



COMMERCIAL AGREEMENT OF LEASE

Consumer Protection Act Version

[[Ask TPN: 170](#)]

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Initial

- 48. APPLICABLE LAW
- 49. TRUSTEE
- 50. AGENT
- 51. OFFER
- 52. ACKNOWLEDGEMENT

Initial

1. SCHEDULE

1.1 The Deposit R [[Ask TPN: 171](#)]

1.2 The estimated initial Rates and Taxes

| Description | Amount, in rands | VAT | Total |
|-------------|------------------|-----|-------|
| | | | |
| | | | |
| | | | |
| | | | |

1.3 The Immovable Property – Erf / Erven

situated at

1.4 The Landlord

registration number / identity number

VAT registration number

1.5 The Landlord's administration fee R

1.6 Address details

1.6.1 The Landlord's address(es)

Physical

Postal

Telefax

Telephone

E-mail

1.6.2 The Tenant's address(es)

Physical

Postal

Telefax

Telephone

E-mail

1.7 The Landlord's nominated bank account

Name of account

Account number

Bank

Branch

Branch code

Initial

1. SCHEDULE (CONTINUED)

1.8 The Lease costs R

1.9 The normal office hours

| | | | |
|-----------|--|----|--|
| Monday | | to | |
| Tuesday | | to | |
| Wednesday | | to | |
| Thursday | | to | |
| Friday | | to | |

1.10 The Operating Costs

| Period | Operating Costs, per month, in rands | VAT | Total |
|--------|--------------------------------------|-----|-------|
| | | | |
| | | | |
| | | | |
| | | | |

1.11 The Parking Bays

| Type | Number of bays | Bay numbers, if applicable |
|-------------------------|----------------|----------------------------|
| Reserved, under-cover | | |
| Reserved, open | | |
| Unreserved, under cover | | |
| Unreserved, open | | |

1.12 The payment date – the day of each month.

1.13 The period of the Lease

Commencement Date

Termination Date

1.14 The Permitted Purpose [[Ask TPN: 173](#)]

1.15 The Premises

as identified on the plan attached hereto, approximately

square metres in extent.

Initial

1. SCHEDULE (CONTINUED)

1.16 The Rent

| Period | Rental, per month, in rands | Escalation | Parking Rental, per month, in rands | VAT | Total |
|--------|-----------------------------|------------|-------------------------------------|-----|-------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

1.17 The sureties [[Ask TPN: 172](#)]

identity number / registration number

and

identity number / registration number

1.18 The Tenant

registration number / identity number

VAT registration number

1.19 The Tenant's initial Participation Quota %

1.20 The Tenant's public liability insurance cover R

1.21 Attachments

Description

Plan

Resolution by representative(s) of the tenant

| |
|--|
| |
| |
| |
| |
| |
| |

Initial

2. DEFINITIONS

- 2.1 In this Lease, the following words shall have the following meanings, unless the contrary appears from the context:
- 2.1.1 **"Alterations"** includes, in relation to the Premises, without in any way limiting the meaning of the word, improvements and additions, and includes wiring, cabling and plumbing;
- 2.1.2 **"Commencement Date"** means the date referred to in item 1.14 of the schedule;
- 2.1.3 **"Common Areas"** means those areas on the Immovable Property, if any, designated as such by the Landlord for use by all lessees on the Immovable Property, or certain classes of lessees;
- 2.1.4 **"Deposit"** means the Deposit referred to in item 1.1 of the schedule;
- 2.1.5 **"Interior"** includes, in relation to the Premises, without in any way limiting the meaning of the word, all fixtures and fittings – including those partially inside and partially outside the Premises – including air-conditioning units (if installed), including split units located outside, toilets (if installed), urinals (if installed), basins (if installed), sinks (if installed), appliances (if installed), cupboards (if installed), taps (if installed) and all doors, windows, glass, handles, locks, keys, light fittings, bulbs, globes, starters, ballasts, walls, ceilings, floors, carpets, tiles, signs, all sewerage, drainage, plumbing, cabling, wiring and electrical installations and the like, if any;
- 2.1.6 **"Immovable Property"** means the Immovable Property referred to in item 1.3 of the schedule, and includes the structures erected thereon;
- 2.1.7 **"Landlord"** means the Party referred to in item 1.4 of the schedule;
- 2.1.8 **"Lease"** means this Lease, as read with any attachments hereto;
- 2.1.9 **"Legal person"** includes a company, close corporation, trust and a partnership;
- 2.1.10 **"Operating Costs"** means the Operating Costs referred to in item 1.11 of the schedule, if any, but excludes Rates and Taxes and utilities;
- 2.1.11 **"Parking Bays"** means the Parking Bays referred to in item 1.12 of the schedule (if any), located on the Immovable Property;
- 2.1.12 **"Participation Quota"** means, in relation to the Tenant, the percentage, expressed to two decimal places, arrived at by dividing the floor area of the Premises, by the total floor area of the Immovable Property lettable by the Landlord, as determined by the Landlord and initially being as referred to in item 1.21 of the schedule;
- 2.1.13 **"Permitted Purpose"** means the purpose(s) of use referred to in item 1.15 of the schedule;
- 2.1.14 **"Premises"** means the Premises referred to in item 1.16 of the schedule, located on the Immovable Property, including the Parking Bays;
- 2.1.15 **"Rates and Taxes"** means the Rates and Taxes and other local authority charges levied in respect of the Immovable Property, including refuse charges, but excluding utilities, and includes any city improvement district levies and the like;
- 2.1.16 **"Rent"** means the rental referred to in item 1.17 of the schedule;
- 2.1.17 **"Representative"** includes, in relation to a legal person, a director, member, trustee or partner of that person, as the case may be;
- 2.1.18 **"Termination Date"** means the date referred to in item 1.14 of the schedule;
- 2.1.19 **"Tenant"** means the Party referred to in item 1.20 of the schedule; and
- 2.1.20 **"Utilities"** includes electricity, water and sanitation, refuse removal, and gas and includes basic and access charges for the supply thereof, and actual or estimated consumption.

