

**PHYSICAL SECURITY, GUARDING, ARMED RESPONSE AND ALARM MONITORING
MASTER SERVICES AGREEMENT**

Between

SOUTH AFRICAN REVENUE SERVICE

An organ of state within the public administration but outside the public service established in terms of section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997)
(hereinafter referred to as “**SARS**”)

and

THE SERVICE PROVIDER
(Registration No: 0000/000000/00)

(herein represented by _____ who warrants that s/he is duly authorised to do so
by virtue of a Resolution of the Directors)
(hereinafter referred to as “**the Service Provider**”)

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ANNEXURES:

- A - LIST OF THE SARS SITES AND PRICING
- B - SERVICE LEVELS AND FINANCIAL PENALTIES

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1. DEFINITIONS

1.1 Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings-

1.1.1 **“Account Executive”** means the Service Provider’s designated manager who will be in charge of the general administration of the Services and will interface with SARS’s Authorised Representative in connection therewith as well as the performance of the Services, and to whom all communications regarding this Agreement must be addressed, and further, who will assist with the resolution of disputes;

1.1.2 **“Agreement”** means this master services agreement, together with all schedules, appendices, attachments and other documents attached hereto or referenced herein;

1.1.3 **“Applicable Law”** means any of the following to the extent applicable to the Service Provider or its subcontractors and where applicable, to SARS or the Services-

(i) Any statute, regulation, policy, by-law, ordinance or subordinate legislation;

(ii) The common law;

(iii) Any binding court order, judgment or decree;

(iv) Any applicable industry code of conduct, policy or standard enforceable by law; or

(v) Any applicable direction, policy or order that is given by a regulatory authority;

1.1.4 **“Armed Response Officer(s)”** means a security officer as defined in Section 1 of the Private Security Industry Regulation Act, 2001 (Act No.56 of 2001);

1.1.5 **“Business Day(s)”** means any day between and including Monday and Friday, except public holidays in South Africa;

1.1.6 **“Confidential Information”** means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which-

- (i) is received by the receiving Party from the furnishing Party;
- (ii) is received by the receiving Party from a third party acting on behalf of the furnishing Party; or
- (iii) comes to the knowledge of the receiving Party by any other means.

Confidential Information includes such information whether marked as ‘Confidential’ or a similar legend or not. Without limitation, Confidential Information of the furnishing Party shall include the following-

- (i) this Agreement, provided that SARS may disclose any or all of the terms of this Agreement;
- (ii) in the case of SARS, Confidential Information shall also include any other non-public information, regardless of whether such information is marked ‘Confidential’ or with another similar legend; SARS’s financial information; information regarding employees and independent contractors of SARS; processes and plans of SARS; intellectual property owned by or licensed to SARS or any other information of SARS which would be deemed by a reasonable person to be confidential or proprietary in nature; and
- (iii) further in the case of SARS, it includes SARS Confidential Information and Taxpayer Information as defined in Chapter 6 of the Tax Administration Act, 2011 (Act No. 28 of 2011), as well as any information required to be kept confidential by any other Act administered by the Commissioner for SARS.

“Confidential Information” shall not include information that-

- (i) is in or enters the public domain without breach of this Agreement; or
- (ii) the receiving Party receives from a third party without restriction on disclosure and without breach of a non-disclosure obligation.

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;

- 1.1.7 **“Contract Manager”** means an employee of the Service Provider, designated as such for the purposes of this Agreement;
- 1.1.8 **“Effective Date”** means 1 May 2018, irrespective of the signature date of this Agreement;
- 1.1.9 **“Incidents”** means the triggering of an alarm at any SARS Site, which necessitates an armed response by the Service Provider’s Personnel;
- 1.1.10 **“Parties”** means SARS and the Service Provider and “Party” as the context requires is a reference to any one of them;
- 1.1.11 **“Performance Failure”** means a failure to attain a prescribed Service Level, which will entitle SARS to levy a financial penalty or which may result in termination of this Agreement, immediate cancellation of Services to the affected Site or reallocation of the Services to the affected Site to another service provider;
- 1.1.12 **“PSIRA”** means the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001) or the authority established thereunder;
- 1.1.13 **“RFP 26/2017”** subject to any contrary indication, is reference to SARS’s Request for Proposals No. 26/2017 for the provision of

physical security, guarding, armed response and alarm monitoring services for various regions as allocated by SARS, and which is incorporated herein by reference;

1.1.14 **“SARS”** means the **SOUTH AFRICAN REVENUE SERVICE**, an organ of state within the public administration but outside the public service established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal address at 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria;

1.1.15 **“SARS’s Authorised Representative”** means the SARS employee designated / appointed in terms of this Agreement as the person who will interface with the Service Provider on all matters relating to the general administration of this Agreement, or his/her appointed delegate;

1.1.16 **“Security Breach/es”** means any deviation from and/or any breach by a Security or Armed Response Officer of his/her duties or obligations in terms of this Agreement, irrespective of whether or not such deviation or breach results in SARS or a SARS employee or a third party suffering a loss or damage;

1.1.17 **“Security Equipment”** means security equipment as defined in Section 1 of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);

1.1.18 **“Security Officer(s)”** means a security officer as defined in Section 1 of the Private Security Industry Regulation Act, 2001 (Act No.56 of 2001);

1.1.19 **“Service Level”** means the minimum performance standard of compliance, which must be met by the Service Provider when rendering the Services;

1.1.20 **“Service Provider”** means _____
incorporated in accordance with the Laws of South Africa with registration number 0000/000000/00 and with its place of business at _____;

- 1.1.21 **“Service Provider’s Personnel”** means any staff employed by or on behalf of the Service Provider or the Service Provider’s subcontractors or joint venture partners;
- 1.1.22 **“Services”** means the physical security, guarding, armed response, alarm monitoring and incidental services as contemplated in the RFP, and this Agreement, and includes those services, functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services;
- 1.1.23 **“Sites”** means the SARS’s offices or premises listed in **Annexure A** of this Agreement; and
- 1.1.24 **“VAT”** means value-added tax levied in terms of the Value-Added Tax Act, 1991(Act No. 89 of 1991).

2. INTERPRETATION OF AGREEMENT

- 2.1 The headings are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
- 2.2 Any reference in this Agreement to-
- 2.2.1 **“Clause”** shall, subject to any contrary indication, be construed as a reference to a Clause in this Agreement; and
- 2.2.2 **“Person”** refers to any person including juristic entities.
- 2.3 Unless inconsistent with the context or save where the contrary is expressly indicated-
- 2.3.1 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the definition Clause, effect shall be given to it as if it were a substantive provision of this Agreement;
- 2.3.2 when any number of days is prescribed in this Agreement, such a

period shall be computed by excluding the first and including the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;

2.3.3 no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement; and

2.3.4 a reference to a Party includes that Party's successors-in-title and permitted assigns, including any other persons contemplated in **Clause 2.7** of this Agreement.

2.4 Unless inconsistent with the context, an expression which denotes-

2.4.1 any one gender includes the other gender; and

2.4.2 the singular includes the plural and *vice versa*.

2.5 Unless it is clear from a specific Clause in which a term has been defined that such definition has limited application to the relevant Clause, any term defined within the context of any particular Clause in this Agreement shall bear the same meaning as ascribed to it throughout the Agreement, notwithstanding that that term has been defined in a specific Clause.

2.6 The termination of this Agreement will not affect the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding that the Clauses themselves do not expressly provide for this.

2.7 This Agreement is binding on the executors, administrators, trustees, permitted assigns or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.

2.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

2.9 None of the provisions hereof shall be construed against or interpreted to the

disadvantage of the Party responsible for the drafting or preparation of such provision.

