

# **SERVICE LEVEL AGREEMENT**

Entered into between:

**OLIVIA ENERGY SOLUTIONS (PTY) LTD**

**REG NO: 2012/052703/07**

**(Hereinafter referred to as the “Company”)**

-and-

**Full Names/Registered Name:** \_\_\_\_\_

**ID No/Reg No:** \_\_\_\_\_

**(Hereinafter referred to as the “Service Provider”)**

WHEREAS the Service Provider is a qualified electrician with a Wireman’s License (and who is registered with the Electrical Contracting Board of South Africa (E.C.B)), and who is able to issue an Electrical Certificate of Compliance

AND WHEREAS the Company is in the business of designing, procuring, supplying and maintaining electrical systems, including but not limited to Solar Power systems, together with products relevant thereto (hereinafter the “Systems”).

NOW THEREFORE the Service Provider agrees to provide the Services to the Company.

## 1. DEFINITIONS

In this agreement, unless a different intention is specified or clearly appears from the context, the following definitions will apply:

- 1.1. **“the System”** Shall refer to all products which the Company from time to time directs the Service Provider to install, maintain or repair at the Site so indicated by the Company.
- 1.2. **“Products”** Mean those items which are to be installed by the Service Provider and shall “Device” and “Equipment” have corresponding meanings.
- 1.3. **“this Agreement”** Means this Service Level Agreement, and includes the Shortened Service Level Agreement, the terms and conditions of which form part of the Service Level Agreement.
- 1.4. **“the Service Provider”** Shall mean the Party with details contained on the title page of this Shortened Service Level Agreement.
- 1.5. **“Good Industry Practices”** Shall apply in relation to the manner in which the services are rendered, the standards, practices, methods and procedures conforming to applicable Law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in similar type of undertakings as the Service Provider, in similar circumstances.
- 1.6. **“Law”** Shall mean the applicable laws, ordinances, regulations, judgments and orders of any competent court, governmental agency or authority in any relevant jurisdiction in the Republic of South Africa.
- 1.7. **“the Party or Parties”** Means the Company and the Service Provider, and “Party” refers to either one of them, as the context may indicate.

- 1.8. **“Business Day”** Means any day other than a Saturday, Sunday, or official public holiday in the Republic of South Africa.
- 1.9. **“Business Hours”** Means the hours between 08:00 and 17:00 on any Business Day.
- 1.10. **“Confidential Information”** Means any information and data of a confidential or proprietary nature owned by a Party, including but not limited to, technical, business, financial, marketing and commercial information software programs and source code and all documentation and manuals in respect of such software programs, information related to any clients of a Party, know-how, trade secrets, the contents of this Agreement, plans, drawings, process information, patterns, designs, techniques and methodologies and all record bearing media (inclusive of samples) containing or disclosing such information and techniques and other proprietary information furnished hereunder, which are disclosed pursuant to the provisions of this Agreement.
- 1.11. **“Device”** Means any individual unit of the Equipment on which the Service Provider shall provide the Support Services in terms of this Agreement.
- 1.12. **“Equipment”** Means the items of equipment listed in the Quotation/Invoice, which may consist of both Hardware and Software.
- 1.13. **“Service Provider Personnel”** Means the employees of the Service Provider and/or the contractors of the Service Provider who shall maintain the Equipment to provide the Support Services as set out in this Agreement.
- 1.14. **“Hardware”** Means the physical Equipment used.
- 1.15. **“Incident”** Means a fault, problem or error relating to the System or a constituent component thereof.
- 1.16. **“Intellectual Property Rights”** Means, without limitation, any know-how, patents, copyright, (including all copyright in any designs and computer programs), registered design, trademark, service marks, design rights, source codes, inventions and trade secrets, and other

industrial and intellectual property rights and rights of a similar character whether registered or not or whether and whether or not capable of registration and all applications and right to apply for the protection of any of the same anywhere in the world.