Initial

3. INTERPRETATION

- 3.1 In this Lease, unless the contrary appears from the context:
- 3.1.1 Words importing natural persons shall include a reference to legal persons and *vice versa*;
- 3.1.2 Words importing the masculine gender shall include a reference to the feminine gender and *vice versa*;
- 3.1.3 Words importing the singular shall include a reference to the plural and *vice versa*;
- 3.1.4 Attachments to the Lease shall be deemed to have been incorporated into the Lease and shall form an integral part thereof;
- 3.1.5 A reference to a Party in the Lease shall include that Party's successors and lawful assigns;
- 3.1.6 Any reference to an enactment is to the enactment as at the date of signature of this Lease and as amended or re-enacted from time to time;
- 3.1.7 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 1st (First) Business Day thereafter;
- 3.1.8 When any number of days is prescribed in the Lease, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 3.1.9 The captions and headings in the Lease are for reference purposes only and shall not affect the interpretation thereof;
- 3.1.10 If any definition is a substantive provision conferring rights or imposing obligations on any Party, then notwithstanding that it is only a definition, effect shall be given to it as if it were a substantive provision in the body of the Lease;
- 3.1.11 Words or expressions defined in this Lease shall bear the same meanings in the attachments to this Lease;
- 3.1.12 Where figures are referred to in numerals and in words, the words shall prevail if there is a conflict between the two; and
- 3.1.13 The rule of construction that a contract shall be interpreted against the Party responsible for drafting it, shall not apply to this Lease.
- 3.1.14 Where an explanation is given – in brackets or crotchets – of a particular word or phrase, such explanation shall not limit or effect the interpretation of the word or phrase in question.

4. LEASE

The Landlord hereby lets to the Tenant, who hereby rents from the Landlord, the Premises.

5. DURATION

[Ask TPN: 174]

- 5.1 The Lease shall commence on the Commencement Date and shall terminate on the Termination Date, unless:
- 5.1.1 terminated or cancelled by the Landlord prior to the expiry of such period in accordance with the terms and conditions referred to herein;
- 5.1.2 terminated or cancelled by the tenant prior to the expiry of such period, in accordance with the provisions of section 14 of the Consumer Protection Act 68 of 2008 – to the extent applicable;
- 5.1.3 renewed and extended in accordance with the provisions of this Lease, as read with the provisions of section 14 of the Consumer Protection Act 68 of 2008 – to the extent applicable;
- 5.1.4 to the extent that the provisions of section 14 of the Consumer Protection Act 68 of 2008 may be applicable – the Tenant fails to expressly direct the Landlord to terminate the Lease on the Termination Date.
- 5.2 In the event that the Lease is not so cancelled or terminated prior to its expiry, or is not so renewed or extended, or no such direction as contemplated by clause 5.1.4 is given - but only in the event that the provisions of section 14 of the Consumer Protection Act 68 of 2008 may be applicable to the Lease - the Lease will not terminate on the Termination Date but will continue on a month-to-month basis, capable of being terminated by either party on one months' notice in writing to the other.
- 5.3 In the event that the Landlord is unable to give the Tenant occupation of the Premises on the Commencement Date for any reason whatsoever, then the Tenant shall not be entitled to cancel the Lease and shall have no claim for damages or other compensation from the Landlord, but the Lease shall be deemed to have commenced on the first day that the Landlord is so able to give the Tenant occupation of the Premises and the Termination Date shall be deemed to have been extended for an equivalent period.
- 5.4 The Tenant shall be obliged to vacate the Premises, and to return all applicable keys, access cards and remotes to the Landlord, on the termination of the Lease.
- 5.5 In the event of the Tenant failing to so vacate the Premises for any reason whatsoever then it shall be obliged to pay to the Landlord for so long as it so remains in occupation, damages for holding over equivalent to the amount(s) that it would have been obliged to make payment to the Landlord in terms of the Lease had the Lease not terminated.
- 5.6 The provisions of clause 5.5 above shall not affect the termination of the Lease nor the Landlord's entitlement to evict the Tenant from the Premises.

6. USE OF PREMISES

[Ask TPN: 175]

- 6.1 The Premises may be used by the Tenant for the permitted purpose, and for no other purpose whatsoever.
- 6.3 Without in any way limiting the prohibition referred to in clause 6.1 above, the Tenant shall not use the Premises, nor permit the Premises to be used, in a manner that is unlawful or in furtherance of any illegal activity or conduct, or in a manner which constitutes a nuisance, or is contrary to the conduct rules referred to in clause 7 below.

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6. USE OF PREMISES

[Ask TPN: 175]

- 6.4 Notwithstanding anything to the contrary contained in clause 6.1 above, the Premises may not be used for a purpose prohibited by, or contrary to, any condition of the title deed(s) to the Immovable Property, or any provision of the town planning scheme applicable to the Immovable Property, or in a manner prohibited by, or contrary to, the conditions applicable to any policy of insurance issued in respect of the Immovable Property or the Premises, or in respect of any movable property situated in or on such Premises or Immovable Property, or in a manner that will result in an increase in the premiums payable in terms of such policy of insurance.
- 6.5 The Tenant shall comply with all applicable laws, by-laws, rules, regulations and licenses in making use of the Premises, including those which the owner of the Immovable Property may be required to observe.
- 6.6 The Tenant uses the Premises, and any services or Utilities or other amenities supplied to or on the Premises or to or on any part of the Immovable Property (if any), and the Common Areas, entirely at its own risk.
- 6.7 The Tenant shall not cause any damage to the Premises or to the Immovable Property.
- 6.8 The Tenant shall not permit any person (including itself) to reside in the Premises.
- 6.9 The provision of Utilities to, and consumption of Utilities on, the Premises and the Immovable Property, forms no part of the Tenant's use and enjoyment of the Premises and does not constitute a necessary incident of its occupation of the Premises.

