator or similar officer in relation to it or its assets or for it to be placed under business rescue; and/or
 - (c) any receiver, administrative receiver, administrator, compulsory manager, judicial custodian, liquidator or practitioner or the like is lawfully appointed in respect of it or any material part of its assets or revenues or it requests any such appointment;
- 1.17.27 **Official** means any of the following in their official capacity:
- a) a government official or governmental employee,
 - b) any official or employee of an entity in which any government holds a substantial ownership interest,
 - c) any official or employee of a public international organisation;
 - d) any political party official; or
 - e) any candidate for political office;
- 1.17.28 **OHS Act** means the South African Occupational Health and Safety Act, 1993 (as amended from time to time) together with any and all regulations promulgated in terms thereof from time to time (or any equivalent law applicable in the Territory);
- 1.17.29 **Parties** means BHBW and the Supplier and “**Party**” means either of them as the context may require;
- 1.17.30 **Personnel** means any individual employed or supplied by the Supplier whether

directly or indirectly and assigned to work in connection with the performance of this Agreement (whether or not such individual is an employee of the Supplier), and includes subcontractors and agents of the Supplier and their personnel;

- 1.17.31 **PPE** means all personal protective equipment required by individuals to deliver the Goods and/or perform the Transportation Services and/or perform the Services, with due regard to the nature of the Goods and/or Services and/or Transportation Services and which shall include, but not be limited to, safety boots or shoes, overalls, hardhats and safety glasses;
- 1.17.32 **Premises** shall bear the meaning assigned to that term in Annexure A;
- 1.17.33 **Price(s)** means, to the extent that the Supplier is providing BHBW with Goods and Services as contemplated in Annexure A, the price(s) for the Goods and/or fees for the Services as set out in Schedule 2 to Annexure A;
- 1.17.34 **Purchase Order** means a written authorisation to the Supplier from BHBW specifying its requirements for Goods and/or Services and/or Transportation Services, as the case may be;
- 1.17.35 **Rate(s)** means, to the extent that the Supplier is providing BHBW with Transportation Services as contemplated in Annexure B, the rates applicable to such Transportation Services as set out in Schedule 3 of Annexure B and/or Schedule 4 of Annexure B (as the case may be);
- 1.17.36 **Representative** means the BHBW Representative and/or the Supplier Representative, as the case may be;
- 1.17.37 **Required Service Level(s)** shall bear the meaning ascribed to that term in Annexure A and/or Annexure B to this Agreement, as the case may be;
- 1.17.38 **Service(s)** shall bear the meaning ascribed to that Term in Annexure A;
- 1.17.39 **Signature Date** means the date on which this Agreement is Signed by the last of the Parties;
- 1.17.40 **Signed** or **Signature** means a hand-written signature, excluding any signature appended by electronic communication;
- 1.17.41 **Site** shall bear the meaning assigned to that term in Annexure B;
- 1.17.42 **South Africa** means the Republic of South Africa;
- 1.17.43 **Special Terms and Conditions** means any special terms and conditions applicable to this Agreement as set out in Annexure D;
- 1.17.44 **Specifications** shall bear the meaning ascribed to that term in Annexure A;
- 1.17.45 **Supplier's Representative** means the person appointed by the Supplier from time to time in terms of clause 11, and whose details are set out in the Agreement Details;
- 1.17.46 **Tax** means VAT or any other tax levied in accordance with the provisions of the relevant Applicable Law;
- 1.17.47 **Territory** means the territory set out in the Agreement Details;
- 1.17.48 **Transportation Services** shall bear the meaning ascribed to that term in Annexure B; and
- 1.17.49 **VAT** means Value-Added Tax levied in accordance with the provisions of the Value-Added Tax Act, 1991 (or any equivalent law applicable in the Territory).

2. APPOINTMENT

- 2.1 BHBW hereby appoints the Supplier, on a non-exclusive basis, as an independent contractor to provide the Services and/or supply the Goods and/or to provide Transportation Services (as the case may be), from time to time, for the duration of this Agreement.
- 2.2 The Supplier hereby accepts the appointment and undertakes to perform its obligations in accordance with the terms and subject to the conditions of this Agreement including, where applicable, the Special Terms and Conditions.
- 2.3 In consideration for the performance of the Services and/or delivery of Goods and/or performance of the Transportation Services in accordance with the terms of this Agreement, BHBW shall pay the Prices and/or Rates to the Supplier (as the case may be).
- 2.4 Notwithstanding anything to the contrary, nothing contained in this Agreement shall:
- a) preclude BHBW from procuring the Services and/or the Goods and/or the Transportation Services (as the case may be) from any other supplier; and
 - b) be deemed to constitute a guarantee by BHBW that it will order any minimum volume of Services and/or Goods and/or Transportation Services (as the case may be) from the Supplier.

3. DURATION

- 3.1 This Agreement shall commence on the Commencement Date and thereafter shall continue for the duration of the Initial Period.
- 3.2 Upon the expiry of the Initial Period, this Agreement shall automatically renew for successive periods of one year each.
- 3.3 Either Party shall be permitted to terminate this Agreement upon 30 (thirty) days' prior written notice to the other Party. In the event of a termination of this Agreement by either Party in accordance with the provisions of this clause 3.3, such termination shall not have an effect on any Services and/or Transportation Services and/or Purchase Orders which were validly concluded prior to the date of termination and which are still pending as at the date of termination provided that BHBW shall in respect of the supply of Goods be permitted, in its sole and absolute discretion, to instruct the Supplier to discontinue all work on an outstanding Purchase Order. Should BHBW exercise its right as aforesaid, BHBW shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 3.4 Notwithstanding the provisions of clause 3.1, to the extent that the Supplier has performed any act related to the delivery of Goods and/or the performance of Services and/or the performance of Transportation Services prior to the Signature Date, such act shall be regulated by this Agreement.

4. GENERAL OBLIGATIONS OF THE SUPPLIER

- 4.1 The Supplier shall:
- (a) co-operate with BHBW in all matters relating to the Goods and/or the Services and/or the Transportation Services, and shall comply with all instructions of BHBW;
 - (b) obtain and maintain in force for the duration of this Agreement, all licenses, permissions, authorisations, consents and permits needed to perform the

Services and/or Transportation Services and comply with all Applicable Laws and regulations;

- (c) ensure that it, at all times, performs its obligations in terms of this Agreement in accordance with:
 - (i) the Required Service Levels and with a degree of care, skill, professionalism and diligence which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged under similar circumstances as those envisaged in this Agreement; and
 - (ii) best practice in the Supplier's industry, profession or trade;
- (d) ensure that it has appropriate insurance to cover its liability under this Agreement and shall provide BHBW with proof of such insurance;
- (e) comply with all of BHBW's Policies and Procedures and any reasonable instruction given by BHBW, in performing its obligations under this Agreement;
- (f) comply with all Applicable Laws and standards in the jurisdictions in which the Services are performed and, at its own cost, obtain all licenses and permits necessary to lawfully perform its obligations in terms of this Agreement;
- (g) use Personnel who are suitably skilled, qualified and experienced (and, if required, appropriately registered) to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;
- (h) provide all PPE, equipment, tools and vehicles and such other items as are required to deliver the Goods and/or provide the Services and/or provide the Transportation Services;
- (i) ensure that its Personnel dress appropriately in their company uniforms at all times and always wear PPE and any other equipment that may be required from time to time whilst they are performing the Services and/or Transportation Services and/or whilst they are delivering the Goods;
- (j) use the best quality goods, materials, standards and techniques in the performance of the Services and/or Transportation Services; and
- (k) hold all materials, equipment and tools, drawings, specifications and data supplied by BHBW to the Supplier ("**BHBW's Materials**") in safe custody at its own risk, maintain BHBW's Materials in good condition until returned to BHBW, and not dispose or use BHBW's Materials other than in accordance with the BHBW's written instructions or authorisation.

5. GENERAL OBLIGATIONS OF BHBW

- 5.1 BHBW shall provide, free of charge, such information and assistance as the Supplier may reasonably request for the delivery of the Goods and/or provision of the Transportation Services and/or provision of the Services and which BHBW considers reasonably necessary for the purpose of providing the Services and/or providing the Transportation Services and/or delivering the Goods.
- 5.2 In addition to the above, where applicable BHBW shall provide the Supplier with all documentation as the Supplier may reasonably require in order to deliver the Goods

and/or perform the Services and/or perform the Transportation Services.

- 5.3 BHBW may give any instructions under this Agreement either orally or in writing. If an instruction is given orally, the Supplier shall be entitled to confirm the instruction in writing, including by way of email communication, and such confirmation, unless rejected or modified by BHBW within 3 (three) Business Days, shall constitute the written instruction of BHBW.

6. HEALTH & SAFETY

- 6.1 Without derogating from the Supplier's obligation to comply with BHBW's Policies and Procedures, the Supplier undertakes, in the execution of the Services and/or the supply of the Goods and/or the execution of the Transportation Services, to comply with all safety, occupational health and environmental management laws, provisions, rules, guidelines and procedures applicable on the Premises and/or on any Site and/or at any building works on the Premises and/or at any building works on the Site; and shall take all reasonable steps to ensure that all its employees, and other persons under the Supplier's direction and control likewise, observe and comply with the foregoing.
- 6.2 Under no circumstances will BHBW be responsible for overseeing the implementation of health and safety programmes of the Supplier, the safety of the Supplier's Personnel or environmental obligations of the Supplier, whether during any visit on the Premises and/or the Site and/or elsewhere.
- 6.3 The Supplier's Representative must immediately notify BHBW's Representative of each serious injury and near miss which occurs in providing the Services and/or supplying of the Goods and/or providing the Transportation Services. The aforementioned notice must specify any corrective actions taken or to be taken to prevent recurrence.
- 6.4 Any failure to report an incident as provided in clause 6.3 above, and more generally, any failure by the Supplier to comply with this clause 6, shall be considered by BHBW to be a breach of this Agreement and may result in the termination of this Agreement and/or any Purchase Order.

7. SUB-CONTRACTING

- 7.1 The Supplier shall not sub-contract any of its obligations under this Agreement without the prior written approval of BHBW. The Supplier shall provide BHBW with such information as may be reasonably required by BHBW to make an informed decision regarding such subcontracting.
- 7.2 Notwithstanding BHBW's approval under clause 7.1, the Supplier shall remain responsible for the proper performance of the Services and/or delivery of the Goods and/or performance of the Transportation Services in accordance with the terms of this Agreement and the Supplier shall remain the guarantor for failure, defective works, omissions, errors and mistakes, committed by the sub-contractor. The Supplier shall ensure that all persons engaged in the provision of the Services and/or supply of the Goods and/or provision of the Transportation Services shall act in accordance with the terms and conditions of this Agreement and shall meet any Required Service Levels stipulated herein.
- 7.3 The Supplier shall indemnify BHBW from any claim made against it by a sub-contractor, including but not limited to any claims which the sub-contractor may have for payments that the Supplier might owe to the sub-contractor and/or any claims which the sub-contractor may have for compensation for breach of agreement

between the Supplier and the sub-contractor.

- 7.4 The agreement binding the Supplier to the sub-contractor must refer to this Agreement and stipulate that the sub-contractor may not under any circumstances claim any direct right against BHBW.

8. WARRANTIES

8.1 General

The Supplier warrants that:

- (a) it is in possession of all valid certificates of roadworthiness (if applicable), professional competences, permits, consents, approvals, authorisations, licenses and/or permissions, as are necessary to perform its obligations in terms of this Agreement;
- (b) it has complied with all Tax, including special tax and customs tax that may be applicable to any of its activities as well as the execution of the Services and/or Transportation Services and/or the delivery of the Goods, and that it is up to date with the payment of any amount of any nature whatsoever which may be due to applicable authorities;
- (c) it is, and it shall be at all times throughout the duration of this Agreement, registered with the Compensation Commissioner in terms of COIDA and undertakes to submit a copy of the "Letter of Good Standing", issued by the Commission, to BHBW's Representative annually for the duration of this Agreement;
- (d) it is a company duly incorporated, organised and validly existing under the laws of the jurisdiction of its organisation or incorporation;
- (e) it has full power and authority and has obtained all necessary authorities and consents to enter into, and perform its obligations under, this Agreement and such other agreements and arrangements referred to in this Agreement;
- (f) it is not acting as an agent or nominee for an undisclosed principal in delivering the Goods and/or rendering the Services and/or rendering the Transportation Services contemplated in this Agreement;
- (g) in delivering the Goods and/or performing the Services and/or performing the Transportation Services, it will not infringe the rights of any third party (including copyright or other Intellectual Property Right);
- (h) the signing of this Agreement and the performance of its obligations under this Agreement and any other agreements and arrangements referred to in this Agreement will not result in a breach of any other agreement or arrangement to which it is a party or any of its constitutional documents, nor give rise to any right of termination of any other agreement or arrangement to which it is a party; and
- (i) this Agreement has been authorised and constitutes a valid and legally binding agreement, enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent conveyance, reorganisation, moratorium and similar laws of general applicability relating to or affecting creditors' rights.

