

# SERVICE AGREEMENT

BETWEEN

**MY SHOPPING CENTRE/COMPANY NAME**  
(REGISTRATION NUMBER XXXX/XXXXXX/XX)  
TRADING AS

**MY MALL**  
("THE COMPANY")

AND

.....  
(REGISTRATION NUMBER ...../...../.....)

TRADING AS

.....  
("THE SERVICE PROVIDER")

## 1 INTERPRETATION

In this Agreement:

Clause headings are for convenience and are not to be used in the interpretation of the Agreement in which such headings appear.

Unless the context indicates a contrary intention, an expression which denotes: (i) any gender includes the other genders; (ii) a natural person includes a juristic person and *vice versa*; and (iii) the singular includes the plural and *vice versa*.

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

- 1.1.1 "Agreement" means this Agreement and any addendum, schedule or annexure to this agreement.
- 1.1.2 "Premises" means the **SHOPPING CENTRE** in respect of which the Services will be provided by the Service Provider.
- 1.1.3 "Call out" means the call out of the Service Provider's Staff to a Building, in order to attend to a specific concern or request by a Shopping Centre representative. The Service Provider's Staff will investigate the call out, make the situation safe insofar as it is possible, or take appropriate action, and then report its findings to the tenant representative.
- 1.1.4 "Designated Representatives" means in respect of **THE SHOPPING CENTRE** and the Service Provider, the respective duly appointed managers, from time to time.
- 1.1.5 "Effective Date" means ..... (**Commencement Date of the contract**).
- 1.1.6 "Equipment" means the HVAC, BMS, electrical, mechanical equipment, electronics and general building systems installed at the Premises, in respect of which the Service Provider will render the Services
- 1.1.7 "Losses" means all losses, liabilities, damages (whether indirect or direct or consequential) and claims, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties) which the Shopping Centre may suffer or incur as a result of this Agreement, provided that the recovery thereof shall be limited to the amount of cover as per the Service Provider's insurance policy, in place at the time such Losses are suffered. The Service Provider hereby warrants that all / any insurance policies shall be kept up to date and shall be paid in full, and indemnifies the Shopping Centre against any Losses suffered as a result of the breach of the aforementioned warranty.
- 1.1.8 "Material" means the material required in respect of the rendering of the Services.
- 1.1.9 "Monthly Service Charge" means the total service charge payable by the Company to the Service Provider in respect of the rendering of the Services, monthly in advance, against receipt of a legally valid VAT invoice
- 1.1.10 "OHS Act" means the Occupational Health and Safety Act, Act No. 85 of 1993, as amended from time to time.
- 1.1.11 "Reimbursable Expenses" mean out-of-pocket expenses actually and reasonably incurred by the Service Provider in performing its obligations under the Agreement, including document reproduction, travel and living expenses for travelling Staff, and charges for any non-routine supplies called for in the Agreement or approved by the Company.
- 1.1.12 "Service Level Agreement" means the schedule for the servicing and maintenance of the Equipment or Mall as described in the attachment hereto known as **Annexure B**.
- 1.1.13 "Staff" means any employee, independent contractor, agent, consultant, sub-contractor or other representative of either party
- 1.1.14 The words "clause" or "clauses" and "Annexure" or "Annexures" refer to clauses of and Annexures to this Agreement.
- 1.1.15 "Domcilium Adresses" (see clause: For the purposes of this agreement the addresses where all correspondence are to be directed are:

**Landlord:** \_\_\_\_\_ [enter detail](#)

**Fax:** \_\_\_\_\_

**e-mail:** \_\_\_\_\_

**Service Provider:** \_\_\_\_\_ [enter detail](#)

**Fax:** \_\_\_\_\_

**e-mail:**

- 1.1.16 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 Sunday and/or a public holiday as gazetted by the Government of the Republic of South Africa from time to time.

Any reference to "**business hours**" shall be construed as being the 24 hours of any business day, excluding Saturdays, Sundays and public holidays in the Republic of South Africa.

Any reference to time shall be based upon South African standard time being Greenwich Meantime plus 2 (two) hours.

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 DURATION

This Agreement shall commence on the Effective Date and shall continue for:

a period of ..... ([words](#)) until .....([date](#)) after which it will continue on a month to month basis until cancelled by either party in writing giving at least one Calendar month notice.

## 3 SERVICES

**Subject to Agreement:** The Service Provider will provide the Services to the Company subject to the specific terms and conditions of this Agreement, read in conjunction with **Annexure B. (The scope of works)**. The Company's representative will be responsible to manage and oversee the rendering of the Services by the Service Provider.

**The Service Provider's obligation to provide resources:** Except as otherwise expressly provided in the Agreement, The Service Provider shall be responsible for providing the Staff, labour (at the Agreed Labour Rate), Material, and other resources, as and when necessary for the Service Provider to provide the Services, to the satisfaction of the Company

## 4 ACCESS TO THE PREMISES

The Company shall allow the Service Provider access to the Premises, as reasonably required by the Service Provider to perform the Services.

**Charges: 4.1** The Monthly Fee in respect of the rendering of the Services, shall be:

ZAR ..... (as described in 1.1.11 above).

**4.2 Call out:** Hourly Fee in respect of the services shall be **ZAR** ..... and all Call outs shall be treated as per 1.1.3 BEFORE the Company's representative (being duly authorised) will endorse the work and resultant cost needed for the specific call-out.

**Escalation:** The Monthly Service Charge and Call Out Hourly rate will escalate annually by .....% (words) on the anniversary of the Effective date/ or as is decided by the governing body of the Service Provider's Industrial Council/ or as is accepted within the applicable Industry as the norm. ([Delete whatever is not applicable](#))

**Liability for taxation:** All Monthly Service Charges set out in the Agreement are exclusive of Value-Added Tax ("VAT").

**Reimbursable Expenses:** The Service Provider will invoice the Company on a monthly basis in arrear for Reimbursable Expenses necessarily and actually incurred as a result of performing the Services, subject to the Company's prior written approval in respect of the incurring of the expense.

**Accounting:** The Service Provider shall account to the Company at the end of every month. In the event that it is found that there is an amount owing to the Service Provider, the Service Provider shall provide the Company with a legally valid VAT invoice for such amount. Payment of the Service Provider's VAT invoices shall be made by the Company within 30 (thirty) days of receipt thereof.

**Accountability:** The Service Provider shall maintain complete and accurate records of, and supporting documentation for the amounts billed to and payments made by the Company under the Agreement in accordance with generally accepted accounting principles applied on a consistent basis.

**Set-off:** With respect to any amount that is to be paid by the Company under the Agreement, the latter may set-off against such amount any amount that the Service Provider is obliged to pay the Company whether under the Agreement or otherwise.

**Disputed amounts:** Subject to clause 0, the Company shall pay undisputed charges when such payments are due under the Agreement. The Company may withhold any amounts that it disputes in good faith, provided that such amount in dispute shall be automatically referred to dispute resolution in terms of clause 9.

## 5 SERVICE PROVIDER'S WARRANTIES

**General Warranties:** The Service Provider represents and warrants that it shall at all times: (i) use adequate numbers of qualified Staff with suitable training, education, experience and skill to perform the Services; (ii) use and adopt any standards and processes required in accordance with the monthly service report as described in **Annexure B**; (iii) provide the Services with promptness and diligence, in a workmanlike manner and in accordance with the practices and high professional standards used in well-managed operations, performing services similar to the Services; (iv) Adhere to the requirements of the OSH Act in it's own operations and will adhere to the Company's directives in this regard on the Premises as a whole.

**Pricing warranties:** The Service Provider represents and warrants that it shall at all times use commercially reasonable efforts to perform the Services in the most cost-effective manner consistent with the level of quality and performance required by the SLA.

**Remedy for failure:** To the extent that the Service Provider fails in any respect to comply with the above warranties and without in any way detracting from whatever other rights and remedies the Company may have, the Service Provider hereby indemnifies and holds the Company harmless against any loss, damage or expense sustained or incurred directly or indirectly as a result of such failure.

**Insurance:** The Service Provider warrants that it has Public Liability Insurance specific to it's operations on the Premises to the amount of: .....(enter amount agreed upon).

## 6 INDEMNITIES

**General indemnity:** The Service Provider hereby indemnifies and holds harmless the Company and its directors, employees, agents, successors, and assigns, from any and all Losses and threatened Losses arising from, in connection with, or based on allegations of, any of the following: (i) any claim or action arising from the Service Provider's failure to observe or perform any duties or obligations to be observed or performed on or after the Effective Date; (ii) any claim or action arising from the Service Provider's breach of any obligation with respect to The Company's confidential Information; (iii) any claim of infringement of any rights, alleged to have occurred based upon performance of the Services by the Service Provider; and (iv) any claim or action arising from the Service Provider's failure to observe or perform any duties or obligation in accordance with any law, licence, certificate, authorisations and consents required for the provision of the Services by the Service Provider to the Company.

**Death, damage and omission:** The Service Provider hereby indemnifies and holds harmless the Company and its officers, directors, employees, agents, successors, and assigns, from any and all Losses and threatened Losses arising from, in connection with, or based on allegations of, any of the following: (a) the death or bodily injury of any agent, employee, business invitee, business visitor or other person, of either the Company and/or any of its tenants, caused by the Service Provider; (b) the damage, loss or destruction of any real or tangible personal property, caused by the Service Provider; and (c) any claim, demand, charge, action, cause of action, or other proceeding asserted against the Company, but resulting from an act or omission of the Service Provider in its capacity as an employer of a person.

## 7 SERVICE PROVIDER STAFF

**Removal of Staff:** The Company shall be entitled, by giving 48 (forty eight) hours written notice thereof to the Service Provider, setting out full and precise reasons, to require the Service Provider to remove any member of its Staff who, in the Company's reasonable opinion, is

failing to perform their duties in a satisfactory manner, and the Service Provider shall take such steps as may be necessary to give effect to such notice.

**Health, safety and security procedures and guidelines:** The Service Provider's Staff shall at all times whilst on the Premises adhere to the standard health, safety and security procedures and guidelines applicable and as such procedures and guidelines may be changed from time to time. Should the Company at any time have reason to believe that any member of the Service Provider's Staff is failing to comply with such standard health, safety and security procedures and guidelines, the Company shall be entitled to deny such Staff-member access to the Premises and require the Service Provider to replace such Staff-member without delay in accordance with this clause.

## 8 CONFIDENTIALITY

**Acknowledgement of importance of Confidential Information:** The Receiving Party acknowledges the great importance of the Confidential Information to the Disclosing Party and recognises that the Disclosing Party may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with this Agreement.

**Receiving Party's undertaking:** The Receiving Party agrees and undertakes:

- 8.1.1 **No publication of Confidential Information:** except as permitted by this Agreement, not to disclose or publish any Confidential Information in any manner, for any reason or purpose whatsoever without the prior written consent of the Disclosing Party.
- 8.1.2 **No exploitation of Confidential Information:** except as permitted by this Agreement, not to utilise, employ, exploit or in any other manner whatsoever use the Confidential Information for any purpose whatsoever without the prior written consent of the Disclosing Party.
- 8.1.3 **Restricting dissemination of Confidential Information:** to restrict the dissemination of the Confidential Information to only those of the Staff who are actively involved in activities for which use of Confidential Information is authorised and then only on a "need to know" basis and the Receiving Party shall initiate, maintain and monitor internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure by the Staff.
- 8.1.4 **Obligations with regard to Staff:** to take all practical steps, both before and after disclosure, to impress upon the Staff who are given access to Confidential Information the secret and confidential nature thereof.

**Further acknowledgements:** All Confidential Information disclosed by the Disclosing Party to the Receiving Party or which otherwise comes to the knowledge of the Receiving Party, is acknowledged by the Receiving Party:

- 8.1.5 **Confidential Information is proprietary:** to be proprietary to the Disclosing Party.
- 8.1.6 **Disclosure does not confer rights:** not to confer any rights of whatsoever nature in such Confidential Information on the Receiving Party.

**Standard of care:** The Receiving Party shall protect the Confidential Information in the manner, and with the endeavour, of a reasonable person protecting its own Confidential Information. In no event shall the Receiving Party use less than reasonable efforts to protect the confidentiality of the Confidential Information.

**Return of Confidential Information:** The Disclosing Party may at any time on written request to the Receiving Party, require that the Receiving Party immediately returns to the Disclosing Party any Confidential Information and may, in addition, require material containing, pertaining to or relating to the Confidential Information and may require that the Receiving Party furnish a written statement to the effect that upon such return, it has not retained in its possession or under its control, either directly or indirectly, any such Confidential Information or material. Alternatively, the Receiving Party shall, as and when required by the Disclosing Party on written request to the Receiving Party, destroy all such Confidential Information and material and furnish the Disclosing Party with a written statement to the effect that the same has been destroyed. The Receiving Party shall comply with any request in terms of this clause within 7 (seven) days of receipt of such request.

**Retention of Confidential Information:** The Service Provider may retain Confidential Information to the extent required by, and for the duration of, any Services performed for the Company in terms of the Agreement between the Parties, provided that it has not waived performance of such Services and subject to the right of the Company to recover the Confidential Information at any time in terms of this clause.

**Exception to this clause:** The Parties record that this clause shall not be applicable where the Receiving Party discloses Confidential Information to attorneys, auditors or appointed experts and professionals, provided that such disclosure is reasonably required by the Receiving Party for the purposes of conducting its business activities.

## 9 DISPUTE RESOLUTION

**Informal dispute resolution:** Prior to the initiation of formal dispute resolution procedures, the Parties shall first attempt to resolve their dispute informally.

**Arbitration:** If the Parties are unable to resolve any dispute, in the manner contemplated by clause 0, then subject to clause **Error! Reference source not found.**, such dispute shall on written demand by either party be submitted to arbitration by an arbitrator or arbitrators appointed by the Arbitration Foundation of South Africa and agreed by the Parties.

**Status of arbitration ruling:** 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. A decision which becomes final and binding in terms of this clause may be made an order of court at the instance of any party to the arbitration.

**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).

**Rapid resolution of disputes:** The Parties shall use commercially reasonable efforts to resolve disputes arising under the Agreement as rapidly as possible.

**Escrow deposits for disputed payments:** To the extent that any dispute referred to determination in terms of this clause involves the withholding of payment of any amount otherwise due in terms of the Agreement by either party, the withholding party shall deposit the amount of the withheld payment into escrow and, if any part of the withheld amount is found properly due to the other party, any capital award plus interest accruing in escrow in the same ratio as the capital award, shall be paid to that party.

**Excluded relief:** This clause shall not preclude a party from seeking urgent relief from any court or organ of state, as envisaged in clause 0.

## 10 TERMINATION

**Breach:** If the Service Provider commits a breach of the Agreement and fails to remedy such breach within 14 (fourteen) days of notice thereof, the Company shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement or otherwise, to terminate this Agreement with immediate effect, without prejudice to any claims which the Company may have for damages against the Service Provider, upon written notice to the Service Provider.

Other grounds for termination with cause: If the Service Provider –

- 10.1.1 is provisionally or finally liquidated or is placed in judicial management, whether provisionally or finally;
- 10.1.2 ceases or threatens to cease to carry on its normal line of business or defaults or threatens to default in the payment of its liabilities generally, or commits any act or omission which would, in the case of an individual, be an act of insolvency in terms of the Insolvency Act, 1936 (as amended);
- 10.1.3 fails to adhere to any legal requirement or breaches any term or condition of any licence, authorisation or consent required for the provision of the Services and which failure or breach the Company in its sole discretion, considers to be detrimental.
- 10.1.4 disposes of a material portion of its undertaking or assets, without prior consultation with the Company, which is considered to be detrimental to the Services provided
- 10.1.5 experiences any change in control, or any material change in the shareholding or management as a result of any transaction relating to such change in control or shareholding, without prior consultation with the company, then the company shall be entitled, but not obliged, to terminate this Agreement on written notice to the Service Provider, with immediate effect, in which event such termination shall be without any liability and without prejudice to any claims which the company may have for damages against the Service Provider.

**Termination due to disposal of Building:** It has been agreed between the parties that should the Company sell or dispose [the Shopping Centre](#) it will then have the right to terminate those Services rendered by the Service Provider in respect of that Building, by giving the Service Provider 90 (ninety) days written notice.

## 11 NOTICES AND DOMICILIUM

**Selection of domicilia:** The Parties hereto select as their respective *domicilia citandi et executandi* the addresses appearing in clause 1.1.15 or such other address or facsimile number as may be substituted by notice given as herein required.

**Requirement for validity of notices:** All notices, requests, demands, and determinations under this Agreement (other than routine operational communications), shall be valid and effective only if in writing and if delivered by hand or facsimile. In this regard, a notice, request, demand and determination under the Agreement (i) delivered by hand shall be deemed duly given when delivered by hand during ordinary business hours as evidenced by a receipt declaration by a member of the addressee's Staff or a delivery declaration by a person authorised to deliver the notice, request, demand and determination by the addressor; and (ii) delivered by facsimile shall be deemed duly given when delivered to the facsimile number set forth in clause 1.1.15, which delivery shall be evidenced by sender's facsimile confirmation sheet. Notices, requests, demands and determinations sent by facsimile and received prior to 13h00 on a business day shall be deemed duly given on such business day; notices, requests, demands and determinations sent by facsimile and received at other times shall be deemed duly given on the first business day following the date that such facsimile is received. A copy of any notice, request, demand and determination under the Agreement that is sent to a party by facsimile shall also be sent to such party by prepaid registered post.

**Persons authorised to give and receive notices:** All notices relating to this Agreement shall be given by the sender's representative and addressed to the addressee's representative. A notice given by or addressed to any Staff of the Service Provider, of equivalent status to the person referred to in clause 1.1.4, shall be deemed to be given by or addressed to the representative as the case may be. Any other purported notice shall be deemed void.

## 12 FORCE MAJEURE

**No liability for force majeure:** No party shall be liable for any default or delay in the performance of its obligations under the Agreement if and to the extent (i) such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, rebellions or revolutions in any country or any other cause beyond the reasonable control of such party; and (ii) the non-performing party is without fault in causing such default or delay, and (iii) such default or delay could not have been prevented by reasonable precautions, and (iv) such default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means.

**Rights in the event of force majeure:** If any event under clause 0 substantially prevents, hinders, or delays performance of the Services necessary for the performance of the Company functions reasonably identified by the Company, in its sole discretion, as critical for more than 3 (three) consecutive days, then at the Company's option: (i) the Company may procure such Services from an alternate source, and the Service Provider shall be liable for payment for such Services from the alternate source for so long as the delay in performance shall continue; (ii) the Company may terminate any portion of the Agreement so affected without liability and the charges payable under the Agreement shall be equitably adjusted to reflect those terminated Services; or (iii) the Company may terminate the Agreement without liability to the Service Provider as of a date specified by the Company in a written notice of termination to the Service Provider. The Service Provider shall not have the right to any additional payments from the Company for costs or expenses incurred by the Service Provider as a result of any force majeure occurrence.

## 13 ASSIGNMENT AND SUB-CONTRACTING

**No assignment without consent:** The Agreement shall be binding on the Parties hereto and the Company's successors and assigns. The Service Provider shall not 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 Company. The Company may assign its rights and obligations under the Agreement without the approval of the Service Provider.

## 14 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 an amendment to remove the invalidity.

## 15 ADVERTISING & MARKETING

The Service Provider shall not make or issue any announcement, advertisement or statement to the press in connection with the Agreement, or otherwise disclose the existence of the

Agreement or the subject matter thereof, to any other person without the prior written consent of the Company.

## 16 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 will 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 will operate as a waiver thereof, nor will 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.

## 17 CONSENT AND APPROVAL

**No withholding of consents:** Except where expressly provided as being in the sole discretion of a party, where Agreement, approval, acceptance, consent, or similar 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 (including of a plan or deliverable) 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 or consent.

## 18 JURISDICTION AND APPLICABLE LAW

**Applicable law:** The Agreement will 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 will be determined in accordance with such law.

**Jurisdiction:** The Parties hereby consent to the jurisdiction of the High Court of South Africa, and any other organ of state established by the Republic of South Africa for the specific purpose of regulating the business or industry activities in which the Parties are engaged.

## 19 WHOLE AGREEMENT

**Whole agreement:** The Agreement constitute the whole of the Agreement between the Parties relating to the subject matter hereof and save as otherwise provided herein no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly authorised representatives.

**Amending this Agreement:** Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part thereof, other than as provided for in clause 0, shall not be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly authorised representatives. Such a document shall be titled an "Addendum" and assigned a sequential number to be included in the title. All such duly executed addenda shall constitute Agreement.

**No collateral terms and conditions:** The Parties agree that there are no other collateral terms or conditions to this Agreement, whether oral or written.

## 20 RELATIONSHIP OF PARTIES

The Parties warrant and acknowledge that the relationship between them is not in the nature of a partnership and that neither party is in any manner entitled to make or enter into binding agreements of any nature on behalf of the other party.

## 21 SURVIVAL

Any provision of the Agreement which contemplates performance or observance subsequent to any termination or expiration of the applicable Agreement shall survive any termination or expiration of the applicable Agreement and continue in full force and effect.

## 22 COVENANT OF GOOD FAITH

Each party agrees that, in its respective dealings with the other party under or in connection with the Agreement, it shall act in good faith.

## 23 COSTS

Each part shall be liable for their own costs incurred for, or incidental to the drafting, preparation and execution of the Agreement.



**SIGNED** at ..... on .....

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For: [My Shopping Centre](#)  
(Being Duly Authorised thereto)

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Witness

**SIGNED** at ..... on .....

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For: [the Service Provider](#)  
(Being Duly Authorised thereto)

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Witness

[PAGE OVER: Attach the chosen and applicable Annexure "B" to this agreement.](#)