



## **RECOVERY AGREEMENT**

Entered into between:

### **Elite Recoveries (Pty) Ltd**

(with registration number **2013/058914/07**) a company duly incorporated under the laws of the Republic of South Africa

Registered at:

899 Pierneef Street, Villieria, 0186

(which address it chooses as its *domicilium citandi et executandi* for purposes of this agreement)

herein represented by Jaco Dreyer, duly authorised thereto.  
(Hereinafter referred to as “**Elite Recoveries**”)

and

(If the group consists of more than one company please refer to Annexure A)

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(with registration number \_\_\_\_\_ and VAT number \_\_\_\_\_)  
a Company / Close Corporation duly incorporated  
under the laws of the Republic of South Africa  
having its main place of business at:

\_\_\_\_\_  
\_\_\_\_\_

(which address it chooses as its *domicilium citandi et executandi* for purposes of this agreement)

herein represented by \_\_\_\_\_, duly authorised  
thereto.  
(Hereinafter referred to as the “**CLIENT**”)

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**Recital**

- A/** Elite Recoveries is a VAT Recovery Specialist who has expended time, effort and money to become a specialist in the recovery of VAT refunds from SARS.
- B/** The Client wishes to utilise the services of Elite Recoveries.
- C/** The Parties wish to record the terms and conditions of their agreement in writing.

The Parties agree as follows:

**1. Mandate**

1.1 Elite Recoveries shall:

- 1.1.1 Perform a **confidential** review of the Client's accounting transactions for purposes set forth in clause 1.1.2 below. Elite Recoveries will conduct a review from \_\_\_/\_\_\_/\_\_\_\_\_ going back 5 (five) years ("the initial period").
- 1.1.2 Identify and report to the Client on overpayments and/or under deductions and/or undue assessments and/or undue penalties and interest *vis a vis* its suppliers and/or the South African Revenue Service ('SARS') (collectively 'Claims').

1.2 The review will, primarily, be geared towards identifying errors in the Client's treatment of VAT.

1.3 This agreement shall commence on the date of signature hereof and shall endure until the review for the initial period has been completed.

**2. Obligations of Elite Recoveries**

**Elite Recoveries** hereby undertakes:

- 2.1 to treat all of the Client's financial information, business information, private affairs and the Client's methods of carrying on business confidential and not to disclose any such information to any third party;
- 2.2 to be sensitive to the relationships between the Client and the Client's suppliers and business partners; and
- 2.3 once the review has been completed, to submit to the Client a written report with information regarding any overpayments and/or under deductions and/or undue assessments and/or undue penalties and interest *vis a vis* its suppliers and the South African Revenue Service with supporting documentation to the Client ('the Report').

**3. Duty of Confidentiality and non-disclosure of confidential information.**

3.1 The Parties anticipate that during the period of this Agreement it may be necessary to reveal confidential information to each other.

3.2 Each Party hereby undertakes, in favour of the other Party, to use the other Party's confidential information exclusively for the purposes of this Agreement and protect it in the same manner it protects its own proprietary or confidential information.

3.3 The foregoing shall however not preclude Elite Recoveries from sharing or disclosing the clients' confidential information with Elite Recoveries' partners, service providers. Third parties or related entities where such persons are bound by similar confidentiality obligations and Elite Recoveries is either of the view that such disclosure is necessary or desirable for the client given the purpose of this Agreement or anticipates that same is likely or could lead to some benefit for the client inclusive of a possible cost saving (VAT or otherwise).

3.4 The provisions of this clause 3 shall survive the expiry or termination of this agreement.

#### 4. Obligations of the Client

4.1 The Client undertakes, that:

- 4.1.1 it will not during the mandate period appoint or allow any other review to be conducted which has the same or similar aim as provided for in this agreement;
- 4.1.2 it will forthwith allow Elite Recoveries to access its relevant financial and other information to enable Elite Recoveries to perform a complete system verification within 7 (seven) days after date of this agreement;
- 4.1.3 it will treat all working papers and reports generated by Elite Recoveries during this review as confidential and further undertakes not to disclose any recovery areas and methodology used by Elite Recoveries, to any third party including, but not limited to, the Client's subsidiaries, associated companies or branches without the prior written consent of Elite Recoveries.

4.2 The Client warrants that to the best of its knowledge and belief, there are no unresolved queries or investigations between the Client and the Client's suppliers or the South African Revenue Service relating to the initial period, unless specifically discussed in writing by the Client to Elite Recoveries, upon signature hereof.

4.3 The Client shall:

- 4.3.1 obtain and make available to Elite Recoveries all relevant source documentation in respect of those Claims identified electronically by Elite Recoveries (or allow Elite Recoveries to obtain the said source documentation on behalf of the Client); and
- 4.3.2 verify and approve the said Claims included in the Report within 7 (seven) days ('the Review Period') after receipt of the Report failing which, the Client shall be deemed to have agreed with the correctness and validity of the Claims identified electronically by Elite Recoveries.

#### 5. Payment and Contingency

5.1. Should Elite Recoveries not identify any savings to the CLIENT; the CLIENT will be charged no fees.

5.2. If any savings are identified by Elite Recoveries the CLIENT will be invoiced at a \_\_\_\_% fee of total savings amount excl VAT. Any savings over R1000.00 will constitute a valid and fee able claim which has to be submitted by the CLIENT to SARS.

5.3. The payment is due and owing to Elite Recoveries by the CLIENT upon:

- 5.3.1. receipt of the financial benefit(reduction of the CLIENTS payment to SARS or on receipt of the actual refund from SARS as the case may be) of the saving; provided however that in the event that the CLIENT receives the financial benefit over a period of time, payment shall be made on a proportional basis and provided further that all payments shall be made not later than 6 (six) months after the due date for the CLIENT's first following VAT return as referred to in clause 5.3.2 below;
- 5.3.2. the event that the CLIENT fails and/or neglects to submit the savings to the Supplier or the South African Revenue Service (as the case may be) upon the CLIENTS first following VAT Return, then upon presentation of an invoice by Elite Recoveries to the CLIENT; or

- 5.3.3. the event that the CLIENT fails and/or neglects to verify and/or approve the claim within 7 (Seven) days after the CLIENT has received Elite Recoveries claims identified electronically, then upon presentation of an invoice by Elite Recoveries to the CLIENT.
- 5.4. Any outstanding amount due to Elite Recoveries shall bear interest at the prevailing prime interest rate, from 7days after date of invoice to date of payment;

## **6. DISPUTED CLAIMS**

- 6.1 If there is any dispute relating to the validity or extent of a claim identified by Elite Recoveries and included in the Report, the Client shall be entitled, by way of written notice to Elite Recoveries ('Referral Notice'), refer the dispute for determination by an independent auditor ('the Independent Auditor') appointed by agreement between the Parties, or failing agreement within 20 (twenty) days of delivery of the Referral Notice, appointed by the President for the time being of the South African Institute of Chartered Accountants.
- 6.2 Elite Recoveries shall, upon receipt of the Referral Notice, be entitled to conduct its own investigation into the Claims disputed by the Client, such investigation to be completed within 7 (seven) days after Elite Recoveries has been given access by the Client to the Source Documentation relating to the disputed Claims and, for purposes of conducting such investigation, it is hereby agreed between the Parties that Elite Recoveries shall be entitled to inspect and make copies of such Source Documentation.
- 6.3 Once Elite Recoveries has completed its investigation, it shall report its findings in writing to the Client, whereafter the Chief Executive Officers of the respective parties shall meet in order to resolve the dispute within 5 (five) days after Elite Recoveries has reported its findings to the Client.
- 6.4 If, despite discussions and negotiations in good faith at such meeting between the respective Chief Executive Officers of the Parties, no resolution to the dispute has been agreed, the Independent Auditor shall be entitled, at the written request of either of the Parties to conduct its own investigations in an informal manner, but shall provide each of the Parties with an opportunity to make written representations. The Parties shall provide the Independent Auditor with all requested information. The Independent Auditor shall be free to conduct any other investigations or require additional evidence or any (written or oral) representations in order to make the determination.
- 6.5 The Independent Auditor in making its determination shall act as an expert and not as an arbitrator and its decision shall, in the absence of fraud or manifest error, be final and binding on the Parties. If necessary, the Claims and fees charged by Elite Recoveries shall be amended to reflect the determination of the Independent Auditor.
- 6.6 The fees and charges of the Independent Auditor shall be shared between the Parties in equal proportions, unless the Independent Auditors decides otherwise, which he shall have the power to do if, in his sole discretion, the circumstances justify a different allocation, including an allocation in terms of which one of the Parties alone will be bear all of the fees and charges.

## 7. ENTIRE AGREEMENT

Each Party acknowledges that this agreement contains the whole agreement between the Parties, and that it has not relied upon any oral or written representations made to it by the other Party or its employees or agents, and has made its own independent investigations into all matters relevant to this agreement. This agreement supersedes any prior agreement between the Parties, whether written or oral, and any such prior agreements are cancelled as at date of signature hereof.

## 8. DOMICILIA CITANDI ET EXECUTANDI

The Parties choose as their respective domicilia citandi et executandi for all purposes of this agreement, the following addresses-

**The Client -Physical Address:**

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**Elite Recoveries at:**

**Building 6, 1<sup>st</sup> Floor, Unit 9, In Shere Centre, C/O Graham & Drive In Road, Pretoria**

Any notice or process or other formal communication to be given for any purpose in terms of this agreement shall be delivered by hand at or sent per telefax or e-mail or prepaid registered post to the domicilium citandi et executandi of the addressee and shall be deemed to have been received on the date of delivery by hand, alternatively within 5 (five) days after the date of posting or in the case of transmission per telefax on the first business day after date of transmission.

## 9. GENERAL

- 9.1 The validity and interpretation of this agreement shall be governed by, and construed and enforced in accordance with the laws of the Republic of South Africa.
- 9.2 The Client acknowledges that punctual payment of the fees of Elite Recoveries shall be of essence to this agreement.
- 9.3 All payments due by the Client to Elite Recoveries in terms of this agreement shall be made to Elite Recoveries at Cape Town for the credit of Elite Recoveries by way of an electronic funds transfer. The particulars of the bank account of Elite Recoveries are as follows:
- Elite Recoveries  
Bank: Standard Bank  
Account Type: Current  
Branch Code: 011545  
Account Number: 061 188 395
- 9.4 The Client shall not, for any reason whatsoever withhold, defer or make any deduction from, or set-off against, any payment due to Elite Recoveries in terms of this agreement, whether or not Elite Recoveries is, or the Client alleges that Elite Recoveries is indebted to the Client from whatsoever cause or howsoever arising, or in breach of any obligation to Elite Recoveries from whatsoever cause or howsoever arising.

For: **ELITE RECOVERIES**

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
ELITE RECOVERIES

\_\_\_\_\_  
Witness

For: **CLIENT**

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
CLIENT

\_\_\_\_\_  
Witness

## Client Data and Document Information

<b>Contact Person ( "Client" ) :</b>	
Name & Surname	
Contact Number	
Email Address	
Is the "Client" aware of any unclaimed VAT or excessively claimed VAT? (yes or no)	<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border-bottom: 1px solid black; width: 100px;"></div> <div style="border-bottom: 1px solid black; width: 100px;"></div> </div> <div style="text-align: right; margin-top: 5px;">Client</div>
Is there a current dispute with SARS? ( If "yes", specify )	<div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div> <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div> <div style="border-bottom: 1px solid black; height: 15px; width: 100%;"></div>
<b>Data</b>	
Name & Surname	
Contact Number	
Email Address	
Prior Financial System used (if applicable)	
Period Used	
Current Financial System used	
Period Used	
<b>Source Documents</b>	
Do you have a cloud based online filling or document system?	
How many years of documents are on site?	
Where are the source documents stored off site	
<b>Financial Manager / Accountant</b>	
Name & Surname	
Contact Number	
Email Address	
When is your financial year-end?	
<b>Annual Company Turnover</b>	
<div style="border-bottom: 1px solid black; width: 100%;"></div> Turnover	<div style="border-bottom: 1px solid black; width: 100%;"></div> Client Signature
Do you have a Tax Compromise from SARS? If so, since when?	

Annexure A

Companies included in this Agreement:

1. _____	VAT Nr _____	Reg Nr _____
2. _____	VAT Nr _____	Reg Nr _____
3. _____	VAT Nr _____	Reg Nr _____
4. _____	VAT Nr _____	Reg Nr _____
5. _____	VAT Nr _____	Reg Nr _____
6. _____	VAT Nr _____	Reg Nr _____
7. _____	VAT Nr _____	Reg Nr _____
8. _____	VAT Nr _____	Reg Nr _____
9. _____	VAT Nr _____	Reg Nr _____
10. _____	VAT Nr _____	Reg Nr _____