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**TERMS & CONDITIONS FOR SUPPLY OF FUEL MANAGEMENT PRODUCTS &  
SERVICES**

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*Dated*

Friday, 30 June 2023

*Entered into between:*

**GILBARCO AFS (PROPRIETARY) LIMITED**

**T/A GILBARCO MEA**

(Reg. No. 1995/05540/07) of 1 Osborne Lane, Bedfordview, South Africa

**“Gilbarco AFS”**

*and*

**[●]**

(Reg. No. or I.D. No.: [●]) of [●]

**“Customer”**

## 1. INTERPRETATION

### 1.1 Definitions

In this Agreement, the following words or expressions bear the respective assigned meaning, unless otherwise stipulated, and cognate words or expressions bear the respective assigned meaning:

**Agreement** means this Terms & Conditions for Sale of Fuel Management Products, including all schedules attached hereto;

**Business Day** means a period of twenty four hours and is termed as either Monday, Tuesday, Wednesday, Thursday, or Friday, as the context might dictate, but excludes a Saturday, a Sunday, and a Public Holiday, in the Republic of South Africa;

**Calendar Month** means the period of a month computed by reference to any two corresponding dates in two different months of a year or, the first falling in one year and the second in a subsequent year to the first, ending on the day preceding the corresponding calendar-day;

**Customer** means the client as referenced in the Offer and who purchases the Products and/or procures the Services from Gilbarco AFS, [in terms of this Agreement];

**Commencement Date** means, for the purposes of this Agreement, Signature Date and, for the purposes of a Contract, the date on which an Offer is accepted;

**Contract** means any contract arising out of the acceptance of any Offer, whether that contract arises out of an Offer accepted by the Customer, or a counter-offer made by the Customer and accepted by Gilbarco AFS, and includes the provisions of this

Agreement and any specific provisions agreed to between the Parties;

**Equipment** means the Products and ancillary items pertaining to a Site and fuel-consuming units that are used in the process of managing fuel, and includes tanks, bowsers, pumps, dispensers, valves, PLLCs, site controllers, filter banks, the Fuel-O-Mat and VeederRoot Products, and which Gilbarco AFS has agreed to maintain and which forms the subject matter of a maintenance agreement;

**Electronic Funds Transfer** means a transfer of value, from one bank account to another bank account, where one or more steps in the transfer process are completed electronically;

**Gilbarco AFS** means Gilbarco AFS (Proprietary) Limited T/A Gilbarco MEA (Reg. No.: 1995/05540/07), a private company duly registered in terms of South African law with its business address being at 1 Osborne Lane, Bedfordview, South Africa and includes its subsidiaries and/or duly appointed and authorised contractors;

**Loss or Losses** means any direct loss of whatever description, including, but not limited to, damages, dues, penalties, fines, costs, reasonable amounts paid in settlement, liabilities (including contingent liabilities), compensation (including compensation paid or payable to any employee), expenses and fees (including reasonable fees and expenses of attorneys, counsel, accountants, consultants and experts arising out of actions, applications, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, interdicts, judgements, orders (including for specific performance), decrees, directives, rulings, liens and obligations);

**Offer** means any written proposal, quotation, bid, or tender by Gilbarco AFS to the Customer for the provision of the Products and/or Services or a written order issued by a Customer to Gilbarco AFS;

**Offer Acceptance Date** shall bear the meaning ascribed thereto in clause 3(a);

**Order Acceptance Date** shall bear the meaning ascribed thereto in clause 3(a)

**Parties** means the Gilbarco AFS and the Customer;

**Products** means the Gilbarco VeederRoot, Orpak, and ancillary products offered by Gilbarco AFS, which form the subject matter of a Contract and as further described in that Offer;

**Site** means premises on land zoned and approved by a competent authority for the retailing of prescribed petroleum products;

**Services** means the repair, maintenance and technical support, on-site and/or remotely delivered, fuel management, and bureau reporting services provided by Gilbarco AFS in respect of the Products and/or Equipment and in respect of which a separate service agreement will form part of a Contract;

**Signature Date** means the date on which the Customer or his, her, or its representative append his or her signature to this Agreement or an Offer, as the case may be, or the date on which Gilbarco AFS or its duly authorised representative append his or her signature to this Agreement or an Offer, as the case may be, whichever is subsequent to the other in time.

## 2. Construction

- (a) In this Agreement, a reference to any Party shall be construed so as to include its successors in title, permitted assigns, and permitted transferees.
- (b) Unless the context clearly indicates a contrary intention, any expression which denotes:
  - (i) any sex includes the other;
  - (ii) a person includes any individual, entity, firm, company, corporation, government, state, or agency of the state or any association, trust, joint venture, consortium or partnership (whether or not having a separate legal personality); and
- (c) the singular includes the plural and *vice versa*.
- (d) Unless the context clearly indicates a contrary intention any reference to:
  - (i) any statute, regulation, or other legislation shall be a reference to that statute, regulation, or other legislation as at the Signature Date and as amended or substituted from time to time;
  - (ii) any agreement, deed, bond or other document shall include a reference to all annexures, schedules and other attachments thereto and shall be a

- reference to that agreement, deed, bond or other document (including such annexures, schedules and other attachments thereto) as amended, novated and/or replaced from time to time;
- (iii) a time of day, is a reference to time in Johannesburg, South Africa (GMT+2); and
- (iv) days (other than a reference to Business Days) or years shall be a reference to calendar days or years, as the case may be.
- (e) If any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision of this Agreement.
- (f) Where any term is defined in a particular Clause, other than this Clause 1, that term shall bear the meaning assigned to it in that Clause wherever it is used in this Agreement.
- (g) The use of the word including followed by a specific example shall not be construed as limiting the meaning of the general wording preceding them and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific examples.

- (h) All amounts referred to in this Agreement are exclusive of Value-Added Tax levied in terms of the Value-Added Tax Act, No. 89 of 1991, and the Customer shall be liable for all Value-Added Tax.
- (i) A certificate signed by any manager or director of Gilbarco AFS whose capacity and/or authority need not be proved, shall be *prima facie* proof of the matter of evidence stated therein in regard to any amount owing by the Customer.

### 3. OFFERS & CONTRACTS

- (a) A binding Contract will come into existence when:
- (i) the Customer provides Gilbarco AFS with a written notice of its acceptance of any Offer, within ten Business Days of receipt of the Offer ("**Offer Acceptance Date**"), or
- (ii) Gilbarco AFS accepts in writing any order for the Products and/or Services ("**Customer Order**") placed by a Customer, within ten Business Days of receipt of such Customer Order ("**Order Acceptance Date**").
- (b) Offers and/or Customer Orders (as the case may be) may unless otherwise stated therein, only be accepted in accordance with the provisions of this Clause 3.

- (c) The Customer Order, once accepted by Gilbarco AFS, or acceptance of an Offer by the Customer, shall be irrevocable.
- (d) Gilbarco AFS may, within its sole discretion, withdraw and/or amend the relevant Offer if an Offer is not accepted within the period prescribed in Clause 3(a)(i).
- (e) The Customer acknowledges that it is aware that Gilbarco AFS' salespersons have no authority to vary these terms and conditions of sale and Gilbarco AFS assumes no liability and shall not be bound by any statements, warranties or representations made by such sales persons save as expressly stated in writing and signed by a manager or director of Gilbarco AFS, duly authorised.

#### 4. CONSIDERATION

- (a) In return for the Products and Services provided by Gilbarco AFS, Gilbarco AFS will invoice the Customer and provide supporting documentation for the Products and Services installed and/or rendered.
- (b) Invoices presented to the Customer shall become payable upon the receipt of the invoice by the customer.
- (c) Unless otherwise agreed between the Parties, the Customer shall make payment of an amount equal to fifty percent of the total amount for Products stipulated in the relevant accepted Offer and/or Customer Order (as the case

may be) for the Products ("**Purchase Price**") to Gilbarco AFS, against receipt of a valid tax invoice from Gilbarco AFS ("**Deposit Invoice**") into the bank account provided for in clause 4(h), or as otherwise specified in the Deposit Invoice.

- (d) Gilbarco AFS shall invoice the Customer ("**Final Invoice**") for Purchase Price less the Upfront Payment ("**Delta Purchase Price**") within 5 Business Days of delivery of the Products to the Customer's premises as specified in the Offer. The Customer shall make payment of the Delta Purchase Price to Gilbarco AFS within 2 Business Days of receipt of invoice, or within 20 Business Days of the Statement reflecting the Final Invoice if a Credit Facility is agreed to by Gilbarco AFS in terms of clause 10, into the bank account provided for in clause 4(h), or as otherwise specified in the Final Invoice.

- (e) Notwithstanding clause 4(d), all risks including the risk of destruction or loss of the Products shall pass to the Customer on delivery. The Customer shall be obliged to take whatever steps may be necessary to prevent the destruction or loss of the goods, including insuring the goods against such loss or destruction. If the goods or any part thereof are lost, stolen or damaged, irrespective of the cause, the Customer shall be responsible for the cost thereof.

- (f) Ownership in the Products shall pass from Gilbarco AFS to the Customer on payment of the Delta Purchase Price as provided for in clause 4(d).
- (g) Fees for Services shall be invoiced by Gilbarco AFS to the Customer on the last Business Day of the Calendar Month during which the Services are rendered, which fees shall become due and payable by the Customer to Gilbarco AFS 20 Business Days from the date of the relevant invoice has been delivered to the Customer.
- (h) The consideration for the Products and Services shall be paid to Gilbarco AFS in full and without deduction, withholding or set-off by way of electronic funds transfer or Direct Deposit to the following bank account of Gilbarco AFS:

<b>Bank:</b>	Citibank
<b>Branch:</b>	Johannesburg
<b>Branch code:</b>	350005
<b>Acc. type:</b>	Cheque
<b>Acc. no.:</b>	0201667003

or as designated by Gilbarco AFS in writing in an Offer, Deposit Invoice or Final Invoice.

- (i) All fees, charges and other amounts referred to in these standard terms and conditions are exclusive of Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and the

Customer shall be liable for all Value-Added Tax.

## 5. INSTALLATION

- (a) The provisions of this clause 5 shall only be applicable in the circumstances where the Customer requires Gilbarco AFS to install a Product. Installation shall be expressly and specifically agreed in writing between the Parties by inclusion thereof in an Offer.
- (b) Gilbarco AFS may, at its sole discretion, use any contractor or sub-contractor of its choice to effect the installation of the Product, on written notice to the Customer.
- (c) The Customer shall, at no cost to Gilbarco AFS, provide on-site assistance to Gilbarco AFS, its employees, contractors, or sub-contractors as may reasonably be required for the performance and execution of the installation, including, the provision of water, electric power, lighting, toilet facilities, and protective cover from adverse weather conditions, such as rain and hail.
- (d) Gilbarco AFS will use its reasonable commercial endeavours to ensure that the installation of the Products is completed as soon as is reasonably possible after the date on which installation commences.
- (e) Notwithstanding the foregoing, the Parties may agree in writing an expedited time for installation only where time is of the essence and such

- date for completion of installation shall be incorporated into the Contract.
- (f) Notwithstanding anything to the contrary herein contained, no responsibility will be accepted by Gilbarco AFS for delays due to *force majeure* or breakdown of vehicle, machines, site and labour difficulties, or any other causes over which Gilbarco AFS has no control.
- (g) The Customer shall inform Gilbarco AFS of any defects (whether latent or patent) or errors resulting or arising from the installation of installed Products by way of written notice, to be received by Gilbarco AFS within 5 Business Days after installation of the Products.
- (h) Should the Customer fail to notify Gilbarco AFS of any defect or error within the specified 5 Business Days period, the Product shall be deemed to have been accepted by it and to have waived any claim in respect of any defect (whether latent or patent) or error in respect of the installation thereof.
- (i) In the event that the Customer is unable to accept or should the Customer request Gilbarco AFS suspend or delay the installation of the Products, Gilbarco AFS reserves the right to claim any additional costs from the Customer.
- (j) For the purposes of determining the successful installation and commissioning of the Products on site, this shall be considered to have occurred as follows in relation to each Product to be supplied by the Company:
- (i) Wetstock / ATG: Upon the first data report (irrespective of the accuracy thereof) from the wetstock management system being delivered to the relevant manager of the Customer.
- (ii) Home Base Automation Technology and Vehicle Tagging: Upon the successful transaction of a vehicle where the vehicle is identified and authorized for fuelling by the system.
- (k) Without prejudice to any other rights of Gilbarco AFS under or arising from this Agreement, the Customer hereby indemnifies and holds Gilbarco AFS harmless from and against any and all Losses of any nature whatsoever and howsoever occurred, incurred or suffered by the Customer resulting directly or indirectly from the use by the Customer or any other third party of the Products, including the failure thereof to operate as intended, or in connection with the installation and maintenance of the Products, or as a result of the improper or fraudulent use of the Products by the Customer or any third party or Losses resulting from the Services by the Customer or any third party.

**6. ON-SITE FUEL MANAGEMENT SERVICES**

(a) Gilbarco AFS may provide on-site fuel management and technical Service to the Customer on a vendor management basis or a consignment basis, as the case may be, on the condition that:

- (i) the fuel management equipment and architectures are implemented to the satisfaction of Gilbarco AFS; and
- (ii) a separate agreement is entered into forming part of the Contract.

(b) In the event that Gilbarco AFS agrees to provide on-site fuel management and technical Services on a vendor management or consignment basis, Gilbarco AFS will be responsible for the accounting of fuel stock on the various Sites and be responsible for the following:

- (i) Order processing (which includes the billing of the Customer on-site for fuel product consumed and the replenishment of product to maintain agreed storage levels per product), invoicing, replenishment and receipts of product. Invoicing of product to the Customer will be based on consumption through a dip of a tank or throughput through a trade meter periodically as agreed

with the consignment Customer;

- (ii) Reconciliation of fuel products that are dispensed through the trade meters with the physical stock in the tanks;
- (iii) Accounting for stock losses within industry standards; namely, diesel 0.5%, petrol 0,5% and lubricants 0.6% on tank variances;
- (iv) Reporting on agreed key performance indicators of the fuel management function as agreed to in writing between Gilbarco AFS and the Customer;
- (v) Implementing policies, procedures, business processes, and controls to ensure that the fuel management system and data regarding the fuel stock and products are complete, accurate, and valid for each reporting period;
- (vi) Provide properly trained, skilled, and competent resources to be placed on Site to perform the on-site or remote fuel management function; and
- (vii) Adhere to the Customer's health safety and security policies and comply with contractor duties.



(c) It is recorded, for the sake of clarity, that the Customer shall, subject to Clause 4(f), at all times own and be at risk for fuel products stored on-site, the Products, and/or Equipment. The Customer shall be responsible for and shall insure against potential Losses which shall include but not be limited to:

- (i) fuel product being stolen whether from fuel delivery trucks, fuel storage bays or any other point;
- (ii) fuel product being lost from storage and/or dispensing equipment failure;
- (iii) fuel product being lost due to temperature variances and adverse weather conditions;
- (iv) fuel product being lost due to the use of systems overrides, the system being bypassed or electrical downtime;
- (v) Products and/or equipment being damaged, destroyed or stolen; and
- (vi) environmental failure, damage, pollution or other similar losses.

(d) Gilbarco AFS may be responsible for losses and gains, for fuel products outside of the agreed upon tolerance levels per product in certain instances, the subject matter which shall be agreed upon in a separate Agreement.

(e) The quantum of losses that Gilbarco AFS will carry in terms of the above shall at all times be limited to an amount that does not exceed the Company's monthly margin on the on-site mobile fuel management Services and the parties agree that after the tolerance levels are agreed upon, Gilbarco AFS shall be afforded the opportunity to take out the relevant insurance to cover this liability and the cost of such insurance shall be added to the service fee.

#### 7. **MOBILE MAINTENANCE AND TECHNICAL SERVICES**

(a) Gilbarco AFS may provide certain maintenance and technical services to the Customer on a managed maintenance basis or a maintenance management basis as, the case may be, on the condition that:

- (i) the fuel management Equipment and architectures are implemented to the satisfaction of Gilbarco AFS; and
- (ii) a separate agreement is entered into forming part of the Contract.

(b) In the event that Gilbarco AFS agrees to provide maintenance and technical services, the Customer and Gilbarco AFS shall agree on the Products to be maintained and Gilbarco AFS will be responsible to maintain the Products at the various Sites and be responsible for the following:

- (i) to nominate a service manager and be responsible to maintain all the Equipment in a professional and workman-like manner and in accordance with industry standards;
  - (ii) provide the services of a qualified technician or technicians that will be available on-site and/or on-call and who will perform the Product maintenance services at Customer Sites;
  - (iii) provide technicians that will be available between 07:00 to 16:00 on a Business Day and on 'stand by' and available for call-outs between 07:00 to 16:00 on a Saturday and Sunday, but not on a public holiday;
  - (iv) provide technicians that will perform preventative maintenance services by inspecting Equipment and high-risk components of the Equipment on a regular basis and provide quotations to the Customer for any repairs deemed necessary.
- (c) The Customer and Gilbarco AFS shall agree on the response times required to effect repair and maintenance Services.
- (d) Any Equipment, which is not new on the Commencement Date of the Contract, shall first be subject to physical inspection by Gilbarco AFS to determine its condition and operation prior to its inclusion in the maintenance and technical services to be provided by Gilbarco AFS:
    - (i) Should any Equipment so inspected be deemed by Gilbarco AFS to require repairs or adjustment of any nature, Gilbarco AFS must advise the Customer of the estimated cost of such repair and/or adjustment, which cost shall be for the Customer's account.
    - (ii) Upon being so advised, the Customer may agree, in writing, to such repair and/or adjustment being conducted by Gilbarco AFS in the manner and at the costs as advised.
    - (iii) If the Customer does not agree, as contemplated in Clause 7(d)(ii), to have the item of Equipment restored to the standard required by Gilbarco AFS, then such an item of Equipment shall be excluded from the maintenance services.
  - (e) The Customer shall not permit any modification or attachment to the Equipment without the prior, specific written consent of Gilbarco AFS and the

Customer agrees not to permit any person other than Gilbarco AFS to modify, maintain, service, calibrate, or repair any item of Equipment or add any attachments thereto without the prior written consent of Gilbarco AFS.

## 8. BUREAU REPORTING SERVICES

(a) Gilbarco AFS may provide certain bureau reporting services and administration relating to the fuel management function to Customers on the condition that the fuel management Equipment and architectures are implemented to the satisfaction of Gilbarco AFS.

(b) In the event that Gilbarco AFS agrees to provide bureau reporting services, the Customer and Gilbarco AFS shall enter into a separate agreement detailing the specific reporting and processing requirements, and Gilbarco AFS may be responsible for the following:

(i) to gather from each refuelling point and tank farm via electronic means all fuel transaction data on a daily basis with the understanding that the preferred method of communication is a cellular modem, allowing for the remote connection to each Site.

(ii) reconcile the fuel receipts and fuel issues with the physical stock

in the tanks on a daily basis and report on any variances;

(iii) to provide daily fuel consumption reports for fuel consuming units;

(iv) fuel data exports received daily and will archive and perform backups accordingly with the understanding that the fuel data is then stored in Gilbarco AFS's centralized database for future reporting and analysis; and

(v) regular communications and liaison with the Customers officials responsible for the fuel management function.

(c) Gilbarco AFS and the Customer shall agree on the:

(i) exception reports required by the Customer's operations and any financial billing files required; and

(ii) key performance indicators of the fuel management function that needs to be monitored and reported on these key performance indicators on a regular basis.

(d) In the event of the Site Equipment failing to operate for whatever reason and in circumstances where the manual override is used to fuel

vehicles, the Customer shall institute the required manual procedures to capture all Site related fuel transactions, the details of which shall include the amount received or dispensed and which vehicle the fuel was dispensed to, and forward the same information to Gilbarco AFS Business Intelligence Division for capturing, failing which the integrity of the reports cannot be upheld.

## 9. LIMITATIONS

- (a) The Products are purchased voetstoots and as is, and Gilbarco AFS makes no warranties or representations in respect of the Products, save for those contained in Annexure A hereto. The parties specifically agree that no implied warranties of whatsoever nature, including the warranty *spondet peritiam artis*, shall apply in respect of the Products.
- (b) In addition to any other specific exclusions of liability contained herein and unless otherwise expressly stated herein, the parties agree that Gilbarco AFS shall not be liable for any loss of profit or any other loss or damage, direct or indirect, consequential or otherwise, sustained by the Customer or its officers, employees, customers, agents or affiliates arising from any cause whatsoever, including gross negligence and wilful or fraudulent misconduct, and the Customer indemnifies

Gilbarco AFS in respect of any such liability.

## 10. TRADE CREDIT AND DEFAULT

- (a) Gilbarco AFS is under no obligation to provide trade credit to the Customer.
- (b) In the event that the Customer requires a credit facility with payment terms, the Customer shall apply for such credit to Gilbarco AFS and complete the necessary documents.
- (c) If the Customer is considered creditworthy by Gilbarco AFS, Gilbarco AFS shall provide a credit facility to the Customer at the commencement of the agreement.
- (d) It is the Customer's responsibility to manage the credit limit supplied to it by Gilbarco AFS and any delay or failure to process the Gilbarco AFS Invoices for payment will reflect on the Customer credit facility.
- (e) It is recorded for the sake of clarity that the Customers internal payment processes and procedures as well as having invoices and supporting documents loaded on electronic payment platforms, shall under no circumstances detract or relieve the Customer from the fact that the Invoices are due and payable and will reflect on the Customers credit facility.
- (f) In the event that the Customer fails to make payment upon the due date of any amount due and owing, or commits any other breach of the terms of a Contract, Gilbarco AFS shall

be entitled, at its option, without prejudice to any other right which it may have, to:

- (i) terminate such Contract on 5 Business Days' notice, and/or
  - (ii) declare all amounts owing by the Customer to be immediately due and payable; and/or
  - (iii) suspend any further supply of Products and/or Services and the carrying out of any of its then uncompleted obligations until payment is made; or
  - (iv) suspend the provision of the credit facility and perform work only on a cash basis.
- (g) No relaxation which Gilbarco may have permitted on any occasion in regard to the carrying out of the Customer's obligations shall prejudice or be regarded as a waiver of Gilbarco AFS's rights to enforce those obligations on any subsequent occasion.

## 11. TERMINATION

- (a) If the Customer during the subsistence of this Agreement:
  - (i) compromises or attempts to compromise with its creditors;
  - (ii) is liquidated whether provisionally or finally;
  - (iii) is placed under business rescue,

- (iv) ceases operation of its primary business;
- (v) commits any act or omission which would, in the case of an individual, be an act of insolvency in terms of the Insolvency Act, No. 24 of 1936;
- (vi) disposes a material portion of its undertaking or assets; or
- (vii) undergoes a change in control or a material change in the shareholding of the Customer,

then Gilbarco AFS shall be entitled, but not obliged, to terminate this Agreement on 5 Business Days' written notice to the Customer, in which event such termination shall be without any liability and prejudice to any rights that Gilbarco AFS may have against the Customer.

- (b) In the event that Gilbarco AFS elects to terminate a Contract and the Products have not been fully paid for, the Customer shall immediately upon such termination return the Products to Gilbarco AFS at the Customer's expense. Should the Customer fail to return the Products to Gilbarco AFS within ten Business Days, the full amounts owed in respect of the relevant Products shall become immediately due owing and payable by the Customer to Gilbarco AFS.

## 12. FORCE MAJEURE

- (a) Performance of the obligations of either party in terms of this Agreement shall be excused for so long and to the extent that it is unable to do so because of any cause beyond its control (which causes shall include, without limitation, an act of God or State or war (whether declared or not) or sabotage, fire, drought, flood, epidemic, civil commotion, riot, road conditions), provided that:
  - (i) shall, when that party knows that such inability is likely to occur and when it occurs, immediately give notice to the other party (which shall be confirmed in writing as soon thereafter as is possible) detailing the circumstances on which it relies and an estimate of the likely duration of such inability; and
  - (ii) shall, when that party knows that such inability is likely to terminate and when it terminates, immediately give notice thereof to the other party, which shall be confirmed in writing as soon thereafter as is possible;
- (b) the party claiming such inability:
  - (i) shall, when that party knows that such inability is likely to occur and when it occurs, immediately give notice to the other party (which shall be confirmed in writing as soon thereafter as is possible) detailing the circumstances on which it relies and an estimate of the likely duration of such inability; and
  - (ii) shall, when that party knows that such inability is likely to terminate and when it terminates, immediately give notice thereof to the other party, which shall be confirmed in writing as soon thereafter as is possible;
- (c) the parties hereto shall cooperate and collaborate and use all reasonable efforts to overcome, or failing which,

minimize the effect of such inability; and

- (d) neither party hereto shall be obliged to subsequently perform any obligation hereunder not performed as a consequence of and during such inability.

## 13. CESSATION, DELEGATION, ASSIGNMENT

- (a) Only Gilbarco AFS, and not the Customer, may, without notice:
  - (i) cede any or all of its rights in terms of any Contract to any person of its choice;
  - (ii) delegate any or all of its obligations in terms of any Contract to any person of its choice;
  - (iii) assign, any or all of its rights and any or all of its obligations in terms of any Contract to any person of its choice.
- (b) The Customer hereby provides Gilbarco AFS with the requisite consent to delegate or effect assignment as contemplated in Clause 13(a)(ii) and Clause 13(a)(iii), respectively.

## 14. CONFIDENTIALITY

- (a) The existence and content of this Agreement and any Offer or counter Offer, whether accepted or not, are confidential.
- (b) The existence and content of any communications and negotiations pertaining to this Agreement and any Offer or

counter Offer, whether accepted or not, are confidential.

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Bedfordview  
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- (c) The Parties shall treat as confidential the existence and nature and all discussions and negotiations relating to the subject matter of a Contact, it being agreed and undertaken that a Contract, its existence, and its provisions are not to be disclosed, directly, or indirectly to any person without the consent of the other Party, other than in terms of any order of a Court of competent jurisdiction which shall have directed it, or as may otherwise be required by law.

E-mail:

[vicus.luyt@gilbarco.com](mailto:vicus.luyt@gilbarco.com) ]

Attention: Vicus Luyt

- (ii) **The Customer:**

Physical:



E-mail:



Attention:



- (d) Each party shall take or cause to be taken such reasonable precautions as may be necessary to prevent the disclosure of any information made available or obtained from the other which is not a matter of public knowledge or lawfully available from any other legitimate source.

- (b) Any notice given or payment made by any Party to the other which is delivered by hand between the hours of 09:00 and 17:00 or any Business Day to the addressee's physical *Domicilium* for the time being shall be deemed to have been received by the addressee at the time of delivery.

- (c) Any notice sent by one Party to the another's (addressee's) e-mail must be regarded as having been received by the addressee when the complete data message enters an information system designated or used for that purpose by the addressee and is capable of being retrieved and processed by the addressee.

## 15. **DOMICILIUM CITANDI ET EXECUTANDI**

- (a) Each of the Parties chooses as its *domicilium citandi et executandi* for all purposes relating to this Agreement and any Contract, including the giving of any notice, the payment of any sum, the serving of any process, as follows:

- (i) **Gilbarco AFS:**

Physical:

## 16. **GOVERNING LAW & ARBITRATION**

- (a) This Agreement and any disputes or claims arising out of or in connection with the

subject matter or formation (including non-contractual disputes or claims) of this Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

the plaintiff shall be entitled to apply to such court for a stay of such proceedings pending resolution of the dispute by means of arbitration as envisaged in this clause 16.

- (b) Any dispute arising out of or in connection with this Agreement or its performance or the breach hereof, including the validity, scope, meaning, construction, interpretation or application hereof, shall, to the extent possible, be settled amicably by negotiation and discussion between the parties.
- (c) All unresolved disputes arising in connection with this Agreement shall be finally settled by arbitration, or another mutually agreed location, in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the said Foundation.
- (d) Any arbitration award may be made an order of Court and enforced against the defaulting party.
- (e) The provisions of this clause 16 shall not prevent either party from seeking urgent relief from any competent court.
- (f) In the event of either party (the “plaintiff”) instituting legal collection proceedings out of a court of law against the other party (the “defendant”) and the defendant entering an appearance to defend such proceedings and/or opposing a summary judgment application,

## **17. COSTS**

The Customer shall pay and reimburse to Gilbarco AFS on written demand, all costs, fees and expenses, (including legal fees on the attorney and own client scale, fees and expenses of advisers and other out-of-pocket expenses and any VAT or other similar tax thereon) incurred by Gilbarco AFS in connection with the preservation or enforcement (unless and to the extent of a contrary costs order made by any court of competent jurisdiction) of any of the Customer's rights under this Agreement (and documents or matters referred to herein).

## **18. POPIA**

The Parties agree that they may obtain personal information during the duration of the Agreement for the fulfilment of the rights and obligations contained herein and may further only process such information for the specific purposes of complying with obligations in terms of this Agreement and as governed by the Protection of Personal Information Act, No. 4 of 2013.

## **19. GENERAL**

### **19.1 Variations to be in Writing**

No addition to or variation, deletion, or agreed cancellation of all or any Clauses or provisions of this Agreement, an Offer, or a Contract will be of any force or effect unless such variation, deletion, or agreed cancellation is reduced in writing and signed by both Parties.



## 19.2 No Indulgences

No latitude, extension of time, or other indulgences which may be given or allowed by either Party to the other in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of either Party arising from this Agreement and no single or partial exercise of any right by either Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term of this Agreement. Failure or delay on the part of either Party in exercising any right, power, or privilege under this Agreement will not constitute or be deemed to be 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.

## 19.3 Whole Agreement

This Agreement, together with an accepted Offer constituting a Contract, represents the whole of the agreement between the Parties relating to the relevant Contract and, save to the extent otherwise provided herein or in an accepted Offer, no undertaking, representation, term, or condition relating to the subject matter of this Agreement and an accepted Offer not expressly incorporated in this Agreement or an accepted Offer, shall be binding on either of the Parties.

## 19.4 Severability

- (a) All provisions and the various Clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement, which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- (b) In the event of any provision(s) of this Agreement and/or the relevant accepted Offer contravening or being inconsistent with any provision of the Petroleum Products Act, then this Agreement and/or the relevant accepted Offer must be reviewed by the Parties and an alternative agreement must be entered into to achieve the same result as this Agreement and/or the relevant accepted Offer, but in a manner that is compliant with the Petroleum Products Act.

## **19.5 No Waiver or Suspension of Rights**

No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement and relevant accepted Offer shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension, or postponement will be effective only in the specific instance and for the purpose given.

## Schedule A

### WARRANTIES

#### 1. GENERAL

- (a) Gilbarco AFS warrants that the Equipment is fit for the purposes intended.
- (b) Gilbarco AFS undertakes to replace or repair Equipment found to be defective in materials or workmanship during the Warranty Period, subject to the following:
  - (i) Labour and travel costs incurred by Gilbarco AFS while performing warranty services/repairs to Equipment will not be charged during the first 3 months of the Warranty Period, subject to the general exclusions listed below.
  - (ii) Labour and travel costs incurred by Gilbarco AFS while performing warranty services/repairs to Equipment will be charged at the prevailing general Gilbarco AFS price list after the first 3 months of the Warranty Period, subject to the general exclusions listed below.
  - (iii) Warranty service/repairs must be performed by the nearest Authorised Service Contractor qualified to perform service/repair on the defective equipment.
  - (iv) Gilbarco AFS must supply new or rebuilt parts, subject to the testing of the removed part, at no charge, in order to replace parts that are found to be defective within the Warranty Period.
  - (v) All new Equipment installations must be registered with the Gilbarco AFS Service Desk within 24 hours of installation/commissioning to receive full warranty benefits, otherwise, the Warranty Period commences at the date of the original invoice.
  - (vi) Gilbarco AFS' liability shall not exceed the total aggregate purchase price paid by the customer for the equipment.
- (c) For the purposes of Schedule A, Warranty Period means the period defined in clause 2 below.
- (d) For the purposes of Schedule A, Defect means Products that are not performing to Gilbarco AFS's specification.

## 2. WARRANTY TERMS

<b>GROUP</b>	PUMPS AND DISPENSERS
<b>SERIES/RANGE/MODELS</b>	ENDEAVOUR, LEGACY, ADVANTAGE, ENCORE, FRONTIER
<b>WARRANTY TERMS</b>	- Warranted against Defects in material and workmanship for a period of 12 months from the date of the original Gilbarco AFS invoice.
<b>SPECIFIC CONDITIONS</b>	- Should the installation not be completed by Gilbarco AFS or its appointed contractor or sub-contractor, then Gilbarco AFS must perform the relevant commissioning of the units.
<b>SPECIFIC EXCLUSIONS</b>	- This warranty excludes hose breakaways, nozzles, hoses and fittings, nozzle-end swivels, graphics and decal materials specified by the customer, fuel filters, belt adjustments, meter calibrations, fluorescent lamps, vapour recovery testing, customer-specified items manufactured by others, and customer-requested reprogramming of equipment.

<b>GROUP</b>	AUTOMATED TANK GAUGING SYSTEMS
<b>SERIES/RANGE/MODELS</b>	TLS2, TLS350+, TLS350R, TLS450+, TLS4, TLS4B, TLS-XB, MAG-PLUS PROBE, MAG-Flex PROBE, TLS FLOATS, SUMP SENSORS, PAN SENSORS, PLLD SWIFTCHECK VALVES, FAFNIR OVERFILL SENSORS, TLS WIRELESS, DL360
<b>WARRANTY TERMS</b>	- Warranted against defects in material and workmanship for a period of 12 months from the date of the original Gilbarco AFS invoice.
<b>SPECIFIC CONDITIONS</b>	- Should the installation not be completed by Gilbarco AFS or its appointed contractor or sub-contractor, then Gilbarco AFS must perform the relevant commissioning of the units.

<b>GROUP</b>	AUTOMATION EQUIPMENT
<b>SERIES/RANGE/MODELS</b>	DOMS PSS5000, DOM HIM MODULES, ORPAK ORTR, ORPAK ORPT, ORPAK ORIC, 8 PORT COMMVERTER, ENHANCE FS, ENHANCE MB, EMR3, EMR4, ORPAK MWGT, ORPAK NANO READER, ORPAK WIGGINS NOZZLE READER, NOZZLE PROTECTOR, MAESTRO EVO, INTEGRATOR COMPACT
<b>WARRANTY TERMS</b>	- Warranted against Defects in material and workmanship for a period of 12 months from the date of the original Gilbarco AFS invoice.
<b>SPECIFIC CONDITIONS</b>	- Should the installation be done by any other party, then Gilbarco AFS must perform the relevant commissioning of the units.
<b>SPECIFIC EXCLUSIONS</b>	- This warranty excludes batteries in the nozzle readers as these are seen as consumables as well as nozzle protectors. Any nozzle reader not equipped with a nozzle reader protector will hold a reduced 3 month warranty from the date of the original Gilbarco AFS invoice. - Some of these excluded items may be warranted by their manufacturer, and warranty claims in connection with these items should be presented directly to the manufacturer concerned.

<b>GROUP</b>	VEHICLE EQUIPMENT
<b>SERIES/RANGE/MODELS</b>	ORPAK DATAPASS, ORPAK NANOPASS, ORPAK FUELOPASS, ORPAK VIU, ORPAK COIL, ORPAK VIUCHIP, ACCUGPS, ACCUTRIP+, TELETRAC QUBE, TELETRAC MNAV, TELETRAC DRIVER POD, TELETRAC NAVCAN, TELETRAC VPOD, TELETRAC QTANIUM350, TELETRAC QTANIUM100, AUTOWATCH BREATHALOK
<b>WARRANTY TERMS</b>	- For all items not listed under specific conditions below, warranted against Defects in material and workmanship for a period of 12 months from the date of the original Gilbarco AFS invoice.
<b>SPECIFIC CONDITIONS</b>	- For these specific items; ORPAK NANOPASS, ORPAK FUELOPASS, ORPAK VIU, ORPAK COIL, ORPAK VIUCHIP, TELETRAC DRIVER POD, AUTOWATCH BREATHALOK warranted against Defects in material and workmanship for a period of 3 months from the date of the original Gilbarco AFS invoice. - Should the installation be done by any other party, then Gilbarco AFS must perform the relevant commissioning of the units.
<b>SPECIFIC EXCLUSIONS</b>	- Datapass, GPS Sender, Accutrip+ or VIU: these devices are warranted against Defects in material and workmanship for a period of 12 months from the date of the original Gilbarco AFS invoice. - FuelOpass, NanoPass or Antenna Coil: these devices are warranted against Defects in material and workmanship for a period of 3 months from the date of the original Gilbarco AFS invoice.

<b>GROUP</b>	BUY-OUT EQUIPMENT
<b>SERIES/RANGE/MODELS</b>	FLOW METERS, SOLENOID VALVES, ACTUATORS, RED LION, DIESEL SAVERS
<b>WARRANTY TERMS</b>	Not warranted in any manner whatsoever by Gilbarco AFS.
<b>SPECIFIC CONDITIONS</b>	Should the installation be done by any other party, then Gilbarco AFS must perform the relevant commissioning of the units.

### 3. GENERAL EXCLUSIONS ON ALL EQUIPMENT

- (a) Problems caused by a faulty installation by non-Gilbarco AFS accredited contractors are not covered by this Schedule.
- (b) This warranty applies only if the equipment has been installed and used in accordance with the prescribed manner and accepted industry norms and standards.
- (c) Problems caused by operator abuse, improper maintenance of equipment by Non-Gilbarco AFS contractors, and/or customer technicians are not covered by this Schedule.
- (d) The use of installation and service personnel other than qualified Gilbarco AFS employees or contractors, without prior approval of the Gilbarco AFS Service Desk, will void any warranty claim in question.
- (e) Damage to equipment resulting from transportation, accidents, power surges, neglect, misuse, act of God, or abuse are not covered by this warranty.
- (f) This Schedule is voided by:

- (i) the use of non-Gilbarco replacement parts;
- (ii) defects caused by the unauthorized addition of non-Gilbarco items to Gilbarco equipment; or
- (iii) defects caused by the unauthorized alteration of Gilbarco equipment.

#### 4. **WARRANTY LIMITATION**

**THIS GENERAL WARRANTY DOES NOT COVER ANY INDIRECT DAMAGES OR LOSS OF PRODUCT OR REVENUE. Repair or replacement of the defective part or component under the terms of this warranty is the EXCLUSIVE REMEDY. Gilbarco AFS (Pty) Ltd is not liable for any incidental, consequential or indirect damages or loss, including without limitation, personal injury, death, property damage, environmental damages, product damages, loss of product, or loss of revenue or profits. Gilbarco AFS (Pty) Ltd is not liable for any claims or lawsuits against the customer arriving out of the use of the equipment.**