

## TERMS AND CONDITIONS

### 1. LEASE OF EQUIPMENT

BHBW rents the equipment described in each quotation to the Customer, which hires such equipment from BHBW, on the terms and conditions set out in this Agreement and the relevant quotation. These terms and conditions shall apply to any short term rental by the Customer from BHBW at any time on or after the Signature Date, provided that the price for any such future rentals shall be at BHBW's then current standard prices or such other prices as may be agreed in writing by and between the Parties.

### 2. DEFINITIONS AND INTERPRETATION

- 2.1 In this Agreement, unless the context requires otherwise –
- 2.1.1 **Agreement** means this short term rental agreement (together with any annexures hereto) read together with all relevant quotations concluded in respect hereof from time to time;
- 2.1.2 **Parties** means BHBW and the Customer and **Party** means either one of them, as the context may require;
- 2.1.3 **Signature Date** means the date of signature of this Agreement by the last Party signing;
- 2.1.4 words indicating any one gender shall include any other gender;
- 2.1.5 the singular shall include the plural and the plural shall include the singular;
- 2.1.6 a reference to natural persons shall include created entities (corporate or unincorporate) and the other way around; and
- 2.1.7 if any portion of a clause is invalid or unenforceable in law, the remainder of that clause shall remain valid and enforceable.
- 2.2 The conditions of this Agreement shall apply to each and every quotation which the Customer may accept in relation to the short term rental of equipment, as if such

terms and conditions were incorporated in such quotation.

- 2.3 The acceptance by the Customer of each quotation in relation to short term rentals shall create a separate and independent agreement between the Parties in relation to the short term rental of the equipment described in that quotation. Notwithstanding the aforesaid, the breach of any one of the separate agreements as constituted shall be deemed, at BHBW's election, to be a breach of any or all agreements effected in terms of this Agreement.

### **3. DELIVERY AND RISK**

- 3.1 The equipment as specified in each relevant quotation shall be delivered by BHBW to the Customer on the date and at the Customer's premises as specified in the quotation. On delivery of the equipment, the Customer shall ensure that the delivery note is signed and returned to BHBW.
- 3.2 Delivery of the equipment referred to in each quotation shall be at the Customer's cost, unless otherwise specified in the quotation or agreed between the Parties in writing.
- 3.3 All risk in the equipment referred to in each quotation shall pass to the Customer on the earlier of:
- 3.3.1 the Customer allowing the unloading of the equipment at its premises and attendance to the required handover process; or
- 3.3.2 signature of the delivery note,
- and shall remain with the Customer until BHBW controls the equipment again.
- 3.4 Unless otherwise agreed between the Parties in writing, the commencement date of each short term rental shall be the date of delivery as specified in the quotation by the Customer.
- 3.5 The rental period of each short term rental shall end on the earlier of the date of upliftment of the equipment by BHBW or return of the equipment (which return will be at the Customer's cost) to such location as BHBW may specify in writing.

3.6 The Customer hereby acknowledges that if the equipment it rents in terms of this Agreement is used equipment, then sections 55(2)(a) and 55(2)(b) of the Consumer Protection Act, No 68 of 2008 ("the **CPA**"), do not apply to the equipment, as is permitted by section 55(6) of the CPA. Accordingly, in such circumstances the Customer hereby indemnifies BHBW in respect of any claims arising out of the unfitness of the equipment for the purposes for which the equipment is generally intended, the quality of the equipment and/or any defects in the equipment.

#### **4. RENTAL AND PAYMENT TERMS**

4.1 The fixed monthly rental and the hourly rental rate (the "**Rental Charges**") as set out in the relevant quotation shall be payable by the Customer to BHBW monthly in arrears by debit order, without deduction or set off. In the event that the Customer's rental of any equipment under this Agreement continues for more than one year, the Rental Charges payable in respect of that equipment will escalate by 10% (ten percent), or such other amount as agreed in writing between the Parties, on every anniversary of the commencement date of such short term rental ("**Annual Increase Date**").

4.2 The Rental Charges referred to in clause 4.1 and all other amounts payable by the Customer under this Agreement (read with the relevant quotation) shall be net of value-added tax, insofar as it is applicable, and such tax shall be recoverable by BHBW from the Customer in addition to the Rental Charges referred to in clause 4.1 and those other amounts.

4.3 The equipment shall be transported and delivered in accordance with clause 3.1 above. Unless otherwise agreed between the Parties in writing and/or stated in relevant quotation, all transport costs are for the account of the Customer.

4.4 If any amount payable in terms of this Agreement is not paid on the due date therefor, then BHBW may (without taking away or detracting from any other rights it may have (legally, at common law, in terms of this Agreement and/or otherwise)):

4.4.1 suspend performance of its obligations under the terms of this Agreement, or take such other action as it deems appropriate to protect and enforce its rights;

and/or

- 4.4.2 charge interest on the outstanding amount at the maximum interest rate allowed by law, calculated from the date when such amount becomes due and payable until the date of payment (both days inclusive). In such circumstances any portion of any rental period hereunder shall be regarded as a full rental period for the purposes of the calculation of such interest.

## **5. CUSTOMER'S OBLIGATIONS**

- 5.1 The Customer warrants that it shall:
- 5.1.1 comply with all of BHBW's handover, training and document signature requirements on taking possession of the equipment referred to in each quotation;
- 5.1.2 as far as permissible in law, only use the equipment referred to in each quotation for the purpose for which it was designed and shall only allow the equipment to be operated by suitably qualified, competent and properly trained and licensed persons. The Customer hereby indemnifies BHBW in full against any claim (including personal injury or death claims) arising as a result of the Customer's breach of this warranty;
- 5.1.3 inspect the equipment referred to in each quotation prior to using same and shall not use the equipment unless it is fit for the purpose for which the manufacturer (as per the manual, operator's guide and warranty documentation) intends it to be used;
- 5.1.4 only use the equipment referred to in each quotation in a manner which does not contravene the manufacturer's and/or BHBW'S recommendation, bearing in mind the used nature of the equipment;
- 5.1.5 not contravene any of the manufacturer's recommendations or recommended uses, particularly where any communication has been given about the equipment referred to in a particular quotation only being fit for certain uses/purposes;

- 5.1.6 keep the equipment referred to in each quotation in its possession and under its care and control and take all reasonable care in the use of the equipment, and shall not permit the equipment to be removed from the Customer's premises or the location designated in the relevant quotation for the use of the equipment, without the prior written consent of BHBW;
- 5.1.7 use the equipment referred to in each quotation with proper care and in a normal, proper and reasonable manner and in accordance with any instructions and/or application specifications stated in the quotation, as well as in accordance with any directions supplied by BHBW to the Customer. The Customer shall furthermore take all reasonable precautions to safeguard the equipment from all loss or damage;
- 5.1.8 immediately cease operating any equipment referred to in a quotation should BHBW determine that equipment to be unsafe or potentially unsafe to use, or if the equipment fails a load test;
- 5.1.9 hold harmless, and hereby indemnify, BHBW in respect of any and all claims whatsoever and howsoever arising should the Customer continue to use any equipment referred to in a quotation despite BHBW determining as provided for in clause 5.1.8 above;
- 5.1.10 permit BHBW's agent(s) or representative(s) to service, inspect and examine the equipment referred to in each quotation at all reasonable times and arrange for the admission for this purpose of any such person to the Customer's premises and shall not remove, replace or repair the equipment or any parts or accessory(ies) without the prior written permission of BHBW;
- 5.1.11 not fit to any equipment referred to in a quotation, without the prior written consent of BHBW, any attachment other than as supplied by BHBW;
- 5.1.12 during the subsistence of this Agreement and at its own expense apply for and obtain all and any licenses, certificates, commissions or exemptions that may be required for or in connection with the use of the equipment referred to in each quotation, and at all times comply with all requirements of all applicable

legislation in this regard. On request by BHBW, the Customer shall furnish to BHBW copies of any or all of the documents referred to in this clause;

- 5.1.13 advise BHBW of the name and address of the landlord of any premises on which the equipment referred to in each quotation is kept, stored and/or used and in addition thereto, advise the landlord (and any subsequent landlord) in writing of BHBW's ownership of the equipment and provide copies of such written notices to BHBW at the time they are given to any such landlord;
- 5.1.14 perform at its costs, the daily maintenance check list provided with the equipment referred to in each quotation by BHBW, failing which the customer shall be liable to BHBW in respect of any damage to or deterioration of such equipment caused by or resulting from or pursuant to such failure;
- 5.1.15 provide, at any work site and at the Customer's cost, whatever fuel, oil, water, electricity or other materials and facilities which may be necessary for the operation, maintenance and storage of the equipment referred to in each quotation;
- 5.1.16 be responsible for repair and for replacement of any tyre(s) which are damaged or have to be replaced during the term of this Agreement unless the quotation expressly provides otherwise;
- 5.1.17 on request by BHBW be obliged, within 24 (twenty four) hours of the request, to advise BHBW in writing of the exact whereabouts of any equipment referred to in a quotation;
- 5.1.18 only use the equipment referred to in each quotation in the Republic of South Africa. Should the Customer wish to use the equipment elsewhere than in the Republic of South Africa, the Customer must obtain BHBW's written consent prior to transporting and removing the equipment beyond the borders of the Republic of South Africa; and
- 5.1.19 return the equipment to BHBW upon the termination of the Agreement and/or short term rental as provided for herein, together with the ignition key. In this regard it is recorded that all return costs shall be the responsibility of the

Customer (unless otherwise agreed between the Parties in writing) and the Customer shall be charged an additional R200 (two hundred rand) for each missing ignition key.

5.2 To the fullest extent permissible by law, neither the Customer nor any third party shall have any claim whatsoever for damages against BHBW (being direct or indirect, special or consequential damages) for any reason whatsoever arising out of this Agreement, which for the sake of clarity will include any damages of whatsoever nature arising from or related to the Customer's use and possession of the equipment referred to in each quotation, but always subject to the protection given to the Customer in respect of the equipment under section 61(2) of the CPA.

5.3 Notwithstanding the above and also as far as is permissible in law, if BHBW is liable for any reason in connection with this Agreement, whether under contract, negligence (delict) or any other legal theory, then BHBW's maximum aggregate liability in any circumstances and even if BHBW was aware of the possibility of such loss or damage shall be limited to direct damages only in the maximum aggregate amount of R100 000,00 (one hundred thousand Rand).

## **6. LOSS OF OR DAMAGE TO EQUIPMENT**

6.1 The Customer shall bear all risks of loss and/or damage to the equipment referred to in each quotation howsoever arising including, but without prejudice to the generality of the foregoing, theft and fire (whether from sources internal or external to the equipment) whilst in the Customer's custody, control or possession. Should the Customer part with possession of any equipment without BHBW's written consent under clause 5.1.6 above, the Customer shall be deemed to have retained possession thereof for the purpose of this clause 6. This Agreement shall not be terminated, nor shall the obligations of the Customer under this Agreement or any of such obligations be diminished, by reason only of any total or partial loss of or damage to the equipment. In the event that the equipment is stolen or otherwise lost, the Customer shall be responsible for all consequential loss suffered by BHBW (including all Rental Charges) for the period:

6.1.1 until the equipment is recovered and put into a safe and usable state; or

6.1.2 until BHBW is reimbursed the value of the relevant equipment under clause 7 hereof.

6.2 Should any equipment referred to in a quotation be returned to BHBW in a condition other than that in which it was delivered, fair wear and tear excepted, the Customer's obligations under this Agreement shall continue and the Rental Charges shall remain payable to BHBW until such time as the Customer makes good all damages occasioned to the equipment (whether by repairing and replacing the equipment or by reimbursing BHBW for all expenses incurred by BHBW in repairing or replacing the equipment. A copy of BHBW's 'Fair Wear and Tear' standards which will be used to determine the Customer's compliance with this clause 6.2 will be made available to the Customer on request.

## **7. INSURANCE OF THE EQUIPMENT**

7.1 Without prejudice to the provisions of clause 6 above, the Customer shall at all times insure the equipment referred to in each quotation until the same is returned to BHBW's premises as herein provided. The aforementioned insurance shall be against all risks of loss or damage howsoever arising including, but without prejudice to the generality of the foregoing, theft and fire (whether from sources or external to the equipment) to the full replacement value of the relevant equipment (specified in the quotation) without excess, and shall exhibit to BHBW at any time on request the proof of payment of the current premium for such insurance within 7 days of such request. Should the Customer fail to comply with its obligations in terms of this clause 7.1 in any manner whatsoever, BHBW reserves the right to terminate the Agreement which right shall not prejudice BHBW's right to claim damages for breach of Agreement. In such circumstances the Customer's obligations and indemnities under the Agreement shall furthermore continue until such time as the relevant equipment has been inspected and collected from the Customer's premises by BHBW.