3. APPOINTMENT

- 3.1 SARS issued a Request for Proposals for the provision of physical security, guarding, armed response and alarm monitoring services, under RFP 26/2017.
- 3.2 The Service Provider submitted a proposal to SARS to render the Services. SARS accepted the proposal and hereby appoints the Service Provider.
- 3.3 The Parties now wish to record their respective rights and responsibilities, as well as the governing provisions pertaining to the Services, in writing.
- 3.4 The Service Provider represents that it has and warrants that throughout the contract term it shall have the resources (assets, equipment and personnel), skills, qualifications and experience necessary to perform the Services in a diligent manner and in accordance with the highest professional standards.
- 3.5 The Service Provider warrants that it will adhere to all SARS's security policies and procedures in the performance of the Services.
- 3.6 In reliance on these statements and representations, SARS has appointed the Service Provider to provide the Services on a non-exclusive basis, which appointment the Service Provider accepts.

4. DURATION

This Agreement will be effective from the Effective Date for a period of twenty four (24) months and will terminate on 30 April 2020, unless terminated earlier in terms of this Agreement.

5. RELATIONSHIP BETWEEN THE PARTIES

- 5.1 The Service Provider is an independent contractor, and under no circumstances will it be considered a partner, joint venture partner, agent or employee of SARS in the performance of its duties and responsibilities

pursuant to this Agreement.

- 5.2 The entire management, direction and control of the Service Provider's Personnel will be the responsibility of the Service Provider.
- 5.3 It is expressly recorded that the provisions of section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995) ("LRA") will not apply to this Agreement. The Service Provider undertakes to take necessary steps as contemplated in section 197(6) of the LRA, to ensure that no employment relationship or employment contract of any of the Service Provider's Personnel, Security Officers or Armed Response Officers is transferred to SARS upon termination of this Agreement.
- 5.4 Notwithstanding the above undertaking, however, in the event that SARS suffers any claim, damage, loss or expense in relation to and/or arising from the operation of section 197 of the LRA as aforementioned (collectively "Labour Claims"), the Service Provider hereby indemnifies and holds SARS harmless in respect of and/or against all and any such Labour Claims.

6. SCOPE OF SERVICES

- 6.1 The Service Provider undertakes to provide SARS with the following Services-
- 6.1.1 Physical security and guarding of SARS's premises and buildings;
 - 6.1.2 On-site patrolling of SARS's buildings and premises;
 - 6.1.3 Recording, investigation and reporting on Security Breaches and Incidents, within agreed timeframes;
 - 6.1.4 Preparation of a monthly report outlining Security Breaches, Incidents, faulty alarms, power failures, panic buttons and failed patrols per SARS Site, of which the report will be submitted to the SARS Authorised Representative or his / her appointed delegate;
 - 6.1.5 Monitoring of alarms installed at SARS Sites;
 - 6.1.6 Armed response to SARS Sites upon the triggering of SARS's

alarms;

6.1.7 Tracking and tracing, which will include the tracking of the Service Provider's Personnel / vehicles responding to a triggered alarm from the Service Provider's control room and the tracing of triggered alarm signals at SARS Sites;

6.1.8 Management of guard monitoring devices, including but not limited to response to panic buttons and failed patrols; and

6.1.9 Special Security Services, as contemplated in RFP 26/2017.

7. SERVICE COVERAGE HOURS

7.1 The Service Provider shall perform the Services on a twenty four (24) hours, seven (7) days a week, three hundred and sixty five (365) days a year basis.

7.2 SARS and the Service Provider will agree to the service coverage hours of the Special Security Services contemplated in **Clause 6.1.9** above. Once the Parties reach an agreement on the service coverage hours, the Service Provider must adhere to the agreed service coverage hours, as well as agreed turnaround times.

8. SERVICE PROVIDER'S PERSONNEL

8.1 The Service Provider shall ensure that every Security or Armed Response Officer assigned to provide the Services at a SARS Site complies with the following requirements-

8.1.1 Registration with PSIRA and Identification Cards

8.1.1.1 All Security and Armed Response Officers shall be registered with PSIRA and issued with the Service Provider's identification card containing as a minimum, the name, surname and PSIRA registration number of the relevant Security or Armed Response Officer.

8.1.1.2 Security and Armed Response Officers shall always wear

the Service Provider's identification cards, or any SARS-issued identification card, in a clear and visible manner.

8.1.2 Uniform

8.1.2.1 Security and Armed Response Officers shall wear a uniform at all times whilst performing the Services at SARS Sites.

8.1.2.2 Security Officers stationed at or Armed Response Officers responding to triggered alarms at state warehouses or land border posts shall wear a combat uniform.

8.1.2.3 Uniforms must be clean and worn properly.

8.1.3 Armed Officers

8.1.3.1 All Armed Response Officers and armed Security Officers shall be in possession of competency certificates as stipulated in the Firearms Control Act, 2000 (Act No. 60 of 2000).

8.1.3.2 Copies of competency certificates must be provided to the SARS Authorised Representative on or before the Effective Date, for record purposes.

8.1.4 Acts That Are Prohibited Whilst On Duty

The Service Provider's Security and Armed Response Officers must not-

8.1.4.1 Consume alcohol, take illegal drugs or possess such substances whilst on duty;

8.1.4.2 Report for duty whilst under the influence of any intoxicating substance;

8.1.4.3 Sleep whilst on duty;

- 8.1.4.4 Leave a post unattended without the superior's permission;
- 8.1.4.5 Fight on site and argue without reason in view of SARS's employees or visitors;
- 8.1.4.6 Be dishonest at any time during this Agreement;
- 8.1.4.7 Commit a Security Breach;
- 8.1.4.8 Aid and/or abet the commission of a Security Breach;
- 8.1.4.9 Use or remove SARS's equipment without permission;
- 8.1.4.10 Allow access to SARS Sites without authority by-
 - 8.1.4.10.1 using a Security Officer's access card to allow access when a SARS employee or visitor does not possess an access card;
 - 8.1.4.10.2 opening a door physically, allowing access without querying the identification of the person entering; or
 - 8.1.4.10.3 failing to report an item carried by a person which obviously requires authority i.e. Weapons, laptop computers, etc.;
- 8.1.4.11 Use a private cellular telephone whilst on duty;
- 8.1.4.12 Read unauthorised material;
- 8.1.4.13 Use unauthorised electronic devices or illegal electronic connections; and
- 8.1.4.14 Conduct themselves in any manner inconsistent with the Code of Conduct for Security Service Providers, 2003.

8.1.5 Management Responsibilities

Management and supervisors must ensure the following:

- 8.1.5.1 All Security Officers assigned at SARS Sites are coherent, fit, reliable, of reputable background, of sound character and able to perform their duties;
- 8.1.5.2 All Security, Armed Response Officers and Personnel do not have criminal records. In this regard, the Service Provider warrants that its personnel do not have criminal records and that it shall check the criminal record status of its personnel on an annual basis;
- 8.1.5.3 All Security and Armed Response Officers conduct themselves in a disciplined and professional manner, as required by the Code of Conduct for Security Service Providers, 2003 and the Service Provider's own Disciplinary Code and Procedures, whenever they are at a SARS Site and performing their duties in terms of this Agreement. In this regard, the Service Provider shall take all necessary steps to ensure that the Service Provider's Personnel selected for an assignment in terms of this Agreement are trained. SARS reserves the right to remove from any Site any of the Service Provider's Personnel, who act in a disorderly manner and/or contravene SARS's security policies and procedures or a provision of the Code of Conduct for Security Service Providers, pending investigation and a final decision by SARS's security management: Subject thereto that SARS will inform the Service Provider appropriately of such an eventuality, as soon as possible, and in order that a suitable replacement can be appointed by the Service Provider, if required;
- 8.1.5.4 All Security and Armed Response Officers, and Personnel conduct themselves in an honest manner;
- 8.1.5.5 Voice stress analysis tests are conducted on all Security

Officers located at, and Armed Response Officers allocated to, High Risk Sites (as deemed by SARS), on a quarterly basis and at the cost of the Service Provider;

8.1.5.6 All Security and Armed Response Officers adhere to the dress code regulations, SARS's safety and security policies, and post descriptions;

8.1.5.7 All Security and Armed Response Officers always wear the Service Provider's identification card or SARS identification card in a clear and visible manner;

8.1.5.8 All Security Officers assigned to SARS Sites have a minimum grade 10 education and are of the required security level grading;

8.1.5.9 The Security Officers are aware of all instructions issued by the relevant SARS Regional Security Manager;

8.1.5.10 The Security Officers acquaint themselves with the contents of the Site Management File issued by the relevant SARS Regional Security Manager, as per **Clause 9.4.1** below;

8.1.5.11 A copy of Security Officers' personnel files shall be provided and/or made available to SARS or any other lawful regulatory authority on demand, containing the information set out in **Clause 10.1**. In particular, a copy of a Security Officer's personnel file must be made available to SARS **before** a Security Officer is assigned to a SARS Site;

8.1.5.12 Partially or uncovered shifts are reported to the relevant SARS Regional Security Manager immediately and that replacements are trained on Site instructions and procedures, as per **Clause 9.5.5** below;

8.1.5.13 The relevant SARS Regional Security Manager is advised,

in writing, when a Security Officer is removed from Site or leave for any other reason;

8.1.5.14 All Security and Armed Response Officers conduct personal searches within the confines of the law, and according to standard operating procedures and instructions;

8.1.5.15 That all panic alarms / buttons and failed patrols are investigated and attended to within fifteen (15) minutes, from the time of the alert, and proper feedback provided to the relevant SARS Regional Security Manager within twenty four (24) hours, should a breach occur;

8.1.5.16 Incident investigation reports are prepared and submitted to the relevant SARS Regional Security Manager within twenty four (24) hours of the Incident or Security Breach occurring, as per **Clause 9.2.2** below;

8.1.5.17 Personnel are available when a SARS Security Operations Centre makes contact regarding an alarm triggered at a SARS Site, as per **Clause 9.1** below;

8.1.5.18 All Armed Response Officers respond to a triggered alarm at a SARS Site within fifteen (15) minutes or less in any area. The fifteen (15) minutes shall be calculated from the time the Service Provider's Personnel obtains verification from the SARS Security Operations Centre that armed response must be dispatched to the particular SARS Site;

8.1.5.19 A response notification is prepared and left at a SARS Site immediately after every Incident (following a response to a triggered alarm at a SARS Site) for SARS's perusal, as per **Clause 9.2.2.3** below;

8.1.5.20 Details of an Incident, relating to the triggering of an alarm at a SARS Site, are reported to the relevant SARS Security Operations Centre, as per **Clause 9.2.2.4** below; and

8.1.5.21 SARS requirements for invoicing are complied with, as per
Clause 16.

9. SERVICE PROVIDER'S GENERAL OBLIGATIONS

9.1 Availability of Personnel for purposes of Armed Response

The Service Provider must ensure that for the contract term its Personnel must be available when a SARS Security Operations Centre makes contact with the Service Provider regarding an alarm triggered at a SARS Site.

9.2 Reporting of Security Breaches or Incidents

9.2.1 The Service Provider shall provide SARS with exception reports, extracted from the guard monitoring system in respect of Security Breaches or Incidents, on a daily, weekly and monthly basis.

9.2.2 The Service Provider shall further comply with the following requirements-

Armed Response and Alarm Monitoring

9.2.2.1 Ensure that Incidents at a SARS Site are fully recorded;

9.2.2.2 An Armed Response Officer must prepare a response notification at a SARS Site immediately after every Incident for SARS's perusal;

9.2.2.3 The response notification must contain the following information-

9.2.2.3.1 Date of Incident;

9.2.2.3.2 Details of the Armed Response Officer, who provided the armed response service;

9.2.2.3.3 Address of the SARS Site visited;

9.2.2.3.4 Relevant remarks; and

9.2.2.3.5 A reference number;

9.2.2.4 Report the details of the Incident, as relayed by the Armed Response Officer dispatched to a SARS's Site, to the relevant SARS Security Operations Centre; and

9.2.2.5 Submit a report to the relevant SARS Regional Security Manager within one (1) day of the Incident referred to in **Clause 9.2.2.1** above, or such shorter time as SARS may prescribe in its absolute discretion.

Guarding

9.2.2.6 The Service Provider shall keep a log book ("Occurrence Book") at each and every Site and record therein, amongst others-

9.2.2.6.1 All activities performed by the Security Officers on Site, including the times when the activities were performed;

9.2.2.6.2 Security Breaches at a Site;

9.2.2.6.3 The Site visits by supervisors and managers; and

9.2.2.6.4 Any other matters, as prescribed by SARS from time to time.

9.2.2.7 All Occurrence Book entries must be checked and signed off by the Service Provider's supervisor and manager during a Site visit.

9.2.2.8 All Occurrence Books at SARS Sites shall become the property of SARS on termination of this Agreement.

9.2.3 In respect of Security Breaches, the Service Provider shall-

9.2.3.1 Ensure that Security Breaches at a Site involving any damage to or loss of property, or potential damage to or loss of property are fully investigated; and

9.2.3.2 Submit the full investigation report within one (1) day of the Security Breach referred to in **Clause 9.2.3.1** or such shorter time as SARS may prescribe, in its absolute discretion.

9.3 Site visits

9.3.1 The Service Provider shall ensure that its personnel, who are designated as supervisors and/or managers in terms of this Agreement, conduct the following visits on a Site-

9.3.1.1 Manager - day shift
Eight (8) Site visits per month;

9.3.1.2 Manager - night shift
Four (4) Site visits per month;

9.3.1.3 Supervisor - day shift
Eight (8) Site visits per month; and

9.3.1.4 Supervisor - night shift
Thirty (30) to thirty-one (31) Site visits per month.

9.3.2 Provided that in respect of a border post site, the compulsory Site visits shall be as follows-

9.3.2.1 Manager: a minimum of four (4) to a maximum of eight (8) Site visits per month; and

9.3.2.2 Supervisor: a minimum of eight (8) to a maximum of fifteen (15) Site visits per month.

9.3.3 The supervisors and managers shall, during the Site visits-

9.3.3.1 physically monitor the guarding positions and conduct inspections of Security Officers by asking them pertinent questions in this regard;

9.3.3.2 check the Security Officers' appearance and level of alertness;

9.3.3.3 ensure that all Security Breaches are reported and recorded in the Occurrence Book;

9.3.3.4 inspect the Occurrence Book and, discuss and clarify any Security Breaches recorded therein; and

9.3.3.5 sign the Occurrence Book and record all non-compliance of Security Officers with their obligations and duties.

9.3.4 The full details of the Site visits shall be recorded in the Occurrence Book.

9.4 **Emergency Evacuation Plan**

9.4.1 The Service Provider shall ensure that Security Officers assigned to perform the Services at a Site must adhere to the standards of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), and to this extent, have a working knowledge of-

9.4.1.1 A Site emergency plan;

9.4.1.2 The emergency telephone numbers;

9.4.1.3 Basic reaction procedures to a power failure on the Site;

9.4.1.4 The evacuation procedure at the Site, where the Security Officer is stationed; and

9.4.1.5 A Site Management File.

9.5 Partly Covered or Uncovered Shifts

- 9.5.1 The Service Provider shall ensure that all Security Officers assigned to a shift report for duty on time. Late coming shall be regarded as a partially covered or uncovered shift.
- 9.5.2 Whenever a Security Officer is late or absent for a shift, this must immediately be reported to the relevant SARS Regional Security Manager and a replacement must be deployed on a Site within two (2) hours: Provided that the allowed deployment time for border post Sites will be two and half (2½) hours.
- 9.5.3 The replacement Security Officer shall not be a person who has just performed the Services elsewhere or at a Site immediately prior to the shift of the late or absent Security Officer.
- 9.5.4 The replacement Security Officer must be of the same quality and grading level as the absent Security Officer.
- 9.5.5 The replacement Security Officer must be trained on Site instructions and procedures, prior to the placement.

9.6 Change and Replacement of Security Officers

- 9.6.1 The Service Provider shall advise SARS by written notice whenever a Security Officer assigned to perform the Services at a Site is on leave or is removed from a Site for any other reason.
- 9.6.2 Where a Security Officer is absent for a shift, a replacement must be deployed on site within the timelines set out in **Clause 9.5.2** above.
- 9.6.3 **Clauses 9.5.4** and **9.5.5** above shall apply with regard to the replacement Security Officer.

9.7 Command Centre Facilities (Control Room)

- 9.7.1 The Service Provider must maintain a fully functional control room to receive alarm signals for the contract term. The control room must

have all the specifications required in terms of RFP 26/2017.

9.7.2 The Service Provider must have the capability for Armed Response Officers to remain in constant contact with their control room when responding to a triggered alarm at a SARS Site.

9.7.3 The Service Provider shall permit SARS to inspect such control room on a monthly basis, at a mutually agreed time.

9.8 Security Equipment

9.8.1 The Service Provider shall ensure that each Site is, at the very least, fitted out with the minimum required equipment and communication capabilities, as set out in RFP 26/2017.

9.8.2 The Service Provider shall ensure that the Security Officers patrolling SARS Sites are monitored by a guard monitoring system acceptable to SARS and that the Armed Response Officers, responding to triggered alarms at SARS Sites, are tracked by the Service Provider's control room. Furthermore, the Service Provider shall ensure that all failed patrols and panic buttons / alarms activated are monitored.

9.8.3 Any monitoring system used by the Service Provider to provide the service of monitoring of SARS alarms must be acceptable to SARS and compatible to SARS's system or other software it may use from time to time in its Security Operations Centres.

9.8.4 The Service Provider must ensure that any of its Security Equipment used or resources deployed at SARS Sites to perform the Services are fully functional at all times. In this regard, SARS reserves the right to inspect the Service Provider's Security Equipment or resources at any time and without prior notice to the Service Provider or the Service Provider's Personnel.

9.8.5 The Service Provider must have a contingency plan in place to ensure that should any of its Security Equipment fail to function at any point during the contract term, the faulty equipment / resource is repaired or replaced, as soon as is reasonably possible, to prevent an interruption

of the Services.

9.9 Data collected from the Guard Monitoring System (GMS)

All data collected from the guard monitoring system (GMS) on SARS Sites must be provided to SARS-

9.9.1 in the format specified by SARS;

9.9.2 as per agreed timelines or promptly upon request; and

9.9.3 may not be withheld by the Service Provider for any reason whatsoever.

9.10 Notification of Disciplinary Hearing

The Service Provider shall inform the SARS's Authorised Representative of any disciplinary action taken against a Security or Armed Response Officer assigned to perform the Services. Withholding such information shall constitute a material breach of this Agreement.

9.11 Information Detrimental to SARS's Security

The Service Provider shall immediately inform the SARS's Authorised Representative of any information, in its possession or that it ought to be reasonably aware of, that is detrimental to SARS's physical security or safety.

9.12 Instructions or Requests by SARS

The Service Provider and its Personnel shall adhere to written and reasonable requests or instructions by the SARS's Authorised Representative and/or his/her appointed delegate.

9.13 Monthly Reports

9.13.1 The Service Provider will provide SARS with a monthly report containing a consolidated record of all Incidents of triggered alarms, faulty alarms, power failures, panic buttons, failed patrols and Security

Breaches at SARS Sites during a month on a template specified by SARS.

9.13.2 It is the responsibility of the Service Provider to supply accurate and relevant information and reports. In this regard, the monthly report will be validated and quality controlled by the Contract Manager.

9.13.3 Any information provided by the Service Provider in the reports must be sufficiently detailed to provide assurance to SARS that the Services are being conducted as per SARS's requirements.

9.13.4 The report will be discussed at the monthly meetings with the Contract Manager.

9.14 Compliance with Applicable Law

The Service Provider shall, specifically, comply with the following legislation and any regulations thereto-

9.14.1 Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

9.14.2 Criminal Procedure Act, 1977 (Act No. 51 of 1977);

9.14.3 Firearms Control Act, 2000 (Act No. 60 of 2000);

9.14.4 Labour Relations Act, 1995 (Act No. 66 of 1995);

9.14.5 Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

9.14.6 Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);

9.14.7 Road Traffic Act, 1989 (Act No. 29 of 1989);

and generally, all Applicable Law.

10. PERSONNEL RECORDS

10.1 Subject to laws relating to the protection of personal information, the Service

Provider shall provide and/or make available to SARS a copy of Security Officers' personnel files. The personnel files must contain copies of the following-

- 10.1.1 Security training certificates, polygraph pre-employment results, integrity evaluation records and PSIRA registration certificates;
 - 10.1.2 Grading certificates, performance history, PSIRA-issued security identification cards, competency certificates [as stipulated in the Firearms Control Act, 2000 (Act No. 60 of 2000)] and certified copies of identity books;
 - 10.1.3 Completed SARS Oath of Secrecy forms, copies of qualifications and medical fitness certificates;
 - 10.1.4 Disciplinary records, a record of pre-employment screening results and annual criminal status screening detailing the results of the security vetting processes established in **Clause 18** of this Agreement; and
 - 10.1.5 All credit references.
- 10.2 Subject to laws relating to the protection of personal information the personnel files referred to in **Clause 10.1** above shall be made available for inspection by SARS or any other lawful regulatory authority on demand.

11. PERFORMANCE FAILURES

- 11.1 The Service Provider shall maintain minimum standards of performance ("the Service Levels") as set out in **Annexure B** attached hereto.
- 11.2 Failure to attain a prescribed Service Level constitutes a Performance Failure and will entitle SARS to levy the corresponding financial penalty stipulated in Columns 4 and 5 of **Annexure B**. The maximum percentage of the Service Provider's total invoice, which may be at risk due to any Performance Failures in any particular month, shall not exceed twenty percent (20%) of the total amount invoiced to SARS in respect of such month.

- 11.3 The Service Provider shall account for such Performance Failures in a credit note crediting SARS with the total sum of the applicable financial penalties that SARS has become entitled to for the immediately preceding month. Notwithstanding the foregoing, SARS may withhold, deduct or set off from any monies due and owing to the Service Provider in terms of this Agreement, an amount equal to the amount of any outstanding claims that SARS may have against the Service Provider for damages, costs or any other indebtedness arising out of this Agreement: Provided that SARS will provide the Service Provider with written notice of its intention to offset, supported by reasonable detail of the actual damages, costs incurred or indebtedness.
- 11.4 The levying of a financial penalty shall not prejudice SARS's rights to-
- 11.4.1 terminate the Agreement for breach by the Service Provider as provided for in **Clause 20** below;
 - 11.4.2 cancel with immediate effect the provision of the Services to the affected SARS Site;
 - 11.4.3 reallocate with immediate effect the Services to the affected SARS Site to another service provider, appointed in terms of RFP 26/2017 or such other service provider as may be appointed by SARS in its exclusive discretion. In such an event, the Service Provider shall be obliged, and for the Service Provider's own account, to assist in the seamless transition of the Services to the incoming service provider; or
 - 11.4.4 invoke any of its rights in terms of Applicable Law.
- 11.5 Where SARS invokes the rights reserved in **Clauses 11.4.2** and **11.4.3**, the Service Provider shall be obliged to reduce the monthly fees for the affected region accordingly in the month following the adjustment.
- 11.6 Cancellation or reallocation of Services in terms of this Clause shall be without any liability to SARS, except for payment for the Services already rendered by the Service Provider less applicable financial penalties.

12. SITES

12.1 The Service Provider will perform the Services in the following ____ (__) regions, as specified by SARS, at the SARS's Sites listed in **Annexure A**, namely-

12.1.1 Region X – _____; and

12.1.2 Region Y – _____.

12.2 The Service Provider must predetermine and mark on a geographical map the location of the relevant SARS Sites. Should the Service Provider encounter difficulties locating a SARS Site, it must immediately contact the SARS's Authorised Representative for directions.

12.3 SARS reserves the right to add to or reduce the number of SARS Sites and/or guarding complement, as listed in **Annexure A**. The fee per region will be adjusted accordingly in the month following the adjustment.

13. CONTRACT MANAGEMENT

13.1 As of the Effective Date, the Service Provider will designate amongst its personnel-

13.1.1 An Account Executive. The person assigned may not fulfil the role and function of the Contract Manager as well;

13.1.2 A Contract Manager. Provided that, where SARS requests a Contract Manager to be stationed at SARS's premises, the Service Provider shall assume all risks associated with the Contract Manager(s) being stationed at SARS;

13.1.3 A Grade A or B Security Officer, as determined by SARS, who will be in charge of the operations of the Services of a shift at a SARS Site; and

13.1.4 Supervisors and managers, who will conduct the inspections at a SARS Site, as required in terms of this Agreement.

- 13.2 The Service Provider shall, on or before the Effective Date furnish SARS with the names and telephone numbers of the personnel designated in terms of this Clause.

14. MANAGEMENT MEETINGS

- 14.1 At the first meeting, the Parties will agree on the place, time and venue of subsequent meetings, and any proposed additions / amendments to the Standard Operating Procedures submitted to SARS by the Service Provider, which shall include as a minimum: rostering / scheduling, dress code and code of conduct.
- 14.2 The Service Provider's Account Executive and SARS's Authorised Representative shall meet once every month to discuss the performance of the Services and amongst others, Security Breaches, Incidents, financial penalties applicable to Performance Failures, invoicing and payment matters, as well as safety issues.
- 14.3 The Service Provider's Contract Manager will meet with the relevant SARS Regional Security Manager and/or his/her delegate to discuss Security Breaches and Incidents, a minimum of one (1) meeting per month and/or per SARS requirements.
- 14.4 The Service Provider's Chief Executive Officer and SARS's Authorised Representative shall meet a minimum of once a year to discuss the overall performance of Services. Both Parties may invite additional persons in their employ to the meeting.
- 14.5 The Service Provider shall be responsible for the correct recording of the meeting proceedings envisaged in this Clause and the keeping of minutes.
- 14.6 The Service Provider shall deliver the minutes and record of the meeting proceedings to SARS within two (2) Business Days after the date of the meeting or such shorter period as SARS may prescribe, in its absolute discretion, for SARS's perusal and verification.
- 14.7 SARS shall have the right to comment on and amend the record. SARS's comments and amendments shall be discussed and/or confirmed at the next

meeting, or as otherwise prescribed by SARS.

- 14.8 Nothing contained in this **Clause 14** shall prevent SARS from calling an unscheduled meeting with the Service Provider or its Account Executive to discuss any matter regarding the performance of Services, at its sole discretion. The provisions of **Clauses 14.5, 14.6 and 14.7** shall apply to such meetings as well.

15. PRICING

- 15.1 The consideration (inclusive of VAT) that SARS will pay the Service Provider in respect of the rendering of the Services is stated in **Annexure A** to this Agreement.
- 15.2 The prices referred to in **Clause 15.1** above shall, subject to minimum statutory wage increases in the security sector, be fixed and firm for a period of twelve (12) months from the Effective Date. For clarity, firm prices are prices at which the Services are rendered without any adjustment being made thereto for any reason except as stated in this Clause, for the duration of the Agreement.
- 15.3 The Service Provider shall give SARS written notice of the latest minimum statutory wage increase within five (5) Business Days of having knowledge of such minimum statutory wage increase.
- 15.4 The Parties shall meet within five (5) Business Days of SARS being so notified to discuss and agree on the adjustment of the monthly fee payable in terms of this Agreement, provided that such adjustment shall not exceed the amount by which the minimum statutory wage payable to the Service Provider's Personnel has been increased.
- 15.5 If the Parties fail to reach an agreement on the increase as provided for in this Clause, the monthly fee payable to the Service Provider will remain the same as that which applied immediately before the requested monthly fee adjustment, provided that the Service Provider may terminate this Agreement by giving SARS thirty (30) days' written notice to that effect.

16. INVOICING

- 16.1 The Service Provider shall invoice SARS the total monthly fee payable per region on or before the fifth (5th) day of the month following the month in which the Service Provider performed the Services.
- 16.2 Each invoice shall contain-
- 16.2.1 A description of the Services rendered; and
 - 16.2.2 Any such details as may reasonably be requested by SARS, from time to time.
- 16.3 The Service Provider shall verify that each invoice is complete and accurate, and that it conforms to the requirements of this **Clause 16** before issuing the invoice to SARS.
- 16.4 The Service Provider shall deliver all invoices to the SARS office designated by SARS from time to time.
- 16.5 SARS shall pay undisputed amounts in an invoice within thirty (30) days after SARS receives such invoice, if the invoice is accurate and meets the requirements of this Agreement.
- 16.6 Should SARS query an item in an invoice, the Service Provider shall within two (2) days after a written request by SARS, provide SARS with any other documentation or information reasonably required by SARS in order to verify the accuracy of the amounts due on an invoice.
- 16.7 The amount of the financial penalties for Performance Failures, calculated with reference to **Annexure B** and as confirmed by SARS pertaining to the prior months, must be credited to SARS by issuing a credit note.
- 16.8 SARS shall not be obliged to pay any amounts that are invoiced more than one hundred and twenty (120) days after the first (1st) day of the month in which the Service Provider was obliged to deliver such invoice, unless the amount or invoice is disputed in terms of **Clause 17** below.

- 16.9 The Service Provider shall for the contract term and for a period of five (5) years after the termination of this Agreement, maintain a complete audit trail of the Services performed under this Agreement, sufficient to permit a complete audit thereof.
- 16.10 The Service Provider shall provide SARS and SARS's auditors access at reasonable times to information, records, documentation and personnel relating to the Services for the purpose of performing audits, examinations and inspections in order to verify the Service Provider's compliance with the terms of this Agreement and/or to enable SARS to comply with the requirements of any regulatory authority and/or regulators and governmental entities having jurisdiction.
- 16.11 All costs incurred in performing audits under this **Clause 16** will be borne by SARS unless audit findings reveal the Service Provider's non-compliance with the terms of this Agreement and/or requirements of a regulatory authority or similar institution having jurisdiction over SARS and/or the Service Provider.

17. DISPUTED CHARGES AND INVOICING ERRORS

- 17.1 SARS may withhold payment of monthly fees that SARS disputes in good faith or, if the disputed monthly fees have already been paid, SARS may withhold an equal amount from a later payment, including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount-
- 17.1.1 SARS shall promptly notify the Service Provider that it is disputing such amount providing a reasonable explanation of the rationale therefore and the Parties shall promptly first address such dispute in accordance with this **Clause 17**;
- 17.1.2 If the dispute relates to (or equals in the case of disputed amounts that have already been paid) only a percentage of the invoiced amount, then SARS shall pay the undisputed amount in accordance with **Clause 16.5** above; and
- 17.1.3 If an invoice is identified as incorrect, then the Service Provider shall either issue a correct invoice if the amount has not yet been paid, or make a correction on the next invoice if the amount has been paid.

- 17.2 Any dispute arising in terms of **Clause 17.1** above and which remains unresolved for five (5) Business Days after it has arisen, shall be referred by either Party to SARS's Group Executive: Procurement and the Service Provider's Chief Executive Officer or their appointed delegates for resolution.
- 17.3 The SARS's Group Executive: Procurement and the Service Provider's Chief Executive Officer or their appointed delegates shall meet to resolve such dispute within five (5) Business Days of the referral of the dispute.
- 17.4 In the event that the dispute remains unresolved after ten (10) days of its referral to the persons mentioned in **Clause 17.2** above, either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **Clause 22** below.

18. SECURITY VETTING OF THE SERVICE PROVIDER'S PERSONNEL

- 18.1 SARS reserves the right at its sole and absolute discretion to do a security check (vetting) on the Service Provider's Personnel involved with the performance of the Services.
- 18.2 The Service Provider will procure from its Personnel such consents and documentation, as may be reasonably requested by SARS, to enable SARS to conduct such security checks as aforementioned.
- 18.3 Security vetting shall include, but not be limited to, checks on criminal records, credit references and identity documents.
- 18.4 Where SARS, in its sole discretion, finds any of the Service Provider's Personnel to be a security risk, including where they are found to have criminal records, SARS will inform the Service Provider accordingly in writing and the Service Provider will be required to immediately replace such a person with a suitably trained and equally graded substitute.
- 18.5 Failure to effect such a replacement of the Service Provider's Personnel, within a period of forty eight (48) hours after having been so informed by SARS, will constitute a Performance Failure due to the disregarding of a SARS written request.

- 18.6 Despite the above, the Service Provider must ensure that prior to commencement of employment the Service Provider's Personnel undergo security vetting, which must include the checks described in **Clause 18.3**.
- 18.7 The Service Provider shall re-vet the criminal status of its personnel annually and SARS may at any time verify the results of such security vetting as set out in **Clause 10.2** above.

19. CONFIDENTIALITY

- 19.1 Except as permitted by this Agreement neither Party shall disclose nor publish any Confidential Information in any manner, for any reason or purpose whatsoever without the prior written consent of the owner of the Confidential Information.
- 19.2 The Service Provider agrees that it will restrict the dissemination of SARS's Confidential Information to the Service Provider's Personnel who are actively involved in activities for which use of Confidential Information is authorised and then only on a 'need to know' basis. The Service Provider shall initiate, maintain and monitor internal security procedures reasonably acceptable to SARS to prevent unauthorised disclosure of SARS's Confidential Information by the Service Provider's Personnel.
- 19.3 Each Party shall maintain the confidentiality of the other Party's Confidential Information, using at least the same efforts as it uses to maintain the confidentiality of its own Confidential Information, and as otherwise required under Applicable Law, the terms of this Agreement and SARS's Oath of Secrecy.
- 19.4 Prior to giving any of the Service Provider's Personnel access to any Confidential Information, the Service Provider shall require that such personnel execute SARS's Oath of Secrecy.
- 19.5 In the event of SARS not being in receipt of a signed Oath of Secrecy from such personnel, SARS shall be entitled to deny the Service Provider's Personnel access to SARS Sites or prevent such personnel from conducting any work in relation to the Services. The Service Provider will, however, in such event, not be excused from its service obligations. The Service Provider

specifically indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors and assigns, against all claims or losses arising from or in connection with SARS denying the Service Provider's Personnel access to SARS premises, where SARS finds any of the Service Provider's Personnel to be a security risk.

- 19.6 The Service Provider shall ensure that the Service Provider's Personnel do not remove any Confidential Information (irrespective of the media it is contained in) or SARS's property from SARS Sites without the written authority of SARS's Authorised Representative.

20. BREACH

- 20.1 If a Party (the "Defaulting Party") is in default or breach of any obligation which arises in terms of the Agreement and that Defaulting Party fails to remedy such default or breach within fourteen (14) Business Days after receipt of a written notice given by the other Party (the "Aggrieved Party") calling upon the Defaulting Party to remedy such default or breach, then the Aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at Law-

20.1.1 claim specific performance;

20.1.2 cancel this Agreement, such cancellation to be effective immediately on receipt by the Defaulting Party of a written notice to that effect; or

20.1.3 claim any money due and payable in terms of this Agreement and claim damages from the Defaulting Party.

- 20.2 The Service Provider acknowledges that it is a material term of this Agreement that the Service Levels prescribed in **Annexure B** must be maintained throughout the contract term. The Parties agree that multiple Performance Failures will constitute sufficient proof of persistent non-compliance by the Service Provider with SARS's prescribed Service Levels and that such persistent non-compliance will constitute a material breach of this Agreement.

- 20.3 The remedies set out in this Clause shall not be construed to be exhaustive of

any other remedies available to the Parties.

21. TERMINATION

21.1 Termination for cause by SARS

21.1.1 SARS may, by giving notice to the Service Provider, terminate this Agreement or the rendering of the Services in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider fails to comply with the provisions in **Clauses 8, 18, 19 and 40** of this Agreement or commits an act of insolvency as defined in the Insolvency Act, 1936 (Act No. 24 of 1936) or is placed under provisional liquidation or under business rescue proceedings or is finally liquidated. Notwithstanding the above, SARS may immediately terminate this Agreement without notice where the Service Provider breaches **Clauses 9.11, 9.14, 19.6 or 39**.

21.1.2 SARS shall have no liability to the Service Provider with respect to a termination under **Clause 21.1.1**.

21.2 Termination Upon Sale, Acquisition, Merger or Change of Control

21.2.1 In the event of a sale, acquisition, merger, or other change of control of the Service Provider (a "Change Event") where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the Service Provider in a single or series of related transactions, then, at any time within twenty (20) Business Days after being notified by the Service Provider in terms of **Clause 21.2.2** of the last of such events to occur, SARS may terminate this Agreement by giving the Service Provider written notice designating a date upon which such termination shall become effective.

21.2.2 The Service Provider shall notify SARS of any Change Event within five (5) Business Days after becoming aware of such Change Event.

21.2.3 No sale, acquisition, merger or other change of control shall be effective against and legally binding on SARS, if the prior written

consent of SARS was not obtained.

21.2.4 SARS shall have no liability to the Service Provider with respect to termination of the Agreement in terms of this Clause.

21.2.5 "Control" in terms of this Clause shall mean, with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of the following-

21.2.5.1 holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a company) of such entity ordinarily having voting rights;

21.2.5.2 controlling the majority of the voting rights in such entity; or

21.2.5.3 having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.

21.2.6 Any termination of this Agreement pursuant to the provisions of this **Clause 21.2** shall be without prejudice to any claim which either Party may have in respect of any prior breach of the terms and conditions of this Agreement by the other Party.

22. DISPUTE RESOLUTION

22.1 In the event of a dispute of whatsoever nature, excluding SARS's decisions and instructions regarding the acceptability and/or replacement of specific Security or Armed Response Officers, which arises out of or in connection with this Agreement, including any dispute as to the validity, existence, enforceability, interpretation, application, implementation, breach, termination or cancellation of this Agreement or as to the Parties' rights and/or obligations in terms of this Agreement or in connection with any documents furnished by the Parties in terms of this Agreement, the Parties shall meet and negotiate in good faith to attempt to resolve the dispute. This entails that the one Party invites the other in writing to a meeting and attempts to resolve the dispute within seven (7) days from date of the written invitation. If the dispute has not been resolved by such negotiation, the Parties shall submit the dispute to the

Arbitration Foundation of Southern Africa (“AFSA”) administered mediation, failing which the dispute shall be determined as below.

22.2 Save in respect of those provisions in this Agreement which provide for their own remedies which would be incompatible with arbitration, or in the event of either Party instituting urgent action against the other in any court of competent jurisdiction, any dispute arising from or in connection with this Agreement will finally be resolved by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (the “Foundation”) or its successor, by an arbitrator or arbitrators appointed by the Foundation.

22.3 Neither Party shall be precluded from obtaining interim relief on an urgent basis or other conservatory relief from a court of competent jurisdiction pending the decision of the arbitrator.

23. FORCE MAJEURE

23.1 To the extent that, and for as long as either of the Parties (hereinafter referred to as the “the affected Party”) is rendered unable wholly or in part, to carry out any of its obligations under this Agreement, by reason of any *force majeure* event beyond its reasonable control, then subject to **Clause 23.5-**

23.1.1 The affected Party shall be released from the relevant obligation and shall incur no liability therefore during the continuance of the said *force majeure* event; and

23.1.2 The obligations not affected by the said *force majeure* event shall remain in force.

23.2 To the extent that the affected Party is not the cause of the *force majeure* event, such *force majeure* event may be deemed to include, but shall not be limited thereto, fire, storm, explosion, accidents, earthquake, an epidemic, floods, drought, war, revolution, riots, sabotage, sanctions, boycotts or the operation of any law or regulation under the law or any other cause beyond the reasonable control of that Party.

23.3 Should such *force majeure* event arise, the affected Party shall within seven (7) days notify the other Party of the estimated duration and extent of the

disturbing circumstances with sufficient particulars to enable the other Party to assess the possibility of obtaining performance by another means not affected by the *force majeure* event.

23.4 The affected Party shall use its best efforts to remove the disturbance with the least possible delay so that its obligations can be fulfilled as soon as reasonably possible in the manner provided for in this Agreement.

23.5 Should the *force majeure* event last more than thirty (30) days from the date of receipt of notification by the other Party, the other Party shall be entitled to terminate this Agreement by giving not less than ten (10) days' written notice to the affected Party.

23.6 SARS shall be entitled to use the service of other parties during such period.

24. STEP IN RIGHTS

24.1 In addition to any other rights and remedies that it may have in terms of this Agreement or otherwise, including the right to terminate this Agreement, SARS may in its sole discretion elect to temporarily take over the Services as contemplated in **Clause 24.2** below, immediately upon SARS's identification or the Service Provider's notification of the occurrence of any event which SARS considers, in its sole discretion, to be an event which may affect the continuity of the Services.

24.2 For purposes of this **Clause 24** SARS may (at its option), either itself or by the procurement of an alternate third party service provider, temporarily take over the provision of the Services until such time as SARS is able to make permanent alternate arrangements for the provision of the Services, which right shall apply for a period of no more than one hundred and eighty (180) days from the date that SARS temporarily takes over the provision of the Services. The Service Provider shall, upon the request of SARS, fully co-operate with and assist SARS in the performance of the Services during any such temporary take-over of the Services by SARS.

24.3 To the extent that SARS exercises its rights to assume the rendering of the Services or part thereof itself, or procures that a third party service provider renders some or all of the Services pursuant to the provisions of **Clause 24.2**

above, the Service Provider shall not be entitled to any fees and/or charges during the period for which SARS or the third party assumes the Services. SARS shall be obliged to also assume, for that period, any direct costs and expenses solely attributed to any such temporary rendering of part or all of the Services, incurred by SARS in accordance with this Clause, including the salary costs for Service Provider Personnel that SARS may require to assist it in so rendering the Services or part thereof. SARS shall not under any circumstances by virtue of such assumption, be obliged or deemed or required to also take over or assume responsibility for the conduct of the Service Provider's business operations or the employment of any Service Provider Personnel, in terms of this Clause.

25. WARRANTIES

25.1 The Service Provider hereby represents and warrants to SARS that-

25.1.1 this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;

25.1.2 it is acting as a principal and not as an agent of an undisclosed principal;

25.1.3 the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum of incorporation or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;

25.1.4 it will provide the Services in a cost-effective and expedient manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS;

25.1.5 it has the requisite insurance to cover third party and professional indemnity claims that may be instituted against it; and

25.1.6 it has the necessary resources, skills, capacity and experience to

render the Services to SARS.

25.2 It is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material to this Agreement and induced SARS to conclude this Agreement.

25.3 The provisions of this Clause shall survive the termination of this Agreement.

26. LIABILITY OF THE PARTIES

26.1 A Party shall be liable to the other Party for any direct damages incurred by such Party as a result of the other Party's failure to perform its obligations in the manner required by this Agreement.

26.2 Except in cases of any malicious, intentional, fraudulent, reckless or grossly negligent acts or a breach of the confidentiality provisions of this Agreement by the Service Provider or the Service Provider's Personnel, the Service Provider shall not be liable to SARS for indirect and consequential or special damages and/or losses suffered by SARS.

27. INSURANCE

27.1 The Service Provider shall for the contract term, have and maintain in force third party liability insurance cover of at least five million rand (R5 000 000.00) against all actions, suits, claims or other expenses arising in connection with damages or loss (including death) suffered by a third party as a result of negligence on the part of the Service Provider, its employees, subcontractor or any person engaged by the Service Provider to provide the Services or component thereof.

27.2 The Service Provider shall for the contract term, have and maintain in force professional indemnity insurance cover to a minimum of five hundred thousand rand (R500 000.00) per Security Breach and/or Incident against all actions, suits, claims or other expenses arising in connection with damages or loss (including death) which may be suffered by SARS as a result of breach of the terms and conditions of this Agreement in providing the Services or component thereof.

- 27.3 The Service Provider shall provide SARS with certificates of insurance, evidencing that the covers and policy endorsements required under this Agreement are maintained in force, on the date of signing this Agreement and provide evidence of renewal of the insurance at least three (3) Business Days prior to expiration thereof.
- 27.4 The Service Provider shall provide SARS with at least thirty (30) days' notice prior to any material modification, cancellation or non-renewal of the policies.
- 27.5 In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage set out in **Clauses 27.1 and 27.2** above, the Service Provider shall be solely responsible to take such action. The Service Provider shall provide SARS with contemporaneous notice and with such other information as SARS may request regarding the event.

28. SARS'S RIGHT TO ACQUIRE INSURANCE IN CERTAIN CIRCUMSTANCES

Without limiting the generality of SARS'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 three (3) Business Days prior to expiration, SARS may, on three (3) Business Days' notice to the Service Provider, purchase the requisite insurance and deduct the costs thereof from any amounts owed to the Service Provider under this Agreement.

29. INDEMNITY BY THE SERVICE PROVIDER

- 29.1 Subject to **Clause 27** above, the Service Provider hereby indemnifies, holds harmless and agrees to defend SARS and its officers, employees, agents, successors and assigns, against all claims or losses arising from or in connection with, any of the following-

29.1.1 Third party claims attributable to any breach of the provisions of this Agreement by the Service Provider;

29.1.2 Third party claims arising from the Service Provider's breach of an agreement between the Service Provider and a subcontractor

(including claims by the subcontractor);

29.1.3 Third party claims attributable to theft, fraud or other unlawful activity or any negligent, wilful or fraudulent conduct by the Service Provider or the Service Provider's Personnel and claims attributable to errors and/or omissions;

29.1.4 Third party claims arising from or related to the death or bodily injury of any agent, employee, customer, business invitee, business visitor or other person caused by the delictual conduct of the Service Provider or the Service Provider's Personnel;

29.1.5 Claims arising from damage to property owned or leased by SARS or belonging to a third party caused by the acts or omissions of the Service Provider or the Service Provider's Personnel; or

29.1.6 Claims arising from a Security Breach and/or Incident.

30. GENERAL

30.1 Subcontracting

30.1.1 It is anticipated that the Service Provider will subcontract a portion of the Services to the subcontractor indicated in its bid proposal submitted in response to RFP 26/2017, and in the manner contemplated therein.

30.1.2 Notwithstanding the provisions of this **Clause 30.1**, the Service Provider shall remain the only Party wholly responsible for the due performance of its obligations in terms of this Agreement and compliance with the terms and conditions thereof.

30.1.3 The Service Provider shall ensure that a subcontracting agreement entered into between the Service Provider and the subcontractor binds the subcontractor to the terms and conditions of this Agreement.

30.1.4 The Service Provider shall be responsible for all acts, omissions, defaults and negligence of its subcontractors and their experts, agents

or employees as if they were those of the Service Provider, and shall not be absolved from its responsibility in terms of this Agreement on the basis that such persons were acting outside the scope of their engagement by the Service Provider.

30.1.5 The Service Provider may not replace the subcontractor contemplated in **Clause 30.1.1** above without the prior written consent of SARS, which consent shall not be unreasonably withheld: Provided both the Service Provider and the then proposed subcontractor satisfy the subcontracting conditions and criteria stipulated in RFP 26/2017.

30.1.6 Nothing contained herein shall create a contractual relationship between SARS and the subcontractor.

31. WHOLE AGREEMENT

This Agreement constitutes the whole Agreement between the Parties as to the subject matter hereof and no contracts, undertakings, representations or warranties given, made or concluded between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

32. ADDITIONS, VARIATIONS, CANCELLATION AND NOVATION

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any rights arising from this Agreement or its breach or termination shall be of any force and effect unless reduced into writing and signed by both Parties or their duly authorised representatives.

33. SEVERABILITY OF THE CLAUSES OR PROVISIONS

If any Clause or provision of this Agreement is found to be invalid, illegal or unenforceable in any way, such Clause or provision shall be deemed to be separate and severable from the remaining provisions of this Agreement, and the validity and enforceability of those provisions shall not be affected.

34. CESSIONS

Subject to Applicable Law, the Service Provider shall not cede, assign, transfer or otherwise alienate this Agreement without the prior written consent of SARS, which shall not be unreasonably withheld.

35. WAIVER

No latitude, extension of time or other indulgence which may be given or allowed by either Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of such Party arising from this Agreement, and no single or partial exercise of any right by a Party under this Agreement, shall in any circumstances be construed to be implied consent or election by a Party or operate as a waiver or novation of or otherwise affect any of that Party's rights in terms of or arising from this Agreement or estop or preclude that Party from enforcing at any time and without notice, strict punctual compliance with each and every provision or term hereof.

36. COSTS

Each Party shall bear its own costs in respect of the negotiation, preparation and finalisation of this Agreement.

37. GOVERNING LAW AND JURISDICTION

37.1 This Agreement shall be subject to South African law.

37.2 The Service Provider hereby consents to the jurisdiction of the High Court of the Republic of South Africa (Gauteng Division, Pretoria).

38. DOMICILIUM CITANDI ET EXECUTANDI

38.1 Any notice in terms of this Agreement may be hand delivered to a responsible person during business hours at the physical addresses of the Parties, in which event proof of acknowledgment shall be endorsed upon a copy of the notice together with the name of the recipient and date of receipt, or may be sent by registered post to the nominated postal addresses of the Parties, in

which event a proof of postage issued by the relevant postal authority will serve as proof, or may be sent per telefax. In the case of hand delivery, receipt shall be deemed to have been on the day of delivery; in the case of postage, receipt shall be deemed to be the fifth (5th) Business Day after posting (unless the contrary is proved) and in the case of telefax, receipt shall be deemed to have been on the first Business Day after the date of transmission (unless the contrary is proved).

38.2 The Service Provider chooses for the purpose of service of documents in legal proceedings its ***domicilium citandi et executandi*** as follows-

38.2.1 Street Address: _____

38.2.2 Postal Address: _____

38.3 SARS chooses for the purpose of service of documents in legal proceedings its ***domicilium citandi et executandi*** as follows-

38.3.1 Street Address: **Lehae La SARS**
299 Bronkhorst Street
Nieuw Muckleneuk
Pretoria
0181

38.3.2 Postal Address: Private Bag X923, Pretoria, 0001

38.4 Any Party to this Agreement may change its *domicilium citandi et executandi* by giving the other Party thirty (30) days' notice, as prescribed in **Clause 38.1** above.

38.5 The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via email.

39. TAX COMPLIANCE

39.1 The Service Provider warrants that, as of the Effective Date, it is and will for the duration of the Agreement remain compliant with all Applicable Laws relating to taxation in the Republic of South Africa.

39.2 A failure to comply with the provisions of this Clause will constitute a material breach and will entitle SARS to terminate the Agreement forthwith. SARS will have no liability to the Service Provider with respect to such termination.

40. BROAD-BASED BLACK ECONOMIC EMPOWERMENT

40.1 The Service Provider commits and warrants to comply in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) [hereafter referred to as the "B-BBEE Act"] as will be amended from time to time, and the Codes of Good Practice issued in terms of the B-BBEE Act.

40.2 Upon the Effective Date of this Agreement and one (1) calendar month after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its BEE rating status from an agency accredited by the South African National Accreditation System or a certificate from the Companies and Intellectual Property Commission or a sworn affidavit, confirming annual turnover and level of black ownership in the case of an Exempted Micro Enterprise and Qualifying Small Enterprise.

40.3 During the currency of this Agreement, the Service Provider shall remain BEE compliant with a minimum B-BBEE status level of contributor 1 or 2.

40.4 A failure to comply with the provisions of **Clause 40.3** above is a material breach and will entitle SARS to terminate the Agreement.

41. ANTI-CORRUPTION AND GOOD FAITH

41.1 In implementing this Agreement and in all further dealings with each other, the Parties undertake to observe the utmost good faith and to give effect to the intent and purpose of this Agreement.

41.2 The Service Provider will not make or cause to be made any offer, gift, payment, consideration, or benefit of any kind, which would or could be construed as an illegal or corrupt practice, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Agreement. Any such practice will be grounds for termination of this Agreement.

42. CONFLICT OF INTEREST

42.1 Neither the Service Provider nor the Service Provider's Personnel shall have any interest or receive any remuneration in connection with the performance of the Services, except as provided for in this Agreement.

42.2 The Service Provider shall not engage in any other activity which may conflict with its obligations to SARS in terms of this Agreement.

43. SIGNATORIES

As Representatives for the South African Revenue Service

1. XXX

Group Executive: Officer of the Commissioner

Date signed:

2. XXX

Group Executive: Procurement

Date signed:

As Authorised Representative for the Service Provider

1. _____

Date signed: