



LEASE AGREEMENT

MADE AND ENTERED INTO BY AND BETWEEN

THE DEPARTMENT OF _____

NORTH-WEST PROVINCE

A Provincial department duly established in terms of Section 7 (2) and schedule 2 of the Public Service Act, as Amended, herein represented by _____ in his capacity as the Superintendent General appointed in terms Public Service Act, 1994

(Proclamation No: 3 of 1994)

(Hereinafter referred to as the Lessee”)

AND

A close corporation established in terms of the close corporation laws of the Republic of South Africa, with registration number _____ herein represented by _____ in his capacity as the Director. Who warrants that s/he is duly authorised to act on behalf of the company in terms of the resolution attached as

Annexure “A”

(Hereinafter referred to as the “Lessor”

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LEASE

1. PARTIES

The parties to this agreement are;

AND

2. DEFINITIONS AND INTERPRETATION

2.1 In this agreement, unless the context indicates otherwise, the following words have the meaning assigned to them hereunder;

“Adjustment date” – lapse of a period of twelve (12) month, on which the escalated rate comes into effect;

“The agreement” – means this lease agreement together with any schedules annexed thereto;

“Building” – the entire structure known as _____, situated at _____;

“Commencement date” – means the date this agreement shall come into effect, being _____;

“Escalation rate” – the seven (%) percentages, which adjusts the rental on every adjustment date;

“Expenses” – those adjustments in respect of the premises which are occasioned by the ownership or the operation thereof; including but not limited to, assessment rates, municipal levies, air-conditioning maintenance, lift maintenance and insurance premiums;

“Lessee” – means the North West Department of _____

“Lessor” – the owner of the premises is he/she does not sign personally, is herein represented by the director who warrants that s/he is authorised to sign this agreement on behalf of the lessor;

“Exit Maintenance” – everything which is required to be done in order for the lessee to return the premises to the lessor, on termination or expiry of this agreement, in the condition they were in at the commencement date, fair wear and tear excepted;

“Parties” – means both the lessee and the lessor;

“Premises” – the building and/or the structure and/or the land, or portions thereof, including _____ parking bay, which is situated at _____,

which form the subject of this agreement;

“Repairs” – everything which is required to be done in order to achieve the same goal as that envisaged in the definition of “maintenance” but which requires more labour and more expense than maintenance, such as the replacement of cables, taps, locks, floor tiles, geysers and the like.

“Signature date” – the date stipulated of this agreement by the party which signs last in time;

“Termination date” – means the expiry of a period of 3 years;

“VAT” – Value-added Tax in terms of the Value Added Tax Act No. 89 Of 1991 as amended;

- 2.2 The clause headings of this agreement have been inserted for reference purpose only and shall not be taken into account in its interpretation. Unless the context indicated otherwise, words importing the singular shall include the plural, words importing persons shall include body corporate, and, in each instance, also the opposite thereof;
- 2.3 If a provision in a definition is substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive provision in the body of the agreement, notwithstanding that it is in the definitions clause.
- 2.4 Any reference to an enactment, regular, rule or by-law is to that enactment, regulation, rule or by law as at the signature date and as amended or replaced from time to time.
- 2.5 Where any number of days is prescribed, such number shall exclude the first and include the last day, unless the last day falls on a Saturday, Sunday or Public Holiday in South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday.
- 2.6 The use of the word “including” followed by a specific example/s shall not be construed as limiting the meaning of the general wording succeeding it and the eiusdem generis rule shall not be applied in the interpretation of such general wording or such specific example/s
- 2.7 The expiration or termination of this agreement shall not affect those provisions of this agreement which expressly provide that they will operate after any such expiration or termination or which of necessary must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide this.
- 2.8 In its interpretation, the contra proferentem rule of construction shall not apply (this agreement be the product of negotiations between the parties) nor shall this agreement be construed in favour of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation on this agreement.

3 THE LEASE

- 3.1 The lessor hereby leases the premises to the lessee who hires the premises on the terms and conditions set out in this agreement, it being specifically recorded and notwithstanding anything to the contrary contained in this agreement, that the only persons who are mandated to negotiate, enter into, amend or otherwise agree the terms and conditions of this agreement are lessor and lessee;

4. DURATION AND RENEWAL

- 4.1 This agreement shall commence on the commencement date and shall endure for the period _____ (start date) and shall continue to run for a period of three (3) years.
- 4.2 Upon the expiry of the initial lease period, the lessee shall have the option of renewing this agreement for an additional period as the secondary lease period upon the terms and conditions contained in this agreement provided that in respect of rental payable from the date on which the secondary lease period commences ("the renewal date"), the parties will be based on an escalation rate which is not higher than the increased rate of the last period of the agreement.
- 4.3 The lessee shall give written notice to the lessor of its intention to exercise the option to renew this agreement (refer to in clause 4.2 above) by no later than 3 months prior to the expiry of the initial lease period.
- 4.4 On expiry of the first period and upon receipt of a written notice from the lessee in terms of clause 3 above, the terms of the contract shall remain for the duration of the extension exercised by the lessee unless otherwise agreed to in writing.
- 4.5 On expiry of the secondary lease period, the lease shall automatically terminate unless the parties agree in writing to a further extension of this agreement.
- 4.6 The terms and conditions of lease during the secondary lease period and any further lease period as referred to in 4.5 shall be those contained in this agreement.

5. THE RENTAL

- 5.1 During the initial rental period, with effect from the commencement date, the monthly rental payable by the lessee to the lesser shall be R _____
(in words _____)Vat included
- 5.2 Thereafter the rental shall escalate each year, one each anniversary date of the lease, in accordance with the escalation rate of _____% (seven percent), per annum

7. OCCUPATION OF THE PREMISES

The lessor warrants the lessee's right to free and undisturbed possession of the premises from the commencement date until termination of this agreement.

8. CONDITION OF PREMISES AT THE COMMENCEMENT DATE AND AT THE TERMINATION DATE

- 8.1 The lessor shall be responsible for installing disable ramps, toilets, service air conditions, do all maintenance of the building and ensure it complies with occupational health and safety, together with National Building Regulations requirements.
- 8.2 Should the Lessor fail to comply with the clause 8.1, lessee may have such installations made at the reasonable cost thereof and the party which was responsible for such installation shall become liable for such amount; provided that where the lessor does not make such installation and the lessee makes such installation on its behalf, the lessee shall be entitled to reduce its rental payment due to the lessor until such time as it has recouped its costs in respect of making the installation on behalf of the lessor.
- 8.3 The lessee shall in writing issue a Certificate of Occupation, in which Lessee accept the the lessor has complied with terms of the agreement and that the Building is ready and available and ready to use, inclusive of the date of occupation.
- 8.4 The lessee shall, within 30 days of occupation of the premises, furnish the lessor with three (3) dates and times, which dates must be within thirty-one (31) days of occupation, to convene a meeting to inspect the premises, so as to ascertain any damages or defect in the premises and general condition of the premises and to record them in a list which is a three parties shall sign.
- 8.5 The Lessor shall within thirty (30) days of such inspection repair the defect(s), failing which the lessee may be entitled to rectify those defects as its own expense and to recover the costs thus incurred in accordance with procedure laid down in sub-clause 8.1 above.
- 8.6 Should the lessor fail to comply with his obligations in respect of installations required by the lessee, if any, or fail to repair the damages or defect(s), he lessee shall notify the lessor of such failure and unless the lessor so complies within fourteen (14) days, save in emergencies, the lessee shall be entitled to rectify those matters at his own expense and to recover the costs thus Incurred by means of direct deduction from monies due to the lessor.
- 8.7 The lessor shall furnish dates and times at least at fourteen (14) working days prior to the expiry of the lease for inspection of the premises after termination of the lease. Within fourteen (14) days after expiry of this agreement, the lessor shall ensure that the following lists are compiled and delivered to the lessee;

- 8.7.1 A list of all items where the parties agree that such items are damaged or defective and that the lessee is liable; and
- 8.7.2 List of the items where the damaged or defective and which in the opinion of the lessor and lessee is liable for, whereas the lessee denies liability.
- 8.8 The items recorded in the list contemplated in clause 8.7.2 shall be replaced as per agreement between the parties. Should parties fail to reach an agreement within seven (7) days from the date of delivery of the lists to the lessee, the dispute may by agreement between the parties be referred to an independent professional who shall act as a mediator in an attempt to resolve dispute.
- 8.9 The lessee shall be liable for a pro rata rental in the event the premises/part of the premises are not available for use.

9. FIXTURES

- 9.1 The parties agree that for the purpose of the interpretation of this clause and of this agreement, fixtures shall refer to movable or immovable fittings installed by the lessee and required for its purpose, such as computer cables and telephone systems. The lessee shall be entitled, at its expense and with the written consent of the lessor, which consent shall not be unreasonably withheld, to install fixtures (which shall remain the property of the lessee) on the premises; provided that after the termination of this agreement-
- 9.2 Fixtures may be removed by the lessee on condition that the premises are resorted to the condition in which they were before the installation of the fixtures, fair wear and tear excepted; or
- 9.3 The lessor may demand that fixtures which have not been thus removed, shall be removed by the lessee, in which event the same requirement regarding the restoration of the premises 9.2 above shall apply

10. EXPENSES, MAINTANANCE AND REPAIRS

- 10.1 Subject to 10.3 below, the lessor shall be responsible for and pay all and any expenses in respect of the premises
- 10.2 the lessor shall be responsible for contracting the suppliers of utilities to the premises referred to in clause 10.1 above and shall be directly responsible for payment of these charges and any connection fees and deposits in respect thereof.
- 10.3 The lessee shall be responsible for and will pay the cost of utilities, cleaning and security on the premises for the duration of this agreement. Electricity shall be charged according to the relevant meter reading, provided prima facie by reading meters or sub-meters and recording same.
- 10.4 Notwithstanding the provisions of 5.7, 10.1, 10.2 and 11.1 the lessee shall be responsible for any increase in the rates and taxes payable by the lessor in respect of

the premises after commencement date.

- 10.5 In the event of the premises being a portion of a building and it consequently being necessary to determine the lessee's pro rata share in respect of maintenance or consumption of necessary service, the pro rata share of the lessee, for the purpose of this agreement, shall be determined by calculating the area of the premises as a fraction of the total area of the building.
- 10.6 Should the lessor fail to pay expenses or to undertake repairs, the lessee may remain the such longer period which the parties may have agreed upon the lessee shall be entitled to demand specific performance or to pay such expenses or to undertake such repairs and to recover the amounts thus disbursed from rental due to the lessor by set off or by legal action. A certificate by the lessee of such of such expenses shall be prima facie proof thereof.

11. OBLIGATIONS OF THE LESSOR

In addition to any other obligations contained in this agreement, the lessor shall be responsible:

- 11.1 For the payment of assessment rate and fixed municipal levies not referred to in 10.4 above, including all related increases;
- 11.2 For insuring the premises, including the buildings as provided for in clause 13 below;
- 11.3 For installation and maintenance of mechanical and fire services equipment, including fire detection equipment, fair wear and tear excepted, as further stipulated in clause 14 hereof;
- 11.4 For landscape maintenance of the premises;
- 11.5 to provide, at the Lessor's expense, all electric, fluorescent, and incandescent light bulbs required on the property;
- 11.6 For the maintenance of, and for all repairs and replacements becoming necessary from time to time in or to, the roofs and outside walls of the buildings including the maintenance and repairs of the structure of the buildings including the maintenance and repair of the structure of the buildings, and all systems, works and installations contained therein;
- 11.7 For maintaining in good order and condition the exterior, roof, gutters and down-pipes of the premises and shall make good any structural defects, other than damage caused by the lessee, (for which the lessee shall be liable, and in respect of which the provisions of this agreement shall apply);
- 11.8 For normal maintenance and repair (including painting) of both the exterior and interior of the premises, including the cleaning of the exterior of the premises as well as windows, in high rise building;
- 11.9 For the operation (including maintenance and repairs) of the air-conditioning system and the lifts during normal office hours or during such times as may be agreed upon;

- 11.10 For water and electricity consumption to the extent that these are not separately metered for the occupant;
- 11.11 For municipal rates (existing and future) levied on ownership (including rates increases)
- 11.12 For installation and maintenance of the fire extinguishing and fire detection equipment as stipulated in clause 13; and
- 11.13 For the replacement of floor covering (carpeting etc) at the expiry of their agreed lifetime.
- 11.14 For submission of valid annual tax certificate;
- 11.15 Compliance with Occupational Health and Safety and Act
- 11.16 Compliance with Department of Labour applicable standards annually-Certification of Occupation
- 11.17 Signing of facilities Management performance schedule specifying maintaining standards and obligations

12. OBLIGATIONS OF THE LESSEE

In addition to any other obligations contained in this agreement, the lessee shall

- 12.1 Not use premises or allow them to be used, in whole or part, for any purpose other than that of the legitimate government business
- 12.2 Take good and proper care of the interior of the buildings
- 12.3 Be responsible for all reasonable security, manned or otherwise, necessary to protect the premises
- 12.4 Not cause or commit any unreasonable nuisance on the premises or cause any annoyance or discomfort to neighbours or the public
- 12.5 Not unreasonably leave refuse to allow it to accumulate in or about premises
- 12.6 Refrain from interfering with electrical, Plumbing, or gas installation or systems serving the premises
- 12.7 Take all reasonable measure to prevent blockages and obstructions from occurring in drains, sewerage pipes and water pipes serving the premises
- 12.8 At all times comply with any law, by law or regulation of the local authority relating to the conduct of its business at the premises and also with the conditions of the title deed under which the premises are held by the lessor;

- 12.9 Be permitted to place such electrical or other signage on the exterior of the premises as it may reasonably;
- 12.10 Forthwith disclose in writing to the lessor details of any act, matter or thing, stored or carried out upon the premises which may affect, vitiate or endanger the fire insurance policy in respect of the property or which may results in an increase of the fire insurance premium
- 12.11 undertake domestic cleaning of the interior of the premises, including domestic services such as the provision of toilet paper, soap, towels, etc.; excluding common areas
- 12.12 be responsible for the cost of sanitary services

13. INSURANCE

- 13.1 The lessor shall comprehensively insure the property and the building, and fittings at its replacement value, at the Lessor's own risk and cost.
- 13.2 The lessee and the occupant may not after commencement of the lease do, or allow anything that is contrary to the provision of the insurance policy which will cause an increase in the premiums of any insurance policy held by the lessor over the property, provided that the conditions or the insurance policy will be communicated in writing to the lessee. The lessor will communicate the conditions or insurance policy on the premises in writing to the lessee within seven (7) days of the commencement of the lease agreement.
- 13.3 Should the lessee knowingly do or cause to be done anything that causes an increase in the premiums of such insurance policy, the lessee will be liable for the increase in the premiums occasioned by the actions of the lessee. The lessor shall furnish to the lessee proof from the insurer of such increase any payment shall be due from the lessee.
- 13.4 The lessor shall not be liable for any damage which the lessee may suffer as a consequence of rain, wind, hail, lightning, fire, earthquake, storm ,riots ,strikes, actions by enemies of the State or in consequence of the interruption of any facility or services supplies to the premises by third parties, unless such damage could have been prevented by the lessor, his employees or agents.
- 13.5 The lessor shall not be liable for any accident, injury or damage incurred by the lessee, his employees, agents or visitors, in or near the premises, unless this could have been prevented on the part of the lessor, his employees or agents.

14. FIRE FIGHTING EQUIPMENT AND LIFTS

- 14.1 The lessor shall be obligated to install, maintain and operate on the premises fire extinguishing and fire detection equipment complying with the national building, and/or any other applicable legislation.
- 14.2 The lessor shall be obliged to maintain the fire extinguishers and ensure that regular checks done on the fire extinguishers

- 14.3 The lessor shall provide the lessee with quarterly reports of regular checks done on the fire extinguishers to ensure safety and security of the occupants of the premises.