7.2 In the event of any claim being made by the Customer under the insurance policy referred to in clause 7.1, all monies received by the Customer pursuant to such claim shall be applied by the Customer towards repair or replacement of the relevant equipment or towards implementing the other obligations of the Customer under the terms of this Agreement.



7.3 Notwithstanding the above it is agreed that the Customer may fulfil its obligations in terms of clause 7.1 by taking up BHBW's offer of Accidental Loss and Accidental Damages Waiver (the "**Waiver**") upon payment of the appropriate charge at the commencement of the Agreement. Such requirement must be specifically indicated in the relevant quotation. The details of BHBW's Waiver, including its conditions and exclusions, are attached to this Agreement as **Annexure A**. The Waiver does not include the first amount equal to 5% of the replacement value of the relevant equipment of each and every claim for loss or damage. This first amount remains the Customer's liability under clause 6 above irrespective of whether or not the Customer has taken up the Waiver.

## **8. REPLACEMENT OF EQUIPMENT**

8.1 If any equipment referred to in a quotation cannot be operated during normal working hours (i.e. between the hours of 07h00 and 17h00 on any day) as a direct result of any mechanical failure attributable to the equipment directly and which is not in any way attributable to the use and possession of the equipment by the Customer or the Customer's agent or employees, then the Rental Charge for the relevant equipment will be reduced by the minimum hourly charge for each hour that the equipment cannot be so operated.

8.2 If BHBW in its discretion, acting reasonably, determines that any repairs or replacement of equipment are necessary because:

8.2.1 of the failure of the Customer to observe its obligations under this Agreement;

8.2.2 the equipment or any part thereof was damaged by a third party while in the possession of, or being used by the Customer; and/or

8.2.3 the equipment or any part thereof was damaged as a direct result of abnormal wear and tear arising out of abnormal, unreasonable and/or improper use of the equipment by the Customer;

then the Customer shall be obliged to pay to BHBW the Rental Charges due under this Agreement for the period during which the equipment is being repaired. The

Customer shall furthermore be liable to BHBW for the costs of all such repairs, which costs shall be at BHBW'S standard rates and charges for the material supplied and work carried out. All amounts contemplated in this clause 8.2 must have been paid by the Customer in full in order for the relevant equipment to be re-delivered to the Customer.

- 8.3 Notwithstanding any other provision of this Agreement, unless otherwise expressly stated in the relevant quotation BHBW shall not be obliged to:
- 8.3.1 supply gas and/or fuels for the equipment;
  - 8.3.2 supply, replace, fit and/or repair tyres/rims for the equipment;
  - 8.3.3 supply and/or repair light bulbs and rotating beacons for the equipment;
  - 8.3.4 supply, replace, fit and/or repair traction batteries and chargers for the equipment;
  - 8.3.5 supply operators for the equipment;
  - 8.3.6 provide, procure or assist in the procurement of licenses, if required;
  - 8.3.7 supply load arms/forks and aisle guide rollers for the equipment.
  - 8.3.8 replace or repair air conditioners;
  - 8.3.9 supply lift chains; and/or
  - 8.3.10 supply or repair additional equipment such as strobe lights, load backrests and reverse buzzers.

## 9. HOUR METER

- 9.1 BHBW shall ensure that a sealed hour meter ("the **Meter**") is attached to all equipment delivered to the Customer pursuant to this Agreement. The Customer warrants that it shall not tamper with or modify the Meter in any way.

- 9.2 BHBW shall be entitled to enter the Customer's premises in order to inspect the Meter and the Customer shall permit BHBW to have access to the equipment for such purpose.
- 9.3 The Customer shall carry out a daily inspection of the Meter in order to determine that it is working and shall immediately notify BHBW in writing if the Meter has ceased to be operative.
- 9.4 Should the Customer breach this clause 9 in any manner whatsoever then, for the full period for which:
- 9.4.1 such breach continues;
- 9.4.2 the Customer continues to fail to inspect the Meter; and/or
- 9.4.3 the Customer has failed to advise BHBW that the Meter is not working,
- the Customer shall be liable for the full Rental Charges and other charges specified in the relevant quotation as if the equipment were being operated for a full 24 hours each day.

