



**WRITTEN AGREEMENT FOR
OCCUPATIONAL HEALTH AND SAFETY**

In accordance with the provisions of Section 37(2) of the Occupational Health and Safety
Act No. 85 of 1993

Entered into and between

Tongaat Hulett
(hereafter referred to as "the Client")

and

.....
(hereafter referred to as "the Mandatary")

Compensation Fund Number:

.....

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Whereas the Client has entered into a contract with the Mandatary, in terms of which the Mandatary is to perform certain work and services for and on behalf of the Client, subject to the terms and conditions as contained in such contract.

And whereas pursuant to the provisions of the applicability of the Occupational Health and Safety Act No. 85 of 1993, as amended, and regulations thereto, the Client and the Mandatary have entered into this Agreement, the terms and conditions of which are set out hereunder.

1. Definitions

Unless inconsistent with the context, the expressions set forth below shall bear the following meanings:

- 1.1. Expressions which denote:
 - 1.1.1. any gender shall include the other genders;
 - 1.1.2. a natural person shall include a juristic person and vice versa;
 - 1.1.3. the singular shall include the plural and vice versa;
- 1.2. **Agreement** shall mean this document and annexures containing its terms and conditions as applicable to the parties thereto;
- 1.3. **Arrangements and Procedures** shall mean the contractor requirements, safety health and environment contract, mandatary acceptable procedure and any other arrangements and procedures prescribed by the Client from time to time and as the case may be.
- 1.4. **Client** shall mean the party as described on the face of this document;
- 1.5. **Employees** shall mean all Employees, servants, contractors, sub-contractors, agents, invitees and the like of the Mandatary. Any person who is employed by or works for an employer and who receives or is entitled to receive any remuneration or who works under the direction or supervision of an employer or any other person.
- 1.6. **Chief Executive Officer** shall mean the CEO or such responsible person as is nominated by the Mandatary, pursuant to the provisions of clause 4 hereunder;
- 1.7. **Contractor/Mandatary** shall mean the party who appears on the face of this document. This is the person who undertakes work at an operation under a contract, full time or part time, who is not a direct employee of that operation. The principal contractor may in his own right, be an employer or a user.
- 1.8. **OHS Act** shall mean the Occupational Health and Safety Act No. 85 of 1993, as amended, together with all regulations, specifications and standards thereto;

- 1.9. **Premises** shall mean all such Premises of the Client, where the Mandatary and the Employees performs work or renders a service for and on behalf of the Client.
- 1.10. **Tongaat Hulett Responsible Person** shall mean the appointee of the Client as referred to in clause 2 hereunder.
- 1.11. **Huley Rules** shall mean the safety rules established by Tongaat-Hulett, which apply to all employees and contractors.

2. Reporting

The Mandatary and/or his designated person appointed in terms of Section 16(2) of the OHS Act shall report to the Tongaat Hulett Responsible Person and/or a representative designated by the Client prior to commencing the work at the Premises.

3. Warranty of Compliance

- 3.1. In terms of this Agreement the Mandatary warrants that he has familiarized himself with the working environment and Premises and that he agrees to the Arrangements and Procedures, as prescribed by the Client, and as provided for in terms of Section 37(2) of the OHS Act, for the purpose of compliance with the OHS Act.
- 3.2. The Mandatary acknowledges that this Agreement constitutes an agreement in terms of Section 37(2) of the OHS Act, whereby all responsibility for health and safety matters relating to the work that the Mandatary and the Employees are to perform on the Premises shall be the obligation of the Mandatary.
- 3.3. The Mandatary further warrants that he and/or the Employees undertake to maintain all necessary compliance with the OHS Act. Without derogating from the generality of the above, nor from the provisions of this Agreement, the Mandatary shall ensure that the clauses as hereunder described are at all times strictly adhered to by himself and the Employees.
- 3.4. The Mandatary hereby undertakes to ensure that the health and safety of any person on the Premises is not endangered by the conduct and/or activities of the Employees whilst they are on the Premises.

4. Mandatary an Employer

The Mandatary shall be deemed to be an employer in his own right whilst on the Client's Premises. In terms of Section 16(1) of the OHS Act, the Mandatary shall accordingly ensure that the requirements of the OHS Act are complied with by himself and/or his/her Chief Executive Officer. (NB: Please refer to **Appendix A - 4.1**).

5. Appointments and Training

- 5.1. The Mandatary shall appoint competent persons as per Section 16(2) of the OHS Act (NB: Please refer to **Appendix A** – 5.1.1). Any such appointed person shall be trained on any occupational health and safety matter, and the OHS Act provisions pertinent to the work that is to be performed under their responsibility. Copies of all appointments made by the Mandatary must be made in writing and shall immediately be provided to the Client.
- 5.2. The Mandatary warrants that he has familiarized himself with the hazards associated with the work being carried out on the premises. The Mandatary shall further ensure that the Employees are trained on the health and safety aspects relating to the work and that they understand the hazards associated with such work being carried out on the Premises. Without derogating from the foregoing, the Mandatary shall, in particular, ensure that all his users or operators of any materials, machinery or equipment are properly trained in the use of such materials, machinery or equipment.
- 5.3. Notwithstanding the provisions of the above, the Mandatary shall ensure that he, his appointed responsible persons and the Employees are at all times familiar with the provisions of the OHS Act, and that they comply with the provisions.

6. Supervision, discipline and reporting

- 6.1. The Mandatary shall ensure that all work performed on the Premises is done under strict supervision, and that no unsafe or unhealthy work practices are permitted. Discipline regarding health and safety matters shall be strictly enforced against any of his Employees regarding non-compliance by such Employee with any health and safety matter.
- 6.2. The Mandatary shall further ensure that the Employees immediately report to him all unsafe or unhealthy work situations immediately after they become aware of the same, and that he in turn immediately reports these in writing, to the Tongaat Hulett Responsible Person.

7. Access to the OHS Act

The Mandatary shall ensure that he has an updated copy of the OHS Act and regulations on site at all times, and that this is accessible to his appointed responsible person and Employees, save that the parties may make arrangements for the Mandatary and his responsible appointed persons to have access to the Client's copies of the OHS Act and regulations.

8. Co-operation

- 8.1. The Mandatary and/or its responsible persons and Employees shall provide full co-operation and information if and when the Client or his representative enquires into occupational health and safety issues concerning the Mandatary.
- 8.2. Without derogating from the generality of the above, the Mandatary and his responsible persons shall make available to the Employer and his

representative, on request, all and any checklists and inspection registers to be kept by him in respect of any of his materials, machinery or equipment.

9. Work procedures

- 9.1. The Mandatary shall be entitled to utilise the procedures, guidelines and other documentation as used by the Client for the purposes of ensuring a healthy and safe working environment. The Mandatary shall furthermore ensure that his responsible persons and Employees are familiar with, and utilise the documents.
- 9.2. The Mandatary shall implement and enforce safe work practices as prescribed by the Client, and he shall ensure that his responsible persons and Employees are made conversant with the contents of these practices and that they adhere to such procedures.
- 9.3. The Mandatary shall ensure that the Employees do not perform work for which a permit is required prior to the obtaining of such a permit.
- 9.4. The Mandatary shall ensure that all his employees have attended induction training.

10. Health and safety meetings

If required in terms of the OHS Act, the Mandatary shall establish his own health and safety committee(s), and ensure that the Employees, being the committee members, hold health and safety meetings as often as may be required, and at least once every 3 three months. The Client may elect to permit the Mandatary's health and safety representatives to attend the Client's health and safety committee meetings.

11. Compensation registration

- 11.1. The Mandatary shall ensure that at all material times he has a valid registration with the Compensation Commissioner, as required in terms of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993, and that all payments owing to the Commissioner are discharged. The Mandatary shall further ensure that the cover shall remain in force whilst any such Employee is present on the Premises. (NB: Please refer to **Annexure 1**)

12. Medical examinations

The Mandatary shall ensure that all the Employees undergo routine medical examinations where these are necessary in terms of the working environment and that they are medically fit for the purposes of the work they are to perform on the Premises.

13. Incident reporting and investigation

- 13.1. All incidents referred to in Section 24 of the OHS Act shall be immediately reported by the Mandatary to the Department of Labour and to the Client in the prescribed manner. The Client shall further be provided with copies of any written documentation relating to any incident and the Mandatary agrees to release same upon request.
- 13.2. The Client retains an interest in the notification of any incident as described, above, as well as in any formal investigation and/or inquiry conducted in terms of Section 32 of the OHS Act into such incident.

14. Sub-contractors

- 14.1. The Mandatary shall notify the Client in writing of any sub-contractor he may wish to engage to perform work on the Premises. It is hereby recorded that all the terms and provisions contained in this clause shall be equally binding upon the sub-contractor prior to the sub-contractor commencing with the work. Without derogating from the generality of this paragraph:
 - 14.1.1. The Mandatary shall ensure that training as discussed in paragraph 5, above, is provided, prior to the sub-contractor commencing work on the Premises.
 - 14.1.2. The Mandatary shall ensure that work performed by the sub-contractor is done under strict supervision and discipline, as described in paragraph 6 above.
 - 14.1.3. The Mandatary shall immediately inform the Client of any health and safety hazard and/or issue that the sub-contractor may have brought to his attention.
 - 14.1.4. The Mandatary shall immediately inform the Client of any difficulty encountered with regard to compliance by the sub-contractor to any health and safety instruction, procedure and/or legal provision applicable to the work the sub-contractor performs on the Premises.
 - 14.1.5. The Mandatary shall ensure that any sub-contractor is strictly compliant with clauses 11, 12 and 24.3 herein and submits the necessary documentation to the Mandatary and Client proving strict compliance.

15. Security and access

- 15.1. The Mandatary and its employee shall only access and exit the Premises through the main gate(s) and/or checkpoint(s) designated by the Client. The Mandatary shall ensure that the Employees observe the security rules of the Client at all times and shall not permit any person who is not directly associated with the work from entering the Premises.

- 15.2. The Mandatary and the Employees shall not enter into any area or section of the Premises which is not directly associated with the work.
- 15.3. The Mandatary shall ensure that all materials, machinery or equipment brought by it onto the Premises are registered at the main gate(s) and/or checkpoint(s). No firearms, dangerous weapons, cameras or any other recording devices shall be allowed on site. A failure to do this may result in a refusal by the Client to allow the materials, machinery or equipment to be removed from the Premises (NB: Please refer to **Annexure 2 and 3**).

16. Fire precautions and facilities

- 16.1. The Mandatary shall ensure that an adequate supply of fire protection and first aid facilities is provided for the work to be performed on the Premises. The parties may mutually arrange for the provision of such facilities, subject to such arrangements being recorded in writing by the parties thereto.
- 16.2. The Mandatary shall further ensure that the Employees are familiar with fire precautions at the Premises, which include fire alarm signals and emergency exits and that such precautions, are adhered to.

17. Hygiene and cleanliness

The Mandatary shall ensure that the area where the work is performed is at all times maintained to reasonably practicable levels of hygiene and that they maintain the surrounding area of the work site to a reasonably practicable level of cleanliness. In this regard, no loose materials shall be left lying unnecessarily, and the work site shall be cleared of waste materials regularly and on completion of any work performed by the Mandatary and the Employees.

18. No nuisance

The Mandatary shall ensure that neither he nor the Employees undertake any activity which may cause environmental impairment, nor constitute any form of nuisance to the Client and/or his surroundings.

19. Intoxication not allowed

No intoxicating substance of any form shall be allowed on the Premises. Any person suspected of being intoxicated shall not be allowed on the site, save that any person required to take medication shall notify the relevant responsible person thereof, as well as the potential side effects of the medication.

20. Personal protective equipment

The Mandatary shall ensure that his responsible persons and the Employees are provided with adequate personal protective equipment (PPE) for the work they may perform, and in accordance with the requirements of General Safety Regulation 2(1) of the OHS Act. The Mandatary shall further ensure that his responsible persons and the Employees wear the PPE issued to them at all material times.

21. Plant, machinery and equipment

- 21.1. The Mandatary shall ensure that all plant, machinery, equipment and/or vehicles he may wish to utilize on the Premises is/are at all times of sound order and fit for the purpose for which it is intended, and that it complies with the requirements of Section 10 of the OHS Act.
- 21.2. In accordance with the provisions of Section 10(4) of the OHS Act, the Mandatary hereby assumes the liability, for taking the necessary steps to ensure that any article or substance that is erected or installed at the Premises, or manufactured, sold or supplied to or for the Client, and which the Mandatary uses at work complies with all the prescribed requirements and will be safe and without risks to health when properly used.
- 21.3. A list of potential hazards for the premises where duly work is to be performed shall be communicated to the Mandatary by the Client.

22. No usage of the Client's equipment

The Mandatary hereby acknowledges that the Employees shall not be permitted to use any materials, machinery or equipment of the Client unless the prior written consent of the Client has been obtained, in which case, the Mandatary shall ensure that only those persons authorized to make use of the same, have access thereto.

23. Transport

- 23.1. The Mandatary shall ensure that all road vehicles used on the Premises are in a roadworthy condition, are licensed and insured. All drivers shall have relevant valid driving licenses and no vehicle shall carry passengers unless it is specifically designed to do so. All drivers shall adhere to the speed limits and road signs on the Premises.
- 23.2. In the event that any hazardous substances are to be transported on the Premises, the Mandatary shall ensure that the requirements of the Hazardous Chemical Substances Act No. 15 of 1973 are complied with at all times.

24. Indemnity by Mandatary

Notwithstanding the provisions of this Agreement, or any other contractual relationship as between the Client and the Mandatary:

- 24.1. The Client shall not be responsible for any loss, damage, injury or death, howsoever caused, to the Mandatary, Employees or Sub-Contractors or their Employees, and the Mandatary hereby indemnifies the Client and holds the Client harmless against all and any claims, losses, demands, liability, costs and expenses of whatsoever nature, which the Client may, at any time sustain or incur arising out of the circumstances referred to herein provided that such loss, damage, injury or death is not caused by the willful action or omission or gross negligence of the Client.

24.2. The Mandatary hereby assumes liability for any loss or damage which is caused by the Mandatary's negligence, or through the negligence of any of the Employees, caused by the Sub-Contractors negligence, or through the negligence of any of the Employee and the Mandatary hereby indemnifies the Client for such loss or damage, whether caused by the Mandatary or Sub-Contractors breach of any of the terms of this Agreement, or by delict.

24.3. The Mandatary in pursuance of this clause 24, undertakes to ensure that he carries the appropriate insurance cover, including third party public liability cover, the details of which shall be furnished to the Client prior to work commencing and/or on demand by the Client.

25. Clarification

In the event that the Mandatary requires clarification of any of the terms or provisions of this Agreement, it should contact the Tongaat Hulett Responsible Person at the Client, whose clarification in terms hereof must be made in writing and addressed to the Tongaat Hulett Responsible Person.

26. Duration of agreement

This Agreement shall remain in force for the duration of the work to be performed by the Mandatary and/or whilst any of the Employees are present on the Premises.

27. Headings

The headings as contained in this Agreement are for reference purposes only, and shall not be construed as having any interpretative value in themselves, nor any indication as to the meaning of the contents of the paragraphs contained in this Agreement.

Signed at _____ on the _____ day of _____ 20____

As witnesses:

1. _____
_____ for **The Client** *duly authorised*

2. _____

Signed at _____ on the _____ day of _____ 20____

As witnesses:

1. _____
_____ for **The Mandatary** *duly authorised*

2. _____

APPENDIX A

4.1 APPOINTMENT OF RESPONSIBILITY

I, _____ being the CEO 16A(1) appointee Representing _____
Name in Full *Company Name*

and or being (a) the “Mandatory”/Contractor
(b) the “Sub-Contractor” appointed by:-

Company Name

Appoint _____
Name in Full / ID Number

as our representative and the “Designated Person” (in terms of OHS Act 16 (2) or Section 8(2) or CR 6 and Section 37(2) whilst contracted to work in or for Tongaat Hulett _____ or any such properties belonging to Tongaat Hulett _____.

Signed at _____ on this _____ day of _____ 20__

SIGNATURE C.E.O. 16(1)

5.1.1 ACCEPTANCE OF RESPONSIBILITY

I, _____ Representing _____
Name in Full *Company Name*

And whilst working at Tongaat-Hulett _____, do hereby accept this appointment and fully understand the regulations and contents of this document and I will comply with them.

Signed at _____ on this _____ day of _____ 20__

SIGNATURE. 16(2) / 8(2) / CR 6 / 37(2)

5.2.1 SIGNATURE OF A TONGAAT HULETT RESPONSIBLE PERSON:

This agreement is duly ratified by:

TH Responsible Person:

Signature:

APPENDIX B

Hazards at Tongaat Hulett premises:

1. Refer to operation specific SHE risk profile to be provided by the site SHE Manager.
2. As highlighted by the SHE induction undertaken by the site SHE Officer.

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APPENDIX C

Tongaat Hulett operation specific COMPULSORY SHE Requirements will be explained by the site SHE Manager and agreed to by the Mandatary representative before work commences. These may or may not include the following:

- A-1** Contractor's Occupational H & Safety Policy Appointment Letters
- B-2** THS & Contractor's Legal Agreements (Section 37(2) OHS Act 85 of 1993 and Regulations)
- C-3** Contractor's Letter of Good Standing
- D-4** Contractor's Tax Clearance Certificate
- E-5** Contractor's Safety Plan
- F-6** Contractor's Risk Assessments (HIRA & ERA)
- G-7** Contractor's Inspection registers (if applicable)
- H-8** Contractor's PPE Issue Register
- I-9** Contractor's Own Inductions
- J-10** Contractor's Chemical List / Hazardous / Non- Hazardous – (if applicable)
- K-11** Contractor's Training Matrix
- L-12** Contractor's Work Instructions
- M-13** Contractor's Staff medicals
- N-14** Contractor's Material Safety Data Sheets – (if applicable)
- O-15** Contractor's Certifications – (i.e. ISO 9001 etc.) (If any)
- P-16** Company Organogram
- Q-17** SHE policy and waste procedure
- R-18** Emergency preparedness and response
- S-19** Fall Protection plan (if applicable)
- T-20** List of appointments as per Construction Regulations (where applicable)

ANNEXURE 1



Site address

TO: ALL MANDATARIES / CONTRACTORS

CONTRACT ACCEPTANCE & CONDITIONS OF WORK AT TONGAAT HULETT OPERATIONS.

1. Company Details			
Company Name:			
Company Address:			
2. Insurance Cover			
Please furnish us with the following particulars and proof of cover (please attach photocopies of originals):-			
2.1 Workmen's Compensation			
Registration No.			
Proof of Payment and Date of Last Payment:			
2.2 Public Liability Assurance			
Insurance Company:			
Policy No.			
Amount of Cover:	(Minimum amount of R5 million)		
Renewal Date:			
2.3 Personal Accident			
Are your workers covered by any additional personal accident cover:-	Yes		No
If applicable, name of insurance company:			
Policy No.			
Note:			
a. It's imperative that you furnish us with this information & complete the relevancies on the attached documentation provided. A copy is to be returned to addressee for onward distribution to the SHEQ Department together with documents listed in APPENDIX C.			
b. This documentation is to reach the _____ prior to entry and commencement of any work.			

SHE/Q Manager
TH _____