- 1.17. “Services”** Means the installation, maintenance, repair and/or support services which are to be supplied to the Company by the Service Provider as contained in these terms and conditions and the Shortened Service Level Agreement
- 1.18. “Service Charge”** Means the amount(s) payable by the Company for the delivery of the Services at the Site(s), as set out in the invoice/quotation, and which exclude(s) VAT unless otherwise stated.
- 1.19. “Site”** Means the physical address(es) stipulated in the invoice/quotation at which the Services are to be provided and/or the Equipment is installed.
- 1.20. “Support Manager”** Means an individual that must be identified by the Service Provider to serve as the liaison between the Service Provider and the Company.
- 1.21. “Shortened Service Level Agreement”** Refers to the document physically signed by the Parties, which is deemed to be incorporated in this Agreement as if specifically traversed.
- 1.22. “System”** Means a unit comprising of the correct combination and configuration of Hardware, Software, and other Equipment, which when used in proper conjunction, performs the specific function for which it was designed.
- 1.23. “VAT”** Means value-added tax levied in terms of the Value-added Tax Act, No. 89 of 1991, as amended or any similar tax levied on the supply of goods and/or services from time to time.
- 1.24. “Quotation”** Refers to a quotation complying with those requirements as set out in the Shortened Service Level Agreement.

## 2. INTERPRETATION

The following rules of interpretation shall apply:

- 2.1. Any reference to one gender shall include the other gender.
- 2.2. Words importing natural persons shall include legal persons and *vice versa*.
- 2.3. Words importing the singular shall include the plural and *vice versa*.
- 2.4. Where figures are referred to in both numerals and words, if there is a conflict between the two, the words shall prevail.
- 2.5. Terms other than those defined within this Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in the electrical contracting industry will be interpreted in accordance with their generally known meanings.
- 2.6. The use of the word “including” or “includes” followed by a specified example/examples 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 examples.
- 2.7. The rule of construction that an agreement shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply.
- 2.8. If any provision in the definition clause is a substantive provision conferring rights or imposing obligations on a Party, then notwithstanding that such provision is contained

in this clause, effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.

- 2.9. The expiration or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide this.
- 2.10. All schedules to this Agreement are incorporated and form an integral part of this Agreement.
- 2.11. In the event of any conflict between the provisions of this Agreement and any schedule to it, the provisions of this Agreement shall prevail.

### **3. RELATIONSHIP**

- 3.1. The Company hereby appoint the Service Provider to provide the Services in accordance with the terms set out in this Agreement.
- 3.2. The relationship between the Parties is governed by the terms of this Agreement. Unless otherwise stated, the Parties are not authorised to bind or act on each other's behalf and no Party is permitted to hold out (by any act or omission) that the nature of the relationship is more or less than is agreed.

#### **4. COMMENCEMENT AND DURATION**

- 4.1. Notwithstanding the date of signature of this Agreement, this Agreement shall be deemed to have commenced upon the Service Provider receiving instruction to perform the Service from the Company and shall continue for an indefinite period, subject to the provisions of clause 8 of this agreement.
- 4.2. The Parties agree that, notwithstanding anything to the contrary contained in this Agreement, either Party may terminate this Agreement upon 30 (thirty) days' notice to the other Party, and neither Party shall have any claim against each other as a result of such termination.

#### **5. SERVICES**

- 5.1 Scope of Service to be provided by the Service Provider to the Company:
- 5.1.1. The Service Provider shall provide the Services specified in the Quotation rendered to the Company, which complies with the requirements as contained in Shortened Service Level Agreement, which was signed by or on behalf of the Service Provider.
- 5.1.2. Any Services not specifically listed in the Quotation shall be provided by the Service Provider to the Company at an additional cost to be agreed upon between the Parties prior to the rendering of such service.

#### **6. SERVICE PROVIDER RESPONSIBILITIES**

- 6.1. Without prejudice to any other obligations incurred as a result of this Agreement, the Service Provider agrees to assume such responsibilities and duties as may be set out in this Agreement.

- 6.2. The Service Provider warrants that:
- 6.2.1. It shall carry out the Services with skill, care, and diligence in terms of the provisions of this Agreement and Annexures hereto, and to observe all laws and regulations applicable from time to time;
  - 6.2.2. The Service Provider shall take full responsibility for and be liable for any damages to the Equipment while it is in the possession of the Service Provider, which possession shall include the transport of the Equipment by the Service Provider -
    - 6.2.2.1. The Service Provider shall obtain adequate insurance coverage covering the Equipment transported by it.
    - 6.2.2.2. Upon request by the Company the Service Provider shall supply to the Company a copy of the insurance policy, together with relevant schedule thereto, under which the Equipment transported by the Service Provider, from time to time, is adequately covered.
  - 6.2.3. It is qualified and has the required expertise and will continue to be qualified and have the required expertise to render the Services as recorded in this Agreement;
  - 6.2.4. The Service Provider shall, in accordance with its compliance with the contents of clause 6.2.5 below, issue a Certificate of Compliance after rendering of the Services and inspection of the Hardware, Equipment, and/or Device, and being satisfied that the aforementioned Hardware, Equipment, and/or Device meet the criteria for issuance of such – which shall form part of the “Services”.
  - 6.2.5. The Service Provider shall be a qualified electrician with a valid Wireman’s License;
  - 6.2.6. The Service Provider shall at all times during the duration of this Agreement be and remain a registered member, in good standing of the Electrical Contracting Board of South Africa (E.C.B);
  - 6.2.7. The Service Provider is aware of the provisions of the Occupational Health and Safety Act, No. 85 of 1993 (as amended) and shall at all times ensure due compliance with the provisions of Government Notice 258 of 2012, published as such in Government



Gazette dated 26 March 2012. The Service Provider furthermore confirms that the relevant Service Provider Personnel has undergone the necessary training enabling them to work at heights.

6.2.7.1. The Service Provider confirms that it is familiar with the contents of Government Notice 258 of 2012, relating to the Electrical Installation Regulations of 2009 in terms of the Occupational Health and Safety Act, 1993.

6.2.8. The Service Provider shall, without compromising its independence from the Company, adhere to the Company's security and emergency regulations at all times and ensure that its Personnel are made aware of all such security and emergency regulations and procedures;

6.2.9. The Service Provider shall adhere to the Company's standard operating procedures as notified by the Company from time to time and undertakes to ensure that all of the Service Provider's personnel are made aware of such standard operating procedures.

## **7. PAYMENT**

7.1. As compensation for the Services, the Company shall make payment to the Service Provider, no later than 7 (seven) days after receipt of an original tax invoice, together with the relevant documentation described immediately below, following the rendering of the Services, by electronic fund transfer.

7.1.1. Certificate of Compliance; and

7.1.2. Client "sign-off" confirming proper and satisfactory rendering of the Services;

7.2. The Service Provider undertakes to individually provide an invoice for each Site to the Company for the Services rendered in terms of this Agreement.

7.3. Payment by the Company of any invoice to the Service Provider constitutes effective payment and as such will absolve and/or discharge the Company of its payment obligations under any invoice from the Service Provider.

- 7.4. If any item or part of an item in an invoice presented by the Service Provider is disputed by the Company, in good faith, the latter shall before the due date of the payment give notice thereof with reasons to the Service Provider. The Company shall be entitled to withhold payment for the disputed item or part of the item on the invoice until such time as the dispute is resolved. Save for the aforementioned, the Company shall not withhold payment of the remaining undisputed items in an invoice presented by the Service Provider.
- 7.5. Payment for any additional services performed by the Service Provider, as agreed with the Company in writing, shall be paid by the Company within 30 (thirty) days of the date of the Service Provider's invoice.
- 7.6. The Service Provider shall maintain completed and accurate records of, and supporting documentation for, the amounts invoiced under the Agreement in accordance with generally accepted accounting principles applied on a consistent basis. The Service Provider shall provide the Company with any and all information with respect to each invoice as may be reasonably requested by the Company to verify accuracy and compliance with the terms of the Agreement.

## **8. TERMINATION**

The Company may terminate this Agreement by giving the Service Provider 1 (one) month's written notice.

## **9. CESSION AND SUB-CONTRACTING**

Neither Party may alienate, transfer, cede or assign the whole or any part of any rights, duties, or obligations in terms of this Agreement without the prior written consent of the other (which consent will not be unreasonably withheld).

