

## INDEPENDENT CONTRACTOR AGREEMENT

made and entered into by and between

**PROPERTY PORT CC CK No : 1986/019618/23**

**(defined hereunder as the "PROPERTY PORT Agency")**

And

**Full Names :** .....

**ID.NO:** .....

**(defined hereunder as the "Independent Contractor")**

### IT IS HEREBY AGREED AS FOLLOWS:

#### 1. DEFINITIONS AND INTERPRETATION

In the interpretation of this agreement unless the context clearly indicates to the contrary:

1.1 the following expressions shall bear the following meanings and related expressions bear corresponding meanings –

1.1.1 **"Affiliates"** PROPERTY PORT CC, its franchisees and other sub-franchisors and the franchisees of the PROPERTY PORT System;

1.1.2 **"Board"** the Estate Agents' Affairs Board, constituted in accordance with the Estate Agency Affairs Act of 1976 and/or the successor to that body;

1.1.3 **"Business Day"** any day of the week excluding Saturdays and Sundays and South African public holidays as published in the Government Gazette of the Republic of South Africa from time to time;

1.1.4 **"Independent Contractor"** name .....

address.....

.....

1.1.5 **"Commissions"** all commission earned by the Independent Contractor in connection with the sale, lease, rental or management of real estate and any interest therein, including introductory Commissions and referral fees, but excluding amounts which accrue to the PROPERTY PORT Agency or to Property Port CC from national incentive schemes, bond introductory Commissions, insurance incentives, volume linked incentives and other similar payments ;

1.1.6 **"Council"** the Regional Advisory Council as PROPERTY PORT CC may establish for the area in which the Property Port Agency operates;

1.1.7	<b>"Effective Date"</b>	the ..... day of .....20..... notwithstanding the Signature Date, save for the purposes of each Renewal Period, where the Effective Date shall be deemed to be the anniversary of first day of the calendar month following the Signature Date;
1.1.8	<b>"Initial Period"</b>	the period commencing on the Effective Date and terminating on the 1st (first) anniversary of the last day of the calendar month in which the Signature Date falls;
1.1.9	<b>"Licensed Estate Agent"</b>	an estate agent registered with the Board as such in accordance with the Estate Agency Affairs Act of 1976;
1.1.10	<b>"National Institute"</b>	the National Institute of Realtors of South Africa, and the successor to that body;
1.1.11	<b>"Operations Manual"</b>	the office operations, financial management, office opening manuals supplied by PROPERTY PORT CC and the South African Rules and Operations Manuals as made available to the PROPERTY PORT Agency at the initial training;
1.1.12	<b>"Operating Guidelines"</b>	the operational guidelines formulated by PROPERTY PORT CC, and the PROPERTY PORT Agency circulated to the Sales Associate from time to time;
1.1.13	<b>"Protected Territory"</b>	the area or place where the PROPERTY PORT Agency has been granted the right to conduct the franchise;
1.1.14	<b>"Property Port CC"</b>	Property Port CC, Is a close corporation incorporated in South Africa, registration number 1986/019618/23;
1.1.15	<b>"PROPERTY PORT Agency"</b>	PROPERTY PORT of 2 Naude Lane ,Umtentweni, and the PROPERTY PORT estate agency business which has been licensed by the South African Registrar of Companies to conduct business as a PROPERTY PORT Estate Agency in the protected area of South Africa;
1.1.16	<b>"PROPERTY PORT International"</b>	PROPERTY PORT International Inc, the international franchisor of the PROPERTY PORT System;
1.1.17	<b>"PROPERTY PORT System"</b>	the PROPERTY PORT proprietary business system in relation to real estate and auxiliary services coupled to and linked to the use of the Trade Marks;
1.1.18	<b>"Renewal Date"</b>	the Effective Date of the Renewal Period;
1.1.19	<b>"Renewal Period(s)"</b>	an additional 1 (one) year period commencing on the Renewal Date;
1.1.20	<b>"Signature Date"</b>	the date of signature of this agreement by the last signing of the signatories
1.1.21	<b>"Trade Marks"</b>	all PROPERTY PORT CC National and International's intellectual property rights, including but not limited to the copyrights, the know-how in relation to the PROPERTY PORT System, trade marks (registered or unregistered), including its trade marks, trade names, business names, logo's, get-up, service marks, trade

dress and distinctive Blue/Cyan-over-Yellow-over-blue/Cyan and Yellow 'Sun', coloured horizontal, bar design associated with PROPERTY PORT CC and it's international real estate services ;

- 1.1.22            **"Trade Secrets"**            all PROPERTY PORT CC trade secrets, including, but not limited to, knowledge of confidential matters, trade secrets, recruiting techniques, accounting procedures, quality control procedures, know-how and other information concerning the practices and marketing of PROPERTY PORT CC estate agency services business and PROPERTY PORT Systems;
- 1.1.23            **"VAT"**                                value added tax as levied from time to time in terms of the Value Added Tax Act of 1991, as amended;

- 1.2                Any gender shall include a reference to any other gender, the singular shall include a reference to the plural, references to natural persons shall include artificial persons and vice versa in each instance; "writing" or "written" shall include communications addressed by telex, telefax, e-mail or telegram.
- 1.3                When any number of days is prescribed, such number shall exclude the first and include the last day, unless the last day falls on a day, which is not a Business Day, in which case the last day shall be the next succeeding Business Day.
- 1.4                Whenever a term is followed by the word "including" which is then followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.
- 1.5                Reference to months or years shall be construed as calendar months or years.
- 1.6                No provision herein shall be construed against or interpreted to the disadvantage of any party by reason of such party having or being deemed to have structured or drafted such provision.
- 1.7                The headnotes to the various clauses of this agreement are inserted for reference purposes only and shall in no way govern or affect the construction thereof.

## 2.        **BACKGROUND**

- 2.1                Property Port CC, who is entitled to trade as "PROPERTY PORT Estate Agency", is the master franchisor in Southern Africa of the PROPERTY PORT System.
- 2.2                Property Port CC has the right to operate a real estate brokerage business in South Africa using the PROPERTY PORT System and methods of PROPERTY PORT within the Protected Territory.
- 2.3                The Independent Contractor is a Licensed Estate Agent and is desirous of availing himself/herself of the services, facilities, programmes and opportunities offered by the PROPERTY PORT Estate Agency System.
- 2.4                The Independent Contractor is aware of the principle of independence and unique manner in which PROPERTY PORT sales associates operate throughout the world in accordance with the PROPERTY PORT System and wishes to enter into such an Independent Contractor relationship with the PROPERTY PORT Estate Agency.

**3. APPOINTMENT OF INDEPENDENT CONTRACTOR**

- 3.1 The Independent Contractor is hereby appointed as an Independent Contractor as sales associate of the PROPERTY PORT Agency with effect from the Effective Date upon the terms and conditions of this agreement and the Independent Contractor accepts the appointment.
- 3.2 The Independent Contractor is hereby granted the right to use the trademarks and aspects of the PROPERTY PORT System as provided in this agreement.
- 3.3 The parties acknowledge that the PROPERTY PORT System and this agreement requires that the Independent Contractor and not the PROPERTY PORT Agency shall be entitled to all Commissions earned and generated by the activities of the Independent Contractor as a PROPERTY PORT Independent Contractor, less the outstanding amounts owed to Property Port CC by the Independent Contractor should there be any.

**4. TERM**

- 4.1 This agreement shall endure for the Initial Period and shall automatically be renewed for successive Renewal Periods unless either party gives written notice to the other party of his/her or its intention not to renew at least 60 (sixty) days prior to any Renewal Date.
- 4.2 Upon each such renewal, the Independent Contractor shall execute the then current form of the Independent Contractor's Agreement (if the PROPERTY PORT CC Estate Agency so requests) and shall make timeous payment of the agreed upon fees.

**5. NATURE OF INDEPENDENT CONTRACTOR RELATIONSHIP**

- 5.1 The Independent Contractor is and shall at all times remain an Independent Contractor and shall be free to dispose of his/her entire time, energy, efforts and skill as he/she sees fit. The Independent Contractor shall not be required to keep definite office hours, attend sales meetings or training session, adhere to sale quotas or participate in "floor time" and the Independent Contractor shall not have mandatory duties except those specifically set out in this agreement.
- 5.2 This agreement shall not create any relationship of employer/employee, joint venture, partnership, or shareholding between the parties. The Independent Contractor is not an employee and this contract is not an employment contract.
- 5.3 100% (one hundred percent) of all commission earned by the Independent Contractor by virtue of any of the Independent Contractor's activities as a PROPERTY PORT Independent Contractor shall accrue to the Independent Contractor, but shall be collected by the PROPERTY PORT Estate Agency on behalf of the Independent Contractor. The commission shall accrue to the Independent Contractor, subject to any set-off the PROPERTY PORT Agency may exercise for unpaid statements and monies which may be due to the PROPERTY PORT Agency by the Independent Contractor from time to time.

**6. PROPERTY PORT AGENCY RESPONSIBILITIES**

- 6.1 The PROPERTY PORT Agency, in consideration for the fees and shared office expenses contribution to be paid by the Independent Contractor to the PROPERTY PORT Agency, shall make available the Property Port System, websites and rules of

operation as well as training all necessary forms and contracts, to enable the Independent Contractor to continue his work. The Independent Contractor shall be given the non-exclusive use of all facilities, together with other Independent Contractors and employees of the PROPERTY PORT Agency.

- 6.2 The PROPERTY PORT Agency shall render the following administrative services to the Independent Contractor:
  - 6.2.1 submit a monthly statement reflecting the Independent Contractor's shared expenses, fees and financial obligations set forth herein to the Independent Contractor;
  - 6.2.2 collection of all Commissions payable to the Independent Contractor, which shall be transmitted promptly to the Independent Contractor. Such collection process will facilitate the orderly handling of Commissions in the PROPERTY PORT Agency office. In so far as it may be necessary the Independent Contractor hereby authorises the PROPERTY PORT Agency to institute action on behalf of the Independent Contractor to collect any such commission from any third party.
- 6.3 The Independent Contractor shall not be entitled to payment of any amount which accrues to the PROPERTY PORT Estate Agency from national incentive schemes, bond introductory Commissions, insurance incentives, volume-linked incentives and other similar payments. Any payment made to the Independent Contractor pursuant to any of the afore-going shall be in the entire discretion of the PROPERTY PORT Agency.

## **7. THE INDEPENDENT CONTRACTOR'S RESPONSIBILITIES**

- 7.1 The Independent Contractor shall act as an Independent Contractor real estate salesperson in obtaining listings for all types of interest in and to real estate, and soliciting purchasers and/or lessees and the like, for real estate and any interest therein. The Independent Contractor agrees that any and all listings of real estate and any interest therein, and all employment in connection with the purchase, sale, rental or management of real estate or any interest therein shall be taken in the name of the PROPERTY PORT Agency. Such listings and appointment agreements shall be filed with the PROPERTY PORT Agency within 1 (one) Business Day after they have been accepted by the Independent Contractor. As additional consideration for the services rendered by the PROPERTY PORT Agency to the Independent Contractor, all such listings shall become the property of the PROPERTY PORT Agency and the PROPERTY PORT Agency shall have the option to release such listings and appointment agreements to the Independent Contractor upon termination of this agreement for whatsoever reason.
- 7.2 Any listings taken by the Independent Contractor during the existence of this agreement shall be dealt with in accordance with the policies and procedures.
- 7.3 For administration purposes all cheques received by the Independent Contractor relating to any listings prepared by the Independent Contractor shall immediately be handed over and delivered to the PROPERTY PORT Agency for deposit in its trust account and the Independent Contractor shall in no circumstances enforce or negotiate on behalf of the PROPERTY PORT Agency any cheque or other instrument representing monies payable to the PROPERTY PORT Agency.
- 7.4 The Independent Contractor shall be responsible for the payment of all expenses relating to any real estate listing obtained by the Independent Contractor except for such expenses as are herein specifically stated to be payable by the PROPERTY PORT Agency (if any). Without restricting the generality of the foregoing, the Independent Contractor agrees to be responsible for all expenses whenever incurred

by the Independent Contractor including: travel, entertainment, food, lodging, fuel, repair and maintenance of vehicles, file development, advertising in excess of that provided by the PROPERTY PORT Agency in its sole discretion, property signs, business cards, stationery, postage costs, telephone calls, Board fees, cost of Multiple Listing Service, internet service provider subscriptions, referral fees, answering service costs, courier costs, costs of any fines or penalties payable by reason of the Independent Contractor's act or failure to act and photocopying and other reproduction expenses.

- 7.5 The Independent Contractor need only devote such portion of his/her time and energy, as he/she deems appropriate to the furtherance of his/her real estate business as contemplated in this agreement. However, the time and energy so expended by the Independent Contractor shall not alter, or in any way reduce, the fees and/or charges for costs and expenses to be paid to the PROPERTY PORT Agency pursuant to the terms of this agreement.
- 7.6 The Independent Contractor shall maintain, at his/her expense, professional indemnity insurance in the minimum amount of R100 000-00 (one hundred thousand rand) and provide the PROPERTY PORT Agency with a copy of the policy and proof of payment of premiums upon request. Insofar as there might be group benefits to be obtained by all Independent Contractors, the aforesaid policy may be arranged and administered by Property Port CC in the name of the PROPERTY PORT Estate Agency and the Independent Contractor, and Property Port CC shall in any event recoup the premiums from the Independent Contractor in terms of clause 8 below. The purpose of the insurance is to protect the Independent Contractor against liability, which may arise in connection with the operations of his/her business as a real estate agent. All policies of insurance to be maintained by the Independent Contractor shall contain a separate endorsement naming the PROPERTY PORT Estate Agency, PROPERTY PORT CC, as a co-insured and the Independent Contractor shall at the PROPERTY PORT Agency's request, furnish it with a copy of the policy and proof of payment of premiums.
- 7.7 The Independent Contractor hereby indemnifies the PROPERTY PORT Agency against any liability of whatever nature arising from or in connection with the Independent Contractor's operation of his/her business as real estate broker. The Independent Contractor holds the PROPERTY PORT Agency, PROPERTY PORT CC, harmless from and against any and all loss, damage, cost or expense (including attorneys' fees) arising out of any such claim relating to the operation of the Independent Contractor's business.
- 7.8 The Independent Contractor shall at all times abide by all rules of ethical conduct established by the Board and the National Institute.
- 7.9 The Independent Contractor recognises that by his signature hereof he becomes an integral part of the "PROPERTY PORT System". The Independent Contractor agrees that he/she will do everything possible and required to protect and maintain a high ethical standard in the conduct of his/her real estate business, the use of the PROPERTY PORT System and the protection of the Trade Mark. The Independent Contractor shall accordingly:
- 7.9.1 maintain his/her personal appearance and the appearance of his/her office in a clean and orderly manner;
- 7.9.2 provide dependable, efficient, courteous, high quality and professional real estate service to the public, of the same high quality and integrity as other PROPERTY PORT agencies, Independent Contractors and employees, in order to create and maintain good will among the public for the entire PROPERTY PORT System on a national and international basis;
- 7.9.3 at all times meet the high standards of real estate service and professionalism

reflective of the goodwill and respect enjoyed by the PROPERTY PORT name and organisation. The Independent Contractor acknowledges that the aforesaid expectations and achievement of the aforesaid requirements could only be met if the Independent Contractor limited the rendering of the real estate services to areas where the Independent Contractor could service customers and clients directly and personally and where the Independent Contractor has the greatest knowledge of local conditions, infrastructures, community history and the housing market.

- 7.9.4 especially and particularly to protect PROPERTY PORT'S goodwill, the Trade Marks, strictly observe and adhere to all the current operational guidelines established by the PROPERTY PORT Agency and its national and international franchisors and regional sub-franchisors. The Independent Contractor acknowledges that:
  - 7.9.4.1 the policies and procedures have been perused and are understood by the Independent Contractor; and
  - 7.9.4.2 the policies and procedures will be binding on the Independent Contractor; and
  - 7.9.4.3 adherence to the policies and procedures constitute a material terms of this agreement; and
- 7.9.5 at all times maintain a proper attitude toward the public, the PROPERTY PORT Agency and his/her fellow PROPERTY PORT International Independent Contractors and employees, and shall not engage in acts or activities that disrupt the PROPERTY PORT System, its operation or his/her office; and
- 7.9.6 in order to protect PROPERTY PORT'S goodwill in the Trade Marks, the Independent Contractor shall not hire, employ, contract with or retain any "sub-agent(s)" or other employee(s), without the prior written consent of the PROPERTY PORT Agency. The Independent Contractor shall not license, sponsor for license or hold the license of any real estate salespersons who is not under direct contract with the PROPERTY PORT Agency, or other than subject to all the terms and conditions hereof and the assistants agreement prescribed by the PROPERTY PORT Agency from time to time.
- 7.10 It is a material term of this agreement that the Independent Contractor shall, in order to protect the goodwill of PROPERTY PORT in the Trade Marks, adhere to and abide by all decisions taken by majority vote and rules, policies and procedures of the PROPERTY PORT Agency and its Independent Contractors, the decisions and ruling of the Councils and the rules, regulations, policies and procedures directives of PROPERTY PORT CC.
- 7.11 The Independent Contractor shall not be entitled to bind the credit of the PROPERTY PORT Agency in any way whatsoever, nor be entitled to enter into any agreement with or without obligations to the PROPERTY PORT Agency, neither entitled to involve himself in any agreement or act relating to his business, in any other manner than in his personal capacity and as an Independent Contractor .

## **8. FINANCIAL OBLIGATIONS**

The Independent Contractor shall pay the following amounts to the PROPERTY PORT Agency during the term of this agreement and any renewal thereof:

### **8.1 Service Fee**

A service fee of \_\_\_\_15\_\_\_\_% (Fifteen percent) of all the Commissions due to the Independent Contractor shall be paid to the PROPERTY PORT Agency at the time that any commission is collected.

### **8.2 Security Deposits**

In order to secure the full and faithful performance of the Independent Contractor's obligations hereunder and to insure the return to the PROPERTY PORT Agency upon termination of the agreement of all materials, plans, programmes, documents, manuals, keys, signs, and the like which may from time to time during the term of the agreement, come into the possession of the Independent Contractor, the Independent Contractor agrees to deposit with and to maintain at all times, a security deposit in the amount of

R...nil..... (Nil.....rand).

The security deposit shall be held by the PROPERTY PORT Agency without obligation to pay interest thereon. Should the Independent Contractor be consistently late in paying his/her monthly financial obligations to the PROPERTY PORT Agency, or should the Independent Contractor request the PROPERTY PORT Agency to expend monies for service or supplies over and above the average amount of the office expenditures for such service and supplies, the PROPERTY PORT Agency, at its option, may require the Independent Contractor to make additional deposits to the security deposit fund. If the Independent Contractor has performed all of his/her obligations hereunder the security deposit shall be returned to the Independent Contractor within 60 (sixty) days after termination of the agreement.

The Independent Contractor shall not set the security deposit off against his/her account due to the PROPERTY PORT Agency by the Independent Contractor. Should the Independent Contractor set off the security deposit against his/her debt due to the PROPERTY PORT Agency at any time, including the last month's statement upon termination, the Independent Contractor shall be additionally liable for 3 (three) times the security deposit, in addition to all other monies due to the PROPERTY PORT Agency by the Independent Contractor, in consideration for the additional cost and administrative overhead associated with the Independent Contractor's arbitrary breach of this Contract. The Independent Contractor's failure to perform the terms and covenants of the agreement may result in the forfeiture of the security deposit at the election of the PROPERTY PORT Agency.

### **8.3 Administration Fees**

The Independent Contractor agrees to pay on presentation of a statement each month a monthly administrative fee of R2750.00.. ( Two Thousand Seven Hundred and Fifty Rand) plus Vat to the PROPERTY PORT Agency for the rights, services, and privileges extended by the PROPERTY PORT Agency. This fee is non-refundable and will be adjusted annually. Payments for partial months at the commencement or termination hereof shall be pro-rated on a daily basis.

### **8.4 Shared Office Expenses**

The Independent Contractor shall pay the PROPERTY PORT Agency his/her pro rata portion of shared expenses, which expense shall be deemed to occur generally: rent, office overheads, furniture, utilities, telephone bills, secretarial and administrative expenses, janitorial services and the like. The office expense will not include salaries,



bonuses, and dividends paid to the franchise owners of the PROPERTY PORT Agency. The shared office expenses for each month shall be determined by the PROPERTY PORT Agency. In order to assist the Independent Contractor to reduce the initial front-end costs of the Independent Contractor, there shall be a ceiling placed on the monthly-shared expenses of the same amount of money, spent by the Independent Contractor using the accounts opened by Property Port, per month for the duration of this agreement as described in clause 4. Shared office expenses shall be due and payable on date of presentation of the monthly statement by the PROPERTY PORT Agency.

#### **8.5 Miscellaneous Shared Expenses**

The PROPERTY PORT Agency may, at its option, from time to time include within a separate category called: "miscellaneous shared expenses" other additional expenses voted by a majority of the Independent Contractors then under contract with the PROPERTY PORT Agency and will give the Independent Contractor an additional statement for such miscellaneous shared expenses, which the Independent Contractor hereby undertakes to pay and which shall be due and payable on the date the Independent Contractor is presented the same.

#### **8.6 Insurance Premiums**

In the event that the PROPERTY PORT Agency has procured the insurance referred to in 7.7 above, the Independent Contractor undertakes to pay the monthly insurance premiums in relation to the said insurance as and when they are billed to the Independent Contractor or the PROPERTY PORT Agency.

#### **8.7 Personal Expenses**

In addition to the services above the Independent Contractor may avail himself/herself of certain additional services and materials which include, but are not limited to: long distance telephone services; copy and reproduction services; any form of advertising and promotional brochures; personalised stationary, postage; property signs; such accident, sickness, health and life insurance benefits and programmes as may be available by the PROPERTY PORT Agency to the Independent Contractor on an optional basis, and other services and materials as made available by the PROPERTY PORT Agency at such rates and on such terms as the PROPERTY PORT Agency shall establish. The PROPERTY PORT Agency will give the Independent Contractor an additional statement for such additional or optional services, which the Independent Contractor hereby promises to pay and which shall be due and payable on date of presentation to the Independent Contractor by the PROPERTY PORT Agency.

#### **8.8 Marketing and Training Fund**

The Independent Contractor agrees to pay on presentation of a statement each month, a fee of

R..Nil.....(....Nil.....

.....rand) to the PROPERTY PORT Agency for the marketing and training provided by PROPERTY PORT CC. The marketing and training fund fee shall be adjusted from time to time. All funds paid for Marketing and Training Fund become the property of the Fund and under no circumstances will be refunded. Payments for partial months at the commencement or termination hereof shall be prorated on a daily basis.

#### **8.9 Annual Membership Dues**

- 8.9.1 As additional consideration for the rights granted to the Independent Contractor in terms of this agreement and for the affiliation with the

PROPERTY PORT Agency, the Independent Contractor shall pay in advance to the PROPERTY PORT Agency for the benefit of PROPERTY PORT CC, annual dues of R.Nil..... commencing on the first anniversary of this agreement.

- 8.9.2 The annual membership fee is non-refundable. However, should the Independent Contractor transfer to another PROPERTY PORT Agency office, his/her annual dues will be transferred, by Property Port CC.
- 8.9.3 Should the Independent Contractor leave the PROPERTY PORT organisation after his/her annual dues are due to PROPERTY PORT, the Independent Contractor will be responsible to pay the current amount that is owed for that year.
- 8.9.4 Should the dues be paid by the Independent Contractor after due date, the PROPERTY PORT Agency, will charge the Independent Contractor a late fee applicable at the time.

#### **8.10 Initiation fee**

Upon execution of the agreement a non-refundable one-off charge of R.Nil..... (....Nil.....rand) shall be paid which may include the annual payment due pursuant to paragraph 8.9 for the first year of this agreement. The aforementioned charge, shall be payable to the PROPERTY PORT Agency.

#### **8.11 Value Added Tax**

All amounts recorded above are recorded exclusive of VAT. Any VAT arising from the payment of these amounts shall be payable by the Independent Contractor to the PROPERTY PORT Agency.

#### **8.12 Increases**

Unless otherwise provided herein, the fees and charges referred to above may at any time, and from time to time be increased on 30 (thirty) days' written notice given to the Independent Contractor at any time.

### **9. Value-Added Tax (VAT)**

In terms of a VAT ruling by the Commissioner for the South African Revenue Services ("SARS") dated 20 December 2001, all Independent Contractor's contracted to specific geographically located PROPERTY PORT agencies shall be deemed to be bodies of persons in terms of Section 72 of the (VAT) Act.

- 9.1 A summary of the practical effect of this VAT ruling is as follows:
  - 9.1.1 Where the Independent Contractors (future and present) contracted to a specific geographically located PROPERTY PORT Agency agree, the relevant contracted Independent Contractors and PROPERTY PORT Agency shall be deemed to be a separate body of persons for VAT purposes and will have to register for VAT as an unincorporated body of persons, giving the effect of a single VAT registered entity.
  - 9.1.2 The Independent Contractors are deemed not to carry on an enterprise for VAT purposes and shall not register for VAT individually with regard to their activities as an Independent Contractor PROPERTY PORT estate agent. Independent Contractors that

are therefore registered for VAT will have to de-register for VAT purposes, provided that they do not carry on any other enterprises in addition to their PROPERTY PORT activities for which they receive consideration in excess of R1 500 000 in any 12-month period (the threshold for compulsory VAT registration) or such other amount as determined by SARS from time to time.

- 9.1.3 Should the PROPERTY PORT Agency fail to meet any of its obligations in terms of the VAT Act, each Independent Contractor shall remain liable for its own VAT liability.
- 9.1.4 Should an Independent Contractor carry on other enterprises, outside the PROPERTY PORT System and its taxable supplies from such other enterprise(s) exceed R1 500 000 (or such other amount as determined by SARS from time to time) on any 12-month period, such Independent Contractor must register and account for VAT on such other income.
- 9.1.5 The procedure for the preparation, submission and payment of VAT obligations as well as the record-keeping requirements, are detailed in the Policy Statement.

## **10. NON PAYMENT AND REMEDIES**

- 10.1 It is understood that the Independent Contractor's monthly statement will be ready and will be issued on or about the 25th of the month, and are due no later than midnight of the last day of the month without penalty. In the event the Independent Contractor does not pay all of his/her financial obligations imposed by the terms of this agreement the PROPERTY PORT Agency may and is hereby authorised to deduct any part or all of such past due fees, late charges, and expenses from Commissions payable to the Independent Contractor and/or forfeit all or part of the Independent Contractor's security deposit. If there are not sufficient Commissions available to offset the amounts due the PROPERTY PORT Agency within 7 (seven) days of receipt by the Independent Contractor of said statement, then the Independent Contractor shall be assessed a late payment charge of 15%...(Fifteen Percent...) of the current monthly balance outstanding.
- 10.2 The Independent Contractor agrees to release to the PROPERTY PORT Agency all monies due to the Independent Contractor for Commissions earned and/or payable on the 25th of the month to be applied to any balances owing to the PROPERTY PORT Agency. All outstanding balances due by the Independent Contractor to the PROPERTY PORT Agency shall accrue interest at the prime rate plus 01.00 %. (One percent).
- 10.3 The Independent Contractor's payments shall be applied in the following order: First, to the payment of late charges, then to interest, then to replenish all or any part of the security deposit, then to unpaid fees, then to shared office expenses, then to miscellaneous shared expenses, then to personal expenses. In the event any portion of fees or monthly billed expenses shall remain unpaid 7 (seven) days after receipt by the Independent Contractor of the relevant statement, the PROPERTY PORT Agency may terminate this agreement without notice and the Independent Contractor shall thereupon cease all activities with respect to the Independent Contractor's license. The Independent Contractor shall be responsible for and hereby undertakes to pay any and all costs, including court costs, litigation expenses, and reasonable attorneys' fees, incurred by the PROPERTY PORT Agency in the collection, or the attempt to collect, amounts due and payable by the Independent Contractor under the terms of this agreement.

**11. TRADE MARKS**

- 11.1 The Independent Contractor acknowledges that PROPERTY PORT CC, is the exclusive owner of all rights, title and interest in and to the Trade Marks. The Independent Contractor acknowledges that the PROPERTY PORT Agency has the right to use the trademarks pursuant to and solely in accordance with its PROPERTY PORT Estate Agency agreement.
- 11.2 The Independent Contractor agrees to keep all Trade Secrets in confidence and not to disclose any details thereof to any person without the prior written consent of the PROPERTY PORT Agency, and PROPERTY PORT CC , or except as provided in this agreement. In particular, the Independent Contractor agrees to take all steps necessary at his/her own expense to protect the Trade Secrets and not to divulge, wholly or in part to any person or entity at any time, either during or subsequent to termination of this agreement, any Trade Secrets without the prior written consent of PROPERTY PORT CC, and the PROPERTY PORT Agency.
- 11.3 The Independent Contractor acknowledges that any failure to comply with the requirements of 11.2 and any confidentiality requirement herein shall constitute a material breach of this agreement. The Independent Contractor acknowledges that, except as otherwise provided below, such a breach would result in irreparable harm and damage to the PROPERTY PORT Agency, and PROPERTY PORT CC for which no adequate remedy at law may be available, and the Independent Contractor accordingly consents to the issuance of an interdict or similar form of remedy prohibiting any conduct by the Independent Contractor in breach of clause 11.2. The Independent Contractor agrees to pay all expenses (including court costs and legal fees on an attorney and own client basis) incurred in enforcing the terms of this clause 11.2
- 11.4 The Independent Contractor acknowledges and agrees that any and all goodwill arising from the Independent Contractor's use of the Trade Marks and all of the licensed rights granted to the Independent Contractor hereunder belongs solely and exclusively to PROPERTY PORT CC and that the Independent Contractor does not have and will not acquire any proprietary rights in any goodwill nor any right to compensation for goodwill attached to the PROPERTY PORT System and the use of the trademarks upon termination of this agreement for any reason. If any right in goodwill accrues to the Independent Contractor by operation of law or otherwise, the Independent Contractor hereby assigns all rights which the Independent Contractor may have in such goodwill to PROPERTY PORT CC. If, for any reason, such assignment does not have the effect of vesting full rights to such goodwill in PROPERTY PORT CC, then the Independent Contractor shall hold such rights as trustee for PROPERTY PORT CC and will, at the Independent Contractor's expense, forthwith on demand do all such acts and things and execute all such documents as PROPERTY PORT CC may consider necessary to vest such rights absolutely in PROPERTY PORT CC.
- 11.5 The Independent Contractor shall co-operate in all respects with Property Port CC and PROPERTY PORT Agency to prove the continuous and effective use of the intellectual property and with respect to any renewal of any registration of the Trade Mark; such co-operation shall include co-operation with PROPERTY PORT CC in the placement and use of the Trade Marks and the taking of all actions necessary to evidence such placement and use.

**12. LIABILITY AND INDEMNIFICATION**

- 12.1 The PROPERTY PORT CC shall not be liable to the Independent Contractor for any expenses incurred by him/her, nor shall the Independent Contractor have authority to bind the PROPERTY PORT Agency by any promise or representation, unless specifically authorised in advance and in writing by the PROPERTY PORT Agency.

- 12.2 From time to time, claims, complaints or litigation involving the PROPERTY PORT Agency may arise directly from the activities of the Independent Contractor. The Independent Contractor agrees to pay all cost and expenses incurred by the PROPERTY PORT Agency in defining or satisfying any claim or judgement assessed against the PROPERTY PORT Agency because of the Independent Contractor's activities. The Independent Contractor further agrees to pay all reasonable legal fees and other out-of-pocket expenses incurred by the PROPERTY PORT Agency that arise directly from the Independent Contractor's activities. The PROPERTY PORT Agency agrees to work closely with the Independent Contractor to keep such expenses at a minimum, but the PROPERTY PORT Agency reserves the right to select the attorney(s) and reserves the right to defend any such complaint, claim or litigation as it, in its sole discretion, sees fit.
- 12.3 The Independent Contractor indemnifies and holds PROPERTY PORT CC, and the PROPERTY PORT Agency harmless from all fines, levies, proceedings, claims, actions or causes of action of any kind of whatsoever nature, including but not limited to all costs, court costs, litigation expenses and reasonable attorneys' fees, arising from, or incidental to the Independent Contractor's activities and operation of a real estate business. Maintenance of any insurance required by this agreement shall not relieve the Independent Contractor of liability under this paragraph.
- 12.4 The Independent Contractor shall at all times disclose to all persons (legal or natural), his/her independence from the PROPERTY PORT Agency and the fact that any and all dealings with him/her are conducted with him/her in his/her capacity as an Independent Contractor.
- 12.5 The disclosure referred to in 11.2 shall be conducted by the Independent Contractor in all legal documents, letterheads or other documentation utilised by him/her in operating his/her business, as well as via verbal means in all his/her dealings with any such person.

### **13. TERMINATION**

- 13.1 The PROPERTY PORT Agency shall have the right to terminate this agreement upon the occurrence of any of the following events:
- 13.1.1 if the Independent Contractor fails to pay, when due, any of its financial obligations to the PROPERTY PORT Agency, PROPERTY PORT CC, the Council or any other person or entity as may be required by this agreement in accordance with the terms of this agreement; or
- 13.1.2 if the Independent Contractor breaches any provision of this agreement, or any policy directive, standard or guideline, or any amendment or supplement thereto, established by PROPERTY PORT CC, or the PROPERTY PORT Agency, or
- 13.1.3 if the Independent Contractor repeatedly (which shall mean twice or more in any 12 (twelve) calendar month period) fails to comply with the provisions of this agreement or fails to comply with the same provision twice, or more, in any 12 (twelve) calendar month period, whether any such non-compliance is corrected after notice or not; or
- 13.1.4 if the Independent Contractor is convicted of an offence, or crime of moral turpitude, or the Independent Contractor's license is suspended, or revoked, or the Independent Contractor fails to conduct himself/herself according to the codes of ethics of the National Institute or Board and in accordance with all applicable laws, rules and regulations; or
- 13.1.5 if the creditworthiness of the Independent Contractor deteriorates to a level reasonably unacceptable to the PROPERTY PORT Agency, or the

Independent Contractor becomes insolvent, or a receiver, or trustee, or liquidator is appointed to take possession of the Independent Contractor's estate, or property or any part thereof, or the Independent Contractor shall make a general assignment for the benefit of creditors, or a judgment is obtained against the Independent Contractor which remains unsatisfied for a period of more than 30 (thirty) days after all rights of appeal have been exhausted or waived; or

- 13.1.6 if the Independent Contractor becomes insolvent or is sequestered (whether provisionally or finally); or
- 13.1.7 if the Independent Contractor fails to remedy, to the reasonable satisfaction of PROPERTY PORT CC, any default under this agreement which, in the judgment of Property Port CC, materially impairs, or may materially impair, the goodwill associated with the PROPERTY PORT System or with the Trade Marks or other commercial symbols within 24 (twenty four) hours after the Independent Contractor has received written notice from the PROPERTY PORT Agency to remedy such default; or
- 13.1.8 if the Independent Contractor engages in any activity or conduct which PROPERTY PORT CC reasonably concludes is unprofessional, dishonest, unethical, illegal or which otherwise reflects adversely upon or is disruptive to the reputation, public image, creditability, creditworthiness or goodwill of PROPERTY PORT CC, Affiliates, sales associates or the PROPERTY PORT System.
- 13.1.9 The PROPERTY PORT Agency shall be entitled to give the Independent Contractor written notice of any breach of the Independent Contractor's obligations herein which notice shall require the Independent Contractor to cure or remedy such a breach within 7 (seven) days of receipt of the said written notice. The written notice shall advise the Independent Contractor that in the event that the condition or conditions complained of and specified in the notice are not cured within the relevant notice period (whichever is applicable), all rights of the Independent Contractor under this agreement may be terminated by PROPERTY PORT CC, or the Property Port Agency.
- 13.2 The PROPERTY PORT Agency may terminate this agreement immediately by written notice and without any prior notice period or requirement to remedy, in the case of a breach set forth in sections 13.1.3, 13.1.6, 13.1.7 or 13.1.8.
- 13.3 Termination of this agreement shall not terminate any monetary obligations owed by the Independent Contractor to PROPERTY PORT CC, the Council, the PROPERTY PORT Agency, or any other person, or entity as may be required by this agreement, and shall not entitle the Independent Contractor to any refund of monies previously paid pursuant to the terms of this agreement.
- 13.4 Termination of this agreement by the PROPERTY PORT CC shall not be an exclusive remedy and shall not in any way affect the rights of the PROPERTY PORT Agency, to receive or collect fees or other amounts payable by the Independent Contractor hereunder, to enforce the provisions of this agreement against the Independent Contractor, or to sue for damages, seek and obtain injunctive relief, including *ex parte* temporary restraining orders, or to pursue any other legal or equitable remedy for a breach of this agreement by the Independent Contractor.
- 13.5 If the Independent Contractor defaults in the performance of its obligations under this agreement, the Independent Contractor shall pay to the PROPERTY PORT CC, upon demand, all costs and expenses, including attorneys fees (on an attorney own client basis), incurred by the PROPERTY PORT Agency, as a result of enforcing the provisions of this agreement.

- 13.6 Either party, without cause, may terminate this agreement at any time upon the giving of 60 (sixty) days written notice to the other. In such event neither party shall have any claim against the other in relation to such termination.
- 13.7 In the event of any failure by the Independent Contractor to give the required notice of termination as in 13.2 above, the Independent Contractor shall be obliged to pay, in lieu of such notice, all applicable fees and dues under clause 5 for a period of 60 (sixty) days subsequent to the date of the Independent Contractor's actual notice to the PROPERTY PORT Agency.
- 13.8 The Independent Contractor shall be entitled to any commission on real estate transactions, which were negotiated prior to the termination date. Such commission shall be paid to the Independent Contractor only upon registration of transfer of the relevant transaction and complete compliance by the Independent Contractor of all obligations under this agreement upon termination. Payment of Commissions to the Independent Contractor shall be subject to the applicable provisions of this agreement.

#### **14. RESTRICTION ON SUBSEQUENT BUSINESS ACTIVITY**

- 14.1 The Independent Contractor shall not, after the termination or expiration of this agreement, for any reason use or permit, suffer or tolerate the use of to his/her own advantage or the advantage of any other person or entity any information gained from the files or business of the PROPERTY PORT Agency or PROPERTY PORT CC and the Independent Contractor further agrees that the sales plans, programmes, materials, manuals, forms, contracts, agreements, brochures and other training, videotape, training material, and sales materials provided by the PROPERTY PORT Agency, PROPERTY PORT CC, are the exclusive property of the PROPERTY PORT CC, and shall not be utilised in connection with any business hereafter carried on by the Independent Contractor, whether alone or in conjunction with other individuals or entities, or otherwise in any way be divulged by the Independent Contractor to any third parties.
- 14.2 The Independent Contractor acknowledges that he/she has obtained knowledge of confidential matters, Trade Secrets, techniques, accounting procedures and other methods developed by PROPERTY PORT CC, through and in the PROPERTY PORT System which are owned by PROPERTY PORT CC, and necessary and essential to the operation of the PROPERTY PORT System, without which information, the Independent Contractor could not efficiently effectively and profitably operate or conduct his/her business. The Independent Contractor further acknowledges that such confidential information was unknown to him/her prior to execution of this agreement and that the methods developed by PROPERTY PORT CC for the real estate service operation are unique and novel to PROPERTY PORT CC.
- 14.3 The Independent Contractor agrees that he/she will take all necessary steps at his/her own expense, to protect such confidential information and he/she will not divulge same, either during or upon termination of this agreement, without the prior written consent of the PROPERTY PORT Agency. The Independent Contractor acknowledges PROPERTY PORT CC's, exclusive right to the PROPERTY PORT System, its method of operation, and its distinguishing characteristics, including but not limited to service marks, Trade Marks, trade names, copyrights, certification marks, designs, slogans, logos, names, or other advertising copy, now or hereafter displayed, used or becoming a part of the PROPERTY PORT Estate Agency, business. Such characteristics presently include, but are not limited to, the horizontal Blue/Cyan over Yellow over Blue/Cyan colour scheme on the PROPERTY PORT CC, signs, business cards, 'Yellow Sun' and other materials identified with PROPERTY PORT CC.

- 14.4 The Independent Contractor agrees not to infringe upon, use or imitate said PROPERTY PORT System or any of the above distinguishing characteristics after termination of this agreement except on the prior written authorisation from PROPERTY PORT CC. The Independent Contractor agrees save as otherwise directed by the PROPERTY PORT Agency in writing, to destroy signs, cards, stationery and other PROPERTY PORT CC material upon termination or expiration of this agreement.
- 14.5 Because of the difficulty of measuring economic loss to the PROPERTY PORT Agency and/or PROPERTY PORT CC as a result of the breach of any of these conditions of clause 14, and because of the immediate and irreparable harm that such a breach would cause PROPERTY PORT CC, the foregoing conditions may be enforced by an interdict and restraining order.
- 14.6 In the event the PROPERTY PORT Agency, PROPERTY PORT CC, is required to employ an attorney to enforce any of the conditions of clause 14, or to institute legal proceedings incident to such enforcement, the Independent Contractor expressly agrees to pay, in addition to all other sums to which the Independent Contractor may be found liable, reasonable attorney's fees, court costs and litigation expenses incurred by the PROPERTY PORT CC.
- 14.7 You further acknowledge that by the virtue of your association with PROPERTY PORT that you will have access to business information (contracts, properties, customers and procedures) that is of critical importance to the business and that PROPERTY PORT CC, will incur substantial losses if this information is divulged to any other person, association or company. You also acknowledge that the confidentiality restraint is reasonable and if it is breached PROPERTY PORT CC has the right to take protective measures and /or claim damages.

## **15. GENERAL**

- 15.1 Any waiver by either party of a breach of any provision of this agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof. Any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of any party hereto in exercising any right, power or privilege hereunder will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 15.2 The rights to terminate this agreement given in clause 13 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.
- 15.3 Nothing in this agreement shall create, or be deemed to create, a partnership or the relationship of employer and employee between the parties.
- 15.4 If any provision of this agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.





- 18.3 The parties irrevocably agree that the submission to arbitration in terms of this clause is subject to the parties' rights of appeal set out hereunder.
- 18.4 Any party to the arbitration may appeal the decision of the arbitrator within a period of 20 (twenty) days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other party or parties to the arbitration. The appeal shall be dealt with in accordance with the rules of the Foundation by a panel of 3 (three) arbitrators appointed by the Foundation.
- 18.5 The decision of the arbitrator shall be final and binding on the parties to the arbitration after the expiry of the period of 20 (twenty) working days from the date of the arbitrator's ruling if no appeal has been lodged by any party. A decision which becomes final and binding in terms of this clause 18.5 may be made an order of court at the instance of any party to the arbitration.
- 18.6 Nothing herein contained shall be deemed to prevent or prohibit any party from applying to the appropriate Court for urgent relief.
- 18.7 The provisions of this clause will continue to be binding on the parties notwithstanding any termination or cancellation of the agreement.

## 19. MISCELLANEOUS PROVISIONS

- 19.1 The benefit and advantage of the stipulations herein contained in favour of PROPERTY PORT CC may be accepted and enforced.
- 19.2 If and whenever pursuant to the terms of this Agreement or otherwise the Independent Contractor becomes liable to pay PROPERTY PORT CC any monies, then such monies may be deducted by PROPERTY PORT CC from any monies that may be due to the Independent Contractor.
- 19.3 This agreement is personal to the Independent Contractor and no rights or obligations of the Independent Contractor hereunder shall be assignable the PROPERTY PORT CC may assign its rights and obligations hereunder to any successor to the business of PROPERTY PORT CC or any part thereof, whereupon the PROPERTY PORT CC shall be relieved of all obligations hereunder arising subsequent to the date of such assignment.

Signed at.....on the.....day of.....20

As witness:

\_\_\_\_\_

\_\_\_\_\_  
For: PROPERTY PORT CC

Signed at.....on the.....day of.....20

As witness:

\_\_\_\_\_

\_\_\_\_\_  
For: Independent Contractor