9. INDEMNITIES

- 9.1 The Supplier hereby indemnifies and holds BHBW, its directors, officers, employees, agents, representatives and/or its Affiliates, their directors, officers, employees, agents and/or representatives ("**Indemnified Parties**") harmless from and against any and all claims (including claims from third parties), demands, damages, costs and losses (including but not limited to, any direct, indirect or consequential losses, loss of profit, loss of reputation and all penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) ("**Claims**") arising directly out of or in connection with:
- (a) any breach of any representation or warranty made by the Supplier in connection with or pursuant to this Agreement;
 - (b) any non-compliance by the Supplier with any Applicable Law;
 - (c) any injury, death, loss or damage sustained by any current or former employee of the Supplier in the course and scope of such employee's employment, or for any loss or damage sustained by such employee and caused by the Supplier's contravention of any Applicable Law;
 - (d) harm, death, loss, injury of or to any person where such harm, death, injury, damage or loss is attributable directly or indirectly to any act or omission of the Supplier and/or its personnel; and
 - (e) any breach by the Supplier of its obligations under this Agreement.
- 9.2 BHBW shall not be liable to the Supplier, its Personnel or any other person at any time engaged by the Supplier in the delivery of the Goods and/or performance of the Services and/or performance of the Transportation Services for any Claims which are attributable to, result from and/or are sustained in the performance of the Services and/or delivery of the Goods and/or performance of the Transportation Services and the Supplier hereby indemnifies BHBW and the Indemnified Parties and holds them harmless against all such Claims.

10. LIMITATION OF LIABILITY

- 10.1 The liability of BHBW for any damages suffered by the Supplier as a result of a breach of any of the provisions of this Agreement, shall be limited to direct damages only, and shall exclude any liability for (a) loss of profits or income; or (b) any indirect, special or consequential losses whatsoever, whether caused by its employees, officers, agents and/or contractors.
- 10.2 Notwithstanding any provision contained elsewhere in this Agreement, any claim by the Supplier against BHBW, howsoever arising, shall in the aggregate be limited to the amount(s) paid and/or to be paid by BHBW to the Supplier under the relevant Purchase Order, as at the date of its claim, or an amount of R1 000 000 (one million Rand), whichever is less.

11. REPRESENTATIVES

- 11.1 BHBW hereby appoints the person set out in the Agreement Details and the Supplier hereby appoints the person set out in the Agreement Details, respectively, as their Representatives under this Agreement, with full authority to act on their behalf within the agreed scope of this Agreement. The Parties agree that each Party's Representative is duly authorised to deal with all operational issues which arise and/or are related to this Agreement, on behalf of that Party.

- 11.2 A Party shall be entitled to appoint a substitute Representative, or to change the contact details of its Representative, on written notice to the other Party from time to time (which written notice shall include contact details or substitute contact details of such Representative, as the case may be). The change shall become effective on the first Business Day after the date of receipt of the notice by the other Party.
- 11.3 All communications and, save as provided for under clause 25, all notices under this Agreement shall be given to BHBW's Representative for BHBW, and to the Supplier's Representative for the Supplier.
- 11.4 Except to the extent specifically otherwise authorised by the relevant Party from time to time, BHBW's Representative and the Supplier's Representative shall not have the authority to amend or terminate this Agreement.
- 11.5 Each of BHBW and the Supplier shall be entitled, on written notice to the other, to limit the authority of its Representative under this clause 11 from time to time; provided, however, that BHBW's Representative and the Supplier's Representative shall at all times at least be authorised to receive notices and other communications under the Agreement for the purposes of seeking and granting approvals for the matters contemplated in clause 7.

12. GOOD FAITH AND CONFLICTS OF INTEREST

- 12.1 The Supplier shall not, except to the extent specifically approved by BHBW in writing, have any interest in, nor receive any remuneration in connection with any work to be performed at the Premises and/or on any Site except as provided for in this Agreement.
- 12.2 Without derogating from the foregoing, the Supplier hereby undertakes not to directly or indirectly, through any act or omission, allow itself to be put in a position where a conflict of interest could arise between its position *vis-à-vis* BHBW under this Agreement and its other (existing or potential) business interests and/or activities. To the extent that any such conflict exists or arises at any time prior to the expiry or termination of this Agreement, the Supplier shall immediately declare such conflict to BHBW in writing, and BHBW shall be entitled to terminate this Agreement and/or any Purchase Order.

13. INDEPENDENT CONTRACTOR

- 13.1 The Supplier is an independent contractor. Nothing in this Agreement shall be construed as creating a relationship of agency, employment, partnership or joint venture between BHBW and the Supplier.
- 13.2 Save to the extent expressly otherwise provided for in this Agreement, neither Party shall have any authority or power to bind the other or to contract in the name of or create a liability against the other in any way or for any purpose.
- 13.3 In no event shall the Supplier's Personnel be considered employees, representatives or agents of BHBW for any purpose whatsoever. The Supplier remains fully and solely responsible for its Personnel's safety, remuneration, medical care and more generally for any sum due to those persons.
- 13.4 The Supplier's Personnel based at the Premises and/or on any Site shall be subject to the general rules and regulations regarding working hours, safety, security procedures and processes, as generally applicable to BHBW's employees at the Premises and/or Site and the Supplier shall ensure that such Personnel work closely with BHBW's Representative and comply with any instructions provided by such Representative.

14. RIGHT TO AUDIT

14.1 The Supplier shall keep records of all:

- a) Goods delivered and/or Services performed and/or Transportation Services performed;
- b) invoices issued to BHBW; and
- c) payments received from BHBW,

for a period of 6 (six) years thereafter, or longer if required by Applicable Laws, as may be necessary for BHBW to audit the Goods delivered and/or Services rendered and/or Transportation Services rendered, and the payments received by the Supplier in terms of this Agreement.

14.2 The Supplier shall allow BHBW or its auditors or other advisers, during Business Hours, to access any of the Supplier's premises, personnel and relevant records as may be reasonably required in order to:

- (a) fulfil any legally enforceable request by any regulatory body; or
- (b) undertake verifications of the accuracy of the Prices and/or Rates (as the case may be); or
- (c) undertake verification that the Services and/or Transportation Services are being provided, and all obligations of the Supplier are being performed, in accordance with this Agreement; or
- (d) verify the circumstances contemplated in clause 14.7.

14.3 BHBW shall use its reasonable endeavours to ensure that the conduct of such audit does not unreasonably disrupt the Supplier or delay the provision of the Services or delivery of the Goods or provision of the Transportation Services by the Supplier and that, where possible, individual audits are co-ordinated with each other to minimise any disruption. The audit contemplated herein shall be reasonable in scope and duration.

14.4 Subject to BHBW's obligations of confidentiality, the Supplier shall provide BHBW (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.

14.5 BHBW shall provide at least 5 (five) Business Days' notice of its intention to conduct an audit unless such audit is conducted in respect of a suspected fraud, in which event no notice shall be required.

14.6 The Parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 14, unless the audit identifies a material default by the Supplier, in which case the Supplier shall reimburse BHBW for all its reasonable costs incurred in the course of the audit as contemplated in clause 14.7(b).

14.7 If an audit identifies that:

- (a) the Supplier has failed to comply with any of its obligations under this Agreement then, without prejudice to the other rights and remedies of BHBW, the Supplier shall take the necessary steps to comply with its obligations at no additional cost to BHBW; or
- (b) BHBW has overpaid any Price and/or Rates, the Supplier shall pay to BHBW the amount overpaid within 5 (five) days from the date of receipt of an invoice or notice to do so. In addition should any overcharge be larger than 2% (two

percent) of the aggregate amount charged for all of the Goods and/or Services and/or Transportation Services provided under this Agreement, the Supplier shall be liable for the costs of the audit; and/or

- (c) the Supplier, its employees, officers or agents has or may have engaged in conduct proscribed by the Anti-Bribery Legislation or Relevant Policies (as defined in clause 17 below), or has committed fraud or theft, then BHBW shall be entitled, without prejudice to any of its other rights in law, to immediately cancel this Agreement, without prejudice to its rights to claim damages.

15. **BREACH**

15.1 If:

- (a) the Supplier commits a material breach of this Agreement which is not capable of being remedied, or if it is capable of being remedied, it fails to remedy such breach within 15 (fifteen) Business Days of receipt of written notice from BHBW requiring it to do so;
- (b) an Insolvency Event occurs in relation to the Supplier which, if capable of being remedied, is not remedied within 14 (fourteen) days;
- (c) the Supplier being a natural person, publishes a notice of the voluntary surrender of his estate, applies for any debt review proceedings, dies, or has any application or other proceedings brought against him in terms of which he is sequestrated or placed under curatorship;
- (d) the Supplier being a partnership, is dissolved;
- (e) there is a change of Control of the Supplier without the prior written consent of BHBW during the subsistence of this Agreement;
- (f) the Supplier or any of its employees are involved in any illegal or corrupt activities (including but not limited to bribery and corruption and fraud);
- (g) any of the Supplier's employees are charged with theft of the Goods or any other property of BHBW or the Customer and/or an End User;
- (h) the Supplier advises or by any means makes known its intention to cede or delegate any of its rights and/or obligations in terms of or arising from this Agreement or purports to cede, delegate, sell or otherwise dispose of the foregoing, without the prior written approval of BHBW; and/or
- (i) the Supplier:
 - (i) fails to reach any specific target as set out in the Required Service Levels, which breach occurs 2 (two) or more times in any calendar year; or
 - (ii) fails to reach any 3 (three) targets as set out in the Required Service Levels in any three consecutive months,

then BHBW shall be entitled, without prejudice to any of its other rights in law, to claim specific performance in terms of this Agreement or immediately cancel this Agreement on written notice to the Supplier, in either event without prejudice to its rights to claim damages.

15.2 If BHBW terminates this Agreement in accordance with the provisions of clause 15.1,

then the Supplier shall:

- (a) on request by BHBW, promptly inform BHBW of all outstanding sub-contracts and other agreements between the Supplier and third parties relating to the Transportation Services and/or the Services and/or the supply of the Goods and furnish BHBW with complete copies thereof; and
- (b) as directed by BHBW:
 - (i) procure the assignment to BHBW, or to another person designated by BHBW, of the Supplier's rights and obligations under such of those subcontracts and agreements as BHBW may designate; or
 - (ii) take such other action relating to such subcontracts and agreements as BHBW may specify.

- 15.3 In the event of BHBW committing a material breach of this Agreement, and failing to remedy such breach within 15 (fifteen) Business Days of receipt of written notice requiring it to do so, then and in such event the Supplier shall be entitled, in its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance or to cancel this Agreement on written notice to BHBW, in either event without prejudice to its rights (but always subject to any limitation expressly stated in this Agreement) to claim damages.

16. SPECIFIC CONSEQUENCES OF TERMINATION

Upon termination or completion of this Agreement, for any reason whatsoever and howsoever arising, the Supplier shall (unless, and save to the extent otherwise directed by BHBW in writing pursuant to clause 15.2(b)):

- 16.1 fulfil all unexecuted but accepted Purchase Orders;
- 16.2 provide BHBW with all information and co-operation to enable the personnel of BHBW, or that of any third party nominated by BHBW, to fully and effectively take over the Transportation Services and/or the Services and/or procurement of the Goods;
- 16.3 co-operate with BHBW to facilitate a smooth, efficient and effective takeover of the Transportation Services and/or the Services and/or procurement of the Goods;
- 16.4 return to BHBW any equipment or other information technology improvised by BHBW;
- 16.5 to the extent applicable, deliver to BHBW all documents, drawings and Specifications relating to the Services and/or the Goods which are capable of being delivered either in hard copy and/or in electronic format;
- 16.6 immediately deliver to BHBW all Deliverables whether or not then complete, and return all BHBW's Materials. If the Supplier fails to do so, then BHBW may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement; and
- 16.7 vacate the Premises and/or Site (if applicable).

17. ADHERENCE TO ANTI-BRIBERY AND SANCTION LAWS

- 17.1 The Supplier warrants that:

- (a) to the best of its knowledge and belief, neither it nor any of its employees, or any other person on its behalf is or has ever been subject to any economic or trade sanctions imposed by any country;
- (b) neither it nor any of its employees nor any other person on its behalf, has ever directly or indirectly paid, given, offered or agreed (either by themselves or in agreement with others) to pay, give or offer any money, gift or anything else of value in order to:
 - (i) influence or attempt to influence any act or decision (including a decision not to act) of any person (including, but not limited to, an Official);
 - (ii) induce any person (including, but not limited to, an Official) to use his/her influence to affect a decision so as to assist the Supplier to obtain or retain business, secure any concession, direct any business or secure any improper advantage for the Supplier or BHBW;
 - (iii) directly or indirectly accepted, agreed or offered to accept (either by themselves or in agreement with others) any money, gift or anything else of value in order to improperly perform their duties; and/or
 - (iv) been found guilty, or been accused, of contravening any anti-bribery, anti-corruption or anti-money laundering laws, regulations and/or policies, including, but not limited to, the provisions of the United Kingdom Bribery Act 2010, the U.S. Foreign Corrupt Practices Act, the South African Prevention of Organised Crime Act of 1998, the South African Financial Intelligence Centre Act of 2001 or the South African Prevention and Combating of Corruption Activities Act of 2004 (collectively, the “**Anti-Bribery Legislation**”); and
- (c) it has no foreign public officials as direct or indirect owners, officers or employees at the Commencement Date of this Agreement.

17.2 For the duration of this Agreement, the Supplier undertakes, on behalf of itself, its directors, officials, employees and agents to:

- (a) comply with all laws, regulations and policies relating to economic or trade sanctions or export controls of the Territory, the United States of America, the European Union, the United Kingdom and the United Nations (“**Sanctions Laws**”) and/or any Anti-Bribery Legislation to which it or its members is or are (as the case may be) subject, including those of any jurisdiction where it conducts business;
- (b) to implement and/or enforce the BHBW Supplier’s Code of Conduct which is attached to this Agreement as Annexure C;
- (c) immediately notify BHBW (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier;
- (d) comply with BHBW’s Anti-bribery and Anti-corruption Policies, which will be available from BHBW on request, as BHBW may update them from time to time (“**Relevant Policies**”);

- (e) not do, or omit to do, any act that will cause or lead BHBW to be in breach of any of the Anti-Bribery Legislation, the Sanctions Laws and/or the Relevant Policies; and
- (f) have and shall maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with the Anti-Bribery Legislation, Sanctions Laws and Relevant Policies, and will enforce them where appropriate.

17.3 The Supplier:

- (a) undertakes to notify BHBW immediately, if it becomes aware that any of the warranties in clause 17.1 above is false or that it has failed to comply with any of its obligations in clause 17.2 above; and
- (b) agrees to provide BHBW with written certification from its directors, officials, employees and agents certifying such person's compliance with clause 17.2.

17.4 Notwithstanding anything to the contrary in this Agreement:

- (a) BHBW may immediately cancel this Agreement on written notice to the Supplier in the event of a breach by the Supplier of any of the warranties in clause 17.1 or any of its obligations in clause 17.2, without prejudice to BHBW's other rights in terms of this Agreement or in law; and
- (b) if BHBW has reason to believe that the Supplier, its employees, officers or agents has or may have engaged in conduct prohibited by the Anti-Bribery Legislation, Sanctions Laws and/or Relevant Policies, or has been accused of committing fraud or theft, then it may immediately, in its sole discretion, suspend this Agreement, without compensation to the Supplier, pending clarification to BHBW's satisfaction of the circumstances that gave rise to the concern.

17.5 The Supplier shall, for the duration of this Agreement, keep itself abreast of any developments in respect of any changes or amendments to the Sanctions Laws and/or any Anti-Bribery Legislation. The Supplier undertakes in favour of BHBW that it shall at all times comply with any such Sanctions Laws and any other Anti-Bribery Legislation as amended or substituted from time to time.

17.6 The Supplier hereby indemnifies the Indemnified Parties against any Claims incurred by them as a result of a breach by the Supplier of this clause 17.

18. FORCE MAJEURE

18.1 If either Party ("**Affected Party**") is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement from any cause beyond the reasonable control of that Party (including, without limiting the generality of the foregoing, war (declared or undeclared), civil commotion, riot, act of public violence, act of terrorism, robbery, rebellion, revolt, revolution, insurrection, nation-wide or industry wide strikes or lock-outs (but not a strike or lock-out which is limited to the personnel of the Affected Party), economic crisis, or acts of state, sabotage, blockade, embargo, coup, fire, explosion, earthquakes and extraordinary weather (abnormal storms, floods, snow, frost, rain, heat or drought) or any other acts of God ("**force majeure**"), the Affected Party shall be relieved of its obligations hereunder during the period that such event and its consequences continue but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss of damages either general, special or consequential which the other Party may suffer due to or resulting from such delay or failure;

provided always that written notice shall, within 48 (forty-eight) hours of the occurrence of the event constituting force majeure, be given of any such inability to perform by the Affected Party.

- 18.2 The Affected Party shall as soon as practicable notify the other Party by telephone (to be confirmed promptly in writing) of any actual or anticipated failure or delay as a result of force majeure.
- 18.3 The Affected Party shall issue further notices as reasonable from time to time (but no less frequently than weekly) to update the other Party as to the status of the force majeure and its ability to perform. The Affected Party shall nevertheless use all reasonable endeavours to continue to perform its obligations under this Agreement and to mitigate and minimise the adverse effects of the force majeure and shall keep the other Party informed of material developments relating to such force majeure.
- 18.4 If the force majeure lasts for more than 60 (sixty) calendar days, the other Party may terminate this Agreement forthwith by giving written notice to the Affected Party.

19. INDUCEMENT

- 19.1 The Supplier confirms that it did not offer any form of reward or gift to any of BHBW's directors, officers, employees or agents in order to secure this Agreement.
- 19.2 The Supplier will not, for the duration of the Agreement, offer any form of reward or gift to any of BHBW directors, officers, employees or agents.
- 19.3 If the statement made above is found to be untrue, or if any breach of this statement occurs, it will constitute a material breach of the Agreement and BHBW will be entitled to terminate this Agreement, without prejudice to any rights it may have.

20. BLACK ECONOMIC EMPOWERMENT

- 20.1 If applicable, the Supplier shall provide BHBW with a valid BBBEE verification certificate from a rating agency accredited by the South African National Accreditation Service, reflecting the Supplier's Contributor Level.
- 20.2 The Supplier shall:
 - (a) maintain or improve its Contributor Level for the duration of this Agreement in accordance with the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the BEE Act, as amended from time to time; and
 - (b) notify BHBW in writing within 14 (fourteen) calendar days of the occurrence of any event which affects, will affect, or would reasonably likely affect its Contributor Level and the steps it proposes will be taken to restore and/or improve its BBBEE Contributor Level.
- 20.3 Any failure by the Supplier to comply with the provisions of this clause 20 shall be a material breach of this Agreement and BHBW shall be entitled, without prejudice to any other rights which it may have in law, to terminate this Agreement with immediate effect.

21. CONFIDENTIALITY

- 21.1 The Receiving Party:
 - (a) acknowledges that the Confidential Information of the Disclosing Party is a valuable, special and unique asset belonging to the Disclosing Party and

accordingly, that it is not to be used to advance the interests of any person other than the Disclosing Party;

- (b) shall treat all the Confidential Information obtained or received from the Disclosing Party, howsoever such Confidential Information may be disclosed to the Receiving Party including, without limiting the foregoing, whether orally, visually or in electronic media, printed media, or by reason of inspection of documentation or other matter on or at the Disclosing Party's premises, or at any other premises, as confidential and same shall be used solely in terms of this Agreement ("**Purpose**"), and shall not be used and/or disclosed to any third party by the Receiving Party to the prejudice of the Disclosing Party. The Confidential Information shall accordingly not be used for any other reason or purpose whatsoever without the prior written consent of the Disclosing Party, which consent may be withheld for any reason whatsoever;
- (c) acknowledges that the Confidential Information is being made available to the Receiving Party and/or will otherwise come into the Receiving Party's possession solely for the Purpose, and that such information would not have been made available to the Receiving Party but for this undertaking;
- (d) undertakes to protect the Disclosing Party's Confidential Information using not less than the same standard of care that it would have applied in respect of its own proprietary, secret or Confidential Information and that the Disclosing Party's Confidential Information shall be stored by the Receiving Party in such a way as to prevent unauthorised disclosure;
- (e) shall ensure that each of its officers, employees, agents and sub-contractors, as well as its Affiliates and such Affiliates' officers, employees, agents and sub-contractors involved directly or indirectly with the performance of the Receiving Party's obligations in terms of this Agreement, shall be individually bound not to disclose any of the Disclosing Party's Confidential Information to any third party and each such individual shall remain so bound notwithstanding the fact that such officer, employee, agent and/or sub-contractor shall have ceased to be an officer, employee, agent or sub-contractor of the Receiving Party or any of its Affiliates;
- (f) shall securely store all documents, papers and other matter furnished to it by the Disclosing Party in connection with or which constitutes Confidential Information in such a manner as to ensure that only individuals entitled to access thereto and who are bound in terms of this clause 21 shall be able to access same;
- (g) agrees that, notwithstanding the fact that certain of the Confidential Information may already be in its possession, the Confidential Information shall remain subject to the provisions of this clause 21;
- (h) in the event of the Receiving Party being compelled in law to disclose any of the Confidential Information to any third party, notify the Disclosing Party of such fact in writing immediately when it receives such a request to enable the Disclosing Party to object and approach a court of competent jurisdiction if necessary, to protect its interests. No provision of this Agreement should be construed in such a way that the Disclosing Party is deemed to have granted its consent to the Receiving Party to disclose the whole or any part of the Confidential Information;

- (i) shall, upon becoming aware of any loss, unauthorised use or disclosure of the Confidential Information, immediately notify the Disclosing Party in writing of such loss, unauthorised use or disclosure. The Receiving Party agrees to use its best endeavours to assist the Disclosing Party in remedying such unauthorised use or disclosure of the Confidential Information;
 - (j) shall, within 7 (seven) calendar days of receiving a demand therefor from the Disclosing Party, return, purge, expunge or destroy all Confidential Information in its possession and shall furnish, within the aforesaid period, the Disclosing Party with a certificate under the hand of a member of the executive committee (or if no such committee is constituted, then under the hand of a director) of the Receiving Party confirming that all Confidential Information as well as copies thereof have been returned and, if incapable of return, have been destroyed and that no copies of such Confidential Information have been retained by the Receiving Party. Such certificate shall constitute prima facie evidence of proof of the return or destruction of such Confidential Information. The Disclosing Party shall be entitled to appoint independent auditors to audit and verify the Receiving Party's compliance with the stipulations of this clause 21(j) and the Receiving Party shall give such auditors such access and such reasonable assistance as to achieve the purposes of such audit; and
 - (k) acknowledges that monetary damages may not be a sufficient remedy for breach of the undertakings given herein and accordingly, without prejudice to any other rights and remedies available to the Disclosing Party, agrees that the Disclosing Party shall be entitled to relief by way of interdict, specific performance or otherwise.
- 21.2 The Receiving Party acknowledges and agrees that the unauthorised disclosure or use of the Confidential Information by the Receiving Party or a third party, may cause irreparable loss, harm and damage to the Disclosing Party and accordingly the Receiving Party indemnifies and holds the Disclosing Party harmless against any loss, action, expense, claim, harm or damage of whatsoever nature, suffered or sustained by the Disclosing Party pursuant to such breach by the Receiving Party or the Receiving Party's employees, agents or representatives of any of the provisions of this undertaking.
- 21.3 Nothing in this clause 21 shall be construed as preventing the Disclosing Party from obtaining interdictory relief.
- 21.4 This clause 21 shall survive the termination of this Agreement for whatever reason and shall endure for a period of 5 (five) years after such termination.

22. PERSONAL INFORMATION

- 22.1 The Supplier undertakes to BHBW that:
- (a) it will not use or disclose any information that may identify an individual or juristic person ("**Personal Information**") that is processed for or on behalf of BHBW, except to the extent necessary to perform under a Purchase Order;
 - (b) only to the extent that the Supplier actually processes Personal Information it will:
 - (i) implement and maintain appropriate technical and organisational measures and other protections for Personal Information (including, without limitation, not loading any Personal Information provided to the Supplier on (a) any laptop computers or (b) any portable storage media

that can be removed from the Supplier's premises unless in each case (i) such information has been encrypted and (ii) such data is loaded onto portable storage media solely for the purpose of moving such data to off-site storage);

- (ii) report to BHBW any breaches of security of Personal Information immediately after discovery ("**Security Incident**");
 - (iii) cooperate fully with BHBW in investigating any Security Incidents;
 - (iv) cooperate fully with BHBW's requests for access to, correction of, and destruction of Personal Information in the Supplier's possession; and
 - (v) comply with all instructions or other requirements provided or issued by BHBW from time to time relating to the Personal Information;
- (c) permit BHBW and/or its Representative, on reasonable prior notice, to inspect and audit Supplier's business premises and computer systems to verify that the Supplier is in full compliance with its processing obligations under this Agreement;
- (d) it will not transfer Personal Information across any country border unless it is strictly unavoidable for the proper performance under a Purchase Order, and provided that the Supplier notifies BHBW in writing prior to any such transfer. On request by BHBW, the Supplier shall enter into such arrangements with BHBW as BHBW may consider appropriate in order to ensure that Supplier's transfers of Personal Information are lawful; and
- (e) it will not provide BHBW with Personal Information of any third party or its Personnel.

