



LEASE AGREEMENT

Entered into by and between:

_____)
(Registration number _____)
(hereinafter “the Lessor”)

and

THE SOUTH AFRICAN MEDICAL ASSOCIATION NPC
(Registration number 1927/000136/08)
herein representing its _____ BRANCH
(hereinafter “the Lessee”)

in respect of the following property (hereinafter “the property”):

1. DEFINITIONS

In this agreement, unless the context otherwise requires, the expressions defined below shall bear the meanings set out hereunder:

- 1.1 **“Business day”** means every day except a Saturday, Sunday or official public holiday;
- 1.2 **“Commencement date”** means the date as recorded in the Schedule, upon which, in the reasonable opinion of the Lessor, the lease will commence or such other date as may be determined in terms of clause 3.2;
- 1.3 **“Common area”** means all staircases, stairwells, toilets not specifically set aside for the Lessee’s exclusive use, gardens, parking areas, ramps, entrances and hallways and all areas which are not in the opinion of the Lessor to be designated as rentable areas;

- 1.4 **“Fittings”** - means fixtures, fittings and appurtenances and appliances belonging to the Lessor and contained in the building or located on the premises but which do not form part of the furniture;
- 1.5 **“Furniture”** - means the furniture, furnishings, appliances, tools, implements, equipment and other articles and items listed on the asset register of the Limpopo Branch of the Lessee.
- 1.6 **“Leased premises”** means the area let in terms of this lease and as described on page 1 of this agreement, together with any areas in respect of which the Lessee has exclusive use;
- 1.7 **“Lessee”** means the South African Medical Association NPC, registration number 1927/000136/08, a non-profit company duly registered in terms of the laws of South Africa, herein acting on behalf of its _____ Branch.
- 1.8 **“Lessor”** means the company, business or person from which the property is leased.
- 1.9 **“Month”** means a calendar month.
- 1.10 **“Property”** means the property forming the subject-matter of this lease agreement, as described on page 1 of this agreement;
- 1.11 **“Pro rata share”** means the ratio between the area that the leased premises bears to the total rentable area of the property as measured according to the method of measurement as laid down by the South African Property Owners Association, and as amended from time to time. Should the area of the leased premises on occupation be found to be different from the estimated area as stated in the Schedule, due to a change in the method of measurement or any reason whatsoever, then the Lessee’s pro rata share as stated in the Schedule, will be adjusted to reflect the correct pro rata share;
- 1.12 **“Rates and taxes”** means those charges levied by any competent authority or body, upon and in respect of the property and/or building/s, or other charges related to the value of the property and/or improvements thereon, at any time and from time to time during the currency of this lease, including increases in those charges.

2. INTERPRETATION

- 2.1 In this Agreement, unless inconsistent with the context, words referring to:
- 2.1.1 one gender shall include a reference to the other genders;
- 2.1.2 the singular includes the plural and *vice versa*;
- 2.1.3 natural persons include juristic persons and *vice versa*.
- 2.2 When a number of days is prescribed in this agreement, such number shall be calculated in accordance with the “business day” definition set out in 1.1 above, excluding the first and including the last day, unless the last day falls on a day which is not a business day, Sunday or official public holiday, recognised as such in the Republic of South Africa, in which case the last day shall be the succeeding day which is a day which is not a business day.

- 2.3 Any schedules or appendices to this agreement shall be deemed to form part of this Agreement.
- 2.4 Any reference to legislation or a statute in this agreement shall be a reference to such legislation or statute as amended, varied or re-enacted from time to time.
- 2.5 Any reference in this agreement to another agreement shall be to such agreement as amended, supplemented, varied, notated or replaced from time to time in accordance with its terms and conditions.
- 2.6 Titles of clauses and schedules of and to this agreement are inserted for the sake of convenience only and shall not be used in respect of or in any way affect the interpretation of any provision of this agreement.
- 2.7 A reference in this agreement to any person shall be a reference to such person's permitted successor, transferee, cessionary and/or delegate.
- 2.8 Where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of this agreement, notwithstanding that that term has not been defined in this interpretation clause.
- 2.9 All rentals and other amounts stipulated herein do not include value added tax - the Lessee is, in addition to the stipulated amounts, also liable for value added tax payable in respect thereof.

3. LETTING AND HIRING

The Lessor hereby lets to the Lessee, who hires, the premises, subject to the terms and conditions contained in this agreement.

4. COMMENCEMENT DATE

- 4.1 Unless postponed by the Lessor, in writing, the commencement date of this lease shall be _____201__.
- 4.2 In the event of the postponement of the commencement date the lease shall endure for the full lease period and the termination date shall be adjusted in light thereof.
- 4.3 In the event that the leased premises are not ready for occupation due to any act/omission by the Lessee, the lease shall commence on the commencement date.

5. DURATION

The lease starts on _____ and can be terminated by 2 (two) calendar months written notice, given by either party on or before the last business day preceding the month in which it is intended the lease will terminate. Such notice may not be given by either party before _____.

6. DEPOSIT

No deposit shall be payable in terms of this agreement.

7. PAYMENT OF TOTAL MONTHLY RENTAL

7.1 The rental shall be the sum of R_____ (_____), excluding VAT, which rental shall be payable monthly in advance on or before the 7th day of the each and every month, free of deduction or set-off whatsoever at the Lessor's premises.

7.2 The rental shall escalate by a percentage of 7% (seven percent) per annum, compounded with effect from the anniversary of the commencement date.

7.3 The rental amount shall exclude the rates and taxes as defined in 1.12 above and further described in 7.1 above. The rental shall also exclude any operating costs and/or levies pertaining to the premises.

7.4 The Lessee may not withhold the payment of any amounts because he has been inconvenienced, or because his use of the leased premises has been impaired or restricted by repairs, renovation, interruption in the supply of services, or for any other reason whatsoever.

8. RATES AND TAXES

8.1 The Lessee shall pay its pro rata share of the rates and taxes which are payable by the Lessor from time to time, including all increases thereon. With regard to consumption charges payable by the Lessee refer to 24 below.

8.2 For purposes of specific particularity it is explicitly recorded herein that the Lessee shall pay the monthly levies payable to the Body Corporate.

8.3 The Lessee shall from time to time pay its pro rata share of any new property levies, charges or taxes which may be imposed by the local or any other responsible authority in respect of the property and/or building.

9. LATE PAYMENTS

If any amount due in terms of this lease agreement is paid after due date, the Lessee shall, at the option of the Lessor, be liable for interest on the unpaid amount, calculated at the prime rate of banks applicable at the time.

10. CONDITION OF LEASED PREMISES

The Lessor is not obliged to rectify any defect in the leased premises, unless the Lessee has notified the Lessor in writing within 14 (fourteen) days after the commencement date of such defects, failing which the Lessee will be deemed to have accepted the premises as being complete and without any defects therein. The Lessee acknowledges that, as at the commencement date and from time to time, construction in and around the Property might

take place, which may result in inconvenience to the Lessee. The Lessee shall have no claim against the Lessor of whatsoever nature, either for a reduction or abatement of rental or cancellation of the agreement, other than as expressly contained herein.

11. USE OF LEASED PREMISES

The Lessee shall use the leased premises for the business of the SAMA _____ Branch Office and matters reasonably related thereto, and shall not use it for any non-related purposes without the express written consent of the Lessor, which consent shall not be unreasonably withheld.

12. ALTERATIONS

- 12.1 The Lessee may not effect any improvements, alterations or additions to the leased premises including, but not limited to, the air-conditioning units or the relocation thereof, without the prior written consent of the Lessor.
- 12.2 Any improvements, alterations or additions, including but not limited to the installation of air-conditioning units, which the Lessee may have affected to the leased premises shall become the property of the Lessor, and the Lessor shall not be obliged to compensate the Lessee in respect thereof.
- 12.3 In the event that the Lessee effects improvements, alterations or additions to the leased premises it shall provide "as-built" plans to the Lessor upon completion of the improvements, alterations or additions. In the event that the Lessee fails to provide the aforesaid plans, the Lessor shall be entitled to effect the drawing thereof and claim the cost thereof from the Lessee.
- 12.4 The said improvements, alterations or additions shall, if the Lessor so requires, be removed by the Lessee at the end of the lease and the Lessee shall make good all damage or unsightliness caused by such removal at the Lessee's cost.
- 12.5 Notwithstanding anything aforesaid the Lessee shall remove the entire telephone system and all cabling including data cabling at termination of the lease, if requested by the Lessor.

13. TRANSFER OF LESSEE'S RIGHTS AND SUBLETTING

- 13.1 The Lessee may not without the prior written consent of the Lessor sublet the leased premises or allow anyone else to occupy the leased premises.
- 13.2 The Lessee may not cede, assign or encumber his rights under this lease.

14. SALE OF PROPERTY OR TRANSFER OF LESSOR'S RIGHTS

In the event of a sale of the property by the Lessor to any third party, the Lessee agrees to be bound to such third party in terms of this lease. The Lessor shall furthermore at any time be entitled to sell, cede, assign, delegate and make over unto or in favour of any legal persona, all its rights, title, interest and obligations as contained herein.

15. MAINTENANCE AND REPAIRS

15.1 The Lessee shall:

15.1.1 keep the leased premises, including the interior and exterior of all windows, and all its contents clean, tidy and in good order, condition and repair;

15.1.2 be responsible for the maintenance and repair of any/all damage to the interior of the leased premises and to the interior and exterior of all doors, door frames and handles, shop/office fronts and windows, window frames and handles, irrespective of how such damage occurred;

15.1.3 at its own cost maintain, and where necessary, replace any fire extinguishing equipment, fire detection or alarm system, power supply and electrical systems, including but not limited to electrical outlets, plugs and distribution boards, installed in the leased premises. The Lessee shall keep records of all such equipment and systems and the maintenance or replacement thereof, in terms of applicable legislation;

15.1.4 not cause or permit any obstruction or blockage in sewerage pipes, water pipes or drains serving the leased premises and/or the property, and in the event of there being any obstruction or blockage shall pay upon demand to the Lessor, the price for removing such obstruction or blockage;

15.1.5 maintain at its own cost the drainage, plumbing installations, including but not limited to the geysers, sanitary fittings and works in the leased premises and replace any damaged or faulty installations;

15.1.6 be responsible for the cost of maintaining all air-conditioning units in good order and condition which maintenance shall be undertaken by the Lessor;

15.1.7 replace at its own cost all light fittings, fluorescent tubes, starters, globes, ballasts, diffusers and incandescent lamps used in the leased premises;

15.1.8 shall be responsible for the pest control in the leased premises. If the Lessee does not exercise proper pest control in the leased premises, then the Lessor can cause pest control to be exercised in those leased premises and charge the relevant amounts to the Lessee. If, as a result of such pest control not being properly exercised by the Lessee, pest problems develop elsewhere in the property, then the Lessee will be liable for whatever costs are incurred by the Lessor in taking care of such pest control in the property.

15.2 The Lessor shall be responsible for the maintenance of, and for all repairs and replacements becoming necessary from time to time in or to, the building and all parts thereof other than those which are the responsibility of the Lessee or Body Corporate or local authority, and the Lessor's obligations in respect thereof shall include the maintenance and repair of the structure of the building, all systems, works and installation contained therein (other than those which are the responsibility of the Lessee or other Lessees within the building), the roofs, the exterior walls, the lifts (if applicable), the grounds and gardens, and all other parts of the common areas, via the Body Corporate where applicable.

15.3 The Lessor shall not, however, be in breach of clause 14.2 above insofar as any of its obligations thereunder are not or cannot be fulfilled by reason of any Force Majeure or the acts of omissions of others over whom the Lessor has not direct authority or control, and where the Lessor is indeed in breach of clause 14.2, the Lessee's only remedy against the Lessor shall be a right of action for specific performance.

15.4 In the event that the responsible party fails to attend to any maintenance or repairs in terms of this lease agreement, then the other party shall:

15.4.1 give the responsible party 14 (fourteen) days written notice, calling upon the responsible party to attend to such maintenance/repairs;

15.4.2 in the event that the responsible party does not do so within that period, then the other party shall be entitled itself to, or through someone else, attend to such maintenance and repairs and claim the cost thereof from the responsible party.

16. SECURITY

In the event that the Lessor directly or indirectly provides security services or any security equipment in or around the leased premises or the property then the Lessee:

16.1 agrees that the Lessor will not be held responsible or legally liable for any acts or omissions of the person/s or entity/ies carrying out such security services or for the failure of any of the security equipment or in the event that the security equipment is not in working order;

16.2 the Lessee waives any claims which it may have against the Lessor in respect of the security services or provision of security equipment.

17. INTERRUPTION OF USE

The Lessee shall have no claim of whatever nature, whether for remission of rent, inconvenience, financial loss or otherwise, by reason of the property and/or the leased premises falling into a state of disrepair and/or by reason of the interruption of any services (including but not limited to the supply of electricity, water, air-conditioning and/or lifts) relating thereto, or by reason of any maintenance, repair, renovation or rebuilding activities.

18. SIGNAGE

18.1 The Lessee may not affix or display any signage in or about the leased premises without the Lessor's prior written consent. All signage affixed by the Lessee shall be removed by him at the request of the Lessor, and the Lessee shall make good any damage caused by such removal.

18.2 In the event that the Lessor insists upon the Lessee erecting signage, the Lessee shall do so in terms of the Lessor's specifications.

19. INSURANCE

19.1 The Lessee shall not do or omit to do anything or allow anything to be done which may constitute a contravention of the terms of any insurance policy held from time to time by

the Lessor in respect of the property, or which may increase the insurance premiums. The Lessor's insurance policies are available for inspection by the Lessee, and the Lessee shall acquaint himself with the terms thereof.

- 19.2 The Lessee shall obtain insurance in respect of any liability which the provisions of the lease impose upon it and against any risks arising from operation of its business from the leased premises.

20. OBSERVE LAWS

- 20.1 The Lessee shall (and shall bear all costs involved in doing so) comply with all laws, by-laws and regulations relating to Lessees or occupiers of business premises or affecting the conduct of any business carried on in the leased premises.

- 20.2 In particular, the Lessee, as the user of the electrical installations in the leased premises, shall be responsible for ensuring compliance with the Electrical Installations regulations of the Occupational Health and Safety Act. The Lessee shall provide a certificate of compliance in regard to the electrical installation on the leased premises in terms of the regulations of the Occupational Health and Safety Act on termination of this agreement.

- 20.3 The Lessee assumes full control of the leased premises for purposes of the Occupational Health and Safety Act (as amended from time to time) upon the beneficial occupation date of the leased premises. The Lessee indemnifies the Lessor against any claims arising from non-compliance with the Act in respect of the leased premises.

- 20.4 The Lessee shall ensure that the provisions of the Tobacco Products Control Act (as amended from time to time), together with all its Regulations (as amended from time to time), are complied with by all its employees, visitors, invitees or clients.

- 20.5 In the event that any fine or penalty is imposed upon the Lessor as a result of the Lessee's contravention of any Act, the Lessor shall be entitled to recover such fine or penalty from the Lessee together with any other damages arising from the contravention.

- 20.6 The Lessee shall not contravene or permit the contravention of any of the conditions of title under which the property is held by the Lessor or any of the provisions of the town-planning scheme applicable to the property. The aforesaid information is available for inspection by the Lessee, and the Lessee shall acquaint himself with the terms thereof.

21. ACCESS

The Lessor is entitled to reasonable access to the leased premises for inspection, maintenance and repair.

22. NO CLAIMS

Save for damage, injury or loss of life caused by wilful conduct on the part of the Lessor, its agent or employees, neither the Lessor nor its agents or employees (the Lessor contracting herein also for their benefit) shall be liable for:

- 22.1 any damage which may be caused to any of the assets of the Lessee or of anyone else or to any item the responsibility of which is imposed on the Lessee in terms of this agreement, or

22.2 any injury or loss of life of the Lessee or any employee, invitee or licensee of the Lessee, in consequence of a overflow of water supply, or fire, or any leakage, or any fault in the plumbing works, or any electrical fault, or by reason of elements of the weather, or failure on the part of the Lessor or his agent or employees to carry out any work required of any of them in the proper manner, or by reason of any defects in any part of the leased premises or on the property or in any of the equipment of the Lessor, or as a result of any other cause whatsoever. The Lessee hereby indemnifies and holds the Lessor harmless in respect of any claim which may be brought against the Lessor by any third party as envisaged above. The Lessee shall, at the option of the Lessor, be obliged to provide proof of indemnity.

23. MANAGEMENT RULES

The Lessor may from time to time prescribe rules in accordance with reasonable trade practice relating to the use of enjoyment of the property and of the leased premises, including matters relating to security, fire, safety, access, the use of common areas, parking, the keeping and placing of heavy objects in the leased premises, the use of air-conditioning and heating, and all matters incidental thereto. The rules (if any) are available at the Lessor's address, and the Lessee shall acquaint himself therewith.

24. CONSUMPTION CHARGES

24.1 The Lessee shall pay for all electricity, water and sewerage consumed by the Lessee in or on the leased premises, as separately metered by the relevant meters or sub-meter/s.

24.2 Should there be no sub-meter in respect of the leased premises, for any of the above services; the Lessor shall be entitled to install one at any time. Should the Lessor elect not to install a sub-meter the Lessee shall have the right to request the Lessor to install the aforesaid sub-meter at the Lessee's costs.

24.3 Should no sub-meter be installed or should a common sub-meter exist for more than the leased premises, charges shall be calculated by the Lessor on a pro rata basis of the rentable area of the leased premises to the total occupied area of the building, alternatively, the total occupied area served by the common sub-meter, whichever is applicable. Unoccupied areas shall not be included in this ratio. The ratio may be adjusted as the areas served by the common sub-meter, if applicable, are leased.

24.4 The Lessee shall pay for all meter reading charges incurred by the Lessor in respect of the sub-meter/s relevant to the Lessee's consumption.

24.5 The Lessor shall be entitled to charge for such electricity, water and sewerage at the same rate and on the same basis as if such electricity and water was supplied directly by the supplier concerned to the Lessee.

24.6 The Lessor may require the Lessee to arrange for the supply of electricity and water to the leased premises directly from the supplier thereof, and to pay such supplier for the electricity, water and sewerage consumed on the leased premises.

24.7 The Lessee shall pay to the Lessor all sanitary, refuse removal, special refuse removal, sewerage and any other local authority charges in respect of or attributable to the leased premises or the business conducted by the Lessee therein.

- 24.8 The Lessee shall furthermore pay to the Lessor a pro rata share of the costs of all electricity, water, sewerage and refuse charges consumed in or in respect of the common area of the property.
- 24.9 Until the statements of account have been received by the Lessor from the local authority and/or the meter reading company assigned to read the meters, indicating the amounts due by the Lessee from the beneficial occupation date on the property or the leased premises, whichever is applicable, the Lessee shall be required to pay an estimated charge therefore, as determined by the Lessor. After receipt of the relevant statements of account from the local authority and/or meter reading company, indicating the actual consumption charges from the beneficial occupation date on the property or the leased premises, whichever is applicable, the Lessor shall reconcile the consumption charges and in the event that the estimated amount exceeds the amount due by the Lessee the Lessor shall refund the Lessee an amount equal to such excess. In the event that the amount estimated is less than the amount due by the Lessee then the Lessee shall make payment of the difference upon demand.

25. AIR-CONDITIONING

If air-conditioning equipment has been supplied by the Lessor it shall be used during normal office hours only, unless otherwise arranged with the Lessor. The Lessee may not use other air-conditioning equipment except with the prior written consent of the Lessor. The Lessee will be liable to fit and supply its own additional air-conditioning units where these are required to cool any computer, electronic equipment or other items which will require 24 hour cooling or for any other reason whatsoever. Maintenance and repairs to such additional units (i.e. 24 hour cooling units) installed either by the Lessor or the Lessee will be at the sole cost of the Lessee. The cost of all electricity consumed by air conditioning equipment shall be borne by the Lessee in accordance with the terms and conditions of this agreement.

26. ADDITIONAL SERVICES

Any additional services provided to the lessee by the Lessor, not described in this agreement, will be invoiced and paid separately to this agreement and will not form part of this agreement.

27. BREACH

27.1 Should the Lessee:

27.1.1 fail to make any payment in terms of this lease agreement by the due date for such payment, or;

27.1.2 fail to take occupation of the leased premises on the commencement date; or

27.1.3 breach any other term of this lease, and fail to remedy such breach within 14 (fourteen) days after having been given written notice requiring that breach be remedied; or

27.1.4 conduct itself in such a way or consistently breach this lease agreement so that the Lessee's conduct is inconsistent with the intention or ability to carry out the terms of this lease agreement;

27.2 then the Lessor shall be entitled, but not obliged, to:

27.2.1 enforce the provisions of this lease and claim damages; or

27.2.2 cancel this lease, resume possession of the leased premises and claim the full value of all arrear amounts owing in terms of this lease together with the present value of each unpaid but not yet due and payable total monthly rental for the unexpired portion of the lease as pre-estimated liquidated damages;

27.3 Notwithstanding the above, no notice of breach shall be required from the Lessor if the Lessee has twice during the same 12 (twelve) month period breached the same or similar provisions of this lease.

28. APPROPRIATION OF PAYMENTS

The Lessor shall be entitled in its sole and absolute discretion to appropriate any amounts received from the Lessee towards the payment of any debt or amount owing by the Lessee to the Lessor irrespective of when the debt arose.

29. HOLDING OVER

If the Lessee disputes any purported cancellation of this lease and remains in occupation of the leased premises, the Lessee shall be obliged to comply with the provisions of this lease and to make all payments due in terms of this lease. If such dispute is determined in favour of the Lessor, any amount so paid by the Lessee shall be retained by the Lessor as compensation for the Lessee's use and occupation of the leased premises during the relevant period.

30. COMPLIANCE WITH LEASE

The Lessee shall, as far as may be reasonably possible, ensure that his employees and visitors observe and comply with the terms of this lease and of the management rules.

31. SERVICE OF PROCESS

The Lessee nominates the leased premises as its *domicilium citandi* and any written communication or legal process may be sent to that address, even if the Lessee has vacated the leased premises. Any notice or legal process delivered to that address shall be deemed to have been received by and come to the notice of the Lessee on date of delivery thereof. The Lessor's *domicilium citandi et executandi* shall be

_____ . Both parties shall be entitled to change the aforementioned addresses provided written notice thereof is received by the other party.

32. CHOICE OF PROCESS

Should the Lessee breach this agreement then the Lessor shall choose whether the dispute is to be brought in the Magistrate's Court or by way of arbitration as set out in clause 33 below. If the Lessor chooses the Magistrate's Court, then the parties are taken to have consented to the jurisdiction of the Magistrate's Court for any action in terms of or relating to this lease.

33. DISPUTE RESOLUTION

Should the Lessor choose the arbitration option referred to in clause 32 above then the dispute shall be determined and resolved by an expedited arbitration process administered by the Arbitration Foundation of Southern Africa (AFSA) in accordance with AFSA's Expedited Rules by an arbitrator selected in accordance with such Rules. This arbitration clause survives termination of the lease agreement.

34. LESSEE'S CONDITIONAL CONSENT TO CESSATION OF SERVICES

- 34.1 If the arbitrator makes an award evicting the Lessee from the leased premises, then the parties further authorise the arbitrator in his/her discretion to direct that unless the Lessee applies to the High Court within such reasonable time as the arbitrator will fix for an order setting aside the award, there will be no obligation on the Lessor to provide or to continue any services or payment thereof to the leased premises;
- 34.2 The Lessee shall communicate its consent to a cessation of service following such directive by omitting to comply with the terms of the directive, alternatively shall communicate the fact that it has not consented to a cessation of services or payment thereof by complying with such directive.

35. COSTS OF ACTION

Should the Lessor take legal action against the Lessee in respect of this lease, the Lessee shall be responsible for payment of all legal costs on a scale as between attorney and own client.

36. TERMINATION

- 36.1 The Lessee shall vacate the leased premises at the end of the lease period or any earlier termination thereof by the Lessor and shall return the leased premises to the Lessor in the condition as elected by the Lessor in terms of clause 36.2 hereunder.
- 36.2 Prior to the termination of this lease, the Lessee shall at its cost reinstate the leased premises to the condition and to the extent as specified by the Lessor in writing, given to the Lessee not less than 30 (thirty) days prior to the termination of this lease. The Lessor shall have the right in its sole and absolute discretion to require that the Lessee –
- 36.2.1 reinstates the leased premises to the same good order and condition as the leased premises were received by the Lessee in terms of this agreement of lease. The Lessor

shall have the right to take photographs to assist in the determination of the condition of the leased premises at the commencement date; and/or

- 36.2.2 if applicable, reinstates the leased premises to the same good order and condition as the leased premises were received by the Lessee in terms of the first agreement of lease between the parties for the same leased premises. This clause is applicable notwithstanding the provisions of clause 38 and only in the event that this agreement is a renewal of a previous agreement/s of lease. It is specifically recorded and agreed that the leased premises would have been accepted by the Lessee in the condition in which they were received at the commencement of the original lease, when the Lessee first took occupation of the leased premises, and not the condition the leased premises were in at the commencement of any renewal period; and/or
- 36.2.3 returns the leased premises to the Lessor without removing any refurbishments and/or alterations undertaken by either the Lessor or the Lessee; and/or
- 36.3 In the event that the Lessor fails to provide the Lessee with its reinstatement requirements as set out in clause 37.2 the Lessee shall return the leased premises to the Lessor in the same good order and condition as the leased premises were received by the Lessee in terms of this agreement of lease.
- 36.4 Upon vacation by the Lessee of the leased premises the Lessor shall undertake a final inspection of the leased premises and any items which have not been attended to in terms of clause 37.2 shall be reinstated by the Lessor and the reasonable costs thereof shall be paid by the Lessee to the Lessor upon demand.
- 36.5 In the event that the Lessee remains in occupation of the leased premises, after the expiry of this lease for the purpose of undertaking the reinstatement, then the Lessee shall be liable to continue to pay the rent which was payable immediately before such expiry and shall be bound by all other provisions in terms of this lease in respect of such period of occupation and for such further damages as may accrue to the Lessor arising from its prolonged occupation.
- 36.6 The Lessee shall have the option to either undertake the work required by the Lessor above, alternatively to make payment to the Lessor of the cost thereof, as determined by mutual agreement. In the event that the parties cannot agree on the cost of reinstatement the Lessee shall be obliged to undertake the reinstatement as provided in clause 37.2.
- 36.7 Notwithstanding the above, if the Lessor intends to renovate/demolish or redevelop the building in which the leased premises are situated, he may terminate this lease by giving the Lessee at least 6 (six) calendar months written notice of cancellation.

37. AMENDMENTS

This agreement contains the full contract between the parties, and replaces all previous agreements. No amendment to or consensual cancellation of this agreement shall be valid unless reduced to writing and signed by both parties. If the Lessor voluntarily renders any service, he shall not thereby incur any obligation to continue rendering such service.

38. PARKING

The Lessor, its agent and its employees do not accept or take any responsibility for the safe custody of any vehicle or any articles therein, nor for any damage to vehicles or articles however caused, not for any injuries, death or loss to any persons as a result of the negligence of the Lessor's employees or agents or from any other cause whatsoever. All vehicles are parked at the risk of the Lessee and the Lessee acknowledges that the driver of any vehicle parked in the parking bay enters the parking area at its own risk. The Lessee accordingly indemnifies the Lessor against any loss or damage of whatsoever nature and howsoever caused to any person entering the parking area.

39. CHANGE OF ADDRESS

Each party may change his address set out in this agreement to any other physical address (not a post office box or *poste restante*) within the Republic of South Africa by delivering a written notice to that effect to the other party.

40. NO WARRANTIES

The Lessee records that all verbal or written warranties and representations, whether express or implied, made by or on behalf of the Lessor have been accurately recorded in this agreement and the Lessee furthermore records that he has not entered into this lease by reason of any other warranty or representation made to him by or on behalf of the Lessor which is not set out in this lease agreement. The Lessor shall not be responsible for any loss or damage suffered by the Lessee arising from any unfulfilled representation made by the Lessor or its agents, which representations are not contained herein. The Lessee furthermore shall not be entitled to cancel this agreement or claim damages by reason of any negligent or fraudulent misrepresentation made by any representatives of the Lessor, which representation is not contained in this agreement.

41. RELAXATION

No latitude, extension of time or other indulgence granted by the Lessor to the Lessee will prejudice any right of the Lessor, or form the basis of any waiver, estoppel or novation of any obligation under this lease.

42. AUTHORITY

By signing this lease, the signatory for the Lessee, if the Lessee is a legal person, confirms, on behalf of the management of such legal person, that he is duly authorised to enter into this lease on behalf of the Lessee.

43. RISK OF PAYMENT

The risk and liability to ensure that payment reaches the Lessor at his chosen *domicilium citandi et executandi* shall be with the Lessee. The Lessee hereby accepts the full risk and liability should any payment be lost, stolen or misappropriated and the Lessee shall immediately make a proper payment in replacement thereof.

44. CONFIDENTIALITY CLAUSE

- 44.1 For the purpose of this clause 'confidential information' shall mean, without limiting the generality of the term, any information or data relating to the terms and conditions of any lease agreement, proposal, offer, or marketing and business information of the Lessor or its agent, including that of its associated and affiliated companies.
- 44.2 The Lessee agrees not to disclose, publish, utilise, employ, exploit or in any manner whatsoever to use any confidential information, for any reason or purpose whatsoever without the prior written consent of the Lessor, which consent maybe withheld in the sole and absolute discretion of the Lessor.
- 44.3 The Lessee agrees that any unauthorised publication or other disclosure of the confidential information may cause irreparable loss, harm and damage to the Lessor or its agent. Accordingly the Lessee hereby indemnifies and holds the Lessor harmless against any loss, action, claim, expense, harm or damage of whatsoever nature suffered or sustained by the Lessor due to a breach by the Lessee of the provisions of the clause.

45. DAMAGE OR DESTRUCTION

- 45.1 The Lessor may cancel this lease if:
- 45.1.1 the premises are destroyed or are damaged to such an extent as to be substantially unLesseeable; or
 - 45.1.2 there is destruction or damage to the building or parts thereof, whether or not the premises are involved and the Lessor determines to put an end to all the tenancies in the building;
- 45.2 The cancellation referred to above shall be by written notice given by the Lessor to the Lessee within 60 (sixty) days of the damage or destruction occurring.
- 45.3 In the event that the Lessor elects not to cancel the lease in terms of this clause, the Lessor shall repair the damage as expeditiously as possible. The Lessee shall not be liable for any rentals or other lease charges for the period in respect of which it is deprived of beneficial occupation due to the damage and destruction.

46. OPTION TO RENEW

- 46.1 The Lessee has an option to renew an additional period of 24 (twenty four) months at open market rentals. For the purposes of this clause the open market rental is the base rental which a willing Lessee will pay and a willing Lessor will accept on the open market for a lease of the leased premises for the period and upon the terms set out in this agreement.
- 46.2 The option to renew must be exercised by the Lessee by delivering a written notice to that effect to the Lessor at the Lessor's address by not later than one hundred and twenty days before the commencement of the renewal period, failing which the option shall lapse.
- 46.3 The Lessor shall inform the Lessee in writing, at least ninety days before the commencement of the renewal period of the amount which he proposes the open market rental for each term of the renewal period should be. Unless the Lessee, by notice in writing to the Lessor,

delivered not later than sixty days before the commencement of the renewal period, rejects the Lessor's proposal, the open market rental shall be as proposed by the Lessor.

- 46.4 In the event of the Lessee rejecting the Lessor's proposal, the two parties shall use their best endeavours to reach agreement on the open market rental by not later than thirty days before the commencement of the renewal period. Should they not be able to agree, then the open market rental shall be determined by an expert as set out in 46.5, and such determination shall be final and binding on both parties.
- 46.5 The expert shall be nominated by the President for the time being of the South African Property Owners' Association at the request of the Lessor; shall act as an expert, and not as an arbitrator; shall give both parties an opportunity to make submissions to him before making a determination; shall determine which party shall be responsible for his fees and disbursements however if he makes no such determinations, his fees and disbursements shall be paid by both parties in equal shares.
- 46.6 In the event of the parties not having reached agreement on the open market rental at the expiry of this lease and if the Lessee is still in occupation of the leased premises then the Lessee, pending resolution of such rental in terms of 46.5 hereof, hereby agrees to pay the rental and all other charges payable for the last month of the lease period escalated by the rates as set out in the schedule (if no rate is contained in the schedule the rental and operating costs shall escalate by 8%) pending finalisation of the open market rental.
- 46.7 The option to renew may not be exercised if the lease has been cancelled or has terminated or while the Lessee is in breach of any provision thereof. This option to renew shall be automatically cancelled in the event that the Lessee has twice during the lease period, failed to make payment of the amounts owing in terms of this lease, within 7 days of due date.
- 46.8 If the lease is renewed the same terms and conditions will apply, save for the rental as determined herein.

SIGNED BY THE PARTIES ON THE DATES AND AT THE PLACES STATED HEREUNDER:

DATE : _____

PLACE: _____

WITNESS

LESSEE
(OR DULY AUTHORISED REPRESENTATIVE)

DATE : _____

PLACE: _____

WITNESS

LESSOR
(OR DULY AUTHORISED REPRESENTATIVE)