## **10. NO WARRANTIES**

- 10.1 Save to the extent that a warranty to the contrary is provided in the CPA, or any other similar legislation, BHBW does not provide any warranty of any sort as to the fitness of the equipment referred to in each quotation for any purpose whatsoever, even should the Customer have expressed any such purpose prior to the execution hereof.
- 10.2 It is agreed that all equipment rented by the Customer in terms of this Agreement is used equipment and the Customer has accepted it as such. Accordingly, the Customer agrees that:
- 10.2.1 sections 55(2)(a) and 55(2)(b) of the CPA do not apply to the equipment as a result of the exemption permitted in section 55(6) of the CPA;
- 10.2.2 there may be defects in the equipment as a result of it/them being used; and

10.2.3 it will use the equipment solely for the purpose for which the equipment is intended, bearing in mind that the equipment is used.

## **11. ACTS OF GOD/ACTS OUTSIDE OF BHBW'S CONTROL**

The Customer shall not have any claim of any nature whatsoever against BHBW for any failure by BHBW to carry out any of its obligations under this Agreement as a result of any act outside of the control of BHBW including, but not limited to, any strike, lockout, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by a sub-contractor or supplier of BHBW, riot, lack of electricity, political or civil disturbances, the elements of nature, an act of any state or government of any other authority and/or or any other cause which is beyond BHBW's control.

## **12. OWNERSHIP**

12.1 BHBW shall remain the owner of the equipment referred to in each quotation and accordingly BHBW shall be entitled to remove such equipment from any place where it may be located on the expiry or early termination of this Agreement. In the event that the equipment is not within the control of BHBW and this Agreement has expired, ended or been terminated, the Customer undertakes to notify BHBW immediately, but if not, at least within 3 days of the termination, end or expiry of the Agreement, that the equipment has not been collected.

12.2 The Customer agrees not to interfere with or in any way jeopardise BHBW's ownership of the equipment and undertakes to take all reasonable steps to facilitate upliftment of the equipment on the termination of this Agreement for any reason whatsoever.

## **13. CANCELLATION AND SUSPENSION**

13.1 Either Party may cancel this Agreement on written notice to the other Party, if the other Party -

13.1.1 commits a breach of any of the terms or conditions of this Agreement and thereafter fails to remedy such breach within a period of 10 days after receipt of

a written notice calling upon them to do so;

13.1.2 being an individual, is provisionally or finally sequestrated (meaning the process by which somebody's property is temporarily, legally confiscated until a debt which that person owes is paid, a dispute is settled or a court order is obeyed) or surrenders his estate;

13.1.3 is a partnership, and the partnership is terminated;

13.1.4 is a company, and the company is placed under a provisional or final order of liquidation (meaning the process by which a company's, close corporation's or trust's property is temporarily, legally confiscated until a debt which it owes is paid, a dispute is settled or a court order is obeyed) or commences business rescue proceedings;

13.1.5 compromises or attempts to compromise generally with any of its creditors;

13.1.6 fails to pay any amount under the terms of this Agreement on the due date for payment thereof and thereafter fails to remedy such breach within a period of five days after receipt of a written notice calling upon them to do so;

13.1.7 fails to satisfy or take steps to rescind any judgment granted against it within 7 (seven) days of the date of that judgment; and/or

13.1.8 allows the equipment to be attached under any legal process.

13.2 Should BHBW cancel this Agreement in terms of clauses 13.1 and/or 13.5, then BHBW shall be entitled to:

13.2.1 retake possession of the relevant equipment; and

13.2.2 claim immediate payment of all amounts due in terms of this Agreement at the date of cancellation, together with interest thereon at the maximum permissible rate in terms of law.

13.3 Should the Customer breach this Agreement, then BHBW shall in addition to its rights

set out in clauses 13.2.1 and 13.2.2 above, have the right to obtain an order from any court with jurisdiction placing the relevant equipment into the custody of BHBW pending the conclusion of any legal action instituted or to be instituted against the Customer. The Customer agrees that BHBW does not need to serve a notice of demand on the Customer before institution of proceedings to obtain an order for attachment of the equipment or an interdict against the Customer.

13.4 BHBW's rights and remedies in terms of this clause shall not exclude any of its other rights and shall be in addition to and without prejudice to any and all other rights it may have.

13.5 Despite any provision or clause stating otherwise, BHBW shall be entitled to cancel this Agreement and/or the short term rental of any equipment hereunder on 1 (one) day's written notice to the Customer.

13.6 A certificate issued and signed by any director, officer or manager of BHBW, whose authority need not be proved, stating the amount owing and/or the rate of the finance charge applicable in respect of this Agreement, shall:

13.6.1 be presumed to be true and correct until evidence showing it to be untrue is brought;

13.6.2 be *prima facie* proof of the facts stated therein and may be used in support of any application for judgment by default or summary judgment (meaning the shortened legal process where the court is allowed to make a decision based on the documents prosecuted to it without hearing from the people in the matter) or for any other purpose, including but not limited to confirming the value of the relevant equipment.

#### **14. ASSIGNMENT AND CESSION OF RIGHTS**

BHBW shall be entitled to cede (meaning to "transfer") all or any of its rights and/or delegate all or any of its obligations under this Agreement to any person, firm or company whomsoever. Insofar as it may be necessary, the Customer hereby irrevocably consents thereto and should a cession of the rights to payment take place then, if so required by the cessionary (meaning the person to whom rights and/or obligations were transferred), payment shall be made by the

Customer directly to the cessionary.

## **15. JURISDICTION AND LEGAL PROCEEDINGS**

The Customer hereby consents to the jurisdiction of the Magistrates Court having jurisdiction over the Customer in respect of all legal proceedings connected with this Agreement, despite what the value of the matter in dispute might be. Where the matter cannot be heard in the Magistrates Court for whatever reason, the Parties hereby agree and consent to the jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg in respect of the institution (meaning the commencement initiation) of all and any proceedings or process by BHBW against the Customer connected with this Agreement and/or the equipment being the subject matter thereof. The Parties further agree that any action instituted by BHBW against the Customer pursuant to this Agreement may be instituted in that division or in any other Court having jurisdiction in respect of the relevant dispute as BHBW may elect.

## **16. JOINT LESSEES AND PARTNERSHIPS**

16.1 Where there is more than one Customer or where the Customer is a partnership, the obligations of the Customer or of the partners shall at all times be joint and several (meaning that each person is not only liable for his/her own share of obligations/debt but that BHBW can claim the full or total obligations or debts from any one of the Customers in the partnership).

16.2 In the event of the Customer being a company, the signatory on behalf of the company hereby warrants (meaning "guarantees") that he is duly authorized to conclude this Agreement on behalf of the Customer and to bind the Customer to these terms and conditions.

## **17. COSTS AND EXPENSES**

17.1 Should the Customer fail to carry out any of its obligations under this Agreement, then BHBW shall be entitled to carry out those obligations on the Customer's behalf and to recover on demand any costs incurred by BHBW in so doing.

17.2 The Customer hereby indemnifies (meaning to absolve or release someone from being responsible in law) BHBW in respect of all costs and disbursements, including

legal costs on the attorney and own client scale, incurred by BHBW in pursuing its legal remedies against the Customer arising from a breach of this Agreement, recovering possession of the equipment, or in tracing the Customer and/or the equipment and in disposing of the equipment, collecting or attempting to collect all or any amount payable by the Customer to BHBW, or otherwise, and all collection commissions, storage charges, costs of valuation of the equipment, costs of sale (including costs of storing the equipment, costs of restoring the equipment to a saleable condition, selling commissions, dismantling and removal charges and all other fees of a like nature) and such costs and charges shall be payable by the Customer to BHBW on demand.

## **18. DOMICILIA AND NOTICES (ADDRESS FOR LEGAL NOTICES)**

- 18.1 Each Party chooses the address set out in the relevant quotation as the address at which all notices and other communications must be delivered for the purposes of this Agreement.
- 18.2 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 email.

## **19. PRIVACY AND PERSONAL INFORMATION**

- 19.1 For the purposes of this clause 19, the Parties agree that the following terms shall bear the following meanings:
- 19.1.1 **Personal Information** means information about an identifiable, natural person and where applicable, a juristic person, including, but not limited to information about: race; gender; sex; pregnancy; marital status; nationality; ethnic or social origin; colour; sexual orientation; age; physical or mental health; well-being; disability; religion; conscience; belief; culture; language; birth; education; medical, financial, criminal or employment history; any identifying number, symbol, e-mail, postal or physical address, telephone number; location; any online identifier; any other particular assignment to the person; biometric information; personal opinions, views or preferences of the person or the views or opinions of another individual about the person; correspondence sent by the



person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; and the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person; and

19.1.2            **Processing** means any operation or activity, automated or not, concerning Personal Information, including: alteration, blocking, collation, collection, consultation, degradation, destruction, dissemination by means of transmission, distribution or making available in any other form, erasure, linking, merging, organisation, receipt, recording, retrieval, storage, updating, modification, or the use of information. The terms “**Process**” and “**Processed**” will bear a similar meaning.

19.2            To the extent applicable, the Customer consents to BHBW collecting its Personal Information from the Customer and where lawful and reasonable, from public sources for credit, fraud and compliance purposes, as well as for the purposes set out below.

19.3            If the Customer provides BHBW with Personal Information about or on behalf of another person (including, but not limited to, account signatories, shareholders, principal executive officers, trustees and/or beneficiaries), the Customer confirms that it is authorised to:

19.3.1            give BHBW the Personal Information;

19.3.2            consent, on behalf of the persons to whom the Personal Information belongs, to the Processing of their Personal Information (specifically with regards to any cross-border transfer of Personal Information); and

19.3.3            receive any privacy notices on behalf of the persons to whom the Personal Information belongs.

19.4            The Customer consents to BHBW Processing the Customer’s Personal Information:

19.4.1            to provide products and services to the Customer in terms of this Agreement;

- 19.4.2 to carry out statistical and other analyses to identify potential markets and trends as well as to evaluate and improve BHBW's business (this includes improving existing, and developing new products and services);
- 19.4.3 if necessary, in countries outside of South Africa. In this regard the Customer specifically acknowledges and agrees that these other countries may not have the same data protection laws as those which apply in South Africa. Where reasonably possible, BHBW will require that any foreign recipient of the Customer's Personal Information agrees to BHBW's privacy policies; and
- 19.4.4 by sharing the Customer's Personal Information with BHBW's third-party service providers and insurers. In this regard BHBW undertakes to ensure that all third-party service providers agree to BHBW's privacy policies if they need access to any Personal Information to carry out their services.

## **20. ANTI-BRIBERY AND CORRUPTION**

- 20.1 Without prejudice to any other clause in this Agreement, the Customer warrants and represents that it shall:
- 20.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the South African Prevention and Combating of Corrupt Activities Act, the US Foreign Corrupt Practices Act and the UK Bribery Act 2010 (collectively, the **Anti-Bribery Legislation**);
- 20.1.2 have and maintain in place for the duration of this Agreement its own policies and procedures to ensure compliance with the Anti-Bribery Legislation and enforce them where appropriate; and
- 20.1.3 for the duration of this Agreement, ensure that neither it nor its directors, officials, employees, agents and/or contractors do or omit to do any act that will cause or lead BHBW to be in breach of any Anti-Bribery Legislation.
- 20.2 Notwithstanding anything to the contrary in this Agreement, BHBW may immediately cancel this Agreement on written notice to the Customer in the event of a breach by

the Customer of any of the warranties in clause 20.1, without prejudice to BHBW's other rights in terms of this Agreement or in law.

20.3 The Customer shall, for the duration of this Agreement, keep itself up to date in respect of any changes to the Anti-Bribery Legislation and shall comply with such changes as and when they are effected.

20.4 The Customer hereby indemnifies BHBW against any losses of any nature whatsoever and howsoever arising which are suffered by BHBW as a result of a breach of this clause 20 by the Customer.

## 21. SANCTIONS

21.1 For the purposes of this clause 21, the Parties agree that the following terms shall bear the following meanings:

21.1.1 **Affiliates** means, to the extent applicable, any of the Customer's subsidiaries, the Customer's holding company or any subsidiary of the Customer's holding company and all of its subsidiaries;

21.1.2 **Applicable Laws** means all national, provincial, local and municipal legislation or subordinate legislation, ordinances, regulations, by-laws, rules and/or other laws of any relevant regulatory authority and any other instrument having the force of law as may be issued and in force from time to time as well as common law;

21.1.3 **Prohibited Activities** means illegal or terrorist activities, money laundering or any activities which are subject to Sanctions or are not in compliance with Applicable Laws;

21.1.4 **Sanctioning Body** means the United Nations Security Council (UNSC), the Office of Foreign Assets Control of the Department of Treasury of the United States of America (OFAC), the European Union (EU), Her Majesty's Treasury (HMT), the Ministry of Economy, Finance and Industry (France) (MINEFI) or any other sanctioning body recognised by BHBW from time to time;

- 21.1.5                    **Sanctioned Entity** means:
- 21.1.5.1                    any natural or juristic person or country;
- 21.1.5.2                    in the case of a juristic person, any person who (i) owns or controls it; or (ii) it owns or controls (and for these purposes, owns means holding any percentage of ownership or beneficial interest and controls means the ability, directly or indirectly and whether through the voting of shares, the appointment of directors or similar officers or through any other means, to control the business or policy of the juristic person); and/or
- 21.1.5.3                    in the case of any country, its ministries, departments, agencies or any other governmental organisations,
- listed on any Sanctions List or who is subject to any Sanctions;
- 21.1.5.4                    **Sanctions** means any restrictions set by a Sanctioning Body, including but not limited to diplomatic, travel, trade or financial sanctions or embargoes; and
- 21.1.5.5                    **Sanctions List** means any list of Sanctioned Entities published by a Sanctioning Body, as updated from time to time.
- 21.2                    The Customer warrants and undertakes that it will not, for the duration of this Agreement:
- 21.2.1                    act in a way that benefits a Sanctioned Entity;
- 21.2.2                    be involved in any Prohibited Activities; and/or
- 21.2.3                    use any equipment provided by BHBW pursuant to this Agreement for any Prohibited Activities.
- 21.3                    The Customer furthermore warrants that it is not and, if it is a company, none of its Affiliates are:

- 21.3.1 a Sanctioned Entity; or
- 21.3.2 being investigated for any activities relating to Sanctions.
- 21.4 The Customer must notify BHBW immediately in writing if it or one of its Affiliates are being investigated for any activities relating to Sanctions.
- 21.5 The Customer indemnifies BHBW against any fines, penalties, losses, damages, costs, actions, proceedings, claims or demands (**Losses**) which BHBW may suffer because of a breach by the Customer of this clause 21.
- 21.6 If BHBW knows or suspects that the Customer is in breach of this clause 21 or the Customer is about to become subject to Sanctions, BHBW can immediately, in its sole and absolute discretion, terminate this Agreement.
- 21.7 The Customer specifically acknowledges and agrees that BHBW shall not be held liable to the Customer for any Losses which the Customer may suffer if BHBW cancels this Agreement in accordance with the provisions of clause 21.6.

## **22. APPLICABLE LAW AND CONFLICT**

- 22.1 This Agreement shall in all respects be governed by and construed in accordance with the laws of the Republic of South Africa.
- 22.2 In the event of any of the provisions contained herein being in conflict with any statute/law in force in the Republic of South Africa for the time being, then such provision shall be deemed to be amended only to the extent necessary to bring it into compliance with such law.

## **23. INDULGENCE**

No relaxation or indulgence (meaning any variation or deviation from what has been agreed) granted by BHBW to the Customer shall be deemed (meaning "presumed") to be a waiver (meaning "the giving up of" or "relinquishment") of any of BHBW's rights, nor shall such conduct stop BHBW from exercising its rights as set out herein. No such relaxation or indulgence shall be deemed to be a novation (meaning a substitution of one obligation for another and in the circumstances means altering the existing agreement to anything else) of

any of the terms and conditions of this Agreement.

## **24. GENERAL**

- 24.1 This Agreement (including all relevant quotations concluded in relation hereto) contains the entire agreement between the Parties with regards to its subject matter.
- 24.2 No agreement to vary, add to or cancel this Agreement shall be of any force or effect unless reduced to writing and signed by or on behalf of the Parties. In the event that there is any conflict between the terms and conditions of this Agreement, any invoice, statement, quotation or other document provided to the Customer with respect to the rental of the equipment referred to in this Agreement, the terms and conditions of this Agreement shall take precedence.
- 24.3 As far as permissible in law, no Party shall have any claim or right of action arising from any undertaking, representation or warranty not contained herein.
- 24.4 No failure by a Party to enforce this Agreement shall constitute a waiver of such provision or affect in any way that Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach make void the effectiveness of the provision itself.
- 24.5 Each Party warrants that it is acting as a principal and not as an agent for an undisclosed principal and that it has the authority to conclude this Agreement.
- 24.6 If any portion of a clause hereof is void as a result of a conflict with any South African law, only that portion of the clause will be invalid and unenforceable and the remainder of the clause and this Agreement will be fully enforceable and valid.