

SERVICE DELIVERY AGREEMENT

between



THE CITY OF CAPE TOWN

herein represented by the City Manager

and

CAPE TOWN INTERNATIONAL CONVENTION CENTRE COMPANY
(PTY) LTD

herein represented by the Chief Executive Officer

 1 

1. INTRODUCTION

The City and Convenco acknowledge that this Agreement sets out the relationship between them and is aimed at giving effect to legislation, particularly the MFMA, and Section 81 of the Local Government: Municipal Systems Act.

This Agreement will be reviewed and amended where applicable, in accordance with the relevant legislation and regulations as applicable.

2. INTERPRETATION

The headings of the clauses of this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of any clause of this Agreement. Unless a contrary intention clearly appears -

2.1 words importing –

2.1.1 any one gender include the two genders;



2.1.2 the singular include the plural and vice versa; and

2.1.3 natural persons include created entities (corporate or unincorporated) and the state;

2.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely-

2.2.1 "Board of Directors" means the Board of Directors of Convenco, appointed in terms of the Systems Act and the Articles of Association of Convenco;

2.2.2 "Chairperson" means the Chairperson of the Board of Directors of

 2 

Convenco;

2.2.3 "Chief Executive" means the Chief Executive Officer of Convenco;

2.2.4 "Companies Act" means the Companies Act, 61 of 1973;

2.2.5 "Business Plan" means the multi-year Business Plan for Convenco,
as required in terms of section 87(5) (a) of the MFMA;

2.2.6 "Convenco" means the Cape Town International Convention Centre
Company (PTY) LTD;

2.2.7 "Director" means the Director: Shareholding Management of the City;

2.2.8 "Executive Mayor" means the Executive Mayor of the City of Cape
Town;

2.2.9 "King II report" means the King II report on Corporate Governance for
South Africa 2002;

2.2.10 "MFMA" means the Local Government: Municipal Finance
Management Act, 56 of 2003;

2.2.11 "MSA" means the Local Government: Municipal Systems Act, 32 of
2000;

2.2.12 "Parties" means Convenco and the City of Cape Town and where
appropriate, any one of them;

2.2.13 "The City" means the City of Cape Town.

2.3 if there is a conflict between this Agreement and the Shareholders Agreement
or the Funding Agreement entered into between the parties, the latter
agreements shall prevail.



- 2.4 if any provision in any definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 2.5 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.7 where any term is defined in any other clause to this Agreement, the term shall, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause, unless it is clear from the context, that the definition of the term applies only to the relevant clause.

3. PRIMARY RELATIONSHIP BETWEEN THE PARTIES

3.1 The City

3.1.1 The City is accountable to its Council for the exercise of its powers and the performance of its functions.

3.1.2 Without limiting the provisions of applicable legislation and in particular the provisions of section 93B of the MSA, the principal functions of the City will include the following:


3.1.2.1 The development of policy as required from time to time, and ensuring compliance with applicable



legislation;

- 3.1.2.2 Assessing the performance of the Board of Directors to ensure that Convenco is managed responsibly and transparently and meets statutory, contractual and other obligations;
 - 3.1.2.3 Assessing the performance of Convenco to ensure that it meets its agreed key financial and non financial performance indicators;
 - 3.1.2.4 Allowing the Board of Directors and Chief Executive Officer to fulfill their responsibilities; and
 - 3.1.2.5 Establishing and maintaining clear channels of communication between the City and Convenco.
- 3.1.3 The City has designated the Director: Shareholding Management and the Mayoral Committee Member for Finance in terms of section 93D (1) (a) and (b) of the MSA:
- 3.1.3.1 To represent the City as a non-participating observer at meetings of the Board of Directors;
 - 3.1.3.2 To attend the Shareholder meetings and to exercise the City's rights and responsibilities.
- 3.1.4 The Executive Mayor's point of contact with Convenco will be the Chairperson of the Board of Directors. The Director: Shareholding Management point of contact in dealings with Convenco will be the Chief Executive Officer.

3.2 The Board of Directors



- 3.2.1 The Board of Directors controls the affairs of Convenco and ensures compliance with all applicable legislation.
- 3.2.2 The duties of the Board of Directors are determined by the section 93H of the MSA, as well as the Companies Act. The general powers and duties of the Board of Directors are also set out in the Convenco Memorandum and Articles of Association.
- 3.2.3 Without limiting the provisions of the Companies Act, the MFMA, the MSA and any other applicable legislation, the principal functions of the Board of Directors will include the following:
- 3.2.3.1 ensuring effective, transparent, accountable and coherent corporate governance and conducting effective oversight of the affairs of Convenco;
 - 3.2.3.2 ensuring compliance with all applicable legislation and agreements;
 - 3.2.3.3 communicating openly and promptly and dealing with the City in good faith;
 - 3.2.3.4 directing Convenco both as to strategy and policy formulation

- 3.3 In the event that the City intends to issue recommendations, policy directives or instructions that will impact on Convenco, the City undertakes to consult Convenco.

4. UNDERTAKINGS BY CONVENCO

- 4.1. Convenco undertakes to ensure compliance with the reporting requirements to the City in accordance with the provisions of sections 86, 87, 88 and 101,102,103 and 104 of the MFMA and any other relevant legislation.



- 4.2. While acting in the best interests of Convenco, Convenco undertakes to take into account the interests of other stakeholders identified by the Board of Directors, and to communicate with them as is appropriate in the circumstances, in accordance with its public objectives.
- 4.3. Convenco will co-operate fully with the City in order to facilitate effective performance monitoring, evaluation and corrective action.

5. GOVERNANCE

- 5.1 Convenco acknowledges its obligations and responsibilities in terms of the MFMA and other relevant legislation.
- 5.2 Convenco further acknowledges the role of:
- 5.2.1 the City in developing policy that may affect Convenco;
 - 5.2.2 the City's responsibilities outlined in S81 of the MSA, and
- 5.3 Convenco will comply with the principles of the Protocol on Corporate Governance in the Public Sector (2002) and the King Report on Corporate Governance for South Africa (2002), to the extent applicable.

6. KEY PERFORMANCE INDICATORS

- 6.1 Convenco's key performance indicators are set out in its Business Plan and the Key Performance Indicators are to be agreed annually by the City and Convenco as required by S87 (5) (d) of the MFMA.
- 6.2 The parties acknowledge that any significant deviation from the assumptions made in the Business Plan, may require a review of the key performance indicators.
- 6.3 Convenco shall be entitled to renegotiate the key performance indicators and targets if they are not achieved or unlikely to be achieved due to

circumstances outside the control of Convenco.

7. REPORTING REQUIREMENTS

7.1. In accordance with the provisions of the MFMA, Convenco undertakes to submit the following:

7.1.1 a proposed budget in line with the prescription of section 87 of the MFMA;

7.1.2 a borrowing programme in line with the prescription of section 108 of the MFMA;

7.1.3 a Business Plan covering the affairs of Convenco for the next three financial years;

7.1.4 within two months after the financial year end, annual financial statements which shall be in compliance with the requirements of section 126 of the MFMA, chapter XI of the Companies Act; and any other applicable legislation;

7.1.5 within six months after the financial year end, an annual report which shall be in compliance with the requirements section 127 of the MFMA;

7.1.6 on a monthly basis, all other reports as required by the City, legislation (with particular emphasis on section 87(11) to (14) of the MFMA), and applicable regulations.

7.2 In the event that the circumstances of Convenco change during any particular financial year, such that amendments to the Business Plan are required, Convenco will consult with the City prior to making decisions or taking action in this regard.

- 7.3 In order to facilitate effective performance monitoring, evaluation and corrective action of Convenco, Convenco shall submit quarterly reports to the City.
- 7.4 The City shall give feedback on each quarterly report submitted by Convenco, by 30 (thirty) days after submission, if necessary.
- 7.5 Thereafter, within 7 (seven) working days, the parties will meet to discuss the City's response to the quarterly reports, if required.

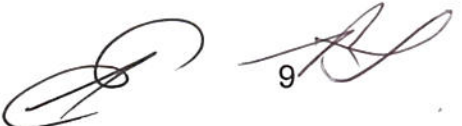
8. OBLIGATIONS TO DELIVER SERVICE

- 8.1 Convenco will continue to deliver services in terms of the service delivery agreement, and applicable legislation.
- 8.2 The City acknowledges that Convenco does not perform a municipal service which requires the setting of a tariff by the City. If Convenco does, in the future, perform a municipal service which requires the setting of a tariff, the City shall, after consultation with Convenco, be entitled to control and adjust such tariff as is required by Section 81(1)(d) of the MSA.
- 8.3 If Convenco is placed under judicial management, becomes insolvent, is liquidated or for any other reason unable to continue performing its functions in terms of the this agreement, Convenco undertakes to immediately interact with its government shareholders to negotiate continuity of the service. If Convenco is wound up, the asset of the Convenco shall be distributed in terms of its Articles of Association

9. NOTICES

- 9.1 The parties choose as their *domicilium citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses

-



9

9.1.1 Convenco:

Physical Address: Convenco, Convention Square
1 Lower Long Street, Cape Town, 8001

Postal Address: PO Box 8120, Roggebaai, 8012

Fax no.: (021) 410 5001

Attention: Company Secretary

9.1.2 The City:

Physical Address: Cape Town Civic Centre, 7th Floor Podium
12 Hertzog Boulevard, Cape Town, 8001

Postal Address: Private Bag X9181, Cape Town, 8000

Fax no.: (021) 400-1300

Attention: Director: Shareholding Management

9.2 Any notices given in terms of this Agreement shall be in writing and addressed to the other party's chosen *domicilium* and shall unless the contrary is proved:

9.2.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery thereof to the addressee;

9.2.2 if posted by pre-paid registered post, be deemed to have been received by the addressee on the 10th day following the date of such posting;



10

9.2.3 if transmitted by telefax or facsimile, be deemed to have been received by the addressee one day after such successful dispatch.

9.3 Notwithstanding anything to the contrary contained in this Agreement, written notice or communication actually received by a responsible official of one of the parties shall be adequate written notice or communication to such party.

10. WHOLE AGREEMENT

10.1 This Agreement constitutes the whole agreement between the parties as to the subject matter thereof and no instructions, agreements, representations or warranties between the parties other than those set out herein are binding upon the parties.

11. VARIATION

11.1 No addition to or variation, consensual cancellation or novation of this Agreement, and/or waiver of any right arising from this Agreement, its breach or termination; shall be of any force or effect unless reduced to writing and signed both parties.

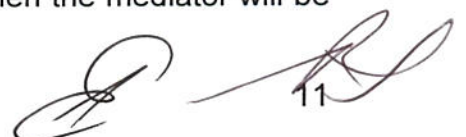
12. DISPUTE RESOLUTION PROCEDURE

12.1 Subject to the provisions of section 109 of the Systems Act, all disputes arising in relation to this agreement will be resolved in accordance with this clause. A party will be entitled to declare a dispute by written notice to the other party.

12.2 Mediation

12.2.1 All disputes will in the first instance be referred for consideration and resolution to mediation.

12.2.2 If the parties cannot agree on the mediator, then the mediator will be



11

selected by the chairperson for the time being of AFSA.

12.2.3 The costs of mediation will be borne by the parties equally.

12.3 Arbitration

12.3.1 If the mediator fails to resolve the dispute within 7 (seven) business days of his or her appointment, then either party may refer the dispute to arbitration.

12.3.2 The arbitration will be conducted in accordance with the provisions of the Arbitration Act, provided that –

12.3.3 a single arbitrator will be appointed by agreement between the parties and will be a practising advocate or attorney of not less than 10 (ten) years standing;

12.3.4 if the parties cannot agree on the arbitrator within 7 (seven) business days of the dispute having been referred to arbitration, then the arbitrator will be appointed by the chairperson for the time being of AFSA;

12.3.5 the arbitration proceedings will take place in Cape Town at a venue and time to be determined by the arbitrator;

12.3.6 the arbitration proceedings will be held informally and in a summary manner with a view to their being completed as soon as possible;

12.3.7 the decision of the arbitrator will be final and binding;

12.3.8 the cost of the arbitration proceedings will be borne by the parties as decided by the arbitrator.

12.3.9 This clause does not preclude either party from –

12.3.9.1 obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator; or



12.3.9.2 having the decision of the arbitrator made an order of court.

SIGNED by the parties and witnessed on the following dates and at the following places respectively:

DATE	PLACE	SIGNATURES	WITNESSES
------	-------	------------	-----------

<u>10 November 2008</u>	<u>CAPE TOWN</u>	<u></u>	1. _____
-------------------------	------------------	--	----------

For: The City

2. _____

DATE	PLACE	SIGNATURES	WITNESSES
------	-------	------------	-----------

<u>25-08-2008</u>	<u>CAPE TOWN</u>	<u></u>	1. _____
-------------------	------------------	---	----------

For: Convenco

2. _____