15 ALTERATIONS, ADDITIONS AND IMPROVEMENTS

- 15.1 The lessee shall not make any alterations or additions to any of the building, the premises or any part thereof. Without the Lessor's prior written consent, but the lessor shall not withhold its consent unreasonably to any such alterations or addition.
- 15.2 in the event that the lessee does make any such prohibited alterations or additions, it is agreed between the parties that such alterations and/or additions shall become an immovable part of the respective building or premises to which it is made and shall thus be owned by the lessor. When alterations or additions has added value to the buildings, the lessor shall negotiate with the lessee on the monetary amount to be paid to the lessee for making such alterations or additions.
- 15.3 Notwithstanding the aforesaid, the lessee shall be entitled to make any non-structural alterations or additions to the interior of the premises without the Lessor's prior written consent, provided that the lessee may, on the expiration of this agreement, remove such non-structural alterations or additions as it may have made, provided that simultaneously with any such removal, it reinstates the premises or part of the premises in question, at the lessee's cost, to their same condition (fair, wear and tear excepted) as they were in prior to the carrying out such alterations or additions.

16 DAMAGE TO OR DESTRUCTION OF THE PREMISES

- 16.1 In the event of the premises being destroyed and there rendered totally unfit for occupation, this agreement shall be terminated automatically
- 16.2 In the event of the premises being damaged and remaining partially suitable for the purpose of the lessee, the parties shall be entitled to terminate this agreement by thirty (30) days notice in writing given to the other party within thirty (30) days after such destruction or damage
- 16.3 Should no notice in terms of 16.2 above be given, then this agreement shall continue and the lessor shall be obliged to proceed expeditiously with work of rebuilding the premises. Should the parties continue with the agreement, the lessee shall be entitled to a reduction in rental to the extent to which the lessee is deprived of the full and beneficial use and occupation of the premises until such time as the premises have been rebuilt or re-instated.
- 16.4 Should there be any dispute as to the extent to which the premises are unfit for occupation and capable of being used for the purpose for which they are let, the dispute shall be referred to an expert and not as an arbiter, and whose decision shall be final and binding on the parties. The parties shall be, failing which they expect shall be appointed by the chairperson of the Law Society of South Africa or his delegate.

17 BREACH

17.1 Subject to any specific provision in this agreement to the contrary, should:

17.1.1 the rental or any other amount payable by the lessee in terms of this agreement not be paid by due date or should the lessee commit or suffer or permit the commission of any breach of the remaining conditions of this agreement and fail to pay such rental or amount or to remedy breach within

18. MANAGEMENT RULES

18.1 The lessor will furnish the lessee with all management rules, if any, prior to entering into this Agreement.

19 LESSORS RIGHTS OF ENTRY AND CARRYING OUT WORKS

19.1 The Lessor's representatives, agents, servants and contractors may at reasonable times and on reasonable notice, without thereby giving rise to any claim or right of action on the part of the lessee of the property or any part thereof, enter the property or any of the buildings in order to inspect them, to carry out any necessary repairs, replacements, or the other works, or to perform any other lawful function in the bona fide interests of the lessor or the lessee or the occupant, but the lessor shall ensure that this right is exercised with due regard for and a minimum of interference with the beneficial enjoyment of the property by those in occupation thereof, and provided further that such rights will be exercised subject to the lessee's specific security requirements relating to the physical security of the property

20. NAMING RIGHTS

20.1 The lessor shall grant the lessee the right to name the premises if the lessee is the sole or majority user of such premises for the duration of such lease.

21 CESSION, ASSIGNMENT AND SUB-LETTING

21.0 The lessee shall not, except with the prior written consent of the lessor, which shall not be unreasonably withheld;

21.1 cede or assign all or any of the rights and obligations of the lessee under his agreement; or

21.2 sublet the premises in whole or in part; or

21.3 give up possession of the premises or any portion thereof to any third party; Provided that it is an explicit provision of this agreement that the lessee may substitute one occupant with another as its own discretion, taking into consideration any concerns

communicated by the lessor.

22 NON-WAIVER

- 22.1 Neither party shall be regarded as having waived, or been in any way from exercising, any right under or arising from this agreement by reason of such party having at any time granted any extension of time for or having shown any indulgence to the other party with reference to any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of any right of action against the other party.
- 22.2 The failure of either party comply with any non-material provision of this agreement shall not excuse the other parties from performing their obligations hereunder fully and timeously.

23 RIGHTS OF FIRST REFUSAL

- 23.1 The lessor hereby grants to the lessee and the lessee hereby accepts the rights of first refusal to purchase the property.
- 23.2 Pursuant to the right granted by the lessor in favour of the lessee in 21.1, the lessor shall not dispose of any part or whole of the property at any time except in accordance with the following:
- 23.2.1 if the lessor intends to so dispose, the lessor shall deliver to the lessee a written notice offering ("the offer notice") so to dispose. To the lessee at a consideration (which shall sound in money currency) and on such terms as may be stipulated in the offer notice; and on such terms as may be stipulated in the offer notice; and
- 23.2.2 the lessee may, at any time within 60 days after the receipt of the offer, accept it by giving written to the lessor to that effect.
- 23.3 if the lessee does not accept the offer within the period aforesaid, the lessor may dispose of the property on terms no more favourable than the terms contained in the offer notice within a period of 90 (ninety) days after the lessee has rejected the offer, where after the lessor shall again be obliged to follow the procedure in clause.
- 23.4 should the lessee not exercise its right of first refusal in relation to the property or in relation to any rights thereto or pursuant thereto, the relevant acquire shall acquire the property free of the right of first refusal contained in this clause.

24 SALE OF PREMISES

- 24.1 Transfer of the ownership of premises from the lessor to a third party pursuant to a sale Thereof shall not in any way affect the validity of this agreement. It shall accordingly, upon Registration of transfer of the premises into the name of the purchaser, remain of full force and effect save that the purchaser shall be substituted as lessor, as lessor, enjoyed against or was liable to fulfil in favour of the lessee in terms of this agreement.
- 24.2 Nothing shall prevent the lessor from advertising the premises as "for sale" or as "to let" as long as it does not disturb the lessee in its use and enjoyment of the premises an any activities which the lessor undertakes are undertaken on reasonable notice to the occupant.

25 WHOLE AGREEMENT

25.1 This is the entire agreement between the parties

25.2 Neither party relies, in entering into this agreement, on any warranties, representations, disclosures or expressions of opinion, which have not been incorporated into this agreement as warranties of undertakings.

25.3 No variation, alterations, or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by the duly authorised representatives of both parties

26. DOMICILIUM CITANDI ET EXECUTANDI

26.1 The parties respectively choose as domicilium citandi et executandi and as the address for the serving of notices the address appearing below

PARTY DETAIL	DEPARTMENT	SERVICE PROVIDER
Physical address		
Postal address		
Tel no		
Cell no		
Email address		
Fax no		
For attention		

26.2 Any notice given by one of the parties to the other (“the addressee”) which:-

26.2.1 is delivered by hand to a responsible person during ordinary hours at the physical address chosen as the addressee’s domicilium citandi shall be deemed to have been received by the addressee on the date of the delivery, until the contrary is provided;

26.2.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee’s domicilium citandi et executandi, shall be deemed to have been received by the addressee on the tenth (10Th) business day of the date of posting (unless the contrary is proved; or

26.3 Either party shall be entitled, on 14 days notice to the other, to change the address of his domicilium citandi et executandi.

27 WARRANTY OF AUTHORITY

27.1 The parties hereby warrant that each of them has the power, authority and legal right to sign and perform this agreement and that this agreement has been duly authorised by all necessary actions of its directors, to the extent applicable, and constitutes valid and binding obligation on it in accordance with the terms thereof.

28 SEVERABILITY

28.1 Any provision in this agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated pro non scrip to and severed from the balance of this agreement, without invalidating the remaining provisions of this agreement or enforceability, of such provision in any other jurisdiction.

DONE AND SIGNED AT MMABATHO ON THIS _____ DAY OF _____ 2018

AS WITNESSES

1. _____

2. _____

For and/or on behalf of the “LESSEE”, who warrant that s/he is duly authorised thereto:

DONE AND SIGNED AT _____ ON THIS _____ DAY OF _____ 2017

AS WITNESSES

1. _____

2. _____

For and/or on behalf of the "LESSOR", who warrant that he is duly authorised in terms of the company resolution attached hereto: