**SERVICES AGREEMENT IN RESPECT OF THE PROVISION OF**

**ASSETS-IN-TRANSIT SERVICES**

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

**[TO BE ADDED]**

(herein represented by its authorised representative 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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### DEFINITIONS

* 1. Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings-
     1. **“Account Executive”** means the Service Provider’s designated senior manager, who will be in charge of the general administration of the Services and will interface with SARS’s Designated Representative in connection therewith, and to whom all communications regarding this Agreement must be addressed, and further, who will assist in the resolution of any disputes;
     2. “**Agreement**” means this Services Agreement, together with all annexures hereto, including all amendments, variations, and/or substitutions to the Agreement, which have been reduced to writing and signed by the duly authorised representatives of the Parties;
     3. “**Amount at Risk**” means that portion of the invoiced amount that is available for the setting-off of financial penalties that are due and payable to SARS as contemplated in **clause 7.2** below;
     4. **“Applicable Law”** means any of the following to the extent applicable to the Service Provider and where applicable, to SARS or the Services-

1. Any statute, regulation, policy, by-law, ordinance or subordinate legislation;
2. The common law;
3. Any binding court order, judgment or decree;
4. Any applicable industry code of conduct, policy or standard enforceable by law; or
5. Any applicable direction, policy or order that is given by a regulatory authority;
   * 1. **“Business Day(s)”** means any day between and including Monday and Friday, except public holidays in South Africa;
     2. **“Effective Date”** means **[TO BE ADDED]**, irrespective of the signature date of this Agreement;
     3. **“Parties”** means SARS and the Service Provider and “Party” as the context requires is a reference to any one of them;
     4. **“PSIRA”** means the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001) or the authority established thereunder;
     5. **“RFP”** subject to any contrary indication, is reference to SARS’s Request for Proposals **No. 60/2018** for the provision of the Services, which is incorporated herein by reference.
     6. “**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;
     7. **“SARS’s Designated Representative”** means the SARS employee designated / appointed in terms of this Agreement, or his/her appointed delegate, as the person who will interface with the Service Provider on all matters relating to the general administration of this Agreement, who will manage the overall performance of the Service Provider over the contract term and to whom all communications regarding this Agreement must be addressed;
     8. **“SARS Sites”** means the SARS offices and/or premises set out in **[TO BE ADDED]** hereto. SARS reserves the right to add to and/or remove an office and/or premise from **[TO BE ADDED],** in which event the consideration payable to the Service Provider shall be adjusted accordingly;
     9. **“Services”** means the provision by the Service Provider of Assets-in-Transit Services as contemplated in **RPF 60/2018**, and in 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;
     10. **“Service Level”** means the minimum performance standard of compliance which must be met by the Service Provider when rendering the Services, a stipulated in **Annexure D** of the RFP;
     11. **“Service Level Failure”** means a failure to attain a prescribed Service Level, which will entitle SARS to levy a financial penalty.
     12. **“Service Provider”** means **[TO BE ADDED]** a company with limited liability incorporated in accordance with the Laws of South Africa with registration number **[TO BE ADDED]** and with its place of businessat **[TO BE ADDED]**;
     13. **“Service Provider’s Personnel”** means any staff, entity, institution or person engaged or employed by or on behalf of the Service Provider to provide the Services; and
     14. “**VAT**” means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

### INTERPRETATION OF THE AGREEMENT

* 1. In this Agreement, unless the context otherwise indicates-
     1. Words and expressions that denote any one gender shall be capable of being construed as a reference to the other gender.
     2. Words signifying the singular shall include the plural and vice versa.
     3. A reference to a person shall include a reference to a juristic person or natural person and vice versa.
     4. Words and phrases defined in this Agreement shall bear the meaning assigned to them throughout this Agreement.
     5. Headings of clauses are for convenience only and shall not aid in the interpretation or modification of clauses within the Agreement.
     6. Since the provisions of this Agreement have been settled by negotiation, the rule of construction that clauses must be interpreted against the party responsible for drafting will not apply.

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### APPOINTMENT

* 1. SARS issued a Request for Proposals for the provision of the Services.
  2. The Service Provider submitted a proposal to SARS, to render the Services. SARS accepted the proposal and hereby appoints the Service Provider to render the Services, subject to the terms and conditions set out herein.
  3. The Service Provider represents that it has and warrants that throughout the duration of this Agreement, 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.
  4. The Service Provider warrants that it will adhere to all applicable SARS security policies and standing operating procedures in the performance of the Services.
  5. In reliance on these statements and representations, SARS appoints the Service Provider to render the Services on a non-exclusive basis, which appointment the Service Provider accepts.

### DURATION

This Agreement will be effective from the Effective Date, and endure for a period of sixty (60) months unless terminated earlier in terms of this Agreement.

### RELATIONSHIP BETWEEN THE PARTIES

* 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.
  2. All personnel used by the Service Provider will be the Service Provider’s employees, contractors or agents, and the entire management, direction and control of all such persons will be the responsibility of the Service Provider.

### SECURITY EQUIPMENT

* 1. The Service Provider must ensure that all of its equipment used or resources deployed to perform the Services are fully functional at all times for the duration of the Agreement.
  2. Should any of its security equipment fail to be fully functional at any point, the Service Provider must ensure that it has a contingency plan in place, whilst the faulty equipment / resource is being repaired or replaced, to prevent an interruption of the Services.

### SERVICE LEVEL FAILURES

* 1. The Service Provider shall maintain the Service Levels set out in the RFP, and annexed herein as **Annexure** **A** . Failure to attain a prescribed Service Level shall constitute a Service Level Failure and will entitle SARS to levy the corresponding financial penalty stipulated therein.
  2. The maximum Amount at Risk that will be levied as financial penalty(ies) in any particular month shall not exceed twenty five (25%) of the total amount invoiced to SARS in respect of such month.
  3. The levying of a financial penalty shall not prejudice SARS’s rights to terminate the Agreement for breach by the Service Provider.
  4. SARS shall be entitled to off-set any service level credit due to it against payment due to the Service Provider in any particular month.

### SUBCONTRACTING

* 1. Subject to Applicable Law, the Service Provider shall not without the prior written consent of SARS, which consent shall not be unreasonably withheld, subcontract any of the Services required in terms of this Agreement to any third party. It is expressly recorded that SARS will not approve a proposed subcontracting if, in the exclusive judgment of SARS, the subcontracting will result in prejudice or potential prejudice to other service providers.
  2. Whenever the Service Provider wishes to subcontract any part of the Services in terms hereof, the Service Provider shall submit, together with its request as set out in **clause 8.1** above,a complete written proposal for SARS’s approval containing –
     1. Full details and business references of the subcontractor;
     2. Confirmation that the subcontractor is PSIRA registered;

* + 1. A full description of the part of the Services it proposes for subcontracting;
    2. Full details of how the Service Provider will manage the performance of the Services by the subcontractor;
    3. The value of the contract proposed to be subcontracted, expressed as a percentage;
    4. The B-BBEE status and certificate of the subcontractor; and
    5. Tax Clearance Certificate of the subcontractor.
    6. Notwithstanding the provisions of this clause, 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.
    7. Subject to the provisions of **clause 8.1** above , 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.
    8. Nothing contained herein shall create a contractual relationship between SARS and the subcontractor.

### SERVICE PROVIDER’S OBLIGATIONS

* 1. The Service Provider shall-
     1. Nominate an Account Executive;
     2. Ensure that the Service Provider’s Personnel devote such time, attention and skill in performing the Services;
     3. Assign suitably qualified and skilled personnel to provide the Services;
     4. Provide the Services to SARS with due care, skill and diligence in accordance with the highest professional service standards and principles;
     5. Ensure that the Service Provider’s Personnel adhere to written and reasonable requests or instructions by SARS’s Designated Representative;
     6. Immediately inform SARS’s Designated Representative of any risks or circumstances within the Service Provider’s knowledge (including information relating to the Service Provider’s Personnel,) which may adversely affect the Services;
     7. Ensure that it performs security checks (vetting) on the Service Provider’s Personnel and immediately take steps to prevent any of the Service Provider’s Personnel found to be a security risk from performing the Services; and,
     8. Ensure that it maintains its PSIRA registration and good standing for the entire term of the Agreement, and furnish confirmation of same to SARS on demand.
     9. Comply with the obligations indicated in the RFP.

### MANAGEMENT LIAISON MEETINGS

* 1. The Account Executive and SARS’s Designated Representative shall meet on monthly or such other intervals as may be agreed between the Account Executive and SARS’s Designated Representative in writing to discuss the performance of the Services.
  2. The Service Provider shall be responsible for the correct recording of the meeting proceedings.
  3. The Service Provider shall deliver the 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, for SARS’s perusal and verification.

