

# AGREEMENT OF LEASE

MADE AND ENTERED INTO BY AND BETWEEN:

XXXX

(Registration number XXXX)

(hereinafter referred to as "the Landlord")

and

## THE SOUTH AFRICAN REVENUE SERVICE

Established as an organ of state within the public administration, but as an institution outside the public service, in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997)

(hereinafter referred to as "the Tenant")

The Landlord hereby lets to the Tenant who hereby hires the Leased Premises described herein on the terms and conditions as set out in this Agreement of Lease, the Schedule and the Annexures attached hereto.

## 1. DEFINITIONS AND INTERPRETATION

In this Agreement of Lease (including the Schedule), unless the context clearly otherwise indicates-

- 1.1 **“Adjustment Date”** means the date on which the Escalation Rate comes into operation, the first adjustment date being the date stipulated in the Schedule;
- 1.2 **“Business Day”** means any day other than a Saturday, Sunday or public holiday in South Africa;
- 1.3 **“Commencement Date”** means the date as stipulated in the Schedule;
- 1.4 **“Escalation Rate”** means the percentage increase (as stipulated in the Schedule), to the previous year's rental which adjusts the rental on every adjustment date;
- 1.5 **“In Writing”** means a written communication and shall include a letter and a telefax signed by a person properly authorised thereto;
- 1.6 **“Leased Premises”** mean the Leased Premises as described in the Schedule;
- 1.7 **“Rental”** means monthly parking rental as set out in the Schedule.
- 1.8 **“Schedule”** means the schedule attached to this Agreement of Lease marked the Schedule;

- 1.9 **“Termination Date”** means the date as stipulated in the Schedule; and
- 1.10 The headings to the paragraphs of this Agreement of Lease are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.11 Words importing the singular shall include the plural and vice versa and words importing any one gender shall include the other and words importing persons shall include, close corporations and companies and vice versa.
- 1.12 If a provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive provision in the body of the agreement, notwithstanding that it is contained in the definitions clause.

## **2. PERIOD OF LEASE**

- 2.1 This lease period shall commence on the Commencement Date as stipulated in the Schedule, notwithstanding the date of signature of this Agreement of Lease, and shall terminate on the Termination date stipulated in the Schedule.

## **3. DEPOSIT, RENTAL AND VALUE ADDED TAX**

- 3.1 It is recorded that no rental deposit is payable by the Tenant as security for any of its obligations in terms of this Agreement of Lease.
- 3.2 The total monthly Rental payable by the Tenant to the Landlord for the parking shall be the amount specified as such in the Schedule.
- 3.3 The Landlord shall, prior to the 25th day of each month, issue the Tenant with an invoice in respect of the following month for Rental due by the Tenant to the

Landlord. The amount due shall be paid by the Tenant monthly by no later than the 7<sup>th</sup> Business Day of every calendar month. Any payments later than this date, will incur interest to be paid by the Tenant at the prime rate charged by any commercial bank at the time.

- 3.4 It is specifically recorded that all amounts referred to in this Agreement of Lease exclude VAT, and are subject to the applicable provisions of the Value-Added Tax Act, 1991 (Act No. 89 of 1991) ("VAT Act"). The Tenant hereby agrees to make payment to the Landlord of any VAT which is payable in respect thereof on the date in which the amount/s to which it relates falls due for payment.
- 3.5 The Landlord represents and warrants to the Tenant that at the Commencement Date of this Agreement and for the duration of this Agreement of Lease, the Landlord shall be and shall remain in compliance with all applicable laws relating to taxation in South Africa.
- 3.6 The Landlord undertakes, on each anniversary of the Commencement Date of the Agreement of Lease, to supply/deliver a valid tax clearance certificate to the Tenant. Failure to provide such a certificate shall constitute a material breach by the Landlord.
- 3.7 Notwithstanding any other provision in this Agreement of Lease, the Tenant shall have the right to withhold Rental in the event of the Landlord breaching its obligations in terms of this Agreement of Lease. In this regard the Landlord acknowledges the Tenant's rights in terms of the ***exceptio non adimpleti contractus*** (defense of non-performance of the contract).

#### **4. RENEWAL PERIOD**

- 5.1 The Tenant shall, subject to compliance with its internal processes and procurement procedures, have an option to renew this Agreement of Lease for the period to be agreed by the Parties. Should the Tenant decide to exercise the right of option, the Tenant shall notify the Landlord, in writing, no later than 6 (six) months prior to expiry of the lease period.
- 5.2 In the event that the Tenant exercises the option, the monthly rental and Escalation Rate payable for the option period shall be such sum as may be agreed upon between the parties, and failing agreement, shall be determined by a registered valuer appointed by the parties. The determination of the said expert shall be final and binding on the parties. The fees for the said expert shall be paid by the parties in equal shares. All such rental shall be paid on the same monthly basis as all monthly rental is payable in terms of the Agreement of Lease.
- 5.3 In the event that the Landlord and Tenant are unable to agree on the appointment of a registered valuer within 10 (ten) Business Days of either party seeking the agreement of the other, then either party shall be entitled to request the appointment of such expert valuer by the President for the time being of the Institute of Valuers to determine the rental and Escalation Rate so payable by the Tenant. The Valuer so appointed shall act as an expert and not as an arbitrator and his determination as to the rental and Escalation Rate shall be final and binding on the parties. The fees of such valuer shall be paid by the parties in equal shares. All such rental shall be paid on the same monthly basis as all monthly rental payable in terms of the Agreement of Lease.
- 5.4 Should a decision not be reached prior to the commencement of the extended period, then the Tenant shall continue paying the monthly rental payable by the Tenant to the Landlord on the last month of the initial Lease Period until such time as the decision has been reached, and any shortfall in rental paid by the

Tenant until the date of the decision, shall within 10 (ten) Business Days after determination of the rental be paid to the Landlord.

- 5.5 All other terms and conditions of this Agreement of Lease shall remain the same and of full force and effect during the renewal period, unless otherwise amended and agreed to in writing by the parties.

## **5. USE OF PREMISES**

The Tenant shall be entitled to use the premises as per the Tenant's business requirements and for no other purposes without the prior written consent of the Landlord first having been obtained, which consent shall not be unreasonably withheld.

## **6. SUITABILITY**

- 6.1 The Tenant shall be solely responsible to obtain any licenses, consents, authorities or permits from any competent authority, in respect of the Leased Premises for the conduct of any business or for any other type of use, or any such licenses, consents, authorities or permits which may be required to be renewed from time to time.
- 6.2 The Tenant acknowledges that if it is a condition of any competent authority, in respect of a grant or renewal of any licenses required by the Tenant to carry on the business for which the Leased Premises are leased, that the Leased Premises be altered, added to or renovated, then the Tenant shall at its own expense carry out such alterations, additions or renovations.

## **7. ALTERATIONS AND ADDITIONS**

- 7.1 The Tenant may at any time install such fixtures, fittings and equipment (at its own cost) in the Leased Premises as are necessary, with prior written consent from the Landlord, which consent shall not be unreasonably withheld, for the purpose of carrying on the Tenant's business and may, prior to the termination of this Agreement of Lease remove any such fixtures, fittings and equipment:

Provided that, after termination of this Agreement of Lease, the Tenant shall repair any damage caused by the installation and removal of such fixtures, fittings and equipment to the condition, reasonable wear and tear considered, as it was at the commencement of the Agreement of Lease.

## **8. LANDLORD ENTRY**

The Landlord acknowledges that the Tenant is in possession of and works with highly confidential information and accordingly it shall not have the right, without the Tenant's prior written approval, to enter the Leased Premises at any time, except in case of an emergency. Provided further that the Tenant's prior written approval shall not be unreasonably withheld or delayed under circumstances where the Landlord must comply with its obligations or enforce its rights under this Agreement.

## **9. INSURANCE**

- 9.1 The Landlord shall furnish the Tenant, prior to the Commencement Date of the Agreement of Lease with a copy of its insurance policy.
- 9.2 The Tenant shall not at any time bring or allow to be brought or kept in the Leased Premises nor do or omit nor suffer to be carried on in the Leased Premises, any matter or thing or activity which might result in a fire or in any of

the terms and conditions of the insurance policy of the building becoming void or voidable or whereby the insurance premiums for any such insurance may be increased.

- 9.3 If the premiums of such insurance are increased as a result of a contravention of this clause, whether with the written consent of the Landlord or not, the Landlord, without prejudice to any of its rights hereunder, may recover from the Tenant the amount due from time to time in respect of any additional premiums. The Tenant shall pay such amount immediately on notification from the Landlord or the Insurance Company, to the effect that such additional premiums have been charged. The Tenant shall be obliged to adequately, if installed by the Tenant, insure all fittings, fixtures and moveable items in the Leased Premises.

## **10. NO CLAIMS**

Neither party shall have any claim of any nature against each other for any loss, damage or any injury which either party may directly or indirectly suffer arising out of *vis major* (a greater force) or *casus fortuitus* (an accident against which due prudence could not have provided).

## **11. SUB-LETTING OR CESSION**

- 11.1 The Tenant shall not cede this Agreement of Lease or any of its rights hereunder, nor sublet the Leased Premises or any portion thereof without the prior written consent of the Landlord, which consent shall not be unreasonably withheld.
- 11.2 At any time during the currency of this Agreement of Lease, the Landlord shall be entitled to sell its property and to cede and make over unto and in favour of any person or corporate body, its right, title and interest in and to this Agreement of Lease with prior written consent of the Tenant, which consent shall not be unreasonably withheld. In the event of any such sale and cession, the Tenant



shall not be entitled to terminate this Agreement of Lease and the Tenant shall be obliged to perform and carry out all its obligations under and in terms of this Agreement of Lease as if the cessionary were the original Landlord.

## **12. TENANT'S GENERAL OBLIGATIONS**

The Tenant shall-

- 12.1 During the entire term hereof, keep in full force and effect, a policy of public liability insurance, covering general and Tenant's liability, with respect to the Leased Premises and the business operated by the Tenant and any sub-tenants of the Tenant, in the Leased Premises' in such amounts as may be required to provide adequate cover in respect of all claims which may foreseeably be made against the Tenant.
- 12.2 To ensure compliance with safety, health and environmental ("SHE") legislation, ensure that SHE systems are implemented and maintained to satisfy all requirements imposed on it by occupational health, safety and environmental legislation.
- 12.3 Comply with the security requirements applicable to the building, provided that such requirements have been communicated to the Tenant in writing and that such requirements do not contravene the Tenant's internal security policies and procedures.
- 12.4 At all times observe all municipal regulations and bylaws, not exceed the floor weight capacity of the Leased Premises, and, save as provided for in this Agreement change or interfere with the electrical and plumbing installations of the Leased Premises and at all times maintain the interior of the Leased Premises including all doors, keys, floors and floor coverings, walls, ceilings, windows,

toilets, geysers, water taps and other appurtenances in good order and conditions and keep the same clean, neat and in a tidy condition.

### **13. LANDLORD'S GENERAL OBLIGATIONS**

- 13.1 Upkeep and maintain in good order and repair, amongst others, the lifts, escalators, central air-conditioning system and the exterior of the Leased Premises, windows and roofs of the Leased Premises.
- 13.2 Remain responsible for repair, maintenance, upkeep and replacement (if necessary) of all lifts and escalators. The response time for any repair, maintenance and/or replacement work shall not be greater than 1 (one) business day, failing which the Tenant shall assume the Landlord's aforesaid obligation and thereafter recover all proven costs from the Landlord.
- 13.3 Ensure that the premises comply with all statutory obligations including but not limited to municipal by-laws applicable prior to occupation and during tenure of the lease provided that any failure to comply with such a statutory obligation is not attributable to an act or omission of the Tenant, its employees, representatives and/or visitors.
- 13.4 Remain responsible for repair, maintenance, upkeep and replacement (if necessary) of the external perimeter security fence and any gates. The response time for any repair, maintenance and/or replacement work shall not be greater than 24 (twenty four) hours failing which the Tenant may assume the Landlord's aforesaid obligation and thereafter recover all proven costs from the Landlord.
- 13.5 Remain responsible for repair, maintenance and replacement (if necessary) of the electrical reticulation up to and including the distribution board supplying the Leased Premises. The response time for any repair, maintenance and/or replacement work shall not be greater than 24 (twenty four) hours, failing which

the Tenant may elect to assume the Landlord's aforesaid obligation and thereafter recover all proven costs from the Landlord.

- 13.6 Remain responsible for repair, maintenance and replacement of all plumbing and services, e.g. sewer, storm water and water (leading to the Leased Premises but not forming part thereof or servicing the Leased Premises exclusively) including, but not limited to underground and water to the Leased Premises where such responsibilities/services fall outside of the municipal accountability. The response time for any repair, maintenance and/or replacement work shall not be greater than 24 (twenty four) hours, failing which the Tenant may elect to assume the Landlord's aforesaid obligation and thereafter recover all proven costs from the Landlord.
- 13.7 Remain responsible for repair, maintenance, upkeep and replacement (if necessary) of all structural aspects, including internal and external aspects, of the Leased Premises.
- 13.8 Remain responsible for repair, maintenance, upkeep and replacement (if necessary) of all waterproofing during the Lease Period or any extensions or renewal thereof. The response time for any repair and/or replacement work shall not be greater than 24 (twenty four) hours, failing which the Tenant may assume the Landlord's aforesaid obligation and thereafter recover all proven costs from the Landlord.
- 13.9 Remain responsible for the repair, maintenance, upkeep and replacement (if necessary) of the comprehensive electrical supply and installation up to the distribution board of the Leased Premises.
- 13.10 Pay all rates, levies, taxes and other government charges raised in respect of the Leased Premises.

13.11 Remain responsible for the repair, maintenance, upkeep and replacement (if necessary) of all mechanical parts to the Building and the Leased Premises.

13.12 Remain responsible for repair, maintenance, upkeep and replacement (if necessary) of any firefighting equipment externally and internally, including but not limited to fire extinguishers, hydrants, sprinkler systems, fire detection, etc. to the Leased Premises and parking.

#### **14. BRANDING AND ADVERTISING**

The Tenant may be granted and thereafter retain all naming rights, branding and advertising in respect of the Leased Premises occupied by it and shall be entitled to erect signage on the Leased Premises in this regard. Such signage installation will be subject to the Landlord's final approval, which approval shall not be unreasonably withheld.

#### **15. DAMAGE TO OR DESTRUCTION OF PREMISES OR BUILDING**

15.1 Should the Leased Premises be destroyed or damaged, without the cause thereof being attributable to the intent or negligence of either party to this Agreement of Lease, to an extent which prevents the Tenant from having occupation of the Leased Premises, then this Agreement of Lease shall forthwith terminate and neither party shall have any further claim howsoever arising against the other party as a result thereof.

15.2 Should the Leased Premises be damaged to a lesser extent than that which prevents the Tenant from having full occupation of the Leased Premises, then-

15.3 This Agreement of Lease shall not be cancelled;

15.3.1 The rental payable by the Tenant shall be reduced pro-rata to the extent (if any) by which the Tenant is deprived of occupation of the Leased Premises; and

15.3.2 The Landlord shall at its own cost, repair the Leased Premises as expediently as is possible under the circumstances.

15.4 The provisions of this clause shall become applicable on signature of this Agreement of Lease and shall apply irrespective of whether the contemplated destruction occurs before or after the Commencement Date.

15.5 Should a dispute arise between the Landlord and the Tenant in respect of the amount of rental payable by the Tenant in terms of clause 15.3.1 then such dispute shall be settled in terms of clause 19.

## **16. BREACH**

16.1 Should either party (the **“defaulting party”**) commit a breach of any of the provisions of this Agreement of Lease, then the party who is not in breach (the **“aggrieved party”**) shall be entitled to give the defaulting party written notice to remedy the breach.

16.2 If the defaulting party fails to comply with that notice within 10 (ten) Business Days of receipt thereof, subject to any other provisions of this Agreement of Lease to the contrary, the aggrieved party shall be entitled to cancel this Agreement of Lease or to claim specific performance, in either event without prejudice to the aggrieved party's rights to claim damages. The foregoing is without prejudice to such other rights as the aggrieved party may have in common law or statute.

## 17. NOTICES AND ADDRESSES

- 17.1 All notices which are given by the Landlord to the Tenant may be given to it at the address set out in the Schedule at which address the Tenant chooses as its *domicilium citandi et executandi* (the physical address at which legal proceedings may be instituted) for all purposes hereunder, or at such other address which the Tenant may advise the Landlord by written notice duly received by the Landlord.
- 17.2 All notices which are given by the Tenant to the Landlord shall be given to it at the address set out in the Schedule at which address the Landlord chooses as its *domicilium citandi et executandi* for all purposes hereunder, or at such other address which the Landlord may advise the Tenant by written notice duly received by the Landlord.
- 17.3 All notices sent by either party to the other shall be delivered by hand, email or telefax.
- 17.4 All notices delivered by either party to the other as aforesaid to the respective addresses provided for in this Agreement of Lease shall be deemed to have been received by the addressee on the date of delivery.
- 17.5 Any party shall be entitled, by prior written consent to the other to change its address to such other address within the Republic of South Africa, provided that the change shall become effective only 10 (ten) Business Days after service of the written notice in question.

## **18. GENERAL**

- 18.1 No alteration, cancellation, variation of or addition to this Agreement of Lease shall be of any force and effect unless it is recorded in writing and signed by both the Landlord and the Tenant.
- 18.2 No agreement varying, adding to, deleting from or cancelling this Agreement of Lease and no waiver of any right under this Agreement of Lease shall be effective unless reduced to writing and signed by or on behalf of both parties.
- 18.3 No extension of time or indulgence granted by either party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such party in any respect under this Agreement of Lease, nor shall it in any way be regarded a waiver of any rights hereunder or a novation of this Agreement of Lease.
- 18.4 Should any one or more of the provisions of this Agreement of Lease be unenforceable, then the remaining provisions shall remain of full force and effect.

## **19. DISPUTE RESOLUTION**

### **19.1 Mediation**

Should any dispute of any nature whatsoever arise out of, or in connection with or relating to this Agreement of Lease, then the parties agree to first meet and use all their reasonable endeavours to negotiate in good faith a settlement of such dispute by way of mediation. Should such negotiations fail after 10 (ten) Business Days, or such longer period as agreed upon in writing, of referral of such dispute, the dispute will then be referred to arbitration in terms of clause 19.2.

## **19.2 Arbitration**

19.2.1 Should the parties fail to settle the dispute pursuant to the provisions of clause 19.1 then any dispute, deadlock and/or difference between the Landlord and Tenant in connection with this Agreement of Lease may be referred to and be determined through arbitration in terms of the rules of the Arbitration Foundation of South Africa.

19.2.2 Upon such referral, the costs of and incidental to the referral and award shall be in the discretion of the arbitrator, who may determine the quantum of the costs, and liability for payment of such costs.

19.2.3 The award of the arbitrator shall be final and binding on the parties and any party shall be entitled to apply to the Courts to have such an award made an order of court.

19.2.4 This clause shall not preclude the Landlord or Tenant from obtaining interim relief on an urgent basis in a Court of competent jurisdiction. To this end, the Landlord and Tenant hereby consent to the jurisdiction of the North Gauteng High Court, Pretoria.

## **20. COSTS**

The Landlord and the Tenant shall each be responsible for and pay its own costs in respect of the finalisation and execution of this Agreement of Lease and incidental costs and necessary consultations and attendances.



**As Representative for XXXX(Landlord)**

Signed at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ 2016.

**As representative (full names) :** \_\_\_\_\_

**Capacity :** \_\_\_\_\_

**Signatory :** \_\_\_\_\_

**WITNESSES**

1. \_\_\_\_\_

2. \_\_\_\_\_

**As Representatives for South African Revenue Service (Tenant)**

1. XXXX

Signature

Date signed

**Chief Officer: Finance**

\_\_\_\_\_

\_\_\_\_\_

2. XXXX

Signature

Date signed

**Acting Executive: Procurement**

\_\_\_\_\_

\_\_\_\_\_

Schedule		
1.	The Building:	
2.	Leased Premises:	
3.	Erf / Stand:	
4.	The Lease Period:	2 (two) years
5.	The Commencement Date:	
6.	The Termination Date:	
7.	The Escalation Rate:	
8.	The Adjustment Date:	
9.	Monthly Parking Rental (Excl. VAT): [Commencement rental – XXXX/bay – secure bays]	
10.	Escalation Rate:	
11.	<i>Domicilium Citandi Et Executandi</i> of the Landlord:	
12.	<i>Domicilium Citandi Et Executandi</i> of the Tenant:	South African Revenue Service 299 Bronkhorst Street Nieuw Muckleneuk Pretoria 0181