
IIS MASTER TERMS 2017

These Master Terms are to be read together with the Schedule, as defined in clause 2.1.70 below. Together, these comprise the complete agreement between the Parties in respect of the matters therein contained.

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THE SCHEDULE

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SECTION A: INTRODUCTION AND DEFINITIONS

1. PARTIES

This Agreement is made between IIS, the Client and BSSC (each as defined in clause 2 below).

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

For the purposes of this Agreement and the preamble above, unless the context requires otherwise:

2.1.1 **Agency Capacity** means IIS acting as the Client's agent in respect of a Transaction, as more fully contemplated in clause 3.3;

2.1.2 **Agency Capacity Transaction** has the meaning given to it in clause 8.1;

2.1.3 **Agreement** means this agreement, encompassing the provisions contained in the Master Terms, together with the Schedule and any Annexures hereunder;

2.1.4 **Associate** means, in relation to a person (whether natural or juristic), a related or inter-related person, as well as, in the case of IIS or BSSC, any credit ratings agencies/third parties/credit insurers used by either of IIS or BSSC to verify information, including credit-related information;

2.1.5 **Available BSSC Facility Limit** means an amount equal to the BSSC Facility

2.1.6

Limit minus the aggregate ZAR value of all BSSC Outstandings;

Available IIS Facility Limit means an amount equal to the IIS Facility Limit minus the aggregate ZAR value of any Outstanding Indebtedness other than BSSC Outstandings;

2.1.7

Base Rate means the basic rate of interest per annum, compounded monthly in arrears and calculated on a 365 day year (irrespective of whether or not the year is a leap year), equal to the percentage figure specified in item 5 (*Base Rate*) in the Table of Particulars;

2.1.8

BSSC means Blue Strata Supply Chain Proprietary Limited, a private company duly incorporated in accordance with the laws of South Africa under registration number 2004/034793/07;

2.1.9

BSSC Account means the BSSC bank account with the details provided in item 17 (*BSSC bank account details*) in the Table of Particulars;

2.1.10

BSSC Disbursement means each payment of customs VAT by BSSC under or in connection with, the services provided or to be provided by IIS and/or BSSC in terms of this Agreement;

2.1.11

BSSC Facility Limit means the maximum aggregate ZAR value of BSSC Outstandings that BSSC is willing to accept at any point in time across all BSSC Transactions with the Client, being the amount specified in

	item 4 (<i>BSSC Facility Limit</i>) in the Table of Particulars;		trust) or resolution of the members of the Client (if the Client is a close corporation):
2.1.12	BSSC Outstandings means the amount payable by the Client to BSSC (inclusive of VAT in terms of clause 32), calculated as follows:	2.1.16.1	approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving to execute those Transaction Documents;
2.1.12.1	the aggregate value of all BSSC Disbursements in respect of all BSSC Transactions; plus	2.1.16.2	authorising a specified person or persons to execute the Transaction Documents to which it is a party on its behalf and any amendments thereto;
2.1.12.2	the amount calculated in accordance with clause 2.1.12.1 above multiplied by the applicable rate specified in item 8 (<i>BSSC Payment Terms and Applicable Fee</i>) in the Table of Particulars; plus	2.1.16.3	authorising a specified person or persons, on its behalf, to sign and/or despatch all documents, notices and orders to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is a party; and
2.1.12.3	interest thereon calculated in accordance with clause 10 (<i>Interest</i>);	2.1.16.4	authorising a specified person or persons, on its behalf, to sign (including by way of electronic signature/e-sign) and/or despatch Payment Authorisation Letters and FECs;
2.1.13	BSSC Transaction means an Agency Capacity Transaction involving the payment of customs VAT by BSSC on the Client's behalf;	2.1.17	Conditions Precedent means the delivery to the satisfaction of IIS of the documents set out in Parts 2 and 3 of the Schedule, other than those deleted/struck out prior to signature of this Agreement;
2.1.14	Business Day means any calendar day other than a Saturday, Sunday or statutory holiday in South Africa;	2.1.18	Companies Act means the Companies Act, 71 of 2008;
2.1.15	Client means the juristic person reflected as such in items 1 and 2 in the Table of Particulars;		
2.1.16	Client Authorising Resolution means a copy of a resolution of the board of directors of the Client (if the Client is a company), resolution of the board of trustees of the Client (if the Client is a		

- 2.1.19 **CPA** means the Consumer Protection Act, 68 of 2008;
- 2.1.20 **Default** means an Event of Default or any event or circumstance specified in clause 28 (*Events of Default*) which would (with the expiry of any applicable grace period, the giving of notice, the making of any determination under this Agreement or any combination of any of the foregoing) be an Event of Default;
- 2.1.21 **Disbursement** means an IIS Disbursement or a BSSC Disbursement;
- 2.1.22 **Disbursement Date** means the date on which each Disbursement is made or reserved;
- 2.1.23 **Event of Default** means any event or circumstance specified as such in clause 29 (*Events of Default*);
- 2.1.24 **FAIS** means the Financial Advisory and Intermediary Services Act, 37 of 2002;
- 2.1.25 **FATCA** means the United States Foreign Account Tax Compliance Act, and all regulations published thereunder;
- 2.1.26 **FEC** has the meaning given to it in clause 21 (*Forward Exchange Contracts*), and **FECs** shall have a corresponding meaning;
- 2.1.27 **FICA** means the Financial Intelligence Centre Act, 38 of 2001;
- 2.1.28 **FICA Documentation** means all of the documents and other evidence in respect of the Client and/or any Security Provider required by IIS to enable it to comply with its obligations under FICA;
- 2.1.29 **Financial Covenants** means the financial covenants specified in item 12 (*Applicable Financial Covenants*) in the Table of Particulars;
- 2.1.30 **Financial Year** means, in respect of each calendar year the annual accounting period of the Client ending on the Financial Year End Date;
- 2.1.31 **Financial Year End Date** means the financial year-end of the Client, being the date specified in item 14 (*Client Financial Year End*) in the Table of Particulars;
- 2.1.32 **Financial Services Provider** means a “*financial services provider*” as defined in FAIS;
- 2.1.33 **Funding Cost** means, in respect of each Principal Capacity Transaction, an amount calculated on each IIS Disbursement from the relevant Disbursement Date until the relevant Payment Date using the principles set out in clause 10.2 *mutatis mutandis*, determined using the Base Rate;
- 2.1.34 **Goods** means the goods to be supplied and/or delivered to the Client pursuant to a Transaction, as specified in each Transaction Notification;

- 2.1.35 **IFRS** means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements;
- 2.1.36 **IIS** means Investec Import Solutions Proprietary Limited, a private company duly incorporated in accordance with the laws of South Africa under registration number 2000/022631/07;
- 2.1.37 **IIS Account** means the IIS bank account with the details provided in item 16 (*IIS bank account details*) in the Table of Particulars;
- 2.1.38 **IIS Disbursement** means each direct or indirect cost incurred or payment made or reserved by IIS, whether in an Agency Capacity or a Principal Capacity, under or in connection with, a Transaction;
- 2.1.39 **IIS Facility Limit** means the maximum aggregate ZAR value of Outstanding Indebtedness other than BSSC Outstandings that IIS is willing to accept at any point in time across all Transactions with the Client, other than BSSC Transactions, being the amount specified in item 4 (*IIS Facility Limit*) in the Table of Particulars;
- 2.1.40 **Insolvency Event** means, in relation to the Client or any Security Provider, that:
- 2.1.40.1 the Client or any Security Provider is or is deemed by any authority or legislation to be unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- 2.1.40.2 the Client or any Security Provider is or is deemed by any authority or legislation to be “financially distressed” (as defined in the Companies Act);
- 2.1.40.3 the value of the assets of the Client or any Security Provider is less than its liabilities (taking into account contingent and prospective liabilities);
- 2.1.40.4 a moratorium is declared in respect of any indebtedness of the Client or any Security Provider to any person;
- 2.1.40.5 any corporate action, legal proceedings or other procedure or step is taken in relation to:
- 2.1.40.5.1 the suspension of payments, a moratorium of any indebtedness, liquidation, winding-up, dissolution, administration, judicial management, business rescue or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Client or any Security Provider other than a solvent liquidation or reorganisation of the Client or

	any Security Provider with IIS's consent;		procedure or step is taken in any jurisdiction;
2.1.40.5.2	a composition, compromise, assignment or arrangement with any creditor of the Client or any Security Provider;	2.1.40.7	an attachment, execution or other legal process being levied against the assets of the Client or any Security Provider which is not paid off, withdrawn or discharged within 14 (fourteen) days;
2.1.40.5.3	the appointment of a liquidator (other than in respect of a solvent liquidation of the Client or any Security Provider with IIS's consent), receiver, administrative receiver, administrator, compulsory manager, judicial manager, business rescue practitioner or other similar officer in respect of the Client or any Security Provider or any of its assets; or	2.1.41	Invoice Date means the date upon which IIS issues the invoice to the Client;
		2.1.42	Investec's Data Protection Statement means the data protection statement for the IBL group, including IIS and BSSC, as discussed in clause 5.7 below;
2.1.40.5.4	enforcement of any Security over any assets of the Client or any Security Provider,	2.1.43	Loan means each loan made or to be made on a Disbursement Date under an Agency Capacity Transaction on the terms and conditions of this Agreement;
	or any analogous procedure or step is taken in any jurisdiction;	2.1.44	Loan Outstandings means the amount payable by the Client to IIS under an Agency Capacity Transaction, inclusive of VAT, which is payable in terms of clause 32 (<i>Value Added Tax</i>), calculated as follows:
2.1.40.6	a meeting is proposed or convened by the directors or shareholders of the Client or any Security Provider, a resolution is proposed or passed, application is made or an order is applied for or granted, to authorise the entry into or implementation of any business rescue proceedings (or any similar proceedings) in respect of the Client or any Security Provider or any analogous	2.1.44.1	the aggregate IIS Disbursements in respect of that Agency Capacity Transaction; plus
		2.1.44.2	interest thereon calculated in accordance with clause 10; plus
		2.1.44.3	the Margin;

- 2.1.45 **Longstop Date** means the date specified in item 10 (*Longstop Date*) in the Table of Particulars;
- 2.1.46 **Margin** means the amount to be added by IIS, in the case of an Agency Capacity Transaction, as a percentage of the Loan Outstandings, and in the case of a Principal Capacity Transaction, as a percentage of the amounts set out in clauses Sales Price, in order to achieve the required rate of return specified in item 6 (*IIS Payment Terms and applicable Margin*) in the Table of Particulars;
- 2.1.47 **Master Terms** means the provisions set out in this document, headed "*IIS Master Terms*", as amended, restated, novated or supplemented from time to time;
- 2.1.48 **Material Adverse Effect** means in the reasonable opinion of IIS a material adverse effect on:
- 2.1.48.1 the business, operations, property, condition (financial or otherwise) or prospects of the Client;
- 2.1.48.2 the ability of the Client to perform any of its obligations under the Transaction Documents; or
- 2.1.48.3 the validity or enforceability of any of the Transaction Documents or the rights or remedies of IIS under the Transaction Documents;
- 2.1.49 **NCA** means the National Credit Act, 34 of 2005;
- 2.1.50 **Original Financial Statements** means in relation to the Client, the annual financial statements of the Client for the Financial Year immediately preceding the Signature Date;
- 2.1.51 **Outstanding Indebtedness** means:
- 2.1.51.1 If IIS is acting in a Principal Capacity, the aggregate Sales Prices not yet paid;
- 2.1.51.2 If IIS is acting in an Agency Capacity, the aggregate Loan Outstandings not yet paid; and
- 2.1.51.3 in respect of BSSC, the aggregate BSSC Outstandings not yet paid;
- 2.1.52 **Pari Passu** means by an equal progress; equably; ratably; without preference;
- 2.1.53 **Parties** means the parties to this Agreement, being IIS, the Client and BSSC and **Party** means any one of them as the context may require; and
- 2.1.54 **Payment Authorisation Letter** has the meaning given to it in clause 5.1;
- 2.1.55 **Payment Date** means the relevant date as selected in item 6 (*IIS Payment Terms and applicable Margin*) or item 8 (*BSSC Payment Terms and Applicable Fee*) in the Table of Particulars, as applicable, being the latest date upon which the Client is to make payment of the amounts owing to IIS or BSSC (as the case may be) under a Transaction;

- 2.1.56 **Penalty Interest Rate** means the rate of interest per month at which interest shall accrue on the Outstanding Indebtedness, as contemplated in clause 31, equal to the rate specified in item 9 (*Penalty Interest Rate*) in the Table of Particulars;
- 2.1.57 **POPI** means the Protection of Personal Information Act 4 of 2013;
- 2.1.58 **Prime Rate** means the publicly quoted basic rate of interest per annum, compounded monthly in arrears and calculated on a 365 day year (irrespective of whether or not the year is a leap year) from time to time published by Investec Bank Limited as being its prime overdraft rate as certified by any manager of Investec Bank Limited, whose appointment and designation need not be proved;
- 2.1.59 **Principal Capacity** means IIS acting in a principal capacity, purchasing Goods from Suppliers in its own name as principal and on-selling the relevant Goods to the Client in respect of a Transaction, as more fully contemplated in clause 3.5;
- 2.1.60 **Principal Capacity Transaction** has the meaning given to it in clause 15;
- 2.1.61 **Property** or **Properties** means, in the event that the Required Security includes a mortgage bond, the immovable property or properties described in Part 3 (*Required Security*) of the Schedule;
- 2.1.62 **Public Authorities** means any government or quasi-government authority of any country, or any division of such authority, including SARS, Transnet SOC Limited, or the like;
- 2.1.63 **Required Security** means all Security granted by the Client or any Security Provider in favour of IIS pursuant to the Security Documents, together with such further security interest as may from time to time be granted for the obligations of the Client to IIS under the Transaction Documents, including, without limitation a mortgage bond, notarial bond, cession in security, charge, pledge, hypothec, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;
- 2.1.64 **Sales Price** means the price payable by the Client to IIS in respect of Goods purchased by the Client from IIS under a Principal Capacity Transaction, inclusive of VAT, which is payable in terms of clause 32 (*Value Added Tax*), calculated as follows:
- 2.1.64.1 the aggregate IIS Disbursements in respect of that Principal Capacity Transaction; plus
- 2.1.64.2 the aggregate value of the Funding Costs; plus
- 2.1.64.3 the Margin;
- 2.1.65 **Sanctions** means trade, economic or financial sanctions, laws, regulations, embargoes or restrictive measures

imposed, administered or enforced from time to time by any Sanctions Authority;

2.1.66 **Sanctioned Country** means a country which is subject to general sanctions by a Sanctions Authority;

2.1.67 **Sanctioned Entity** means:

2.1.67.1 a person, country or a territory which is listed on a Sanctions List or is subject to Sanction; or

2.1.67.2 a person which is ordinarily resident in a country or territory which is listed on a Sanctioned List or is subject to Sanctions;

2.1.68 **Sanctioned Transaction** means either the use by any person of amounts held in an account or any economic benefit derived from a Transaction for the purpose of financing directly or indirectly the activities of any person or entity which is on a Sanctions List or for the purpose of financing directly or providing any credit, directly or indirectly the activities of any person in a Sanctioned Country, and/or the contribution or making available of amounts paid from an account or pursuant to a Transaction to any person or entity, if the relevant person has actual knowledge, without having made enquiry, that such person or entity intends to use such funds for the purpose of financing the activities of any person or entity which is in a sanctioned Country and/or is on a sanction List, in each case to the extent

that such financing or provision of funds would be prohibited by Sanctions;

2.1.69 **SARS** means the South African Revenue Services;

2.1.70 **Schedule** means the document titled, "Schedule", which the Client and an employee or some other agent acting on behalf of IIS will complete and which will be read together with the standard terms and conditions set out in this document, and which may be amended from time to time as contemplated in clause 4 (*The Schedule*);

2.1.71 **Security Documents** means each of:

2.1.71.1 the documents and agreements establishing or recording the Required Security specified in Part 3 (*Required Security*) of the Schedule; and

2.1.71.2 any other agreement or document that may at any other time be concluded as Security for the obligations of the Client under or in connection with this Agreement;

2.1.72 **Security Provider** means any person who provides Security pursuant to a Security Document;

2.1.73 **Security Provider Authorising Resolution** means a copy of a resolution of the board of directors of the Security Provider (if such Security Provider is a company), resolution of the board of trustees of the Security Provider (if such Security Provider is a

- trust) or resolution of the members of the Security Provider (if the Security Provider is a close corporation):
- 2.1.73.1 approving the terms of, and the transactions contemplated by, the Security Documents to which it is a party and resolving to execute those Security Documents;
- 2.1.73.2 authorising a specified person or persons to execute the Security Documents to which it is a party, and any agreements, documents, instruments related or incidental to the Security Documents together with any other agreements, deeds or documents as may be required or are desirable from time to time to give effect to the Security Documents on its behalf and any amendments thereto; and
- 2.1.73.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Security Documents,
- 2.1.74 **Security Provider Financial Assistance Board Resolution** means, if the relevant Security Provider is a related or interrelated company as contemplated in section 1 of the Companies Act, a resolution of the board of directors of the Security Provider:
- 2.1.74.1 confirming the application of the “solvency and liquidity test” by its board of directors under the Companies Act in connection with any financial assistance granted by it under the Security Documents as contemplated by section 45 of the Companies Act (as applicable) and/or any “distribution” made by it under the Security Documents as contemplated by section 46 of the Companies Act (as applicable); and
- 2.1.74.2 confirming for the purposes of section 45 of the Companies Act (as applicable) that the terms under which any such financial assistance is to be given pursuant to the Security Documents are fair and reasonable to it;
- 2.1.75 **Security Provider Financial Assistance Shareholder Resolution** means, if the relevant Security Provider is a related or interrelated company as contemplated in section 1 of the Companies Act, a special resolution by the shareholders of the Security Provider authorising the financial assistance proposed to be given;
- 2.1.76 **Service Provider** means any service provider elected by IIS or BSSC to assist with the provision of the services to the Client in accordance with the terms of this Agreement from time to time;

- 2.1.77 **Signature Date** means the date that this agreement has been signed by the Party signing it last in time;
- 2.1.78 **Supplier** means a supplier of Goods in respect of a Transaction;
- 2.1.79 **Table of Particulars** means the table in Part 1 (*Table of Particulars*) of the Schedule;
- 2.1.80 **Tax** means all direct and indirect taxes, charges, import duties, levies, deductions, withholdings or fees of any kind whatsoever, or any amount payable on account of or as security for any of the foregoing, imposed, levied, collected, withheld or assessed by a governmental entity, together with any forfeiture amounts, penalties, fines or interest relating thereto, including but not limited to corporate tax, provisional tax, income tax, capital gains tax, value added tax, withholding tax, customs and excise duties and levies, securities transfer tax, pay-as-you-earn, unemployment benefits as contemplated in the Unemployment Insurance Act, 63 Of 2001, skills development levies under the Skills Development Levies Act, 9 Of 1999 and any payment whatsoever which IIS may be or become bound to make to any person as a result of the operation of any enactment relating to taxation and all penalties, charges and interest relating to any claim for taxation or resulting from a failure to comply with the provisions of any enactment relating to taxation and **Taxes** and **Taxation** shall be construed accordingly;
- 2.1.81 **Transaction** means: (i) an Agency Capacity Transaction, (ii) a Principal Capacity Transaction; or (iii) a BSSC Transaction (as the case may be);
- 2.1.82 **Transaction Documents** means this Agreement, the Security Documents, each Transaction Notification, Payment Authorisation Letter, FEC and/or other written document or instruction (including those made using email) under or in connection with this Agreement; and
- 2.1.83 **Transaction Notification** means a confirmation of transactions by IIS for the supply and/or delivery of Goods in the form as updated or amended by IIS from time to time;
- 2.1.84 **Value at Risk** means, in relation to a FEC, the maximum exposure between the rate the FEC was purchased and the ruling spot rate for the day.
- 2.2 **Interpretation**
- 2.2.1 In addition to the definitions in clause 2.1 (*Definitions*), unless the context requires otherwise:
- 2.2.1.1 the singular shall include the plural and *vice versa*;
- 2.2.1.2 a reference to:
- 2.2.1.2.1 any one gender, whether masculine, feminine or neuter, includes the other two;

- 2.2.1.2.2 a **clause** is a reference to a clause in the Master Terms, (whether or not having separate legal personality);
- 2.2.1.2.3 an **item in Part 1 of the Schedule** is to a numbered item in the “Table of Particulars” in Part 1 of the Schedule and 2.2.1.7 a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- 2.2.1.2.4 a **paragraph in Part 2 of the Schedule** is to a paragraph in Part 2 (*CP Documents*) of the Schedule.
- 2.2.1.3 **authority** includes any court or any governmental, intergovernmental or supranational body, agency, department or any regulatory, self-regulatory or other authority; 2.2.1.8 a provision of law is a reference to that provision as amended or re-enacted; and
- 2.2.1.4 the use of the word **including** followed by specific examples will not be construed as limiting the meaning of the general wording preceding it, and the *eiusdem generis* rule must not be applied in the interpretation of such general wording or such specific examples; 2.2.1.9 a time of day is a reference to Johannesburg time.
- 2.2.1.5 **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent; 2.2.2 All the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it.
- 2.2.1.6 a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership 2.2.3 Unless a contrary indication appears, a term used in any other Transaction Document or in any notice given under or in connection with any Transaction Document has the same meaning in that Transaction Document or notice as in this Agreement.
- 2.2.4 In the case of any inconsistency between this Agreement and a provision in a Transaction Notification or other Transaction Document, the provision in the Transaction Notification or Transaction Document, as the case may be, shall prevail.

- 2.2.5 A Default (other than an Event of Default) is **continuing** if it has not been remedied or waived and an Event of Default is **continuing** if it has not been remedied or waived.
- 2.2.6 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in an interpretation clause, effect shall be given to it as if it were a substantive provision of the relevant Transaction Document.
- 2.2.7 The Schedules to any Transaction Document form an integral part thereof and a reference to an "**Annexure**" or a "**Schedule**" is a reference to an annexure of, or a schedule to, this Agreement, as same may be amended, novated or supplemented from time to time.
- 2.2.8 A reference to an agreement or document is a reference to that agreement or document, as may be amended, novated or supplemented from time to time.
- 2.2.9 The rule of construction that, in the event of ambiguity, a contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of the Transaction Documents.
- 2.2.10 The expiry or termination of any Transaction Documents shall not affect those provisions of the Transaction Documents that expressly provide that they will operate after any such expiry or termination or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.2.11 The Transaction Documents shall to the extent permitted by applicable law be binding on and enforceable by the administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators of the Parties as fully and effectually as if they had signed the Transaction Documents in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators, as the case may be.
- 2.2.12 Where figures are referred to in numerals and in words in any Transaction Document, if there is any conflict between the two, the words shall prevail.
- 2.2.13 Unless a contrary indication appears, where any number of days is to be calculated from a particular day, such number shall be calculated as including that particular day and excluding the last day of such period.
3. **CAPACITY AND AUTHORITY**
- 3.1 The Client has approached IIS and/or BSSC on the basis that it will, from time to

time, require certain services and/or certain Goods that it has specifically identified (or will identify). IIS and/or BSSC are able to facilitate, amongst other things, the provision of the services and/or the acquisition, financing and delivery of such Goods as detailed more fully in this Agreement (in each case, a **Transaction**).

3.2 IIS shall act, in relation to each Transaction, either in an Agency Capacity or in a Principal Capacity and shall not, in relation to a particular Transaction act in more than one capacity (i.e it shall not act in an Agency Capacity for part of a Transaction and Principal Capacity for another part of the same Transaction). Notwithstanding the foregoing, IIS may act in different capacities in separate Transactions.

3.3 When IIS is providing services to the Client in an Agency Capacity, these services may include, amongst other things, the importation of Goods, inclusive of logistics, transportation, forwarding, clearing and delivery of Goods. IIS may also make a loan facility available to the Client in order to make payments to Suppliers or Service Providers, whether local or foreign. Services rendered by IIS in an Agency Capacity may comprise one or multiple elements referred to above which are not limited to those herein mentioned.

3.4 Should IIS act in an Agency Capacity in respect of a Transaction, IIS will be acting as the Client's agent. The relevant Goods will accordingly be consigned to the Client.

IIS will, *inter alia*, make IIS Disbursements and conclude arrangements comprising, amongst other things, payments to Suppliers and Service Providers, the importation, forwarding, clearing and delivery of the Goods to the Client, all on the Client's behalf. ***Unless IIS and the Client agree to the contrary, IIS will be deemed to be acting in an Agency Capacity.***

3.5 Should IIS act in a Principal Capacity in respect of a Transaction, IIS will be acting as principal. The relevant Goods will accordingly be purchased from the relevant Supplier by IIS in its own name and will accordingly be consigned to IIS. The Client will, in accordance with the provisions of this Agreement, purchase the Goods from IIS.

3.6 The Parties agree that each Transaction shall be governed by the terms of, and shall be subject to the conditions set out in, this Agreement, provided that:

3.6.1 when IIS acts in an Agency Capacity in respect of a particular Transaction then only the provisions of Sections A, B and D as well as the Schedule and any Annexures to this Agreement will apply to the relevant Transaction and accordingly, the provisions of Section C of this Agreement shall not apply to the relevant Transaction; and

3.6.2 when IIS acts in a Principal Capacity in respect of a particular Transaction then only the provisions of Sections A, C and D as well as the Schedule and any

Annexures to this Agreement will apply to the relevant Transaction and accordingly, the provisions of Section B of this Agreement shall not apply to the relevant Transaction.

4. THE SCHEDULE

4.1 The Schedule, comprising Parts 1 (*Table of Particulars*), 2 (*CP Documents That Do Not Relate to Required Security*) and 3, (*Required Security and Related CP Documents*), may be amended by agreement between the Parties and the line items or new provisions of each successive Schedule shall replace the corresponding line items or repealed provisions of the previous Schedule and such line items or new provisions shall become effective from the date of signature thereof by the Party signing last in time provided that reference to the Signature Date of this Agreement shall continue to refer to the date that the original Schedule has been signed by the Party signing it last in time. Unless the Schedule provides otherwise, the amendments shall not apply to any Transactions concluded prior to the date of the applicable Schedule.

4.2 IIS shall be entitled, in its sole discretion and at any time, to modify and/or amend these Master Terms by written notice to the Client. Any such modification and/or amendment will be effective immediately upon delivery by IIS of such written notice. IIS agrees to publish the updated Master

Terms on its website within a reasonable period after amendment.

5. AUTHORISATIONS AND INSTRUCTIONS BY THE CLIENT

5.1 Subject to clause 19.1, IIS will, from time to time, make payments to Suppliers upon receipt of an instruction from the Client (each a **Payment Authorisation Letter**) or on such other terms as may be agreed between the Client and IIS.

5.2 IIS and BSSC shall be entitled to rely on any instruction, consent or authorisation given by the Client in connection with any matter contemplated in this Agreement, regardless of the form of the instruction, and regardless of whether or not the Client has complied with any formalities (including whether or not the instruction, consent or authorisation is given orally, by way of email or other form of writing and, if it is in writing, whether it has been signed). For the avoidance of doubt, electronic signature and/or electronic authorisation by way of email, electronic signature/e-sign/DocuSign, mobile applications or the "Blue Link" portal is permitted under this Agreement.

5.3 Any instruction, consent or authorisation given by the Client shall be irrevocable unless IIS and/or BSSC (or as the case may be) agree in writing to it being revoked and/or amended.

5.4 Notwithstanding the foregoing, neither IIS nor BSSC is required to obtain, in respect of a Transaction, the prior authorisation of

the Client for payments to Service Providers or Public Authorities or in connection with the sub-contracting of services and IIS is hereby authorised to make any and all such payments.

5.5 The Client irrevocably acknowledges and agrees that, from time to time in respect of a Transaction, IIS and/or BSSC may be obliged to give certain undertakings to Suppliers, Service Providers and/or Public Authorities in relation to payments to be made or obligations to be satisfied. For the avoidance of doubt, such undertakings shall be deemed to form part of the Outstanding Indebtedness and the Client authorises IIS and BSSC to give such undertakings to Suppliers, Service Providers and/or Public Authorities.

5.6 In the circumstances where the services to be provided by IIS contemplate a local payment being made to a Supplier, then the signed Payment Authorisation Letter from the Client to process the payment is deemed to be *prima facie* proof that the Client has received delivery of the Goods related to this payment.

5.7 The Client will ensure that it complies with the requirements of POPI and Investec's Data Protection Statement in terms of which the Client agrees to the disclosure of its personal information to Investec and acknowledges how that personal information will be used by Investec. The Investec Data Protection Statement may be found at

<https://www.investec.co.za/legal/data-protection-statement.html>.

6. PREVIOUS AGREEMENTS BETWEEN IIS AND THE CLIENT

6.1 From the Signature Date hereof, all indebtedness by the Client to IIS and/or BSSC shall become Outstanding Indebtedness as defined in this Agreement. No obligation in respect of such amounts (including dates for payment, interest, penalty interest and the like) will be novated, but will instead, *mutatis mutandis*, be amended and restated in order to accord with the provisions of this Agreement.

6.2 All agreements and security between IIS and/or BSSC and the Client that are current and validly subsisting shall, from the Signature Date hereof, be governed by the terms and shall be subject to the conditions set out in this Agreement.

7. CONDITIONS PRECEDENT

7.1 Neither IIS nor BSSC are obliged to perform under this Agreement until such time as the Conditions Precedent have been fulfilled or waived (as the case may be).

7.2 The Conditions Precedent are stipulated for the benefit of IIS and may be waived (or the time period for fulfilment thereof may be extended), by IIS at any time in its sole discretion.

7.3 If IIS or BSSC provides any service or commences with any Transaction, then

notwithstanding that a Condition Precedent has not been satisfied or waived (as the case may be), such action will be valid and IIS and BSSC shall be entitled to enforce any provision of this Agreement as it may deem necessary or desirable in the circumstances.

- 7.4 If any of the Conditions Precedent are not fulfilled or waived (as the case may be) by the Longstop Date, or by such later date as may be agreed to by IIS or BSSC in writing, then either of IIS or BSSC shall be entitled to cancel this Agreement, in which case all of the provisions of this Agreement shall terminate, with the exception of clauses 13 (*Pledge*), 19 (*Indemnities, Disclaimers and Exemption from Liability*), 23 (*Rights of IIS and BSSC*), 25 (*Warranties*), 30.1 (*Consequences of an Event of Default*), 32 (*Value Added Tax*) and 38 (*Costs and Expenses*).

SECTION B: IIS ACTING AS AGENT

8. APPOINTMENT OF IIS AS AGENT

8.1 The Client, as principal, hereby irrevocably nominates, constitutes and appoints IIS, and or BSSC with power of substitution, to be its true and lawful agent:

8.1.1 for all Transactions (each an **Agency Capacity Transaction**) other than those Transactions that IIS and the Client have agreed, under clause 3.5 hereof, will be Principal Capacity Transactions; and

8.1.2 to do all such things and to complete and sign all such documents, for so long as this Agreement remains in force, for the purposes of each Agency Capacity Transaction, and for all purposes incidental thereto, including the institution of legal proceedings, which appointment IIS hereby accepts.

8.2 Notwithstanding anything in this clause 8 to the contrary, IIS shall be entitled to withdraw from or refuse to enter into or continue with any Agency Capacity Transaction, if IIS, in its sole and absolute discretion, determines it appropriate.

9. UTILISATION OF IIS FACILITY IN AN AGENCY CAPACITY TRANSACTION

9.1 Subject to the terms and conditions of this Agreement, IIS makes available to the Client a ZAR facility in an aggregate amount equal to the IIS Facility Limit.

9.2 IIS, in fulfilling its role as the Client's agent, shall from time to time make IIS Disbursements on behalf of the Client. The Parties have agreed that, as and when IIS makes IIS Disbursements:

9.2.1 each such IIS Disbursement shall constitute a utilisation by the Client of the facility contemplated in this clause 9, which constitutes a Loan under such facility in an amount equal to such IIS Disbursement; and

9.2.2 the Available IIS Facility Limit shall be reduced by an amount which is equal to such IIS Disbursement.

10. INTEREST

10.1 Subject to clause 31 (*Penalty Interest*), each Loan shall bear interest at a rate equal to the Base Rate from the relevant Disbursement Date until the relevant Payment Date.

10.2 Interest shall:

10.2.1 accrue on a daily basis during the period of calculation;

10.2.2 be compounded monthly in arrears;

10.2.3 be calculated on the actual number of days elapsed and on the basis of a 365 (three hundred and sixty-five) day year irrespective of whether or not the applicable year is a leap year; and

10.2.4 be determined inclusive of the first day and exclusive of the last day of the period for which it is determined.

- 10.3 Interest accrued on each Loan shall, subject to clause 31 (*Penalty Interest*), be due and payable and shall be paid by the Client to IIS in arrears on the relevant Payment Date.
11. **PAYMENT OF LOAN OUTSTANDINGS AND MARGIN**
- 11.1 The Client shall repay, in respect of each Agency Capacity Transaction, the Loan Outstandings in full, in a single payment to IIS on the relevant Payment Date applicable to such Agency Capacity Transaction.
- 11.2 Notwithstanding the obligations of the Client described in clause 11.1, the Client may prepay the whole or any portion of the Loan Outstandings under this Agreement to IIS at any time prior to the relevant Payment Date without additional penalty.
- 11.3 In consideration for IIS acting in an Agency Capacity, the Client agrees to pay a Margin in respect of each Agency Capacity Transaction.
12. **NO FIDUCIARY DUTIES**
- Nothing in this Section B of the Agreement or any other Transaction Document constitutes IIS as a trustee or fiduciary of the Client, a Supplier, a Service Provider or any other person.
13. **BLUE STRATA SUPPLY CHAIN**
- 13.1 The Parties agree that IIS employees, agents and representatives are authorised to act on behalf of BSSC regarding any goods or service provided under the Agreement.
- 13.2 No fee shall be payable to BSSC in respect of 7 day or 30 day payment terms.
14. **PLEDGE**
- 14.1 The Client agrees that until IIS has delivered the Goods to the Client, IIS shall have a pledge over all Goods and all documents relating to the Goods (such Goods and documents, the **Pledged Goods**) regardless of where the Pledged Goods are, in whose name they are being held and regardless of who is exercising possession over such Goods.
- 14.2 The pledge referred to in clause 14.1 above (the **Pledge**) shall operate as a continuing covering security for the payment or discharge to IIS of all the obligations or indebtedness (whether actual or contingent, present or future and from whatsoever cause and howsoever arising) at any time due, owing or incurred by the Client to IIS under or in connection with the Transaction Documents or any breach thereof.
- 14.3 The Client shall, if and when IIS so requires, instruct such persons as may be necessary to hold the Pledged Goods or any part thereof for, on behalf of or to the order of IIS.
- 14.4 The Client shall, if and when IIS so requires, execute and sign all documents which IIS may from time to time require to perfect its title or to enable IIS to transfer ownership in respect of any of the Pledged

- Goods or for facilitating delivery of such documents to IIS or its nominees or any purchaser and to do all such acts and things as may be necessary or expedient in connection with any sale or other transfer IIS may make. IIS and its agents and its nominees are hereby irrevocably and *in rem suam* authorised to execute and sign any such document as the Client's agent and to do any such act or thing on the Client's behalf in this regard.
- 14.5 Upon the occurrence of an Event of Default, IIS may (to the extent permitted at law) without notice or further consent sell, assign, transfer, negotiate or otherwise dispose of the Pledged Goods at such times, in such manner and generally on such terms and conditions and for such consideration as IIS may in its sole discretion deem fit and IIS may apply the proceeds towards the discharge of the costs incurred and towards such of the monies, obligations and liabilities hereby secured, and in such order as IIS may from time to time determine. If such proceeds are insufficient for such purpose, the Client undertakes to forthwith upon demand make good such deficiency, and indemnifies IIS accordingly.
- 14.6 During the continuance of the Pledge, the Client shall keep the Pledged Goods insured to their full value against all insurable risks with a note of IIS's interest endorsed on the policy and in the case of loss or damage to the Pledged Goods howsoever caused, will pay over to IIS all sums recovered from such insurance or
- otherwise in respect of such loss or damage and pending such payment, the Client shall hold all such monies on behalf of IIS. IIS is irrevocably and *in rem suam* authorised to recover the amount due from the relevant insurers.
- 14.7 The Client will be liable for all freight, demurrage, warehouse, dock, transit and other charges, rent and all other costs of and incidental to the Pledged Goods and indemnifies IIS against any costs, charges, expenses and losses incurred in respect of these.
- 14.8 IIS may at its option insure and store or arrange for storage of any or all of the Pledged Goods and shall be entitled to reimbursement from the Client on demand of any costs, charges or expenses of or in connection therewith but IIS shall not be responsible for any loss or damage resulting from any under-insurance or its omission to so insure or store.
- 14.9 The Client warrants to IIS that it is entitled to pledge to IIS the Pledged Goods and to execute or sign any transfers, delivery orders or other requisite documents when called upon and the Pledged Goods are and will remain free from any other pledge, charge, lien or encumbrance of any kind.
- 14.10 The Pledge is a continuing covering security notwithstanding the winding up, business rescue, incapacity or any change in the constitution of the Client or any settlement of account or other matter whatsoever and is in addition to and shall not merge with or otherwise prejudice or

affect any security or remedy whether now or hereafter held by or available to IIS and shall not be in any way prejudiced or affected thereby or by the validity thereof or by IIS now or hereafter dealing with, exchanging, releasing, varying or abstaining from perfecting or enforcing of any rights which it may now or hereafter have or giving time for payment or indulgence or compounding with any other person liable.

- 14.11 IIS shall have no responsibility whatsoever for the correctness, validity or sufficiency of the documents released to the Client or for the existence, quality, quantity, condition, packing value or delivery of the Goods.

SECTION C: IIS ACTING AS PRINCIPAL

15. IIS AS PRINCIPAL

- 15.1 Should IIS act in a Principal Capacity in respect of a Transaction, following the Parties agreeing to IIS acting in such capacity on the basis contemplated in clause 3.5 (each a **Principal Capacity Transaction**), IIS will, from time to time, purchase such Goods as the Client requests. Notwithstanding anything in this clause 15.1 to the contrary, IIS shall be entitled to: (i) refuse to purchase any Goods requested by the Client; and/or (ii) withdraw from or refuse to continue with any Principal Capacity Transaction, if IIS, in its sole and absolute discretion, determines it appropriate.
- 15.2 The Client hereby agrees to purchase all Goods from IIS that IIS acquires pursuant to clause 15.1, and IIS agrees to sell such Goods to the Client, at the relevant Sales Price.
- 15.3 Each Principal Capacity Transaction shall be a separate and distinct agreement of sale.

16. UTILISATION OF IIS FACILITY IN A PRINCIPAL CAPACITY TRANSACTION

- 16.1 Subject to the terms and conditions of this Agreement, IIS makes available to the Client a ZAR facility in an aggregate amount equal to the IIS Facility Limit.
- 16.2 IIS, in fulfilling its role as principal, shall from time to time make IIS Disbursements. The Parties have agreed that, as and when

IIS makes such IIS Disbursements, the Available IIS Facility Limit shall be reduced by an amount which is equal to the relevant IIS Disbursement.

17. PAYMENT OF THE SALES PRICE

The Client shall pay, in respect of each Principal Capacity Transaction, the Sales Price in full in a single payment to IIS on the relevant Payment Date.

18. PRINCIPAL CAPACITY: OWNERSHIP, BENEFIT AND RISK

In the case of each Principal Capacity Transaction:

- 18.1 ownership in the Goods will remain with IIS until the Goods are paid for in full by the Client, notwithstanding the date of delivery and/or any partial payments of the Sales Price; and
- 18.2 risk shall pass in full to the Client on delivery of the Goods to the first South African warehouse as contemplated in the IIS marine cargo insurance policy. The marine cargo insurance policy document is available upon request by the Client.

SECTION D: GENERAL PROVISIONS

19. INDEMNITIES, DISCLAIMERS AND EXEMPTION FROM LIABILITY

19.1 Client Requests and Instructions

IIS may, in its sole discretion, accept or refuse to accept any request from, or instruction of, the Client. IIS may also request such additional information as it determines appropriate before performing any actions in relation to a Transaction.

19.2 Defective Goods

19.2.1 Defective Goods

19.2.2 For the purposes of this clause 19.2, **Defective Goods** shall mean Goods that are:

- 19.2.2.1.1 not in working order;
- 19.2.2.1.2 not in good condition;
- 19.2.2.1.3 not fit for the purpose for which they are generally intended;
- 19.2.2.1.4 not in accordance with the nature, type and quality generally expected of those Goods; and/or;
- 19.2.2.1.5 not in accordance with the Transaction Notification.

19.2.3 The Client bears the risk that the Goods are Defective Goods.

19.2.4 Whether or not Goods are Defective Goods according to the terms of the Transaction Notification, the Client shall be obliged to pay IIS for these

Defective Goods in terms of the invoice issued by IIS to the Client.

19.2.5 Any claims which IIS may have against the Supplier in respect of Defective Goods shall, at the request of the Client and to the extent reasonably possible without adversely affecting IIS, be ceded by IIS to the Client (provided that IIS is entitled to do so).

19.2.6 The Client shall have no claim against IIS and IIS shall not be liable for any damages of whatsoever nature (whether direct, indirect or consequential) to the Client arising from or caused by the fact that any of the Goods ordered are Defective Goods.

19.2.7 IIS gives no warranty that the Goods will not be Defective Goods under this Agreement or under any Transaction pursuant to this Agreement and the Parties agree that no implied warranty in respect of Defective Goods shall apply to this Agreement.

19.3 Late, Short, Over-Delivery or Non-Delivery

19.3.1 For the purposes of this Clause 19.3:

19.3.1.1 **Short Delivery** shall mean an under-supply in the Goods, in which the Goods delivered to the Client are of a lesser amount, quantity or volume (as the case may be) as the amount, quantity and/or volume of Goods ordered from the Supplier; and

- 19.3.1.2 **Over-Delivery** shall mean an over-supply in the Goods, in which the Goods delivered to the Client are of a greater amount, quantity or volume (as the case may be) as the amount, quantity and/or volume of Goods ordered from the Supplier.
- 19.3.2 The Client shall have no claim against IIS and IIS shall not be liable to the Client or any other person for any damages of whatsoever nature (whether direct, indirect or consequential), caused by or arising from any delay in the delivery (whether in whole or in part) of the Goods to the Client or in respect of any failure to deliver (whether in whole or in part) the Goods for any reason whatsoever, including the destruction of the Goods.
- 19.3.3 The Client bears all risk of Short Delivery and Over-Delivery and the Client shall, notwithstanding any Short Delivery or Over-Delivery, be obliged to make payment to IIS for the full amount due in respect of that order (in the case of a Short Delivery) and for the full amount of Goods delivered (in the case of an Over-Delivery).
- 19.3.4 The Client shall examine all Goods delivered pursuant to a Transaction and shall notify IIS, in writing, within 24 hours of delivery of any Defective Goods, Short Delivery or Over-Delivery or potential insurance claims coming to its notice and shall furnish IIS with the following information in respect thereof:
- 19.3.4.1 name of Supplier;
- 19.3.4.2 carton number;
- 19.3.4.3 full description of Goods and Defective Goods;
- 19.3.4.4 date of delivery of the Goods; and
- 19.3.4.5 photographs if appropriate.
- 19.3.5 If there are seal discrepancies the container must not be unpacked and IIS must be notified immediately.
- 19.3.6 Any claim which IIS may have against the Supplier concerned for Short Delivery (or over-delivery) shall, at the request of the Client (and to the extent reasonably possible without adversely affecting IIS), be ceded by IIS to the Client (provided that IIS is entitled to do so).
- 19.4 **Incorrect Bank Account**
- IIS shall not be responsible for any loss or damage caused to or suffered by the Client should:
- 19.4.1 the Client make payment of any Outstanding Indebtedness into any bank account other than the IIS Account or the BSSC Account (as applicable); or
- 19.4.2 IIS or BSSC make payment of any Disbursement into the incorrect bank account of a Supplier or Service Provider.

19.5 **Black Economic Empowerment**

19.5.1 IIS makes no representations or warranties whatsoever regarding:

19.5.1.1 the broad-based black economic empowerment (**B-BBEE**) credentials of its suppliers and/or services providers; or

19.5.1.2 any points which the Client may or may not score, through the procurement of IIS's services under the B-BBEE scorecard approach contemplated in the revised Codes of Good Practice under the Broad-Based Black Economic Empowerment Act, 53 of 2003.

19.5.2 For purposes of this clause 19.5, "Direct Costs" means, in relation to any invoice issued by IIS, all costs and fees, directly attributable to the services rendered by IIS to the Client and not third party procurement by IIS on behalf of the Client from another party.

19.5.3 The Client may only claim B-BBEE procurement spend for amounts attributable to IIS's Direct Costs in IIS's invoices. Any other costs associated with IIS's services not attributable to Direct Costs in its invoices are treated as third party procurement costs for purposes of calculating IIS's B-BBEE procurement.

19.6 **Disbursements**

The Client acknowledges that each Disbursement is genuinely incurred and is fair and reasonable.

19.7 **Tariff headings**

Neither IIS nor BSSC shall bear any responsibility in respect of incorrect tariff headings, it being the Client's obligation to ensure that the correct and appropriate tariff headings are used.

19.8 **Value-added Tax**

The Client hereby agrees to indemnify each of IIS and BSSC for the full amount of any cost or expense, including such part thereof as represents VAT.

19.9 **Investec Bank Limited facilities and guarantee**

19.9.1 If the Client has concluded a facility (**IBL Facility**) with Investec Bank Limited (**IBL**) (whether in the form of a term, revolving, general banking facility or otherwise) and IIS has granted a guarantee in favour of IBL, pursuant to which IIS has guaranteed the payment and performance when due, whether by acceleration or otherwise, of the obligations of the Client to IBL under and in connection with the IBL Facility (the **Guarantee Agreement**), then:

19.9.1.1 the Client hereby indemnifies and holds IIS harmless against any claim made against, or liability of, IIS, or amount paid or due and payable by IIS to IBL, under the Guarantee Agreement (including any loss,

liability, damage, claim, cost or expense of whatsoever nature plus legal costs as between attorney and own client, which IIS may suffer or incur as a result of having entered into or enforcing its rights under this indemnity or the Guarantee Agreement), and irrespective of the validity and legal effect of the Guarantee Agreement; and

and shall pay to each Indemnified Party all Taxes, costs, damages, demurrage, expenses, fees, losses and/or liabilities (including, but not limited to costs, damages, expenses, fees, losses and/or liabilities in respect of claims made by or against third parties, including, but not limited to SARS) incurred by any Indemnified Party as a result of, arising from or in connection with:

19.9.1.2 the Client irrevocably and unconditionally undertakes to immediately pay IIS on first demand in writing, without set-off, objection or qualification, any amount which IIS may be called upon to pay to IBL under the Guarantee Agreement, including any costs, liabilities, fees or expenses incurred by IIS in enforcing its rights hereunder.

19.10.1 this Agreement;

19.10.2 any claims made against any Indemnified Party by any person pursuant to any Transaction;

19.10.3 any claim which may be made against IIS and/or BSSC by SARS or the duly authorised customs or taxation authorities of the country of importation (**Foreign Tax Authorities**) for payment of any Taxes or any other amounts which may be payable to SARS or the Foreign Tax Authorities in respect of any claim of whatsoever nature, including, customs duty and/or other levies relating to the importation of the Goods;

19.9.2 The Required Security granted by the Client or any Security Provider in favour of IIS pursuant to the Security Documents is intended to, and shall, secure (in addition to any Outstanding Indebtedness) any and all of the obligations of the Client that may arise, from time to time, pursuant to this clause 19.9.

19.10.4 any claim made by any governmental authority, including SARS or the South African Reserve Bank;

19.10 **General indemnities**

The Client hereby indemnifies each of IIS and BSSC and each of its principals, directors, officers, employees, representatives and agents (the **Indemnified Parties**) and holds each of the Indemnified Parties harmless against

19.10.5 the cancellation of any agreement of sale in respect of a Principal Capacity Transaction in respect of which the Goods have not yet been delivered to the Client, as contemplated in clause 24.1.3;

- 19.10.6 the occurrence of any Default or Event of Default;
- 19.10.7 a failure by the Client or Security Provider to pay any amount due under a Transaction Document on its due date; or
- 19.10.8 such Indemnified Party not making, or not being in a position to make, a Disbursement by reason of the operation of any one or more of the provisions of this Agreement (other than arising out of the gross negligence or wilful misconduct of the relevant Indemnified Party),

and agrees to pay IIS and/or BSSC, as the case may be, within 3 (three) Business Days of demand thereof, any amounts demanded by IIS and/or BSSC, as the case may be, under this clause 19.9.

20. **IMPORT, EXPORT AND EXCHANGE CONTROL REGULATIONS**

- 20.1 Compliance with all import, export and exchange control regulations and the obtaining of all necessary permits shall be the Client's sole responsibility and neither IIS nor BSSC shall bear any responsibility in respect thereof.
- 20.2 In compliance with exchange control regulations, all Goods for which IIS pays in advance are required to arrive in South Africa within 4 (four) months of the relevant Payment Date if the Goods are brought in via sea freight and within 14 (fourteen) days if the Goods are air freighted. In order for IIS to make an advance payment to a

foreign Supplier, the payment terms must be stated on the pro-forma invoice. Should the advance payment be outstanding for greater than 4 (four) months if brought in via sea freight and 14 (fourteen) days if via air freight, IIS reserves the right to either invoice the amount to the Client at the effective exchange rate plus the relevant Margin, or charge an additional margin on the advance payment portion to be incorporated into the costing. Interest or a deemed Funding Cost will continue to be charged at the Base Rate.

21. **FORWARD EXCHANGE CONTRACTS**

- 21.1 Subject to the provisions of this Agreement, forward exchange contracts (**FECs**) will be entered into in accordance with the Client's instructions.
- 21.2 IIS may, from time to time, renegotiate the terms of FECs depending on the required payment dates to Suppliers. Currency fluctuations may result in a profit or loss in respect of an FEC. These profits or losses shall be included in the effective foreign exchange rate utilised when converting the foreign currency value to ZAR to calculate the utilisation of the IIS Facility Limit in accordance with clauses 9 or 16 (as the case may be).
- 21.3 Should the monetary amount of the applicable Client's order accepted by IIS be less than the monetary amount of the FEC relating to such order, IIS shall surrender the excess amount of FEC and any profit or loss incurred shall be for the account of the Client. Similarly, should the

- monetary amount of the FEC be less than the monetary amount of an order accepted by IIS, IIS shall purchase additional foreign currency for the Client, which cost will be incorporated into the total cost per shipment.
- 21.4 Notwithstanding anything contemplated in this Agreement, IIS may refuse to enter into any FEC on behalf of a Client, and/or surrender or cancel any or all of the Client's open FEC positions. Any resultant loss incurred as a result of such action or omission shall be for the account of the Client. Any resultant profit incurred as a result of such action or omission shall be utilised to discharge any of the Client's Outstanding Indebtedness to IIS, if any, and if there is, at the time, no Outstanding Indebtedness, IIS shall make payment of such profit to the Client or credit the Client, at the instance of the Client.
- 22. INSURANCE**
- 22.1 Marine insurance**
- 22.1.1 IIS shall insure the contents of each shipment during the period that the risk of loss or damage attaches to IIS, unless the Client has requested that it be permitted to procure its own insurance to cover shipments during such periods and IIS has agreed to rely on such insurance (as contemplated in clause 22.1.3).
- 22.1.2 In the event that the contents of a shipment are insured by IIS:
- 22.1.2.1 IIS shall only be required to insure such shipment until delivery to the first warehouse in South Africa nominated by the Client; and
- 22.1.2.2 insurance shall be in respect of the marine insurance cargo risks covered in terms of the London Institute Cargo Clauses (A), (B) or (C) as applicable. A copy of the IIS marine cargo insurance policy document is available upon request.
- 22.1.3 In the event that the Client has requested to be permitted to procure its own insurance and IIS has agreed to rely on such insurance as contemplated in clause 22.1.1 above, then during the currency of this Agreement and any time whilst the Client has Outstanding Indebtedness to IIS hereunder, the Client:
- 22.1.3.1 shall maintain in full force and effect insurance over each shipment with first class underwriters and/or companies who are domiciled or carrying on business in South Africa and/or the United Kingdom on the following minimum terms:
- 22.1.3.1.1 all risks (Institute Cargo Clause (A) and/or Institute Cargo Clauses (Air), as the case may be) for the total cost per shipment amount plus a minimum of 10% (including freight when freight is payable on shipment or due in any event, ship and/or cargo lost or not lost);

- 22.1.3.1.2 war risk insurance (governed by the Institute of London Underwriters);
- 22.1.3.1.3 Strikes, Riots and Civil Commotions Clauses (Cargo); and
- 22.1.3.1.4 any other risks against which IIS considers, having regard to practices and other circumstances prevailing at the relevant time, it would be reasonable for the Client to insure and which are specified by IIS by notice to the Client.
- 22.2 Insurance over stock in trade**
- 22.2.1 During the currency of this Agreement and at any time whilst the Client has Outstanding Indebtedness to IIS hereunder, the Client shall maintain in full force and effect insurance over all of its stock in trade against all risks and for amounts at least equal to the cost of the stock to the Client.
- 22.3 General insurance provisions**
- 22.3.1 The insurance policies contemplated in clauses 22.1 and 22.2 above shall:
- 22.3.1.1 name IIS as an additional named insured for its rights and interests, with full waiver of rights of subrogation against IIS, but without IIS thereby being liable to pay (but having the right to pay) premiums or other assessments in respect of such insurance;
- 22.3.1.2 name IIS as a loss payee with such directions for payment as IIS may specify;
- 22.3.1.3 provide that IIS may make proof of loss if the Client fails to do so;
- 22.3.1.4 provide that if such insurance is cancelled, or if any substantial change is made in the coverage which adversely affects the interests of IIS, or if any insurance is allowed to lapse for non-payment of premium, such cancellation, change or lapse shall not be effective with respect to IIS until 30 (thirty) days (or 14 (fourteen) days in the case of war risks) after receipt by IIS of prior written notice from the insurers of such cancellation, change or lapse.
- 22.3.2 The Client hereby cedes to IIS all of its rights, title and interest in and to the aforesaid insurance policies contemplated in clauses 22.1 and 22.2 above (and cedes to IIS all of its claims and/or rights of action against insurers arising from, pursuant to or in connection with the aforesaid insurance policies), *in securitatem debiti* as security for the due performance of the Client's obligations under this Agreement.
- 22.3.3 Any claims against insurers will be subject to the provisions of the insurance policy, and IIS shall not be held liable for any potential shortfall, for any reason, should a shortfall arise, or

should IIS fail to obtain insurance for any reason whatsoever.

- 22.3.4 The Client shall, if so required by IIS, produce copies of the relevant insurance policies contemplated in clauses 22.1 and 22.2 above.

23. TRANSACTION NOTIFICATIONS

- 23.1 It is confirmed that a Transaction Notification reflects only the foreign value of the Goods purchased and the final costing and charges in respect thereof will in due course and whether in respect of Loan Outstandings or the Sales Price include, but not necessarily be limited to, components attributable to duty, freight, insurance, inland transport, financing and allied charges as well as IIS's Margin.

- 23.2 The Client agrees to the terms and conditions set out in each Transaction Notification from time to time and shall at all times ensure that the Supplier agrees to such terms and conditions.

24. RIGHTS OF IIS AND BSSC TO WITHDRAW

- 24.1 Notwithstanding anything to the contrary in this Agreement, each of IIS and BSSC shall at all times, in its sole discretion, be entitled, in respect of any Transaction to:

- 24.1.1 refuse to make any Disbursement;
- 24.1.2 refuse an instruction from the Client or accept any order;
- 24.1.3 cancel or withdraw from any Transaction;

- 24.1.4 cancel any one or more agreements of sale with the Client in respect of Principal Capacity Transactions in respect of which the Goods have not yet been delivered to the Client;

- 24.1.5 require the Client to pay to IIS and/or BSSC all Outstanding Indebtedness; and/or

- 24.1.6 require the Client to pay all amounts in respect of which IIS and/or BSSC have been indemnified under this Agreement,

in which case the Client shall pay all such amounts by no later than the date specified by IIS and/or BSSC in the notice delivered to the Client (being no earlier than the last day of any applicable grace period permitted by law).

- 24.2 In the event that IIS elects to cancel any one or more agreements of sale with the Client pursuant to clause 24.1.4 above or otherwise in terms of this Agreement, the Parties agree that IIS shall be entitled to claim damages in an amount that would be necessary to put IIS in the position it would have been in had the relevant Transaction been fulfilled. The Parties agree, for purposes of this clause 24.2, in order to determine the damages payable, that the Goods will be deemed to have been delivered on the date of delivery of notice by IIS notifying the Client that it has elected to enforce its rights under this clause 24.

- 24.3 Each Party agrees that the remedies described in clause 24.2 above represent liquidated and agreed-upon current damages (it being agreed that it would be difficult to calculate the actual damages). Each Party further agrees that the aforesaid liquidated damages provision constitutes reasonable and fair compensation to IIS in view of the prejudice to be suffered by IIS for the additional risks and damages sustained by it as a result of the reasons giving rise to IIS's entitlement to cancel pursuant to clause 24.1.2 above or otherwise in terms of this Agreement.
25. **WARRANTIES**
- 25.1 **Warranties**
- The Client makes the warranties set out in this clause 25.1 to IIS and BSSC on the Signature Date on each day upon which IIS delivers a Transaction Notification to a Supplier and on each Disbursement Date, Invoice Date and Payment Date.
- 25.1.1 **Insolvency**
- An Insolvency Event has not occurred in respect of the Client.
- 25.1.2 **Power and Authority**
- 25.1.2.1 The Client has the power to enter into the Transaction Documents to which it is a party and has taken all necessary actions to authorise the entry into, and performance under, the Transaction Documents to which
- it is a party and the transactions contemplated therein.
- 25.1.2.2 The Client has the power to enter into and perform, and has taken all necessary action to authorise its entry into, and performance of, the Transaction Documents to which it is party and the transactions contemplated by those Transaction Documents.
- 25.1.2.3 No limit on the Client's powers will be exceeded as a result of this Agreement, or the grant of security or the giving of guarantees or indemnities contemplated by the Security Documents to which the Client is a party.
- 25.1.2.4 The Client has the power to own its assets and carry on its business as it is being conducted or is contemplated to be conducted.
- 25.1.3 **Binding Obligations**
- The obligations of the Client under each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations.
- 25.1.4 **Non-conflict with Other Obligations**
- The entry into and performance by the Client of, and the transactions contemplated by the Transaction Documents to which it is a party, and the granting of the security pursuant to the Security Documents to which it is a party, do not and will not conflict with:

<p>25.1.4.1 any law applicable to the Client;</p> <p>25.1.4.2 the constitutional documents of the Client;</p> <p>25.1.4.3 any agreement, license or instrument binding upon the Client or any of its assets.</p>	<p>25.1.6.2 All authorisations necessary for the conduct of the business, trade and ordinary activities of the Client have been obtained or effected and are in full force and effect.</p>
<p>25.1.5 Non-contravention of Applicable Laws</p> <p>Nothing involving the nature of any Goods or the ordering, purchasing, transporting, importation, delivery and/or warehousing of such Goods is a contravention of any applicable laws.</p>	<p>25.1.7 Information true and authentic</p> <p>All documentation and information supplied by the Client to IIS and BSSC, including but not limited to invoices, packing lists, transportation documents, certificates of origin and tariff codes, is complete, correct, true and authentic.</p>
<p>25.1.6 Authorisations</p> <p>25.1.6.1 All authorisations required or desirable:</p> <p>25.1.6.1.1 to enable the Client lawfully to enter into, exercise its rights and comply with its obligations under the Transaction Documents to which it is a party and to ensure that its obligations under such Transaction Documents are legal, valid, binding and enforceable (save to the extent that registration of any Security Document may be required for it to be enforceable); and</p> <p>25.1.6.1.2 to enable the Client to lawfully conduct its business,</p> <p>have been obtained or effected and are in full force and effect.</p>	<p>25.1.8 Deduction of Tax</p> <p>The Client is not required to make any deduction for or on account of Tax from any payment it may make to IIS or BSSC under any Transaction Documents to which the Client is a party.</p> <p>25.1.9 No Event of Default</p> <p>25.1.9.1 No Event of Default is subsisting or might reasonably be expected to result from the making of any Disbursement or the entry into, the performance of, or any transaction contemplated by, any Transaction Document to which the Client is a party.</p> <p>25.1.9.2 As at the Signature Date, no event of default (howsoever described) is subsisting or might reasonably be expected to result from the making of any Disbursement or the entry into, the performance of, or any</p>

transaction contemplated by, any Transaction Document to which the Client or any Security Provider is a party under any agreement pursuant to which any financial indebtedness was incurred by the Client or any Security Provider.

25.1.10.4

The Client has not knowingly withheld any information which, if disclosed, would reasonably be expected materially and adversely to affect the decision of IIS and/or BSSC to enter into the Transaction Documents to which it is a party and/or to make any IIS Disbursement or BSSC Disbursement, as the case may be.

25.1.10 No Misleading Information

25.1.10.1 To the best of the Client's knowledge and belief (having made due enquiry), all written information provided by the Client and supplied to IIS and BSSC pursuant to or in anticipation of the Transaction Documents to which the Client is a party and the transactions contemplated thereby is complete, true and accurate in all material respects as at the date it was given and is not misleading in any material respects (whether because of information actually provided or which should have been provided).

25.1.11

***Pari Passu* Ranking**

The Client's payment obligations under the Transaction Documents to which it is a party rank at least *Pari Passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

25.1.12

Security Interest

25.1.12.1

Subject in each case to any registration specifically required by law and subject to each such Security Document becoming unconditional in accordance with its terms:

25.1.10.2 Any expressions of opinion or intention provided by the Client in connection with any Transaction Document were made after due and careful consideration and based on reasonable grounds.

25.1.12.1.1

each Security Document validly creates the security interest which is expressed to be created by that Security Document; and

25.1.10.3 The Client has made full disclosure to IIS and BSSC of all material facts which would reasonably be expected, materially and adversely to affect the decision of IIS and BSSC to enter into the Transaction Documents to which it is a party.

25.1.12.1.2

the security created by each Security Document:

25.1.12.1.2.1

ranks and will rank, in respect of all other security interests granted or to be granted by

- the Client in favour of any person other than IIS, in the order of priority it is expressed to rank in the relevant Security Document; and
- 25.1.12.1.2.2 is not subject to avoidance in the event of any business rescue proceedings, winding-up, dissolution or administration involving the Client.
- 25.1.12.1.3 Other than any assets which are either the subject to the Required Security and owned by a Security Provider (if any) or which are leased by the Client, the Client is the sole, absolute, legal and, where applicable, beneficial owner of all assets made subject to the security created by each Security Document.
- 25.1.13 **No Material Adverse Change**
- Since the date of the Original Financial Statements no event or series of events has occurred, commenced or is threatened which is (or the continuation of which is) likely to have a Material Adverse Effect.
- 25.1.14 **Application of NCA/CPA**
- The Client is a juristic person whose asset value or annual turnover (as calculated in accordance with the provisions of the relevant legislation):
- 25.1.14.1 equals or exceeds the threshold value determined by the Minister in terms of section 6 of the CPA (which, as at the Signature Date, is R2,000,000 (two million Rand)); and
- 25.1.14.2 together with the combined asset value or annual turnover of all related juristic persons, at the Signature Date, equals or exceeds the threshold value determined by the Minister in terms of section 7(1)(a) of the NCA (which, as at the Signature Date, is R1,000,000 (one million Rand)).
- 25.2 **Reliance**
- Each of IIS and BSSC has entered into the Transaction Documents to which it is a party on the strength of, and relying on, the representations and warranties set out in clause 25.1, each of which shall be deemed to be a separate representation and warranty given without prejudice to any other representation or warranty and deemed to be a material representation inducing IIS and BSSC to enter into the Transaction Documents to which it is a party.
26. **INFORMATION UNDERTAKINGS**
- The undertakings in this clause 26 remain in force from the Signature Date for so long as this Agreement is in force.

- 26.1 **Requirements as to financial statements**
- 26.1.1 Each set of financial statements delivered by the Client pursuant to item 13 (*Financial Statements to be delivered and ongoing reporting obligations*) in Part 1 (*Table of Particulars*) of the Schedule shall be certified by a director of the relevant company as fairly representing its financial condition as at the date as at which those financial statements were drawn up.
- 26.1.2 The Client shall procure that each set of financial statements of the Client delivered pursuant to item 13 (*Financial Statements to be delivered and ongoing reporting obligations*) in Part 1 (*Table of Particulars*) of the Schedule:
- 26.1.2.1 is prepared using accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for the Client; and
- 26.1.2.2 contains sufficient information, in form and substance as may be reasonably required by IIS, to enable IIS to determine whether the Financial Covenants have been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Client's Original Financial Statements.
- 26.1.3 Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.
- 26.2 **Year-end**
- The Client shall notify IIS in respect of a change to its Financial Year End within two weeks of submitting the documentation in respect of such change to the Companies and Intellectual Property Commission (**CIPC**).
- 26.3 **Information: miscellaneous**
- The Client shall supply to IIS:
- 26.3.1 immediately after becoming aware of them, the details of any litigation, arbitration, administrative proceedings, liquidation applications, winding up applications or business rescue applications which are current, threatened or pending against it;
- 26.3.2 immediately, such further information regarding the financial condition, business and operations of the Client as IIS may reasonably request;
- 26.3.3 immediately after becoming aware of them, the details of any Default or Event of Default or any event or potential event which could reasonably be expected to result in a Default or Event of Default or have a Material Adverse Effect;

- | | | | |
|--------|--|----------|--|
| 26.3.4 | immediately after becoming aware of them, the details of any change in status in the Client's applications for finance with any other party or financial institution; | 26.4.2.1 | no Default or Event of Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it); |
| 26.3.5 | immediately, notice of any change in authorised signatories of it signed by a director, trustee, member or company secretary of it accompanied by specimen signatures of any new authorised signatories; | 26.4.2.2 | no Material Adverse Effect has occurred since the Signature Date; |
| 26.3.6 | all documents dispatched by the Client to its auditors and by the auditors to the Client, including but without limitation, the auditor's report to management and recommendations; and | 26.4.2.3 | there are no events or potential events which could reasonably be expected to result in a Default, an Event of Default or a Material Adverse Effect. |
| 26.3.7 | immediately upon request, such additional information or documentation as IIS may require in order to verify that any signatory referred to in clause 26.3.5 above has been duly authorised. | 26.5 | "Know your customer" (KYC) checks |
| 26.4 | Notification of default | 26.5.1 | If: |
| 26.4.1 | The Client shall notify IIS of any Default or Event of Default or any event or potential event which could reasonably be expected to result in a Default or Event of Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence. | 26.5.1.1 | the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the Signature Date; or |
| 26.4.2 | Promptly upon a request by IIS, the Client shall supply to IIS a certificate signed by two of its directors on its behalf certifying that: | 26.5.1.2 | any change in the status of the Client after the Signature Date, obliges IIS to comply with "know your customer" or similar identification procedures (whether in terms of the Financial Intelligence Centre Act, 2001 or otherwise) in circumstances where the necessary information is not already available to it, the Client shall promptly upon the request of IIS supply, or procure the supply of, such documentation and other evidence as is reasonably requested by IIS in order for IIS to carry out and be satisfied it has complied with all necessary "know your |

customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Transaction Documents.

26.6 **Sanctions**

The Client warrants that it is not on any Sanction List and is not registered or has a place of business in a Sanctioned Country and that the Client will not:

26.6.1 use the proceeds of any imported goods for the purpose of, or conclude any agreement with any person that may have the effect of financing or making funds available directly or indirectly to any person or entity which is currently listed on a Sanctions List or currently located in a Sanctioned Country, to the extent such financing or provision of funds would currently be prohibited by sanctions; or

26.6.2 contribute or otherwise make available the proceeds of any imported goods to any other person or entity if it, as the case may be, has (or ought to have) actual knowledge after due enquiry that such party intends to use such proceeds for the purpose of financing the activities of any person or entity which is currently listed on a Sanction List or is currently located (or ordinarily resident) in a Sanctioned Country, to the extent that such contribution or provision of proceeds would currently be prohibited.

26.7 **Monitoring phone calls**

The Client agrees that IIS may record all incoming and outgoing calls for, inter alia, quality and security purposes.

27. **GENERAL UNDERTAKINGS**

27.1 Any registrable Security forming the basis of the Required Security shall be registered to the reasonable satisfaction of IIS by no later than the date falling one month after the Longstop Date.

27.2 The Client agrees to adhere to the Financial Covenants.

27.3 The Client undertakes to provide IIS with access to its premises and personnel, in the event that the value of the assets and asset classes, cyclicity of the stock and debtors levels, management and general business information may need to be assessed by IIS. Wherever possible and/or prudent, prior notification will be communicated by IIS prior to any visit.

27.4 The Client undertakes that it will not during the period of this Agreement and for a period of thirty six months thereafter, either for itself or as the agent of anyone else, persuade, induce, solicit, encourage or procure that any employee of IIS or BSSC terminates his/her employment or employ any employee of IIS or BSSC.

28. **ADDITIONAL PROVISIONS**

The Parties agree to the additional provisions set out in item 15 (*Additional Provisions*) in Part 1 (*Table of Particulars*) of the Schedule.

29. EVENTS OF DEFAULT

An Event of Default shall occur in relation to the Client if:

- | | | | |
|------|--|-------|--|
| 29.1 | the Client fails to pay any Outstanding Indebtedness on the Payment Date and in the currency and in the manner specified in this Agreement; | 29.7 | the Client fails to duly perform or comply with any other obligation of the Client in any Transaction Document to which the Client is a party and the Client fails to remedy such failure within 5 (five) Business Days after receiving written notice from IIS requiring such remedy; |
| 29.2 | the Client does not comply with the Financial Covenants, and fails to remedy such breach within 14 Business Days of such breach (or such longer period as IIS may elect, in its sole discretion); | 29.8 | any Security Provider fails to duly perform or comply with any obligation of that Security Provider under any Transaction Document to which it is a party and the relevant Security Provider fails to remedy such failure within 15 (fifteen) Business Days after receiving written notice from IIS requiring such remedy; |
| 29.3 | the Available IIS Facility Limit has been exceeded without the prior written consent of IIS; | 29.9 | an event of default (howsoever described) has occurred under any agreement to which the Client or any Security Provider is a party (including, but not limited to, an event of default (howsoever described) under any facility or loan agreement) and is not remedied within the time period specified in such agreement or, if no such time period is specified, within a reasonable time; |
| 29.4 | the Available BSSC Facility Limit has been exceeded without the prior written consent of BSSC; | 29.10 | the Client or any Security Provider suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business; |
| 29.5 | the Value at Risk has been exceeded without the prior written consent of IIS; | 29.11 | an Insolvency Event occurs; |
| 29.6 | any representation or warranty made by the Client or any Security Provider in any Transaction Document to which the Client or such Security Provider is a party (or in any notice or other document, certificate or statement delivered by the Client or that Security Provider pursuant to or in connection with any Transaction Document) is or proves to have been incorrect or misleading when made and the Client or such Security Provider fails to remedy such circumstances within 10 (ten) Business Days after receiving written notice from IIS requiring such remedy; | 29.12 | the Client or any Security Provider breaches and/or repudiates any material provision of any Transaction Document to which the Client or relevant Security Provider is a party and fails to remedy |

- such breach or repudiation within the applicable remedy period;
- 29.13 at any time, any act, condition or thing required to be done, fulfilled or performed by the Client or any Security Provider in order:
- 29.13.1 to enable the Client or relevant Security Provider lawfully to enter into and perform its obligations under the Transaction Documents to which the Client or relevant Security Provider is a party;
- 29.13.2 to ensure that the obligations of the Client or relevant Security Provider under the Transaction Documents to which it is a party are legal, valid and binding;
- 29.13.3 to make the Transaction Documents to which the Client or relevant Security Provider is a party admissible in evidence in South Africa,
- is not done, fulfilled or performed; or
- 29.14 at any time it is or it becomes unlawful for the Client or any Security Provider to perform or comply with any or all of its obligations under any Transaction Document to which the Client or relevant Security Provider is a party or any of the obligations of the Client or relevant Security Provider under any Transaction Document to which the Client or relevant Security Provider is a party are not or cease to be legal, valid and binding;
- 29.15 the Client or any Security Provider taking any action which may generally prejudice the rights of IIS or BSSC;
- 29.16 the Client or any Security Provider concluding any transaction which in the opinion of IIS is outside the ordinary course of its business, without IIS's prior written consent; and/or
- 29.17 any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.
- 30. CONSEQUENCES OF AN EVENT OF DEFAULT**
- 30.1 Upon the occurrence of an Event of Default or at any time thereafter whilst it is continuing, IIS and BSSC may, without prejudice to any other rights it may have in terms of this Agreement or any other Transaction Document or at law, by written notice to the Client, in respect of any or all Transactions:
- 30.1.1 declare that all or part of the Outstanding Indebtedness, together with all other amounts accrued or outstanding under this Agreement to be immediately due and payable, whereupon the amounts so declared shall become immediately due and payable; and/or
- 30.1.2 exercise any of its rights set out in clause 24, in which case the Client shall pay all such amounts (together with any accrued but unpaid interest or Penalty Interest, pursuant to clause 31, thereon calculated from the due date of such

- unpaid sum to its date of payment in full) by no later than the date specified by IIS or BSSC, as the case may be, in the notice delivered to the Client (being no earlier than the last day of any applicable grace period permitted by law); and/or
- 30.1.3 enforce any of the Required Security; and/or
- 30.1.4 charge interest at the Penalty Interest Rate.
- 30.2 Receipts will be applied upon the occurrence of an Event of Default in the following order:
- 30.2.1 **first**, in or towards payment of any Penalty Interest;
- 30.2.2 **secondly**, in or towards payment of costs and other expenses; and
- 30.2.3 **thirdly**, in or towards payment of any remaining Outstanding Indebtedness.
- 31. PENALTY INTEREST**
- 31.1 If an Event of Default occurs then, from the date of occurrence of that Event of Default and for so long as it is continuing, the Base Rate shall not be used to calculate:
- 31.1.1 interest; or
- 31.1.2 the Funding Costs,
- but instead, the relevant rate to be used for such purposes shall be the Penalty Interest Rate.
- 31.2 If the Client fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on that unpaid sum from the due date up to the date of actual payment in full (both before and after judgment) at the Penalty Interest Rate.
- 31.3 Any interest accruing under:
- 31.3.1 clause 31.1 shall be payable on the following Payment Date; and
- 31.3.2 clause 31.2 shall be immediately payable by the Client on demand by IIS.
- 32. VALUE ADDED TAX**
- 32.1 All amounts expressed in this Agreement to be payable by the Client to IIS or BSSC, which (in whole or in part) constitute the consideration for a supply or supplies for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply or supplies. Accordingly, if VAT is or becomes chargeable on any supply made by IIS or BSSC to the Client under this Agreement the Client shall, at the time of paying the consideration for such supply, pay to IIS or BSSC, as the case may be, an amount equal to the amount of such VAT.
- 32.2 This clause does not relate to the payment of customs VAT in respect of the Goods, but relates instead to the rendering of goods and/services by IIS and BSSC to the Client as VAT vendors.

33. FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT

33.1 General

33.1.1 IIS is a registered Financial Services Provider as contemplated in FAIS (Registration no: 42482) and is authorised as an intermediary under FAIS in respect of the following products:

33.1.1.1 Short-Term Insurance: Commercial Lines and Securities; and

33.1.1.2 Securities and Instruments: Derivative Instruments (Foreign Exchange).

33.1.2 Please take note of the additional FAIS disclosures below:

33.1.2.1 IIS employs Mr Lance Rabbie (identity Number 700808 5039 085) on a full time basis as an authorised representative and accepts responsibility for the activities of the representative performed within the scope of his employment. Mr Rabbie has five years of experience in the field and is a CA(SA). Mr Rabbie is authorised under FAIS for the license categories as stipulated in clause 33.1.1.1 and 33.1.1.2 above.

33.1.2.2 IIS does not own more than 10% (ten percent) of issued shares directly or indirectly of any “Assurer” or “Product Provider” (as contemplated in FAIS). Investec

Bank Limited holds 100% (one hundred percent) of the shares in IIS.

33.1.2.3 IIS has executed a cell captive arrangement with Guardrisk Insurance Company Limited for Short Term insurance used to cover all products imported by IIS on behalf of clients.

33.1.2.4 IIS does not receive any non-cash incentives from any product supplier nor are there any personal interests that may give rise to a conflict of interest. For further information, please refer to the IIS ‘Conflicts of Interest Policy’, as amended and/or updated from time to time, which is a public document available for inspection at our offices and which can be found at:

<https://www.investec.co.za/legal/sa/conflicts-of-interest.html>.

33.2 FAIS-related complaints

If you (the Client) feel that your rights under FAIS have been prejudiced, you have the right to lodge a complaint. FAIS requires that all complaints be in writing and a copy of the complaints process is available upon request at the offices of IIS. You may additionally contact the complaints officer, Lance Rabbie, on (011) 245-5600 or via email on (lance.rabbie@investec.co.za). If you are unsatisfied with the internal process, you may escalate the process to the relevant

Ombud (FAIS or Short Term) or if still unsatisfied to the Registrar at the Financial Services Board.

33.3 **Compliance**

Investec Corporate and Institutional Banking is responsible for IIS's compliance with all applicable regulatory requirements. For all compliance related matters, the compliance team at Investec Corporate and Institutional Banking can be contacted at:

Investec Bank Limited
 100 Grayston Drive
 Sandown, 2196
 Tel: (011) 286 7000
 Email: ICIBCompliance@investec.co.za

33.4 **Particulars of relevant Ombuds:**

33.4.1 The FAIS Ombud

Postal address: P.O. Box 74571,
 Lynnwood Ridge, 0040;
 Phone: 086 0662 837
 Fax: 012 3483447
 Physical Address: Eastwood Office
 Park, Boabab House, Ground Floor,
 Lynnwood Ridge, 0081
 Email: info@faisombud.co.za
 Web Site: www.faisombud.co.za

33.4.2 The Short Term Insurance Ombudsman

Postal address: The Ombudsman for
 Short Term Insurance, P.O. Box 32334,
 Braamfontein, 2017
 Phone: 086 0662837
 Fax: 011 726 5501

Physical address: Sunnyside Office
 Park, 5th Floor, Building D, 32 Princess
 of Wales Terrace, Parktown,
 Johannesburg

Email: info@osti.co.za

Web Site:
www.insuranceombudsman.co.za

33.5 IIS holds professional indemnity cover with Santam Limited and fidelity guarantee cover with AIG South Africa Limited as prescribed by FAIS to the limit of R5 million and R10 million respectively.

33.6 All information obtained or acquired from the Client shall remain confidential unless the Client provides written consent, or unless IIS is required by law to disclose such information.

33.7 As an authorised Financial Services Provider, IIS may not request or induce in any manner a Client to waive any right or benefit conferred on the Client by or in terms of any provision of the "*General Code of Conduct for Authorised Financial Services Providers and Representatives*" (as contemplated under FAIS), or recognise, accept or act on any such waiver by the Client.

33.8 If IIS completes or submits any transaction requirement on behalf of the Client, then the Client must be satisfied as to the accuracy and completeness of the details thereof.

33.9 With regards to the completion or submission of any transaction requirement, misrepresentation or non-disclosure of a material fact or the inclusion of incorrect

information which may have an adverse effect on the Client, the Client is entitled to request a copy or record of any transaction or its requirement within a reasonable time.

34. CALCULATIONS AND CERTIFICATES

34.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Transaction Document, the entries made in the accounts maintained by IIS and/or BSSC are *prima facie* evidence of the matters to which they relate.

34.2 Certificates and Determinations

34.2.1 Any certification or determination by IIS of a rate or amount under any Transaction Document is, in the absence of manifest error, *prima facie* evidence of the matters to which it relates.

34.2.2 Any statement or certificate signed by a director of IIS (whose appointment and authority it shall not be necessary to prove) in respect of any amount due and owing by the Client to IIS shall, in the absence of manifest error, constitute *prima facie* proof of the matters to which it relates.

34.3 Day count convention

Any interest, commission or fee accruing under a Transaction Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days (irrespective of

whether the year in question is a leap year).

35. GENERAL

35.1 Communications between the Parties

All notices, demands and other oral or written communications given or made by or on behalf of any Party to the other Parties shall be in English or accompanied by a certified translation into English.

35.2 Remedies

Subject to the provisions of clause 28, 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 is 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 remedies by any of the Parties does not constitute a waiver by such Party of the right to pursue any other remedy.

35.3 Entire Agreement

35.3.1 Other than as expressly provided herein, this Agreement constitutes the entire agreement among the Parties in regard to its subject matter.

35.3.2 None of the Parties shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Agreement.

35.4 Variations

35.4.1 Other than as expressly provided for in this agreement (including the circumstances contemplated in clauses 4.2 and 5.2 above), no agreement to vary, add to or cancel this Agreement shall be of any force or effect unless recorded in writing, signed by or on behalf of the Parties.

35.4.2 Notwithstanding clause 35.4.1 above, IIS shall at all times be entitled, but not obliged, to act on the oral instructions of the Client.

35.5 No Waiver

35.5.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and is not deemed a waiver of any subsequent breach or default.

35.5.2 A failure to exercise or a delay by a Party in exercising any right or remedy provided under this Agreement or by law does not constitute a waiver of that or any other right or remedy, nor does it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law prevents or restricts the further exercise of that or any other right or remedy.

35.6 Survival of Rights, Duties and Obligations

Termination or expiry of this Agreement for any cause does not release any Party from

any liability which at the time of termination or expiry has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination or expiry.