22.2 Notwithstanding the foregoing, if the Supplier does provide BHBW with any Personal Information, the Supplier represents and warrants that it has obtained the necessary consent to provide that Personal Information to BHBW and to allow BHBW to use, disclose, and transmit such Personal Information on a worldwide basis among BHBW and its Affiliates in connection with a Purchase Order.

23. **INTELLECTUAL PROPERTY**

- 23.1 The Receiving Party acknowledges that all right, title and interest in or to the Intellectual Property Rights vests exclusively in the Disclosing Party and all benefits arising from the use of the Intellectual Property Rights inure for the benefit of the Disclosing Party. The Receiving Party acknowledges that, save as otherwise provided for in this Agreement, it has no rights in or to the Intellectual Property Rights.
- 23.2 The Receiving Party shall not make any representation or do any act which may be taken to indicate that it has any right, title or interest in or ownership or use of the Intellectual Property Rights.
- 23.3 The Receiving Party undertakes not to do or permit to be done any act which may impair or prejudice the right or title of the Disclosing Party in and to the Intellectual Property Rights.
- 23.4 The Receiving Party shall promptly notify the Disclosing Party of any conduct by any party which constitutes or which potentially constitutes an infringement of any of the Intellectual Property Rights and which comes to the notice of the Receiving Party.

- 23.5 If the Receiving Party becomes aware that any other person alleges that the delivery of the Goods and/or provision of the Services and/or provision of the Transportation Services infringes any rights of another party or that the Intellectual Property Rights are otherwise threatened or likely to be adversely affected, the Receiving Party shall immediately give written notice thereof to the Disclosing Party and shall make no comment or admission to any third party in respect thereof.
- 23.6 The Disclosing Party shall conduct all proceedings relating to the Intellectual Property Rights and shall in its sole discretion decide what legal action, if any, to take in respect of any infringement or alleged infringement of the Intellectual Property or passing-off or any other claim or counterclaim brought or threatened in respect of the use or registration of the Intellectual Property Rights, and the Receiving Party undertakes to provide such assistance as the Disclosing Party may require in connection with any such action.
- 23.7 All BHBW's Materials are the exclusive property of BHBW.

24. DISPUTE RESOLUTION

24.1 Negotiation

- (a) In the event of any dispute or difference in connection with or in respect of the conclusion or existence of this Agreement, the carrying into effect of this Agreement, the interpretation or application of the provisions of this Agreement, the Parties' respective rights and obligations in terms of and arising out of this Agreement or the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of this Agreement ("**Dispute**"), then either Party may give written notice to the other to initiate the procedure set out below.
- (b) The Parties shall first endeavour to resolve the Dispute by negotiation. The Parties shall meet as soon as possible after the notice referred to in clause 24.1(a) and shall use their bona fide best efforts to resolve the dispute by negotiations.
- (c) If, for any reason, including lack of co-operation by any Party, a Dispute is not settled in terms of clause 24.1(b) within 30 (thirty) calendar days of the notice referred to in clause 24.1(a) or such longer period of time as the Parties may agree to in writing, the Dispute shall be referred to the respective chief executive officers or equivalent senior officer of the Parties (each a "**Senior Officer**"), for a determination.
- (d) The Parties shall use their best endeavours to procure that their respective Senior Officers resolve the Dispute within 30 (thirty) calendar days of being requested to do so.
- (e) If the Dispute is resolved by the Senior Officers within the 30 (thirty) calendar day period referred to in clause 24.1(d), then their resolution shall, if it is recorded in writing and signed by both of them, be final and binding on the Parties.

24.2 Mediation and Arbitration

- (a) If the Dispute is not resolved by the Senior Officers of each of the Parties then either Party shall be entitled to refer the Dispute to mediation and then to arbitration in terms of this clause 24.2 by notifying the other Party in writing of its intention to do so ("**Dispute Notice**").

- (b) The Parties shall agree on a mediator within 7 (seven) Business Days of the notice referred to in clause 24.2(a).
- (c) If for any reason the Parties do not agree on a mediator within 7 (seven) Business Days of the Dispute Notice or the mediator agreed upon by the Parties cannot or does not accept an invitation to mediate and the Parties have for any reason failed to agree on another mediator within 10 (ten) Business Days of the Dispute Notice, then either Party may ask the chairperson of the Johannesburg Bar Council to appoint an accredited mediator.
- (d) The Parties shall agree on the mediation procedure and failing agreement within 5 (five) Business Days of the Dispute Notice or such longer period of time as may be agreed to in writing, then the mediation shall take place in accordance with the United Nations Commission on International Trade Law ("**UNCITRAL**") Model Conciliation Rules in force at the time of the dispute.
- (e) If for any reason, including lack of co-operation by the Parties, a Dispute is not settled by mediation within 30 (thirty) days of the Dispute Notice or such longer period of time as the Parties may agree in writing, then the Dispute shall be settled by arbitration.
- (f) The mediation and the arbitration shall be administered by the Parties.
- (g) The number of mediators shall be 1 (one) and the number of arbitrators shall be 1 (one).
- (h) The mediation and arbitration shall take place in South Africa at the place stipulated in the Agreement Details.
- (i) The governing substantive law of this Agreement shall be South African law.
- (j) The governing procedural law of mediation and the arbitration shall be South African law.
- (k) Nothing in this clause shall preclude any Party from seeking urgent interim relief from any Court of competent jurisdiction.
- (l) The provisions of this clause :
 - (i) constitute an irrevocable consent by the Parties to the proceedings contemplated in terms hereof and neither Party shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause or such proceedings; and
 - (ii) are severable from the rest of this Agreement and shall remain in effect despite the termination, cancellation, invalidity or alleged invalidity of this Agreement for any reason whatsoever.

25. DOMICILIUM AND NOTICES

- 25.1 Any legal process to be served on either Party may be served on it at the address specified for it in the Agreement Details and it chooses that address as its *domicilium citandi et executandi* ("**domicilium**") for all purposes under this Agreement.
- 25.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing, provided that any notice given

by telefax shall be regarded for this purpose as having been given in writing.

- 25.3 Either Party shall be entitled, from time to time by written notice to the other Party, to vary its address or telefax number for the purposes of this clause 25 to any other address which is not a post office box or a poste restante, provided that the change shall become effective on the 7th (seventh) day after the receipt of the notice.
- 25.4 All notices given in terms of this Agreement shall be in writing and any notice given by either Party to the other (“addressee”) which:
- (a) is delivered by hand to the addressee’s physical domicile, shall be deemed to have been received by the addressee on the first Business Day following the delivery date, provided that it was delivered to a responsible person during ordinary Business Hours, and the envelope in which it is delivered is marked for the attention of the Party’s designated officer set out in the Agreement Details;
 - (b) is sent by registered mail to the addressee’s physical domicile, in a correctly addressed envelope marked for the attention of the Party’s designated officer set out in the Agreement Details, shall be deemed to have been received by the addressee on the 14th (fourteenth) Business Day following the date of such posting; and/or
 - (c) is sent by facsimile or email to a Party at the facsimile number and/or email address specified for it in the Agreement Details, shall be deemed to have been received (unless the contrary is proved) within 4 (four) hours of transmission if it is transmitted during normal Business Hours of the receiving party or within 4 (four) hours of the beginning of the next Business Day after it is transmitted, if it is transmitted outside those Business Hours; provided it is marked for the attention of the Party’s Representative set out in the Agreement Details.
- 25.5 Notwithstanding anything to the contrary in this clause 24, a written notice or other communication actually received by a Party (and for which written receipt has been obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

26. GENERAL

26.1 Governing Law

The validity of this Agreement, its interpretation, the respective rights and obligations of the Parties and all other matters arising in any way out of it or its expiration or earlier termination for any reason shall be determined in accordance with the Governing Law.

26.2 Set- off

Notwithstanding anything to the contrary contained in this Agreement, BHBW shall be entitled to set-off any amount(s) owing by the Supplier to BHBW against any amount(s) which are due and payable by BHBW to the Supplier.

26.3 Entire Agreement

- (a) This Agreement (including its Annexures and their Schedules) constitutes the entire agreement between the Parties and supersedes any other arrangement between the Parties and the Supplier’s standard trading terms and conditions, whether referenced in this document, any Annexure to this document or stipulated in any other document provided by the Supplier, will not apply to the Agreement or any other transaction between the Parties.

- (b) Save as otherwise expressly provided, no agreement to amend, add to or otherwise vary or waive any of the provisions of this Agreement shall be effective unless it is made in writing and duly signed by the Parties or on their behalf by their duly authorised agents. For the purposes of this clause, a “written document” shall exclude any written document that is in the form, either wholly or partly, of a data message as defined in the Electronic Communications and Transactions Act 25 of 2002.
- (c) Neither Party shall be bound by any undertakings, representations or warranties not expressly recorded in this Agreement.

26.4 Stipulation

The provisions in clauses 9 and 17.6 shall, by way of *stipulatio alteri*, constitute a contract for the benefit of each Indemnified Party which shall be capable of acceptance at any time by any such Indemnified Party by written notice to that effect to the Supplier. Prior to acceptance, the benefit of the stipulation may not be withdrawn by the Supplier without the prior written consent of BHBW.

26.5 Remedies

No remedy conferred by this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by any of the Parties shall not constitute a waiver by such Party of the right to pursue any other remedy.

26.6 Waiver

The failure by any of the Parties to enforce any provision of this Agreement shall not affect in any way that Party’s right to require performance of the provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.

26.7 Undertakings, representations or warranties

Save as expressly provided for in this Agreement, neither Party shall have any claim or right arising from any undertaking, representation or warranty not included in this Agreement.

26.8 Severance

If any provision of this Agreement is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the Parties shall endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision.

26.9 Survival of Rights, Duties and Obligations

Termination of this Agreement for any cause shall not release a Party from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination.

26.10 Exclusivity

This Agreement is non-exclusive. The Parties agree that this Agreement shall not limit the Supplier’s ability to supply to, or obtain any work from, other customers and/or BHBW right to use third party service providers for services or goods of identical or similar nature, identified herein.

26.11 Assignment

Neither Party may assign this Agreement or cede any of its rights or delegate any of its obligations under it, unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided that BHBW may assign its rights and obligations under this Agreement to any of its Affiliates, without first having to obtain the prior written approval of the Supplier.

26.12 Lien

Notwithstanding anything to the contrary contained in this Agreement, to the extent applicable the Supplier hereby waives any lien or right of retention of any kind whatsoever in respect of the Goods, for any cause whatsoever.

26.13 Successors Bound

This Agreement shall be binding on and shall inure for the benefit of the successors and permitted assigns and personal representatives (as the case may be) of each of the Parties.

27. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by the different Parties on separate counterparts, one or more of which may be delivered via facsimile and/or email, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument.

28. **COSTS**

Each Party shall bear and pay its own costs of and incidental to the negotiation, drafting, preparation and execution of this Agreement.

ANNEXURE A: SPECIFIC TERMS AND CONDITIONS APPLICABLE TO THE SUPPLY OF GOODS AND/OR SERVICES

1. DEFINITIONS

- 1.1 All capitalised terms used in this Annexure A but not defined shall bear the meaning ascribed to those terms in the General Terms and Conditions. Any references to Schedules and/or clauses in this Annexure shall, unless otherwise specified, be deemed to be a reference to the relevant clauses and/or Schedules of this Annexure.
- 1.2 In addition to what it stated in clause 1.1 above, for the purposes of this Annexure A the following additional terms shall have the corresponding meanings:
- (a) **Acceptance** shall bear the meaning ascribed to that term in clause 8.7 below;
 - (b) **Commissioning** shall bear the meaning ascribed to that term in clause 7.2 below;
 - (c) **Customer** means a customer of BHBW as notified in writing by BHBW to the Supplier from time to time;
 - (d) **Defective Services** means Services which do not comply with the terms or requirements of this Agreement or which are otherwise negligently or incorrectly performed by or on behalf of the Supplier;
 - (e) **Deliverables** means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
 - (f) **Delivery** shall bear the meaning ascribed to that term in clause 7.4 below;
 - (g) **Delivery Date** means that date(s) on which the Goods are to be delivered or, where applicable, the Services are to be performed, as specified in a Purchase Order;
 - (h) **Delivery Note** shall bear the meaning ascribed to that term in clause 6.3 below;
 - (i) **Goods** means the goods to be delivered by the Supplier as detailed in Schedule 1 to this Annexure A;
 - (j) **Premises** means any of BHBW's managed operations sites (whether owned or leased by BHBW) and/or any Customer sites wherever located in the Territory, as notified by BHBW in the relevant Purchase Order;
 - (k) **Proof of Delivery** or **POD** means documentary proof of delivery of the Goods by the Supplier to BHBW;
 - (l) **Quotation** shall bear the meaning ascribed to that term in clause 2.2 below;

- (m) **Required Service Level(s)** means prompt, efficient, accurate, complete, appropriate, professional and competent levels of service (with due regard to the level of service ordinarily expected from a professional or entity engaged in services of the nature of the Services) which the Supplier is required to comply with in its rendering of the Services, as set out more fully in Schedule 3 to this Annexure B;
- (n) **Services** means the services (including without limitation the Deliverables) which are to be provided by the Supplier to BHBW as set out more fully in Schedule 1 to this Annexure A and/or any applicable Purchase Order;
- (o) **Specifications** shall bear the meaning ascribed to that term in clause 2.3 below;
- (p) **Statement of Work** or **SOW** means the document specifying the scope, objective and timeframes for the Services, as set out more fully in Schedule 1 to this Annexure A; and
- (q) **Warranty Period** means a period of 12 months from the Delivery Date.

