

MASTER SERVICES AND MANUFACTURING AGREEMENT

BETWEEN

BOOYCO ENGINEERING (PROPRIETARY) LIMITED

Registration number: 1985/000809/07

(hereinafter referred to as "BOOYCO")

and

_____ (PROPRIETARY) LIMITED

Registration number: _____

(hereinafter referred to as "THE SUPPLIER")

1. INTERPRETATION

1.1 In this Agreement, unless the context indicates otherwise:

1.1.1 **"Booyco"** means BOOYCO ENGINEERING (Proprietary) Limited (Registration No. 1985/000809/07) of 101 Newton Road, Meadowdale, Germiston, Johannesburg;

1.1.2 **"Affiliated Entity"** means:

1.1.2.1 any person or entity directly or indirectly controlled by either of the parties; and

1.1.2.2 any person or entity which directly or indirectly controls either of the parties and any other person or entity which is directly or indirectly controlled by the aforementioned person or entity;

1.1.3 **"Agreement"** means this Master Services Agreement together with any of its Service Schedule(s) and annexures;

1.1.4 **"Business Day"** means any day other than a Saturday, Sunday or public holiday officially recognised as such in the Republic of South Africa;

1.1.5 **"Rates and fees"** mean the rates and fees associated with the Services as set out in Annexure "A";

1.1.6 **"Contract Document"** means the specified work order, which will include payment terms, period of engagement regarding the defined project, Services or Goods required, which will be annexed hereto and which will become an integral part of this Agreement, annexed hereto as Annexure "D";

1.1.7 **"CPI"** means the Consumer Price Index for all expenditure groups, metropolitan areas only as published from time to time in respect of any date or period by Statistics South Africa. If such index ceases to be published the parties shall agree in writing and apply the most similar

index published by Statistics South Africa or any statutory body authorised in its stead in terms of the Statistics Act of 1976;

- 1.1.8 **"Effective Date"** means _____ 202_, irrespective of the Signature Date;
- 1.1.9 **"Hardware"** means all manufactured goods as supplied to Booyco by The Supplier in the execution of the Services and Goods to be provided in terms of this Agreement and the associated Contract Document, which will include but not be limited to hardware, fabrications, parts, services, manuals and ancillary products to the Goods;
- 1.1.10 **"Master Services Agreement"** means the provisions contained in this document and any annexures hereto, and does not include any Service Schedule(s);
- 1.1.11 **"Parties"** shall mean Booyco and The Supplier
- 1.1.12 **"Prime Rate"** means a rate of interest per annum which is equal to the Reserve Bank of South Africa Limited's published minimum lending rate of interest per annum, compounded monthly in arrears, charged by the said bank on the unsecured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time. (In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, whose decision shall be prima facie proof of the applicable rate);
- 1.1.13 **"Retained Responsibilities"** means those obligations retained by Booyco and to be performed by The Supplier, as more fully described in Annexure "B";
- 1.1.14 **"Required Consents"** means with respect to any third party software, equipment leases and third party service contracts in use or in effect as of the Effective Date, those consents and approvals necessary to allow the The Supplier, its agents and representatives use thereof and access thereto for the purpose of providing the Services;

- 1.1.15 **"Services"** means the provision of the required Goods, Products or Services as defined in the associated Contract Documents(s) linked to the specific instructions, project or requirement of Booyco as well as other requirements that may evolve during the continued duration of this Agreement and as they may be described, supplemented, enhanced, modified or replaced in accordance with the terms of the Service Schedules;
- 1.1.16 **"Service Fees"** mean the fees payable by Booyco to The Supplier as consideration for the Services and Goods rendered to Booyco;
- 1.1.17 **"Service Schedule"** means the agreement(s) to be entered into between Booyco and The Supplier from time to time, specifying the specific Services to be provided or Goods and Products to be supplied to Booyco by The Supplier and any annexures thereto to be appended to this Master Services Agreement by example as "Service Schedule 1". The Service Schedule shall contain the following:
- 1.1.17.1 A detailed description of the service including the purpose for which the Service is required;
 - 1.1.17.2 The deliverables to be provided in terms of that Service Schedule;
 - 1.1.17.3 The cost of the service, including all fees and disbursements;
 - 1.1.17.4 The nature of materials to be used and/or personnel who shall perform the Services;
 - 1.1.17.5 The location at which the services shall be performed
 - 1.1.17.6 The acceptance criteria
 - 1.1.17.7 The responsibilities of the service provider, and
 - 1.1.17.8 Any special terms or conditions specific to the service schedule.

- 1.1.18 **"Signature Date"** means the date on which this Agreement is signed by the last Party signing;
- 1.1.19 **"Software"** means the associated software, if applicable listed in Annexure "_" of Service Schedule 1 annexed hereto or any such other software as may be required to enable The Supplier to carry out the Services defined in the various Service Schedules entered into from time to time;
- 1.1.20 **"Supplier"** means _____ (Proprietary) Limited (Registration No. _____) of _____, Gauteng, South Africa and such other subsidiary of _____ (Proprietary) Limited that may sign a Service Schedule with Booyco from time to time;
- 1.1.21 **"Supplier Accounts"** means all of the accounts in respect of which The Supplier owns 100% of the receivables, or any other accounts not owned by The Supplier and, which The Supplier has agreed in writing to include in this Agreement;
- 1.2 Words importing the singular shall include the plural and vice versa, words importing any gender shall include the other genders and words importing persons shall include partnerships and bodies corporate.
- 1.3 Reference to this Agreement means this Agreement and all annexures thereto.
- 1.4 The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.5 This Agreement shall be binding on and enforceable by the administrators, trustees, permitted assigns or liquidators of the parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted assigns or liquidators, as the case may be.

- 1.6 If any provision in clauses 1 or 2 is a substantive provision conferring rights or imposing obligations on any Party, then notwithstanding that such provision is contained in such clauses, effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.
- 1.7 Where any term is defined within the context of any particular clause in this Agreement, the term so defined shall, unless it appears clearly from the clause in question that such term has limited application to the relevant clause, bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that such term has not been defined in this clause 1.
- 1.8 When any number of Business Days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last Business Day.
- 1.9 Expressions defined in this Agreement shall bear the same meanings in any annexure thereto which does not contain its own definitions.

2. INTRODUCTION

- 2.1 It is recorded that Booyco desires to appoint The Supplier to carry out the Services and provide the required Goods as more clearly defined in the associated Contact Document / Services Schedule and it is further recorded that The Supplier has accepted such appointment, subject to the terms and conditions set forth herein.
- 2.2 The Supplier has or has access to, the requisite experience, Hardware and Software to meet Booyco's requirements.
- 2.3 This Master Services Agreement is an enabling agreement in terms of which The Supplier will provide the Goods, Products and Services to Booyco and the Parties shall execute separate Service Schedules/ Contract Documents, specifying the specific Services which The Supplier will provide to the Booyco.
- 2.4 Each Service Schedule/Contract Document, read with this Master Services Agreement, shall constitute an independent agreement between the Parties. For the avoidance of doubt it is recorded that, the terms of one Service Schedule shall not apply to any other Service Schedule.
- 2.5 The Parties wish to record in writing their agreement in respect of the above and matters ancillary thereto.

3. COMMENCEMENT AND DURATION

- 3.1 This Agreement shall commence on the Effective Date and shall continue indefinitely subject to each Party's right to terminate it in terms of clauses 15 or 0.
- 3.2 Notwithstanding clause 3.1 above, either Party shall have the right to terminate this Agreement on 180 (one hundred and eighty) days' written notice of termination, given by the Party wishing to terminate this Agreement to the other.

4. APPOINTMENT OF THE SUPPLIER

- 4.1 Booyco hereby appoints The Supplier, and The Supplier hereby accepts such appointment, to provide the Goods, Products and Services on the terms and conditions set out in this Agreement.
- 4.2 Booyco hereby agrees to grant The Supplier the opportunity to provide Booyco with any new Goods, Products or Services should Booyco require same during the course of this Agreement or the associated Services Schedule / Contract Document on the following terms:
- 4.2.1 Booyco shall notify The Supplier in writing of Booyco's specific requirements in sufficient detail to enable The Supplier to provide an estimated price and estimated implementation timelines in respect thereof ("**Specific Notice**");
- 4.2.1.1 For the sake of clarity the following information will form part of Booyco's specific requirement:
- 4.2.1.1.1 Detailed Data pack
 - 4.2.1.1.2 Acceptance criteria
 - 4.2.1.1.3 Delivery quantities
 - 4.2.1.1.4 Delivery schedules
 - 4.2.1.1.5 Technical qualifications and requirement
- 4.2.2 The Supplier shall within 15 (fifteen) Business Days of receipt of the Specific Notice provide Booyco with a proposal setting out the fees and implementation timelines in respect of such services ("**The Supplier Proposal**");

- 4.2.3 the Parties shall thereafter negotiate in good faith with a view to agreeing the terms of the The Supplier's Proposal, provided that Booyco shall not be obliged to agree to any such terms if it determines in its reasonable discretion that such terms are not market related;
- 4.2.4 Should the Parties reach agreement on the terms of the **The Supplier Proposal**, The Supplier shall be appointed to render the Services in respect of Booyco's requirements and the Parties shall enter into a Service Schedule or an addendum to an existing Service Schedule, and the provisions of the Master Services Agreement and the Service Schedule shall apply thereto; and
- 4.2.5 Should the Parties fail to reach agreement on the terms of the **The Supplier Proposal** within 90 (ninety) Business Days of either Party, requesting same, Booyco shall be entitled to appoint any third party to render the required services relating only to Booyco's new requirement. For the sake of clarity, this will not imply that The Supplier will be entitled to terminate any current agreements / Services Schedules.
- 4.2.6 The Supplier's appointment will be subject to The Supplier being audited and passing such audit, by Booyco or an appointed representative. In the event that The Supplier's audit is passed with findings, Booyco reserves the right to appoint The Supplier, subject to The Supplier rectifying the findings within a reasonable time.
- 4.2.7 In the event The Supplier does not rectify the findings within the prescribed time, Booyco reserves the right to cancel this agreement with immediate effect, without any penalties.

5. SERVICE SCHEDULE

- 5.1 All production, Services and provision of Goods shall be performed in terms of the Service Schedule.
- 5.2 Each Service Schedule shall form part of, and shall be subject to, all terms of this Agreement.
- 5.3 In the event of a conflict between the terms of any Service Schedule and any of the terms of this Agreement, the Service Schedule shall have precedence.

5.4 Each Service Schedule shall, where applicable, include the following details, which shall be applicable to that Service Schedule only:

5.4.1 a statement regarding the scope of the Services to be performed by The Supplier;

5.4.2 the specific Service definitions for each Service component, including, where applicable, a high level Service description and the obligations of the Parties;

5.4.3 the territory of application of the Services, it being recorded that where no territory is specified, there shall be deemed to be a territorial limitation to the Republic of South Africa;

5.4.4 the commencement date and duration;

5.4.5 the Service Fees;

5.4.6 the annual re-pricing calculation (if any), or where not specified in the Service Schedule then the annual increase calculation of the Master Service Agreement shall apply as defined in clause 6.7 of this agreement; and

5.4.7 the Service Level Agreement relating to the Service.

5.4.8 Any penalties or fines in relation to late deliveries

5.4.9 Any penalties in relation to noncompliance with quality or acceptance criteria.

6. FEES AND DISBURSEMENTS

6.1 As consideration for the Services provided, Booyco shall pay to The Supplier the Service Fees, calculated in accordance with and in the manner set out in the Service Schedule.

- 6.2 The Supplier shall charge Booyco for disbursements that are associated with the provision of the Services alternatively the Goods and its production.
- 6.3 The Service Fees and disbursements will be invoiced on a monthly basis and shall be payable by no later than 30 (thirty) days from the date of the relevant tax invoice or such other date as specifically agreed in terms of specific contract terms.
- 6.4 All invoices may be submitted by email and shall be payable by Booyco without deduction or set-off.
- 6.5 If Booyco fails to pay any amount on the due date thereof, then Booyco shall pay The Supplier interest thereon at the Prime Rate from the due date of payment to the actual date of payment.
- 6.6 Booyco shall be entitled to withhold payment in respect of any amounts due to The Supplier under this Agreement in respect of which a genuine dispute has been raised, provided that:
- 6.6.1 Booyco shall provide The Supplier with written reasons and substantiating documentation in respect of the disputed amount within 10 (ten) Business Days of the dispute being notified to The Supplier by Booyco;
- 6.6.2 Booyco may only withhold payment of the actual amount in dispute; and
- 6.6.3 if a determination is made pursuant to the provisions of clause 18 that such amounts were in fact due and payable to The Supplier, any such outstanding amounts (together with interest calculated in accordance with clause 6.5, if any, which accrued thereon), will be paid to The Supplier within 30 (thirty) Business Days of the determination being made in favour of The Supplier.
- 6.7 The Supplier shall in consultation with Booyco be entitled to increase all Services Fees and Additional Fees on each anniversary of the Adjustment Date at a rate calculated at CPI.

7. **RETAINED RESPONSIBILITIES**

7.1 Whilst The Supplier shall be responsible for providing the Services, Booyco shall remain responsible for The Supplier's Retained Responsibilities as set forth in **Annexure "B"**

7.2 To the extent that Booyco is hindered or prevented from performing any or all of its obligations hereunder as a result of The Supplier's failure to perform any one or more of its Retained Responsibilities, The Supplier shall be excused from performing such of its obligations as it is unable to perform in such circumstances for the duration of the period that Booyco is prevented from performing such obligations.

8. **SUB-CONTRACTORS**

8.1 The Parties record that whilst The Supplier shall be entitled to utilise sub-contractors in the provision of the Services, The Supplier shall:

8.1.1 not be relieved of any of its duties or obligations in terms of this Agreement by entering into any sub-contract with any sub-contractor; and

8.1.2 remain liable for Services performed by sub-contractors as if The Supplier had performed such obligations.

9. **INDEMNITY AND LIMITATION OF LIABILITY**

9.1 The Supplier shall indemnify Booyco against any claims for direct damage or injury to its property and/or persons employed or engaged by it to the extent that such damage or injury is caused by the proven wilful and/or negligent acts or omissions of The Supplier or its employees or agents whilst acting in the course and scope of the provision of the Services in terms of this Agreement.

9.2 Notwithstanding the provisions of clause 9.1:

9.2.1 The Supplier shall not be liable to Booyco for any consequential, indirect, special, punitive or incidental damages, including but not limited to claims for loss of profits or of contracts, loss of data, loss of operation time and

loss of goodwill, arising out of a breach of any provisions of this Agreement or in law;

9.2.2 the aggregate liability of The Supplier in respect of any claim for damages or losses under this Agreement and any Service Schedule or in law shall be limited to and shall not exceed the aggregate Service Fees payable to The Supplier in terms of that Service Schedule for the 12 (twelve) month period immediately preceding the month in which the claim arose (less any Value-Added Tax thereon). Where applicable, if any claim arises before the expiry of a period 12 (twelve) months from the Effective Date the aggregate liability of The Supplier in respect of such claim shall not exceed 10% (Ten percentum)); and

9.2.3 the aggregate liability of The Supplier for damages or losses under this Agreement and/or any Service Schedule or in law, irrespective of the number of claims, shall be limited to and shall not exceed the value of the services rendered by The Supplier to Booyco

9.3 For the avoidance of doubt the Parties record that The Supplier shall have no obligation whatsoever to advise Booyco of any change to any statutory or regulatory requirements relating to The Supplier. Without in any way limiting the aforesaid obligation, The Supplier shall use its reasonable endeavours to notify Booyco of any changes to any statutory or regulatory requirements relating to The Supplier and its business, that The Supplier becomes aware of.

9.4 Despite anything contained in 9.1,9.2 and 9.3, The Supplier will be liable for all or any cost or penalties as a direct result of The Suppliers' negligence or The Supplier's failure to adhere to their standard operating procedures or pre-approved processes.

10. WARRANTIES

10.1 The Supplier hereby warrants to and in favour of Booyco that:

10.1.1 it has the necessary skills and expertise to enter into this Agreement and to render the Services, produce the Goods and provide the required Products; and

10.1.2 it holds the necessary rights in relation to the Designs to enable it to enter into this Agreement and render the Services.

- 10.1.3 Services shall be rendered timeously, with a high degree of professional skill and care;
 - 10.1.4 It has the necessary approvals, licenses, and authorities to provide the Services;
 - 10.1.5 For the duration of the Agreement, it shall comply with all law applicable to the performance of its obligations in terms of this Agreement
 - 10.1.6 Its methodologies, concepts, ideas and consulting tools are in accordance with international best practice; and
 - 10.1.7 The Services shall at all times be performed in a manner which does not infringe the intellectual property rights of any other party.
- 10.2 Any breach of the aforesaid warranties by The Supplier shall be deemed to be a material breach of the Agreement entitling Booyco to cancel this Agreement and claim for damages, after having complied with the provisions of clause 15.
- 10.3 Each of the warranties and representations in this Agreement are separate and severable and shall not limit any other warranties or representations given by The Supplier notwithstanding that they may be similar or overlap.

11. **FORCE MAJEURE**

- 11.1 A Party shall not be liable for a failure to perform any of its obligations in terms of this Agreement insofar as it is able to prove that such failure was due to an impediment beyond its reasonable control and, for purposes of this clause 11, the following events (which enumeration shall not be exhaustive) shall be deemed to be impediments beyond the control of each of the Parties, namely:
- 11.1.1 war, whether declared or not, civil war, civil violence, riots and revolutions, acts of piracy, acts of sabotage;
 - 11.1.2 natural disasters such as violent storms, cyclones, earthquakes, floods and destruction by lightning;
 - 11.1.3 boycotts, strikes and lock-outs of all kinds, go-slows, occupation of premises or work stoppages;

- 11.1.4 explosions, fires and destruction of plant, equipment, machinery and machines and of any kind of installations; and
 - 11.1.5 acts of Government, State or other authority, whether lawful or unlawful, apart from acts for which the Party seeking relief has assumed the risk, each a "force majeure event".
- 11.2 Relief from liability for non-performance by reason of a force majeure event shall commence on the date upon which the Party seeking relief gives notice of the impediment relied upon and shall terminate on the date upon which such impediment ceases to exist.
- 11.3 If the force majeure event persists for a period exceeding 90 (ninety) consecutive days then Booyco shall have the right to appoint a third Party service provider on a temporary basis to perform the services affected by the force majeure event pending the conclusion of the force majeure event.
- 11.4 Booyco will be relieved of its obligations to pay The Supplier the Service Fees for the affected services whilst the third party service provider renders such services as contemplated in clause 11.3.
- 11.5 If the force majeure event persists for a period exceeding 180 (one hundred and eighty) consecutive calendar days, then either Party may terminate this agreement by written notice to the other Party.

12. PUBLICITY

- 12.1 Neither Party shall make or issue any formal or informal announcement, advertisement or statement to the media in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person without the prior written consent of the other Party.
- 12.2 Where Parties wish to market the product for their own use, all relevant costs shall accrue to the said party, without penalty to the other

13. REGULATORY COMPLIANCE

- 13.1 The Supplier shall at all times comply with the regulatory laws rendering the Service to Booyco as stipulated in this Agreement.
- 13.2 The Supplier shall at the request of Booyco allow the Booyco access at all reasonable times to confirm or establish the level of compliance with the regulatory laws in relation to the services rendered on by The Supplier in terms of this Agreement.
- 13.3 The Supplier shall at the request of Booyco allow the Booyco access at all reasonable times to confirm and or establish the level of compliance with quality and approved processes in relation to the services rendered on by The Supplier in terms of this Agreement.
- 13.4 The Supplier shall employ suitably qualified personnel to discharge its responsibilities in terms of this Agreement.
- 13.5 For as long as this Agreement endures, The Supplier shall align itself with Booyco as far as the methodology and standard of compliance employed by it is concerned.
- 13.6 The Supplier shall report to Booyco in the form and at the times required by Booyco in relation to all aspects of its compliance activities to the Compliance Co-ordinator.

14. CONFIDENTIALITY

- 14.1 For the purposes of this clause, "Confidential Information" shall mean all information of a confidential nature, disclosed (whether in writing, orally or by any other means and whether directly or indirectly) by one Party ("the Disclosing Party") to the other Party ("the Receiving Party") whether before or after the Effective Date, including, without limitation, information relating to the Disclosing Party's business operations, plans or intentions, know-how or technologies, trade secrets, market opportunities and business affairs.
- 14.2 At all times during the currency of this Agreement, the Receiving Party of any Confidential Information shall, unless otherwise authorised in writing by the Disclosing Party:

- 14.2.1 keep the Confidential Information confidential;
 - 14.2.2 not disclose the Confidential Information to any person other than with the prior written consent of the Disclosing Party or in order to give effect to the intent or import of this Agreement;
 - 14.2.3 not use the Confidential Information for any purpose other than the performance of its obligations under this Agreement.
- 14.3 At all times during the currency of this Agreement, the Receiving Party shall be entitled to disclose the Confidential Information to any of its employees (a "Recipient") to the extent that such disclosure is reasonably required for the purposes of implementing this Agreement, and who in the case of The Supplier is an employee of The Supplier who is actively involved in rendering the Services to Booyco.
- 14.4 The Receiving Party shall procure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.
- 14.5 The obligations contained in this clause 14 shall not apply to any Confidential Information which:
- 14.5.1 is in or comes into the public domain other than through a breach of this Agreement by the Receiving Party or any Recipient;
 - 14.5.2 can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party;
 - 14.5.3 subsequently comes lawfully into the possession of the Receiving Party from a third party; or
 - 14.5.4 is disclosed by the Receiving Party to any competent authority in terms of any applicable law or to the Receiving Party's professional advisors.

15. **BREACH**

15.1 Notwithstanding the termination clause, should either Party ("Defaulter") commit a material breach of this Agreement then the other Party shall be entitled to give the Defaulter 21 (twenty one) Business Days' notice in writing to remedy such breach and/or failure and if the Defaulter fails to comply with such notice then the other Party shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies which that Party may have in law, including the right to claim damages:

15.1.1 to cancel this Agreement; or

15.1.2 to claim immediate performance and/or payment of all the Defaulter's obligations in terms hereof.

16. **EARLY TERMINATION**

16.1 This Agreement may be terminated forthwith by either Party if the other Party is at any time wound-up or liquidated or placed in judicial management or administration, whether final or provisional.

16.2 Should this Agreement be terminated in terms of clause 15 or 16, all Service Schedules between the parties shall be deemed to have been terminated simultaneously with this Agreement.

17. **ASSIGNMENT**

17.1 Neither Party shall be entitled to:

17.1.1 cede its rights;

17.1.2 delegate its obligations; or

17.1.3 assign its rights and obligations, under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, provided that either Party shall be entitled to cede, delegate or assign its rights and/or obligations under this Agreement to any Affiliated Entity, without requiring the other Party's consent to do so, by giving written notice to that effect to the other Party.

18. ARBITRATION

- 18.1 If any dispute arises out of or in connection with this Agreement, or related thereto, whether directly or indirectly, the Parties must refer the dispute for resolution first by way of negotiations and in the event of that failing, by way of mediation and in the event of that failing, by way of arbitration. The reference to negotiation and mediation is a precondition to the Parties having the dispute resolved by arbitration.
- 18.2 A dispute within the meaning of this clause exists once one Party notifies the other in writing of the nature of the dispute and requires the resolution of the dispute in terms of this clause.
- 18.3 Save as otherwise specifically provided elsewhere in this Agreement, any dispute arising out of or pursuant to this Agreement, its termination or cancellation shall, at the request of any Party to the dispute, be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator or arbitrators agreed to between the parties to the dispute and failing such agreement within 3 (three) days of a request therefore by any Party, appointed by AFSA, which arbitration shall be held in Johannesburg, South Africa.
- 18.4 Each Party to this Agreement irrevocably –
- 18.4.1 consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and
- 18.4.2 authorises the other to apply, on behalf of both Parties to such dispute, in writing to the secretariat of AFSA in terms of the aforesaid rules for any such arbitration to be conducted as a matter of urgency.
- 18.5 Notwithstanding anything to the contrary contained in this clause 18, any Party shall be entitled to apply for, and if successful, be granted, an interdict from any competent court having jurisdiction.
- 18.6 For the purposes of clause 18.3 and for the purposes of having any award made by the arbitrator/s being made an order of court, each of the Parties hereby submits itself to the Gauteng Division of the High Court of South Africa.

18.7 This clause 18 constitutes an irrevocable consent by each of the Parties to any proceedings in terms hereof, is severable from the rest of the Agreement and shall, notwithstanding the termination of this Agreement, remain in full force and effect.

19. NOTICES AND DOMICILIA

19.1 Each of the Parties chooses domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the serving of any process and for any other purposes arising from this Agreement at their respective addresses set forth in clause 1.1.1 and 1.1.8 respectively hereof.

19.2 Each of the parties shall be entitled from time to time, by written notice to the other to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante.

19.3 Any notice given and any payment made by a Party to any of the others ("the addressee") which:

19.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee at the time of delivery; or

19.3.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being shall be presumed, unless the contrary is proved by the addressee, to have been received by the addressee on the 5th (fifth) Business Day after the date of posting.

20. GENERAL

20.1 This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

20.2 For purposes of this Agreement, a "written document", "notice in writing" or "written notice" shall include a written notice sent by facsimile as contemplated in clause 19, but shall exclude any document that is in the form, either wholly or partly, of a data

message as defined in the Electronic Communications and Transactions Act, 2002, and “signed” shall mean a signature executed by hand with a pen and without any electronic process or intervention

20.3 This Agreement contains the entire agreement between the Parties in regard to the subject matter thereof and supersedes any previous agreement between the Parties, whether tacit, oral or written

20.4 Neither Party shall be bound by any express nor implied term, representation, warranty, promise or the like, not recorded herein

20.5 No indulgence which either of the Parties (“the Grantor”) may grant to the other Party (“the Grantee”) shall constitute a waiver of any of the rights of the Grantor, who shall not thereby be precluded from exercising any rights against the Grantee which might have arisen in the past or which might arise in the future

20.6 The Parties undertake at all times to do and procure the doing of all such things, to perform all such acts and to take all such steps open to them and necessary for or incidental to the putting into effect or maintaining of the terms, conditions and import of this Agreement.

20.7 Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable or become unrealistic due to changed circumstances not foreseen and not within its control, such terms and conditions will be severable from the remaining terms and conditions, which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties shall forthwith negotiate an amendment to remove the invalidity

21. **NON-SOLICITATION**

21.1 Neither Party may, without the prior written consent of the other Party, either during, the duration of the agreement or within six months after the expiry of this Agreement, employ whether directly or indirectly, any person who, during the currency of this Agreement, was an employee of the other Party and, in the case of The Supplier’s employees, was utilised by The Supplier in rendering the Services to Booyco as contemplated in terms of this Agreement or, in the case of Booyco’s employees, played an integral role in managing the relationship between The Supplier and Booyco

21.2 To the extent that a Party breaches the provisions of this clause 21, such Party shall pay the other Party ("the aggrieved Party") a finder's fee equal to the cost to company salary which was paid to the employee by the aggrieved Party during the 6 (six) calendar months preceding the resignation of the employee. The finder's fee shall be payable within 30 (thirty) calendar days of receipt of an invoice from the aggrieved Party and shall be without prejudice to any other rights to which the aggrieved Party may be entitled in terms of this agreement or in law.

21.3 Nothing in this clause 21 shall be construed as preventing either Party from appointing an employee of the other pursuant to the employee responding to the publication of general recruitment advertising by such Party.

22. CHANGE IN LAWS

22.1 In the event that The Supplier establishes to Booyco's reasonable satisfaction that a change in applicable laws, regulations, ordinances and codes after the execution of the Agreement increases the cost to The Supplier of providing the Services or any other services, The Supplier shall be entitled to amend the Service Fees and/or the Rates in terms of which The Supplier's Service Fees would be increased on a prospective basis, but not in excess of the amount required for The Supplier to recover the additional costs attributable to the change in applicable laws, regulations, ordinances and codes.

23. SUPERSESSION

23.1 From the Effective Date this Agreement replaces and supersedes any and all previous agreements heretofore made and executed by the Parties regarding the subject matter of this Agreement.

24. GENERAL

24.1 No alteration, consensual cancellation, variation of, or addition to this clause as well as the remainder of this Agreement, shall be of any force or effect unless reduced to writing and signed by all Parties to this Agreement or their duly authorised representatives.

24.2 This document contains the entire Agreement between the parties relating to the matters provided for herein and no Party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.

24.3 No indulgence, leniency or extension of time which any Party may grant or show shall in any way prejudice or preclude such Party from exercising any of its rights in the future.

24.4 This Agreement cancels and supersedes all prior negotiations and agreements of the parties relating to the provision of the Services.

24.5 Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

25. COUNTERPARTS

25.1 This Agreement may be signed in separate counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. A counterpart of this Agreement in facsimile form shall be evidence of the original signature and shall be as effective in law as the counterparts in original form showing the original signatures.

26. COSTS

26.1 Each Party shall bear its own costs of and incidental the preparation of this Agreement together with the drafting and redrafting thereof.

DATED AND SIGNED AT _____ ON THIS _____ DAY OF
_____ 20__.

For and on behalf of Booyco Engineering (Pty) Ltd, who, by his/her signature hereto, warrants that he/she is authorised to represent Booyco Engineering (Pty) Ltd, herein.

Signature : _____

Name : _____

Designation : _____

WITNESS 1

Signature : _____

Name : _____

WITNESS 2

Signature : _____

Name : _____

DATED AND SIGNED AT _____ ON THIS _____ DAY OF
_____ 20__.

For and on behalf of _____ (The Supplier), who, by his/her signature hereto, warrants that he/she is duly authorised to represent _____, herein.

Signature : _____

Name : _____

Designation : _____

WITNESS 1

Signature : _____

Name : _____

WITNESS 2

Signature : _____

Name : _____

ANNEXURE "A" - RATES

ANNEXURE "B" - SUPPLIER'S RETAINED RESPONSIBILITIES

ANNEXURE "C" - OBLIGATIONS

ANNEXURE "D" – CONTRACT DOCUMENT