



AGREEMENT NO:

FINANCIAL QUERIES TO:

TEL:

TECHNICAL QUERIES TO:

TEL:

PROCUREMENT QUERIES TO:

TEL:

SERVICE PROVIDER:

NBCRFLI:

**National Bargaining Council For The
Road Freight and Logistics Industry**
31 De Korte Street
Braamfontein
Johannesburg
2017

Attention:

Tel:

Mobile:

E-Mail:

SERVICE LEVEL AGREEMENT

Made and entered into between:

THE NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT AND LOGISTICS INDUSTRY

Duly represented by xxxxxxxx in his capacity as the National Secretary of the National Bargaining Council for the Road Freight and Logistics Industry and he being duly authorised thereto.

(hereinafter referred to as “the NBCRFLI”)

and

COMPANY NAME

(REGISTRATION NUMBER ☺)

Duly represented by in their capacities being duly authorised thereto by a resolution of the attached hereto marked Annexure “A.”(hereinafter referred to as “the Service Provider”)

1 INTRODUCTION

- 1.1 The Service Provider is providing travel management services.
- 1.2 The NBCRFLI is seeking the services of the Service Provider on a regular basis for a period .
- 1.3 The Service Provider wishes to be so appointed and has agreed to render the Services to the NBCRFLI on the terms set out in this Agreement.
- 1.4 The Parties are accordingly entering into this agreement to record the terms and conditions on which the Service Provider is to be engaged by the NBCRFLI.

“NOW WHEREFORE IT IS AGREED AS FOLLOWS”

2 DEFINITIONS AND INTERPRETATION

- 2.1 In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:
 - 2.1.1 "Agreement" means this Service Level Agreement, including the Annexure[s] [as amended from time to time in terms of this Agreement].
 - 2.1.2 "Annexure[s]" means the annexure[s] attached to this Agreement.
 - 2.1.3 "Applicable Law" means any constitution, statute, ordinance treaty, decree, proclamation, notice, by-law, regulation, delegated or subordinated legalisation or other legislative measure, as well

as the common law and customary law and any jurisdiction, in each case having the force of law in the Republic of South Africa.

2.1.4 "Business Day" means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa.

2.1.5 "Commencement Date" means the date on which this Agreement takes effect.

2.1.6 "Competent Authority" includes any court of competent jurisdiction and any local or national department, minister, ministry, official or public or statutory person (whether autonomous or not) of the government of the Republic of South Africa having jurisdiction over a Party to this Agreement, the subject matter of this Agreement or any assets or transaction contemplated by this Agreement.

2.1.7 "Data Protection Legislation" means the Protection of Personal Information Act No 4 of 2013.

2.1.8 "Date of Signature" means when this Agreement has been signed by each Party (whether or not in counterpart), the latest of the dates on which this Agreement (or any counterpart) was signed by any Party.

2.1.9 "Eligible Employees" means: all permanent employees of NBCRFLI, to whom Services shall be made available. Eligible Employees shall include contractors/fixed term employees paid via payroll and Interns, learners but excludes pensioners, employees no longer working as a result of disability, PFA

(Personal Finance Advisory) field staff, pensioners (active and inactive), secondees and independent contractors;

- 2.1.10 "Employee Wellness Program" means the employee wellness program offered by the Service Provider as part of the Services and "EHWP" shall have the same meaning;
- 2.1.11 "HPCSA" means Health Professions Council of South Africa is a statutory regulator of healthcare professions in South Africa;
- 2.1.12 "Immediate Family Members" means the spouse, partner, children and/or any person residing in the same household with the Eligible Employees;
- 2.1.13 "Fees" means the charges agreed to between the NBCRFLI and the Service Provider for the Services rendered by the Service Provider as set out in Annexure "B".
- 2.1.14 "Intellectual Property" means any computer software, material, name, concept, training material, training instruments, copyright in documents, patentable or non-patentable inventions, discoveries and improvements, patent, trade mark, trade name, drawings, designs, operational analysis, technology and know-how or other intellectual property.
- 2.1.15 "NBCRFLI" means the National Bargaining Council for the Road Freight and Logistic Industry, a statutory body established in terms of the Constitution and Labour Relations Act 66 of 1995, as amended.

- 2.1.16 “NBCRFLI Representative” means the person appointed by the NBCRFLI to liaise with the Service Provider in respect of services provided by the Service Provider to the NBCRFLI in terms of this Agreement.
- 2.1.17 “Notice” means a written document, and “Notify” shall have a corresponding meaning.
- 2.1.18 “Parties” refers to the NBCRFLI and the Service Provider as the parties to this Agreement; and “Party” means anyone of them as the context may require.
- 2.1.19 “SACSSP” means South African Council for Social Service Profession a regulatory body entrusted to set and maintain standards of education and practice of the social service professionals (social work and child and youth care work) in the Republic of South Africa.
- 2.1.20 “Services” mean the services provided by the Service Provider to NBCRFLI and as described in this Agreement and in the annexes hereto.
- 2.1.21 “Service Provider” means company name with registration number, a company duly constituted and incorporated in accordance with the Company Laws of the Republic of South Africa, which is appointed by the NBCRFLI to provide the required services.
- 2.1.22 “Service Provider Representative” means the person appointed by the Service Provider to liaise with the NBCRFLI in respect of services provided by the Service Provider to the NBCRFLI in terms of this Agreement.

2.1.23 "Surviving Provisions" means 1 (*Definitions and interpretation*), 11 (Warranties), 11 (Intellectual Property), 12 (Confidentiality) 14.3 (*Mediation*), 14.4 (*Arbitration*) 21 (General) and any other provisions of this Agreement which are expressed to continue in force after termination or which by necessary implication must continue after termination.

2.1.24 "Writing" means written document and includes e-mail; and "Written" shall have a corresponding meaning.

2.2 In this Agreement:

2.2.1 All the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it;

2.2.2 References to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;

2.2.3 Words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;

2.2.4 References to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;

- 2.2.5 If a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 2.2.6 Any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
- 2.2.7 Words and phrases used in this Agreement, which are defined or used in any statute, which applies to the subject matter, professional person, goods, or services provided for in this Agreement shall be construed in accordance with the applicable statute or regulations; and
- 2.2.8 If there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement or paragraph of any Annexure, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement;
- 2.2.9 Where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;
- 2.2.10 Where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to

have intended such act to be performed upon or by the next succeeding Business Day;

2.2.11 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 as having not been written (i.e. *pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;

2.2.12 The rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis* rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.

2.3 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

2.4 Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the

disadvantage of the Party responsible for the drafting or preparation of the Agreement (i.e the *contra proferentem* rule), shall not apply.

3 APPOINTMENT

The NBCRFLI hereby appoints the Service Provider to provide the services (Scope of Services) as set out in Annexure "A".

4 DURATION

4.1 Notwithstanding the date of signature, this Agreement shall commence from xxxxxx2023 and shall automatically terminate on xxxxxx, if not renewed in writing for a period to be determined by agreement between the Parties.

4.2 Notwithstanding what is stated in Clause 4.1 above and Clause 13, either Party is entitled to terminate this Agreement at any given stage during its duration by giving the other Party three (3) months written notice. Provided that nothing shall preclude either Party from terminating this Agreement summarily for any cause recognized in law as sufficient.

5 NATURE OF THE RELATIONSHIP

5.1 The Parties record that the Service Provider shall at all times, be an independent Contractor.

5.2 The Service Provider shall be responsible for all salaries and wages, required income tax or other taxation payments or employee benefits for its employees, as required by law with no recourse whatsoever to the NBCRFLI.

5.3 The Service Provider shall have no authority to act or purport to act as an agent for the NBCRFLI and the Service Provider shall not pledge the credit of the NBCRFLI nor incur any debts, liabilities, or obligations on behalf of the NBCRFLI.

5.4 Nothing contained in this Agreement or otherwise shall:

5.4.1 authorise, empower or constitute the Service Provider as an agent of the NBCRFLI in any manner;

5.4.2 authorise or empower the Service Provider to assume or create an obligation or responsibility whatsoever, express or implied, on behalf of or in the name of the NBCRFLI;

5.4.3 authorise or empower the Service Provider to bind the NBCRFLI in any manner; and/or

5.4.4 make any representation, warranty, covenant, agreement or commitment on behalf of the NBCRFLI.

5.5 This Agreement is for the delivery of the Service Provider's Services as specified under this Agreement and nothing in this Agreement shall be deemed or construed to create, or have been intended to create, a partnership, joint venture, employment, franchise, agency or other similar relationship between the Parties hereto.

Subject to the terms and conditions of this Agreement, the Service Provider shall provide the Services (Scope of Services) as set out in Annexure "A".

7 DELIVERABLES

The NBCRFLI may not disclose a deliverable or make the benefit of the Services available to anyone else or refer to the contents of a deliverable or the findings of the Service Provider other than its employees (where necessary), except:

- 7.1 with the Service Provider's prior written consent on terms to be agreed
- 7.2 between the Parties, and such consent shall not be unreasonably withheld
- 7.3 by the Service Provider;
- 7.4 where required by law or regulation; or
- 7.5 to the NBCRFLI's legal advisers.

8 REMUNERATION AND PAYMENT

8.1 In consideration for provision of Services the NBCRFLI shall remunerate the Service Provider in accordance with the schedule of rates and fees as set out in Annexure "B".

8.2 The fee as set out in Annexure "B" shall endure for the duration of the Agreement and shall:

- 8.2.1 be inclusive of disbursements;
- 8.2.2 May not under any circumstances be increased by the Service Provider.

8.3 The Invoice provided by the Service Provider must be supported by evidence of the services rendered, including reports or records or time sheets and must reflect the Agreement number and must be addressed to:

National Bargaining Council for the Road Freight and Logistics Industry

31 De Korte Street

Braamfontein

2001

Ref: Nosipho Hlatshwayo

8.4 All payments to the Service Provider under this Agreement shall be made in South African Rands.

8.5 All payments to the Service Provider shall be effected to the credit of such banking account of the Service Provider as the Service Provider may from time to time direct, in writing.

8.6 Payment for such services or deliverable item shall be due and payable within thirty (30) days from the date the invoice is delivered to the NBCRFLI, provided that the Service Provider's obligations, including the supply of any other documentation such as reports/records/timesheets/ etc. as required by the Agreement.

9 OBLIGATIONS OF THE SERVICE PROVIDER

9.1 The Service Provider shall comply with the following:

9.1.1 The Service Provider shall exercise all reasonable skill, care, and diligence in the execution of the services and shall carry out all its obligations in accordance with South African and international professional standards for such services.

- 9.1.2 The Service Provider shall appoint a designated representative who will act as the internal project Manager for this Agreement, who will monitor and manage the Services provided by the Service Provider, attend meetings, receive comment on work delivered and be the contact person for this Agreement.
- 9.1.3 The Service Provider shall be responsible for all salaries and wages, required income tax or other taxation payments or employee benefits for its employees, as required by law with no recourse whatsoever to the NBCRFLI.
- 9.1.4 The Service Provider shall not do anything that may bring the NBCRFLI in disrepute or reflect adversely on the business and integrity of the NBCRFLI.
- 9.1.5 The Service Provider shall allocate and dedicate sufficient resources, expertise and skilled persons as required, to provide the Services.
- 9.1.6 The Service Provider and its employees and agents or contractors appointed by the Service Provider shall comply with all management systems and reporting procedures as required by the NBCRFLI.
- 9.1.7 The Service Provider shall immediately advise the NBCRFLI in Writing should the Service Provider become aware of any information or circumstances that may affect the rendering of the Services to the NBCRFLI or that have been rendered to the NBCRFLI.

9.1.8 All documents, databases, or any other material in any format, prepared by the Service Provider in relation to the services rendered shall be delivered to the NBCRFLI immediately upon the NBCRFLI's request.

9.1.9 Any work, recommendation or decision will be subject to prior written authorisation from the NBCRFLI's designated representative prior to any action being taken by the Service Provider.

10 OBLIGATIONS OF THE NBCRFLI

10.1 The NBCRFLI shall appoint a designated representative who will act as the internal project Manager for this Agreement, who will monitor and evaluate all activities, receive, and comment on work delivered and be the contact person for this Agreement.

10.2 The NBCRFLI shall review, evaluate, and approve the services provided by the Service Provider against this Agreement on an on-going basis.

10.3 The NBCRFLI will provide accurate and complete information to the Service Provider in a timely manner. The Service Provider will be entitled to rely on the information provided by or on behalf of the NBCRFLI, which relates to this Agreement.

10.4 The NBCRFLI shall respect the laws and customs of the Republic of South Africa and provinces in which any business in relation to the project is conducted.

11 WARRANTIES OF THE SERVICE PROVIDER

The Service Provider warrants that:

- 11.1 It will render the services as an independent Contractor.
- 11.2 It has the necessary expertise, skills, experience, and resources required to render the services and achieve the required aims of this Agreement.
- 11.3 The Services will be executed timeously with the requisite degree of care, skill, and expertise.
- 11.4 The documents, service or deliverable items furnished under this Agreement will conform to the obligations as set out in this Agreement and or annexures hereto.
- 11.5 The documents, service or deliverable items developed and produced in terms of this Agreement will not infringe upon or violate any patent, copyright, trade secret, confidential information, or any other rights of a third party.
- 11.6 It has professional indemnity insurance in place.

12 INTELLECTUAL PROPERTY RIGHTS

- 12.1 All Intellectual Property rights in all works developed or created by the NBCRFLI and imparted to or handed over by the NBCRFLI to the Service Provider whether prior to or after the commencement of this Agreement shall remain vested in the NBCRFLI.
- 12.2 Similarly, all Intellectual Property rights in all works developed or created by the Service Provider and imparted to or handed over by the Service Provider to the NBCRFLI whether prior to or after the commencement of this Agreement shall remain vested in the Service Provider subject to clause 12.3 below.

12.3 Ownership and title of all Intellectual Property rights in all works developed or created by the Service Provider for the duration of this Agreement and for purposes of and related to the Services in terms of this Agreement shall vest in the NBCRFLI upon the NBCRFLI's full payment of the Service Provider's fees in terms of this Agreement.

12.4 The Service Provider agrees and undertakes to treat all information concerning the intellectual property of the NBCRFLI supplied by the NBCRFLI or which may come to its attention as strictly confidential. The Service Provider shall not divulge to any party any information relating to the intellectual property of the NBCRFLI without the written consent of the National Secretary of the NBCRFLI.

13 CONFIDENTIALITY

13.1 "Confidential Information" means any information or data which by its nature or content is identifiable as sensitive, confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence and which the Disclosing Party or any person acting on its behalf may disclose or provide to the Receiving Party, or which may come to the knowledge of the Receiving Party by whatsoever means.

13.2 Confidential Information includes but is not limited to information, which would grant access to a record of the NBCRFLI, or information provided by the NBCRFLI to the Service Provider about:

13.2.1 Internal or external documents which are confidential in nature and not available for distribution to the public;

- 13.2.2 Internal policy discussions related to new or evolving policies or revisions to the NBCRFLI policies, which have not been formally determined and have not been announced to the public.
- 13.2.3 Discussions held with the NBCRFLI, which are confidential in nature or meetings where confidential matters are discussed;
- 13.2.4 Minutes of meetings, including submissions, which are confidential in nature;
- 13.2.5 Internal or external submissions which are confidential in nature;
- 13.2.6 The NBCRFLI records which may contain confidential information about an individual or any policy, which has not been announced to the public;
- 13.2.7 Any violation of any instruction related to the confidential nature of any communication; and
- 13.2.8 Any other matter which the NBCRFLI would reasonably anticipate being confidential.

13.3 Confidential information as defined in clause 13.1 may be disclosed only with the prior written consent of the National Secretary of the NBCRFLI.

13.4 Confidential Information excludes information or data which:

- 13.4.1 is lawfully in the public domain at the time of disclosure to the Service Provider;
- 13.4.2 subsequently becomes lawfully part of the public domain by publication or otherwise;

- 13.4.3 subsequently becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled, without any restriction on disclosure, to disclose such Confidential Information;
- 13.4.4 is disclosed pursuant to a requirement or request by operation of law, regulation or a professional or administrative body to which the Service Provider is a member, or a court order;
- 13.4.5 is already in the possession of the Service Provider prior to its disclosure by the NBCRFLI, without restrictions as to use or disclosure; and/or
- 13.4.6 is independently developed by the Service Provider without use of or reliance on confidential information; or later becomes publicly available without violation of this Agreement or which may be lawfully obtained from a third party.

13.5 Provided that the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions and provided further that the information disclosed in terms of this Agreement will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession. The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise.

13.6 "Receiving Party" being the Party, other than the Disclosing Party, to the extent that it receives disclosure of any of the Confidential Information from the Disclosing Party in terms of this Agreement.

13.7 "Disclosing Party" being either of the Parties to the extent that it discloses any of the Confidential Information to the other Party in terms of this Agreement.

13.8 The Receiving Party acknowledges the importance of the Confidential Information to the Disclosing Party and, where applicable, third party proprietors of such information, and recognises that the Disclosing Party and/or third party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with this Agreement.

13.9 The Receiving Party agrees and undertakes:

13.9.1 except as permitted by this Agreement, not to disclose or publish any Confidential Information in any manner, for any reason or purpose whatsoever without the prior Written consent of the Disclosing Party and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the Receiving Party to obtain the consent of such third party;

13.9.2 except as permitted by this Agreement, not to utilise, employ, exploit or in any other manner whatsoever use the Confidential Information for any purpose whatsoever without the prior Written consent of the Disclosing Party and provided that in the event of the Confidential Information being proprietary to a third party, it

shall also be incumbent on the Receiving Party to obtain the Written consent of such third party;

13.9.3 to restrict the dissemination of the Confidential Information to only those of the employees who are actively involved in activities for which use of Confidential Information is authorised and then only on a "need to know" basis and the Receiving Party shall initiate, maintain and monitor internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure by the Staff;

13.9.4 to take all practical steps, both before and after disclosure, to impress upon the Staff that are given access to Confidential Information the secret and confidential nature thereof;

13.9.5 neither Party shall release any information whatsoever about any activities undertaken in terms of this Agreement, to the electronic or print media without the prior written consent of the other Party;
and

13.9.6 all Confidential Information disclosed by the Disclosing Party to the Receiving Party or which otherwise comes to the knowledge of the Receiving Party, is acknowledged by the Receiving Party:

13.9.6.1 to be proprietary to the Disclosing Party or where applicable, the relevant third party proprietor;

13.9.6.2 and not to confer any rights of whatsoever nature in such Confidential Information on the Receiving Party.

- 13.10 The Receiving Party shall protect the Confidential Information in the manner, and with the endeavour, of a reasonable person protecting their own Confidential Information. In no event shall the Receiving Party use less than reasonable efforts to protect the confidentiality of the Confidential Information.
- 13.11 The Disclosing Party may at any time on Written request to the Receiving Party, require that the Receiving Party immediately returns to the Disclosing Party any Confidential Information and may, in addition, require that the Receiving Party furnish a written statement to the effect that upon such return, it has not retained in its possession or under its control, either directly or indirectly, any such Confidential Information or material. Alternatively, the Receiving Party shall, as and when required by the Disclosing Party on Written request to the Receiving Party, destroy all such Confidential Information and material and furnish the Disclosing Party with a written statement to the effect that the same has been destroyed. The Receiving Party shall comply with any request in terms of this clause 12 within 7 (seven) days of receipt of such request.
- 13.12 The Service Provider may retain Confidential Information to the extent required by, and for the duration of any Services performed in terms of this Agreement, subject to the right of the NBCRFLI to recover the Confidential Information at any time.
- 13.13 The Parties record that this clause 12 shall not be applicable where the Receiving Party discloses Confidential Information to attorneys, legal advisers, or auditors, provided that such disclosure is reasonably required by the Receiving Party for the purposes of conducting its business activities.

13.14 The Service Provider shall be entitled to retain a copy of the confidential information for its working papers and record keeping purposes (which shall remain subject to the confidentiality provisions of this Agreement).

13.15 **SECURITY**

13.15.1 The Services are provided on the basis that all the Service Provider's contact with the Eligible Employees and their Immediate Families is confidential and consistent with professional codes of ethics and practice as set by the HPCSA, SACSSP and/or other Applicable Law. No data or information shall be provided to NBCRFLI that may identify an individual user of the Services, unless with the written consent of such individual user of the Services or where, in the reasonable opinion of the Service Provider, there is a threat to life or a major threat to property and/or the business of NBCRFLI. In such circumstances the details of the said individual user of the Services shall only be given on a "need to know" basis and only if the information is judged by the Service Provider to be of significance.

13.15.2 In compliance with 13.15.1, note that reports will not be provided where details may compromise Confidentiality/Secrecy of the programme, i.e. if 5 or less cases has occurred within the given time period.

14 DATA PROTECTION

14.1 For the purposes of this Clause 14, "Responsible Party", "Personal Data", and "Processing" shall have the meanings set out in POPIA and "process" and "processed" when used in relation to the processing of personal data,

will be construed accordingly. Any reference to personal data includes a reference to special personal data, as applicable, whereby "special personal data" means personal data that incorporates such categories of data as are listed in Section 26 of POPIA.

14.2 Each Party agrees to use all reasonable efforts to assist each other to comply with such obligations as are imposed on them by the Data Protection Legislation. Neither Party shall, by its acts or omissions, cause the other Party to breach its respective obligations under the Data Protection Legislation.

14.3 In relation to the Eligible Employee and Immediate Family members Personal Data, both Parties acknowledge and agree that ICAS shall be Responsible Party and ICAS's Data Privacy notice with can be access from <https://www.icas.co.za/source/documents/pdf/icas-international-global-privacy-notice.pdf> will be applicable.

15 BREACH AND TERMINATION

15.1 In the event of a Party ["the defaulting Party"] breaching a material term of this Agreement and failing to remedy such breach within 7 (seven) days of having been requested in writing by another Party ("the aggrieved Party") to do so, the aggrieved Party shall be entitled immediately and without further notice to cancel this Agreement and, subject to any other provisions of this Agreement and without prejudice to any of the aggrieved Party's rights under this Agreement or in Law, to claim damages from the defaulting Party, as well as any other relief which is permitted in Law.

15.2 The NBCRFLI's claim of immediate, specific performance of all of the Service Provider's obligations under this Agreement shall be without

prejudice to the NBCRFLI's right to claim damages or cancel the Agreement.

15.3 Termination of this Agreement for any cause shall not release either Party from any liability which at the time of termination has already accrued to the other Party or which thereafter may accrue in respect of any act or omission prior to such termination.

15.4 Upon termination of this Agreement by either party, the NBCRFLI agrees to pay the Service Provider's fees for all Services necessarily rendered in terms of the agreement by the Service Provider up to the date of termination. Where the Parties have agreed on a fixed fee for the provision of Services, the NBCRFLI agrees to pay the Service Provider's fees for the Services rendered by the Service Provider on a pro rata basis on the Service Provider's hourly rates.

16 DISPUTES

16.1 SEPARATE, DIVISIBLE AGREEMENT

This clause is a separate, divisible agreement from the rest of this Agreement and shall:

16.1.1 Not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that any such issue shall at all times be and remain subject to arbitration in terms of this clause.

16.1.2 Remain in effect even if the Agreement terminates or is cancelled.

16.2 **DISPUTES SUBJECT TO MEDIATION AND ARBITRATION**

16.2.1 Save as may be expressly provided for elsewhere in this Agreement for the resolution of particular disputes, any other dispute arising out of or in connection with this Agreement or the subject matter of this Agreement, including without limitation, any dispute concerning:

16.2.1.1 the existence of the Agreement apart from this clause;

16.2.1.2 the interpretation, application and effect of the Agreement;

16.2.1.3 the Parties' respective rights or obligations under the Agreement;

16.2.1.4 the rectification of the Agreement;

16.2.1.5 the breach, termination or cancellation of the Agreement or any matter arising out of the breach, termination or cancellation; and/or

16.2.1.6 damages arising in delict, compensation for unjust enrichment or any other claim, whether or not the rest of the Agreement apart from this clause is valid and enforceable, shall be referred to mediation as set out in 15.3.

16.2.2 Despite the provisions of this clause, either Party has a right to institute urgent proceedings in any court of competent jurisdiction to enforce the terms of this agreement.

16.3 **MEDIATION**

If the Parties are unable to agree on a mediator or to resolve any dispute by way of mediation within 14 days of any Party in writing requesting that the dispute be resolved by mediation, then the dispute shall be submitted to and decided by arbitration as set out in this clause.

16.4 **ARBITRATION**

16.4.1 Appointment of the Arbitrator

16.4.1.1 the Parties shall agree on the Arbitrator who shall be an Attorney or Advocate with no less than 10 years practice in the panel of arbitrators of the Arbitration Foundation of Southern Africa ("**AFSA**"). If agreement is not reached within 10 Business Days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.

16.4.1.2 the request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment as arbitrator, and a copy shall be furnished to the other Parties who may, within 7 days, submit written comments on the request

to the addressee of the request with a copy to the first Party.

16.4.2 Venue and period for completion of Arbitration

The arbitration shall be held in Johannesburg and the Parties shall endeavour to ensure that it is completed within [90] days after notice requiring the claim to be referred to arbitration is given.

16.4.3 Arbitration Act- Rules

The arbitration shall be governed by the Arbitration Act, 1965, or any replacement Act and shall take place in accordance with the Commercial Arbitration Rules of AFSA.

16.4.4 Arbitrator may apply Equity

The Arbitrator need not strictly observe the principles of law and may decide the matters submitted to him according to what he considers equitable in the circumstances.

17 LIABILITY AND INDEMNITY

17.1 The Service Provider, including any person acting for or on behalf of the Services Provider, shall exercise reasonable care and skill in the performance of its duties in terms of this Agreement and the Service Provider, including any person acting for or on behalf of the Service Provider, shall be liable to the NBCRFLI where the Service Provider has failed to exercise such reasonable care and skill.

17.2 Each party ("indemnifying party") indemnifies the other party from and against any loss, liability, cost, damage or expense ("Loss") suffered or

incurred by the indemnified party, its officers, employees or agents (“indemnified persons”), as a result of:

17.2.1 any illness, injury or death to any person, or any loss or damage to any property of any person, arising out of or in connection with the performance of the Agreement, or use of the Services;

17.2.2 any fraudulent or wilful act or omission, or any failure to comply with any relevant law, by the indemnifying party; and

17.2.3 Any claim or action against an indemnified party that the Services or any deliverable infringes the Intellectual Property Rights of any person, except to the extent that the Loss is caused by the negligence or wrongful act or omission of the indemnified persons.

17.2.4 Any loss incurred by the other Party, if such loss is caused as a direct result of negligence or willful default on the part of the Indemnifier, its employees or agents.

17.3 The Service Provider will not be liable for:

17.3.1 loss or corruption of data from the NBCRFLI’s systems;

17.3.2 consequential loss or damage including indirect damages or special damages which shall include, without limitation, any loss of profit, loss of business or trade, loss of business reputation or business opportunities, loss of products, production or profit suffered by the NBCRFLI in the rendering of the Services by the Service Provider in terms of this Agreement.

17.4 Notwithstanding anything to the contrary set out in this Agreement, the Service Provider hereby indemnifies and shall hold harmless the NBCRFLI

against any claims, actions, proceedings, demands, damages, expenses and costs (including those asserted by third parties) of whatsoever nature and howsoever incurred which may be taken or made against it or be incurred or become payable by it arising directly out of the services rendered by the Service Provider to the NBCRFLI.

17.5 The Service Provider hereby indemnifies and shall hold harmless the NBCRFLI against any direct financial losses relating to claims that the documents or deliverables have been proven to infringe upon any patent, copyright, trade secret or other intellectual property right of any third party.

17.6 The Service Provider, including any person acting for or on its behalf, acts as an independent contractor and not as an agent or employee of the NBCRFLI and has no authority or right to bind the NBCRFLI, and the Service Provider, including any person acting for or on its behalf, shall be liable for any action where it seeks to bind the NBCRFLI.

17.7 The Service Provider shall not be held liable for any claim or action brought against the NBCRFLI where such claim or action arises out of circumstances beyond the control of the Service Provider where the Service Provider has taken reasonable steps to prevent, avoid and limit such claim, complaint or action.

17.8 The Service Provider's liability to NBCRFLI under or in connection with this Agreement whether in contract, tort (including negligence) or otherwise and howsoever arising shall be limited to the amounts paid or payable by NBCRFLI to the Service Provider during the 24 (twenty four) months immediately preceding the event or series of connected events giving rise to the liability.

18 **FORCE MAJEURE**

18.1 If any Party is prevented or delayed in performing any obligation under this Agreement for any reason beyond the reasonable control of that Party, then that Party shall be excused from performing or timeously performing that particular obligation for the duration of that prevention or delay.

18.2 Any Party so prevented or delayed shall inform the other in writing of that prevention or delay as soon as reasonably possible after the circumstances causing such prevention or delay has arisen.

18.3 The Parties shall do everything reasonably possible to prevent, avoid or limit the duration or effects of any such prevention or delay. Upon termination of the circumstances giving rise to any such prevention or delay, the Party so prevented or delayed shall forthwith give written notice to the other Party.

18.4 While any such prevention or delay continues, the Parties shall continue to comply with their obligations under this Agreement which are not affected by it, to the extent that they are able lawfully to do so, subject to the right of the other Party not prevented from continuing with all its obligations under this Agreement to cancel this Agreement by giving written notice of such termination to the other Party.

18.5 For the purpose of this Agreement "Force Majeure" shall mean any circumstances beyond the reasonable control of the Party concerned and shall include but not be limited to:

18.5.1 the inconsistent and/or inadequate supply of electricity by the official South African energy supplying body;

18.5.2 war, revolution, riots, mob violence, sabotage, epidemics, accidents, breakdown of machinery or facilities where such are not part of a Party's equipment or under a Party's control;

18.5.3 industrial Action by workers, agents or employees;

18.5.4 earthquakes, floods, fires or other natural physical disasters.

18.6 The mere shortage of labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances, which are themselves, Force Majeure.

19 **DOMICILIUM CITANDI ET EXECUTANDI**

19.1 The parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement; whether in respect of court process, Notices or other document or communications of whatsoever nature, the following address:

19.1.1 The NBCRFLI:

Street Address:

31 De Korte Street

Braamfontein

Johannesburg

2001

Postal Address:

Private Bag X69

Braamfontein

2017

NBCRFLI'S Representative:

Telephone Number:

E-mail:

19.2 The Service Provider

Physical Address:

Postal Address:

Service Provider designated representative:

Telephone number:

E-mail:

19.3 Any Notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing, but it shall be competent to give Notice by telefax or email.

19.4 Either party may by Notice to the other party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in the Republic of South Africa or its postal address, telefax number or email address, provided that the change shall become effective on the 10th (Tenth) business day from the deemed receipt of the Notice by the other party.

19.5 Any Notice to a party:

19.5.1 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

19.5.2 sent by telefax to its chosen fax number stipulated in clause 19.1 shall be deemed to have been received on the date of dispatch (unless the contrary is proved).

19.5.3 sent by email to its chosen email address stipulated in clause 19.1 shall be deemed to have been received on the date of dispatch (unless the contrary is proved).

19.6 Notwithstanding anything to the contrary herein contained a written Notice or communication actually received by a party shall be an adequate written Notice or communication to it notwithstanding that it was not sent to or delivered at its *domicilium citandi et executandi*.

20 GOOD FAITH

20.1 In implementing this Agreement and in all further dealings with each other, the Parties undertake to observe utmost good faith and to give effect to the intent and purpose of this Agreement.

20.2 Both Parties undertake to perform their obligations under this Agreement in the utmost good faith.

20.3 Neither Party will not make or cause to be made any offer, gift or payment or consideration or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any third party, as an inducement or reward in relation to the execution of this Agreement. Any such practice will be grounds for termination of this Agreement.

21 CONFLICT OF INTEREST

21.1 Unless agreed in writing between the Parties, neither the Service Provider nor its personnel and employees shall have interest or receive

remuneration in connection with the Services provided by the Service Provider except as provided in this Agreement and agreed to upon by the Parties.

21.2 The Service Provider shall not engage in any activity, which may conflict with the interest of the NBCRFLI in terms of this Agreement.

22 GENERAL

22.1 Entire Agreement

This Agreement constitutes the entire Agreement between the Parties as to the subject matter hereof and no undertakings, agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

22.2 Subcontracting

The Service Provider shall not without the prior written consent of the NBCRFLI, sub-contract any of the services required in terms of this Agreement to any third party.

22.3 Variation, Cancellation and Waiver

No addition to or variation, consensual cancellation or novation of this contract and no waiver of any rights arising from this Agreement shall be of any force and effect unless recorded into writing and signed by both Parties or on behalf of both Parties.

22.4 Indulgence

No latitude, extension of time or other indulgence which may be given or allowed by the NBCRFLI in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of the NBCRFLI arising from this Agreement, and no single or partial exercise of any right by the NBCRFLI under this Agreement, shall in any circumstances be construed to be implied consent or election by the NBCRFLI or operate as a waiver or novation of or otherwise affect any of the NBCRFLI's rights in terms of or arising from this contract or estop or preclude the NBCRFLI from enforcing at any time and without notice, strict punctual compliance with each and every provision or term hereof.

22.5 **Cession and Delegation**

Except as provided for elsewhere in this Agreement, a Party may not cede any or all of that Party's rights or delegate any or all of that Party's obligations under this Agreement without the prior written consent of the other Party.

22.6 **Applicable Law**

22.6.1 This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

22.6.2 No remedy conferred by this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by any of the Parties shall not constitute a waiver by such Party of the right to pursue any other remedy.

22.7 **Signature in Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

22.8 **Independent Advice**

Each of the Parties hereby respectively agrees and acknowledges that:

22.8.1 It has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

22.8.2 Each provision of this Agreement (and each provision of the Annexures) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

22.9 **Costs**

22.9.1 Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

22.9.2 Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection

with a breach by another Party shall be borne by the Party in breach.

23 ATTESTATION

The Parties hereby acknowledge to have read and signed this Agreement, the contents of which are understood and accepted by both the undersigned Parties.

Signed at JOHANNESBURG on this _____ day of _____ 2023.

FOR: THE NATIONAL BARGAINING COUNCIL FOR THE ROADS FREIGHT AND LOGISTIC INDUSTRY

Date

Date

WITNESSES

1. _____

2. _____

Signed at JOHANNESBURG on this _____ day of _____ 2023.

FOR:

For: THE SERVICE PROVIDER
Duly authorised

WITNESSES:

For: THE SERVICE PROVIDER
Duly authorised

1. _____

2. _____

ANNEXURE "A"
SCOPE OF SERVICES

ANNEXURE "B"

1. SCHEDULE OF RATES AND PRICES

The items detailed shall be deemed to include all items necessary to complete the Services in accordance with the requirements of the NBCRFLI and the Scope of Services, and the rates shall be deemed fully inclusive of all the Service Provider's activities, costs and profits.