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- 9.1.2 appoint a contact person to attend to all the Authority's responsibilities for purposes of executing the provisions of this Agreement.
- 9.1.3 ensure that the Service Provider's personnel are fully assisted on instances wherein they require access to any of the Authority's premises or platforms to carry out any services as well as any other duties that require to be conducted on such premises or platforms.
- 9.1.4 pay the amount envisaged in annexure B through an Electronic Funds transfer or otherwise for the duration of this Agreement, to also allow for month-end reports preparation and presentation by the Service Provider.

## **10. WARRANTIES**

- 10.1 The Service Provider represents and warrants to the Authority that it is under no contractual or other restrictions or obligations which are inconsistent with the execution of this Agreement, or which will interfere with the performance of its services.
- 10.2 The Service Provider further warrants that it is aware of the Authority's strict confidentiality requirements, and shall ensure such confidentiality in accordance with Clause 12.
- 10.3 In performing the Services, the Service Provider shall comply, to the best of its knowledge, with all business conduct, regulatory health and safety guidelines established by the Authority or any governmental authority with respect to the Authority's business.
- 10.4 The Service Provider warrants the effectiveness of the service that is provided under this Agreement and that where it is not able to fully warrant same it warrants that it shall assist the Authority in effectively remedying any defect or fault to the service by ensuring the expeditious effectiveness of the service irrespective of any manufacturer's warranty.

## **11. BREACH AND TERMINATION**

- 11.1. If either Party breaches any of the material provisions of this Agreement and fails to remedy that breach within 7 (seven) business days after receipt of a written notice from the non-defaulting Party requiring it to remedy that breach, the non-defaulting Party shall be entitled, without prejudice to any remedies which it may otherwise have in terms of this Agreement or at law, to terminate this Agreement without further notice to the defaulting Party.
- 11.2. Either Party shall have the right to terminate upon a 30 (thirty) day notice this Agreement forthwith (but without affecting its accrued rights in terms of this Agreement or any Service Schedule, as the case may be) should either Party discover that any of the following events have occurred, namely:

- 11.2.1 Failure by the Authority to pay for services performed.
  - 11.2.2 Failure by the Service Provider to effectively provide the Service to the Authority.
  - 11.2.3 Fraudulent misrepresentation by either party.
  - 11.2.4 Insolvency of the Service Provider;
  - 11.2.5 A judgment is granted against either Party and such party fails to satisfy or appeal against such judgment within 30 (thirty) days of the judgment being granted;
  - 11.2.6 Breach of any one or more of the provisions of this Agreement.
  - 11.2.7 Disclosure of confidential information contrary to clause 12.
- 11.3 Either party may terminate this Agreement without cause and without any penalty, by a thirty (30) day written notice, provided, however, that no such termination under this clause shall be construed as entitling any of the parties after having committed any of the applicable acts envisaged in clauses 11.1 and 11.2, to be found without fault or without liability for such acts.
- 11.4 In the event the Agreement is terminated under this clause 11 or clause 2.1, the Service Provider will surrender to the Authority all documentation relating to the service.

## 12. CONFIDENTIALITY

Any information received by the Service Provider in furtherance of the obligations under this Agreement or which concern any of the affairs of the Authority, will be treated by the Service Provider in full confidence and will not be released to any other persons or entities, whether during the tenure of this Agreement or after termination, without the prior written consent of the Authority, except where the information has already become public information at the instance of the Authority or as may be necessary in the ordinary course of performing the services under this Agreement or for the compliance with any law or lawful court order.

## 13. WAIVER

Failure by either Party to insist upon the strict compliance with any of the terms and conditions of this Agreement shall not be deemed a waiver of any right or remedy that such Party may have, and shall not be deemed a waiver of that Party's right to require the strict performance of all terms and conditions thereafter, nor a waiver of any remedy for the subsequent breach of any of the terms or conditions.

## 14. ENTIRE AGREEMENT

- 14.1. This Agreement represents the entire agreement by and between the Parties with respect to the matters contained herein. Any prior or contemporaneous oral or written agreements by and between the Parties or their agents and representatives relating to the subject matter of this Agreement are hereby revoked.
- 14.2. In the event that any provision of this Agreement shall be declared invalid, illegal or otherwise unenforceable by a competent court with relevant jurisdiction, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

## 15. MODIFICATION

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This Agreement may not be modified in whole or in part, at any time, except by mutual agreement between the parties and provided that such agreement is in writing, signed by the duly authorised representatives of both Parties, dated and attached hereto.

## 16. GOVERNING LAW AND JURISDICTION

This Agreement shall be considered as an Agreement made in the Kingdom of Eswatini and governed by the law of Eswatini and save as expressly referred to anywhere else in this Agreement, the parties hereby submit to the jurisdiction of the Courts of Eswatini.

## 17. INDEMNITY

17.1. Without prejudice to any other rights that the Parties may have under applicable law or under this Agreement, it is hereby agreed that no Party shall be indemnified for failure to comply with any of the terms and conditions under this Agreement, for any reason including failure to perform due to the negligent acts or omissions or wilful misconduct of either Party's officers, employees or agents, under or in connection with or arising out of any work, or the Authority delegated to such Party under this Agreement.

17.2. The Service Provider agrees to indemnify and hold the Authority and its Staff harmless against all claims, suits and losses (including reasonable attorney's fees) by any third party, including any member of the Service Provider's staff member or personnel, that arise due to personal injury, death or damage to property

## 18. DISPUTE RESOLUTION

18.1. Any dispute or controversy arising from the implementation or application of this Agreement shall be settled by negotiation, with a view to an amicable settlement.

18.2. If any matter remains unresolved after such negotiations referred to in Clause 18.1 above, these shall be resolved by means of arbitration. Any party shall be entitled to demand in writing that the dispute be referred for arbitration within seven (7) days after an agreement could not be reached.

18.3. The arbitrator shall upon application be appointed by the Law Society of Eswatini at its own discretion and upon agreement by both parties to the rules to be followed by the arbitrator. The costs of arbitration shall be borne by the parties jointly.

18.4. The finding of the arbitrator shall be final and binding on the parties and may only be made an order of court should one of the parties fail, refuse or neglect to give effect to the arbitrator's finding or award.

18.5. Otherwise save for the generality of this clause the parties shall reserve the right to refer such dispute to a court with competent jurisdiction.

## 19. ADDRESS FOR SERVICE/NOTICE

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19.1. The Parties both hereby choose the following addresses as their *domicilium citandi et executandi* for all purposes in connection with or arising from out of these terms and conditions:

**The Eswatini Revenue Service  
Portion 419 of Farm 50  
Mvutshini-Gables Road  
eZulwini, Eswatini**

**And**

.....  
.....  
.....  
.....

19.2 Any notice given in terms of this Agreement shall be in writing and shall:

- a. if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;
- b. if posted by prepaid registered post, be deemed to have been received by the addressee on the 8th (eighth) business day following the date of such posting;
- c. if transmitted by facsimile, be deemed to have been received by the addressee 1 (one) business day after despatch;
- d. if sent electronically, be deemed to have been received on the first business day following the successful transmission thereof as evidenced by the electronic confirmation of receipt, unless the contrary is proven.

## **20. INTELLECTUAL PROPERTY**

20.1 The Authority hereby warrants that any instructions given in relation to the Service Provider's use of any third party item supplied directly or indirectly by the Authority shall not cause the Service Provider to infringe any third party's Intellectual Property Rights in such item.

20.2 Service Provider warrants that by the utilisation of the Deliverables by or on behalf of the Authority or in connection with the receipt of the Services it shall not infringe any Intellectual Property Right of any third party and that it further warrants that no such third party shall have any claim against the Authority for use of any intellectual property belonging to the third party that is subject to this agreement.

## **21. LIMITS TO SERVICE PROVIDER'S ADVISE, REPORTS AND PRODUCT OF SERVICES**

21.1 While performing the services, the Service Provider may supply oral, draft or interim advice, reports or presentations. However, the written advice or opinion, as the case may be, in the final version of the product of services shall take precedence. The Authority may not rely on any draft, interim or oral advice, opinion, report or presentation.

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- 21.2 The Service Provider shall have no obligation to update, orally or in writing, any product of service for events that occur after it has issued the final version of the of the product of the service unless;
- 21.2.1 the law requires the Service Provider to do so;
- 21.2.2 the Service Provider has agreed to do so in this Agreement;
- 21.3 Except for reports expressly prepared for publication, the Service Provider shall supply the products of service for the Authority's benefit and information only. The product of service may not (except for the Authority's own internal purposes) be copied, referred to or disclosed to any third party, wholly or partially, without the Service Provider's prior written consent and then only on terms acceptable to the Service Provider. The Authority may disclose any product of the services to its bankers, legal representatives and other professional advisers when seeking advice about the services. However, the Authority must inform them that;
- 21.3.1 Except when utilised for their internal purposes, these groups must not disclose the product of the services to any third party without the Service Provider's prior written consent and then only on terms acceptable to the Service Provider;
- 21.3.2 The Service Provider accepts no liability to the Authority's Bankers or legal and other professional advisers in connection with the services; and
- 21.3.3 The Service Provider does not have a duty of care or any legal obligation to the Authority's bankers or legal and other professional advisers in connection with the services.
- 21.4 The Authority may not quote the Service Provider's name or reproduce its logo in any form or medium without the Service Provider's prior written consent.

## 22. FORCE MAJEURE

- 22.1 If either party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement by reason of any event or circumstance beyond that Party's reasonable control including, without limitation, lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving employees of either party), pandemics (as declared by the World Health Organisation) or acts of local or central government or other competent authorities, or event beyond the reasonable control of suppliers to either party, the Party so affected shall be relieved of its obligations hereunder during the period that such event and its consequences continue but only to the extent so prevented and the affected Party shall not be liable for any delay or failure in the performance of any obligations hereunder, provided always that written notice shall forthwith be given of any such inability to perform by the affected Party.
- 22.2 The Parties agree that should the circumstances giving rise to force majeure continue for more than 3 (three) months, either party may terminate this Agreement by notice in writing to the other Party.

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## 23. THIRD PARTY RIGHTS

- 23.1 By entering into this Agreement the Service Provider does not and is not intending to create any rights for a third party.
- 23.2 The Service Provider does not owe any third party any legal obligation or duty concerning this Agreement. On the Authority's written request, the Service Provider may allow a third party to have access to the product of the services on terms acceptable to the Service Provider. The Service Provider is not bound by any agreement between the Authority and any third party.

## 24. EXCLUSIONS AND LIMITATION OF THE SERVICE PROVIDER'S LIABILITY

- 24.1 Each provision of clauses 24.2 to 24.5 shall apply to this agreement and to the rendering of the services and will be enforceable between the Service Provider and the Authority. If and to the extent that any provision of clauses 24.2 to 24.5 is contrary to or is illegal in terms of legislation, it shall not apply to this Agreement nor to the rendering of the service and will not be enforceable between the Parties.
- 24.2 The Service Provider's maximum liability arising out of and in connection with this Agreement in respect to direct economic loss or damage incurred or suffered by the Authority, or by other beneficiaries, or by any of the Authority's employees or agents, or by any other third party whatsoever, is limited to two times the fees for the rendering of the service.
- 24.3 The maximum liability referred to in clause 24.2 shall be an aggregate (total, maximum) liability for all claimants and all claims arising out of or in connection with this Agreement and the rendering of the services, whether under legislation, in this Agreement or delict and whether caused by negligence, gross negligence or otherwise.
- 24.4 In working out the liability of the Service Provider under this Agreement, the maximum (total) amount of which liability shall in any event not exceed the limits mentioned in clause 24.2 and 24.3, a court or an arbitrator must limit the liability to the loss or damage suffered which the court or arbitrator holds the Service Provider responsible for based on relative degrees of fault. Apportionment of damages shall be at the discretion of the court or arbitrator.
- 24.5 The Authority may not bring any claim personally against any individual employee or director of the Service Provider. All claims arising out of this agreement must be brought only against the Service Provider.

## 25. INTERNAL POLICIES AND PROCEDURES

Both Parties warrant that by entering into this agreement that they have acted within their respective mandates and have complied with all policies and procedures, including supply-chain policies and procedures, where necessary.

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SIGNED AT ..... ON THE..... DAY OF ..... 2023.

AS WITNESSES:

1. ....

2. ....

.....

Signed by me, Mr Brightwell Nkambule, on behalf of the Eswatini Revenue Service

SIGNED AT ..... ON THE..... DAY OF ..... 2023.

AS WITNESSES:

1. ....

2. ....

.....

Signed by me, ..... on behalf of the Service Provider

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