7. CONDUCT RULES

[Ask TPN: 176]

- 7.1 The Landlord or its letting or managing agents shall be entitled to publish conduct rules for time to time in order to regulate the conduct of all or particular lessees on the Immovable Property and their access to, and use of, any shared services or amenities on the Immovable Property, including the Common Areas, if any.
- 7.2 The Tenant shall ensure that it, its officers, servants, agents and invitees comply with any such conduct rules.
- 7.3 Notwithstanding anything to the contrary contained in clause 7.1, the Tenant shall have no claim to the use of any such services, amenities or Common Areas, unless specific provision to the contrary is made in the Lease.

8. RENTAL

[Ask TPN: 177]

- 8.1 The Tenant shall pay the rent to the Landlord, in accordance with the table referred to in item 1.16 of the schedule, on or before the day of the month referred to in item 1.12 of the schedule, monthly in advance, and irrespective of whether that day is a Saturday, Sunday or public holiday.
- 8.2 The table referred to in item 1.16 of the schedule reflects VAT at the standard rate of 14%. In the event that VAT becomes payable on rent at some rate other than 14% then the table referred to in item 1.16 of the schedule shall be deemed to have been adjusted accordingly.

9. OPERATING COSTS

- 9.1 The Tenant shall pay the Operating Costs to the Landlord, in accordance with the table referred to in item 1.10 of the schedule, on or before the day of the month referred to in item 1.12 of the schedule, monthly in advance, and irrespective of whether that day is a Saturday, Sunday or public holiday.
- 9.2 The table referred to in item 1.10 of the schedule reflects VAT at the standard rate of 14% (Fourteen Percent). In the event that VAT becomes payable on Operating Costs at some rate other than 14% (Fourteen Percent) then the table referred to in item 1.11 of the schedule shall be deemed to have been adjusted accordingly.

10. RATES AND TAXES

[Ask TPN: 178]

- 10.1 The Tenant shall pay for all Rates and Taxes levied in respect of the Premises or the Immovable Property.
- 10.2 In the event that the Tenant does not Rent the whole of the Premises or the Immovable Property from the Landlord, then the Tenant shall pay for a pro-rata share of such Rates and Taxes, calculated in accordance with its Participation Quota.
- 10.3 For illustrative purposes (only), the amount of the Rates and Taxes that it is anticipated that the Tenant will initially be responsible for on the Commencement Date of the Lease, is as reflected in item 1.2 of the schedule.
- 10.4 The Tenant's initial Participation Quota is as set out in item 1.19 of the schedule hereto.
- 10.5 The Tenant shall pay the Rates and Taxes to the Landlord, on presentation of invoice, simultaneously with payment of the rent.
- 10.6 The table referred to in item 1.2 of the schedule reflects VAT at the standard rate of 14% (Fourteen Percent). In the event that VAT becomes payable on the Rates and Taxes at some rate other than 14% (Fourteen Percent) then the table referred to in item 1.2 of the schedule shall be deemed to have been adjusted accordingly.

11. UTILITIES

[Ask TPN: 178]

- 11.1 The Tenant shall pay for all Utilities supplied to the Premises, including basic service and network charges, meter service charges, and charges in respect of consumption or estimated consumption, and environmental levy charges.
- 11.2 In the event that a separate sub-meter has not been installed to the Premises, the Tenant shall, in respect of the supply of any such utility in respect of which there is no sub-meter, pay for a pro-rata share of the total charges raised in respect of the Immovable Property, calculated in accordance with its Participation Quota.
- 11.3 The Tenant's initial Participation Quota is as set out in item 1.19 of the schedule hereto.
- 11.4 The Tenant shall pay these charges to the Landlord, on presentation of invoice, simultaneously with payment of the Rent.

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12. PAYMENT TO THE LANDLORD

[Ask TPN: 179]

- 12.1 The Tenant shall pay all amounts due by it to the Landlord without deferment, deduction or set off for any reason whatsoever.
- 12.2 The Tenant shall pay all amounts due by it to the Landlord free of bank charges, exchange, commission and the like.
- 12.3 The Tenant shall pay all amounts due by it to the Landlord by electronic funds transfer, directly into the account referred to in item 1.7 of the schedule, or into such alternative account as may be nominated for such purposes by the Landlord in writing from time to time.
- 12.4 The Tenant shall be deemed to have made payment on the day that such payment reflects in the bank account nominated by the Landlord, notwithstanding the day on which the funds were transferred to such account.
- 12.5 The Tenant shall bear the risk of the funds being intercepted prior to them reflecting in the bank account nominated by the Landlord.
- 12.6 All amounts due by it to the Landlord shall be paid by the Tenant to the Landlord together with the VAT payable thereon by law.
- 12.7 The Landlord shall be entitled to appropriate the payments received by it from the Tenant in payment of such amounts as it shall deem fit.
- 12.8 In the event of any amount due by the Tenant to the Landlord not being paid on due date then the Landlord shall be entitled, but not obliged, to charge interest thereon at the maximum rate of interest applicable to incidental credit agreements, as published from time to time in the Regulations to the National Credit Act 34 of 2005, or the successor to such legislation.
- 12.9 Should the Landlord so elect to charge interest, this shall not affect or prevent it from exercising the other remedies available to it in terms of this Lease or at law as a result of the Tenant's breach.

13. DEPOSIT

[Ask TPN: 180]

- 13.1 The Tenant shall pay the Deposit to the Landlord on the date of signature of the Lease and in any event prior to the Tenant taking occupation of the Premises.
- 13.2 The Landlord may appropriate the Deposit, or any part thereof, towards the payment of any amounts for which the Tenant is liable in terms of the Lease and which are overdue for payment, including amounts arising on, or subsequent to, the termination or cancellation of the Lease, and including liquidated damages. In the event of the Landlord doing so during the period of the Lease, the Tenant shall be obliged to reinstate the Deposit to its original amount, forthwith.
- 13.3 The Deposit shall be repaid by the Landlord to the Tenant, less any amounts deducted by the Landlord, including amounts arising on, or subsequent to, the termination or cancellation of the Lease, and including liquidated damages, once the Tenant has complied with all of its obligations to the Landlord.
- 13.4 No interest shall be paid on the deposit.

14. CONDITION OF THE PREMISES

[Ask TPN: 181]

- 14.1 The Tenant shall, within 10 (Ten) days of the Commencement Date, advise the Landlord in writing, at the address referred to in item 1.6.1 of the schedule, of any defects to the Premises.
- 14.2 Should the Tenant fail to so advise the Landlord in writing then the Tenant shall be deemed to have taken occupation of the Premises in a perfect state of repair.

15. ALTERATIONS TO THE PREMISES

[Ask TPN: 182]

- 15.1 The Tenant shall not make any Alterations to the Premises (including its Interior), nor install any fixtures or fittings in the Premises, nor install any signs on the Premises, without the prior consent in writing of the Landlord.
- 15.2 The Landlord shall be entitled to require that the Tenant provide it with quotations, drawings and / or plans as a condition to it considering any request for it to so give its consent.
- 15.3 In the event that the Landlord is disposed to granting its consent for the purposes of clause 15.1, it shall be entitled to attach such conditions to such consent as it shall deem fit. Such conditions may include the requirement that the Alterations are attended to or supervised by, or fixtures and fittings installed by or supervised by, or signs installed by or supervised by, contractors or other third parties approved of by the Landlord in writing, but at the Tenant's cost.
- 15.4 Any such Alterations, fittings or fixtures, or signs, shall be of a high standard and in keeping with the general finishes of the structures on the Immovable Property (and the Premises). If the Landlord is not satisfied with them, once completed or installed, the Tenant shall be obliged, at its cost, to rectify their shortcomings, to the satisfaction of the Landlord.
- 15.5 The Landlord may, at its election, either require the Tenant to reverse any such Alterations and to remove any such fixtures and fittings, and signs on the termination or cancellation of the Lease, and to make good, at the Tenant's cost, any resultant damage, or may elect to retain any such Alterations and fittings and fixtures, and signs on termination or cancellation.
- 15.6 Should the Landlord elect to retain any such Alterations, fittings and fixtures or signs as aforesaid, the Tenant shall be obliged to restore same, on the termination or cancellation of the Lease, in the same good order and condition as they were in on the date of their completion or installation, and the provisions of clauses 17.4 to 17.6 below shall apply *mutatis mutandis* (i.e. with the necessary adjustments).
- 15.7 The Landlord shall not be obliged to pay any compensation to the Tenant for any Alterations made by, and any fittings and fixtures or signs installed by, the Tenant, whether made with the prior consent in writing of the Landlord, or not, and whether retained by the Landlord on termination or cancellation or not.

16. MAINTENANCE OF THE PREMISES BY THE LANDLORD, AND DESTRUCTION

[Ask TPN: 183]

- 16.1 The Landlord shall be responsible for the repair of any structural defects or damage to the exterior of the Premises, for the duration of the Lease.

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16. MAINTENANCE OF THE PREMISES BY THE LANDLORD, AND DESTRUCTION[\[Ask TPN: 183 \]](#)

- 16.2 Where the damage has been caused by the Tenant, its servants, agents or invitees, the Tenant shall be responsible for the cost of the repairs to the Premises.
- 16.3 Where the Premises have been damaged or are defective to the extent that, in the opinion of an architect or engineer appointed by the Landlord, the Premises are such that they cannot reasonably be utilised for the Permitted Purpose referred to in item 1.14 of the schedule, or the nature of the repairs required are such that the Tenant could not reasonably remain in occupation of the Premises, either Party shall have the election to terminate the Lease. Should the parties elect to continue with the Lease, the Tenant shall never the less be required to vacate the Premises for so long as is required to repair them.
- 16.4 In the event that either Party elects to terminate the agreement of Lease, neither Party shall have any claim against the other Party by reason of such termination but the Tenant shall remain responsible for the payment of such amounts as may be owed by it to the Landlord as at the date of termination.
- 16.5 In the event that the Landlord elects to continue with the Lease, the Tenant shall be entitled to a remission of Rental for the period in which the Landlord is unable to give it occupation of the Premises, save where the damage has been caused by the Tenant, its servants, agents or invitees, in which event the Tenant shall be obliged to continue paying Rental notwithstanding that it is not in occupation.

17. MAINTENANCE AND RESTORATION OF THE PREMISES BY THE TENANT[\[Ask TPN: 183 \]](#)

- 17.1 The Tenant shall be responsible for the maintenance and repair of the Interior of the Premises, in good order, for the duration of the Lease, and at its cost, irrespective of how such deterioration or damage may have been caused.
- 17.2 The Tenant shall be responsible, at its cost, for the removal of any obstruction or blockage in the sewerage, drainage or plumbing, installations to the Premises.
- 17.3 Should the Tenant fail to maintain and repair the Premises as aforesaid, the Landlord shall be entitled, although not obliged, to itself conduct maintenance on or to repair the Premises, in which event the Tenant shall be obliged to pay to the Landlord the cost thereof.
- 17.4 The Tenant shall be obliged to restore the Premises to the Landlord, on the termination or cancellation of the Lease, inclusive of its Interior, in the same good order and condition as it was in on the Commencement Date of the Lease.
- 17.5 Should the Tenant fail to do so then the Landlord shall be entitled, without prejudice to the other rights available to it at law, either to require that the Tenant do so subsequent to the termination or cancellation of the Lease, or that the Tenant pay to it an amount equivalent to the cost of so restoring the Premises, in which event the Tenant shall be obliged to pay to the Landlord the cost thereof.
- 17.6 In the event of the Landlord requiring the Tenant to restore the Premises subsequent to the termination or cancellation of the Lease, or in the event of the Landlord itself restoring the Premises, the Tenant shall furthermore be deemed to have remained in occupation of the Premises until such time as the Premises are so restored and shall be obliged to pay to the Landlord damages for holding over equivalent to the amount(s) that it would have been obliged to make payment to the Landlord in terms of the Lease had it continued, for the period that it takes to so restore the Premises.