## **10. LIMITATION OF LIABILITY**

- 10.1. The Company shall not be held liable for any loss, damage, injury, or death to any person or its moveable or immovable property arising from the conduct of the Service Provider or its representatives, unless directly arising from the breach by the Company of any of the provisions of this Agreement or directly from any negligent or wilful act on the part of the Company or any of its agents, employees, officers, or representatives.
- 10.2. The Service Provider shall be responsible for its personnel and indemnifies the Company and each of its agents, employees, officers, and representatives against any claim of whatsoever nature in respect of, and against, all loss, liability and expense covered by the Service Provider's public liability insurance.
- 10.3. The Service Provider hereby indemnifies and holds harmless the Company against any and all losses incurred by the Company that arises directly or indirectly as a result of:
- 10.3.1. Any act or omission by the Service Provider;
  - 10.3.2. Any breach by the Service Provider or its Personnel of any Applicable Law; or
  - 10.3.3. any breach of any of the provisions of this Agreement by the Service Provider or Service Provider Personnel.

## **11. WARRANTIES**

- 11.1. The Service Provider warrants that all Services to be supplied under this Agreement shall be performed in a professional manner by personnel with the necessary expertise and training, subject to the relevant provisions of clause 6.2 above.
- 11.2. The Service Provider shall provide a 1 (one) year warranty with respect to the Services which the Service Provider supplies in terms of this Agreement.

## 12. CONFIDENTIALITY

- 12.1. All confidential information exchanged between the Parties pursuant to the negotiations, conclusion and implementation of this Agreement shall not at any time whether directly or indirectly be distributed, disclosed, or disseminated in any way or form by the receiving Party to and third party except to its own employees but then only on a need-to-know basis and such Confidential Information shall remain the property of the disclosing Party.
- 12.2. The receiving Party shall protect the Confidential Information in the manner and with the endeavour of a reasonable person protecting its own Confidential Information. Under no circumstances shall the receiving Party use less than reasonable efforts to protect the confidentiality of the Confidential Information.
- 12.3. The receiving Party, at the written request of the disclosing Party, shall procure that its employees, contractors, agents, directors, representatives, associated, advisors, and consultants, to whom any Confidential Information of the disclosing Party is disclosed in terms of this Agreement, enter into confidentiality undertakings on terms essentially similar to those contained in this clause.
- 12.4. For the avoidance of doubt, the Parties acknowledge and agree that for the purposes of section 37(1) and 64(1) of the *Promotion of Access to Information Act*, No. 2 of 2000 (as amended), all Confidential Information is information provided in confidence by the disclosing Party and no provision of this Agreement shall be construed in such a way that a disclosing Party is deemed to have granted its consent to the receiving Party to disclose the whole or any part of the Confidential Information in terms of the provisions of such act.
- 12.5. The confidentiality obligations referred to in clauses 12.1. and 12.2 shall not apply to any information which:
- 12.5.1. The receiving Party can demonstrate, is already in the public domain;
- 12.5.2. The receiving Party can demonstrate it has become available to the public through no breach by the receiving Party;

- 12.5.3. Was rightfully in the receiving Party's possession without obligation of confidence prior to receipt from the disclosing Party as proven by its written records;
  - 12.5.4. Can be proved to have been rightfully received by the receiving Party from a third party without obligation of confidence;
  - 12.5.5. Is independently developed by the receiving Party as proven by its written records;
  - 12.5.6. Is approved for release with the prior written consent of the disclosing party;
  - 12.5.7. Is required to be disclosed in order to comply with a judicial order or decree, provided the receiving Party has given the disclosing Party sufficient prior written notice of such request to enable the disclosing Party to prevent or protect such disclosure;
- 12.6. At the request of the disclosing Party, at any time, the receiving Party shall promptly deliver to the disclosing Party all originals and copies (including partial copies) of the disclosing Party's Confidential Information received by the receiving Party or in its possession including Confidential Information electronically stored and drawings, sketches or diagrams of whatever nature disclosed to it as well as all noted (in any media or format) which it may have prepared or may have obtained as a result of the Confidential Information being made available to it, without retaining any copies thereof.
- 12.7. The Parties agree to use the Confidential Information for the sole purpose of this Agreement only, unless agreed to otherwise in writing.
- 12.8. The rights and obligations in terms of this clause are divisible from the rest of the Agreement and shall remain of full force and effect notwithstanding termination of the Agreement for any reason whatsoever.

### **13. INTELLECTUAL PROPERTY RIGHTS**

- 13.1. All Intellectual Property Rights including, but not limited to, software, copyrights, trademarks, trade names, registered design, service marks, patent rights, trade secrets and know-how or other industrial or intellectual property rights relating to any products owned by a Party, its agents, vendors, suppliers and/or subcontractors, and the software used to implement such

products shall at all times remain the sole property of such Party, its agents, vendors, suppliers and/or subcontractors.

- 13.2. For the purposes of this clause, any reference to “products” shall specifically include the Equipment.
- 13.3. Notwithstanding anything seemingly to the contrary contained herein, a Party shall not acquire any right, title or interest in and to any software, trade secrets, copyright, patents and other intellectual proprietary rights of the other Party or the other Party’s agents, vendors, suppliers and/or subcontractors to which it has granted use and/or access in terms of or for the purposes of this Agreement. Neither Party shall in any way or manner use or adapt the Intellectual Property Rights of the other Party to create any derivative works without the express prior written consent of the other Party which consent the Company shall be entitled to withhold in its sole and absolute discretion.
- 13.4. Neither Party shall in any manner alter, obscure, use or affect the display of the respective Intellectual Property Rights (and disclaimers) of the other Party, its agents, vendors, suppliers and/or subcontractors, without the prior written approval of the other Party, vendor, supplier or subcontractor or permit any other person to use or sublicense such intellectual property rights.

#### **14. DATA PROTECTION**

- 14.1. The Service Provider acknowledges that during the course of its interactions with the Company and providing the Services it may or will obtain access to or be provided with personal information as well as other information and data (the “Company Data”).
- 14.2. In this regard the Service Provider undertakes to respect and maintain the privacy and security of all Company Data and in addition to its confidentiality undertakings, that it will comply with all applicable data protection or data privacy laws applicable in the Republic of South Africa, including the *Protection of Personal Information Act*, No. 4 of 2013 (as amended).

- 14.3. The Service Provider consents to the collection, processing, and further processing of its personal information by the Company for the purposes of implementing this Agreement, and *vice versa*.
- 14.4. Neither Party shall divulge the data of the other Party to third parties (unless otherwise provided in this Agreement) and a Party shall use the data of the other Party and/or the Company Data only for purposes of this Agreement and *vice versa*.
- 14.5. Neither Party shall possess or assert any lien or other right against or to the other Party's data, or sell, assign, lease or otherwise dispose of the other Party's data, or any part thereof, to third parties.
- 14.6. Notwithstanding any other provision in this Agreement, the Company agrees that, for the Service Provider to provide the Services, data (which will include Personal Information as defined in the *Protection of Personal Information Act*, No. 4 of 2013 (as amended)) will be provided to the Service Provider or Processed (where "Processed/Processing" shall have the following meaning in this Agreement: "the operation, or set of operations, performed on data, by any means, such as by collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction") on behalf of the Company by the Service Provider.
- 14.7. The Service Provider shall comply with all applicable law relating to data protection, privacy and security when processing the Company Data under the Agreement. This includes without limitation applicable international or national data protection, privacy, export or data security directives (the "Data Protection Laws") applicable to it in its Processing of the Company Data under or by virtue of this Agreement.
- 14.8. The Service Provider will only Process Company Data to the extent necessary to provide the Services in accordance with this Agreement and will implement and take appropriate and reasonably technical and organisational measures, in accordance with its security policies as

amended from time to time, to protect Company Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access.

- 14.9. The Company shall obtain sufficient consent and authorization, under any applicable laws, from any relevant data subject (as defined in terms of Data Protection Laws) to permit the Processing of any Company Data by the Service Provider, as provided for in this Agreement.
- 14.10 The Service Provider shall at all times comply strictly with all applicable Data Protection Laws which may be in force from time to time.
- 14.11. The Service Provider hereby warrants, represents, and undertakes that it shall not, at any time Process Company Data for any purpose other than with the express prior written consent of the Company, and to the extent necessary to provide the Services.
- 14.12. At any time during the existence of this Agreement and at the Company's written request or upon the termination of this Agreement for any reason, the Service Provider shall promptly return to the Company all copies, whether in written, electronic or other form of media, of the Company's Data in its possession, or securely dispose of all such copies, and certify in writing to the Company that such data has been returned to the Company or disposed of securely.

## **15. BREACH**

Should either Party breach any provision of this Agreement and fail to remedy such breach within 14 (fourteen) days of receiving written notice from the aggrieved party requiring the defaulting party to do so, then the aggrieved party shall be entitled without prejudice to any other rights it may have in terms of this agreement or at common law, to cancel this Agreement without notice or to claim specific performance of all the defaulting party's obligations without prejudice to the aggrieved party's rights to claim damages it may have suffered. Any outstanding obligations of either party to the other at the date of cancellation shall survive such cancellation and remain enforceable by the Party to whom such obligation is owed.



## 16. NOTICES AND DOMICILIUM

- 16.1. The Parties choose as their *domicilium citandi et executandi* the respective addresses set out in this clause for all purposes arising out of or in connection with this Agreement at which addresses all legal processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.
- 16.2. The Company:           19 Dan Pienaar Street  
  
  Ladybrand  
  
  Free State Province.  
  
  Email: regsdienste@ovk.co.za
- 16.3. The Service Provider: As per the address provided in the  
  
  Shortened Service Level Agreement.
- 16.4. Every notice shall be deemed to have been properly given –
- 16.4.1. If delivered by hand, on the date of delivery;
- 16.4.2. If sent by pre-paid registered post, 7 (seven) days from date on which the notice was posted;
- 16.4.3. If sent via e-mail, on the first business day following the date of transmission thereof.
- 16.5. Either Party may, by written notice to the other Party, change its chosen *domicilium citandi et executandi* or e-mail address to any physical address within the Republic of South Africa (other than a post office box or post restante), provided that the change shall become effective 7 (seven) days after receipt of such notice.

## **17. DISPUTE RESOLUTION AND ARBITRATION**

- 17.1. Any dispute between the Parties arising in connection with this Agreement, the conclusion of this Agreement or the subject matter of this Agreement, shall be determined in accordance with this clause 17.
- 17.2. Each Party shall first attempt to resolve any dispute by means of negotiation between the Parties.
- 17.3. Should the Parties not be able to reach an amicable solution to the dispute between them, then either of the Parties (the “referring party”) shall be entitled to refer such dispute to arbitration by giving notice thereof to the other Party.
- 17.4. The arbitrator which is appointed to determine the dispute between the Parties shall be appointed by the chairperson for the time being of the Free State Society of Advocates; subject to the provision that the arbitrator appointed shall be a practicing advocate Senior Counsel with not less than 10 (ten) years standing.
- 17.5. Arbitration proceedings shall be held at Bloemfontein, Free State Province, South Africa, and shall be conducted under the Rules for the Conduct of Arbitrations.
- 17.6. Nothing in this clause 17 shall preclude any party from seeking interim and/or urgent relief from a court of competent jurisdiction.

## **18. CHANGES TO EQUIPMENT AND SERVICE CHARGES**

- 18.1. Changes to the Equipment by the replacement of existing items and/or the addition of new items:
- 18.1.1. At the Company’s request;

18.1.2. By agreement between the Parties; or

18.1.3. In the course of ordinary Maintenance Services.

As well as any corresponding changes to the Quotation in respect of any one or more of the Site(s), may be made by the Service Provider providing the Company with an updated Quotation provided that written approval is received from the Company.

## **19. GENERAL**

19.1. In the event of a dispute arising between the Parties concerning any aspect of this Agreement, senior management of the Parties must employ reasonable endeavours to co-operate with each other towards finding an amicable solution to the dispute notwithstanding the institution of any formal proceedings.

19.2. This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, variations, representations, or warranties between the Parties other than those set out in writing herein and signed by the Parties shall be binding upon them.

19.3. The Parties declare that they have entered into this Agreement without relying on any undertakings, representations or warranties not expressly incorporated herein.

19.4. No failure or delay on the part of any Party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

19.5. No latitude, extension of time or other indulgence which may be given or allowed by any Party to any other Party in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement and no single or partial exercise of any right by any Party shall under any circumstances be construed to be an implied consent by such Party or operate

as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or *estop* such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

- 19.6. Should any of the terms and conditions of this Agreement be held to be invalid, unlawful, or unenforceable, such terms and conditions will be severable from the remaining terms and conditions of the Agreement, which will continue to be valid and enforceable. If any term or condition, held to be invalid, is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.
- 19.7. The law of the Republic of South Africa shall apply to this Agreement.
- 19.8. The Parties consent to the jurisdiction of the courts of Bloemfontein with respect to any matter pertaining to this matter.
- 19.9. Each Party shall bear its own cost in relation to the negotiating, drafting, and implementing of this Agreement.