



**UNITED**  
Cleaning & Trolley Services

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Address: Camp Orchards, 56C Inanda Road, Waterfall, Homestead Manor House, 1st Floor - Office no.7

Postal Address: PO BOX 2049, Hillcrest, 3650

## **STANDARD TERMS & CONDITIONS**

Where the Service Provider and the Client have signed a written agreement, then the terms governing the written agreement shall have preference over any term contained herein below.

This Agreement records the agreement between the Client (the party requesting the Services) and United Trolley Services (Pty) Ltd ("The Service Provider"), resulting from the Client having accepted a written quotation from the Service Provider to supply the Services.

Wherefore, by accepting a written quotation, the Parties hereby agree to be bound by the following terms and conditions:

### **SECTION A - AGREEMENT DATA AND INFORMATION**

#### **1. THE SERVICE PROVIDER**

Name:	United Trolley Services (Pty) Ltd
Registration No:	2017/005722/07
VAT Number	4620281727
Physical Address:	Camp Orchards, Inanda Road, Hillcrest, 3610, Durban
Registered Address:	Camp Orchards, Inanda Road, Hillcrest, 3610, Durban
Postal Address:	PO Box 2049, Hillcrest, 3650
Tel:	031 765 7777
Contact Person:	Andre Vieira
E-mail:	andre@unitedtrolleys.co.za

#### **2. AGREEMENT INFORMATION:**

- 2.1. Commencement Date: this date is deemed to be the date of acceptance by the Client of the written quotation submitted by the Service Provider;
- 2.2. The Service Fee: the Service Provider's usual fees as quoted from time to time exclusive of VAT;
- 2.3. Services: Trolley Management, Trolley Repairs and Trolley Recovery Services.
- 2.4. Service Level: to be determined in writing by the Service Provider.

**United Trolleys Services (PTY) Ltd Trading as United Cleaning and Trolley Services**

Directors: ADGC Vieira & M Mbuso

Vat No. 4620281727 | Reg No. 2017/005722/07

2.5. The Client shall give the Service Provider no less than 60 days prior written notice of its intention to:

2.5.1. terminate the Services at any individual Site Property whilst retaining the Services at their remaining Site Properties; and,

2.5.2. request that the Service Provider reduce its staff compliment at any Site Property.

2.6. Bank Account Details:

Account Holder: United Trolley Services

Bank: First National Bank Branch

Branch: Hillcrest (223726)

Account Number: 62666946474

## **SECTION B - GENERAL TERMS AND CONDITIONS**

### **3. AGREEMENT OVERVIEW:**

3.1. This Agreement represents a Service Level Agreement (“SLA” or “Agreement”) between the Service Provider and Client for the provisioning of the Services, as required to support and sustain the Trolley assets of the Client.

3.2. The Client hereby appoints the Service Provider exclusively to undertake and perform the Services for the duration of the Agreement, which appointment is hereby accepted by the Service Provider, subject to the terms and conditions of this Agreement.

### **4. INTERPRETATION**

4.1. The headings of the clauses in the Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of, nor amplify the terms of this Agreement, or any clause hereof whatsoever.

4.2. Unless a contrary intention clearly appears:

4.2.1. words importing:

4.2.1.1. any one gender includes the other genders;

4.2.1.2. the singular includes the plural and vice versa;

4.2.1.3. natural persons include juristic entities and the State, whether incorporated or not and vice versa.

4.3. Unless a contrary intention clearly appears, where any number of days is provided for in the interpretation of any clause of this Agreement, then only business days shall be counted,

excluding Saturdays, Sundays and public holidays, by excluding the first day and including the last day in the counting.

4.4. The following words shall have the following meanings assigned to them for the purpose of this Agreement:

4.4.1. **AFSA:** means the Arbitration Foundation of Southern Africa NPC, registration number 1996/007749/08;

4.4.2. **Agreement:** means this service level agreement including any annexures and / or any appendices to it, as amended by the Parties from time to time;

4.4.3. **Anti-Corruption Laws:** means any and all local and/or foreign anti-corruption Laws that are directly or indirectly applicable or relevant to -

4.4.3.1. this Agreement,

4.4.3.2. either Party to this Agreement; and/or

4.4.3.3. the Services rendered pursuant to this Agreement or transactions contemplated by this Agreement;

4.4.3.4. including, but not limited to, the Prevention and Combating of Corrupt Activities Act ("PCCA") No. 12 of 2004 (South Africa), the Foreign Corrupt Practices Act ("FCPA") of 1977 (United States) and the Bribery Act ("BA") of 2010 (United Kingdom);

4.4.4. **Commencement Date:** Shall mean the date upon which this Agreement will take effect, being the date stipulated in clause 2.1 above.

4.4.5. **Confidential Information:** shall mean and shall be deemed to include, all information conveyed by the Parties orally, in writing, by demonstration, or by other media, shall be considered as such at the time of transmittal and shall include, by way of example but without limitation:

4.4.5.1. Data; know-how; contacts; software; formulas; processes; designs; sketches; photographs; plans; drawings; specifications; samples; reports; information obtained from previous or current participants in programs of the Parties; information relating to transactional procedures.

4.4.6. **The Services:** means the services to be performed by the Service Provider during Service Hours and as follows:

4.4.6.1. Trolley collection services;

4.4.6.2. Trolley porter services;

4.4.6.3. Trolley maintenance and repairs;

4.4.6.4. Trolley cleaning;

4.4.6.5. Trolley recoveries.

- 4.4.7. **Service Fees:** Shall mean the fee(s) stipulated in clause 2.2 above, excluding Vat, applicable from the commencement date and subject to the provisions of Clause 7 and 8 below.
- 4.4.8. **Service Levels:** means the levels of Services to be rendered to the Client as set out in clause 6 below.
- 4.4.9. **Service Records:** Shall mean the detailed records of all activities carried out by the Service Provider and relevant to the provisions of this Agreement.
- 4.4.10. **Maintenance:** In respect of clause 4.4.6.3 above and clause 5.1.3 below, shall mean the act of minor adjustments that are made to a working Trolley, where no spare parts are used and which act is included in the Service Fee.
- 4.4.11. **Repairs:** Whether they are minor or major, shall mean the act of using parts, whether new or second hand, and labour to fix a broken Trolley which acts are not included in the Service Fee, but are to be carried out by the Service Provider.
- 4.4.12. **The Site Property:** Shall mean the Client's premises where the Service Provider will perform the Services, as stipulated by Client in writing from time to time.
- 4.4.13. **Service Hours:** means the actual trading hours of the Client.
- 4.4.14. **Trolley:** means a steel or plastic, or combination of steel and plastic, basket on wheels supplied by the Client to its customers to enable them to purchase goods sold at the Site Property, being the subject matter of this Agreement. Ordinary shopping baskets and / or two-tier / three-tier basket trolleys do not fall under the ambit of this Agreement.
- 4.4.15. **Trolley Audit:** means, subject to the provisions of this Agreement, the joint act of recording the number of Trolleys (excluding Baskets) situated at the Site Property and / or those situated at the Service Provider's repair centres, owned by the Client and maintained by the Service Provider, including those Trolleys in need of repair, or which have been scrapped ("irreparable"), with the view to the Parties keeping an up to date record of the number of Trolleys that have been misplaced, stolen and or are otherwise unrecoverable.
- 4.4.16. **Rand Value** means the market related, monetary value (exclusive of VAT) attributed to a single Trolley within the Client's fleet of Trolleys, as determined by the Client's Trolley supplier(s) from time to time and reflected in Rands.
- 4.4.17. **Trolley Porter Personnel:** Shall mean the employees of the Service Provider who actively carry out the Services and / or lawful instructions of the Service Provider;
- 4.4.18. **Property Manager:** Shall mean the manager or person in charge and employed by the Client and situated at the Site Property.

4.4.19. **POPI:** means the Protection of Personal Information Act, No. 4 of 2013, as amended from time to time.

## 5. **SERVICES, MATERIALS OR PRODUCTS SUPPLIED (DELIVERABLES)**

5.1. The following is agreed in respect of the Services:

### 5.1.1. Trolley Porter Services –

5.1.1.1. The Service Provider shall supply Trolley Porter Personnel who will, amongst other things, fetch, collect, sort and maintain in regular supply, working Trolleys for use by the Client's customers at the Site Property. In clarification of the term "regular supply", this means that the Service Provider, through its Trolley Porter Personnel will ensure that all working Trolley's located at the Site Property, under the direct control of the Service Provider, must remain available for use by the Client's customers.

### 5.1.2. Trolley cleaning –

5.1.2.1. Trolley cleaning will be done once (1) a week and a deep clean will be done once (1) a month, utilising SABS approved food grade chemicals and high-pressure washer, to ensure grime, dirt, dust, and foreign matters are removed.

### 5.1.3. Trolley Maintenance and Repairs –

5.1.3.1. All Parts needed for repairing broken trolleys or for the necessary Maintenance and upkeep of the Trolleys, will be for the Client's expense and further, shall be supplied by the Client.

5.1.3.2. Spare parts from broken trolleys may be used to Repair Trolleys. The Service Provider is required to keep up to date records of Trolleys that have been scrapped, parts utilised and or the total number of Trolleys that remain in use.

5.1.3.3. Maintenance and minor Repairs will be attended to on site at the Property by trained staff, subject to sub-clause 5.1.8 below.

5.1.3.4. Major Trolley Repairs (where welding, replacing parts, along with other work, is required) may be attended to off-site at the Service Provider's repair centre and subject to sub-clause 5.1.8 below.

5.1.4. A dedicated area manager will be appointed to each Site Property, who must liaise with the Property Manager and address any issues relating to the execution or otherwise of the Services and to assist with the Trolley Audit. In addition to the area

manager, the Service Provider will appoint a permanent on-site supervisor (team leader) who will be responsible for managing the Trolley Audit on behalf of the Service Provider.

5.1.5. Employees of the Service Provider shall receive uniforms and personal protective equipment, supplied to them by the Service Provider.

5.1.6. Trolley recoveries –

5.1.6.1. Recoveries will be done by a trained recovery driver in the areas around the Site Property, being personnel employed by the Service Provider directly, alternatively, by a sub-contractor. Recovered Trolleys will be returned to the Site Property, repairs completed, and relevant records will be updated and maintained for Trolley Audit purposes.

5.1.6.2. Upon completion of the Trolley Audit in accordance with clause 5.1.7 below, it is agreed that the Service Provider shall be granted 30 days to attempt a recovery of Trolleys that are missing before the loss ratio provided for in clause 6 may be applied.

5.1.6.3. The Client acknowledges that the performance of recovering Trolleys removed by third parties, is a nationwide initiative by all retailers, and involves numerous contractors and other third parties, whose actions are not necessarily under the control of the Service Provider. Whilst the Service Provider is committed to taking appropriate steps to avoid recovering Trolleys from other retailers not governed by this Agreement. If a Trolley is not clearly marked and identifiable as belonging to the Client, then the Service Provider cannot be held liable for Trolleys not belonging to the Client being mixed up with those Trolleys that do belong to the Client.

5.1.7. Trolley Audit –

5.1.7.1. In order to calculate the loss ratio mentioned in clause 6 below, a Trolley Audit shall be attended to once annually after 28 February, and by no later than the 15<sup>th</sup> day of March each year; however, the Service Provider is required to maintain a weekly Trolley count, attended to by a representative from the Service Provider and the Client, and signed off by the Service Provider's dedicated area manager and Property Manager.

5.1.7.2. After the completion of any Trolley Audit performed in accordance with this Agreement, including the settlement of any losses due, where applicable, the new Trolley count arrived at shall replace all other Trolley counts previously arrived at.

5.1.7.3. In arriving at the total Trolley count, broken, stolen (outside of the Service Hours) and or scrapped Trolleys shall be counted together with the working Trolleys. It is the intention of the Parties that only those Trolleys that are

removed by a third party from the Site Property during ordinary business hours and which cannot be located or recovered, shall form the basis of the loss ratio calculation provided for in clause 6 below.

5.1.7.4. The weekly Trolley count attended to by the Parties must be referred to by the Parties when performing the annual Trolley Audit.

5.1.8. Additional & ad hoc services –

5.1.8.1. Should the Client require additional Trolley Porter Personnel, a larger fleet of Trolleys and / or Repairs to Trolleys, being additional services to those agreed upon at the Commencement Date, then the Client must deliver a written purchase order detailing the additional services required.

5.1.8.2. Upon receipt of the purchase order referred to in sub-clause 5.1.8.1 above, the Service Provider must communicate its acceptance of the order by delivering a written quotation to the Client for final acceptance of the terms of the additional services to be rendered.

5.1.8.3. Upon acceptance of a quotation for additional services by the Client, and upon receipt of a purchase order by the Service Provider, the Client shall not be entitled to retract an order and shall be required to take delivery of the goods purchased by the Service Provider and settle the Service Provider's fees upon receipt of invoice.

**6. SERVICE LEVEL: TROLLEY LOSSES GUARANTEE BY SERVICE PROVIDER**

6.1. An initial Trolley Audit will be conducted in respect of the Client's National group fleet of Trolleys, by representatives from the Service Provider and Client, on or as soon after the Commencement Date as practically possible ("the Initial Trolley Count").

6.2. If the Client is independently owned and not a member of a group of retail shopping outlets, then the Initial Trolley Count will be conducted on the Client's independently owned fleet of Trolleys, by representatives from the Service Provider and Client, on or as soon after the Commencement Date as practically possible.

6.3. Unless otherwise agreed by the Parties in writing, and subject to the provisions of this Agreement, a loss ratio equal to 10% or less than the Initial Trolley Count provided for in clause 6.1 or 6.2 above, will be acceptable and can bear no consequence to the Service Provider. The Parties shall agree to review the loss ratio percentage annually.

6.4. Subsequent to the completion of a Trolley Audit, if the loss ratio percentage is more than the agreed to loss ratio percentage referred to in clause 6.3 above then, the Service Provider shall, at the election of the Service Provider, either reinstate the Client's Trolleys to a number that causes the loss ratio to reduce to a percentage that is equal to the loss ratio percentage agreed upon; alternatively, the Service Provider must reimburse the Client the Rand Value for the

number of Trolleys required in order to reduce the loss ratio to a percentage that is equal to the loss ratio percentage agreed upon in clause 6.3.

- 6.5. If the Service Provider elects to replace the missing Trolleys in accordance with clause 6.4, then this may be done over a period of six months, commencing 60 days after the finalisation of the last Trolley Audit.
- 6.6. If the Service Provider elects to reimburse the Client with the Rand Value for the missing and unrecovered Trolleys as opposed to a physical replacement thereof, as provided for in clause 6.4 above, then the Service Provider shall issue the Client with a credit note for the Rand Value, over a period of six months commencing 60 days after the finalisation of the last Trolley Audit.
- 6.7. Where additional Trolleys are added to the fleet by the Client at any stage after the initial and or subsequent Trolley Audits are completed, then the overall number of Trolleys in the Client's fleet shall increase accordingly, thereby including the additional Trolleys in the loss ratio calculation for the next Trolley Audit that follows.
- 6.8. The Client acknowledges that the Trolley loss guarantee supplied by the Service Provider herein shall not apply at all unless an uninterrupted period of no less than 12 months has elapsed from the Commencement Date.

## **7. PAYMENT OF SERVICE FEES**

- 7.1. Service Fees are due and payable by the Client at the end of the month during which an invoice is presented to the Client by the Service Provider. All overdue payments that have not been settled within 20 days from due date for payment may, at the election of the Service Provider, attract interest at the rate of 2% per month, calculated from due date of payment, compounded monthly, until settled in full.
- 7.2. All invoices by the Service Provider must:
  - 7.2.1. be addressed to the Client;
  - 7.2.2. reflect the Client's VAT registration number and corporate details;
  - 7.2.3. Reflect the Service Provider's VAT registration number and corporate details;
  - 7.2.4. fully describe the Services for which the Service Provider is seeking payment;
  - 7.2.5. show how the amount claimed was calculated.

## **8. INCREASE IN SERVICE FEES**

- 8.1. It is recorded that the Service Fees have to a large extent been determined by the wages paid by the Service Provider to its Trolley Porter Personnel and / or other staff; accordingly, an increase in wages for whatever reason shall entitle the Service Provider to a corresponding increase in the Service Fees.



8.2. The Service Provider's entitlement to increase its Service Fees are not limited to the events described in clause 8.1 above, but are determined by various factors and accordingly, the Service Provider shall be entitled to increase its Service Fees at any time and on or about the 1<sup>st</sup> day of March each and every year, provided that it notifies the Client in writing of its intention to increase the Service Fees, together with a brief summary of the reasons for the increase.

## 9. **DURATION**

9.1. This Agreement shall come into effect on the Commencement Date and shall endure for a period of no more than 24 months, unless terminated prior in writing by either party, giving no less than 40 days' notice of the intention to cancel.

9.2. In the event of termination of this Agreement by either party, the Parties must conclude a final Trolley Audit in accordance with the same procedures set out in clauses 5.1.7 and 6 above, to grant the Service Provider an opportunity to conduct a reasonable handover of the services to another service provider, alternatively, to the Client, evidenced by a written hand-over form signed by both Parties.

## 10. **SUB-CONTRACTORS**

10.1. Where the Service Provider has appointed a sub-contractor, the Service Provider shall ensure that such sub-contractor is properly equipped, experienced, organised and financed to undertake the duties assigned to it and the Service Provider warrants that it will actively supervise such sub-contractor at all times.

10.2. The Service Provider shall ensure that none of its sub-contractors will assign, transfer or otherwise dispose of the whole or any part of their rights or obligations under their sub-contract agreements and that the sub-contract agreements shall contain provisions to this effect.

10.3. The Service Provider shall ensure that any sub-contractors appointed shall maintain at their own cost a policy or policies of insurance in accordance with the provisions of clause 11 below.

10.4. In the event that the Service Provider sub-contracts any of its obligations under this Agreement it shall nevertheless remain fully liable to the Client for the due performance of its obligations under this Agreement.

## 11. **INSURANCE**

11.1. The Service Provider shall, at its own cost, maintain in force for the duration of the Agreement, the following insurance policies with a reputable insurance company, namely:

11.1.1. public liability insurance, covering liability to third parties for death or injury to any persons, arising from the provision of the Services; and,

11.1.2. damage to property arising from the provision of the Services; and,

11.1.3. any other insurance policy as required by Legislation.

11.2. The Service Provider shall pay all premiums due in respect of the policies of insurance referred to in this clause 11.

11.3. The Service Provider, upon written request, shall furnish the Client with copies of the insurance policies together with proof of payment of all premiums as well as confirmation that the Service Provider has complied with all conditions of the insurance policy, to the reasonable satisfaction of the Client.

## 12. **CONFIDENTIAL INFORMATION**

12.1. This Agreement and any Confidential Information, of any nature, obtained by either Party, or third parties in terms of or arising, prior to the Commencement Date or subsequent thereto, the implementation of or the contents of this Agreement shall be treated as confidential by the Parties and shall not be used, divulged or permitted to be divulged to any person not being a Party to this Agreement, without the prior written consent of the other Party (which consent shall not be unreasonably withheld) save that -

12.1.1. each Party shall be entitled to disclose such Confidential Information to such of its Related Persons who need to know for the purposes of this Agreement or for any act which a Party is obliged to take in Law. Before revealing such information to any such Related Persons, the Party undertakes to procure that the related persons are aware of the confidential nature of the information being made available to them and that they will maintain such confidentiality;

12.1.2. each Party shall treat and safeguard the Confidential Information as private and confidential,

12.1.3. the Parties must ensure proper and secure storage of all Confidential Information;

12.1.4. either Party must notify the other party immediately should any breach of these confidentiality provisions be suspected;

12.1.5. any Confidential Information which is required to be furnished by Law or by existing Agreement may be so furnished;

12.2. For the purposes of clause 12.1, "Related Persons" includes employees, directors, advisors (including, but not limited to legal, tax and/or financial advisors, bankers), contractors and/or consultants.

12.3. Neither Party shall make or issue any formal or informal announcement or statement to the press in connection with this Agreement, without the prior written consent of the other Party.

12.4. This clause 12 shall be severable from this Agreement and shall survive the termination of this Agreement indefinitely for any reason whatsoever.

## 13. **PROTECTION OF PERSONAL INFORMATION**

13.1. The Parties to the Agreement acknowledge that they shall comply fully with the statutory obligations contained in POPI, when Processing Personal Information obtained by either of them. Without limiting the generality of the aforesaid the responsible party shall ensure that the privacy and data protection conditions are strictly adhered to when processing personal information.

13.2. The Parties hereby indemnify and hold each other harmless from any liability or damage caused whatsoever and arising from a failure by either one of them to comply with the statutory obligations imposed on them by POPI.

#### 14. **ANTI-CORRUPTION**

14.1. The Service Provider acknowledges that the Client may be subject to anti-Corruption Laws.

14.2. The Service Provider agrees that its performance under this Agreement will be in full compliance with all applicable anti-corruption laws and regulations and agrees that in connection with its activities under this Agreement, neither the Service Provider nor any agent, affiliate, employee, or other person acting on its behalf will offer, promise, give, or authorise the giving of anything of value, or offer, promise, make, or authorise the making of any bribe, rebate, payoff, influence payment, kickback, or other unlawful payment, to any government official, political party, or candidate for public office in order to obtain or retain business or gain any unfair advantage.

14.3. The Service Provider warrants that to the best of its knowledge and belief that neither the Service Provider or any of its members have been charged or convicted of a crime involving public corruption.

#### 15. **LIMITATIONS OF LIABILITY**

15.1. Save for in the case of gross negligence by the Service Provider and subject to the provisions of this Agreement, the Service Provider shall not be held liable to the Client for any loss of property and / or harm, injury and / or death to any third party, person or customer / employee of the Client, and howsoever caused.

15.2. The Parties record that they hold the necessary public liability insurance in respect of any damage caused to third parties that may arise out of any act or omission by them or their agents and / or in the conduct of their business.

15.3. The Service Provider will assume responsibility for the Client's Trolleys during Service Hours, subject to the terms of this Agreement; however, the Client shall assume and bear any and all risk associated with its Trolleys, and any damage and or loss that may be experienced by it outside of the Service Hours and howsoever caused.

15.4. The purpose of clause 15.3 is to clarify that any Trolleys that are successfully stored at the Site Property by the Service Provider and secured in accordance with the provisions of this Agreement, are the responsibility of the Client and / or the Client's security agents.

#### 16. **OBLIGATIONS OF THE CLIENT**

16.1. In order for the Service Provider to successfully perform in terms of the Agreement, the Client shall provide at its own cost:

16.1.1. A sufficient number of working Trolleys from the Commencement Date;

16.1.2. reasonable access to the Site Property during business hours for the Service Provider, its staff and sub-contractors;

- 16.1.3. to the supply of electricity, water and change room facilities and any other access that may be required;
  - 16.1.4. safe storage of and for any of the Service Provider's equipment and cleaning materials;
  - 16.1.5. a secure storage area to accommodate the Client's Trolleys during non-working hours, inclusive of all locks and chains required to safeguard the Trolleys.
- 16.2. The Client shall not be entitled to give instructions to or otherwise discipline any of the Service Provider's employees.

## 17. **OBLIGATIONS OF THE SERVICE PROVIDER**

### 17.1. The Service Provider shall:

- 17.1.1. When handling Trolleys in accordance with this Agreement, reduce as far as reasonably possible, the risk of loss, damage or injury to the Client's personnel, merchandise, moveable and immovable assets, personal property of employees, visitors and most importantly, the Client's customers;
- 17.1.2. carry out the Services diligently and with utmost skill, supervision and care;
- 17.1.3. strictly adhere to and comply with the terms and conditions of any and all laws and instructions;
- 17.1.4. exercise the utmost good faith to the Client;
- 17.1.5. provide the Client with all reasonable requests for written updates, reports and information relating to the Services performed, to be performed;
- 17.1.6. notify the Client immediately of any cause that may result in the Service Provider not being able to render the Services in full or in part;
- 17.1.7. ensure that its employees and staff are trained and supported with the necessary expertise to enable them to comply with their duties and perform the Services.
- 17.1.8. Save as where otherwise agreed, bear all risk and costs in and to the Service Provider's own equipment and resources.

### 17.2. Storage of Trolleys (when not in use):

- 17.2.1. All Trolleys located on Site Property shall be kept in their in-store bays or in receiving areas.
- 17.2.2. At the end of each working day, all Trolleys must be locked and secured with a plastic-coated chain supplied by the Client.
- 17.2.3. The Service Provider will not be held accountable for losses resulting from after-hours (outside of the agreed working hours) orchestrated theft from the Site Property.

## 18. **DISPUTE RESOLUTION**

- 18.1. In the event of there being any dispute between any persons bound by this Agreement, including any dispute or difference arising out of or in respect of any of the provisions of this Agreement, then the dispute may be resolved by arbitration.
- 18.2. Any arbitration will be conducted in English in Durban and be subject to the expedited rules of AFSA.
- 18.3. If AFSA no longer exists then an arbitrator will be appointed by the president (or his/her nominee) of the KZN Legal Practice Counsel or its successor in title and the arbitrator will have the power to decide on the procedural rules that the arbitration will follow.
- 18.4. The decision by the arbitrator will be final and binding on the parties to the dispute.
- 18.5. Despite this agreement to resolve disputes by arbitration the Parties can still apply to court for urgent relief or for judgment in relation to a liquidated claim.
- 18.6. Any arbitration in terms of this clause 19 will be confidential.
- 18.7. The arbitration process begins once a written demand to resolve a dispute by arbitration is sent and this action will be considered to have interrupted the running of prescription as set out in the Prescription Act, 68 of 1969.

## 19. **BREACH**

- 19.1. Should any Party (“the defaulting party”) commit a breach of any of the provisions of this agreement then, the Party who is not in breach (“the aggrieved party”) shall be entitled to give the defaulting party written notice to remedy the breach.
- 19.2. If the defaulting party fails to comply with the notice of breach within five business days (5) of the receipt thereof, subject to any other provisions of this Agreement to the contrary, the aggrieved party shall be entitled to cancel this agreement or to claim specific performance, in either event, without prejudice to the aggrieved party’s rights to claim damages. The foregoing is without prejudice to such other rights as the aggrieved party may have in common law or statute.
- 19.3. The following shall be deemed to be a material breach:
- 19.3.1. if either Party fails to remunerate the other Party for any monies due, owing and payable and arising out of the terms and conditions of this Agreement;
- 19.3.2. if either Party is placed under liquidation or judicial management, whether provisionally or finally.

## 20. **FORCE MAJEURE**

- 20.1. Neither party shall have any claim against the other party for a failure by them to carry out their obligations under this Agreement, where such failure is as a result of *force majeure* such as,

but not limited to, severe adverse weather conditions, industry wide strikes, fuel shortages, sanctions, riots, sabotage, terrorism, political or civil disturbance, acts of war, decisions by the State or any other factor beyond the reasonable control of the defaulting party.

20.2.A Party successfully raising force majeure shall be excused from performing under this Agreement and until such time that the event preventing performance has been removed and / or overcome, provided that after two months, either party may then terminate the Agreement by giving written notice to the other party of their decision to terminate this Agreement.

20.3.A decision to terminate the Agreement as a result of force majeure will not absolve the Client from paying all monies due, owing and payable to the Service Provider under the Agreement.

## 21. **GENERAL**

21.1. In the event that any provision of this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, in any jurisdiction, then such invalidity, illegality or unenforceability shall not affect any other provision and this Agreement shall be interpreted and construed to exclude such invalid, illegal or unenforceable term or provision.

21.2. This Agreement constitutes the entire agreement between the Parties in respect of the subject matter of this Agreement. No amendment, addition, novation or consensual cancellation of this Agreement or any provision or term hereof, no settlement of any disputes arising under this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given. For the purposes hereof, "in writing" shall include any written document that is in the form either wholly or partly, of a data message as defined in the Electronic Communications and Transactions Act, 25 of 2002.

21.3. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement or other document issued or executed pursuant to or in terms of this Agreement shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party (save as to any extension, waiver or relaxation actually given) thereafter from exercising its rights strictly in accordance with this Agreement.

21.4. No Party may rely on any representation which allegedly induced that Party to enter into this Agreement unless the representation is recorded in this Agreement.

21.5. No part of this Agreement shall constitute a provision in favour of any person who is not a party to this Agreement unless the provision in question expressly provides that it does constitute such a provision.

21.6. This Agreement shall be governed by and interpreted in accordance with the substantive Laws of the Republic of South Africa which shall for the purposes relating to this Agreement be the governing Law. The Parties hereby irrevocably and unconditionally subject themselves to the exclusive jurisdiction of the High Court of the Republic of South Africa.

21.7. In the event of either party having to instruct an attorney to enforce any of the provisions of the Agreement, both parties agree to be liable for all such cost incurred on an attorney and own client scale, such costs to include tracing fees and collection commission.

21.8. The principle stating that in the event of ambiguity, then the contract will be interpreted against the party who was responsible for the drafting of the contract, shall not apply to this Agreement.