35.7 Severance

If any provision of this Agreement that is not material to its efficacy as a whole is rendered void, illegal or unenforceable in any respect under any law of any jurisdiction, the validity, legality and enforceability of the remaining provisions are not in any way affected or impaired thereby and the legality, validity and unenforceability of such provision under the law of any other jurisdiction are not in any way affected or impaired.

35.8 Cession and Assignment

35.8.1 Neither the Client nor any Security Provider may cede any of its rights or delegate any of its obligations under the Transaction Documents.

35.8.2 IIS and/or BSSC may cede and/or delegate (a “**Transfer**”) any or all of its rights and/or obligations under this Agreement and/or under any other Transaction Document to one or more persons. Without limitation to the generality of the foregoing, IIS and BSSC shall be entitled to sub-contract any of their respective services under this Agreement to any person without the consent of the Client or any Security Provider.

- 35.8.3 The Client consents to any splitting of claims which may arise as a result of a Transfer permitted by this Agreement and shall procure that each Security Provider also consents to such splitting of claims.
- 35.9 Counterparts
- This Agreement may be signed in any number of counterparts. Each counterpart is an original and all counterparts taken together constitute one and the same instrument. The Parties may enter into this Agreement by signing any such counterpart.
- 35.10 Applicable law
- 35.10.1 This Agreement is governed by and shall be construed in accordance with the laws of the Republic of South Africa.
- 35.10.2 Subject to the provisions of clause 28, the Parties consent and submit to the exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg in any dispute arising from or in connection with this Agreement.
- 35.11 General Co-operation
- The Parties shall co-operate with each other and execute and deliver to the other Parties such other instruments and documents and take such other actions as may be necessary or reasonably requested from time to time in order to carry out, evidence and confirm their rights and the intended purpose of this Agreement.
- 35.12 Successors Bound
- This Agreement shall be binding on and shall inure for the benefit or the successors and assigns and personal representatives (as the case may be) of each of the Parties.
- 35.13 Rights of Third Parties
- 35.13.1 This is an agreement between the Parties only and no rights are stipulated for the benefit of any third party.
- 35.13.2 Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to amend, vary, cancel or rescind this Agreement at any time except to the extent that the relevant amendment, variation, cancellation or rescission (as the case may be) relates directly to the right conferred upon any applicable third party under a stipulation for the benefit of that party contained in this Agreement that has been accepted by that third party.
- 35.14 Set-off
- IIS may set off any matured obligation due from the Client under the Transaction Documents against any matured obligation owed by IIS to the Client, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, IIS may convert either obligation at a market

rate of exchange in its usual course of business for the purpose of the set-off.

36. PAYMENT MECHANICS

36.1 Place

Unless a Transaction Document specifies that payments under that Transaction Document are to be made in another manner, all payments by the Client under the Transaction Documents must be made to IIS or BSSC (as applicable) to the IIS Account or the BSSC Account (or such other account at such office or bank in South Africa as IIS or BSSC may notify to the Client for this purpose by not less than 5 (five) Business Days' prior notice).

36.2 Funds

Payments under the Transaction Documents to IIS must be made for value on the due date in immediately available and freely transferable funds, or at such times and in such funds as IIS may specify to the party concerned as being customary at the time for the settlement of transactions in Rand in the place for payment.

36.3 Partial payments

Other than in the case of an Event of Default, which will be dealt with in accordance with clause 30.2, if IIS receives a payment which is insufficient to discharge all the amounts then due and payable by the Client under the Transaction Documents, IIS may apply that payment as it, in its sole and absolute

discretion, determines provided that IIS shall, if the Client makes written request, provide the Client with reasonable information explaining how the payment has been applied.

36.4 No set-off by the Client

All payments to be made by the Client or any Security Provider under the Transaction Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

36.5 Business Days

36.5.1 Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day, unless the next Business Day falls in the following month, in which case the payment shall be made on the preceding Business Day.

36.5.2 During any agreed extension of the due date for payment of any principal or unpaid sum under this Agreement interest is payable on the principal or unpaid sum at the rate payable on the original due date, unless otherwise specified by IIS or BSSC, as the case may be.

36.6 Currency of account

36.6.1 Subject to the provisions of this clause 36.6, ZAR is the currency of account and payment for any sum due from the Client under any Transaction Document.

- 36.6.2 Each payment in respect of costs, expenses or Tax shall be made in the currency in which the costs, expenses or Tax are incurred.
- 36.6.3 Any amount expressed to be payable in a currency other than Rand shall be paid in that other currency.
- 37. ADDRESSES FOR LEGAL PROCESSES AND NOTICES**
- 37.1 The Parties choose for the purposes of this Agreement the following addresses and email addresses:
- 37.1.1 for IIS:
- Physical address: 61 Katherine St,
Dennehof, Sandton, 2196
Email address:
antony.meltzer@investec.co.za
Marked for the attention of: A.
Meltzer
- 37.1.2 for BSSC:
- Physical address: 61
Katherine St, Dennehof, Sandton, 2196
Email address:
antony.meltzer@investec.co.za
Marked for the attention of: A.
Meltzer
- 37.1.3 for the Client, the address and email address indicated as such in item 3 (*Address for legal processes and notices*) in Part 1 (*Table of Particulars*) of the Schedule.
- 37.2 Any legal process to be served on any of the Parties may be served on it at the address specified for it in clause 37.1 and it chooses that address as its *domicilium citandi et executandi* for all purposes under this Agreement.
- 37.3 Any notice or other communication to be given to any of the Parties in terms of this Agreement is valid and effective only if it is given in writing, provided that any notice given by email is regarded for this purpose as having been given in writing.
- 37.4 A notice to any Party which is delivered to the Party by hand at the address specified for it in clause 37.1 is deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours on a Business Day, failing which it shall be deemed to have been received on the following Business Day.
- 37.5 Each notice by email to a Party at the email address specified for it in clause 37.1 is deemed to have been received within 4 hours of transmission if it is transmitted on a Business Day and during normal business hours of the receiving Party or within 4 hours of the beginning of the next Business Day at the destination after it is transmitted, if it is transmitted outside those business hours.
- 37.6 A notice to any Party which is sent by overnight courier in a correctly addressed envelope to the address specified for it in clause 37.1 is deemed to have been

received on the Business Day following the date it is sent.

37.7 Notwithstanding anything to the contrary in this clause 37, a written notice or other communication actually received by any Party is adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

37.8 Any Party may by written notice to the other Parties change its address or email address for the purposes of clause 37.1 to any other address (other than a post office box number) provided that the change will become effective on the day following receipt of the notice by the Party who received it last.

38. COSTS AND EXPENSES

38.1 General

The Parties are responsible for their own costs, legal fees and other expenses incurred in the negotiation, preparation and execution of this Agreement. The Client is responsible for all costs associated with the entering into or registration of any Required Security.

38.2 Amendment costs

If:

38.2.1 the Client requests an amendment, waiver or consent the Client shall, within three Business Days of demand, reimburse IIS for the amount of all costs and expenses (including legal fees)

reasonably incurred by IIS in responding to, evaluating, negotiating or complying with that request or requirement;

38.2.2 there is any change in law or any regulation which requires an amendment, waiver or consent under the Transaction Documents, the Client shall, within three Business Days of demand, reimburse IIS for the amount of all costs and expenses (including legal fees) reasonably incurred by IIS in connection with evaluating, negotiating or complying with any such requirement.

38.3 Enforcement costs

The Client shall, within three Business Days of demand, pay to IIS the amount of all costs and expenses (including legal fees on the scale as between attorney and own client whether incurred before or after judgement) incurred by IIS in connection with the enforcement of, or the preservation of any rights under, any Transaction Document.

39. LEGAL REPRESENTATION

The Client acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all the provisions of this Agreement and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, the Client acknowledges that all of the provisions of this Agreement and the restrictions contained herein have been

negotiated as between it and the other Parties hereto and are part of the overall intention of the Parties in connection with this Agreement.

ANNEXURE 1
TRANSACTION BASED TERMS AND
CONDITIONS

1. This Annexure shall only apply to this Agreement if the box specified in item 19 (*Transaction Based Terms and Conditions*) in Part 1 (*Table of Particulars*) of the Schedule has been selected.
2. From time to time, IIS shall approve a list of customers of the Client (the **Approved Customers**) from which orders will be accepted by IIS, subject to the provisions of clause 24.1.2 of the Agreement (each an **Accepted Order**).
3. Any order which is capable of acceptance by IIS (and may thereby constitute an Accepted Order) shall at least:
 - 3.1 be a firm order, in a form acceptable to IIS;
 - 3.2 have been received by IIS by no later than 1 (one) month prior to the proposed shipment of that order;
 - 3.3 have a delivery date which is capable of being met (all things remaining equal);
 - 3.4 have a gross profit margin which is acceptable to IIS; and
 - 3.5 correspond with the order to be placed by IIS on the foreign supplier;

unless agreed otherwise in writing.
4. The Client shall procure that each Approved Customer signs a written agreement containing an irrevocable undertaking, in the form as prepared by IIS from time to time, in terms of which it undertakes to IIS to make payment in respect of each Accepted Order directly to IIS or into a joint bank account to be opened by the Client and IIS with The Standard Bank of South Africa Limited (the **Joint Account**).
5. The Joint Account will be utilised solely for the purposes specified in this Annexure.
6. With effect from the date upon which this Agreement becomes unconditional in accordance with its terms, any gross revenue which is generated by the Client, in respect of Accepted Orders will accrue to the Joint Account.
7. Authorised signatories of the Joint Account shall be one representative of the Client (to be approved in writing by IIS) and one representative of IIS.
8. By no later than the second business day of each month, IIS shall deliver to the Client a reconciliation statement containing full and accurate details of the Client's account with IIS and its indebtedness to IIS under this Agreement (the **Statement**).
9. IIS shall release from the Joint Account, payment which is equal to the net profit minus the Client's indebtedness to IIS, as reflected in the Statement (the **Monthly Revenue**), on the 3rd (third) Business Day following delivery of the Statement or the Revised Statement contemplated in paragraph 12 below of this Annexure (as the case may be), by electronic transfer into the bank account of the Client, as specified by the Client to IIS in writing from time to time.

10. If the Client disputes any aspect of the Statement, which in its opinion could impact the Monthly Revenue payable by IIS, it may deliver written notice to that effect, setting out, in reasonable detail, the nature and basis for such dispute (**Dispute Notice**) to IIS within 2 (two) business days following receipt of the Statement (the **Time Period**).
11. If the Client does not deliver a Dispute Notice to IIS within the Time Period, the Statement shall be deemed to have been accepted by the Client and the Monthly Revenue shall be paid to the Client in accordance with paragraph 9 above of this Annexure.
12. If a Dispute Notice is delivered to IIS within the Time Period, then, for a period of 5 (five) business days following the receipt by IIS of the Dispute Notice, the Parties shall endeavour in good faith to resolve by mutual agreement all matters in the Dispute Notice. If the Parties resolve all the matters in the Dispute Notice within such 5 (five) business day period, the Statement shall be deemed to be adjusted accordingly (the **Revised Statement**) and the Monthly Revenue shall be paid to the Client in accordance with paragraph 9 above of this Annexure.
13. If the Parties do not resolve any matter in the Dispute Notice within the 5 (five) business day period referred to in paragraph 12 above of this Annexure, the items in dispute shall be submitted to a mutually acceptable accounting firm (the **Independent Auditors**) for final determination, and the Statement shall be adjusted in accordance with the determination of the Independent Auditors, acting as experts and not as arbitrators, and shall become final and binding on the Parties. To the extent that the Parties fail to agree a mutually acceptable accounting firm to act as Independent Auditors within 2 (two) business days after the end of the 5 (five) business day period referred to in paragraph 12 above of this Annexure, the Independent Auditors shall be such firm appointed by the President for the time being of The South African Institute of Chartered Accountants, Southern Region.