* 1. 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.
  2. **Clauses 10.1**; **10.2** and **10.3** shall be subject to **clause** **29.2** below.
  3. The Service Provider’s Chief Executive Officer or equivalent functionary and SARS’s Designated Representative shall meet biannually to review the performance of the Services.
  4. Nothing contained in this **clause** **10** shall prevent SARS or the Service Provider from requesting a meeting to discuss any matter regarding the Services. The provisions of **clauses 10.2**, **10.3** and **10.5** shall apply to such meetings as well.

### CONSIDERATION

* 1. SARS shall pay the Service Provider the fees set out in **[TO BE ADDED]**  hereto as consideration for the Services. The fees are inclusive of VAT.
  2. Subject to **clause 13** below, SARS shall pay all undisputed invoices within thirty (30) days after SARS receives such invoice, provided the invoice is accurate and meets all requirements in terms of this Agreement.
  3. SARS may set off any amounts due to SARS in terms of this Agreement against any amounts payable by SARS to the Service Provider.

### INVOICING

* 1. The Service Provider shall invoice SARS for Services performed pursuant to this Agreement on a monthly basis in arrears on or before the fifth (5th) Business Day of the month following the month in which the Service Provider rendered the Services to SARS.
  2. Each invoice shall contain-
     1. A description of the Services rendered;
     2. Any such details as may be reasonably requested by SARS from time to time.
  3. The Service Provider shall verify that each invoice is complete and accurate and that it conforms to the requirements of thisclause before issuing the invoice to SARS.
  4. The Service Provider shall deliver all invoices to the SARS office designated by SARS from time to time.
  5. 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 documentation or information reasonably required by SARS in order to verify the accuracy of the amounts due on an invoice.

* 1. The Service Provider shall for the duration of this Agreement 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. The Service Provider shall provide SARS and SARS’s auditors access at reasonable times to information, records and documentation 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.
  2. All costs incurred in performing audits under **Clause 12.6** above will be borne by SARS unless audit findings reveal the Service Provider’s non-compliance with the terms of this Agreement and/or Applicable Law, in which event such costs will be borne by the Service Provider.

* 1. 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 13** below.

### DISPUTED CHARGES AND INVOICING ERRORS

* 1. SARS may withhold payment of fees that SARS disputes in good faith or, if the disputed 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-
     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 Agreement;
     2. If the dispute relates to only a percentage of the invoiced amount, then SARS shall pay the undisputed amount in accordance with **clause 11.2** above; and
     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.
  2. Any dispute arising in terms ofthis clauseand which remains unresolved for five (5) Business Days after it has arisen, shall be referred by either Party to SARS’s Executive: Procurement and the Account Executive or their designees for resolution.

* 1. The SARS’s Executive: Procurement and the Account Executive or their designees shall meet within five (5) Business Days of the referral of the dispute to resolve such dispute.
  2. In the event that the dispute remains unresolved after ten (10) days of its referral to the persons mentioned in **clause 13.3,** either Party shall be entitled to refer the dispute for resolution in accordance with the provisions of **clause 24** below.

### CONFIDENTIALITY

* 1. The Service Provider shall ensure that prior to commencing the Services, all the Service Provider’s Personnel sign the SARS Oath of Secrecy and submit the original thereof to SARS for record keeping purposes.
  2. The Service Provider undertakes that for the term of this Agreement and after the expiration or earlier termination of this Agreement for any reason, it will keep confidential all proprietary information, including any trade secrets and/or all information of a confidential nature which SARS from time to time communicates to the Service Provider, its agents and/or personnel. This includes the knowledge acquired by the Service Provider, its agents and/or personnel as a result of the work to be performed by the Service Provider in terms of this Agreement and which by its nature, is intended to be kept confidential
  3. For purposes of this Agreement, the expression “Confidential Information” shall include, but shall not be limited to SARS’s operating procedures, internal policies, manuals, computer infrastructure, hardware, software, methods and techniques, know-how, operating costs, as well as the names of service providers and/or potential service providers with whom SARS has not yet contracted but intends contracting for purposes of establishing business relationships to which the Service Provider may become privy during the contract term.
  4. The Service Provider further in particular undertakes to keep confidential all 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 legislation administered by the Commissioner for SARS.
  5. The Parties agree that no trade and/or business secrets, Confidential Information or methods of work supplied by the one Party to the other shall be disclosed to any third party, without first obtaining the written consent of the other Party.
  6. If the Service Provider is uncertain about whether information is to be treated as confidential in terms of this Clause, it shall be obliged to treat it as such until advised otherwise, in writing, by SARS.
  7. The Service Provider will protect the interests of SARS and its Confidential Information by-
     1. making available such Confidential Information only to those of its personnel who are actively involved in the execution of its obligations under this Agreement and then only on a “need to know” basis;
     2. putting in place internal security procedures reasonably acceptable to SARS to prevent unauthorised disclosure and taking all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;
     3. not using any Confidential Information of SARS, or disclosing directly or indirectly any Confidential Information of SARS to third parties, whether during the term of this Agreement or thereafter; and
     4. ensuring that all Confidential Information of SARS which has or will come into the possession of the Service Provider and its personnel, will at all times remain the sole and absolute property of SARS.
  8. Confidential Information shall not include information that-
     1. is lawfully in the public domain at the time of disclosure;
     2. subsequently and lawfully becomes part of the public domain by publication or otherwise;
     3. subsequently becomes available to a Party from a source other than the disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such Confidential Information;
     4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order;
     5. is independently developed or learned by a receiving Party without reference to or use of the Confidential Information of the other Party; and/or
     6. is disclosed by the receiving Party with the disclosing Party’s prior written approval.
  9. The provisions of this Clause shall survive the termination or cancellation of this Agreement for any reason whatsoever.

### SECURITY VETTING OF THE SERVICE PROVIDER’S PERSONNEL

* 1. Subject to Applicable Law, SARS reserves the right at its sole and absolute discretion to do a security check (vetting) on the Service Provider’s Personnel.
  2. The Service Provider will procure from such personnel such documentation as may be reasonably requested by SARS, to enable SARS to conduct such security checks as aforementioned.
  3. Security vetting shall include, but not be limited to, checks on criminal records, credit references and identity documents.
  4. Where SARS, in its sole discretion, finds any of the Service Provider’s Personnel to be a security risk, SARS will inform the Service Provider accordingly in writing and the Service Provider will be required to, within forty eight (48) hours, replace such a person with a suitably qualified or skilled substitute.
  5. Despite the above, the Service Provider must ensure that prior to Commencement of employment or engagement of the Service Provider’s Personnel, such personnel undergo security vetting, which must include the checks described above. The Service Provider shall re-vet the personnel annually, or as required in terms of Applicable Law.

### ANTI-CORRUPTION AND GOOD FAITH

* 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.
  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.

### CONFLICT OF INTERESTS

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

### WARRANTIES

* 1. The Service Provider hereby represents and warrants to SARS that-
     1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
     2. it is acting as a principal and not as an agent of an undisclosed principal;
     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;
     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.
     5. it has the requisite insurance to cover all claims that may be instituted against it, as a consequence of rendering the Services; and
     6. it has the necessary resources, skills, capacity and experience to render the Services to SARS.
  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.
  3. The provisions of this Clause shall survive the termination of this Agreement.

### LIABILITY OF THE PARTIES

* 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.
  2. The Service Provider shall be liable for negligent or wrongful acts or omissions of the Service Provider’s Personnel.
  3. Except in cases of criminal negligence or wilful misconduct or a breach of confidentiality 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.

### INSURANCE

* 1. **Comprehensive Insurance**
     1. The Service Provider shall as of the Effective Date have and maintain in force insurance coverage of no less than **[TO BE ADDED]** rand to provide for any claims, losses, expenses, legal fees, costs or similar financial losses suffered by SARS from entrusting the provision of the Services to the Service Provider.
     2. The foregoing insurance cover shall be primary and non-contributing with respect to any other insurance or self-insurance that may be maintained by SARS. All coverage required by this **clause 20.1** shall include a waiver of subrogation in favour of SARS, and a waiver of any insured-versus-insured exclusion regarding SARS. To the extent any coverage is written on a claims-made basis, it shall allow for reporting of claims for at least twelve (12) months after the termination of the Agreement for any reason whatsoever
  2. **Third Party Liability**
     1. The Service Provider shall on or before the Effective Date and for the duration of this Agreement, have and maintain in force third party liability insurance cover of not less than **[TO BE ADDED]** against all actions, suits, claims or other expenses arising in connection with damages or loss (including death) suffered by third party as a result of negligence or related causes on the part of the Service Provider or the Service Provider’s Personnel.

* 1. 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.
  2. The Service Provider shall provide SARS at least thirty (30) days’ notice prior to any material modification of the insurance policies.
  3. 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 this **clause 20**  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.

### INDEMNITY BY THE SERVICE PROVIDER

* 1. 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 -
     1. Third party claims attributable to any breach of the provisions of this Agreement by the Service Provider;
     2. 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 of the Service Provider or the Service Provider’s Personnel;
     3. 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; or
     4. Claims arising from damage to any site or 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.

### BREACH

* 1. If a Party (the “Defaulting Party”) is in default or breach of any obligation which arises in terms of this Agreement and that Defaulting Party fails to remedy such default or breach within seven (7) 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-
     1. claim specific performance;
     2. cancel this Agreement, such cancellation to be effective immediately on receipt by the Defaulting Party of a written notice to that effect; and
     3. claim damages from the Defaulting Party.

* 1. The Service Provider acknowledges that it is a material term of this Agreement that the Service Levels must be maintained throughout the duration of this Agreement. The Parties agree that multiple Service Level Failures will constitute sufficient proof of persistent non-compliance by the Service Provider of SARS’s prescribed Service Levels and that such persistent non-compliance will constitute a material breach of this Agreement.
  2. The remedies set out in this clause shall not be construed to be exhaustive of any other remedies available to the Parties.

### TERMINATION

* 1. **Termination for cause by SARS**

* + 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 14**, **16** a**nd 28** 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 9.1.6 or 27**
    2. SARS shall have no liability to the Service Provider with respect to a termination under **clause 23.1**.
  1. **Termination Upon Sale, Acquisition, Merger or Change of Control**
     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 after being notified by the Service Provider in terms of **Clause 23.2.2** of the last of such events to occur, SARS may terminate this Agreement by giving the Service Provider thirty (30) days’ written notice designating a date upon which such termination shall become effective.
     2. The Service Provider shall notify SARS if there is any Change Event within ten (10) Business Days after the Change Event is achieved.
     3. No sale, acquisition, merger or other change of control shall be effective against and legally binding on SARS if the Service Provider failed to notify SARS, as required by **Clause 23.2.2** above, and SARS may upon discovery of the Change Event terminate the Agreement by giving the Service Provider thirty (30) days’ written notice and designating a date upon which such termination shall be effective.
     4. SARS shall have no liability to the Service Provider with respect to termination of the Agreement in terms of this Clause.
     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-
        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;
        2. controlling the majority of the voting rights in such entity; or
        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.
     6. Any termination of this Agreement pursuant to the provisions of this **clause 23.2** 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.

### DISPUTE RESOLUTION

* 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.
  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.
  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.

### DOMICILIUM CITANDI ET EXECUTANDI

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

**[TO BE ADDED]**

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

**299 Bronkhorst Street**

**Nieuw Muckleneuk**

**Pretoria**

**0181**

* 1. 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 25.1** above.
  2. 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.

### FORCE MAJEURE

* 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 26.5 below**
     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
     2. The obligations not affected by the said *force majeure* event shall remain in force.
  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, or the operation of any law or regulation under the law or any other cause beyond the reasonable control of that Party.
  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.
  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.

* 1. 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.
  2. SARS shall be entitled to engage the services of other parties during any *force majeure* period.

### TAX COMPLIANCE

* 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.
  2. 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.

### BROAD-BASED BLACK ECONOMIC EMPOWERMENT

* 1. The Service Provider commits and warrants compliance in all respects with the requirements of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) [hereinafter referred to as the “BBBEE Act”], as amended from time to time and the Codes of Good Practice issued in terms of the BBBEE Act.
  2. During the currency of this Agreement, the Service Provider shall remain BEE compliant.
  3. SARS may, in writing, from time to time call upon the Service Provider to provide proof of its BBBEE Status. .

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### GENERAL

* 1. **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.

* 1. **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.

* 1. **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.

* 1. **Cession and Assignment**

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.

* 1. **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.

* 1. **Costs**

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

* 1. **Governing Law and Jurisdiction**
     1. This Agreement shall be subject to South African law.
     2. The Service Provider hereby consents to the jurisdiction of the High Court of the Republic of South Africa ( Gauteng Division, Pretoria).

### SIGNATORIES

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**As Representatives for the South African Revenue Service**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Group Executive**

**Office of the Commissioner**

**Date signed:**

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

**Group Executive: Procurement**

**Date signed:**

**As Authorised Representative for the Service Provider**

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

**Full Names:**

**Capacity:**

**Date signed:**