



**SERVICE LEVEL AGREEMENT
“SLA”**

between

**Service Provider
(hereinafter referred to as “the Service Provider”)**

and

SOUTH AFRICAN REVENUE SERVICE

**(a Public Entity established in terms of the
South African Revenue Service Act, 1997 (Act No. 34 of 1997)**

(hereinafter referred to as “the Customer”)

TABLE OF CONTENTS

<u>1.</u>	<u>APPOINTMENT</u>	<u>3</u>
<u>2.</u>	<u>INTERPRETATION</u>	<u>3</u>
<u>3.</u>	<u>DEFINITIONS</u>	<u>5</u>
<u>4.</u>	<u>COMMENCEMENT AND DURATION</u>	<u>8</u>
<u>5.</u>	<u>SERVICES</u>	<u>9</u>
<u>6.</u>	<u>SERVICE PROVIDER'S GENERAL OBLIGATIONS</u>	<u>9</u>
<u>7.</u>	<u>FEES AND PAYMENT</u>	<u>10</u>
<u>8.</u>	<u>COMPLIANCE WITH TAX AND BEE LEGISLATION</u>	<u>11</u>
<u>9.</u>	<u>SERVICE PROVIDER'S STAFF</u>	<u>11</u>
<u>10.</u>	<u>CONFIDENTIALITY</u>	<u>13</u>
<u>11.</u>	<u>SERVICE PROVIDER'S WARRANTIES</u>	<u>14</u>
<u>12.</u>	<u>INDEMNITIES</u>	<u>15</u>
<u>13.</u>	<u>LIMITATION OF LIABILITY</u>	<u>15</u>
<u>14.</u>	<u>INSURANCE AND RISK OF LOSS</u>	<u>15</u>
<u>15.</u>	<u>BREACH AND TERMINATION</u>	<u>16</u>
<u>16.</u>	<u>FORCE MAJEURE</u>	<u>17</u>
<u>17.</u>	<u>DISPUTE RESOLUTION</u>	<u>18</u>
<u>18.</u>	<u>GENERAL</u>	<u>20</u>

1. APPOINTMENT

- 1.1 SARS went out on Tender, under Tender number RFP 11/2016 for the provision of pest control services.
- 1.2 SARS therefore appoints the Service Provider, on a non-exclusive basis, for the supply of pest control services as set out fully in Annexures "A" annexed hereto.
- 1.3 The Service Provider accepts the appointment to render the Services, subject to the terms and conditions of this Agreement, should there be any conflict between the terms contained in the agreement and the Annexure, the terms and conditions of the agreement will prevail.
- 1.4 The Customer shall not be precluded from obtaining services that may be similar or identical to the Services from any other service provider for the duration of this agreement.

2. INTERPRETATION

In this Agreement (as hereinafter defined) –

- 2.1 clause headings are for convenience and are not to be used in the interpretation hereof;
- 2.2 no provision shall be construed against or interpreted to the disadvantage of any Party by reason of such Party having or being deemed to have structured or drafted such provision; and
- 2.3 unless the context indicates a contrary intention, an expression which denotes –
 - 2.3.1 any one gender includes the other genders;
 - 2.3.2 a natural person includes a juristic person and/or trust and *vice versa*; and

- 2.3.3 the singular includes the plural and *vice versa*;
- 2.4 any reference to “days” shall be construed as being a reference to calendar days unless qualified by the word “business” in which instance a “business day” shall be any day other than a Saturday, Sunday and/or a public holiday as gazetted by the Government of the Republic of South Africa from time to time;
- 2.5 any reference to time shall be based upon South African standard time being Greenwich Meantime plus 2 (two) hours;
- 2.6 the words “include”, “includes” and “including” means “include without limitation”, “includes without limitation”, and “including without limitation”. The use of the word “including” followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it;
- 2.7 defined terms appearing in the Agreement in title case shall be given their meaning as defined, unless the context otherwise indicates;
- 2.8 terms other than those defined in the Agreement shall be given their plain English meaning (which in the case of defined terms appearing in lower case shall include the term as defined) and those terms known in the industry shall be interpreted in accordance with their generally accepted meanings, unless the context otherwise indicates;
- 2.9 unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next succeeding business day;
- 2.10 where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

3. DEFINITIONS

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

- 3.1 **“Agreement”** means this Agreement together with Annexure “A”, any schedules, annexes or appendices hereto;
- 3.2 **“Applicable Laws”** means any of the following, from time to time, to the extent that it applies to a Party (including, as applicable, affiliates and Sub-contractors of a Party), or the Services (including the performance, delivery, receipt or use of the Services, as applicable and wherever occurring):
 - 3.2.1 Any statute, regulation, policy, by-law, ordinance or subordinate legislation (including treaties, multinational conventions and the like having the force of law);
 - 3.2.2 South African common law;
 - 3.2.3 Any binding court order, judgment or decree;
 - 3.2.4 Any applicable industry code, policy or standard enforceable by law; and
 - 3.2.5 Any applicable direction, policy or order that is given by a regulator (other than the Customer’s directions or policies given as a customer of the Services);
- 3.3 **“Confidential Information”** means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence, which may come to the knowledge of the Receiving Party by whatsoever means, and includes “SARS confidential information” and “taxpayer information” as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011). The Confidential Information of the Disclosing Party shall

include confidential information even if it is not marked as being “confidential”, restricted or proprietary (or any similar designation).

Confidential Information excludes information or data which –

- 3.3.1 is lawfully in the public domain at the time of disclosure thereof to the Receiving Party;
- 3.3.2 subsequently becomes lawfully part of the public domain by publication or otherwise;
- 3.3.3 is or becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled without any restriction on disclosure, to disclose such Confidential Information to the Receiving Party; or
- 3.3.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed;

Provided that –

- 3.3.5 the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions;
- 3.3.6 the information disclosed shall not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party’s possession; and
- 3.3.7 any combination of features shall not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party’s possession, but only if the combination itself is in the public domain or in a Party’s possession.

The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise.

- 3.4 **“Effective Date”** means **TBC**, notwithstanding the date of signature of this Agreement.
- 3.5 **“Losses”** means all losses, liabilities and damages arising from claims (whether actual or threatened) and all related costs and expenses (including legal fees, disbursements and costs of investigation, litigation, settlement, and judgment), fines, interest and penalties.
- 3.6 **“Parties”** means the parties to this Agreement, being – the South African Revenue Service and the **Service Provider**.
- 3.6.1 **“the Customer”** being the South African Revenue Service, an organ of state established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), together with its successors in title and assigns of 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria, 0181, which address it hereby selects as its *domicilia citandi et executandi* and facsimile +27 12 422 4963, which address it hereby selects as the address for the purposes of receiving notices; and
- 3.6.2 **“the Service Provider”** being **Service Provider**, Registration Number: , together with its successors in title and assigns, of **Address TBC** it hereby selects as its *domicilia citandi et executandi* and facsimile number 086 515 6373 which it hereby selects as the address for the purposes of receiving notices.
- 3.6.3 **“the Disclosing Party”** being either of the Parties referred to in clauses 3.6.1 and 3.6.2 to the extent that it discloses any of the Confidential Information in terms of this Agreement; and

- 3.6.4 **“the Receiving Party”** being the Party, other than the Disclosing Party, that receives disclosure of any of the Confidential Information.
- 3.7 **“Services”** means the supply of all-inclusive pest control services of the property listed in Annexure “A”.
- 3.8 **“Signature Date”** means the date of the Party last signing affixing its signature to this Agreement.
- 3.9 **“Staff”** means any employee, independent contractor, agent, consultant, sub-contractor or other representative of either Party.
- 3.10 **“Sub-contractor”** means a third party (including an affiliate of a Party) to whom a Party subcontracts or otherwise delegates any of its obligations to perform any of the Services (including subcontractors of a subcontractor): Provided that such third party has been approved for such purpose by the Customer in accordance with this Agreement.
- 3.11 **“Termination Date”** means, unless terminated earlier by either Party in terms of this Agreement, **TBC**.
- 3.12 **“Third Party”** means a person other than the Customer or the Service Provider.

4. COMMENCEMENT AND DURATION

This Agreement shall commence on the Effective Date and shall endure for a period of thirty - six (36) months, until the Termination Date, unless terminated earlier by either Party in accordance with this Agreement.

5. SERVICES

The Service Provider shall provide the Services in accordance with Annexure “A”, clause 3.7 and in accordance with the provisions of this Agreement.

5.1 The Service Provider shall be excused from failing to comply with the Services to the extent that non-performance or delayed performance is solely and directly attributable to

5.1.1 an act or omission of the Customer or the Customer’s Staff; or

5.1.2 circumstances of *force majeure* as referred to in this Agreement.

6. SERVICE PROVIDER’S GENERAL OBLIGATIONS

6.1 For the duration of this Agreement, the Service Provider undertakes to-

6.1.1 Perform the Services with due care and diligence, in a professional, diligent and accurate manner, in conformance with industry best practice and existing industry codes, to the highest standards as established for such services in South Africa, in order to ensure a safe working environment;

6.1.2 Exercise all reasonable skill, care and diligence in the discharge of its obligations in terms of this Agreement.

6.2 The Service Provider shall comply with and shall ensure that its Staff complies with all security measures imposed by the Customer regarding security and access to the Customer’s premises.

6.3 The Service Provider will be required to render the required Services and shall at all times be responsible to the Customer for the fulfilment of its obligation under this Agreement and shall not be allowed to subcontract any of its obligations to any other

service provider without the Customer's prior written consent, which consent may be granted or withheld at the Customer's sole discretion.

- 6.4 Should the Service Provider be unable to deliver in terms of this contract for whatever reason nothing in this agreement prohibits the Customer from obtaining the Services elsewhere and the Service Providers invoice for that particular month will be adjusted accordingly.
- 6.5 The Service Provider shall ensure that it at all times adheres to, and complies with, all Applicable Laws, including without limitation, employment law legislation; health, safety and environmental legislation. The Service Provider must inform the Customer in due time about progressive upgrading in accordance with any relevant new "essential health and safety requirements".
- 6.6 The Service Provider shall invoice the Customer for the Services rendered in accordance with the invoicing requirements, as more fully described in clause 7 below.

7. FEES AND PAYMENT

7.1 *Fees and charges-*

The fees and charges applicable to the Services are set out in Annexure "A" to this Agreement and are all inclusive and payable in South African Rand (ZAR) without adjustment for the change in the values of currencies. The Service Provider shall not be entitled to any additional fees or charges, including expenses, of whatsoever nature, unless agreed to in writing between the Parties and subject to the Customer's internal procurement policies and procedures.

7.2 *Invoicing and payment-*

The Service Provider shall invoice the Customer for the Services monthly in arrears. Payment of the Service Provider's invoices shall be made by the Customer within 30 (thirty) days of receipt thereof by the Customer: Provided that such invoice is accurate

and meets the Customer's invoicing requirements and standards as communicated to the Service Provider from time to time.

7.3 *Disputed amounts-*

If the Customer disputes any invoiced amount ("the affected invoice"), then it shall, within 10 (ten) business days of receipt thereof, notify the Service Provider in writing, specifying the affected invoice, the particular disputed amount, and its reasons for such dispute. Such amounts shall not be regarded as 'payable' provided such dispute is *bona fide*. If the Parties are unable to resolve such dispute, it shall be referred for determination in accordance with the provisions of clause 17.

8. COMPLIANCE WITH TAX AND BEE LEGISLATION

The Service Provider represents and warrants to the Customer that at the Effective Date of this Agreement it is in compliance with BEE and Tax legislation, and throughout the term it shall remain compliant therewith.

9. SERVICE PROVIDER'S STAFF

9.1 *Health, safety and security procedures and guidelines-*

9.1.1 The Service Provider shall ensure that the Service Provider's Staff shall at all times, whilst on the Customer's premises, adhere to the health, safety and security procedures and guidelines applicable to the Customer's Staff, as such procedures and guidelines may be changed by the Customer from time to time. Should the Customer at any time have reason to believe that any member of the Service Provider's Staff is failing to comply with such health, safety and security procedures and guidelines, the Customer shall be entitled to deny such Staff member access to the Customer's premises and require the Service Provider to replace such Staff member without delay. The Service Provider shall not be relieved of its obligations under this Agreement as a result of such denial of access, and the Customer shall have no liability to the Service Provider with regard thereto. The Service Provider indemnifies the Customer against any claims that

may be brought by any of the Service Provider's Staff who may be affected as a result of the Customer exercising its rights under this clause 9.1.1.

9.1.2 The Service Provider shall register with the Compensation Commissioner as required by the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993). Documentary proof of such registration and/or a letter of good standing from the Compensation Commissioner shall be made available to the Customer upon request.

9.1.3 The Customer's security requirements and regulations include, inter alia, the right to search (i) the person of any member of the Service Provider's Staff; (ii) any container in the possession of the Service Provider's Staff; and (iii) any vehicle driven by the Service Provider's Staff, whilst the Service Provider's Staff are on-site at the premises of the Customer. The Service Provider shall obtain an undertaking from its Staff irrevocably agreeing to submit to such searches and consents to such searches by the Customer or any person duly appointed by the Customer to undertake such searches.

9.1.4 The Service Provider hereby agrees and undertakes, in terms of Section 37(2) of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), to ensure that the Service Provider and the Service Provider's Staff comply with the aforesaid Act and accepts sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with or arising out of such Services, for the duration of this Agreement, including –

- (i) providing for the health and safety of the Service Provider's Staff and ensuring that the Service Provider's Staff at all times adhere to the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), and the terms and conditions of this Agreement; and
- (ii) ensuring that neither the Customer's Staff nor any third party's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services.

9.2 *Acknowledgement by Service Provider's Staff-*

Prior to the assignment of any of the Service Provider's Staff to the performance of any duties under this Agreement, the Service Provider shall procure a written undertaking to the Customer from such Service Provider Staff, acknowledging that they are not employees of the Customer and the Service Provider hereby indemnifies the Customer against any claims which may arise from the Service Provider failing to comply with this clause 9.2.

9.3 *Security vetting of Service Provider's Staff-*

9.3.1 The Customer reserves the right in its sole and absolute discretion to perform a security check (vetting) on the Service Provider's Staff involved with the performance of the Services.

9.3.2 Where the Customer finds any of the Service Provider Staff to be a potential security risk, the Customer shall inform the Service Provider accordingly and the Service Provider shall immediately replace such person with a suitably qualified substitute. The Service Provider indemnifies the Customer against any claims that may be brought by any Service Provider Staff who may be affected as a result of the Customer exercising its rights under this clause 9.3.

10. CONFIDENTIALITY

10.1 The Service Provider undertakes not to commit any act which in any manner prejudices the Customer's Confidential Information, including any third party information which is in the custody of the Customer. The Service Provider further undertakes to implement measures to ensure that its Staff who has not signed the Customer's Oath of Secrecy shall not have access to the Customer's Confidential Information or the Customer's premises.

- 10.2 The Service Provider may with the Customer's prior written consent and subject to the provisions of this clause 10, disclose only such information as may be legally required by a regulatory or other competent authority.

11. SERVICE PROVIDER'S WARRANTIES

11.1 *General Warranties-*

The Service Provider represents and warrants that it shall for the duration of this Agreement:

- 11.1.1 Use adequate numbers of qualified Staff who have suitable training, experience and skill to perform the Services;
- 11.1.2 Use and adopt any standards and processes required under the Agreement; and
- 11.1.3 Provide the Services with promptness and diligence and in a professional manner.

11.2 *Warranties relating to Service Provider's authority-*

The Service Provider represents and warrants that it:

- 11.2.1 Has all the necessary licences, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the provision of the Services; and
- 11.2.2 Shall comply with all legal requirements and with the terms and conditions of all licences, certificates, authorisations and consents required for the provision of the Services.

11.3 *Product specific warranties-*

The Service Provider represents and warrants that it shall-

- 11.3.1 Ensure that all equipment, tools, components and/or parts used, supplied and/or installed in connection with the Services comply with the highest industry standards.

12.INDEMNITIES

Without in any way detracting from the rights of the Customer in terms of the Agreement, the Service Provider hereby indemnifies and holds the Customer and its Staff harmless against any and all Losses which may be suffered as a result of any breach of the provisions of the Agreement by the Service Provider or its Staff.

13.LIMITATION OF LIABILITY

The Parties agree that, in the event of a breach of any of the provisions of the Agreement, the Customer shall not be liable to the Service Provider for any Losses, save for that arising out of wilful misconduct or gross negligence of the Customer or its Staff.

14.INSURANCE AND RISK OF LOSS

14.1 Insurance:

14.1.1 The Service Provider shall, at its own cost and expense, for the duration of this Agreement have and maintain in force, to the reasonable satisfaction of the Customer, sufficient insurance cover to cover all of its obligations and liabilities under this Agreement, consistent with acceptable and prudent business practices, including:

- (i) Public Liability Insurance cover, to the value of a minimum of R 500,000.00 per incident for the duration of this Agreement, in order to cover the Service Provider's potential liability in terms of this clause 14 and the Agreement in general; and
- (ii) Such additional insurance cover as the Customer may from time to time during the currency of the Agreement reasonably require the Service Provider to obtain.

14.1.2 The Service Provider shall indemnify and hold the Customer harmless against all Losses of whatsoever nature arising out of this Agreement or any Applicable Law in respect of injury or death of any person or loss of or damage to any person or property occurring by

reason of the Service Provider's wilfulness or negligence prior to, during or after its execution of the Services.

14.2 *The Customer's Right to Acquire Insurance in Certain Circumstances-*

Without limiting the generality of the Customer's rights and remedies hereunder, in the event of a failure by the Service Provider to maintain any insurance required hereunder, or to provide evidence of renewal at least 3 (three) business days prior to expiration of the applicable insurance cover, on 3 (three) business days' notice to Service Provider, the Customer may purchase the requisite insurance and deduct the costs thereof from any amounts owed to the Service Provider under this Agreement.

14.3 *Risk of Loss-*

The Service Provider shall be responsible for risk of loss of, and damage to, any assets, equipment and/or tools in its possession or under its control. Any such items in the possession or control of the Service Provider's Sub-contractors or agents shall be deemed to be under the control of the Service Provider.

15. BREACH AND TERMINATION

- 15.1 Should a Party ("the defaulting party") commit a breach of any of the provisions of this Agreement, then the other Party ("the aggrieved party") shall be entitled to require the defaulting party to remedy the breach within 10 (ten) business days, or such other reasonable time as agreed to in writing by the aggrieved party, of delivery of a written notice requiring it to do so. If the defaulting party fails to remedy the breach within the period specified in such notice, the aggrieved party shall be entitled to claim immediate payment and/or performance by the defaulting party of all of the defaulting party's obligations due in terms of this Agreement, in either event, without prejudice to the aggrieved party's right to claim damages. The foregoing is without prejudice to such other rights as the aggrieved party may have at law: Provided always that the aggrieved party shall not be entitled to cancel this Agreement for any breach by the defaulting party, unless such breach is a material breach going to the root of this Agreement and is incapable of being remedied by a payment of money or, if it is capable of being remedied

by a payment of money, the defaulting party fails to pay the amount concerned within 10 (ten) business days after such amount has been determined.

15.2 Notwithstanding the provisions of clause 15.1 above, the Customer may immediately terminate this Agreement at any time by giving written notice of such termination to the Service Provider if:

15.2.1 The Service Provider is, other than for the purposes of amalgamation, placed under voluntary or compulsory liquidation (whether provisional or final) or under judicial management or under curatorship or under the equivalent of any of the foregoing, including business rescue proceedings as envisaged in terms of the Companies Act, 2008 (Act No. 71 of 2008);

15.2.2 A final and unappealable judgment against the Service Provider remains unsatisfied for a period of 10 (ten) business days or more after it comes to the notice of the Service Provider;

15.2.3 The Service Provider makes any arrangement or composition with its creditors generally or ceases to carry on business; and / or

15.2.4 The Service Provider breaches any of confidentiality provisions, undertakings or warranties as set out in this Agreement.

15.3 Any termination of this Agreement pursuant to the provisions of this clause 15 shall be without the Customer incurring any liability in connection with such termination, or prejudice to any claim which the Customer may have in respect of any prior breach of the terms and conditions of this Agreement by the Service Provider.

16. FORCE MAJEURE

16.1 Neither Party shall be liable to the other Party for any failure, delay or default in the performance of its obligations under this Agreement, if and to the extent that such failure,

delay or default is caused by *casus fortuitus*, *vis maior*, act of God, lock-out, fire, riot, flood, drought, state of emergency, embargoes, export control, international restrictions, war (whether declared or not), civil disturbance, court order or any other circumstance beyond its reasonable control (collectively, “circumstances of *force majeure*”).

16.2 Following any circumstances of *force majeure*, the non-performing Party shall:

16.2.1 As soon as reasonably possible after the event occurring, notify the other Party by whichever way is available and if possible thereafter, confirm it in writing;

16.3 If circumstances of *force majeure* substantially prevent or delay performance of the Services necessary for the performance of the Customer’s functions that the Customer reasonably believes to be critical at reasonable levels of service for more than 5 (five) consecutive days (or such longer period as the Customer may agree in its sole discretion), then at the Customer’s option, the Customer may-

16.3.1 At its expense procure the Services from an alternate source, in which case the Customer shall be relieved of its obligation to pay the Service Provider for such Services for so long as the Service Provider’s performance is impaired;

16.4 The Customer shall not be liable for the payment of any termination fees or have any other liability to the Service Provider for terminating the Agreement or any portion thereof in terms of this clause 16.

17.DISPUTE RESOLUTION

Any dispute arising from the Agreement shall be subject to the following dispute resolution procedures –

17.1 *Informal dispute resolution-*

Prior to the initiation of formal dispute resolution procedures, the Parties shall first attempt to resolve their dispute informally by referral of the dispute to a joint committee

of their respective representatives and such senior Staff members as may be required from time to time, to consider and negotiate in good faith an amicable solution thereto. Proceedings in terms of this clause 17.1 shall not be construed to prevent a Party from instituting formal proceedings earlier to avoid the expiration of any applicable limitations period, or to preserve a superior position with respect to other creditors.

17.2 *Rapid resolution of disputes-*

The Parties shall use commercially reasonable efforts to resolve disputes arising under the Agreement as rapidly as possible.

17.3 *Excluded relief-*

This clause 17 shall not preclude either Party from initiating any formal dispute resolution proceedings or seeking urgent relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.

17.4 *Confidentiality of proceedings-*

Any dispute resolution or arbitration process under this clause 17 shall be conducted *in camera* and the Parties shall treat as confidential and not disclose to any third party the existence of the dispute, details of the dispute, the conduct of the informal or formal dispute resolution proceedings or the outcome of the dispute resolution proceedings, without the written consent of the other Party, provided that the Parties shall be entitled to disclose such information to such persons as are necessary to enable them to conduct their case.

17.5 *Continued performance-*

Each Party agrees to continue performing its obligations under the Agreement while any dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance).

18. GENERAL

18.1 *No assignment without consent-*

The Agreement shall be binding on the Parties hereto. Neither Party shall be entitled to assign or otherwise transfer the benefit or burden of all or any part of the Agreement without the prior written consent of the other Party.

18.2 *No sub-contracting without consent-*

The Service Provider may not sub-contract its obligations under the Agreement without the prior written consent of the Customer. Should the Customer consent to such appointment, the Service Provider shall at all times be responsible to the Customer for fulfilment of all the Service Provider's obligations under the Agreement and remain the Customer's sole point of contact regarding the Services, including with respect to payment.

18.3 *Waiver-*

No change, waiver or discharge of the terms and conditions of the Agreement shall be valid unless in writing and signed by an authorised representative of the Party against which such change, waiver or discharge is sought to be enforced, and any such change, waiver or discharge shall be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege under the Agreement shall operate as a waiver thereof, nor shall 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.

18.4 Upon signature by the Party signing last in time, this Agreement shall replace and prevail over all prior discussions, offers, agreements or other arrangements between the Parties as to its subject matter. Any services provided prior to such signature date by the Service Provider to the Customer shall be governed by this Agreement.

- 18.5 Neither Party shall be authorised to publish or cause to be published any advertisement or other information relating to the other Party or the other Party's business without the prior written approval of the other Party;

Applicable law-

The Agreement shall be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto shall be determined in accordance with such law.

- 18.6 *Whole agreement and amendment-*

The Agreement constitutes the whole of the agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation shall be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly authorised representatives.

- 18.7 *Costs-*

Each Party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of the Agreement.