



FREIGHT VI (PTY) LTD
REGISTRATION NO. 2021/867443/07

PO Box 20161, Durban North
Kwa-Zulu Natal, 4061
Telephone: 031 100 1904
Legal: info@freightvi.co.za

SUBCONTRACTOR APPLICATION AND AGREEMENT

PART A: APPLICATION

1. APPLICANT

<input type="checkbox"/> Company	<input type="checkbox"/> CC	<input type="checkbox"/> Partnership	<input type="checkbox"/> Trust	<input type="checkbox"/> Individual
Registered name:		Registration No.		
Trading name/s:		VAT No.		
Full name of Applicant's representative:				
Physical address:		Postal address:		
Office Tel:				
Fax:				
E-mail:				
Banking details:				
Bank:				
Account holder:				
Account number:				
Branch:				
Reference:				

2. ACTIVE TRADE REFERENCES

NAME	TELEPHONE NO	CONTACT PERSON	MONTHLY PURCHASES

3. DOCUMENTS REQUIRED

The following documents must accompany this application:

Board Resolution authorising this application and appointing the signatory
Company/CC/Trust registration documents
Proof of business address
Tax Clearance certificate
Proof of banking details

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Copies of ID's of directors / owners
BEE rating certificate

4. NOTICE IN TERMS OF SECTION 18 OF THE PROTECTION OF PERSONAL INFORMATION ACT, 4 OF 2013 ("POPIA")

- a. When the Applicant completes and submits this application, Freight VI collects and processes the Applicant's Personal Information (as defined in POPIA) to conclude and manage the Subcontractor's Agreement between the Parties and to comply with its obligations in terms thereof. Freight VI may also process the information to enforce the provisions of the Agreement.

5. CONSENT TO PROCESS PERSONAL INFORMATION (SECTION 11(1)(A) OF POPI)

I, the undersigned, duly authorized (if acting on behalf of another person), hereby give consent to Freight VI (Pty) Ltd to process the personal information of the Applicant for the purposes stated in the Agreement (Part B).

APPLICANT:	
Date:	Place:
Signature:	
Signatory:	Capacity:
Witnesses:	
1.	2.

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PART B: SUBCONTRACTOR AGREEMENT

Between:

FREIGHT VI (PTY) LTD
REGISTRATION NO. 2021/732599/07
("FVI")

And

THE APPLICANT AS DESCRIBED IN CLAUSE NO. 1 OF PART A: APPLICATION
("Subcontractor")

1. DEFINITIONS

- 1.1. **"Agents"** means directors, officers, employees, agents, professional advisers, contractors, subcontractors or any Affiliate of either Party;
- 1.2. **"Agreement"** means this Agreement together with all Schedules and the Load Confirmations incorporated herein;
- 1.3. **"FVI"** means Freight VI (Pty) Ltd, a company duly incorporated in terms of the Companies Act, 2008 with Registration number:2021/732599/07;
- 1.4. **"Client"** means:
 - 1.4.1. An existing customer of FVI;
 - 1.4.2. a former customer of FVI with whom FVI intends to enter into a business relationship again infuture; and
 - 1.4.3. a potential customer of FVI with whom FVI has negotiated for the purpose of entering into a business relationship, or contemplated such negotiation.
- 1.5. **"Collection and Delivery Receipt"** means a document which, if signed by the Customer or FVI or their representatives, serves as proof of collection and delivery of Goods transported in accordance with a Load Confirmation;
- 1.6. **"Commencement Date"** means the last date of signature of this Agreement;
- 1.7. **"Confidential information"** means:
 - 1.7.1. any information relating to the business activities of FVI, and which the Subcontractor may acquire knowledge of by virtue of the Transportation Services rendered by it to FVI or communicated to the Subcontractor by the Customer or any of the Customer's employees or its agents;
 - 1.7.2. the technical detail, commercial and financial information, trade secrets, know-how, techniques, processes, utilities, apparatus, designs, technical and procedural specifications, methods of operating, costs and any other information acquired by the Subcontractor during the course of the Parties' commercial interactions and discussions with one another, regardless of whether such information is formally designated as confidential or not; and
 - 1.7.3. the names of clients and potential clients of FVI, which the Subcontractor may become privy to as a result of performing the transportation services in terms of this Agreement.
- 1.8. **"Consignee"** means the person or company designated by FVI, to whom Goods are to be delivered;

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- 1.9. **“Customer”** means a company which has employed the loading and transportation services of FVI and who is a party to a Main Agreement;
- 1.10. **“Disclosing Party”** means FVI;
- 1.11. **“Goods”** means the goods to be transported by the Subcontractor in terms of this Agreement;
- 1.12. **“FVI”** means Freight VI (Pty) Ltd, Registration Number 2021/732599/07, duly incorporated in accordance with the laws of the Republic of South Africa;
- 1.13. **“Load Confirmation”** means a form issued by FVI to the Transporter for particular orders and transactions in respect of the carriage of Goods, including the price stipulated therein for rendering the Services;
- 1.14. **“Main Contract”** means the contract entered into between the Customer and FVI;
- 1.15. **“Personal Information”** (PI) shall mean the race, gender, sex, pregnancy, marital status, national or ethnic origin, colour, sexual orientation, age, physical or mental health, disability, religion, conscience, belief, culture, language and birth of a person; information relating to the education or the medical, financial, criminal or employment history of the person; any identifying number, symbol, email address, physical address, telephone number, location information, online identifier or other particular assignment to the person; the biometric information of the person; the personal opinions, views or preferences of the person; correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; the views or opinions of another individual about the person whether the information is recorded electronically or otherwise.
- 1.16. **“POPIA”** shall mean the Protection of Personal Information Act 4 of 2013 as amended from time to time.
- 1.17. **“Receiving Party”** means the Subcontractor;
- 1.18. **“Stipulatio alteri”** means a contractual term in favour of a non-party;
- 1.19. **“Subcontractor”** means the entity and its registration number referred to on page 1 herein above and includes the Transporter's servants and agents and any person or persons carrying any Goods forming the subject matter of this Agreement under and in terms of a subcontract with the Subcontractor;
- 1.20. **“The Parties”** means the parties to this Agreement, being, FVI and Subcontractor;
- 1.21. **“Third party”** means any person other than FVI or Subcontractor and their agents;
- 1.22. **“Transportation Services”** means the loading and transportation services rendered by the Subcontractor on behalf of FVI to the Customer.

2. INTERPRETATION

In this Agreement, unless the context otherwise requires:

- 2.1. **“A Party”** includes a reference to that Party's successors in title and assigns allowed at law;
- 2.2. **“Days”** shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or Public Holiday as gazetted by the government of the Republic of South Africa from time to time;
- 2.3. **“Law”** means any applicable South African law and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;
- 2.4. **“Person”** means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and
- 2.5. **“Writing”** means legible writing and in English and includes a data message as contemplated in the Electronic Communications and Transactions Act, No 25 of 2002.

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- 2.6. The use of the words “**include**” and “**including**” followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it;
- 2.7. The words “**shall**” and “**will**” and “**must**” used in the context of any obligation or restriction imposed on a party will have the same meaning;
- 2.8. A reference to any statutory enactment shall be construed as a reference to that enactment as at the Commencement Date and as amended or substituted from time to time.
- 2.9. This Agreement shall in no way be construed as creating an agreement between the Customer and the Subcontractor or imposing obligations on the Customer and Subcontractor towards each other, and any Transportation Services rendered by the Subcontractor to the Customer will at all times be done on behalf of FVI.

3. RECITAL

It is recorded that:

- 3.1. FVI will from time to time receive orders from its Customers for the loading and transportation of Goods from designated loading points to destinations nominated by the Customer and for the off-loading of such Goods at specific destinations.
- 3.2. FVI appoints the Subcontractor on a non-exclusive basis to render Transportation Services to FVI from time to time in accordance with this Agreement and the Load Confirmations issued in terms of clause 5, and the Subcontractor accepts this appointment.

4. DURATION

- 4.1. This Agreement shall come into effect upon the Commencement Date and shall continue indefinitely, subject to clause 23.
- 4.2. This Agreement will be binding on the Parties from the Commencement Date and neither party shall have any claim against the other party, prior to the Commencement Date, except to the extent provided for in clause 18.3.

5. LOAD CONFIRMATIONS

- 5.1. FVI will, from time to time, by e-mail or telephonically, furnish the Subcontractor with a Load Confirmation.
- 5.2. The Load Confirmation shall specify, *inter alia*:
 - 5.2.1. the Goods to be transported and the quantity thereof;
 - 5.2.2. the loading point for Goods;
 - 5.2.3. the off-loading point for the Goods;
 - 5.2.4. the distance which the Goods are to be transported;
 - 5.2.5. the time and date for the collection and delivery of the Goods;
 - 5.2.6. the rate per ton to apply for the transportation of the Goods;
 - 5.2.7. such further terms and conditions stipulated by FVI or the Customer in respect of the Transportation Services to be rendered in terms of such Load Confirmation; and
 - 5.2.8. such additional particulars that may be relevant for the transportation of the specific Goods.
- 5.3. The parties acknowledge that circumstances will require from time to time that for telephonic Load Confirmations and/or Requests to be given to the Subcontractor by FVI. If a Load Confirmation is communicated telephonically, FVI shall as soon as practicable record the Load Confirmation in writing and provide the Subcontractor with a written confirmatory Load Confirmation.

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5.4. If the Subcontractor is unwilling or unable to render the Services set out in a Load Confirmation, it shall immediately after receipt of the Load Confirmation, notify FVI that it will not proceed with the rendering of such Services.

5.5. The Subcontractor shall be bound by all terms set out in such Load Confirmations in respect of Goods to be transported, in addition to being bound by this Agreement, upon notifying FVI that it accepts such terms or when it proceeds with carrying out the Transportation Services set out in the Load Confirmations, whichever is the earlier.

6. OBLIGATIONS OF THE SUBCONTRACTOR

6.1. The Subcontractor shall render the Transportation Services as set out in the Load Confirmation(s) with due care, diligence and skill and without delay as an independent contractor.

6.2. The Subcontractor shall:

6.2.1. inform FVI at what times it expects to load and off-load Goods in terms of a Load Confirmation;

6.2.2. inform FVI at what times Goods are actually loaded and off-loaded in terms of a Load Confirmation; and

6.2.3. immediately notify FVI of any and all occurrences which would or could cause delays in the rendering of the Transportation Services.

6.3. The Subcontractor shall satisfy itself that all Goods are suitable for carriage and that all Goods are properly packed and/or crated to ensure correct loading and safe carriage. It is agreed that, should the Goods not be in a clean, dry and stable condition and/or if the Goods reflect visible damage or leakage, then the Subcontractor will not load the Goods, and in which event the Subcontractor will immediately advise FVI.

6.4. The Subcontractor shall provide the correct dunnage/lashing equipment to secure the Goods and, when applicable, provide tarpaulins to cover the Goods at all times and to protect against water ingress, hail, dust, heat, sun, etc.

6.5. The Subcontractor shall carry out its mandate in accordance with the instructions and direction contained in the Load Confirmation.

6.6. Any failure by the Subcontractor to comply with any of its obligations in terms of this Agreement shall constitute a material breach hereof and as a result of such breach shall not receive or be entitled to payment for such Services.

7. COLLECTION AND DELIVERY

7.1. Each completed transportation of Goods shall be evidenced by a written Collection and Delivery Receipt, which document shall be in such format as may be prescribed, from time to time, by FVI.

7.2. The Collection and Delivery Receipt shall:

7.2.1. be signed by the Subcontractor and FVI and where applicable, by the Customer or their representatives at the loading point and by the Consignee at the off-loading point;

7.2.2. indicate the kind, quantity and quality of Goods received and delivered by the Subcontractor at the loading point; and

7.2.3. be sent to FVI by courier or by hand no later than 7 (seven) calendar days after off-loading, to the following address: TBA.

7.3. To the extent that any provision on such Collection or Delivery Notice conflicts in any way with any provision of this Agreement, the provisions of this Agreement shall prevail.

8. RATES AND PAYMENT

8.1. The rates applicable for the rendering of the Transportation Services by the Subcontractor for each Consignment of Goods shall be the rates as stipulated in the Load Confirmation, expressed as an amount in Rand per route requested by FVI.

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- 8.2. Any rates to apply in terms of clause 8.1 shall remain fixed notwithstanding that the Subcontractor may be obliged to deviate from the route selected by the Subcontractor, or to transport the Goods over another route, for any reason, including but not limited to, adverse weather conditions, impassable or dangerous roads, bridges or ferries or the instructions of any competent authority.
- 8.3. Any rates to apply in terms of clause 8.1, with the exception of the provisions made under clause 8.2, shall be subject to reasonable adjustment following, inadvertent, deliberate and/or necessary alterations by FVI to any of the specifications on the relevant Load Confirmation notwithstanding such alterations being communicated or not.
- 8.4. The Subcontractor shall, upon completion of each delivery of Goods in terms of a Load Confirmation, provide FVI with the following in respect of such delivery:
 - 8.4.1. An original Value Added Tax ("VAT") invoice issued in accordance with the VAT Act by or on behalf of the Subcontractor to FVI, at the applicable rate and for the quantity stipulated in the Load Confirmation;
 - 8.4.2. the original Collection and Delivery Receipts, signed in accordance with clause 7;
 - 8.4.3. the original weigh-bridge tickets pertaining to the loading and off-loading points; and
 - 8.4.4. any other information which FVI may require from time to time.
- 8.5. The Subcontractor authorises FVI to deduct from any amount payable in terms of any VAT invoice rendered by or on behalf of the Subcontractor to FVI:
 - 8.5.1. any expenses incurred in connection with the Transportation Services by FVI on behalf of the Subcontractor, or by the Subcontractor at the expense of FVI. This includes, but is not limited to, any expenses incurred by the Subcontractor in respect of services provided by a third party, which FVI is required to pay for, or a direct payment to a third party by FVI on behalf of the Subcontractor, including but not limited to, tracking companies, service stations, wash bays, maintenance or repair workshops, as well as any compulsory costs charged by the Customer to FVI to facilitate compliance of the Subcontractor with the Customer's operational requirements;
 - 8.5.2. an administration fee of 5% (five per cent) of the aggregate amount paid by FVI on behalf of the Subcontractor in terms of clause 8.5.1;
 - 8.5.3. any other amounts which may be due by the Subcontractor to FVI;
 - 8.5.4. the insurance premium payable by the Subcontractor in respect of goods in transit insurance in the event that FVI may have made payment of any such premiums on behalf of the Subcontractor, or may intend to make payment of such premiums on behalf of the Subcontractor directly to the relevant insurer.
- 8.6. FVI will furnish the Subcontractor with a VAT invoice for all such deductions made by FVI in terms of clause 8.5.
- 8.7. FVI will pay the Subcontractor, after all deductions referred to in clause 8.5, the amount of the VAT invoice of the Subcontractor. Payment will be made by electronic funds transfer into the bank account nominated by the Subcontractor in Part A hereto.
- 8.8. Payment in respect of the Subcontractor's invoices will be made by the later of the following:
 - 8.8.1. within 30 (THIRTY) days after receipt of payment from FVI's Customer/s; or
 - 8.8.2. On/before the end of the month in which the original documentation required in terms of clause 8.4 is delivered to FVI, provided that the documentation was received by FVI on or before the 07th day of the month in question. Should the documentation be received after the 7th of the month, payment will only be made by FVI at the end of the following month.
- 8.9. Examples of Payment Date/s in terms of clause 8.8.2:

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- 8.9.1. January documentation received on or before the 07 January will be paid on the last day February;
- 8.9.2. January documentation received on the 08 January to the 07 February will be paid on the last day of March.
- 8.9.3. January documentation received on the 08 February to the 07 March will be paid on the last day of April.
- 8.10. Should FVI dispute any item which appears in any invoice, it shall, within 7 (seven) calendar days of receipt of such invoice notify the Subcontractor of such dispute in writing and the Parties shall use their reasonable endeavours to resolve the issue. FVI shall be entitled to withhold payment of any disputed invoice, until such dispute has been resolved.
- 8.11. The Subcontractor will not withhold any Goods of the Customer on account of any dispute as to rates or any alleged failure by FVI to make payment under this Agreement. The Subcontractor hereby waives and releases all liens which the Subcontractor might otherwise have to any Goods of FVI or the Customer in the possession or control of the Subcontractor.

9. SET OFF AND NO WITHHOLDING OF PAYMENTS

- 9.1. The Subcontractor shall make payment to FVI, on demand of any monies due payable by it to FVI in terms of this Agreement, and the Subcontractor will not be entitled to hold over or set-off any payments against such indebtedness, whether such indebtedness is disputed by the Subcontractor or not.
- 9.2. A certificate signed by any manager or director of FVI setting out the amount of any indebtedness of the Subcontractor to FVI in terms of this Agreement, the rates of interest and any other fact, shall, upon its mere presentation, be *prima facie* proof of the Subcontractor's Indebtedness to FVI.

10. RISK

- 10.1. The Subcontractor shall have the sole and exclusive care, custody and control of the Customer's property from the time the Subcontractor commences loading of the Goods for transportation until off-loading the Goods to the Consignee accompanied by the Collection and Delivery Receipt.
- 10.2. The risk of any damage or loss of goods shall pass from the Customer to the Subcontractor upon commencing of the loading of Goods onto the vehicle of the Subcontractor at the loading point.
- 10.3. The risk of damage or loss of goods shall pass from the Subcontractor to the Consignee upon completion of the off-loading of Goods at the off-loading point.

11. DELAYS AND DAMAGE

- 11.1. Time is of the essence in respect of the Transportation Services to be rendered by the Subcontractor under this Agreement.
- 11.2. The Subcontractor shall at all times be responsible for delays which are within its control in respect of the rendering of Transportation Services.
- 11.3. FVI will be entitled, in its sole discretion, to levy a penalty against the Subcontractor for any delays in delivery, reckoned at 0,5% of the total amount for the Consignment in question, per day, which amount will be set-off against the Subcontractor's invoice.
- 11.4. If the Subcontractor is unable to timelessly render any of the Transportation Services at any time, whether due to vehicle breakdowns or driver abandonment or otherwise, FVI shall be entitled to appoint a third party operator to render the Transportation Services or the remainder thereof and recover from the Subcontractor the amount paid to the third party operator to the extent that it exceeds the amount that FVI would have paid to the Subcontractor if the Subcontractor had rendered the Transportation Services.
- 11.5. The Subcontractor shall be liable for any loss, damage and/or destruction of the Goods or any other property caused by the Subcontractor or drivers in its employ.
- 11.6. Any claims or expected claims by the Customer against FVI, including in respect of the market value of missing Goods, in respect of Goods transported by the Subcontractor, shall be processed and deducted from any payments to be made to the Subcontractor.

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- 11.7. The liability of the Subcontractor to FVI and the Customer shall be determined in accordance with this Agreement and the common law of South Africa. Nothing in this agreement shall be construed as exempting the Subcontractor from its common law liability.

12. WARRANTIES AND UNDERTAKINGS BY THE SUBCONTRACTOR

- 12.1. The Subcontractor shall be responsible for all operational requirements of the Subcontractor and its vehicles to be used to render Transportation Services under this agreement. The Subcontractor warrants to IFL that:
- 12.1.1. all its employees and agents are covered in terms of the Compensation for Occupational Injuries and Diseases Act, which cover shall remain in force whilst such persons are carrying out any duty in terms of the Agreement;
 - 12.1.2. it will ensure compliance by its employees and agents with all the requirements of the Occupational Health and Safety Act and that he qualifies as an employer of such persons.
 - 12.1.3. the Subcontractor and its employees and agents will have the necessary skill, qualifications and equipment to provide the Transportation Services under this Agreement;
 - 12.1.4. all of the Subcontractor's vehicles used to render Transportation Services will comply with any legal roadworthiness standards prescribed by law, proof of which must be furnished on demand by FVI;
 - 12.1.5. it will comply with all statutory requirements generally imposed on carriers, such as the Subcontractor from time to time, and specifically for any goods to be transported pursuant to Load Confirmations issued in terms of this Agreement;
 - 12.1.6. the transportation of Goods by the Subcontractor will not violate or infringe applicable law;
 - 12.1.7. it shall ensure that the vehicles are maintained to the sole satisfaction of FVI, proof of which is to be supplied to FVI upon request, including but not limited to full service records and or mechanical inspection records by the manufacturer or service provider approved by the manufacturer;
 - 12.1.8. all the drivers, vehicles and/or other equipment to be used in connection with the carrying out of the Transportation Services comply with all the legal requirements of FVI and the Customer, including but not limited to, medical fitness of drivers, specific and/or compulsory modifications to vehicles and ensuring the availability of suitable labour, equipment and safety gear.
- 12.2. The Subcontractor shall pay all the expenses which are in any way related to its business and/or the rendering of the Transportation Services and shall bear the sole responsibility of the refueling of vehicles and for the employment and personnel management of drivers at the Subcontractor's own expense.
- 12.3. The Subcontractor, in the rendering of Transportation Services, warrants that it shall:
- 12.3.1. follow correct weighing procedures in accordance with the standard practice in the transport industry during loading-on and loading-off of any goods transported by it;
 - 12.3.2. ensure that the loading bins of vehicles or other containers are at all times clean and properly sealed before and after loading;
 - 12.3.3. ensure that no vehicle is at any time short-or-overloaded and not permit that any load exceeds a vehicle's gross vehicle mass.
- 12.4. The Subcontractor shall, at the request of EC, attend performance review meetings with EC for purposes of monitoring the Subcontractor's performance in terms of this Agreement.

13. DRIVERS

- 13.1. The Subcontractor shall:
- 13.1.1. employ only trustworthy, skillful and experienced drivers who are trained and qualified to execute the level of service demanded by this agreement;

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- 13.1.2. For every driver employed by it in terms of this Agreement, furnish FVI with such identification documents, licenses, work permits, security records, curricula vitae, medical records and other information as FVI may deem necessary to establish the suitability of such drivers;
- 13.1.3. organise, supervise, and accept responsibility for all drivers employed by it to execute the service in accordance with this Agreement; and
- 13.2. The Subcontractor's drivers shall, at the cost of the Subcontractor's cost:
 - 13.2.1. at all times be dressed in a presentable manner to improve and maintain the desired professional image of both the Subcontractor and FVI; and
 - 13.2.2. be equipped with the necessary equipment, tools and protective clothing as and when required to execute the Transportation Services.
- 13.3. FVI shall always be entitled to communicate directly with any driver in the Subcontractor's employ in terms of this Agreement.
- 13.4. Accommodation, meals, transportation, remuneration and employment contracts for drivers employed by the Subcontractor shall not be provided by FVI and shall be the Subcontractor's responsibility and for the Subcontractor's account.
- 13.5. FVI shall have the right to review and approve or reject driver assigned by the Subcontractor for any reason which may include, but shall not be limited to, any failure, neglect, incompetence, improper conduct, unsatisfactory workmanship or security and safety reasons, and FVI's decision shall be final. Drivers rejected by FVI shall not be used by the Subcontractor to render services to FVI under this Agreement.

14. VEHICLE TRACKING

- 14.1. The Subcontractor warrants that its vehicles are fitted with tracking devices, which tracking devices shall be used by the Subcontractor when rendering the Transportation Services. The Subcontractor undertakes to maintain the operation of the tracking devices and the connecting services for the duration of this Agreement.
- 14.2. FVI shall at all times have full access to the tracking history of such vehicles in respect of the Transportation Services rendered to FVI. Such access may in no way be refused by the Subcontractor or any of its employees or representatives. To the extent necessary, the Subcontractor hereby irrevocably gives consent to the relevant tracking company to grant FVI the access as contemplated in this clause.

15. INSURANCE

- 15.1. The Subcontractor, at its expense, shall ensure that it is at all times insured against any and all risk pertaining to the rendering of Transportation Services for such an amount as FVI deems appropriate, in its sole and absolute discretion.
- 15.2. Notwithstanding that FVI may in future facilitate insurance for and on behalf of the Subcontractor, FVI shall have no liability towards the Subcontractor for any insurance taken by the Subcontractor through the facilitation of FVI and the Subcontractor indemnifies FVI against any such claims.
- 15.3. The Subcontractor shall at any time upon request of FVI provide FVI with adequate and satisfactory proof that the Subcontractor is appropriately insured in respect of all Transportation Services to be rendered by it, including sufficient goods in transit insurance on all loads to be carried by the Subcontractor in the rendering of Transportation Services. The Subcontractor shall furnish the relevant insurance policy document to FVI upon request.
- 15.4. The Subcontractor undertakes to instruct their insurers to settle any claim arising from any loss or damage, directly with FVI and not to accept any settlement directly from their insurers, irrespective of the value.
- 15.5. Should the Subcontractor's insurance company not pay the full claim amount, the shortfall will be for the Subcontractor's account and shall be immediately payable upon written demand by FVI.
- 15.6. Any excess payable in respect of an insurance claim made as contemplated in clause 15.4 will be paid by the Subcontractor.

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- 15.7. The Subcontractors furthermore indemnifies and holds harmless FVI and its Customers in respect of any public liability claim by any third party and undertakes to timelessly submit any such claim to its insurers.

16. EXEMPTION AND INDEMNITY

- 16.1. The Subcontractor shall have no claim of any nature, whether for damages, a remission of any payments, cancellation or otherwise, against FVI, its employees, agents or others on whose behalf FVI would be liable, in respect of any damage or loss sustained by the Subcontractor of any nature, or any damage caused to the assets of the Subcontractor, or assets kept on its premises by any third parties, or in regard to the Subcontractor's business, or for any loss, damage, injury or death sustained by any of its customers, employees, agents or any person for whom it is liable in law, however caused, including the negligent acts or omissions of FVI, its employees or representatives, for whom it may be liable in law. This constitutes a *stipulation alteri* in respect of the employees and representatives of FVI to the extent that it indemnifies such persons for damage and losses arising from this Agreement.

- 16.2. The Subcontractor indemnifies and hold FVI, its employees, representatives or any person for whom it may be liable in law, harmless against any loss, damage or expense, including legal costs on an attorney and own client scale, which may be demanded from or sustained by one or more of FVI's employees, representatives or any other person for whom it is liable in law, by reason of:

16.2.1. any breach by the Subcontractor of the terms of this Agreement;

16.2.2. any claim brought by any third party, arising out of the implementation of this Agreement, including but not limited to, injury or death or loss or damage which any Client and/or the Subcontractor or its employees, representatives or any other person for whom it is liable in law may sustain connected with or arising out of the implementation of this Agreement, or any act or omission on the part of the Subcontractor, its employees, representatives or any person whom it is liable in law.

17. LIMITATION OF LIABILITY

Under no circumstances, including as a result of its negligent acts or omissions or those of its employees, agents or contractors or any other person for whom it may be liable, shall FVI or its employees, representatives or any other affiliated person, in whose favour a *stipulation alteri* is hereby created in favour of such persons, be liable for any direct, indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind, whether arising under contract, delict or otherwise and whether the loss or damage was reasonably foreseen or foreseeable, sustained by the Subcontractor, its employees, agents or directors, including but not limited to any loss of operation time, corruption or loss of information, loss of contracts and/or loss of profits.

18. CONFIDENTIALITY

18.1. Introduction:

18.1.1. Under this clause the Subcontractor will be referred to as the Receiving Party and FVI will be referred to as the Disclosing Party.

18.1.2. The Receiving Party acknowledges that by virtue of the Transportation Services to be rendered by it to the Disclosing Party, it will acquire knowledge of the Disclosing Party's confidential information and trade secrets relating to the business activities of the Disclosing Party.

18.1.3. The Parties acknowledge that the confidential information is a valuable, specialised and unique asset proprietary to the Disclosing Party.

18.1.4. The Receiving Party further acknowledges that should it use any confidential Information of the Disclosing Party to compete with the business of the Disclosing Party, the Disclosing Party will be severely prejudiced in its trade and proprietary interests relating to such confidential information.

18.1.5. The Receiving party will ensure that its employees, representatives and directors comply with the provisions of this clause 18.

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18.2. Title:

All Confidential Information disclosed by the Disclosing Party to the Receiving Party is acknowledged by the Receiving Party to be the proprietary and the exclusive property of the Disclosing Party. This Agreement shall not confer any rights of ownership or license on the Receiving Party of whatever nature in the Confidential Information.

18.3. Confidentiality Term:

The term of Confidentiality will commence upon the Commencement Date of this Agreement, or on the date on which Confidential Information is first disclosed to the Receiving Party, whichever of the two dates is the earliest, and the term of confidentiality will terminate upon expiry of a period of 12 (twelve) months after termination of this Agreement.

18.4. Disclosure of Confidential Information:

- 18.4.1. The Receiving Party agrees that it will not during the Confidentiality Term, disclose the Confidential Information to any third party for any reason whatsoever without the prior written consent of the Disclosing Party and to the extent of such authorisation.
- 18.4.2. The Receiving Party agrees not to utilize, exploit or in any manner whatsoever use the Confidential Information disclosed pursuant to this Agreement for any purpose whatsoever without the prior written consent of the Disclosing Party.
- 18.4.3. The Receiving Party Agrees to indemnify, defend and hold the Disclosing Party harmless from and against all suits, liabilities, causes of action, claims, losses, damages, costs, or expenses of any kind incurred or suffered by the Disclosing Party and any of its employees, representatives or directors, arising from the Receiving Party's unauthorised use or disclosure of the Disclosing Party's Confidential Information in violation of the Agreement and/or the Confidentiality Term.
- 18.4.4. If the Receiving Party is unsure about whether any Information is to be treated as confidential, he/she must treat it as such until clearance is obtained from the Disclosing Party.

18.5. Restricting Disclosure of Confidential Information:

- 18.5.1. The Receiving Party undertakes not to use the Confidential Information for any purpose other than:
 - 18.5.1.1. Rendering the Transportation Services and performing its obligations in terms of this Agreement, including any acts which are necessary to accomplish the aforesaid; and
 - 18.5.1.2. In accordance with the provisions of this Agreement.

18.6. Data, Information Technology and Copyright in Works Belonging to the Disclosing Party:

All data, electronic or otherwise, which is viewed, accessed, used, processed or generated by the Receiving Party in any way relevant or related to the rendering of the transportation services and performing its obligations in terms of this Agreement may not be used in any manner or any circumstances if it is not authorised to do so. Data in terms of this clause includes mechanical or other recordings of sound, images or other aspect provided on the website of the Disclosing Party.

18.7. Return of Material Containing or Pertaining to Confidential Information

- 18.7.1. The Disclosing Party may at any time, and in its sole discretion request the Receiving party to return any material and/or data in whatever form containing or pertaining to Confidential Information, and may, in addition, request the Receiving Party to furnish a written statement to the effect that, upon such return, the Receiving Party has not retained in its possession, or under its control either directly or indirectly, any material or data; or
- 18.7.2. If it is unable to do so, the Receiving Party shall destroy or ensure the destruction of all material and/or data in whatever form relating to Confidential Information, and delete, remove or erase, or use best efforts to ensure deletion, removal or erasure from any computer or database or document retrieval system under its control, all Confidential Information, in a manner that makes the deleted, erased or removed material permanently irrecoverable.

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- 18.7.3. The Receiving Party shall comply with any request by the Disclosing Party in terms of this Clause within 7 (seven) business days of receipt of such request.

18.8. Standard of Care:

The Receiving Party Agrees that it shall protect the Confidential Information using the same standard of care that it applies to safeguard its own proprietary, secret or confidential information but no less than a reasonable standard of care, and that the Confidential Information shall be stored and treated in a way as to prevent unauthorised disclosure thereof.

18.9. Excluded Confidential Information:

- 18.9.1. The obligations of the Receiving Party pursuant to the provisions of this clause shall not apply to Confidential Information that:

- 18.9.1.1. is known to, or in the possession of the Receiving Party prior to disclosure thereof by the Disclosing Party;
- 18.9.1.2. is or becomes publicly known, otherwise than as a result of breach of the Agreement by the Receiving Party;
- 18.9.1.3. is developed independently of the Disclosing Party by the Receiving Party in circumstances that do not amount to breach of the Agreement;
- 18.9.1.4. is disclosed by the Receiving Party to satisfy an order of court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time, provided that in these circumstances, the Receiving Party shall advise the Disclosing Party to take whatever steps it deems necessary to protect the interests in this regard and provided further that the Receiving Party will disclose only that portion of the Confidential Information which is legally required to disclose and the Receiving Party will use its reasonable endeavours to protect the confidentiality of such Confidential Information to the greatest extent possible in the circumstances;
- 18.9.1.5. is disclosed to a third party pursuant to the prior written authorisation and limited to the extent of such approval of the Disclosing Party;
- 18.9.1.6. is received from a third party in circumstances that do not result in a breach of the provisions of this agreement.

18.10. Non-Solicitation:

- 18.10.1. The Receiving Party acknowledges that the Disclosing Party is the exclusive effective cause of the business relationship between the Customer and the Receiving Party.
- 18.10.2. The Receiving Party undertakes that it, its employees, representatives, directors or Subcontractors will not:
- 18.10.2.1. During the term of this Agreement, directly or indirectly, solicit or provide transportation services for the carriage of goods to any client of the Disclosing Party, other than providing such services in terms of this Agreement; and
 - 18.10.2.2. For a period of 12 (twelve) months after the expiry or termination of this Agreement for any reason whatsoever, directly or indirectly, render any transportation services to any of the clients of the Disclosing Party.
 - 18.10.2.3. The Receiving Party acknowledges that the restraint imposed upon it in terms of clause 18.9 is reasonable as to the subject matter and duration and is reasonably required by the Disclosing Party to safeguard its legally recognised protectable interests.

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19. PROCESSING OF PERSONAL INFORMATION

- 19.1. The Parties acknowledge that for the purposes of this agreement that the Parties may come into contact with, or have access to PI and for which the other party is responsible. Such PI may also be deemed or considered as private and confidential as it relates to any third party who may be directly or indirectly associated with this Agreement. Further, it is acknowledged and agreed by the Parties that they have the necessary consent to share or disclose the PI and that the information may have value.
- 19.2. The Parties agree that they will at all times comply with POPIA's Regulations and Codes of Conduct and that it shall only collect, use and process PI it comes into contact with pursuant to this Agreement in a lawful manner, and only to the extent required to execute the services and to perform their respective obligations in terms of this Agreement.
- 19.3. The Parties agree that it shall put in place, and at all times maintain, appropriate physical, technological and contractual security measures to ensure the protection and confidentiality of PI that it, or its employees, its contractors or other authorised individuals comes into contact with pursuant to this Agreement.
- 19.4. Unless so required by law, the parties agree that it shall not disclose any PI as defined in POPIA to any third party without the prior written consent of the other party, and notwithstanding anything to the contrary contained herein, shall any party in no manner whatsoever transfer any PI out of the Republic of South Africa.
- 19.5. Each Party indemnifies and holds the other party harmless against any direct or indirect loss or damage suffered by a party or any third party, as a result of the party's non-compliance with POPIA, or the Regulations relating to POPIA.

20. CONFLICT OF INTEREST

- 20.1. The Subcontractor will avoid any material conflict between its own interests and those of FVI, in particular:
- 20.1.1. shall not derive any personal economic benefit to which the Subcontractor is not entitled by reason of the services provided to FVI in terms of this Agreement, from FVI or from any other person in circumstances where the benefit is obtained in conflict with the interests of FVI.
- 20.1.2. shall notify FVI, at the earliest practical opportunity, of the nature and extent of any direct or indirect material interests that it may have in conflict with FVI.

21. EMPLOYEES

The Subcontractor agrees that it shall not, for a period of 12 (twelve) months after expiration or termination of this Agreement for any reason, solicit, aid or induce (whether on its own account or for any other person, firm or company) any employee or consultant of FVI to leave their employment with FVI.

22. RELATIONSHIP

Nothing in this Agreement shall create or be deemed to create a relationship of principal/agent, employer/employee, partnership or joint venture between FVI and the Subcontractor and, except as provided in this Agreement, neither party shall enter into or have authority to enter into any agreements or make any representation or warrantee on behalf of or pledge the credit or otherwise bind or oblige the other party.

23. NEGOTIATION

The Parties undertake to first attempt to solve any disputes which may arise in terms of this Agreement, by way of negotiation. Only if negotiations fail or one party refuses to negotiate, may either party approach the court with jurisdiction to resolve the dispute.

24. BREACH AND TERMINATION

- 24.1. Subject to the remaining provisions of this clause 22, if either party commits a breach of this Agreement and/or fails to comply with any provisions hereof, then the other party shall be entitled to:
- 24.1.1. Give the defaulting party 7 (seven) calendar days' notice in writing to remedy such breach and/or failure, and if the defaulting party fails to comply with such notice then the aggrieved

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party shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies which the aggrieved party may have in law, to:

- 24.1.2. Cancel this agreement; or
 - 24.1.3. Claim immediate performance and/or payment of all the defaulting party's obligations in terms hereof.
- 24.2. FVI shall be entitled to terminate this agreement with immediate effect in the event of:
- 24.2.1. the Subcontractor being in breach of clause 18;
 - 24.2.2. the Subcontractor or any of its employees or Subcontractors or agents offering to pay, giving or offering to give any bribe or gift to any person in the employ of FVI, its suppliers or clients, except where the value of such gift(s) do not exceed the amount of R50.00 (Fifty Rand) per annum;
 - 24.2.3. the Subcontractor or any of its employees or Subcontractors or agents being involved in theft of goods, including but not limited to theft in transit, at the premises of the Customer or suppliers of FVI, at intermediate storage facilities, or at service stations or rest areas;
 - 24.2.4. FVI experiencing deliberate under-performance by the Subcontractor of its obligations in terms of this Agreement, and the Subcontractor has failed to remedy the situation within 7 (seven) days of receipt of a written notice calling upon it to do so;
- 24.3. Either Party may give written notice to the other terminating this Agreement with immediate effect upon the occurrence of one or more acts of default. An act of default in respect of a party shall be:
- 24.3.1. an application or order is made to or by a court for its winding up, liquidation, dissolution or administration;
 - 24.3.2. a meeting of directors or shareholders of the party is convened to consider the passing of, or a resolution is passed for the administration, custodianship, curatorship, bankruptcy, liquidation, sequestration, winding-up, business rescue or dissolution of the party, whether provisional or final;
 - 24.3.3. it is unable or admits inability or is deemed to be unable to pay its debts generally as they fall due or its liabilities exceeds its assets, fairly valued, or it stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors generally, or a moratorium is agreed or declared in respect of affecting all or a material part of its indebtedness;
 - 24.3.4. it commits any at which, if an individual committed such an act, would be an act of insolvency within the meaning of the Insolvency Act
 - 24.3.5. any business rescue practitioner, curator, trustee in bankruptcy, liquidator or the like is appointed in respect of it or any part of its assets or it requests any such appointment;
 - 24.3.6. the party has any judgment made against it and it fails to:
 - 24.3.6.1. appeal against such judgment (if such judgment is appealable) or to apply for the rescission thereof (if such judgment is a default judgment) within the prescribed time limits or thereafter fails to prosecute such appeal or application (and any subsequent right of appeal or review) or ultimately fails in such appeal or application; or
 - 24.3.6.2. satisfy such judgment, or, if it lodges an appeal or application and such appeal or application ultimately fails, it fails to satisfy such judgment within 10 (ten) business days of such appeal or application failing.
 - 24.3.7. if such party is, due to any event of force majeure, unable to perform its obligations or duties under this agreement for a consecutive 60-day period or for a total of 60 days in any period of 3 consecutive months.

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24.3.8. The termination or expiry of this agreement (howsoever arising) shall be without prejudice to any rights or liabilities of the parties accrued at the date of termination or expiry (as appropriate), provided that if this agreement is terminated in terms of clause 23.2, FVI shall be entitled deduct from payment to the Subcontractor claims for losses or damages, including but not limited to loss of business or profit, and which may include legal costs on an attorney and own client basis. The Subcontractor shall not be entitled to claim from FVI any losses or damages whatsoever, including but not limited to loss of business or profit or any legal costs howsoever incurred.

24.3.9. The termination or expiry of this agreement shall not affect or prejudice any provision which is expressly or by implication provided to come into force on or continue in effect after such termination.

25. FORCE MAJEURE

25.1. Delay or failure to comply with or breach of any of the terms and conditions of this Agreement if occasioned by or resulting from an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, blockade, embargo, sanctions, epidemics, act of any Government or other Authority, compliance with Government orders, demands or regulations, or any circumstances of like or different nature beyond the reasonable control of the Party so failing, will not be deemed to be a breach of this Agreement nor will it subject either Party to any liability to the other.

25.2. Should either Party be prevented from carrying out its contractual obligations as a result of a force majeure event lasting continuously for a period of 30 (thirty) days, either Party shall be entitled, after due consultation with the other Party in an effort to come to a mutually acceptable arrangement, to terminate the Agreement on written notice to the other Party, without liability.

26. ADDRESSES FOR SERVICE (*domicilium citandi et executandi*)

26.1. The parties choose the following addresses for purposes of this Agreement:

26.1.1. FVI:

Physical address: PO Box 20161, Durban North, Kwa-Zulu Natal, 4061

E-mail: info@freightvi.co.za

26.1.2. **SUBCONTRACTOR:** The addresses stipulated in Part A hereto.

26.2. Any notice or legal process to be served on either party must be served on it at the address specified above and each party chooses that address as its *domicilium citandi et executandi* (address for service) for all purposes under this Agreement.

26.3. Either party may, from time to time, by written notice to the other, change his address for service to any other address in RSA which is not a post box or a *poste restante*.

26.4. Any notice or legal process by one party to the other which is delivered by hand, fax or e-mail during the normal business hours of the addressee, will be presumed, until the contrary is proven, to have been received by the addressee at the time of delivery.

27. RIGHT TO CEDE AND ASSIGN

27.1. FVI shall be entitled to cede and assign all its rights and obligations in and under this agreement to a third party on written notice of such cession and assignment being given to the Subcontractor.

27.2. The Subcontractor will not be entitled to cede or assign any of its rights or obligations in and under this agreement to a third party without the prior written consent of FVI, which consent may be withheld for any reason or no reason at all.

28. NO INDULGENCE

28.1. A failure to exercise, or a delay in exercising any right or remedy under this Agreement shall not constitute a waiver of that right or remedy or a waiver of any other right or remedy and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of that right or remedy or the exercise of any other right or remedy.

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28.2. The rights, powers and remedies conferred on the parties by this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law or otherwise.

29. ENTIRE AGREEMENT

This document and the Load Confirmations incorporated herein, constitutes the whole agreement between the parties. No party will have any right or remedy arising from any undertaking, warranty or representation which is not included in this document.

30. GOVERNING LAW

This Agreement shall be governed by the laws of the Republic of South Africa.

31. SEVERABILITY

Each clause or part of a clause of the Agreement is separate and severable from the rest of the Agreement and should any clause or part thereof be unenforceable, it will not affect the enforceability of the rest of the Agreement.

32. COUNTERPARTS

The parties agree that the Agreement may be executed in a number of counterparts by the parties. Should it be signed at different venues or at different times or not in the presence of any other party, it will be deemed to have been signed as if the parties were all present at the time and place of signature.

33. NON-VARIATION

No amendment, variation or consensual cancellation of the Agreement, including this clause, will be of any force or effect unless it is reduced to writing and signed by all parties hereto.

34. SIGNATURE

34.1. SUBCONTRACTOR:
Date:
Place:
Signature:
Signatory:
Capacity:
Witnesses:
1.
2.

34.2. FVI:
Date:
Place:
Signature:

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PART C: INSURANCE CONFIRMATION AND CESSION

DETAILS OF SUBCONTRACTOR'S OWN CURRENT GOODS IN TRANSIT INSURANCE

Name of insured:	
Name of insurance company:	
Policy number:	
Name of insurance broker:	
Insurance broker Tel No:	
Policy number:	
Inception / start date of policy:	
Policy load limit: Rands	

Type of Cover(tick):	All Risks		Fire, collision, overturning, theft following & highjack	
Type of Cover(tick):	Other		All Risks including deterioration of refrigerated foodstuffs	

List any excluded goods:

Countries covered		RSA		Botswana		Namibia		Swaziland		Zimbabwe
		Mozambique		Zambia		Lesotho		Malawi		DRC

Policy Excess:

Basic / non-Hijack:	
Hijacking:	

Cession

I, the undersigned personally and / or in my capacity as director and / or member of the Subcontractor hereby undertake to notify FVI of any alteration / cancellation of the above confirmed insurance cover, and do hereby cede all my rights in and to any insurance claim in respect of goods carried as a subcontractor on behalf of FVI, to and in favour of FVI, and hereby give authority that any such claim payment must be paid by my insurance company directly to FVI.

This cession of rights is irrevocable, and I hereby authorise my insurer to recognise this cession as lawful and give effect to this cession and instruction.

SIGNED SUBCONTRACTOR _____

CAPACITY _____

DATE _____

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