

DISPOSAL SERVICES AGREEMENT

[XXXXXX]

between

XXXX

Registration No: XXXX

(hereinafter referred to as “the Service Provider”)

and

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 Customer”)

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1. APPOINTMENT

- 1.1 SARS undertook a procurement process in terms of RFP 38/2021, in respect of the disposal of customs goods (defined in this Agreement as “Disposal Services”) on an ad hoc basis, and accepted the quote of the Service Provider, following its procurement process for such Services.
- 1.2 SARS therefore appoints the Service Provider, on a non-exclusive basis, for the provision of disposal services on an ad hoc basis as set out more fully in the attached document, annexed hereto and marked as Annexure “A” for a period of 5 (five) years in respect of the SARS Customs offices, XXXX, which are specifically set out in Annexure “A”.
- 1.3 The Service Provider accepts the appointment to render the Services, subject to the terms and conditions of this Agreement.

2. INTERPRETATION

- 2.1 The head notes to the Clauses of this Agreement are for reference purposes only and will not govern or affect the interpretation of, nor modify or amplify the terms of this Agreement;
- 2.2 Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings—
 - 2.2.1 clause headings are for convenience and are not to be used in the interpretation hereof;
 - 2.2.2 no provision shall be construed against or interpreted to the disadvantage of any Party by reason of such Party having or being deemed to have structured or drafted such provision; and
 - 2.2.3 unless the context indicates a contrary intention, an expression which denotes –
 - 2.2.4 any one gender includes the other genders;
 - 2.2.5 a natural person includes a juristic person and/or trust and *vice versa*; and

- 2.2.6 the singular includes the plural and *vice versa*;
- 2.3 the words “**clause**” or “**clauses**” and “**Annexe**” or “**Annexes**” refer to clauses of and annexes to this Agreement;
- 2.4 any reference to “**days**” shall be construed as being a reference to calendar days unless qualified by the word “**business**” in which instance a “**business day**” shall be any day other than a Saturday, Sunday and/or a public holiday as gazetted by the Government of the Republic of South Africa from time to time;
- 2.5 any reference to time shall be based upon South African standard time being Greenwich Meantime plus 2 (two) hours;
- 2.6 the words “**include**”, “**includes**” and “**including**” means “**include without limitation**”, “**includes without limitation**”, and “**including without limitation**”. The use of the word “**including**” followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it;
- 2.7 unless otherwise provided herein, a reference to “**written**” or “**in writing**” shall exclude any data message and “**signed**” or “**signature**” shall not include an electronic or advanced electronic signature. The terms “**data message**”, “**electronic signature**” and “**advanced electronic signature**” shall have the meanings assigned to them in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), as amended;
- 2.8 any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in clause 3 or elsewhere within the Agreement, shall be given effect to as if it were a substantive provision within the body of the Agreement;
- 2.9 defined terms appearing in the Agreement in title case shall be given their meaning as defined, unless the context otherwise indicates;
- 2.10 terms other than those defined in the Agreement shall be given their plain English meaning (which in the case of defined terms appearing in lower case shall include the term as defined) and those terms known in the general maintenance and service industry shall be interpreted in accordance with their generally accepted meanings, unless the context otherwise indicates;

- 2.11 unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next succeeding business day;
- 2.12 where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;
- 2.13 unless inconsistent with the context or save where the contrary is expressly indicated no provision of this Agreement constitutes a stipulation for the benefit of any person who is not a party to this Agreement; and
- 2.14 termination shall not affect any of the provisions of this Agreement which operates after any such termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

3. DEFINITIONS

As used in the Agreement the following words bear the following meanings–

- 3.1 **“Agreement”** means this maintenance agreement together with any schedules, annexes or appendices hereto;
- 3.2 **“Amount at Risk”** means the maximum percentage (20%) of the Service Provider’s total invoice, which may be at risk in respect of Service penalties imposed resulting from any Service Level Failures;
- 3.3 **“Applicable Laws”** means any of the following, from time to time, to the extent that it applies to a Party (including, as applicable, affiliates and Sub-contractors of a Party), or the Services (including the performance, delivery, receipt or use of the Services, as applicable and wherever occurring)–
 - 3.3.1 Any statute, regulation, policy, by-law, ordinance or subordinate legislation (including treaties, multinational conventions and the like having the force of law);
 - 3.3.2 South African common law;

- 3.3.3 Any binding court order, judgment or decree;
- 3.3.4 Any applicable industry code, policy or standard enforceable by law; and
- 3.3.5 Any applicable direction, policy or order that is given by a regulator (other than the Customer's directions or policies given as a customer of the Services);
- 3.4 **"BBBEE"** means broad-based black economic empowerment as defined in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 3.5 **"Confidential Information"** means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence, which may come to the knowledge of the Receiving Party by whatsoever means, and includes "SARS confidential information" and "taxpayer information" as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as information considered confidential in terms of any other tax act administered by the Commissioner for SARS. The Confidential Information of the Disclosing Party shall include confidential information even if it is not marked as being "confidential", restricted or proprietary (or any similar designation).

Confidential Information excludes information or data which—

- 3.5.1 is lawfully in the public domain at the time of disclosure thereof to the Receiving Party;
- 3.5.2 subsequently becomes lawfully part of the public domain by publication or otherwise;
- 3.5.3 is or becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled without any restriction on disclosure, to disclose such Confidential Information to the Receiving Party; or
- 3.5.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed;
- Provided that—

- 3.5.5 the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions;
- 3.5.6 the information disclosed shall not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession; and
- 3.5.7 any combination of features shall not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession, but only if the combination itself is in the public domain or in a Party's possession.

The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise;

- 3.6 **"Effective Date"** means XXXX, notwithstanding the date of signature of this Agreement;
- 3.7 **"Losses"** means all losses, liabilities and damages arising from claims (whether actual or threatened) and all related costs and expenses (including legal fees, disbursements and costs of investigation, litigation, settlement, and judgment), fines, interest and penalties;
- 3.8 **"Parties"** means the parties to this Agreement, being—
- 3.8.1 **"the Customer"** being the **South African Revenue Service**, an organ of state established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), together with its successors in title and assigns of **299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria, 0181**, which address it hereby selects as its *domicilia citandi et executandi* for the purposes of clause 30 and of **Private Bag X923, Pretoria, 0001**, which foregoing 2 (two) addresses it hereby selects as addresses for the purposes of receiving notices as contemplated in clause 30; and
- 3.8.2 **"the Service Provider"** being **XXXX**, Registration Number: XXXX together with its successors in title and assigns, of **XXXX**, which address it hereby selects as its *domicilia citandi et executandi* for the purposes of clause 30 which foregoing 1 (one) address it hereby selects as its address for the purposes of receiving notices as contemplated in clause 30;

- 3.8.3 **“the Disclosing Party”** being either of the Parties referred to in clauses 3.8.1 and 3.8.2 to the extent that it discloses any of the Confidential Information in terms of this Agreement;
- 3.8.4 **“the Receiving Party”** being the Party, other than the Disclosing Party, that receives disclosure of any of the Confidential Information;
- 3.9 **“Service Level”** means a qualitative standard of performance of the Services that the Service Provider is required to satisfy in its performance of the Services, as are detailed in clause 9 and 10;
- 3.10 **“Service Level Penalty”** means a penalty payable by the Service Provider to SARS as a result of a Service Level Failure, which penalty is calculated in accordance with clause 10 as a percentage of the Amount at Risk;
- 3.11 **“Service Level Credit”** means a penalty payable by the Service Provider to the Customer as a result of a Service Level Failure, which penalty is calculated in accordance with clause 10 as a percentage of the Amount at Risk. Service Credits will be calculated cumulatively on a monthly basis, but will not exceed the prescribed Amount at Risk;
- 3.12 **“Service Level Failure”** means the Service Provider’s failure to meet a prescribed Service Level;
- 3.13 **“Service Level Target”** means the prescribed performance standards or response times as detailed in clause 10;
- 3.14 **“Services”** means the disposal of customs goods set out in clause 1.2 provided by the Service Provider to the Customer as set forth in this Agreement. The Services include, without limitation; those services fully set-out in Annexure “A”;
- 3.15 **“Service Request”** means a specific written request or instruction(s) issued, and signed on behalf of SARS by a designated representative to a Service Provider, directing the Service Provider to perform the Services in terms of this Agreement and which may include specific Deliverables to be provided by the Service Provider to SARS;
- 3.16 **“Signature Date”** means the date of the Party last signing affixing its signature to this Agreement;

- 3.17 **“Staff”** means any employee, independent contractor, agent, consultant, Sub-contractor or other representative of either Party;
- 3.18 **“Sub-contractor”** means a third party (including an affiliate of a Party) to whom a Party subcontracts or otherwise delegates any of its obligations to perform any of the Services (including subcontractors of a Subcontractor): Provided that such third party has been approved for such purpose by the Customer in accordance with this Agreement;
- 3.19 **“Termination Date”** means XXXX unless terminated earlier by either Party in terms of this Agreement, and
- 3.20 **“Third Party”** means a person other than SARS or the Service Provider.

4. RECORDAL

- 4.1 The Customer requires the Service Provider to perform the Services. The Service Provider represents that it has the necessary know-how, qualifications and ability to undertake the work required in terms of the Services.
- 4.2 The exact scope of such Services shall be as described in appendices hereto and/or in a document(s) headed “Scope of Work”, “Work Order” or any other similarly defined ad hoc document, the contents of which shall be agreed by the Parties and signed by their authorised representatives, whereupon such appendix and/or Scope of Work shall be deemed incorporated in, and governed by, the provisions of this Agreement.
- 4.3 Upon signature by the Party signing last in time, this Agreement shall replace and prevail over all prior discussions, offers, agreements or other arrangements between the Parties as to its subject matter. Any services provided prior to such signature date by the Service Provider to the Customer shall be governed by this Agreement.

5. APPOINTMENT

- 5.1 The Customer hereby appoints the Service Provider on a non-exclusive basis, and the Service Provider hereby accepts such appointment to perform the Services to the highest standards

existing in the disposal of goods field for the Customer, upon the terms and conditions contained herein.

- 5.2 The Customer shall not be precluded from obtaining services that may be similar or identical to the Services from any other service provider.

6. NATURE OF RELATIONSHIP

- 6.1 The Parties act for all purposes in terms of the Agreement as independent contractors. Without limiting the foregoing–

6.1.1 neither Party shall be entitled to contract on behalf of or bind the other Party in any manner whatsoever or to incur any liability or debt on behalf of the other Party;

6.1.2 neither Party shall be authorised to publish or cause to be published any advertisement or other information relating to the other Party or the other Party's business without the prior written approval of the other Party; and

6.1.3 neither Party may use the other's logos, or any other service marks or trademarks which are intellectual property of the other Party.

6.2 Without limiting the foregoing, neither Party's employees shall be deemed an employee of the other Party for any purpose whatsoever.

6.3 The Service Provider shall under no circumstances be or become a partner, joint venture partner, agent or employee of the Customer in the performance of its duties and responsibilities pursuant to this Agreement. All Staff used by the Service Provider shall be the Service Provider's employees, contractors or agents, and the entire management, supervision, direction and control of all such persons shall be the responsibility of the Service Provider.

6.4 Should any dispute arise between the Service Provider and its Staff, such dispute is to be resolved by the Service Provider and it undertakes that any such dispute shall not in any manner affect the provision of the Services to the Customer in terms of this Agreement.

6.5 The Service Provider warrants that it is not acting on behalf of an undisclosed principal.

7. COMMENCEMENT AND DURATION

This Agreement shall commence on the Effective Date and shall endure for a period of 5 (five) years, until the Termination Date, unless terminated earlier by either Party in accordance with this Agreement or until the available funds for these services are depleted.

8. GOVERNANCE

The Parties shall each appoint a person as the contact person in respect of the management of this Agreement. These representatives shall communicate monthly to ensure that the Parties comply with their respective obligations in terms of the Agreement.

9. SERVICES

The Service Provider shall provide the Services in accordance with Annexure “A” on an as and required basis when requested by the Customer.

10. SERVICE LEVELS

10.1 The Service Provider undertakes to achieve the following Service Level Targets–

Service Level Target	Response time	Amount at Risk - Percentage Penalty
Normal Request	2 days	20% of the Amount at Risk of the total invoice
Emergency Request	2-3 hours	20% of the Amount at Risk of the total invoice

10.2 The Service Provider recognises that its failure to meet Service Levels may have a material adverse impact on the business and operations of the Customer and that the damage from the Service Provider’s failure to meet any Service Level is not susceptible to precise determination. Accordingly, in the event that the Service Provider fails to meet a Service Level, then in addition to all other remedies available to the Customer in law, the Customer may immediately impose a penalty, calculated as a percentage of the Amount at Risk. Amount at Risk will be calculated by

aggregating the total applicable percentage/s relating to any failure to meet a Service Level Target as set out in this clause 10 and applying this percentage against the Amount at Risk.

- 10.3 In the event of two or more Service Level Failures occurring within any calendar month, this shall be construed as a material breach of this Agreement.
- 10.4 The Service Provider shall be excused from failing to comply with the Service Levels to the extent that non-performance or delayed performance is solely and directly attributable to—
- 10.4.1 an act or omission of the Customer or the Customer's Staff; or
- 10.4.2 circumstances of *force majeure* as referred to in this Agreement.
- 10.5 In the event that the Customer is entitled to a Service Level Credit under this Agreement, the amount of such Service Level Credit shall be set forth as a deduction on the Service Provider's next invoice to the Customer. If there is no further invoice to be issued for the Services in terms of this Agreement, then the Service Provider shall, at the Customer's election, either refund the amount of the Service Level Credit to the Customer or provide the Customer with a credit note for such amount.
- 10.6 If the Service Provider fails to meet any Service Level, the Service Provider shall (i) investigate and report on the causes of the Service Level Failure; (ii) promptly correct the failure and begin meeting the Service Levels; (iii) advise the Customer, as and to the extent requested by the Customer, of the status of remedial efforts being undertaken with respect to such Service Level Failure; and (iv) take appropriate preventive measures to prevent the recurrence of the Service Level Failure.
- 10.7 The Service Provider shall be responsible for monitoring and measuring its performance of the Services against the Service Levels. Failure to measure performance with respect to a particular Service Level shall be deemed to be a failure to meet such Service Level.
- 10.8 It is recorded that the Customer is entitled to reasonable access to all data in the Service Provider's possession relating to Service Levels and service level performance.
- 10.9 The Service Provider shall provide the Customer with a soft-copy report on the Service Provider's monthly performance against the Service Levels, and shall provide the Customer with detailed information in support of such report/s upon request.

- 10.10 The payment of Service Level Credits by the Service Provider to SARS will not preclude SARS from instituting a claim against the Service Provider for damages which SARS has suffered as a result of any Service Level Failures.

11. SERVICE PROVIDER'S GENERAL OBLIGATIONS

- 11.1 For the duration of this Agreement, the Service Provider undertakes to—

- 11.1.1 Perform the Services with due care and diligence, in a professional, diligent and accurate manner, in conformance with industry best practice and existing industry codes, to the highest standards as established for such services in South Africa, in order to ensure a safe working environment;
 - 11.1.2 Exercise the utmost good faith towards the Customer both in carrying out its duties hereunder and also in all its dealings with the Customer;
 - 11.1.3 Report to the Customer representative as may from time to time be reasonably necessary or desirable in connection with the Services; and
 - 11.1.4 Exercise all reasonable skill, care and diligence in the discharge of its obligations in terms of this Agreement.
- 11.2 The Service Provider shall comply with and shall ensure that its Staff complies with all security measures imposed by the Customer regarding security and access to the Customer's premises.
- 11.3 The Service Provider shall have sufficient contingency measures in place, shall at all times be responsible to the Customer for fulfilment of its obligation under this Agreement and shall not be allowed to subcontract any of its obligations to any other service provider without the Customer's prior written consent, which consent may be granted or withheld at the Customer's sole discretion.
- 11.4 The Service Provider shall ensure that it at all times adheres to, and complies with, all Applicable Laws, including without limitation, employment law legislation; municipal bylaws, health, safety and environmental legislation.
- 11.5 The Service Provider undertakes to keep and maintain proper records of all Services rendered in terms of this Agreement, including duly completed timesheets, which are to be signed off by the

Customer's representative (facilities coordinator) on site, as well as proof of all consumables, equipment, tools, parts, components and the like purchased in terms of this Agreement. The aforementioned documents must accompany all invoices submitted to the Customer for payment.

- 11.6 The Service Provider shall invoice the Customer for the Services rendered in accordance with the invoicing requirements, as more fully described in clause 12 below.
- 11.7 The Service Provider shall, upon request, supply the Customer's representative (corporate real estate representative) with comprehensive management reports, documenting all the Services rendered and work performed and completed during a specified time period.
- 11.8 The Service Provider shall not perform any Services without an incident number unless authorised by the local Customer's representative (corporate real estate representative)

12. FEES AND PAYMENT

12.1 Fees and charges–

The fees and charges applicable to the Services are set out in Annexure "A" to this Agreement and are all inclusive and payable in South African Rand (ZAR) without adjustment for the change in the values of currencies. The Service Provider shall not be entitled to any additional fees or charges, including expenses, of whatsoever nature, unless agreed to in writing between the Parties and subject to the Customer's internal procurement policies and procedures. At all times, this would be subject to the total amount available for this contract.

12.2 Value Added Tax–

All fees and charges set out in this Agreement are inclusive of Value Added Tax.

12.3 Invoicing and payment–

The Service Provider shall invoice the Customer for the Services monthly in arrears. Payment of the Service Provider's invoices shall be made by the Customer within 30 (thirty) days of receipt thereof by the Customer: Provided that such invoice is accurate and meets the Customer's invoicing requirements and standards as communicated to the Service Provider from time to time.

12.4 ***Accountability–***

The Service Provider shall maintain complete and accurate records of all amounts billed to and payments made by the Customer under the Agreement in accordance with generally accepted accounting principles applied on a consistent basis. The Service Provider agrees to provide the Customer with any information in respect of each invoice, as may be requested by the Customer to verify accuracy and compliance with the provisions of the Agreement.

12.5 ***Disputed amounts–***

If the Customer disputes any invoiced amount (“the affected invoice”), then it shall, within 10 (ten) business days of receipt thereof, notify the Service Provider in writing, specifying the affected invoice, the particular disputed amount, and its reasons for such dispute. Such amounts shall not be regarded as ‘payable’ provided such dispute is *bona fide*. If the Parties are unable to resolve such dispute, it shall be referred for determination in accordance with the provisions of clause 29.

13. **ETHICAL BUSINESS PRACTICES**

13.1 The Customer has a policy of zero tolerance regarding corrupt activities. The Service Provider shall promptly report to the Customer and the relevant authorities any suspicion of corruption on the part of their Staff, as well as any behaviour by any of those persons that is likely to constitute a contravention of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).

13.2 If the results of any audit of the Services conducted by or on behalf of the Customer indicates the possibility of corrupt activities, improper or fraudulent practices or theft, the Customer shall, after allowing the Service Provider reasonable opportunity to investigate that possibility, have the right either by itself, or by its agents, or by requesting the police, to investigate all the relevant circumstances, to question any relevant Staff of the Service Provider or a third party and the Service Provider shall use all reasonable efforts to facilitate any such investigation or enquiry. In the event that an act of corruption, fraud or theft is proven, the Customer shall be entitled, on written notice to the Service Provider, to immediately terminate this Agreement without incurring any liability towards the Service Provider as a consequence of such termination. The Service Provider acknowledges that it is crucial that the Customer shall be entitled, without penalty, to ensure continued provision of the Services if for whatever reason this Agreement is terminated pursuant to the breach thereof by the Service Provider or its Staff, as the case may be.

14. COMPLIANCE WITH TAX LEGISLATION

The Service Provider represents and warrants to the Customer that at the Effective Date of this Agreement it is in compliance with, and throughout the term it shall remain in compliance with, all Applicable Laws relating to taxation in South Africa. Failure to remain in compliance with, all Applicable Laws relating to taxation in South Africa shall entitle the Customer to terminate the Agreement without incurring any liability whatsoever towards the Service Provider for such termination.

15. COMPLIANCE WITH CUSTOMER POLICIES

- 15.1 The Service Provider shall comply with the procurement policies and procedures of the Customer, to the extent that it applies to any order or acquisition acquired on behalf of the Customer and/or as may be reasonably directed by the Customer from time to time.
- 15.2 The Service Provider shall ensure that it's Staff at all times, when on the Customer's premises-
 - 15.2.1 Comply with all practices and procedures including (but not limited to) any security and access policies and procedures, as well as health, safety and environmental policies and procedures, which are of general application to the Customer's Staff and/or as may be reasonably directed by the Customer from time to time.
 - 15.2.2 Conduct themselves in accordance with the standards expected by the Customer of its own Staff as provided for in the Customer's Disciplinary Code and Code of Conduct.
- 15.3 Should the Customer at any time have reason to believe that any of the Service Provider's Staff is failing to comply with the provisions of clause 15.2 above; the Customer shall be entitled to deny such person access to the Customer's premises and require the Service Provider to replace such person without delay. The Service Provider indemnifies the Customer against any claims that may be brought by any of the Service Provider's Staff who may be affected as a result of the Customer exercising its rights under this clause 15.3.

16. SERVICE PROVIDER'S STAFF

- 16.1 ***Health, safety and security procedures and guidelines–***

- 16.1.1 The Service Provider shall ensure that the Service Provider's Staff shall at all times, whilst on the Customer's premises, adhere to the health, safety and security procedures and guidelines applicable to the Customer's Staff, as such procedures and guidelines may be changed by the Customer from time to time. Should the Customer at any time have reason to believe that any member of the Service Provider's Staff is failing to comply with such health, safety and security procedures and guidelines, the Customer shall be entitled to deny such Staff member access to the Customer's premises and require the Service Provider to replace such Staff member without delay. The Service Provider shall not be relieved of its obligations under this Agreement as a result of such denial of access, and the Customer shall have no liability to the Service Provider with regard thereto. The Service Provider indemnifies the Customer against any claims that may be brought by any of the Service Provider's Staff who may be affected as a result of the Customer exercising its rights under this clause 16.1.1.
- 16.1.2 The Service Provider shall register with the Compensation Commissioner as required by the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993). Documentary proof of such registration and/or a letter of good standing from the Compensation Commissioner shall be made available to the Customer upon request.
- 16.1.3 The Customer's security requirements and regulations include, inter alia, the right to search (i) the person of any member of the Service Provider's Staff; (ii) any container in the possession of the Service Provider's Staff; and (iii) any vehicle driven by the Service Provider's Staff, whilst the Service Provider's Staff are on-site at the premises of the Customer. The Service Provider shall obtain an undertaking from its Staff irrevocably agreeing to submit to such searches and consents to such searches by the Customer or any person duly appointed by the Customer to undertake such searches.
- 16.1.4 The Service Provider hereby agrees and undertakes, in terms of Section 37(2) of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), to ensure that the Service Provider and the Service Provider's Staff comply with the aforesaid Act and accepts sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with or arising out of such Services, for the duration of this Agreement, including –
- (i) providing for the health and safety of the Service Provider's Staff and ensuring that the Service Provider's Staff at all times adhere to the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), and the terms and conditions of this Agreement; and

- (ii) ensuring that neither the Customer's Staff nor any third party's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services.

16.2 Removal of Service Provider Staff–

The Service Provider shall promptly remove from the Customer's account any Service Provider Staff whose presence or involvement in the Customer's account is determined by the Customer and/or Service Provider to be detrimental to the Services or to the Customer's work environment. The Service Provider indemnifies the Customer against any claims that may be brought by any Service Provider Staff who may be affected as a result of the Customer exercising its rights under this clause 16.2.

16.3 Continuing Obligation to Perform–

The Service Provider shall remain fully responsible for the provision of the Services in terms of the Agreement notwithstanding-

16.3.1 Turnover of the Service Provider's Staff; or

16.3.2 The removal by the Customer and/or Service Provider of any of the Service Provider's Staff, including under clauses 16.1, 16.2 and 16.5.

16.4 Acknowledgement by Service Provider's Staff–

Prior to the assignment of any of the Service Provider's Staff to the performance of any duties under this Agreement, the Service Provider shall procure a written undertaking to the Customer from such Service Provider Staff, acknowledging that they are not employees of the Customer and the Service Provider hereby indemnifies the Customer against any claims which may arise from the Service Provider failing to comply with this clause 16.4.

16.5 Security vetting of Service Provider's Staff-

16.5.1 The Customer reserves the right in its sole and absolute discretion to do a security check (vetting) on the Service Provider's Staff involved with the performance of the Services.

16.5.2 The Service Provider shall procure from its Staff such documentation as may be reasonably requested by the Customer, to enable the Customer to conduct such security checks as aforementioned.

16.5.3 Where the Customer finds any of the Service Provider Staff to be a security risk, the Customer shall inform the Service Provider accordingly and the Service Provider shall immediately replace such person with a suitably qualified substitute. The Service Provider indemnifies the Customer against any claims that may be brought by any Service Provider Staff who may be affected as a result of the Customer exercising its rights under this clause 16.5.

16.6 Labour Relations–

16.6.1 The Service Provider hereby indemnifies the Customer against any Losses which the Customer may suffer or incur in relation to the Service Provider's Staff which arose as a result of the conduct of the Service Provider.

16.6.2 It is the Parties' understanding that section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995) shall not apply to the Service Provider's staff upon termination of this Agreement. However, in the event that the Customer suffers any Losses in relation to and/or arising from the operation of section 197 as aforementioned (collectively "Labour Claims"), the Service Provider hereby indemnifies and holds the Customer harmless in respect of and/or against all and any such Labour Claims.

17. BROAD BASED BLACK ECONOMIC EMPOWERMENT

The Service Provider shall annually within 30 (thirty) days of the anniversary of the Effective Date of the Agreement provide the Customer with a then current certificate confirming its BBBEE rating. The annual rating must be done by a reputable rating agency, acceptable to the Customer. The Service Provider further undertakes to maintain and/or improve its BBBEE rating as provided in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003). Failure to provide such a certificate shall entitle the Customer to withhold payment or alternatively terminate the Agreement, without incurring any liability towards the Service Provider for such withholding of payment or termination.

18. SALE OR CHANGE OF CONTROL OF SERVICE PROVIDER

18.1 In the event of a sale or other change of control of the Service Provider, the Customer may terminate this Agreement with immediate effect on written notice to the Service Provider, without the Customer incurring any liability whatsoever as a result of such termination.

- 18.2 The Service Provider shall notify the Customer immediately upon becoming aware of any anticipated sale or change of control.

19. AUDITS

The Service Provider shall for the duration of this Agreement and a period of 5 (five) years after the termination of the Agreement, maintain a complete audit trail of all transactions under this Agreement, sufficient to permit a complete audit thereof. The Service Provider shall provide the Customer and the Customer's auditors access at reasonable times to information, records and documentation relating to the Services for the purpose of performing audits, examinations and inspections of the Service Provider, in order to verify the Service Provider's compliance with all of the terms of this Agreement and to enable the Customer to comply with the requirements of its regulators and governmental entities having jurisdiction.

20. CONFIDENTIALITY

- 20.1 The Service Provider shall execute the Customer's standard Oath of Secrecy (as amended from time to time), and undertakes to ensure that all of its Staff involved in performing the Services in terms of this Agreement, or who may have access to the Customer's Confidential Information, sign and are bound by the Customer's standard Oath of Secrecy (as amended from time to time), prior to such Staff entering or gaining access to the Customer's premises.
- 20.2 The Service Provider undertakes not to commit any act which in any manner prejudices the Customer's Confidential Information, including any third party information which is in the custody of the Customer. The Service Provider further undertakes to implement measures to ensure that its Staff who has not signed the Customer's Oath of Secrecy shall not have access to the Customer's Confidential Information or the Customer's premises.
- 20.3 The Service Provider may with the Customer's prior written consent and subject to the provisions of this clause 20 disclose only such information as may be legally required by a regulatory or other competent authority.

21. SERVICE PROVIDER'S WARRANTIES

21.1 *General Warranties—*

The Service Provider represents and warrants that it shall for the duration of this Agreement–

21.1.1 Use adequate numbers of qualified Staff who have suitable training, education, experience and skill to perform the Services;

21.1.2 Use and adopt any standards and processes required under the Agreement; and

21.1.3 Provide the Services with promptness and diligence and in a professional manner.

21.2 *Product specific warranties–*

The Service Provider represents and warrants that it shall–

21.2.1 Ensure that all equipment, tools, components and/or parts used, supplied and/or installed in connection with the Services comply with the highest industry standards.

21.3 *Regulatory requirement–*

The Service Provider warrants that it is and shall remain for the duration of this Agreement, fully cognisant of and compliant with any relevant legislative or regulatory requirements and/or rulings or codes of practice of any competent authority or industry body that has jurisdiction over the provision of or is relevant to the Services under the Agreement. The Service Provider shall promptly identify and notify the Customer of any relevant changes in law, legislative enactments and/or regulatory requirements and rulings or codes of any competent authority or industry body that may relate to or have an impact on the Service Provider's provision of the Services. The Service Provider and the Customer shall co-operate to identify the impact of such changes on the provision of the Services by the Service Provider. The Service Provider shall be responsible for any fines and penalties arising from any non-compliance with any law, legislative enactment or regulatory requirement, code or ruling of any competent authority or industry body relating to the delivery or use of the Services.

22. INDEMNITIES

Without in any way detracting from the rights of the Customer in terms of the Agreement, the Service Provider hereby indemnifies and holds the Customer and its Staff harmless against any and all Losses which may be suffered as a result of any breach of the provisions of the Agreement by the Service Provider or its Staff.

23. LIMITATION OF LIABILITY

The Parties agree that, in the event of a breach of any of the provisions of the Agreement, the Customer shall not be liable to the Service Provider for any Losses, save for that arising out of wilful misconduct or gross negligence of the Customer or its Staff.

24. INSURANCE AND RISK OF LOSS

24.1 **Insurance:**

24.1.1 The Service Provider shall, at its own cost and expense, for the duration of this Agreement have and maintain in force, to the reasonable satisfaction of the Customer, sufficient insurance cover to cover all of its obligations and liabilities under this Agreement, consistent with acceptable and prudent business practices, including–

- (i) Public Liability Insurance cover, to the value of a minimum of R1 000 000.00 (one million Rand), in order to cover the Service Provider's potential liability in terms of this clause 24 and the Agreement in general; and

24.1.2 The Service Provider shall indemnify and hold the Customer harmless against all Losses (including legal expenses on a full indemnity basis) of whatsoever nature arising out of this Agreement or at Applicable Law in respect of injury or death of any person or loss of or damage to any person or property occurring by reason of the Service Provider's wilfulness or negligence prior to, during or after its execution of the Services.

24.1.3 The Service Provider shall report all incidents affecting, or which may affect, any of the terms and conditions of any insurance policy, including any of the Customer's insurance policies becoming void or voidable, or whereby the insurance premiums for such insurance may be increased, immediately upon becoming aware of their occurrence.

24.2 ***The Customer's Right to Acquire Insurance in Certain Circumstances–***

Without limiting the generality of the Customer's rights and remedies hereunder, in the event of a failure by the Service Provider to maintain any insurance required hereunder, or to provide evidence of renewal at least 3 (three) business days prior to expiration of the applicable insurance cover, on 3 (three) business days' notice to Service Provider, the Customer may purchase the requisite insurance and deduct the costs thereof from any amounts owed to the Service Provider under this Agreement.

24.3 ***Risk of Loss–***

The Service Provider shall be responsible for risk of loss of, and damage to, any assets, equipment and/or tools in its possession or under its control. Any such items in the possession or control of the Service Provider's Sub-contractors or agents shall be deemed to be under the control of the Service Provider.

25. **BREACH AND TERMINATION**

25.1 Should a Party ("the defaulting party") commit a breach of any of the provisions of this Agreement, then the other Party ("the aggrieved party") shall be entitled to require the defaulting party to remedy the breach within 10 (ten) business days, or such other reasonable time as agreed to in writing by the aggrieved party, of delivery of a written notice requiring it to do so. If the defaulting party fails to remedy the breach within the period specified in such notice, the aggrieved party shall be entitled to claim immediate payment and/or performance by the defaulting party of all of the defaulting party's obligations due in terms of this Agreement, in either event, without prejudice to the aggrieved party's right to claim damages. The foregoing is without prejudice to such other rights as the aggrieved party may have at law: Provided always that the aggrieved party shall not be entitled to cancel this Agreement for any breach by the defaulting party, unless such breach is a material breach going to the root of this Agreement and is incapable of being remedied by a payment of money or, if it is capable of being remedied by a payment of money, the defaulting party fails to pay the amount concerned within 10 (ten) business days after such amount has been determined.

25.2 Notwithstanding the provisions of clause 25.1 above, the Customer may immediately terminate this Agreement at any time by giving written notice of such termination to the Service Provider if–

25.2.1 The Service Provider is, other than for the purposes of amalgamation, placed under voluntary or compulsory liquidation (whether provisional or final) or under judicial management or under curatorship or under the equivalent of any of the foregoing, including business rescue proceedings as envisaged in terms of the Companies Act, 2008 (Act No. 71 of 2008);

25.2.2 A final and unappealable judgment against the Service Provider remains unsatisfied for a period of 10 (ten) business days or more after it comes to the notice of the Service Provider;

25.2.3 The Service Provider makes any arrangement or composition with its creditors generally or ceases to carry on business;

25.2.4 The Service Provider undergoes a sale or change of ownership as envisaged in terms of clause 18 above; and/or

25.2.5 The Service Provider breaches any of confidentiality provisions, undertakings or warranties as set out in this Agreement.

25.3 Any termination of this Agreement pursuant to the provisions of this clause 25 shall be without the Customer incurring any liability in connection with such termination, or prejudice to any claim which the Customer may have in respect of any prior breach of the terms and conditions of this Agreement by the Service Provider.

26. TERMINATION FOR CONVENIENCE

The Customer may terminate this Agreement in whole or in part for convenience and without cause at any time by giving the Service Provider at least 30 (thirty) days prior written notice designating the termination date. The Customer shall have no liability to the Service Provider with respect to such termination, except the settlement of all due accounts to the Service Provider up to and including the termination date.

27. FORCE MAJEURE

27.1 Neither Party shall be liable to the other Party for any failure, delay or default in the performance of its obligations under this Agreement, if and to the extent that such failure, delay or default is caused by *casus fortuitus*, *vis maior*, act of God, lock-out, fire, riot, flood, drought, state of emergency, embargoes, export control, international restrictions, war (whether declared or not), civil disturbance, court order or any other circumstance beyond its reasonable control (collectively, "circumstances of *force majeure*").

27.2 Following any circumstances of *force majeure*, the non-performing Party shall–

27.2.1 As soon as reasonably possible after the event occurring, notify the other Party by whichever way is available and if possible thereafter, confirm it in writing;

- 27.2.2 Be released from further performance or observance of its obligation(s) so affected for so long as such circumstances of *force majeure* prevail;
- 27.2.3 Continue to endeavour to recommence performance or observance whenever and to whatever extent reasonably possible without delay; and
- 27.2.4 Co-operate with the other Party in implementing such contingency measures as that other Party may reasonably require.
- 27.3 Should any circumstances of *force majeure* continue for more than 30 (thirty) consecutive days, then either Party shall be entitled to terminate this Agreement by giving written notice to the other Party to that effect.
- 27.4 If circumstances of *force majeure* substantially prevent or delay performance of the Services necessary for the performance of the Customer's functions that the Customer reasonably believes to be critical at reasonable levels of service for more than 5 (five) consecutive days (or such longer period as the Customer may agree in its sole discretion), then at the Customer's option, the Customer may–
- 27.4.1 At its expense procure the Services from an alternate source, in which case the Customer shall be relieved of its obligation to pay the Service Provider for such Services for so long as the Service Provider's performance is impaired;
- 27.4.2 Terminate the portion of the Agreement affected as of a date specified by the Customer, and the fees and charges shall be equitably reduced to reflect the termination of the terminated Services;
or
- 27.4.3 If a substantial portion of the Services are affected, terminate the Agreement and/or other related agreement/s as of a date specified by the Customer in a written notice to the Service Provider.
- 27.5 The Customer shall not be liable for the payment of any termination fees or have any other liability to the Service Provider for terminating the Agreement or any portion thereof in terms of this clause 27.

28. COMMUNICATION INTERFACES

All routine and operational communications between the Service Provider and the Customer shall be addressed to their respective representatives appointed in terms of clause 8 above, or their alternates, in writing, which shall include fax and/or email.

29. DISPUTE RESOLUTION

Any dispute arising from the Agreement shall be subject to the following dispute resolution procedures –

29.1 ***Informal dispute resolution–***

Prior to the initiation of formal dispute resolution procedures, the Parties shall first attempt to resolve their dispute informally by referral of the dispute to a joint committee of their respective representatives and such senior Staff members as may be required from time to time, to consider and negotiate in good faith an amicable solution thereto. Proceedings in terms of this clause 29.1 shall not be construed to prevent a Party from instituting formal proceedings earlier to avoid the expiration of any applicable limitations period, or to preserve a superior position with respect to other creditors.

29.2 ***Arbitration–***

If the Parties are unable to resolve any dispute in the manner contemplated by clause 29.1, such dispute shall on written demand by either Party to the dispute be submitted to arbitration at the Arbitration Foundation of Southern Africa, in Sandton and in accordance with the rules thereof by an arbitrator or arbitrators agreed on by the Parties or should the Parties fail to agree on an arbitrator within 10 (ten) days after arbitration has been demanded, the arbitrator shall be nominated at the request of either Party to the dispute by the Arbitration Foundation of Southern Africa. The arbitration shall be held in the English language. Any Party may appeal the decision of the arbitrator within a period of 20 (twenty) days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other Party to the arbitration. The appeal shall be dealt with in accordance with the rules of the Arbitration Foundation of Southern Africa by a panel of 3 (three) arbitrators appointed by the Arbitration Foundation of Southern Africa. The decision of the arbitrator shall be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party or upon the issue of determination by the appeal panel, as the case may be. A decision,

which becomes final and binding in terms of this clause 29.2 may be made an order of court at the instance of any Party to the arbitration.

29.3 *Continued performance*–

Each Party agrees to continue performing its obligations under the Agreement while any dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance).

29.4 *Rapid resolution of disputes*–

The Parties shall use commercially reasonable efforts to resolve disputes arising under the Agreement as rapidly as possible.

29.5 *Excluded relief*–

This clause 29 shall not preclude either Party from seeking urgent relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.

29.6 *Confidentiality of proceedings*–

Any dispute resolution or arbitration process under this clause 29 shall be conducted *in camera* and the Parties shall treat as confidential and not disclose to any third party the existence of the dispute, details of the dispute, the conduct of the informal or formal dispute resolution proceedings or the outcome of the dispute resolution proceedings, without the written consent of the other Party, provided that the Parties shall be entitled to disclose such information to such persons as are necessary to enable them to conduct their case.

30. NOTICES AND DOMICILIUM

30.1 *Selection of addresses for receiving notices and selection of domicilia*–

The Parties hereto select the addresses appearing in clauses 3.8.1 and 3.8.2 respectively as addresses for the purposes of receiving notices and select as their respective *domicilia citandi et executandi* the physical addresses appearing therein. The addresses and/or facsimile numbers may be substituted by written notice to the other Party to that effect. Such change of address and/or facsimile shall be effective 7 (seven) days after receipt of the notice of the change of domicilia.

30.2 **Communication and notices–**

All notices to be given in terms of this Agreement shall be in writing and–

30.2.1 If delivered by hand during business hours, being between 08:00 and 16:30 on business days, be rebuttably presumed to have been received on the date of delivery;

30.2.2 If sent by facsimile during business hours be rebuttably presumed to have been received on the date of successful transmission of the facsimile;

30.2.3 Any facsimile sent after business hours or on a day which is not a business day shall rebuttably be presumed to have been received on the following business day;

30.2.4 The Parties record that whilst they may correspond via email during the currency of this Agreement for routine operational reasons, no formal notice, demand or request required in terms of the Agreement may be given or concluded via email.

30.3 **Notice actually received:** Notwithstanding the foregoing, any notice given in writing, including one sent by data message, actually received by the Party to whom the notice is addressed, shall be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with the provisions of this clause 30.

31. **GENERAL**

31.1 **Penalties–**

Wherever a provision of this Agreement stipulates for, or operates as, a penalty in favour of the Customer, (i) the Service Provider waives, to the fullest extent permitted by law, any right it may have to claim a reduction of such penalty and (ii) the Customer shall be entitled to at any time claim damages *in lieu* of such penalty.

31.2 **No assignment without consent–**

The Agreement shall be binding on the Parties hereto. Neither Party shall be entitled to assign or otherwise transfer the benefit or burden of all or any part of the Agreement without the prior written consent of the other Party.

31.3 ***No sub-contracting without consent–***

The Service Provider may not sub-contract its obligations under the Agreement without the prior written consent of the Customer. Should the Customer consent to such appointment, the Service Provider shall at all times be responsible to the Customer for fulfilment of all the Service Provider's obligations under the Agreement and remain the Customer's sole point of contact regarding the Services, including with respect to payment.

31.4 ***Severability–***

Should any of the terms and conditions of the Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions which shall continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate such an amendment to remove the invalidity.

31.5 ***Waiver–***

No change, waiver or discharge of the terms and conditions of the Agreement shall be valid unless in writing and signed by an authorised representative of the Party against which such change, waiver or discharge is sought to be enforced, and any such change, waiver or discharge shall be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege under the Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

31.6 ***No withholding of consents–***

Except where expressly provided as being in the sole discretion of a Party; where agreement, approval, acceptance, consent or action by either Party is required under the Agreement, such action shall not be unreasonably delayed or withheld. An approval, acceptance, consent or similar action by a Party under the Agreement shall not relieve the other Party from responsibility for complying with the requirements of the Agreement, nor shall it be construed as a waiver of any rights under the Agreement, except as and to the extent otherwise expressly provided in such approval, acceptance or consent.

31.7 Counterparts–

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay.

31.8 Applicable law–

The Agreement shall be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto shall be determined in accordance with such law.

31.9 Whole agreement and amendment–

The Agreement constitutes the whole of the agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation shall be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly authorised representatives.

31.10 Costs–

Each Party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of the Agreement.

SIGNED at PRETORIA for and on behalf of the SOUTH AFRICAN REVENUE SERVICE

1. XXXX

Signature

Date signed

Executive: Customs Port

2. XXXX

Signature

Date signed

Executive: Procurement

SIGNED at _____ for and on behalf of **XXXX** on this the _____ day of
_____ 2022

Name:

Capacity:

Who warrants his/her authority hereto

As witnesses:

1.
2.