2. QUOTATION AND ORDERING PROCEDURE

- 2.1 BHBW shall send a request for quotation (“**RFQ**”) in writing to the Supplier, specifying its requirements for the Services to be rendered and/or quantities and particulars of the Goods to be delivered to BHBW, including the required Delivery Date and address of the Premises.
- 2.2 The Supplier shall provide a quotation to BHBW, within 5 (five) calendar days, detailing all the information in the RFQ (“**Quotation**”). Each Quotation shall specify the lead times required, the total Price for the Goods and/or Services and shall remain valid for a period of at least 30 (thirty) calendar days from the date of receipt by BHBW.
- 2.3 BHBW shall be entitled to issue a written Purchase Order subject to this Agreement based on the Quotation, together with such further instructions, guidelines, specifications, procedures or plans (“**Specifications**”) as BHBW may require.
- 2.4 Each Purchase Order shall reflect a unique number.
- 2.5 Notwithstanding the above, the Supplier shall notify BHBW within 24 (twenty four) hours after receiving the Purchase Order, if it is unable to comply with any Specification set out in the Purchase Order, in which event BHBW shall be entitled to cancel the Purchase Order and procure the Services and/or the Goods from another third party supplier.
- 2.6 Each Purchase Order, read with the terms and conditions of this Agreement, shall constitute a separate contract. In the event of a conflict between this Agreement and the Purchase Order, this Agreement shall prevail.

3. CHANGE ORDERS

- 3.1 BHBW may, at any time prior to the Delivery Date or the date on which the Services are to be performed, request a change to the relevant Purchase Order by delivering a written notice to the Supplier, with sufficient details of the proposed changes (“**Change Order**”).

- 3.2 Within 2 (two) Business Days, or such other period as the Parties may agree, after receipt of the Change Order, the Supplier shall submit to BHBW a written notice setting out the details of the resultant impact on the Purchase Order, if any.
- 3.3 If no notice is received by BHBW within the 2 (two) day period referred to above, then the Supplier shall be deemed to have accepted the Change Order and shall not be entitled to claim any compensation for the Change Order.
- 3.4 If the impact of the Change Order is a change of the Price(s) or a change to the Delivery Date, then BHBW shall be entitled to withdraw the Change Order within 2 (two) Business Days after receipt of the notice from the Supplier, failing which it shall be deemed to have accepted the revised terms of the Purchase Order.

4. SAMPLES

- 4.1 The Supplier shall provide BHBW with test samples of the Goods, at no charge, where these are required by BHBW.

5. PRICES AND ADJUSTMENT

- 5.1 Unless otherwise provided in Schedule 2 to this Annexure A, the Price(s) are fixed for the duration of this Agreement and shall not be subject to variation for any reason.
- 5.2 Where the Price(s) are not so fixed, the Supplier may increase the Price(s) no more than once in any 12 (twelve) month period, provided that the first such increase must fall on a date which is after the first anniversary of the Commencement Date. The Supplier shall give BHBW not less than 3 (three) months' notice of any increase. Any such increase shall not be permitted to exceed the percentage increase, over the last 12 (twelve) months, in the consumer price index (all items) as published by Statistics South Africa, or such replacement index as the Parties may agree in writing from time to time. Any increase in the Price(s) as aforesaid shall only apply with effect from expiry of the Supplier's 3 (three) months' notice.
- 5.3 Notwithstanding the provisions of clause 5.2, BHBW shall have the right to reject any proposed price increase BHBW. In the event that BHBW rejects a price increase as aforesaid, BHBW may, in its sole and absolute discretion, cancel this Agreement and/or any Purchase Order placed hereunder forthwith upon written notice to the Supplier without payment of any compensation to the Supplier for any damages whatsoever including loss of business and/or profits resulting from such cancellation.

6. TRANSPORTATION PACKAGING

- 6.1 Unless otherwise agreed between the Parties in writing, the Supplier shall be responsible for the packaging and transporting (or for procuring and arranging for the packaging and transportation of) the Goods to the Premises and all costs incurred in and pursuant to the packaging and transportation of the Goods shall be borne and paid for by the Supplier. Unless the Parties agree otherwise in writing, packaging and transportation costs shall be deemed to be included in the Price(s).
- 6.2 The Supplier shall be obliged to take all reasonable care to ensure that the Goods are packed in such manner and with such materials so as to prevent any loss or deterioration of the Goods or any damage (including water damage) thereto as a result of faulty packaging whilst in transit or during loading or unloading.

- 6.3 All packages shall be clearly marked, addressed and accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered in instalments, the outstanding balance of Goods remaining to be delivered ("**Delivery Note**").
- 6.4 In the absence of any written agreement to the contrary, packaging cases and materials shall become and remain the property of BHBW.
- 6.5 The Supplier shall ensure that all legislation applicable to the handling, packaging, storage, transportation and delivery of the Goods is at all times complied with by the Supplier or, where applicable, the Supplier's agents.
- 6.6 The Supplier shall be responsible for all loss of or damage to property and/or injury to persons caused by the Supplier or any contractor employed by the Supplier or by their servants or agents and/or by the Supplier's and/or their contractor's transport vehicles or equipment, whether such loss, damage or injury is caused at or anywhere outside of the Premises.
- 6.7 Where the Premises are not a BHBW owned or leased premises, the Supplier shall ensure that all requirements are met to access the Premises. Any cost associated with the aforesaid will be for account of the Supplier.

7. DELIVERY

- 7.1 The Supplier shall deliver and unload the Goods on the Delivery Date(s) at the Premises, together with all such instructions, user manuals and other documentation relating to the operation, maintenance and use of the Goods. Goods delivered shall be in such quantities as set out in the Purchase Orders placed by BHBW in accordance with clause 2.
- 7.2 Within 2 (two) calendar days after the date on which the Goods have been unloaded at the Premises, the Supplier shall at its cost assemble, install and/or commission the Goods, in accordance with the original equipment manufacturer guidelines and the criteria set out in Schedule 3 to this Annexure A, so that they are capable of performing the functions required by BHBW ("**Commissioning**").
- 7.3 The Supplier shall give written notice to BHBW forthwith upon the successful Commissioning of the Goods in accordance with clause 7.2.
- 7.4 After the Commissioning of the Goods, BHBW, or the authorised party identified in the Purchase Order, shall sign the Delivery Note. The Delivery Note must indicate the date and time of the Commissioning. Delivery shall be deemed to have been effected only when the Supplier receives the signed Delivery Note from the receiving party ("**Delivery**").
- 7.5 The Supplier shall be responsible for, and shall make good, any damage to the Premise(s) or its surroundings caused by the Commissioning of the Goods (including any contamination).
- 7.6 Where design work is undertaken by or on behalf of the Supplier, the Supplier shall disclose to BHBW details of its relevant professional insurance, which would apply in respect of liability arising from any act, omission or negligence in such design work.

- 7.7 BHBW shall be entitled to recover from the Supplier all loss and damage of whatsoever nature which BHBW may suffer as a result of the Supplier's failure to comply with the provisions of this clause 7.

8. INSPECTION OF GOODS

- 8.1 The Goods will be subject to inspection and testing by BHBW at any time and place, within a reasonable time before or after Delivery, but by no later than the date specified in the Purchase Order. If the inspection and testing is done by BHBW at the Supplier's premises, the Supplier shall provide all reasonable assistance and facilities (at no additional charge) to BHBW or its agent for the purposes of such inspection and testing.
- 8.2 The inspection shall be at the Supplier's risk and expense. No such inspection by BHBW or failure of BHBW to identify any defects during such inspections will relieve the Supplier of its obligations to BHBW in terms of this Agreement or be deemed a final approval of the Goods.
- 8.3 If any Goods are (i) defective in quality, quantity, material, workmanship or design (where design is the responsibility of the Supplier); (ii) damaged; and/or (iii) not in conformity with the Specifications or normal standards of quality for such supply, then BHBW shall be entitled to:
- (a) reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - (b) terminate this Agreement and/or any applicable Purchase Order with immediate effect by giving written notice to the Supplier;
 - (c) require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - (d) recover from the Supplier any expenditure incurred by BHBW in obtaining substitute goods from a third party; and/or
 - (e) claim damages for any additional costs, losses or expenses incurred by BHBW arising from the Supplier's failure to supply the Goods in accordance with the Specifications.
- 8.4 Any items of the Goods which are rejected and/or required to be repaired by the Supplier, shall be repaired at the Supplier's cost.
- 8.5 Notwithstanding anything to the contrary, no inspection conducted by BHBW or its representatives in terms of this clause 8 shall be deemed to constitute a waiver of any warranty given by the Supplier.
- 8.6 The terms of this Agreement shall apply to any substituted and/or repaired or replaced goods supplied by the Supplier.
- 8.7 Following the inspection and testing of the Goods, BHBW shall, subject to the provisions of clause 8.3, immediately issue a certificate of acceptance, duly signed by its Representative, to the Supplier ("**Acceptance**").

- 8.8 Acceptance of any delivery, or any payments for Goods delivered, shall not deprive BHBW of the right to return any Goods which are in any way defective, unsuitable, damaged and/or not compliant with the Specifications.

9. OWNERSHIP, RISK AND BENEFIT

- 9.1 Risk and benefit in the Goods shall pass on Delivery.
- 9.2 Ownership of the Goods shall pass to BHBW on the later of Acceptance and Delivery, irrespective of whether the Price has been paid in full.

10. SUPPLY OF SERVICES

- 10.1 The Supplier shall provide the Services to BHBW in accordance with the terms of this Agreement and/or the SOW, with effect from the date set out in the Purchase Order and for the duration of the period set out in the Purchase Order.
- 10.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order and/or the SOW.

11. ADDITIONAL OBLIGATIONS OF THE SUPPLIER

- 11.1 In addition to the obligations stipulated in clause 4.1 of the General Terms and Conditions, the Supplier shall:
- (a) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the SOW, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by BHBW;
 - (b) be responsible for examining the Premises and its surroundings, as well as any other information relevant to the risks, contingencies and other circumstances having an effect on its obligations under the Purchase Order;
 - (c) perform the Services in such a manner as not to disrupt or interfere with the normal business operations of BHBW or its Customer on the Premises, or cause any damage or harm to any person or their property;
 - (d) observe all health and safety rules and regulations and any other security requirements that apply at the Premises;
 - (e) not do or omit to do anything which may cause BHBW to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that BHBW may rely or act on the Services; and
 - (f) maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow BHBW, or its auditors, to inspect such records at all reasonable times on request.

12. ADDITIONAL OBLIGATIONS OF BHBW

- 12.1 In addition to the obligations stipulated in clause 5 of the General Terms and Conditions, BHBW shall provide the Supplier with reasonable access at reasonable times to the Premises for the purposes of providing the Services.

13. LATE COMPLETION AND PENALTIES

- 13.1 The Parties agree that time is of the essence in respect of the performance of the Services and/or delivery of the Goods.
- 13.2 The Supplier shall use its best endeavours to ensure that all accepted Purchase Orders are executed and that the performance of the Services and/or delivery of the Goods is made on the Delivery Date(s), at the Premises and, unless otherwise agreed in writing, only during Business Hours.
- 13.3 If the Supplier fails to deliver the Goods and/or perform the Services by the Delivery Date(s) or by the dates or times specified in the SOW, BHBW shall, without limiting its other rights or remedies set out in clause 15 of the General Terms and Conditions, have one or more of the following rights:
- (a) to terminate this Agreement with immediate effect by giving written notice to the Supplier;
 - (b) to execute and complete the Services (or part thereof) or procure a third party to do so and/or procure substitute Goods from a third party at the expense of the Supplier and to recover from the Supplier any costs incurred by BHBW in obtaining substitute Goods and/or Services from a third party;
 - (c) where BHBW has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - (d) to claim damages for any additional costs, loss or expenses incurred by BHBW which are in any way attributable to the Supplier's failure to meet such dates.
- 13.4 If the Goods are not delivered by the applicable Delivery Date, then BHBW may, at its discretion, claim or deduct 1% (one per centum) of the Price(s) for each week's delay in delivery by way of liquidated damages, up to a maximum of 10% (ten per cent) of the total Price(s) of the Goods. If BHBW exercises its rights under this clause 13.4, then subject to clause 13.5, it shall not be entitled to any of the remedies set out in clause 13.3(a) in respect of the Goods' late delivery.
- 13.5 Should the delivery be delayed for more than 10 (ten) weeks after the Delivery Date, BHBW shall be entitled to cancel the Purchase Order without any further liability.
- 13.6 BHBW's rights under this Agreement are in addition to its rights and remedies implied by statute and common law.

14. INVOICES AND PAYMENT

- 14.1 In respect of the Goods, the Supplier shall invoice BHBW on or at any time after completion of Delivery to BHBW but by no later than the last Business Day of each month before 10:00 am in respect of a Purchase Order executed in the that month. In respect of the Services, the Supplier shall invoice BHBW on completion of the Services but by no later than the last Business Day of each month before 10:00 am in respect of a Purchase Order executed in the that month. Each invoice shall include such supporting information required by BHBW to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number, copy

of the Delivery Note and the certificate of Acceptance (in respect of the Goods) and time sheets (in respect of the Services).

14.2 All invoices issued by the Supplier must comply with the relevant legislation in order to be a valid invoice and must, at a minimum, contain the following information:

- (a) the heading "VAT INVOICE" and words "TAX INVOICE" must appear on the face of the invoice;
- (b) the words "COPY TAX INVOICE" must appear on the face of a copy invoice;
- (c) the relevant Purchase Order number and serial invoice number;
- (d) the Tax number (i.e. VAT registration for South Africa) of both the Supplier and BHBW;
- (e) both BHBW's and the Supplier's registered/trading names and addresses;
- (f) the Tax amount must be separately stated or it must be noted that the amount is inclusive of the appropriate amount of Tax;
- (g) date of issue of the invoice; and
- (h) the description and quantities of the Goods delivered and/or the hours of Services rendered by each of the Supplier's employees, their respective hourly rates, detailed information on any other portion of the Prices, and such other information as may reasonably be required by BHBW.

14.3 Should BHBW request electronic invoices, the Supplier agrees to provide electronic invoices and shall ensure that such invoices are in an encrypted format (at least 128 bytes), over a secure line.

14.4 Unless otherwise agreed in writing and subject to the provisions of clauses 14.1, 14.2 and 14.5, the amount reflected on the invoice shall be paid by BHBW within 60 (sixty) calendar days after BHBW receives the invoice, by means of an electronic funds transfer into the bank account set out in the Agreement Details or such other bank account as the Supplier may nominate in writing from time to time.

14.5 If BHBW disputes any amount on an invoice issued to it under this Agreement, it shall within 14 (fourteen) calendar days of receipt of the invoice, notify the Supplier in writing of the amount which is in dispute. BHBW shall pay the undisputed portion of the invoice, in accordance with the terms of the invoice, pending resolution of such dispute.

14.6 As soon as possible after receipt of the notice of disputed items, the Supplier shall convene a meeting between the Parties' respective Representatives in order to resolve the disputed items through bona fide negotiations. Should the dispute be resolved at the meeting, the Supplier shall issue an amended invoice to BHBW, reflecting the agreed upon amount which shall be payable. BHBW shall pay the balance of the amount reflected in the amended invoice within 10 (ten) Business Days after receipt of the amended invoice or alternatively the Supplier will issue a credit note to BHBW in respect of the agreed amount. Should the Parties agree to keep the disputed invoice unchanged, then BHBW will pay the balance of the invoice as is within 10 (ten) Business Day from the date of the meeting.

14.7 Should the dispute not be resolved within 30 (thirty) calendar days after the Supplier has received the notice of dispute, then the matter shall be resolved in accordance with clause 24 of the General Terms and Conditions.

14.8 Notwithstanding the foregoing, in no event shall BHBW be liable for payment of any interest or penalties on delayed payments to the Supplier, regardless of such payments being disputed or undisputed.

15. ADDITIONAL WARRANTIES

15.1 In addition to the warranties contained in clause 8 of the General Terms and Conditions, and save as provided in Schedule 4 of this Annexure A the Supplier furthermore warrants that:

- (a) All of the Goods or Deliverables, and all goods and materials supplied and used in the Services or transferred to BHBW, will:
 - (i) be free from defect in design, materials and workmanship;
 - (ii) be fit for the purpose for which they are intended;
 - (iii) comply with all Applicable Laws and guidelines approved by a recognised industry body;
 - (iv) not endanger the health or safety of any person;
 - (v) perform as described in the Supplier's specifications (or the specifications of the manufacturer or supplier of such Goods or equipment, as the case may be); and
 - (vi) not be subject to any right of retention, pledge, hypothecation, lien, cession in security or encumbrance of any nature or any instalment sale or credit agreement in favour of any third party.
- (b) The Goods will be available for supply at all times for the duration of this Agreement and the Warranty Period and furthermore warrants that neither production nor distribution will be halted. In the event that the Supplier elects to stop production of all or part of the Goods, the Supplier shall inform BHBW of this fact in writing at least one year in advance of the intended date on which production will be stopped, so that BHBW has an opportunity to place additional orders.
- (c) Where the supplier is not the manufacturer of the Goods, the Supplier shall do all things necessary to procure that the guarantee provided by the manufacturer in respect of the Goods shall be transferred to and operate in favour of BHBW or its Customer, as the case may be.
- (d) The supply of the Goods (including any licence granted) or the rendering of the Services to BHBW will not in any way constitute an infringement of any copyright, trade secret, trademark, patent, invention, proprietary information, or any other rights, title or interest in the intellectual property rights of any third party.
- (e) Warranty Period

- (i) The warranties given in terms of clause 15.1(a) shall remain in full force and effect for the Warranty Period calculated from the later of:
 - (A) the Delivery Date;
 - (B) where a latent defect is found, the date of discovery of that latent defect; or
 - (C) the date of delivery of the replacement or repaired Goods to the Premises.
- (f) Warranty on Goods
 - (i) With respect to materials, equipment or components purchased by the Supplier for incorporation into the Goods and/or supplied as part of the Services, the Supplier shall assign to BHBW any warranties which the Supplier may have received from the suppliers of such materials, equipment or components.
 - (ii) The Supplier agrees that BHBW will be entitled to transfer, assign and cede the warranties relating to the Goods to its Customers.
- (g) Warranty on Services
 - (i) The Supplier hereby warrants that the Services will comply with:
 - (A) the highest standards of workmanship; and
 - (B) the Required Service Levels.
 - (ii) The Supplier shall promptly re-perform and make good Defective Services at its own cost.
 - (iii) Subject to the provisions of this clause 15.1(g), the Supplier undertakes to make good, by repair or replacement, defects in the Services arising from faulty design, materials and workmanship for the Warranty Period (the Warranty Period will recommence each time such repairs or replacement are carried out).
- (h) Consumer Protection
 - (i) The Supplier warrants that where its conduct results in a Customer (who is a consumer in terms of the Consumer Protection Act No. 68 of 2008 (or equivalent legislation applicable in the Territory) ("**CPA**"), becoming entitled to any rights under the CPA, the Supplier shall honour any applicable warranty and/or indemnify BHBW in respect of any amounts whatsoever for which BHBW may become liable in the event that the Customer claims that the Goods are not:
 - (A) reasonably suitable for the purpose for which they were generally intended unless the consumer has been informed that the Goods offered are in a specific condition and the consumer agrees to this;

- (B) of good quality as generally expected, in good working order and free of any defects;
- (C) useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply;
- (D) meeting the applicable standards set under the South African Standards Act, 1993 (or equivalent legislation applicable in the Territory), or any other public regulation; and/or
- (E) meeting any specific purpose which the consumer communicated to BHBW when he/she/it ordered the Goods.

15.2 Any representations and/or warranties included in the Supplier's catalogues, brochures, sales literature and/or quality systems shall be binding on the Supplier.

16. ADDITIONAL INDEMNITIES

16.1 The Supplier shall, at BHBW's request, make available to BHBW all appropriate information in relation to the Goods and/or Services. BHBW shall be entitled to rely upon the accuracy completeness and correctness of such information.

16.2 In addition to the indemnities contained in clause 9 of the General Terms and Conditions, the Supplier hereby indemnifies the Indemnified Parties against all Claims arising directly or indirectly out of or in connection with:

- (a) the information contemplated in clause 16.1 being inaccurate, incomplete and/or incorrect;
- (b) the late delivery of any Goods;
- (c) the Commissioning of the Goods;
- (d) any Defective Services;
- (e) any Claim made against any of them for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier or its Personnel; and/or
- (f) any claim made against any of them by a third party for death, personal injury or damage to property arising out of or in connection with any failure, hazard or defect in the Goods.

17. INTELLECTUAL PROPERTY RIGHTS

17.1 In addition to what is stated in clause 23 of the General Terms and Conditions, insofar as Intellectual Property Rights are concerned the Parties agree as follows:

- (a) In respect of the Goods and any goods that are transferred to BHBW as part of the Services under this Agreement, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of

such items to BHBW, it will have full and unrestricted rights to sell and transfer all such items to BHBW.

- (b) The Supplier hereby assigns to BHBW, with full title and free from all third party rights, all Intellectual Property Rights in the products of the Services, including the Deliverables.
- (c) The Supplier shall obtain waivers of all rights in the products of the Services to which any individual is now or may be at any future time entitled under any copyright or patent law in any jurisdiction.
- (d) The Supplier shall, promptly at BHBW's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as BHBW may from time to time require for the purpose of securing for BHBW the full benefit of this Agreement, including all right, title and interest in and to the Intellectual Property Rights assigned to BHBW in accordance with clause 17.1(b).
- (e) All rights, title and interest in or to the Intellectual Property Rights owned by BHBW pertaining to the Goods or Services vests exclusively in BHBW and all benefits arising from the use of the Intellectual Property Rights inure solely for the benefit of BHBW. The Supplier acknowledges that it has no rights in or to the Intellectual Property Rights of BHBW and shall not make any representation or do any act which may be taken to indicate that it has any right, title or interest in or ownership or use of the Intellectual Property Rights.

18. CONSUMER PROTECTION ACT INDEMNITY

- 18.1 The Parties acknowledge that in terms of section 61 of the Consumer Protection Act, 2008, the producer, importer, distributor, retailer and/or service provider may be held jointly and severally liable for any harm caused wholly or partly as a consequence of the supply of unsafe goods, a defect in the goods or insufficient instructions or warnings provided pertaining to any hazard associated with the use of the goods. This shall apply irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor, retailer and/or service provider.
- 18.2 The Supplier hereby indemnifies and holds harmless Indemnified Parties from and against any and all Claims arising as a result of or related to section 61 of the Consumer Protection Act.

ANNEXURE A SCHEDULE 1: STATEMENT OF WORKS / DESCRIPTION OF GOODS

ANNEXURE A SCHEDULE 2: PRICES

1. SERVICES

1.1 The Price for the Services will be as follows:

| Item | Description of Service | UOM | Normal Rate | Overtime 1 | Overtime 2 |
|------|------------------------|-----|-------------|------------|------------|
| 1. | | | | | |
| 2. | | | | | |
| 3. | | | | | |
| | | | | | |

* Travel cost will be charged at R5.00 per kilometre;

* Accommodation where required will be charged at the actual cost incurred, subject to prior approval being obtained from BHBW.

2. GOODS

2.1 The Price for the Goods will be as follows:

| Item | Description of Goods | Quantity | Cost Code | Price |
|------|----------------------|----------|-----------|-------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| | | | | |

ANNEXURE A SCHEDULE 3: REQUIRED SERVICE LEVELS / INSTALLATION AND COMMISSIONING REQUIREMENTS

The following service levels will be provided by the Supplier:

1. LEAD TIMES

2. REQUIRED SERVICE LEVEL/ INSTALLATION AND COMMISSIONING REQUIREMENTS



3. KEY PERFORMANCE LEVELS (KPI'S)

The following KPI's will be used to measure the Service provided by the Supplier:

3.1

3.2

3.3

4. MANAGEMENT OF THE AGREEMENT

4.1 The Parties will meet semi-annually to discuss the performance of the Agreement.

4.2 The agenda of this management meeting will include the following:

- (a) The KPI's;
- (b) Any dispute or actions ongoing;
- (c) Health, Safety, Environment and Quality;
- (d) The relationship;
- (e) Continuous improvement actions;
- (f) Contract management issues;

5. MONITORING OF SERVICES:

5.1 The Parties shall set up technical and contractual meetings on **[weekly/bi-weekly/monthly]** basis or as and when required by the BHBW's Representative or any legal representative of BHBW to review and control the execution of the Services, and their compliance with the requirements of the Agreement. Each meeting will be held in the presence of BHBW's and the Supplier's Representative and will be subject to a report signed by the Parties.

5.2 Acceptance of the Services

Upon final completion of the Services, the Parties shall jointly go through the checking and inspection of all of the Services.

If all of the checking made and all of the measures taken comply with the standards and obligations agreed to in the Agreement, the Parties shall prepare a document in writing evidencing such compliance. This document shall be signed by the Parties and it will constitute final acceptance of the Services by BHBW.

- 5.3 If, during the inspections and checking carried out by the Parties, failures, poor workmanship, poor execution or any other defects are identified, the Supplier shall immediately make all repairs, modifications or executions necessary to meet its obligations under this Agreement. The Parties will meet again when all modifications, repairs and executions have been carried out by the Supplier in order to carry out the provisions of clause 5.2.

6. ASSEMBLY, ERECTION AND/OR COMMISSIONING CRITERIA



7. ADDITIONAL TRANSPORTATION AND PACKAGING

- 7.1 Additional Packaging Requirements:
- 7.2 Additional Marking Guidelines:
- 7.3 Transportation undertaken by the Supplier, for delivery of Goods to **(Premises)**

ANNEXURE A SCHEDULE 4: EXCEPTIONS TO THE WARRANTIES

1. SERVICE WARRANTY

The Supplier's warranty on the Services is as follows:

1.1 [●]

2. WARRANTY ON MATERIALS

The Supplier warrants any materials (parts, components and consumables) provided as part of the Services as follows:

2.1 [●]

3. WARRANTY PROCESS

Where a warranty claim is considered by the Supplier, the following process will be followed:

3.1 [●]

[**Note:** Include Supplier's warranty policy. Ensure these warranty clauses do not contradict the terms of this agreement.]

ANNEXURE B: SPECIFIC TERMS AND CONDITIONS APPLICABLE TO THE SUPPLY OF TRANSPORTATION SERVICES

1. DEFINITIONS

- 1.1 All capitalised terms used in this Annexure B but not defined shall bear the meaning ascribed to those terms in the General Terms and Conditions. Any references to Schedules and/or clauses in this Annexure shall, unless otherwise specified, be deemed to be a reference to the relevant clauses and/or Schedules of this Annexure.
- 1.2 In addition to what it stated in clause 1.1 above, for the purposes of this Annexure B the following additional terms shall have the corresponding meanings:
- (a) **Abnormal Load** means an indivisible object that, due to its dimensions and/or mass, cannot be transported on a vehicle or vehicles without exceeding the limitation or mass set out in the South African National Road Traffic Regulations or equivalent law in the Territory;
 - (b) **Abnormal Vehicle** means any vehicle, or combination of vehicles, that by virtue of its dimensions and mass, or a combination of both, does not comply with the South African National Road Traffic Regulations and/or which is or are operated under an Exemption Permit, and includes any motor vehicle accompanying such vehicle as a condition of operation;
 - (c) **Border Permits** means any and all permits issued by the Cross Border Road Transport Agency or equivalent authority in the Territory;
 - (d) **Collection Date** means the date on which the Goods are to be collected from a Loading Site in terms of this Agreement, as set out in a Purchase Order;
 - (e) **Delivery Date** means the date(s) on which the Goods are to be delivered to the Offloading Site(s) in terms of this Agreement, as set out in a Purchase Order;
 - (f) **End User** means BHBW, its customer, Principal/s or any other person to whom the Goods will be transported in terms of this Agreement, as reflected in the Purchaser Order;
 - (g) **Exemption Permit** means an exemption granted in terms of section 81 of the South African National Road Traffic Act for the transportation of an Abnormal Load;
 - (h) **Goods** means the Machines and Parts, including all Packaging Materials and other forms of covering;
 - (i) **Instructions** shall bear the meaning ascribed to that term in clause 3.2 below;
 - (j) **Loading Site** means the designated point of origin from which the Goods are to be collected, as specified in a Purchase Order;
 - (k) **Machines** means all:

- (i) Massey Ferguson / Challenger / Fendt / Hyster / Utilev / Geringhoff and/or Unia machines, implements and/or parts and components thereof; and/or
- (ii) any other brand of machine together with any implements or parts and components thereof,

which BHBW requests the Supplier to transport on its behalf in terms of this Agreement;

- (l) **Offloading Site** means the facility(ies) of the End User, being the designated point of destination to which the Goods are to be delivered, as specified in a Purchase Order;
- (m) **Packaging Materials** includes, without limitation, a metal and/or wooden and/or cardboard transportation carton or box (whether re-sealable or not) or any other equipment or device used in connection with the transportation of the Goods;
- (n) **Parts** means all equipment (including Abnormal Loads) and/or parts and/or components thereof bearing BHBW and/or Massey Ferguson / Challenger / Fendt / Hyster / Utilev / Geringhoff and/or Unia marks and/or any other brand marks and which BHBW requests the Supplier to transport on its behalf in terms of this Agreement;
- (o) **Permits** means the Exemption Permits and/or Border Permits;
- (p) **Principal/s** means Agco / Hyster-Yale UK Limited / Geringhoff and/or Unia who are the original equipment manufacturers of the Machines and Parts referred to herein, either jointly or severally as the context may require;
- (q) **Proof of Collection** or **POC** means documentary proof of collection of the Goods by the Supplier from the Loading Site, substantially in the form attached as Schedule 1 to this Annexure B;
- (r) **Proof of Delivery** or **POD** means documentary proof of delivery of the Goods by the Supplier to the Offloading Site, substantially in the form attached as Schedule 1 to this Annexure B;
- (s) **Required Service Level** means the service levels required by BHBW for the performance of the Services, as set out in Schedule 2 to this Annexure B;
- (t) **Site** means either the Loading Site or the Offloading Site, as the context may require;
- (u) **South African National Road Traffic Act** means the South African national Road Traffic Act, 1996, as amended from time to time (or any equivalent law applicable in the Territory);
- (v) **South African National Road Traffic Regulations** means the South African National Road Traffic Regulations, 2000, promulgated in terms of section 75 of the South African National Road Traffic Act, as amended from time to time;
- (w) **Transportation Service(s)** means the transport management services to be provided by the Supplier to BHBW, including freight forwarding and clearing

services and inbound and outbound logistics services and warehousing, as more fully set out in Schedule 3 to this Annexure B (in respect of Machines) and Schedule 4 to this Annexure B (in respect of Parts);

- (x) **TRH11** means the document titled “TRH11: Dimensional and Mass Limitations and Other Requirements for Abnormal Load Vehicles”, published by the South African Department of Transport from time to time; and
- (y) **Vehicles** means the Supplier’s fleet of vehicles used for the purposes of providing the Services.

2. FEES

- 2.1 The fee(s) payable by BHBW for the Services shall be calculated according to the rates set out in Schedule 3 to this Annexure B and/or Schedule 4 to this Annexure B.
- 2.2 The Rates shall be exclusive of VAT.
- 2.3 Unless otherwise provided in Schedule 3 to this Annexure B or Schedule 4 to this Annexure B, as the case may be, the Rate(s) are fixed for the duration of 12 (twelve) months from the Commencement Date and shall not be subject to variation during this period for any reason whatsoever.
- 2.4 No annual increase in the Rates may be made by the Supplier (whether on account of increased costs, labour, fluctuation in rates of exchange or otherwise) unless an application for a Rate adjustment is made in writing to BHBW at least 60 (sixty) days before the proposed effective date of such Rate adjustment. Any such application for a Rate adjustment shall be supported by such documentary evidence as may be required by BHBW.
- 2.5 No Rate adjustment shall be effective until all documentary evidence has been received, the adjustment has been accepted in writing by BHBW and the Parties have signed an amended Rates table.
- 2.6 Notwithstanding the provision of clause 2.4, BHBW shall have the right to reject any proposed Rate adjustment and in the event that BHBW does reject a proposed Rate adjustment BHBW may, in its discretion, cancel this Agreement and/or any Purchase Order concluded hereunder forthwith upon written notice to the Supplier and without payment of any compensation to the Supplier for any damages whatsoever including loss of business and/or profits resulting from such cancellation.

3. PURCHASE ORDERS

- 3.1 The Supplier shall render the Services, as requested from time to time by BHBW, in accordance with a Purchase Order which Purchase Order shall be governed by the terms hereof. In the event of a conflict between the terms of this Agreement and the terms of a Purchase Order, then the terms of this Agreement shall prevail.
- 3.2 Each Purchase Order shall set out, at a minimum, the type of Service required by BHBW, the required Collection Date, the required Delivery Date, the address of the Loading and Offloading Sites, the make and load of the Goods (including all relevant details, specifications, dimensions and loading instructions) and all such other instructions and guidelines as BHBW may specify (“**Instructions**”).

- 3.3 Each Purchase Order shall reflect a unique order number.
- 3.4 Notwithstanding anything to the contrary contained in this Agreement, BHBW does not guarantee any minimum volumes of Goods, minimum number or frequency of journeys or routes for the purposes of the Services.
- 3.5 The Parties shall agree in advance on the delivery schedule applicable to each Purchase Order.
- 3.6 On collection of the Goods on the relevant Collection Date, the Parties or their representatives shall sign a POC verifying the condition and quantity of the Goods and the loading instructions against the Purchase Order.
- 3.7 The Supplier shall notify BHBW in writing within 24 (twenty four) hours after receiving a Purchase Order if it is unable to comply with any Instructions, in which event BHBW shall be entitled to cancel the Purchase Order and procure the Services from another transporter.
- 3.8 Any ambiguity or uncertainty in a Purchase Order or in this Agreement must be referred to BHBW for rectification before the Supplier proceeds to execute the Services set out in the Purchase Order.

4. PACKAGING, LOADING AND OFFLOADING

- 4.1 The Supplier shall, at its own cost, load and offload the Goods at the Loading Site and Offloading Site, respectively, at the times and on the Collection Date(s) and Delivery Dates(s) set out in the Purchase Order.
- 4.2 The Supplier shall take all reasonable care to ensure that the Goods are packed in such manner and with such materials, including the Packaging Materials, so as to prevent any damage (including water damage), loss or deterioration of the Goods whilst in transit or during loading or offloading.
- 4.3 All packages shall be clearly marked, addressed and accompanied by a Purchase Order and all other relevant information. In the absence of any written agreement to the contrary, Packaging Materials shall become and remain the property of BHBW.
- 4.4 Unless the Parties agree otherwise in writing, all cost incurred by the Supplier in the performance of the Services shall be deemed to be included in the Rates set out in Schedule 3 and Schedule 4 to this Annexure B, respectively.
- 4.5 The Supplier shall ensure that all laws applicable to the handling, packaging, storage, transportation and delivery of the Goods are at all times complied with by the Supplier or, where applicable, the Supplier's employees or agents.
- 4.6 The Supplier shall use Vehicles which are in good working order and condition and shall procure that the Vehicles are loaded in terms of the provisions for the loading and transportation of goods as prescribed by the South African National Road Traffic Regulations.
- 4.7 All Vehicles and trailers attached to such Vehicles shall be fitted with either permanent or temporary tracking devices, proof of which shall be supplied to BHBW on request. The Supplier shall provide tracking reports to BHBW in real time within 1 hour of being requested by BHBW.

- 4.8 The Supplier shall ensure that the Goods transported by the Vehicles do not exceed the maximum legal gross combination massload or legal axle massload in terms of any Applicable Law and, if applicable, shall comply with TRH 11.
- 4.9 The Supplier shall provide to BHBW a written submission as the payload of all Vehicles and the distribution of the Goods on the Vehicle at the time of loading of the Goods on such Vehicle.
- 4.10 The Supplier shall be in possession of a valid certificate of roadworthiness and valid Permits (if applicable) and any other licenses required in respect of the Vehicles and the transportation of the Goods and same shall be furnished to BHBW on commencement of this Agreement and on an annual basis thereafter.
- 4.11 The Supplier shall be responsible and accountable for any traffic contraventions and no charges, fines or fees shall be payable by BHBW in this respect.
- 4.12 In the event of a Vehicle having a mechanical breakdown, the Supplier shall be obliged to inform BHBW immediately of such event and the estimated time of repair.
- 4.13 The Supplier shall be liable for causing any loss of or damage to property and/or injury to persons in the handling, loading, offloading, packaging, storage, transportation and delivery of the Goods, (including but not limited to environmental damage, oil spills, or overhead bridge damage), whether such loss, damage or injury is caused at, or anywhere outside of, the Sites.
- 4.14 The Supplier shall be responsible for examining the Goods or counting any Goods received by it, save where such Goods are bundled, palletized or packed in any manner such that their number cannot easily be counted.
- 4.15 The Supplier shall give written notice to BHBW forthwith upon the successful delivery and offloading of the Goods.
- 4.16 The Supplier shall supervise the off-loading of the Goods at the Offloading Site and ensure that the POC is signed by a representative of the End User. Delivery shall be deemed to have been effected only when the End User has signed the POD.
- 4.17 The Supplier shall bear the onus of proving delivery to such Offloading Site, provided however that a valid POD signed by a representative of the End User at the Offloading Site and delivered to BHBW by the Supplier shall constitute prima facie proof that the applicable Goods were delivered.
- 4.18 The End User shall be entitled to inspect the Goods upon delivery and identify any missing and/or damaged Goods by endorsing same on the POD.
- 4.19 No such inspection or failure of the End User to identify any damaged and/or missing Goods during such inspections will relieve the Supplier of its obligations to BHBW or be deemed a final approval of the Services.
- 4.20 Pursuant to such inspection, BHBW shall be entitled to claim, from the Supplier, any Goods which are lost, damaged or not suitably packed in accordance with any Instructions.
- 4.21 The Supplier shall ensure that it complies with all of the requirements for accessing the Sites, including the BHBW's Policies and Procedures where the Site is a BHBW

owned or leased premise. Any cost associated with this will be for account of the Supplier.

5. LATE COMPLETION AND PENALTIES

- 5.1 The Parties agree that time is of the essence in respect of the performance of the Services.
- 5.2 The Supplier shall use its best endeavours to ensure that all accepted Purchase Orders are timeously executed.
- 5.3 In the event of a likely delay in respect of the Collection Date(s) or Delivery Date(s), other than as a result of a force majeure event (as contemplated in clause 18 of the General Terms and Conditions), the Supplier shall give written notice to BHBW of the fact or likelihood of delay not later than 12 (twelve) hours after the delay first arises specifying:
 - (a) the reasons for the delay and the date on which the cause of the delay first arose;
 - (b) the steps to be taken to minimise the delay; and
 - (c) how the Collection Date(s) or Delivery Date(s), as the case may be, are likely to be delayed, both in the progress of one or more activities and as a whole, and the expected revised Collection Date(s) or Delivery Date(s), as the case may be.
- 5.4 BHBW shall, at its sole discretion, be entitled to revise the Collection Date(s) or Delivery Date(s), as the case may be, by giving the Supplier written notice within 2 (two) calendar days after receipt of the notice referred to above.
- 5.5 Subject to clause 5.4, should the Supplier, in breach of clause 5.2, fail to collect or deliver the Goods on the Collection Date(s) or Delivery Date(s) or revised Collection Date(s) or Delivery Date(s), as the case may be, BHBW shall be entitled (without prejudice to its other rights in law) to:
 - (a) claim damages or, in lieu of damages, the payment (by way of a penalty) of the penalty amount(s) set out in the Agreement Details; and/or
 - (b) execute and complete the Services (or particular part thereof) or procure a third party to do so, at the expense of the Supplier and claim its reasonable costs and expenses incurred as a result thereof. The Supplier shall give its full and unconditional assistance and co-operation to BHBW and the third party contractor to perform and complete the Services (or the particular part thereof).

6. INVOICES AND PAYMENT

- 6.1 The Supplier shall provide a Tax invoice to BHBW by no later than the 2nd Business Day of each month before 10:00 am in respect of a Purchase Order executed in the previous month, together with the POC and POD, duly signed, and all such other documents as BHBW may be required to submit to the relevant revenue authorities in respect of the delivery of the Goods.

- 6.2 All invoices issued by the Supplier must comply with the relevant legislation in order to be a valid invoice and must at a minimum contain the following information:
- (a) the words "TAX INVOICE" must appear on the face of the invoice;
 - (b) the words "COPY TAX INVOICE" must appear on the face of a copy invoice;
 - (c) the relevant Purchase Order number;
 - (d) the Tax number of the Supplier and BHBW;
 - (e) BHBW's and the Supplier's registered/trading names and addresses;
 - (f) the Tax amount must be stipulated separately or it must be noted that the amount is inclusive of the appropriate amount of Tax; and
 - (g) the description and quantities of the Goods delivered and the respective Rates applicable to the Purchase Order. If the Supplier fails to submit a POD (being either an original or copy thereof) to BHBW in respect of a particular Order, then payment for such Order will not be deemed to be due and the Supplier shall not be entitled to invoice BHBW for Services rendered in respect of such Purchase Order.
- 6.3 Unless otherwise agreed in writing and subject to clauses 6.1, 6.2, 6.4 and 6.7, the amount reflected on the invoice shall be paid by BHBW within 60 (sixty) calendar days after BHBW receives the invoice by means of electronic funds transfer into Supplier's Bank Account, as set out in the Agreement Details.
- 6.4 If BHBW disputes any amount in an invoice issued to it under this Agreement, it shall within 14 (fourteen) calendar days of receipt of the invoice, notify the Supplier in writing of the amount which is in dispute. BHBW shall pay the undisputed portion of the invoice, in accordance with the terms of this Agreement, pending resolution of such dispute.
- 6.5 As soon as possible after receipt of the notice of dispute, the Supplier shall convene a meeting between the Parties' respective Representatives in order to resolve the issue of the dispute through bona fide negotiations.
- 6.6 Should the dispute be resolved at the meeting, the Supplier shall issue an amended invoice to BHBW, reflecting the agreed upon amount which shall be payable. BHBW shall pay the balance of the amount reflected in the amended invoice within 10 (ten) Business Days after receipt of the amended invoice or alternatively the Supplier will issue a credit note to BHBW in respect of the agreed amount. Should the Parties agree to keep the disputed invoice unchanged, then BHBW will pay the balance of the invoice as is within 10 (ten) Business Day from the date of the meeting. Should the dispute not be resolved within 30 (thirty) calendar days after the Supplier has received the notice of dispute, then the matter shall be resolved in accordance with the provisions of clause 24 of the General Terms and Conditions.
- 6.7 The Parties agree that payment for Services will only be effected where POD's are signed off and certified by the Representatives of BHBW and the Supplier.

7. OWNERSHIP OF THE GOODS

- 7.1 Ownership of the Goods shall remain vested in BHBW at all times.
- 7.2 Notwithstanding anything to the contrary contained in this Agreement, the Supplier shall be liable for all and any loss or damage to the Goods caused or arising from the fraudulent, negligent or intentional act or omission of the Supplier, its employees, agents or subcontractors.

8. ADDITIONAL OBLIGATIONS OF THE SUPPLIER

- 8.1 In addition to the obligations stipulated in clause 4.1 of the General Terms and Conditions, the Supplier shall:
- (a) ensure that it, at all times, performs its obligations with due regard to the safety of all persons at the Loading Sites and the Offloading Sites and with the policies and procedures applicable at any Site. BHBW's Representative may direct the Supplier to permanently remove any person from a Site if, in the opinion of BHBW's Representative, the person:
 - (i) is guilty of misconduct or is incompetent or negligent; and/or
 - (ii) has contravened any of BHBW's Policies and Procedures and the applicable rules of the Site or any authority on safety or safe working procedures;
 - (b) at its cost, timeously source and procure all tools, Packaging Materials, Vehicles, equipment, materials, substances or other goods and ancillary services required for the performance of its obligations in terms of this Agreement;
 - (c) conduct bi-annual documented audits on third parties entrusted with part of the Services;
 - (d) perform its obligations in terms of this Agreement in a way which does not interrupt, or causes the least possible interruption to, the business of BHBW or the End User;
 - (e) ensure that every driver is in possession of a current and valid driver's licence required in the Territory to operate the Vehicles;
 - (f) be responsible for examining the Site and its surroundings, as well as for considering all other information relevant to the risks, contingencies and other circumstances having an effect on its obligations under this Agreement;
 - (g) co-operate with any and all other persons performing any services of any nature whatsoever at the Sites;
 - (h) ensure that:
 - (i) the Supplier's driver(s) are contactable at all times by way of a cellular phone and that they are able to communicate with BHBW's Representative at all reasonable times, including having access to international roaming for cross border movement;

- (ii) the Supplier's Representative is available to make any and all decisions regarding the performance of the Services or any of the Supplier's other obligations in terms of this Agreement; and
- (iii) no advertising is placed or displayed on the Vehicles, other than as authorised by BHBW and that no controversial, political or other signs which, in BHBW's opinion, may compromise BHBW's image are fixed, affixed or displayed on the Vehicle; and
- (i) by liable for, and must make good, any damage caused by it or its Personnel to the Site or its surroundings in the provision of the Services (including any contamination).

9. ADDITIONAL WARRANTIES

9.1 In addition to the warranties contained in clause 8 of the General Terms and Conditions, the Supplier furthermore warrants that:

- (a) the Services will comply with all Applicable Laws, including where applicable the TRH11 and the South African National Road Traffic Regulations, the Required Service Levels and the guidelines approved by any recognised industry body;
- (b) it will not endanger the health or safety of any person in performing the Services; and
- (c) its drivers will be in possession of an Exemption Permit where applicable to the Goods.

10. ADDITIONAL INDEMNITIES

10.1 The Supplier shall, at BHBW's request, make available to BHBW all appropriate information in relation to the Services. BHBW shall be entitled to rely upon the accuracy completeness and correctness of such information.

10.2 In addition to the indemnities contained in clause 9 of the General Terms and Conditions, the Supplier hereby indemnifies the Indemnified Parties against all Claims arising directly or indirectly out of or in connection with:

- (a) the information contemplated in clause 10.1 being inaccurate, incomplete and/or incorrect; and
- (b) the late delivery of any Goods.

ANNEXURE B SCHEDULE 1: FORM OF PROOF OF COLLECTION / DELIVERY

ANNEXURE B SCHEDULE 2: REQUIRED SERVICE LEVELS

ANNEXURE B SCHEDULE 3: SCOPE OF SERVICES AND RATES (MACHINES)

ANNEXURE B SCHEDULE 4: SCOPE OF SERVICES AND RATES (PARTS)

BHBW SOUTH AFRICA (PTY) LTD (BHBW) SUPPLIER AND SERVICE PROVIDER CODE OF CONDUCT

Supplier and service provider standards for doing business with BHBW

We set out below the required standards for doing business with BHBW or a BHBW group, subsidiary, division or business unit.

The term “Supplier” shall be construed to include but not be limited to all agents, dealers, partners and service providers.

Legal and ethical standards

The supplier or service provider shall comply with all laws applicable to its business and the laws of the countries in which it conducts its business.

BHBW requires its suppliers and service providers to support the United Nations’ Universal Declaration on Human Rights and the International Labour Organisation’s Declaration of Fundamental Principles and Rights at Work.

The supplier or service provider is also required to comply with international anti-bribery and local anti-bribery and corruption legislation, where applicable to its business.

Specifically, the supplier or service provider is required to comply with the following minimum standards:

Labour

The supplier or service provider may not directly or indirectly use any form of forced or compulsory labour or child labour. The supplier or service provider must not employ children under the age of 15 (or higher age if local law sets a higher limit).

Where applicable, the supplier or service provider must ensure that all employees are permitted to participate in collective bargaining, without fear of intimidation or reprisal and be free to choose whether or not to do so.

The supplier or service provider should promote diversity and must not discriminate in employment and occupation on such grounds as race, religion, disability, national origin, colour, gender, sexual orientation, age and/or physical or mental disability, or other unfair discrimination.

Health, Safety and Environment

The supplier or service provider must comply with applicable health, safety and environmental laws, regulations and standards and provide a healthy and safe working environment to prevent accidents and injury and promote safety throughout the supply chain. The supplier or service provider recognises its responsibility towards the environment and maintains proper systems to prevent and/or minimise potential hazards.

Improper payments, fraud, corruption and bribery

The supplier or service provider must comply with local legislation on fraud, corruption and bribery as well as international anti-bribery legislation, where applicable to its business. The supplier or service provider must not offer, demand or accept a bribe, payment, gift, benefit or other service that seeks to influence the behavior or conduct of others or seeks to be influenced.

Compliance to ethical standards within the supply chain

The supplier or service provider understands that it has responsibility for its own supply chain and for managing standards of conduct within its supply chain. It therefore agrees to encourage and promote high ethical standards and adherence to international best practices in human rights, health, safety and environmental standards when undertaking its contractual obligations towards BHBW.

Compliance with the Supplier Code of Conduct

The supplier or service provider is required to communicate the content of this Supplier Code of Conduct to its employees and to its subcontractors and other business partners who are involved in supplying products and services to BHBW and to ensure their adherence to these standards.

BHBW reserves the right, upon reasonable notice, to make such enquiries as it may deem appropriate to confirm compliance with the Code of Conduct and if non-compliance is confirmed, to require the supplier or service provider to take remedial action and to prevent any recurrence.

In the spirit of transparency and open reporting, should the supplier or service provider become aware of any circumstance or action that is, or may be, in breach of this Code of Conduct, we request that the matter be reported to the BHBW Ethics Line at www.tip-offs.com which is administered by an independent service provider in accordance with the BHBW Whistle Blowing Policy.

Any breach of this Code of Conduct will be considered to be a material breach of contract by the supplier or service provider and BHBW reserves its right of action under the terms of the main agreement.

Compliance declaration

The supplier or service provider acknowledges its agreement to and acceptance of this Code of Conduct by appending the authorised signature below:

Signed at _____ on this _____ day of _____ 20____

Signature _____ Name _____

Designation _____

For and on behalf of _____ (name of Legal Entity)
(Supplier or service provider)

ANNEXURE D: SPECIAL TERMS AND CONDITIONS / AMENDMENTS TO GENERAL TERMS AND CONDITIONS

1. AMENDMENTS

The General Terms and Conditions of this Agreement are amended as follows:

- 1.1 Clause [●] is hereby deleted and replaced with the following new clause [●]: