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**SERVICE LEVEL AGREEMENT**

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between

**PIKITUP JOHANNESBURG (SOC) LIMITED**  
**("the Employer")**

and

.....  
**("the Service Provider")**

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ANNEXURE A

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**PARTIES:**

This Agreement is made between:

- (i) **PIKITUP JOHANNESBURG (SOC) LIMITED** a wholly owned municipal entity of the City of Johannesburg incorporated under the Companies Act No.71 of 2008, read with the Municipal Systems Act No. 32 of 2000, with registration number 2000/029899/07 (the “**Employer**”); and
- (ii) ..... a company registered in accordance with the laws of the Republic of South Africa with registration number ..... (the “**Service Provider**”).

**WHEREAS**

- A. The Employer is a wholly owned municipal entity that is mandated to provide municipal waste management services in the Johannesburg Metropolitan area.
- B. The Service Provider has expertise in the business of, *inter alia*, internal audit Services.
- C. In reliance on the Service Provider’s expertise, the Employer wishes to procure the services in its business operations.
- D. the Service Provider is willing and able to provide services to the Employer, the parties wish to enter into this Agreement to regulate their relationship and matters ancillary thereto.

**IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

For the purposes of this Agreement and the preamble above, unless the context requires otherwise:

1.1.1 **Agreement** means this agreement, as amended, replaced or re-stated from time to time, and the schedules and annexures hereto, if any.

1.1.2 **Applicable Law** means any of the following, from time to time, to the extent it applies to a Party or the Services (including, the performance, delivery, receipt or use of the Services, as applicable and wherever occurring): (a) any statute, regulation, policy, by-law, ordinance or subordinate legislation (including treaties, multinational conventions and the like having the force of law); (b) the common law; (c) any binding court order, judgment or decree; (d) any applicable industry code, policy or standard enforceable by law; or (e) any applicable direction, policy or order that is given by a regulator;

1.1.3 **Business Day** means a calendar day, other than a Saturday, Sunday, or public holiday in South Africa;

1.1.4 **Charges** means the charges and fees payable by the Employer to the Service Provider as consideration for the performance of the Services, which charges are set out in Annexure C;

1.1.5 **Commencement date** means .....

1.1.6 **Commercially Reasonable Efforts** means taking such steps and performing in such a manner as a well-managed company would undertake where such company was acting in a prudent and reasonable manner to achieve the particular result for its own benefit provided always that such steps are within the reasonable control of the Party;

1.1.7 **Confidential Information** means all information relating to the Services and

the Employer (including all information relating to the Employer's business, products, services, affairs and/or finances which is not readily available, in the ordinary course of business, to third parties) and any other information which, by its nature, would reasonably be considered to be confidential;

1.1.8 **Employer's Representative** means the Employer's Representative or any replacement appointed in writing by the Employer and may be an individual or the holder of particular office in the employ of the Employer;

1.1.9 **Force Majeure Event** shall have the meaning ascribed thereto in clause 17;

1.1.10 **Insolvency Event** means, in relation to either Party, the occurrence of any of the following events or circumstances:

1.1.10.1 an order or declaration is made or a resolution is passed for the administration, custodianship, curatorship, bankruptcy, liquidation, winding-up, any form of compromise, business rescue or dissolution, (and whether provisional or final) of it or its estate;

1.1.10.2 a Party is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness;

1.1.10.3 any receiver, administrative receiver, any form of administrator, compulsory manager, curator, trustee in bankruptcy, liquidator, business rescue practitioner or the like (whether provisional or final) is appointed in respect of it or any material part of a Party's assets or it requests any such appointment; or

1.1.10.4 an order is made placing a Party under supervision for business rescue proceedings as contemplated in section 131(1) of the

Companies Act No. 71 of 2008;

- 1.1.11 **Parties** means the Service Provider and the Employer and **Party** shall mean either of them as the context requires;
- 1.1.12 **Performance Standards** means the performance and service levels, as set out in Annexure B and as may be amended by agreement between the Parties from time to time;
- 1.1.13 **Services** means the Services set out in Annexure A;
- 1.1.14 **Signature Date** means the date of signature of this Agreement by the Party signing it last in time;
- 1.1.15 **Term** shall have the meaning ascribed thereto in clause 4; and
- 1.1.16 **VAT** means value-added tax as may be levied in terms of the Value-Added Tax Act No. 89 of 1991, to the extent applicable;

## 1.2 **Interpretation**

- 1.2.1 In addition to the definitions in clause 1.1, unless the context requires otherwise:
- 1.2.1.1 the singular shall include the plural and vice versa;
- 1.2.1.2 a reference to any one gender, whether masculine, feminine or neuter, includes the other two;
- 1.2.1.3 all the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it;

- 1.2.1.4 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day is not a Business Day, in which case the last day shall be the next succeeding day which is a Business Day;
- 1.2.1.5 expressions defined in this Agreement shall bear the same meanings in the schedules and annexures to this Agreement which do not themselves contain their own conflicting definitions;
- 1.2.1.6 if any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.2.1.7 the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply; and
- 1.2.1.8 the words “include”, “including” and “in particular” shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s.

## **2. APPOINTMENT**

The Employer hereby appoints the Service Provider to provide the Services to the Employer on a non-exclusive basis, and the Service Provider hereby accepts such appointment on the terms and conditions set out herein.

## **3. RELATIONSHIP OF THE PARTIES**

- 3.1 For the avoidance of any doubt, the Parties record and agree that, pursuant to the

implementation of this Agreement, they shall at all times act as independent contractors to one another. Neither Party is an agent of the other or has any authority to represent the other as to any matters, except as expressly authorised in this Agreement.

3.2 Nothing contained in this Agreement shall be construed as creating a company, close corporation, joint venture, partnership or association of any kind between the Parties; nor is anything contained in this Agreement to be construed as creating or requiring any continuing relationship or commitment on a Party's or its affiliates' behalf with regard to the other Party and its affiliates other than as specifically set out herein.

3.3 Unless expressly authorised by this Agreement, neither of the Parties (nor their respective agents) shall have the authority or right, nor shall any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party.

#### 4. **COMMENCEMENT AND DURATION**

4.1 Subject to clause 4.2 below, this Agreement shall be deemed to have commenced on the Signature Date and shall endure for a period of thirty-six **(36) Months** (the "**Term**") until when it shall terminate automatically.

4.2 Notwithstanding the provisions of clause 4.1 above, this Agreement may be terminated at any time during the Term or any period extended by the Employer.

#### 5. **THE SERVICES**

5.1 The Service Provider agrees to provide the Services to the Employer as defined in Annexure A [*Services*].

5.2 The Service Provider shall be responsible for performing the Services in accordance with this Agreement and the Performance Standards detailed in Annexure B [*Performance Standards*]. The Service Provider undertakes that, in providing the

Services, it will employ the necessary diligence, skill and expertise to comply with such Performance Standards.

5.3 The Service Provider shall participate in all meetings and service review sessions reasonably requested by the Employer upon reasonable notice to address performance issues related to this Agreement.

## 6. GENERAL OBLIGATIONS OF THE EMPLOYER

6.1 The Employer shall, for the duration of this Agreement, provide to the Service Provider such information and documentation as reasonably requested by the Service Provider so as to allow the Service Provider to fulfil its obligations in terms of this Agreement.

6.2 The Employer's use of the Services shall comply with all material Applicable Law.

6.3 In addition, and without derogating from the generality of this clause 6, the Employer shall for the duration of the Term (and during any extension of such Term, if applicable):

6.3.1 co-operate with the Service Provider in all matters relating to the Services;  
and

6.3.2 provide, in a timely manner, such input and other information as the Service Provider may reasonably require, and ensure that it is accurate in all material respects.

6.4 In addition, the Employer shall be responsible for and undertakes to pay the Charges as set out in Annexure C hereto.

## **7. GENERAL OBLIGATIONS OF THE SERVICE PROVIDER**

7.1 The Service Provider shall:

7.1.1 Perform the Services with due care, skill, professionalism, and diligence as would be expected of a reasonable service provider in the position of the Service Provider;

7.1.2 co-operate with the Employer in all matters relating to the Services;

7.1.3 provide the Services in accordance with the Performance Standards;

7.1.4 strictly and punctually comply with all reasonable requests submitted by the Employer in relation to the Services at any time;

7.1.5 work with the Employer to integrate its Services with other service providers, so appointed by the Employer, in order to achieve the main business objects as set out in the Employer's Memorandum of Incorporation;

7.1.6 comply with all Applicable Laws in relation to the provision of the Services conduct itself in a courteous and business-like manner always considering the image and reputation of the Employer; and

7.1.7 subject to clause 11 respect the confidentiality of the Employer.

## **8. CHARGES**

8.1 As consideration for the provision of the Services, the Service Provider shall be entitled to the Charges in accordance with Annexure C.

8.2 The Service Provider shall use Commercially Reasonable Efforts to procure the services of any third party that it elects to use at reasonable rates, bearing in mind criterion such as quality of service, synergies and reliability.

8.3 Within 10 (ten) Business Days after the end of each calendar month, the Service Provider shall deliver its invoices in respect of the Charges to the Employer, which invoices shall set out in sufficient detail what services were provided in any given month and the amount charged for each. Within 30 (thirty) days of receipt of such invoice, the Employer shall make payment of the amount specified therein to the Service Provider into a bank account nominated in writing by the Service Provider from time to time.

9. **SERVICE PROVIDERS WARRANTY ON ADHERENCE TO APPLICABLE LAW RELATED TO ANTI-BRIBERY AND SANCTIONS**

9.1 No Party to this Agreement shall engage in any activities in relation to the Services, which would be in contravention of any Applicable Law relating to anti-fraud and corruption.

9.2 The Service Provider hereby warrants that, for the duration of this Agreement, it will comply (and will procure that all its employees, directors, officers or agents comply) with all laws, regulations or policies relating to economic sanctions, trade sanctions and/or export controls and the prevention and combating of bribery, corruption and money laundering, to which it or the Employer is subject.

9.3 The Service Provider further warrants that it has, and will for the duration of this Agreement have, an adequate anti-corruption programme in place to enable compliance with the Anti-Corruption and Sanctions Regulations.

9.4 The Service Provider undertakes not to, and will procure that all its members/employees, directors, officers or agents, do not:

9.4.1 pay, promise to pay or offer to pay, or authorise the payment of any commission, success fee, bribe, pay off or kickback related to the performance of its obligations that violates any Anti-Corruption and Sanctions Regulations or enter into any agreement pursuant to which any such commission, success fee, bribe, pay off or kickback may or will at any time be paid; or

9.4.2 offer, promise or give any undue pecuniary or other advantage, whether directly or indirectly to any public official, with the intent of influencing the actions or decisions of such official in performance of his/her official duties, with the purpose of obtaining or retaining business or other improper benefit or advantage.

9.5 Any breach by the Service Provider of the provisions of this clause will be a material breach of this Agreement and entitle the Employer to cancel this Agreement immediately on notice to the Service Provider.

## 10. **PENALTIES**

If the Service Provider fails to achieve the Performance Standards or complete an activity by a date specified in the Performance Standards or purchase order then, the Employer shall, without prejudice to its other remedies under this Contract impose a penalty of 10% of the invoice price which shall be deducted on each invoice submitted from the date the Service Provider failed to achieve or complete an activity until the contract is terminated.

## 11. **CONFIDENTIALITY**

11.1 The Service Provider agrees and undertakes to use the Confidential Information only for the purpose of rendering the Services in terms of this Agreement and for no other purpose whatsoever and not to disclose such Confidential Information to any third party without the consent of the Employer. To this end the Service Provider shall be entitled to disclose the Confidential Information to its employees, directors or subcontractors to the extent necessary for the performance of the Services, provided such persons are subject to confidentiality undertakings which are no less stringent than those applicable to the Service Provider under this Agreement.

11.2 The rights and obligations contained in this clause 10 shall endure for the duration of this Agreement and after the Termination.

## 12. **WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

12.1 Each Party hereby warrants and represents to the other that, as at the Signature Date:

12.1.1 it shall use its Commercially Reasonable Efforts to avoid any material conflict between its interests and those of the other Party and, where such conflict is unavoidable, will disclose the details of such conflict to the other Party;

12.1.2 it has the necessary power and legal capacity to enter into and perform its obligations under this Agreement and all matters contemplated herein;

12.1.3 it has taken all necessary corporate and/or internal action to authorise the execution and performance of this Agreement;

12.1.4 it has the capacity and power to provide the representations, warranties and undertakings contained in this Agreement;

12.1.5 the execution of this Agreement and performance of its obligations hereunder does not and shall not, to the best of its knowledge:

12.1.5.1 contravene any Applicable Law; or

12.1.5.2 contravene any provision of its constitutional documents,

so as to prevent it from performing its obligations under this Agreement.

## 13. **MATERIALITY OF WARRANTIES AND REPRESENTATIONS**

13.1 Each of the warranties and representations given by the Parties in terms of clause 12 and this clause 13 (or elsewhere in this Agreement) shall:

13.1.1 be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other word/s in this Agreement;

- 13.1.2 continue and remain in force notwithstanding the completion of the transactions contemplated in the Agreement; and
- 13.1.3 be deemed to be material and to be a material representation inducing the Parties to enter into this Agreement.
- 13.2 It is recorded and agreed that each Party has entered into this Agreement on the strength of the warranties and undertakings it has received from the other Party and on the basis that such warranties and undertaking will, unless otherwise specifically stated, be correct on the Signature Date.
- 13.3 A breach by either Party of any warranty, representation or other provision of clause 12 and this clause 13 or of any express or implied warranty or representation contained elsewhere in this Agreement, shall be a material breach of this Agreement which shall confer on the other Party the right, in its sole discretion, to utilise any remedy it may have in law or created in this Agreement for the enforcement of its rights, including termination in terms of clause 20.

#### **14. COMPLIANCE WITH POPI ACT, No. 4 OF 2013**

- 14.1 The Parties acknowledge their respective obligations to comply with the substantive provisions of the Protection of Personal Information Act, No. 4 of 2013 (POPI Act), which in essence comprises of both Parties allowing the other Party access to records on the condition that the identifiable person (or his or her guardian or curator) to whom the records relates has furnished prior written consent for the disclosure of the records.
- 14.2 Each Party understands and acknowledges that the restrictions and obligations accepted by that other Party pursuant to this Agreement are reasonable and necessary in order to protect the interests of the other Party, its employees and claimants and that party's failure to comply with this Agreement in any respect could cause irreparable harm to the other Party, its employees and claimants for which there may be no adequate legal remedy.

- 14.3 Each Party therefore understands and agrees, notwithstanding any contrary provision in any other agreement between the Parties, that each Party retains its full rights to pursue legal or equitable remedies in the event of any breach or threatened breach of this Agreement, and may prevent the other Party, any of its agents or subcontractors, or any third party who has received records from that Party from violating this Agreement by any legal means available. Each Party further understands that violation of this Agreement may subject that Party to applicable legal penalties, including those provided under POPI Act and termination of any agreements entered into between the Parties.
- 14.4 Within thirty (30) days after the termination of this Agreement, for whatever reason, the receiving Party of either party`s personal information shall return same or at the discretion of the disclosing Party of such personal information, destroy such personal information, and shall not retain copies, samples or excerpts thereof.
- 14.5. In cases where the disclosing Party has elected for the personal information to be destroyed, as provided for in clause 14.4 above, the receiving Party shall, within ten (10) days of receiving the instruction to destroy the personal information, send an affidavit confirming the destruction of personal information.

## 15. **LIMITATION OF LIABILITY**

- 15.1 Nothing in this Agreement shall limit or exclude a Party's liability:
- 15.1.1 for death or personal injury of any person or physical loss or damage to any property caused by its negligence, or the negligence of its employees, agents or subcontractors; and
- 15.1.2 for deliberate default, fraud, fraudulent misrepresentation or reckless misconduct.
- 15.2 Subject to clause 15.1, under no circumstances shall a Party be liable to the other for any of the following, whether in contract, delict (including negligence) or otherwise:

- 15.2.1                    loss of revenue or anticipated revenue;
  - 15.2.2                    loss of savings or anticipated savings;
  - 15.2.3                    loss of business opportunity;
  - 15.2.4                    loss of profits or anticipated profits;
  - 15.2.5                    wasted expenditure; or
  - 15.2.6                    any indirect or consequential losses.
- 15.3                    Subject to clause 15.1, the Service Provider's maximum aggregate liability in contract, delict (including negligence) or otherwise, however arising, under or in connection with this Agreement shall be limited to the amount of twice the Charges paid under or pursuant to this Agreement (the "**Cap**").

16.                    **PERFORMANCE REVIEWS**

The Parties record that:

- 16.1                    On a quarterly or on an as and when agreed basis, they shall convene a meeting to review in addition to any other issue pertaining to this agreement, levels of Service and performance of their obligations provided in this agreement;
- 16.2                    The outcome of the reviews purported under clause 16.1 shall be documented and kept on file by each Party.

17.                    **FORCE MAJEURE**

- 17.1                    Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent that a Force Majeure Event occurs. In such event, subject to the provisions of this clause the non-performing Party is excused from further performance for as long as such circumstances prevail and the Party continues to use its Commercially Reasonable Efforts to mitigate the effect of

the Force Majeure Event and recommence performance of the Services, as soon as possible.

17.2 A **Force Majeure Event** is any event or circumstance or combination of events and circumstances which fulfils all of the following 3 (three) criteria:

17.2.1 is beyond the reasonable control of the Party affected by that event or circumstance or both;

17.2.2 wholly or partially prevents the performance by the affected Party of any of its obligations under this Agreement; and

17.2.3 cannot be prevented, overcome or remedied by the exercise by the affected Party of a standard of care and diligence consistent with that of a service provider experienced in projects or activities of a similar nature to the Services (as the case may be).

17.3 If a Force Majeure Event occurs, in relation to the Service Provider's obligations to provide the Services, the Service Provider must immediately notify the Employer in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement.

## 18. **INDEPENDENT AUDIT**

18.1 The Service Provider shall maintain up-to-date records which clearly identify relevant time and expense and shall make these available to the Employer on reasonable

request.

## 19. DISPUTE RESOLUTION

### 19.1 General Dispute Resolution

19.1.1 Any dispute (“**a dispute**”) between the Parties arising in connection with this Agreement or the subject matter hereof shall be submitted to and determined by binding arbitration in terms of this clause 19. For the purpose hereof the term “dispute” shall be interpreted in the widest sense and shall include any dispute or difference in connection with or in respect of the conclusion or existence of this Agreement, the carrying into effect of this Agreement, the interpretation or application of the provisions of this Agreement, the Parties’ respective rights and/or obligations in terms of and/or arising out of this Agreement and/or the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of this Agreement.

19.1.2 The Parties shall use Commercially Reasonable Efforts to resolve amicably by direct informal negotiation any disagreement or dispute arising between them out of or in connection with this Agreement.

If, after 10 (ten) days from the commencement of such informal negotiation, the Parties have been unable amicably to resolve any disagreement or dispute arising out of or in connection with this Agreement, including any question regarding its existence or validity, either Party (the “**Referring Party**”) shall be entitled, by notice in writing to the other Party, to refer a dispute to arbitration in accordance with the rules of the Association of Arbitrators (Southern Africa). Such arbitration shall be held in [Johannesburg].

19.1.3 The number of arbitrators in respect of a dispute shall be 1 (one) and the appointment of the arbitrator shall be agreed upon between the Parties, but failing agreement between the Parties, the appointment shall be made by the

Chairman of the Association of Arbitrators at the time of referral.

19.1.4 The arbitrator shall have the powers conferred upon an arbitrator under the Arbitration Act, 1965, as amended, or re-enacted in some other form from time to time, but shall not be obliged to follow the procedures described in that Act and shall be entitled to decide on such procedures as he may consider desirable for the speedy determination of the dispute, and in particular he shall have the sole and absolute discretion to determine whether and to what extent it shall be necessary to file pleadings, make discovery of documents or hear oral evidence.

19.1.5 The decision of the arbitrator shall be final and binding on the Parties.

19.1.6 The language of the arbitration shall be English.

19.1.7 Nothing in this clause 19 shall preclude either Party from obtaining urgent or interim relief from the High Court of South Africa or any other competent organ of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged. To this end, the Parties submit to the non-exclusive jurisdiction of the Gauteng Local Division, Johannesburg, of the High Court.

## 20. TERMINATION

20.1 The Parties acknowledge that, in relation to the Services, time is of the essence and if a Party commits a material breach of this Agreement and/or fails to comply with any of the provisions hereof (the “**Defaulting Party**”), then the other Party/s (the “**Innocent Party**”) shall be entitled to give the Defaulting Party 15 (fifteen) Business Days’ notice in writing, or such shorter period as is reasonable if time is of the essence, to remedy such breach and/or failure and if the Defaulting Party fails to comply with such notice, then the Innocent Party shall forthwith be entitled but not obliged, without prejudice to any other rights or remedies which the Innocent Party may have in law, including the right to claim damages:

20.1.1 to cancel this Agreement; or

20.1.2 to claim immediate performance of the provisions of this Agreement.

20.2 Either Party may, by giving 14 (fourteen) days' written notice to the other Party, terminate this Agreement, in whole or in part, immediately if any Insolvency Event occurs in relation to the other Party, in which case such termination shall be deemed to have occurred 1 (one) day prior to the occurrence of the Insolvency Event.

20.3 Notwithstanding any other provision contained in the Agreement the Employer may, due to changes on operation requirement, terminate the Agreement by giving at least thirty (30) days' notice in writing to the Service Provider at any time.

## 21. NOTICES

21.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses:

21.1.1 Employer: Pikitup Johannesburg SOC Limited

Physical: 66 Jorissen Street

Jorissen Place

Braamfontein

2001

E-mail:

Attention:

21.1.2 Service Provider:

Physical:

E-mail:

Attention:

21.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to

give notice by email.

21.3 Any Party may by notice to the other Party change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that Party to another physical address the relevant jurisdiction or its email address, provided that the change shall become effective *vis-à-vis* that addressee on the 10<sup>th</sup> (tenth) Business Day from the receipt of the notice by the addressee.

21.4 Any notice to a Party:

21.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium* to which post is delivered shall be deemed to have been received on the 10th (tenth) Business Day after posting (unless the contrary is proved); or

21.4.2 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery.

21.5 Notwithstanding anything to the contrary herein contained a written notice or communication (including by email) actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

## 22. SUBCONTRACTING, CESSION AND ASSIGNMENT

22.1 The Service Provider shall not be entitled to sub-contract or assign more than 25% of its rights and obligations under this Agreement to a third party unless:

22.1.1 the Service Provider has obtained the prior written consent of the Employer;

22.1.2 the third party is qualified to provide the Services; and

22.1.3 the Service Provider remains responsible for the performance of the Services in accordance with the provisions of this Agreement.

23. **GOVERNING LAW AND SUBMISSION TO JURISDICTION**

23.1 This Agreement is governed by, and all disputes, claims, controversies, or disagreements of whatever nature arising out of or in connection with this Agreement, including any question regarding its existence, validity, interpretation, termination or enforceability, shall be resolved in accordance with the laws of South Africa.

23.2 Subject to clause 21, the Parties hereby consent to the non-exclusive jurisdiction of the Gauteng Local Division, Johannesburg of the High Court of South Africa in respect of all matters and proceedings arising out of, pursuant to or in connection with this Agreement.

24. **WHOLE AGREEMENT, NO AMENDMENT**

24.1 No amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver, or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver, relaxation or suspension, signed by the Party granting such extension, waiver, relaxation or suspension). Any such extension, waiver, relaxation or suspension which is so given or made shall be construed strictly as relating only to the matter in respect whereof it was made or given.

24.2 No oral *pactum de non petendo* shall be of any force or effect.

24.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party

thereafter from exercising its rights strictly in accordance with this Agreement.

24.4 To the extent permissible under Applicable Law, no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

25. **SEVERABILITY**

Any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated *pro non scripto* and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

26. **STIPULATIO ALTERI**

No part of this Agreement shall constitute a *stipulatio alteri* in favour of any person who is not a Party to the Agreement unless the provision in question expressly provides that it does constitute a *stipulatio alteri*.

27. **EXECUTION IN COUNTERPARTS**

This Agreement may be executed in two counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement as at the date of signature of the Party that signs its counterpart last in time.

28. **COSTS**

Each Party will bear its own costs in relation to the drafting and finalisation of this Agreement (including but not limited to attorneys' fees, financial advisers' fees, expenses, etc.) and attendances incidental thereto.

SIGNED at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

For and on behalf of

**PIKITUP JOHANNESBURG (SOC) LIMITED**

\_\_\_\_\_

Signatory:

Capacity:

Who warrants his authority hereto

SIGNED at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

For and on behalf of the Service Provider

\_\_\_\_\_

Signatory:

Capacity:

Who warrants his/her authority hereto

**THE SERVICES**

**1. SCOPE OF WORK**

Pikitup requires the service is to ensure that it complies with Municipal Finance Management Act (MFMA), the Municipal Systems Act (MSA), Treasury Regulations, other relevant laws and regulations, King Code on Corporate Governance (King IV), Board of Directors and the Audit and Risk Committee directives.

The scope of work will be determined based on the approved annual internal audit plan and adhoc audit requests.

**2. DELIVERABLES**

The service provider shall conduct the provision of internal audit services on an as and when required basis for the period of 36 months for the following types of services in line with the approved internal audit plan and adhoc audit requests:

- a) Audit of Information and Communication Technology (ICT)
- b) Information security and cyber security
- c) Performance Management and Information Audits
- d) Audit of pre-determined objectives
- e) Financial Audits
- f) Compliance Audits
- g) Operational Audits
- h) Probity Audits

- i) Combined Assurance
- j) Enterprise Risk Management
- k) Business Continuity Management
- l) Forensic Audits and Investigation Related Services
- m) Assurance on Ethics
- n) Adhoc/special audits

### **3. PANEL REQUIREMENTS**

Service providers are required to submit proposals that demonstrate an understanding, proven track record, knowledge and experience in internal auditing.

### **4. AUDIT FIRM EXPERIENCE**

The service provider must have relevant experience in internal auditing for services listed on Deliverables section 2 above.

### **5. PROJECT PLAN**

A project plan outlining the processes map, activities, audit approach and how the methodology will meet stated deliverables (as indicated in section 2 above):

- Demonstrate by expanding on key deliverables, systematic project methodology aligned to relevant auditing standards and approach including final reporting phase.
- The plan should detail the key tasks to be performed, activities required and the milestones for each tasks to be undertaken. This must include a work programme.
- The team must consist of the following resources: Project manager and auditors aligned to the size and complexity of the project.
- The specific timeframes will be agreed upon with the appointed service providers based on the audit project undertaken when awarded.

### **6. ACTIVE PROFESSIONAL MEMBERSHIP AND / OR AFFILIATION**

The audit firm should consist of members affiliated with the following professional bodies:

- a) Institute of Internal auditors (IIA)
- b) Independent Regulatory Board of Auditors (IRBA)
- c) South African Institute of Chartered Accountants (SAICA)
- d) Information System Audit and Control Association (ISACA)

e) Association of Certified Fraud Examiners (ACFE)

## **7. SPECIAL CONDITIONS**

Pikitup is committed to uphold the highest standard of honesty, integrity and ethical conduct and has adopted a zero tolerance on fraud and corruption. A bidder of who commits an act of fraud will be subject investigation and possible termination. Where relevant Pikitup may pursue full recovery of all losses resulting from such act of fraud.

## ANNEXURE B

### PERFORMANCE STANDARDS

The Service Provider must within 90 days of the receipt of the purchase order review, appraisal of, and report to the Employer's Representative on the following:

1. Systems established by management to ensure compliance with policies, plans, procedures, laws and regulations which could have a significant impact on operations;
2. Operations or programs to ascertain whether results are consistent with established objectives and goals and whether operations or programs are being carried out as planned;
3. Reliability and integrity of financial and operating information and the means used to identify, measure, classify and report such information;
4. Economy and efficiency with which company's resources are employed and identify opportunities to improve operating performance;
5. Means of safeguarding assets and, as appropriate, verifying the existence of assets;
6. Risks are appropriately identified and managed; and
7. Quality and continuous improvement are fostered in the organisation's control process; Internal Audit provides a written assessment on the effectiveness of the company's system of internal controls, financial controls and risk management to the Audit and Risk Committee and the Board on quarterly and annual basis in line with relevant standards and norms.

**PRICING SCHEDULE**

Your company will be required to provide quotation together with other service providers on the panel for that specific audit requirement.