18. NO REMEDY FOR LOSS OF AMENITIES OR DISRUPTION

The Tenant shall have no entitlement to cancel the Lease, or to claim damages, remission of Rental or other compensation from the Landlord, or to withhold the payment of Rental, in the event of its use of the Premises being disturbed by reason of any disruption in the supply of services or Utilities or other amenities to the Premises or to any part of the Immovable Property, or in the event of the Premises or any part of the Immovable Property being defective or in a state of disrepair, or in the event of the renaming or redevelopment of the Immovable Property or any of the structures thereon, including those in which the Premises are situated.

19. ACCESS TO THE PREMISES BY THE LANDLORD[\[Ask TPN: 184 \]](#)

- 19.1 The Landlord, its officers, servants, agents, contractors and invitees shall be entitled, from time to time, to access the Premises during the normal office hours referred to in item 1.10 of the schedule, and otherwise at all other reasonable times, for the purposes of inspecting it, or for the purposes of ensuring that the Tenant is performing its obligations in terms of the Lease, or for the purposes of repairing or refurbishing the Premises, or for the purposes of showing the Premises to prospective purchasers or lessees.
- 19.2 Should the Landlord, its officers, servants, agents, contractors or invitees so access the Premises for the purposes of repairing or refurbishing the Premises, it shall be entitled to bring equipment and materials onto the Premises and shall be entitled to erect scaffolding and hoardings in, or in front of, or outside of, the Premises, and the like.
- 19.3 Should the Landlord, its officers, servants, agents, contractors or invitees so access the Premises, it shall not be considered to be a deprivation of the Tenants' rights, even should the Tenant be inconvenienced or affected as a result thereof, and the Tenant shall not be entitled to cancel the Lease and shall have no claim for damages, remission of Rental or other compensation from the Landlord, nor shall it be entitled to withhold the payment of Rent.

20. CESSION AND SUBLETTING[\[Ask TPN: 185 \]](#)

- 20.1 The Tenant shall not permit any third Party to occupy the Premises, or to take possession of the Premises, without the prior consent in writing of the Landlord.
- 20.2 The Tenant shall not sublet the Premises to any third Party without the prior consent in writing of the Landlord.
- 20.3 The Tenant shall not cede any of its rights in terms of the Lease to any third Party without the prior consent in writing of the Landlord.
- 20.4 The Tenant shall not assign the Lease to any third Party without the prior consent in writing of the Landlord.
- 20.5 The Tenant shall not encumber the Lease, or any of its rights in terms of the Lease, without the prior consent in writing of the Landlord.

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20. CESSION AND SUBLETTING

[Ask TPN: 185]

- 20.6 In the event that the Landlord is disposed to granting its consent for the purposes of clause 20.1, clause 20.2, clause 20.3, clause 20.4 or clause 20.5, it shall be entitled to attach such conditions to such consent as it shall deem fit.
- 20.7 In the event that the Landlord is disposed to granting its consent for the purposes of clause 20.2 or clause 20.3, the Landlord shall, in addition to the rental and other amounts payable by the Tenant to it, be entitled to the benefit of any profit made by the Tenant as a result of the sub-Lease or cession.

21. WARRANTIES

[Ask TPN: 186]

The Landlord will ensure that the Tenant's use of the Premises is not disturbed by a third Party having superior title to the Premises but the Landlord does not necessarily warrant that it is the owner of the Premises.

22. LIMITATION OF LIABILITY OF LANDLORD

- 22.1 Notwithstanding anything to the contrary contained in this Lease or implied by law, the Landlord shall not be responsible for any claim, loss or damage of whatsoever nature suffered by the Tenant, whether arising in contract or delict, or as a result of a breach of this Lease, including, without limitation:
- 22.1.1 any loss of, or damage caused to, the furniture, equipment, documents, records or other assets of the Tenant on the Premises, or the business of the Tenant, as a result of:
- 22.1.1.1 rain, hail or lightning;
 - 22.1.1.2 water seepage or leakage;
 - 22.1.1.3 fire;
 - 22.1.1.4 theft or robbery;
 - 22.1.1.5 riot or civil disturbance;
 - 22.1.1.6 *vis major* (i.e. act of God) or *casus fortuitous* (i.e. accidental occurrence).
- 22.1.2 any loss or damage arising out of any disruption in the supply of services or Utilities or other amenities, if any, to the Premises or to any part of the Immovable Property;
- 22.1.3 any loss or damage arising out of damage to, or destruction of, the Premises or other structures on the Immovable Property, or as a result of such Premises or other structures being defective or in a state of disrepair;
- 22.1.4 any loss or damage arising out of any negligent act or omission or statement by the Landlord, its officers, servants or agents;
- 22.1.5 Notwithstanding anything to the contrary contained in this Lease or implied by law, the Landlord, its officers, servants or agents shall not in any event be responsible for any indirect or consequential loss or damages suffered by the Tenant as a result of a breach of this Lease by the Landlord, or any act or omission or statement by the Landlord, its officers, servants and agents, or any other reason whatsoever and irrespective of whether the claim against the Landlord arises in contract or in delict.

23. VIS MAIOR (ACT OF GOD) AND CASUS FORTUITUS (ACCIDENTAL OCCURRENCE)

[Ask TPN: 187]

The Landlord shall be excused for any failure to perform its obligations in terms of this Lease as a result of *vis major* (i.e. an act of God) or *casus fortuitous* (i.e. as a result of an accidental occurrence beyond its reasonable control).

24. JOINT AND SEVERAL LIABILITY OF TENANT

[Ask TPN: 188]

In the event that the Tenant consists of more than one party, each of the parties comprising the Tenant shall be liable to the Landlord jointly and severally for the performance by the Tenant of its obligations in terms of the Lease.

25. VICARIOUS LIABILITY OF TENANT

[Ask TPN: 189]

The Tenant will breach the obligations imposed on it by this Lease through the actions or omissions of its officers, servants, agents or invitees, notwithstanding that such officer, servant, agent or invitee, as the case may be, may have been acting outside of the course or scope of his employment with, or contrary to his contract with, or mandate from, the Tenant.

26. CERTIFICATE

In the event of there being a dispute as to the amount of the Rental, Operating Costs, Rates and Taxes, Utilities or other amounts payable by the Tenant to the Landlord in terms of the Lease, a certificate signed by:

- 26.1 a director, member, trustee, partner or manager of the Landlord, or of the Landlord's letting or managing agent, whose appointment need not be proved, shall be *prima facie* proof (that is to say, proof on the face of it) of the amounts so payable;
- 26.2 an auditor or chartered accountant appointed by the Landlord shall be conclusive proof of the amounts so payable.

27. LANDLORD'S CONSENT

- 27.1 In circumstances where the Lease requires the Landlord to provide his consent or approval, such consent or approval shall not be unreasonably withheld.
- 27.2 Any request for the Landlord to provide its consent or approval must be accompanied by payment of the administration fee referred to in item 1.5 of the schedule, as a pre-condition to the Landlord considering such request.

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28. MEASUREMENT OF AREA

Any area required to be determined shall be measured and calculated in accordance with the Method of Measuring Floor Areas in Commercial and Industrial Buildings (from time to time) of the South African Property Owners Association.

29. BREACH AND CANCELLATION

[Ask TPN: 190]

- 29.1 The Landlord shall be entitled, but not obliged, to cancel the Lease in the event of:
- 29.1.1 The Tenant failing to make payment of the rent or any other amount(s) due by it to the Landlord on the due date for payment thereof, and failing to remedy such breach within 7 (seven) days of receipt of written notice from the Landlord requiring it to do so, in circumstances where both the Tenant and the Landlord are juristic persons (only), and, in all other circumstances, in the event of the Tenant failing to make payment of the rent or any other amount (s) due by it to the Landlord on the due date for payment thereof and failing to remedy such breach within 20 (twenty) business days of receipt of written notice from the Landlord requiring it to do so;
 - 29.1.3 The Tenant breaching any other term or condition of the lease, all of which are deemed to be material, and failing to remedy such breach within 7 (seven) days of receipt of written notice from the Landlord requiring it to do so, in circumstances where both the Tenant and the Landlord are juristic persons (only), and, in all other circumstances, in the event of the Tenant breaching any other term or condition of the lease, all of which are deemed to be material, and failing to remedy such breach within 20 (twenty) business days of receipt of written notice from the Landlord requiring it to do so;
 - 29.1.4 The Tenant, being a juristic person, committing an act of insolvency, but only in the event that the Landlord is also a juristic person;
 - 29.1.5 The Tenant filing for business rescue, but only in the event that the Landlord is also a juristic person;
 - 29.1.6 The Tenant filing for its winding up, but only in the event that the Landlord is also a juristic person;
 - 29.1.7 The estate of the Tenant being wound up, whether provisionally or finally, but only in the event that the Landlord is also a juristic person;
 - 29.1.8 There being a change in the control, shareholding or membership of the Tenant (not being a company whose shares are listed on a recognised stock exchange) without the prior consent in writing of the Landlord, but only in the event that the landlord is also a juristic person;
 - 29.1.9 The Landlord – in the event that it is the owner – disposing of the Immovable Property to a third party, but only in the event that both the Landlord and the Tenant are juristic persons;
- 29.2 At its election, and as an alternative to cancellation, the Landlord may, in circumstances where it would otherwise be entitled to cancel, by written notice convert the Lease to a month-to-month Lease, capable of being cancelled by the Landlord (only) on 1 (One) months' notice in writing to the Tenant.
- 29.3 Should the Landlord elect not to cancel or to convert the Lease in circumstances where it would have been entitled to, its failure to do so shall not be construed as a waiver and it shall not thereby be precluded from exercising its right to cancel or to convert the Lease on any future occasion.
- 29.4 The cancellation of the Lease by the Landlord shall be without prejudice to the other rights available to it at law, including the right to claim damages and all amounts as may have been owing to it by the Tenant as at the date of cancellation.
- 29.5 In the event of the Landlord cancelling this Lease, then the Tenant shall be obliged to vacate the Premises forthwith.
- 29.6 In the event of the Tenant failing to so vacate the Premises for any reason whatsoever then it shall be obliged to pay to the Landlord for so long as it so remains in occupation, damages for holding over equivalent to the amount(s) that it would have been obliged to make payment to the Landlord in terms of the Lease had the Lease not been so cancelled, and shall be obliged to continue to observe the other terms and conditions of the Lease, notwithstanding its cancellation.
- 29.7 The provisions of clause 29.6 above shall not affect the cancellation of the Lease nor the Landlord's entitlement to evict the Tenant from the Premises.
- 29.8 In the event of the Landlord cancelling the Lease in accordance with the provision of clause 29.1 above the Landlord shall be entitled, in addition to the other remedies available to it, to recover from the Tenant:
- 29.8.1 A *pro-rata* portion of any commission paid by the Landlord, whether to one of its servants or to a letting or managing agent, in consideration for the placement of the Tenant in the Premises, calculated in the proportion that the remaining period for which the Lease would otherwise have endured (but for its early cancellation, and excluding the period of any renewal or extension thereof) bears to the full, intended period of duration of the Lease (but for its early cancellation, and excluding the period of any renewal or extension thereof).
- 29.9 in the event of the Landlord cancelling this Lease the Landlord may, in addition thereto, and at its election, cancel any other contract concluded between it and the Tenant, and the Tenant shall have no claim against the Landlord by reason of it so doing.
- 29.10 In the event of the Tenant cancelling the Lease in accordance with the provisions of section 14 of the Consumer Protection Act 68 of 2008 – to the extent that such legislation may be applicable – the Landlord shall be entitled to charge the Tenant a reasonable cancellation penalty, as envisaged by that Act. In calculating such penalty, without in any way limiting the manner, form and basis for determining the amount of that penalty, account shall be taken of, amongst other factors:
- 29.10.1 any commission paid by the Landlord in consideration for the placement of the Tenant in the Premises, on the same basis as referred to in clause 29.8.1, *mutatis mutandis* (i.e. with the necessary adjustments);
 - 29.10.2 The full, intended period of duration of the Lease.

30. INDEMNITY BY TENANT

[Ask TPN: 191]

- 30.1 The Landlord, its officers, servants and agents shall not be responsible for, and the Tenant indemnifies each one of them against, all claims arising out of any loss, injury or damage to property on the Premises or on the Immovable Property, whatsoever.
- 30.2 Not applicable

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30. INDEMNITY BY TENANT

[Ask TPN: 191]

- 30.3 The Tenant indemnifies the Landlord against all consequences arising out of the Tenant's failure to comply with its obligations in terms of this Lease.
- 30.4 The Tenant shall be obliged, for so long as it remains in occupation of the Premises, to procure and maintain public liability insurance for an insured amount not less than that referred to in item 1.20 of the schedule, with an insurer approved of by the Landlord in writing.
- 30.5 The Tenant shall be obliged to provide the Landlord with a copy of such insurance policy and proof of it having made payment of the premiums due in terms thereof, on request.

31. ARBITRATION

Not applicable

32. DOMICILIA (PLACE FOR SERVICE OF SUMMONS) AND NOTICES

- 32.1 The parties agree to accept service of any court process, or to accept delivery of any notice, either as contemplated by this Lease or at law, including any notifications in terms of the National Credit Act 34 of 2005, or any other statutory notifications, at their respective addresses as referred to in item 1.6 of the schedule.
- 32.2 Any notice will be deemed to have been duly delivered to the Party concerned:
- 32.2.1 within 7 (Seven) days of postage by prepaid registered mail to the postal address of that Party, as referred to in item 1.6 of the schedule;
 - 32.2.2 on the same day of it being faxed to the fax number of that Party, as referred to in item 1.6 of the schedule;
 - 32.2.3 on the same day of it being sent to the e-mail address of that Party, as referred to in item 1.6 of the schedule;
 - 32.2.4 on the day of it being delivered by hand to the physical address of that Party, as referred to in item 1.6 of the schedule.
- 32.3 Either Party will be entitled, by written notice to the other Party, to change any of its addresses as referred to in item 1.6 of the schedule, provided that such new address as disclosed in such notice is within the Republic of South Africa.

33. CONSENT TO JURISDICTION

- 33.1 Either Party shall, at its election, be entitled to institute action out of any Magistrates' Court exercising jurisdiction over the other Party's person, notwithstanding that the amount of its claim or the nature of the relief sought would otherwise have exceeded the jurisdiction of that court.
- 33.2 If the Tenant is a *peregrinus*, (i.e. foreigner) then the Tenant consents to the jurisdiction of the High Court in which the Premises are located.

34. WAIVER OF DIPLOMATIC IMMUNITY BY TENANT

[Ask TPN: 192]

- 34.1 The parties record that the conclusion of this Lease is a purely commercial transaction.
- 34.2 The Tenant hereby waives any right which it may otherwise have to claim immunity from the institution and prosecution of civil process against it, including the enforcement of any judgment, or to decline to submit to the jurisdiction of any court.

35. COSTS

- 35.1 In the event of either Party taking legal action against the other Party because of a breach by the other Party of its obligations to the first-mentioned Party including, without limitation, its failure to pay any amount, the other Party shall pay for all legal costs incurred by the first-mentioned Party on the scale as between attorney and client including, without limitation, collection fees, tracing agents fees and fees of counsel as on brief.
- 35.2 In the event of the Landlord appointing an auditor or chartered accountant for the purposes of clause 26.2 above, the Tenant shall pay for the costs of such appointment.
- 35.3 In the event of any provision of this Lease obliging the Tenant to do something, or requiring the Tenant to attend to something at its cost, or providing that the Tenant will pay for something, then in the event of the Landlord or its letting or managing agent deciding, at its election, to do that thing, or to attend to that thing, or to pay that amount, on behalf of the Tenant, the Tenant shall reimburse the Landlord, or its letting or managing agent, for the cost thereof, on demand.

36. ELECTRICAL COMPLIANCE CERTIFICATE

The Tenant shall be responsible for obtaining an electrical compliance certificate in respect of the installations in the Premises, at its cost.

37. CREDIT INFORMATION

[Ask TPN: 193]

- 37.1 The Tenant agrees that the information provided by it to the Landlord or its letting or managing agents may be utilised by the Landlord, or its letting and managing agents, to conduct a credit assessment in respect of the Tenant.
- 37.2 The Landlord and its letting or managing agents has the Tenant's consent to request and to obtain from any third party including, without limitation, any registered credit bureau, or any credit provider or lessor, information relevant to the conduct of a credit assessment in respect of the Tenant or to the tracing of the Tenant.

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37. CREDIT INFORMATION

[Ask TPN: 193]

- 37.3 The Landlord and its letting or managing agents has the Tenant's consent to furnish credit information concerning the Tenant, to any third Party including, without limitation, any credit bureau, credit provider or lessor.

38. WHOLE AGREEMENT

This Lease constitutes the whole agreement between the parties as to the subject matter hereof.

39. NON-VARIATION

No amendment, alteration, variation, deletion, addition, renewal, or extension of this Lease, whether consensual or unilateral, or mutual termination of this Lease, shall be of any force or effect unless reduced to writing and signed by both parties.

40. NON-WAIVER

No latitude, indulgence or extension of time granted by either Party to the other Party shall in any way prejudice the rights of the first-mentioned Party nor be construed as a waiver of the first-mentioned Party's rights nor create an expectation for the other Party that such latitude, indulgence or extension of time will be granted to it in the future.

41. SEVERABILITY

Each of these terms and conditions shall be considered to be a separate provision, distinct from the others. In the event of any of these terms and conditions being found to be illegal, invalid, prohibited or unenforceable, such terms and conditions shall be ineffective only to the extent of that illegality, invalidity, prohibition or unenforceability and the remaining terms and conditions shall remain of full force and effect.

42. SEVERANCE OF CONDITIONAL RIGHTS

In the event of this Lease including an option to renew, or an option to purchase the Immovable Property, or a right of first refusal to purchase the Immovable Property, or some other preferential conditional right(s), if any, such rights are only enforceable by the Tenant against the Landlord and are not enforceable against any new owner of the Immovable Property.

43. TO LET AND FOR SALE NOTICES

- 43.1 The Landlord shall be entitled to exhibit, on the Premises and on the Immovable Property, notices reflecting that the Premises are available to let, from three months prior to the Termination Date.
- 43.2 The Landlord shall be entitled to exhibit at any time, on the Premises and on the Immovable Property, notices reflecting that the Premises are available for sale.

44. REDEVELOPMENT OF THE IMMOVABLE PROPERTY AND TERMINATION FOR CONVENIENCE

- 44.1 The Landlord shall be entitled to rename the Premises, or the Immovable Property, at any time.
- 44.2 The Landlord shall be entitled, but shall not be obliged, to redevelop the Immovable Property or to refurbish the Immovable Property and any of the structures thereon, including those in which the Premises are situated, at any time.
- 44.3 The Landlord shall have the right, at any time, to relocate the Tenant from the Premises to alternative Premises on the Immovable Property, on three months' notice in writing.
- 44.4 The Landlord shall only be so entitled in the event of the floor area of such alternative Premises being at least equivalent to the floor area of the Premises from which the Tenant is to be relocated.
- 44.5 In the event of the Landlord exercising its rights in terms of clause 44.3, the Premises shall be deemed to have been substituted by the alternative Premises, and the Lease, and the terms and conditions of the Lease, shall remain in force *mutatis mutandis* (i.e. with the necessary adjustments).
- 44.6 In the event of the Landlord exercising its rights in terms of clause 44.3, the Tenant shall have no claim or remedy against the Landlord by reason thereof.
- 44.7 Either Party shall have the right to terminate the Lease, for convenience, on six months' notice in writing to the other Party.
- 44.8 In the event that either Party elects to so terminate the Lease, neither Party shall have any claim against the other Party by reason of such termination but the Tenant shall remain responsible for the payment of such amounts as may be owed by it to the Landlord as at the Termination Date.

45. VALUE ADDED TAX

[Ask TPN: 194]

Unless the contrary is stated, all amounts appearing in the Lease are exclusive of VAT, which tax is payable by the Tenant in addition to the amounts in question.

46. COST OF LEASE

- 46.1 The Tenant shall pay to the Landlord the costs of preparing the Lease, in the amount referred to in item 1.9 of the schedule, on date of signature of the Lease and in any event prior to the Tenant taking occupation of the Premises.
- 46.2 The Tenant shall pay to the Landlord any duties or other taxes (if any) payable on the conclusion of the Lease, on date of signature of the Lease, and in any event prior to the Tenant taking occupation of the Premises.

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46. COST OF LEASE

46.3 The Tenant shall pay to the Landlord any duties or other taxes payable on any extension or renewal of the Lease (if any), on demand.

47. SURETIES

[Ask TPN: 195]

The Tenant undertakes to procure that the Landlord be furnished with deeds of suretyship, in a format stipulated by or acceptable to, the Landlord, from the natural or legal persons referred to in item 1.17 of the schedule.

48. APPLICABLE LAW

This Lease shall be governed by, and interpreted in accordance with, the laws of the Republic of South Africa.

49. TRUSTEE

In the event that the Lease is signed, on behalf of the Tenant, by a person acting in his capacity as an agent or trustee for a company or close corporation to be formed, or registered or incorporated, or acquired, such person in his personal capacity shall be personally liable as Tenant under this agreement until and unless the company or close corporation is formed, or is registered or incorporated, or is acquired, and fully adopts and ratifies the terms of the lease within 30 (Thirty) days of date of signature of the Lease by the Landlord.

50. AGENT

In the event that this Lease is signed on behalf of the Tenant, by a person that he is authorised in writing to do so by the Tenant that he purports to represent.

51. OFFER

The signature of the Lease by the Tenant constitutes an offer, irrevocable for a period of 60 (Sixty) days, to enter into an agreement of Lease with the Landlord, on the terms and conditions hereof, which is capable of being accepted by the Landlord by its signature of the Lease, without notification to the Tenant.

52. ACKNOWLEDGEMENT

The Tenant enters into the Lease for a purpose wholly or mainly related to its business or profession.

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SIGNATORIES

SIGNED AND DATED BY THE TENANT AT THE UNDERMENTIONED PLACE AND ON THE UNDERMENTIONED DATE, IN THE PRESENCE OF THE UNDERMENTIONED WITNESSES, HE/SHE BEING DULY AUTHORISED THERETO.

Signed by the TENANT at

on this the

day of

20

TENANT

WITNESS 1

NAME OF SIGNATORY

WITNESS 2

SIGNED AND DATED BY THE LANDLORD AT THE UNDERMENTIONED PLACE AND ON THE UNDERMENTIONED DATE, IN THE PRESENCE OF THE UNDERMENTIONED WITNESSES, HE/SHE BEING DULY AUTHORISED THERETO.

Signed by the LANDLORD at

on this the

day of

20

LANDLORD

WITNESS 1

NAME OF SIGNATORY

WITNESS 2

Initial