

MASTER SERVICE LEVEL AGREEMENT

(Broker)

made and entered into by and between

AGRICOAL LOGISTICS (PTY) LTD

REG NO.: 2008/006046/07

REPRESENTED BY CHRISTOPH VAN ZYL

(AGRICOAL)

AND

NAME: _____

(ID/REG NO.) _____

REPRESENTED BY _____

(THE CARRIER)

WHEREAS AgriCoal, as a result of its involvement in the distribution of Goods in the Territory, has a need for such Goods to be transported by the Carrier subject to the terms and conditions hereof;

AND WHEREAS the Carrier possess of the necessary experience, vehicles, equipment and staff in order to conduct the aforementioned transportation;

AND WHEREAS AgriCoal is desirous to appoint the Carrier to conduct the transportation of the Goods in the Territory on a non-exclusive basis and the Carrier is desirous to be appointed as a Carrier in terms of this Agreement;

NOW the parties are desirous to reduce their agreement to writing.

1. DEFINITIONS AND TERMINOLOGY

In this Agreement, unless the context otherwise indicates, words and expressions shall bear the following meanings -

- 1.1. **“Agreement”** shall mean this signed Master Agreement, including all annexures attached hereto as dealt with in paragraph 21 of this Agreement;
- 1.2. **“AgriCoal”** shall mean AgriCoal Logistics (Pty) Ltd with registration number: 2008/006046/07, a private company duly registered in terms of the Company laws of South Africa;
- 1.3. **“the Carrier”** shall mean the entity as described on the cover page (page 1) of this Agreement;
- 1.4. **“Goods”** shall mean agricultural products such as, but not limited to maize, grain, soya beans, sorghum, wheat, sugar, coal, chrome as well as any other Goods that AgriCoal wish to carry and transport as stipulated in **Annexure “A”**;
- 1.5. **“Party/Parties”** shall mean any party / both parties to this Agreement, namely AgriCoal and / or the Carrier;
- 1.6. **“Service”** shall mean the services as described in clause 4 of this Agreement;
- 1.7. **“Commencement date”** Means the commencement date of this Agreement being the signature date of this Agreement by the Carrier;

- 1.8. **“day”** Means business day;
- 1.9. **“Delivery/Delivered”** Means the successful off-loading of the Goods at the end destination as stipulated in **Annexure “A”**;
- 1.10. **“Loading Point”** means the address stipulated by AgriCoal in **Annexure “A”** where the Goods are to be loaded;
- 1.11. **“Off-Loading Point”** means the address stipulated by AgriCoal in **Annexure “A”** where the Goods are to be off-loaded;
- 1.12. **“Vehicle”** means one or more of the truck and trailers to be used by the Carrier in the transportation of the Goods;
- 1.13. **“Consignee”** means the person who takes delivery of the Goods at the Off-Loading Point;
- 1.14. **“Consignor”** means the person from whom the Goods are collected at the Loading Point; and
- 1.15. **“Territory”** means the area in which AgriCoal transport and distribute Goods. No specific area and or routes are dedicated to any particular carrier;
- 1.16. **“Client”** means any client that AgriCoal rendered or renders services to.

2. INTERPRETATION AND RELATIONSHIP

- 2.1. The index and the headings of the clauses used in this Agreement are for reference purposes only and shall not govern the interpretation or be used to give any indication as to the meaning or effect of this Agreement.
- 2.2. In this Agreement, unless the context otherwise indicates, a reference to:
- 2.2.1. The singular shall be deemed to include a reference to the plural and vice versa;
- 2.2.2. Any one gender shall be deemed to include a reference to the other genders; and
- 2.2.3. A natural person shall be deemed to include a reference to a legal person.
- 2.3. The terms defined in clause 1 of this Agreement shall be construed as binding provisions of

this Agreement and any rights conferred and obligations imposed upon the parties by such definitions shall be binding upon them.

2.4. The parties for all purposes of this Agreement will act in their capacity as a separate and independent legal entity and with no joint and several liabilities on the part of either party. The relationship between the parties shall therefore in no way, whatsoever, be deemed to be that of an employer and an employee or a partner or an agency or representative of one another.

2.5. The Carrier shall be regarded as an independent contractor.

3. APPOINTMENT AND DURATION

3.1. AgriCoal hereby appoints the Carrier as a preferred, non-exclusive service provider to render the Service as and when required by AgriCoal, and the Carrier is willing to accept such appointment upon the terms and conditions contained in this Agreement.

3.2. Notwithstanding clause 3.1 above, AgriCoal shall have the right to terminate this Agreement on 7 (seven) days written notice to the Carrier.

3.3. The Carrier acknowledges that the Carrier will be introduced to AgriCoal's respective Clients and in executing the Carrier's obligations under this Agreement may be in direct contract with such Clients. The Carrier further acknowledges that the Carrier would not have been aware of the Client, alternatively any services to be provided to the Client, had the Carrier not been introduced to the Client by AgriCoal. Wherefore it is recorded between the parties and agreed to by the Carrier that:

3.3.1 For a period of 6 (six) months after the service as per clause 4 below has been rendered to AgriCoal by the Carrier, the Carrier undertakes not to directly and / or indirectly and without engaging AgriCoal, approach any of AgriCoal's Clients that the Carrier has been introduced to and / or been in direct contact with in executing the said service, for the purpose of rendering any services directly to such Clients;

3.3.2 Immediately upon AgriCoal becoming aware of any breach of the Carrier's undertaking as per clause 3.3.1 above, AgriCoal will give written notice to the

Carrier of such breach, whereafter the Carrier will:

3.3.2.1 Make available to AgriCoal any and all, not limited to, invoices, payment advises, delivery notes and agreements rendered or entered into between the Carrier and the client, within 5 (five) days of notified of the breach as per clause 3.3.2 above;

3.3.2.2 Attend to pay 25% (twenty five percent) of the Carriers invoice amount or payment amount received by the Carrier, to AgriCoal within 5 (five) days of receiving written notice from AgriCoal in confirmation of the amount due and banking details.

4. SCOPE OF SERVICE

4.1. OBJECTIVE

The main objective of this Agreement is that the Carrier is to provide a safe, cost effective and reliable transportation service to AgriCoal in the Territory. The Carrier shall *inter alia* attend to the following as and when required by AgriCoal:

4.1.1. The collection of Goods at the Loading Point;

4.1.2. The safe, timeous and reliable transportation of the Goods from the Loading Point to the Off-Loading Point;

4.1.3. The delivery of the Goods to the Off-Loading Point;

4.1.4. The correct and punctual completion of all relevant documentation required by AgriCoal or as practise dictates.

4.2. COMMITMENT

- 4.2.1. The Carrier hereby undertakes to ensure that all the Vehicles to be utilized to render the Service comply with all requirements of the National Road Traffic Act 93 of 1996 (as amended). The Carrier shall be liable for all damages whatsoever in the event that AgriCoal or any third party suffers such damages as a result of any act or omission of the Carrier;
- 4.2.2. The Carrier undertakes and agrees to provide, operate and maintain such Vehicles and equipment as may be necessary to render the Service. It is specifically recorded that AgriCoal does not provide any guarantee and / or undertaking in respect of any minimum quantity of the Goods to be transported in terms of this Agreement. Such volumes shall be at the absolute discretion of AgriCoal;
- 4.2.3. The Carrier undertakes to ensure that the Vehicles are at all times maintained to meet the standard required by AgriCoal;
- 4.2.4. The Carrier undertakes to provide drivers that are competent, reliable, medically fit and properly trained and qualified to convey the Goods;
- 4.2.5. The Carrier shall ensure that its drivers are competent in order to see to the duly completion and signature of all relevant documentation;
- 4.2.6. The Carrier undertakes to ensure that its employees and/or drivers comply with all relevant and applicable legal requirements and shall ensure that they follow due process while they are at the Loading and Off-Loading Points;
- 4.2.7. The Carrier undertakes to, at all relevant times, be able to telephonically contact all the drivers of the Vehicles;
- 4.2.8. The Carrier shall dedicate a representative who shall at all relevant times be in contact with the relevant officials of AgriCoal in order to ensure that the Loading

and Off-Loading instructions are properly communicated, and are effected timeously and efficiently;

- 4.2.9. The Carrier shall be liable for clean-up, rehabilitation (if necessary) and recovery as a result of any spillage, of whatsoever nature, whilst the Goods are loaded, transported and off-loaded;
- 4.2.10. The Carrier will be liable for any loss or damage to Goods transported, howsoever caused, and the Carrier agrees to indemnify AgriCoal for any such loss or damage, by way of payment or at the option of AgriCoal, by way of deduction or set-off from any and all monies otherwise payable by AgriCoal to the Carrier;
- 4.2.11. The Carrier undertakes to comply with AgriCoal documentation requirements as indicated in this clause 4 and to ensure that the relevant documents are being signed by all relevant and dedicated officials at the Loading and Off-Loading Point as well as any weigh bridges, if applicable.
- 4.2.12. The Carrier shall at all times and when requested by AgriCoal be able to prove Delivery of the Goods;
- 4.2.13. The Carrier undertakes to liaise with AgriCoal (when required) so as to perform in a prompt, safe and efficient manner all reasonable instructions issued by AgriCoal, and to co-operate with AgriCoal in all matters pertaining to this Agreement. Should any delays be incurred that would result in a late delivery, the Carrier undertakes to notify AgriCoal of such delay and the expected duration thereof the moment the delay is apparent;
- 4.2.14. It is recorded that AgriCoal shall have the right to, at its discretion, notify the Carrier of any additional requirements or terms prescribed by AgriCoal to which the Carrier has to comply with and which requirements are to be in connection with the Service;
- 4.2.15. The Carrier shall ensure that the Goods are Delivered at the Off-Loading Point into the custody and possession of the person or official nominated by AgriCoal, or if

no person is nominated, to the person in charge of incoming deliveries at such address;

- 4.2.16. The Carrier shall supervise the Loading and Off-Loading of Goods onto or from the Vehicles;
- 4.2.17. It shall not be expected by the Carrier to warrant the quality of the Goods but shall be accepted, until proven otherwise by the Carrier, that the Goods and the quality of the Goods shall be as stipulated on the Load Confirmation;
- 4.2.18. The Carrier shall Deliver the Goods in the same condition and quantity as received at the Loading Point;
- 4.2.19. The Carrier shall keep the Goods in good order and condition, properly covered by tarpaulins or other means and secured for the duration of the transportation;
- 4.2.20. The Carrier shall ensure that the Vehicles arrive timeously at the Loading Point and proceed to the Off-Loading Point without delay;
- 4.2.21. The Carrier shall procure and obtain all permits required in terms of any law regulating the transportation of the Goods;
- 4.2.22. The Carrier shall attend, at the request of AgriCoal, performance review meetings with AgriCoal for purposes of monitoring the Carrier's performance in terms of this Agreement;

4.3. LOADING AND OFF-LOADING

- 4.3.1. AgriCoal shall, at its sole discretion, forward loading instructions to the Carrier, addressed in accordance with **Annexure "A"**. The loading instructions shall include the following:
 - 4.3.1.1. The load confirmation reference number;
 - 4.3.1.2. The date on which the Goods are to be loaded;

- 4.3.1.3. The location where the Goods are to be loaded;
 - 4.3.1.4. The location where the Goods are to be off-loaded;
 - 4.3.1.5. The driver's name;
 - 4.3.1.6. The horse registration number of the Vehicle;
 - 4.3.1.7. The trailer(s) registration number(s);
 - 4.3.1.8. The transport rate;
 - 4.3.1.9. The Goods to be loaded;
 - 4.3.1.10. The invoice weight;
 - 4.3.1.11. The offloading reference number; and
 - 4.3.1.12. The AgriCoal broker responsible for the load.
- 4.3.2. The Carrier shall execute the said instructions punctually and effectively;
- 4.3.3. The facsimile/ e-mail transaction report or acknowledgement of receipt or the electronic confirmation report shall be sufficient proof that the said loading instructions have been given and received;
- 4.3.4. The Carrier shall ensure that its Vehicles are timeously available, present and ready to load at the designated Loading and Off-Loading Points;
- 4.3.5. The Carrier shall ensure that the Consignee follow proper procedure in its instructions to the driver of the Vehicle and that the Goods are off-loaded strictly in accordance with such instructions;

- 4.3.6. The Carrier shall ensure that the Goods off-loaded comprise the correct quantity and are in good order and condition;
- 4.3.7. The Carrier shall be liable for any delay or detention of the Goods so carried and for any loss, damage or deterioration arising therefrom;
- 4.3.8. It is hereby recorded that the dates and times on which the Goods are to be loaded and off-loaded as stipulated in **Annexure "A"**, are material and the Carrier undertakes to strictly adhere to these time limits. It is recorded that should AgriCoal be held liable or suffer any damage as a result of the Carrier not adhering to these time limits, the Carrier shall assume responsibility and liability for such damages;
- 4.3.9. The Carrier shall provide all cordage, nets, tarpaulins, ropes and all other equipment reasonable necessary for safeguarding and securing of the Goods in transit and during off-loading;
- 4.3.10. It is agreed that the Vehicles will have sufficient loading capacity to enable the Carrier to comply with its obligations in terms of this Agreement. The Carrier shall not, without AgriCoal`s prior consent dispatch a particular Vehicle unless it has been loaded to its full capacity;
- 4.3.11. The Carrier undertakes not to overload any of its Vehicles in executing compliance with this Agreement;
- 4.3.12. The Carrier shall, upon loading, ensure that the original delivery note is signed signifying that the Goods have been loaded and upon off-loading, acknowledging that the Goods have been off-loaded. The Carrier and the Consignee must ensure that a sufficient declaration of all shortages or damage to the load must be documented in the delivery note.
- 4.3.13. The Carrier is obliged to disclose to the Consignor details of the maximum pay load legally allowed for the specific vehicle at all times as prescribed by the National Road Traffic Act 93 of 1996 (as amended);

- 4.3.14. The Carrier will supply only such Vehicles as are suited to the required load with due consideration to roadworthiness, gross vehicle mass and axel mass limitations and other legal requirements;

5. OCCUPATIONAL HEALTH AND SAFETY

The Carrier shall, in so far as may be applicable, comply with the Occupational Health and Safety Act, 85 of 1993 and shall use its best endeavours to minimise or prevent any loss or damage to life, property and the environment. All relevant incidents occurring at the warehouse, no matter how small, shall be reported to AgriCoal.

6. LOAD CONFIRMATION

- 6.1. The Carrier shall only execute the Service upon receipt of an official instruction issued by AgriCoal, which instruction shall include the loading instructions referred to in clause 4.3.1 above. An instruction shall be regarded as official upon receipt of a completed **Annexure "A"** by the Carrier from AgriCoal and shall constitute the Agreement between the Parties upon signature thereof by the Carrier.
- 6.2. The Carrier shall not be compensated for any work performed without a Load Confirmation. The Carrier shall endeavour to avoid any delay and shall, on receipt of a Load Confirmation:
- 6.2.1. Commence with the Service on AgriCoal's instruction to do so;
- 6.2.2. Execute the Service in such order and sequence as is required by AgriCoal to ensure the sufficient, expeditious and timeous performance of the entire Service; and
- 6.2.3. Maintain progress in accordance with the agreed program and schedule, meeting all milestone dates and times specified.
- 6.3. Should there appear to be any discrepancy, ambiguity or uncertainty pertaining to the meaning or effect of any information contained in a load confirmation stipulated as per **Annexure "A"**, the Carrier shall refer the matter to AgriCoal for decision before proceeding to execute the Load Confirmation.

- 6.4. Should the Carrier at any stage be unable to execute the Service and AgriCoal prefers not to make use of the remedies available by law for breach of contract and should the Carrier's inability to supply the Service not be attributable to and as a result of the factors mentioned in clause 14 of this Agreement, then AgriCoal shall be entitled, without prejudice to any of its rights in terms of this Agreement or under common law, to purchase the Service that the Carrier has been unable to supply from any other supplier and recover the difference in cost from the Carrier.

7. THE CARRIER'S PERSONNEL

- 7.1. The Carrier shall employ trustworthy, skilful and experienced personnel who are trained and qualified to execute the service.
- 7.2. The Carrier shall, upon request, furnish AgriCoal with security records, *curricula vitae* and medical records of personnel employed by the Carrier to execute the Service.
- 7.3. The Carrier's personnel shall wear the Carrier's uniform and a personnel identification card issued by the Carrier. The personnel identification card shall reflect the following information:
- 7.3.1. A personnel identification number;
 - 7.3.2. A company card reference number; and
 - 7.3.3. A signature of the employee.
- 7.4. The Carrier's personnel shall be equipped with the necessary equipment, tools, protective clothing and requisites required to execute the Service.
- 7.5. The Carrier shall organise, supervise and accept responsibility for all personnel employed by it to execute the Service in accordance with this Agreement.
- 7.6. AgriCoal shall have the right to review and approve or reject personnel assigned by the Carrier for any reason which may include, but shall not be limited to, any failure, neglect,

incompetence, improper conduct, bad workmanship or for security and safety reasons, and AgriCoal's decision shall be final.

- 7.7. Accommodation for and transportation of personnel employed by the Carrier shall not be provided by AgriCoal and shall be for the Carrier's account.

8. INSPECTION AND RECTIFICATION

- 8.1. AgriCoal may at any time perform an inspection of the Carrier when executing the Service in terms of this Agreement.
- 8.2. If AgriCoal is, at any time, dissatisfied with the Service on account of it being unsatisfactory, faulty or of inferior quality or on account of it not being in accordance with the stipulations of this Agreement, then AgriCoal may in its sole discretion and without prejudice to any of its rights in terms of this Agreement or under common law, instruct the Carrier in writing to remedy such failure or default within 48 (FOURTY EIGHT), hours free of charge.
- 8.3. The Carrier shall immediately, and in any event within the time prescribed by AgriCoal, remedy such failure or default free of charge.

9. COMPENSATION

AgriCoal will compensate the Carrier for the Service rendered in accordance with the all-inclusive rate stipulated as per the loading instruction or as agreed upon between the parties in **Annexure "A"**.

10. PAYMENT

- 10.1. The Carrier must submit an original Value-Added Tax invoice together with all required supporting documents to AgriCoal not later than the cut-off dates as circulated from time to time by AgriCoal in order to be paid by the last business day of that particular payment cycle. Should the carrier submit an original Value-Added Tax invoice together with all required supporting documents to AgriCoal after the cut-off dates day, payment shall only be made in the next payment cycle.

10.2. Any payment effected in terms of this Agreement shall be subject to AgriCoal's right to offset and deduction of payments due in terms of this Agreement or any other Agreement which the Parties may have, against damages or losses that AgriCoal has sustained by reason of the Carrier's failure to perform its duties as stipulated in this Agreement, subject to the Carrier being in default to make payment of such damages and/or losses within 7 (seven) days from receipt of a written demand by AgriCoal.

10.3. Invoices to AgriCoal shall be issued to:

AgriCoal Logistics (Pty) Ltd
Offices 5101, Block 5, Monument Office Park
71 – 79 Steenbok Avenue, Monument Park, 0181
Attention: Christoph van Zyl/Meliss Venter
Tel: 012 111 0600
Fax: 086 633 6085

10.4. An invoice submitted by the Carrier shall contain, as a minimum, the following information:

10.4.1. The name and address of the Carrier;

10.4.2. The date of the invoice;

10.4.3. An invoice number;

10.4.4. The Value Added Tax ("VAT") registration number of the Carrier and AgriCoal;

10.4.5. The load confirmation reference number;

10.4.6. A description of the Service covered by the invoice;

10.4.7. The price and VAT portion applicable to invoice; and

10.4.8. A copy of the signed delivery note must be attached plus the Load Confirmation with the transport rate on it.

- 10.5. The Carrier shall comply with the requirements stipulated in the Value Added Tax Act, Act 89 of 1991 or any amendment(s) or Act passed in substitution thereof.
- 10.6. Failure to comply with the requirements of this clause 10 may result in late payment of the total value of an invoice. AgriCoal shall not be liable for any costs incurred or losses suffered by the Carrier as a result of such late payment.

11. HARDSHIP

Should either party suffer undue and/or unreasonable hardship as a result of the execution or implementation of any of the provisions of this Agreement, then, provided the party in question is not entitled to claim relief in terms of clause 14 as Force Majeure, such party shall forthwith indicate which of the provisions of the Agreement is causing such party hardship and give the other party written particulars concerning the nature of the hardship suffered together with a proposal as to how to remove the hardship. The parties shall thereupon negotiate on a bona fide basis for the removal of the undue and/or unreasonable hardship. However, such negotiation shall not extend the deadlines for any performance of an obligation otherwise established hereunder, without the written consent of both parties.

12. ARBITRATION

- 12.1. The parties agree that all disputes which may arise from this Agreement, its terms and conditions, interpretation, application, execution or otherwise will be settled by way of arbitration, subject thereto that urgent relief may be sought from a competent Court by any party.
- 12.2. The Arbitration Act No. 42 of 1965 and the laws of the Republic of South Africa will be applicable to such arbitration.
- 12.3. Arbitration will be done in an informal and expedited manner.
- 12.4. Same will be referred to a practising advocate of not less than ten years of standing to be nominated by the parties, to adjudicate and rule on the impasse.

- 12.5. In the event of the Parties not being able to agree on the appointment of such practising advocate, such appointment shall be made by the chairperson from time to time of the Pretoria Bar Council who in his sole discretion may appoint a practising advocate of not less than ten years standing.
- 12.6. The decision of the duly appointed practising advocate on any issue submitted to him/her for adjudication and a ruling shall be final and binding on the Parties.
- 12.7. The Arbitrator will make a finding and award which he deems fair and reasonable with regard to the dispute submitted to him. He will therefore not be bound to strictly comply with the applicable rules of the law.

13. CONFIDENTIALITY

- 13.1. Both parties acknowledge that the details of this Agreement and any communication between the parties arising out of or in connection with this Agreement are strictly confidential and shall not be disclosed to any third party without the prior written approval of the other party, who shall have the right to grant or refuse such consent in its absolute discretion.
- 13.2. Each party therefore agrees:
- 13.2.1. To use reasonable means, not less than that used to protect its own proprietary information, to safeguard the proprietary information of the other party;
- 13.2.2. Not to disclose any proprietary information of the other party to any unauthorised person;
- 13.2.3. Not to make any copies of the proprietary information of the other party except as required only for the purpose of this Agreement;
- 13.2.4. To return all proprietary information to the other party upon receipt of written instruction to do so or at date of termination of this Agreement; and

13.2.5. To ensure that the provisions of clause 13 of this Agreement are not violated by any labourer, employee, sub-Carrier, agent or any other person employed by it in terms of this Agreement.

14. FORCE MAJEURE

14.1. Neither of the Parties shall be held liable in respect of any failure to fulfil its obligations or commitments in terms of this Agreement, when such failure is caused by or arises from force majeure such as, but not limited to war, civil commotion, riots, insurrection, fires, explosions, floods or other circumstances, in so far as any of the aforementioned events are beyond its control and have not been caused by its negligence or that of its employees. The party so prevented from fulfilling its obligations hereunder shall immediately notify the other to that effect and confirm this in writing, giving a full and complete explanation of the circumstances responsible for such failure or occurrence as well as the estimated duration thereof and, if requested, the action(s) such party is taking or proposes to take to remove the said circumstances with the least possible delay as well as the action(s) to be taken to prevent future recurrences.

14.2. Should the Carrier due to force majeure not be able to supply the Service, then AgriCoal shall be entitled to appoint any other person to execute the Service until such time that the Carrier is able to render the Service.

14.3. Should such occurrence continue for a period of thirty (30) days or longer, either party may terminate this Agreement or any part thereof, unless the parties agree to continue on such new terms and conditions acceptable to both parties.

15. CESSION

15.1 The Carrier shall not cede, assign, sublet or make over this Agreement or any part thereof or any of its rights, benefits, duties or obligations there under to any other person without the written consent of AgriCoal.

15.2 The Carrier hereby cedes all its existing book debts as continuing security of any amount that may become due to AgriCoal.

16. DEFAULT

16.1 Either party shall be entitled to cancel this Agreement on written notice to that effect to the other party and to claim such damages as it may have suffered as a result of such breach, upon the occurrence of one or more of the following events:

16.1.1 If the other party should fail to make any payment which is owed by it in terms of this Agreement, on due date, and remains in default for 14 (FOURTEEN) days after having received written notice calling upon it to remedy such failure;

16.1.2 If the other party commits a breach of any other material provision of this Agreement and fails to remedy such breach within 14 (FOURTEEN) days after having received written notice calling upon it to remedy such failure;

16.1.3 If the other party commits a non-material breach of this Agreement and fails to remedy such breach within 30 (THIRTY) days after having received written notice calling upon it to remedy such failure;

16.1.4 If any provisional or final order is made or a resolution is passed for the winding-up of such other party;

16.2 Should any party institute legal action against the other as a result of breach of this Agreement by the other, the party instituting action shall be entitled to recover legal costs from the guilty part on a scale as calculated between attorney and own client.

17. LAW AND REGULATIONS

17.1. The law of the Republic of South Africa shall be applicable to this Agreement.

17.2. The Carrier shall at its own expense comply with the under-mentioned legislation (which do not constitute an exhaustive list) or any amendment or any Act(s) passed in substitution thereof and in general with all laws, regulations, bylaws and requirements of local and other authorities that may be applicable to the service performed in terms of this Agreement:

- 17.2.1. The National Road and Traffic Act 93 OF 1996 (as amended) together with all Regulations and related Codes;
- 17.2.2. Occupational Health and Safety Act, Act 85 of 1993;
- 17.2.3. Compensation for Occupational Injuries and Diseases Act, Act 30 of 1993;
- 17.2.4. National Environmental Management Act, Act 107 of 1998;
- 17.2.5. Basic Conditions of Employment Act, Act 75 of 1997;
- 17.2.6. Labour Relations Act, Act 66 of 1995;
- 17.2.7. Unemployment Insurance Contributions Act, Act 4 of 2002;
- 17.2.8. Income Tax Act, Act 58 of 1962; and
- 17.2.9. Value Added Tax Act, Act 89 of 1991.
- 17.2.10. AgriCoal Code of Conduct and ethical principles.

18. LIMITATION OF LIABILITY

AgriCoal shall not be liable to the Carrier for loss of profits or for any indirect, incidental, special or consequential losses or damages arising from this Agreement.

19. DOMICILIA AND NOTICES

19.1. The *domicilia citandi et executandi* of the parties for all purposes arising from or pursuant to this Agreement are as follows:

AgriCoal: Offices 5101, Block 5, Monument Office Park
71 – 79 Steenbok Avenue, Monument Park
Pretoria
0181 _____ (physical address)
info@agricoal.co.za _____ (email address)

012 111 0600 (tel no.)

086 623 9532 (fax no.)

The Carrier:

(physical address)

_____ (email address)

_____ (tel no.)

_____ (fax no.).

19.2. Either party may by written notice to the other party change its aforesaid *domicilium citandi et executandi* 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/or any payment made by either party to the other which:

19.3.1. Is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium citandi et executandi* for the time being shall be presumed to have been received by the addressee at the time of delivery;

19.3.2. Is send by email shall be presumed to have been received by the addressee on the day and time it was received by the recipient's email server, unless proven otherwise; or

19.3.3. Is sent by facsimile during the normal business hours of the addressee to the officials of the addressee referred to in this Agreement shall be presumed to have been received on the first business day following the date of successful transmission thereof.

19.4. All correspondence / queries to AgriCoal shall be submitted to Christoph van Zyl who can be contacted on cell phone 072 604 1117 / facsimile 086 632 9532 / e-mail at christoph@agricoal.co.za.

20. INSOLVENCY

Should an application be made for the surrender or sequestration of a party's estate, or should an order be issued, whether provisional or final, for the sequestration of a party's estate, or should a party enter into or propose any deed of assignment to any of its creditors for settlement of its debts, or if execution is issued against a party by virtue of any judgement, or if a party commits any act of insolvency, or, being a legal entity, is placed under judicial management, or commences to be wound up in a liquidation that is not merely a voluntary liquidation for the purpose of reconstruction, then the other party may, without prejudice to any of its rights in terms of this Agreement or common law, forthwith terminate this Agreement and any amount outstanding will immediately become payable.

21. ENTIRE AGREEMENT AND PURPOSE OF ANNEXURE A

21.1. The Parties record that:

21.1.1 This Agreement together with **Annexure "A"** records the terms and conditions of the agreement between the Parties and regulate the affairs between the Parties;

21.1.2 The Carrier however accepts that it would be impossible alternatively unpractical for the Parties to sign this Agreement upon receipt of every instruction from AgriCoal to the Carrier to render the Service from time to time;

21.2 Every agreement between AgriCoal and the Carrier shall be concluded in the following manner:

21.2.1 The Carrier shall sign this Agreement which shall form the basis of every request for Service;

21.2.2 A request for Service shall be made by AgriCoal by forwarding a copy of **Annexure "A"** in its completed form to the email address of the Carrier at the email address stipulated in paragraph 19.1;

- 21.2.3 The request for Service shall be regarded as accepted either upon confirmation of the Carrier that it accepts the Service alternatively upon the Carrier loading the Goods at the Loading Point;
- 21.2.4 Upon happening on either one of the two events mentioned in paragraph 21.2.3, the Agreement shall be regarded as being concluded on the basis as set out in this Agreement read together with **Annexure "A"**;
- 21.2.5 Every request for Service and acceptance thereof in accordance with paragraph 21.2.3 above, shall constitute a separate cause of action;
- 21.2. The Parties therefore accept that this Agreement read together with **"Annexure "A"** constitutes the sole and exclusive Agreement and no alteration or variation of any of the terms or conditions of this Agreement shall be of any force or effect unless it is recorded in writing and signed by both Parties.
- 21.3. No latitude, indulgence, consent or forbearance or any other similar act by either party in enforcing any provisions of this Agreement shall constitute a variation or novation of this Agreement or a waiver of rights or estoppel in terms of this Agreement.
- 21.4. The parties, by signing this Agreement, shall be deemed to have satisfied themselves as to all the conditions and circumstances affecting this Agreement.
- 21.5. Each party shall bear and pay its own costs incidental to the negotiations, drafting and conclusion of this Agreement.
- 21.6. Each person signing this Agreement for and on behalf of a party hereby warrants in his personal capacity that he is duly authorized by such party to do so.

22. NO REPRESENTATIONS

The Agreement constitutes the sole record of the Agreement between the parties with regard to the subject matter thereof. There were no prior representations, including notices, announcements, guarantees or warranties, irrespective of whether verbal or in writing, which induced this Agreement, save as contained in this Agreement. This Agreement correctly reflects the intentions of the parties.

Neither party shall be entitled to apply for rectification of this Agreement, nor shall its conditions be susceptible to renunciation or estoppel.

23. INSURANCE

23.1. The Carrier shall procure and maintain comprehensive all risk insurance at its own costs with an insurer approved by AgriCoal covering loss of or damage to the Goods whilst in the possession of the Carrier.

23.2. Upon receipt of an instruction or request for Service received from AgriCoal, the Carrier shall:

23.2.1 Forthwith inform its insurer of such an instruction; and

23.2.2 Provide a copy of this Agreement inclusive of **"Annexure "A"** to the Insurer;

23.2.3 Obtain written confirmation from its insurer that it is covered for the Service and for the amount it is covered;

23.2.4 Furnish AgriCoal with such written confirmation.

23.3 The Carrier shall ensure that its policy or policies evidencing such insurance shall be endorsed with, or otherwise include, a reference to the interest therein of AgriCoal, and shall be exhibited to AgriCoal on their request.

23.4 The Carrier herewith agrees that the proceeds from its own insurance claim may be paid out directly from its insurance to AgriCoal.

23.5 The Carrier must ensure that the following insurance cover is in place:

23.5.1 For loads transported with its own vehicles Goods in transit insurance capped at a value that is sufficient to cover the market value of the Goods loaded for any one full load and will be calculated pro rata on part loads;

- 23.5.2 For loads subcontracted to other transporters contingent insurance which covers the Carrier for the full value of the market value of the Goods loaded for any one full load and will be calculated pro rata on part loads, in the case whereby the Carrier's subcontractor's insurance does not cover any loss or damage;
- 23.5.3 Insurance on equipment and equipment leased or rented and brought on to the Consignor's premises or into use during the operation of this Agreement and extending to third party liability of no less than R10,000,000.00 (ten million Rand); and
- 23.5.4 Adequate insurance cover for rehabilitation and recovery.
- 23.6 The Carrier must upon request from AgriCoal submit proof of payment of the premiums and renewal premiums in respect of the said policy/ies.
- 23.7 The Carrier must at all times inform AgriCoal of any material changes to the insurance policy that will adversely affect AgriCoal as well as any obligation that AgriCoal have in terms of the insurance policy in order to successfully claim in the event of loss or damage.
- 23.8 For the purpose of this Agreement Goods will be deemed to be in the possession of or under the control of the Carrier from the time of loading of the Goods onto the Vehicle and shall continue through the ordinary course of transit and terminate once proof of receipt of the Goods are received from the Off-Loading Point.
- 23.9 Immediately upon the occurrence of any loss of or damage to the Goods whilst in the possession of or under the control of the Carrier, the Carrier shall notify AgriCoal thereof and will furnish in writing full particulars of the occurrence given rise to the loss or damage and the extent of the loss or damage, and shall assist AgriCoal to prepare and submit a Goods in transit claim.
- 23.10 AgriCoal shall be entitled to set-off any loss or damage against any amounts due to the Carrier if payment in respect of such losses/damages has not been made by the Carrier or its insurer

within 60 (Sixty) days from receipt of AgriCoal's claim. The aforementioned 60(Sixty) days period is furthermore subject to the following proviso's:

23.10.1 Claims are to be submitted to the Carrier in writing within 30 (THIRTY) days after the claim first been brought under the attention of AgriCoal subject to such claim being supported by a tax invoice and statement; and.

24 INDEMNITY

The Carrier hereby indemnifies and holds AgriCoal harmless against any claim, of whatsoever nature and any losses or damages that AgriCoal might suffer from the rendering of the Service.

25 SURETY

25.1 The signatory signing this Agreement hereby bind himself as surety for and co-principal debtor jointly and severally with the Carrier to AgriCoal for the due and punctual performance by the Carrier of all its obligations to AgriCoal whether presently due, owing and payable or becoming due, owing and payable in the future.

25.2 This suretyship is given as a continuing covering suretyship for all the obligations of the Carrier arising from this Agreement as defined and explained in paragraph 21 above.

25.3 The signatory signing this Agreement hereby further bind himself as surety for and co-principal debtor with the Carrier to AgriCoal for due compliance of the obligations of the Carrier as stipulated in paragraphs 23.2, 23.3, 23.5, 23.7 and 23.9. Should any claim for damage be instituted by AgriCoal against the Carrier and/or its insurer be rejected or repudiated by the insurer as a result of the failure by the Carrier to comply with the obligations as set out in these aforementioned paragraphs, the signatory signing this Agreement shall personally attract responsibility and liability for such damages.

I have read and understood the provisions of the clause 25 and regard these terms binding on me in person.

Signature

Full names

Position

_____ ID number _____ Date

_____ Place

Thus done and signed by AgriCoal at _____ on this the _____ day of
_____ 20 _____.

WITNESS

FOR AND ON BEHALF OF AGRICOAL

Thus done and signed by the Carrier at _____ on this the _____ day of
_____ 20 _____.

WITNESS
Signature

FOR AND ON BEHALF OF THE CARRIER
Signature

AGRICOAL LOGISTICS INVOICE REQUIREMENTS AND PAYMENT TERMS

Invoice requirements:

- All invoices should be made out to: AGRICOAL LOGISTICS (PTY) LTD
- Please ensure that our VAT number: 4440247866 is stated on the invoice as well as your VAT number.
- Please ensure that the following is clearly stated on your invoice:
 - Rate
 - Tonnages
 - Vehicle registration number
 - Job Card reference number as stated on the Load Confirmation for that specific load, no loads will be accepted without a reference number
- Payment will only be authorised if the following are attached to the invoices:
 - Original POD's and / or Weighbridge Slips
 - Load Confirmations
- Every load with the specific reference number/ Load Confirmation should be invoiced separately, otherwise it will not be paid.
- If no Load Confirmations are received, please follow up with the relevant Logistical Operator.
- Invoices received and incorrectly invoiced (Example rate differences, tonnage differences, VAT or any other error) will only be paid if the credit note and/or the new invoice is received before the cut-off date, corrections received after cut-off, will only be paid with the next payment run.
- Please courier all invoices with original supporting documents as set out above to our physical address:

**Offices 5101, Monument Office Park, Block 5
71-79 Steenbok Street.
Monument Park
0181**

No loads will be accepted on copy POD's and/or Weighbridge Slips

No payment will be made without a statement. Statements must be sent before the 10th and 25th of every month

Payment terms:

In the event of a transporter also being a client of Agricoal, the transporter account will be subject to the client's payment terms and not as per the below.

Grain/Wheat products (15 days)

1st cycle:

- We have to receive all invoices and statements with the relevant supporting documents as set out above **by the 13th for payment on the 1st working day of the next month.**

2nd cycle:

- We have to receive all invoices and statements with the relevant supporting documents as set out above **by the 28th for payment on the next working day after the 15th of the next month.**

Minerals/Other Products

We have to receive all statements and invoices with the relevant supporting documents as set out above by the **20th of each month for payment on the 1st working day of the next month.** No payment will be made without a statement and detail reconciliation to our account.

Your co-operation is highly appreciated in order for us to process your payment promptly and on time.

Sincerely,

The Agricoal Team