

MASTER LOGISTICS AGREEMENT (“MLA”)

IN RELATION TO LOGISTICS SERVICES PROVIDED BY

RAM TRANSPORT (SOUTH AFRICA) PROPRIETARY LIMITED

RAM HAND-TO-HAND LOGISTICS PROPRIETARY LIMITED

RAM SUPPLY CHAIN SOLUTIONS PROPRIETARY LIMITED

GO TO HUB PROPRIETARY LIMITED

“RAM” OR “RAM HAND-TO-HAND COURIERS”



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I. SECTION 1 – INTRODUCTION

1 INTRODUCTION

- 1.1 RAM, its Subsidiaries and Affiliates provide a range of logistics services, including Courier & Express Parcel Services, Logistics Services, Warehousing & Supply Chain Solution Services, Pick Up and Drop Off Services, Insurance Intermediary Services, and Security & Risk Services set out in in the [INTERPRETATION SCHEDULE](#) which is available on RAM’s Website under the [LEGAL DOCUMENTS SECTION](#).
- 1.2 CLIENT wishes to engage RAM to provide the certain Services, and RAM accepts this engagement on the terms and conditions set out in this MASTER LOGISTICS AGREEMENT (“**MLA**”).
- 1.3 This MLA is entered into between RAM and CLIENT described in the RAM APPLICATION.
- 1.4 This MLA, together with its schedules, annexures, and any subsequent Service Level Agreements (“**SLAs**”), is governed by the terms and conditions set forth herein.

2 INTERPRETATION

- 2.1 Clause headings in this STANDARD MASTER LOGISTICS AGREEMENT (“**MLA**”) are inserted for convenience only and shall not be used in its interpretation.
- 2.2 All capitalised terms used in the Preamble shall have the meaning given to these terms in this MLA.
- 2.3 The provisions of RAM's [INTERPRETATION SCHEDULE](#) relating to interpretation shall apply and the expressions defined in such document shall bear the meanings assigned to them therein.
- 2.4 The following words and expressions shall bear the meanings stated opposite them and cognate words and expressions shall bear similar meanings –

2.4.1	AGREEMENT	the Agreement between the Parties which shall only arise upon submission by Client of the Application to RAM and acceptance thereof being communicated by RAM to Client
2.4.2	APPLICATION	RAM APPLICATION to enter Courier and Logistics Services Agreement submitted electronically by Client
2.4.3	INTERPRETATION SCHEDULE	RAM’s INTERPRETATION SCHEDULE as published from time to time on RAM’s Website incorporating interpretation, definitions and glossary of terms, as amended from time to time
2.4.4	PP&R SCHEDULE	RAM’s 01.2 _ PACKAGING, PROHIBITED & RESTRICTED ITEMS SCHEDULE , as amended from time to time
2.4.5	RAM'S LEGAL DOCUMENTS	<p>RAM'S LEGAL DOCUMENTS as published and amended from time to time on RAM’s Website under the heading RAM'S LEGAL DOCUMENTS including -</p> <ol style="list-style-type: none"> i. this STANDARD MASTER LOGISTICS AGREEMENT; ii. 01.1 _ INTERPRETATION SCHEDULE iii. 01.2 _ PACKAGING, PROHIBITED & RESTRICTED ITEMS SCHEDULE iv. 01.3 _ DATA PRIVACY & PROTECTION SCHEDULE v. 01.4 _ RAM'S WEBSITE & IT PLATFORM USE SCHEDULE

- 2.5 All references to the MLA in this Agreement shall include [RAM'S LEGAL DOCUMENTS](#) which are incorporated by reference.



II. SECTION 2 – TERMS & CONDITIONS

3 EFFECTIVE DATE

For purposes of this MLA, the EFFECTIVE DATE of this MLA will be the date that CLIENT signs and submits RAM'S APPLICATION and same is duly accepted by RAM in writing.

4 APPOINTMENT

- 4.1 With effect from the EFFECTIVE DATE, CLIENT appoints RAM to render SERVICES to CLIENT in accordance with this MLA, the APPLICATION and any relevant SERVICE LEVEL AGREEMENT/S & SCOPE OF WORKS ("SLA"), as and when required by the CLIENT.
- 4.2 The PARTIES wish to record in writing the terms and conditions governing their relationship and their respective rights and obligations on the terms and conditions contained herein.
- 4.3 The appointment in terms of this MLA shall be in respect of CLIENT'S Service requirements set out in the APPLICATION, any SLA and any further SLAs which may from time to time, during the period of this MLA, be agreed upon between CLIENT and RAM.
- 4.4 Each SLA shall come into effect on the relevant SLA Commencement Date and shall terminate on the SLA Completion Date or until such SLA is terminated in accordance with the provisions of the relevant SLA.

5 PERIOD

Subject to 17 (BREACH/TERMINATION), this MLA shall commence on the EFFECTIVE DATE and shall, unless terminated in accordance with the provisions of this MLA continue in full force and effect for an indefinite period.

6 SERVICES & SERVICE LEVELS

6.1 PROVISION OF SERVICES

- 6.1.1 RAM shall provide the SERVICES on behalf of CLIENT in accordance with and subject to the terms and conditions of this MLA read together with the APPLICATION and any relevant SLA & SLA SCHEDULES & ANNEXURES, which may be required by the CLIENT from time to time.
- 6.1.2 RAM and/or each TP-SP (as the case may be) –
- 6.1.2.1 are private contract carriers and not common, governmental or parastatal carriers;
- 6.1.2.2 shall provide the SERVICES in accordance with this MLA and the APPLICATION;
- 6.1.2.3 shall be entitled to assume the authenticity of, and to act in reliance upon, any document appearing to them to be authentic in accordance with the customs and practice of the trade, including, the SHIPPING INSTRUCTION, Waybill, any POD, other written acknowledgment of receipt of a SHIPMENT or any written release order by a RECEIVER;
- 6.1.2.4 shall select the method of transport, carriage and handling to be used for the provision of the SERVICES or any aspect thereof;
- 6.1.2.5 do not guarantee that written and/or verbal request for special conditions or special delivery instructions will result in any specific method being employed; and
- 6.1.2.6 are independent corporate, juristic or other business entities and are not liable for the debts or obligations of each other.
- 6.1.3 No TP-SP is authorised to accept service of legal process for or on behalf of RAM or any other TP-SP.

6.2 SLA - GENERAL

- 6.2.1 Provided that CLIENT has complied with its obligations in terms of this MLA, including the provisions of the relevant SLA, RAM undertakes to adhere strictly to the service levels for delivery as set out in the relevant SLA.
- 6.2.2 The service levels for delivery shall be monitored, inter alia, by reference to reports furnished by RAM.



6.3 CLIENT'S RESPONSIBILITIES

- 6.3.1 CLIENT undertakes to comply with its obligations as set out in this MLA, the APPLICATION and the any relevant SLAs.
- 6.3.2 CLIENT agrees that RAM's performance in terms of this MLA, is dependent on various conditions set out in the SLA ("**SLA CONDITIONS**"), including, *inter alia*, CLIENT -
- 6.3.2.1 providing timely decisions and approvals;
 - 6.3.2.2 providing RAM with appropriate information and correct and complete Instructions;
 - 6.3.2.3 complying with collection cut-off times.
- 6.3.3 Accordingly, RAM shall not be liable for any delay or failure on its part to provide all or any of the SERVICES as a consequence of CLIENT failing to comply with any SLA Conditions.
- 6.3.4 Where there are no defined timelines, the PARTY requesting the approval or decision shall stipulate reasonable timelines.
- 6.3.5 Should RAM contend that CLIENT has not complied with any SLA Conditions, the consequence of which will result in any delay or failure on the part of RAM to provide all or any of the SERVICES and CLIENT disputes that it has failed to comply with its obligations in terms of this 6.3 (CLIENT'S RESPONSIBILITIES), then in order to prevent any damage to CLIENT's business as a result of such delay or failure, the PARTIES agree that such dispute will be determined in accordance with the provisions of 18 (DISPUTE RESOLUTION) as a matter of urgency.

6.4 DELIVERY

- 6.4.1 Delivery to the RECEIVER, or, on a SHIPMENT returned to CLIENT (or its nominee(s)), shall be conclusively evidenced by a POD acknowledging receipt by the RECEIVER or CLIENT.
- 6.4.2 Save for the RELIEF EVENTS contemplated in this MLA or any SLA in terms of which RAM shall be entitled to charge a RE-DELIVERY SURCHARGE, RAM agrees to attend to 1 (one) Delivery Attempt.

6.5 COLLECTION & DELIVERY

- 6.5.1 Subject to this MLA and against payment of the SERVICE COSTS, as contemplated in 12 (SERVICE COSTS & PAYMENT), RAM agrees to collect, receive and arrange for delivery of the SHIPMENT to the RECEIVER in accordance with the information on the SHIPPING INSTRUCTION or return of the SHIPMENT to CLIENT (or nominee) when the SHIPMENT was not delivered to the RECEIVER.
- 6.5.2 Any instruction from CLIENT to RAM to provide the SERVICES shall be on a SHIPPING INSTRUCTION, duly completed and tendered with the SHIPMENT.
- 6.5.3 Subject to 6.4.2, unless otherwise agreed in writing and signed by RAM, no other instructions, whether verbal or written shall be binding on RAM.
- 6.5.4 A POD (as defined in the **INTERPRETATION SCHEDULE**) shall be sufficient evidence of delivery to the RECEIVER, or of a SHIPMENT returned to CLIENT (or nominee).
- 6.5.5 In the absence of gross negligence or other material breach of duty by RAM or any 3P-SP, a POD shall be sufficient evidence that the SHIPMENT was delivered in accordance with this MLA in good order and condition, in an intact form, without any Loss and shall further constitute final and absolute release of all undertakings and obligations of RAM and/or any TP-SP.

6.6 DELIVERY QUERIES

- 6.6.1 CLIENT's nominated AUTHORISED REPRESENTATIVE shall address RAM's delivery queries, if RAM is unable to attend to a SHIPMENT, due to, *inter alia*, an Incorrect SHIPPING INSTRUCTION or RELIEF EVENT.
- 6.6.2 If at any time RAM identifies irregularities with a SHIPPING INSTRUCTION, then RAM shall –
- 6.6.2.1 notify the AUTHORISED REPRESENTATIVE with the query, as soon as is reasonably possible after the query has come to RAM's attention;
 - 6.6.2.2 provide the AUTHORISED REPRESENTATIVE with details of the RELIEF EVENT.



- 6.6.3 The AUTHORISED REPRESENTATIVE shall be obliged, within a period of not more than 10 (ten) Business Days after having been notified by RAM of the INCORRECT SHIPPING INSTRUCTION or RELIEF EVENT, to provide RAM with an alternative and correct SHIPPING INSTRUCTION.
- 6.6.4 Upon receipt by RAM of the correct SHIPPING INSTRUCTION from the AUTHORISED REPRESENTATIVE, RAM shall proceed with the delivery of the SHIPMENT to the RECEIVER.
- 6.6.5 If no alternate SHIPPING INSTRUCTION is provided by the AUTHORISED REPRESENTATIVE to RAM within 10 (ten) Business Days of the AUTHORISED REPRESENTATIVE being notified of the INCORRECT SHIPPING INSTRUCTION, RAM shall return the SHIPMENT to CLIENT and RAM shall, in addition to the SERVICE COSTS be entitled to charge CLIENT with an INCORRECT SHIPPING INSTRUCTION SURCHARGE.
- 6.7 **PACKAGING & CONTENTS OF THE SHIPMENT**
- By using the SERVICES, CLIENT agrees to comply with the provisions of [SCHEDULE 1.2 - PP&R SCHEDULE](#).
- 6.8 **RIGHT TO HOLD & SUSPEND SHIPMENTS**
- 6.8.1 CLIENT hereby grants to RAM the right to –
- 6.8.1.1 hold and/or suspend any SHIPMENTS which may be in RAM’s possession from time to time, for all sums due at any time by CLIENT to RAM, including sums due as a result of –
- 6.8.1.1.1 any DELIVERY EXCLUSION;
- 6.8.1.1.2 CLIENT paying the incorrect amount as a result of failure to disclose or incorrect disclosure of Volumetric Weight, Actual Weight and/or Chargeable Weight;
- 6.8.1.2 sell such SHIPMENTS and use the proceeds to make good any debt due to RAM in accordance with applicable Laws.
- 6.8.2 RAM shall, without incurring any liability toward CLIENT and until such time as all amounts owing to RAM have been paid together with interest accruing as damages, due to Breach of this MLA, during the period payment of such sums was overdue, be entitled to retain possession of any SHIPMENT/s and document/s and suspend the SHIPMENT thereof.
- 6.9 **RECEIPT OF A SHIPMENT**
- 6.9.1 A SHIPMENT under this AGREEMENT, shall be deemed to have been received into RAM or any TP-SP’s possession only upon –
- 6.9.1.1 the SHIPMENT being received into RAM or TP-SP’s physical possession; and
- 6.9.1.2 a receipt acknowledging acceptance being issued by RAM or TP-SP and furnished to CLIENT by an expressly authorized RAM and/or TP-SP Personnel.
- 6.9.2 CLIENT is responsible for ensuring that the person furnishing such receipt is expressly authorized to do so by RAM.
- 6.10 **CUSTOMS & SECURITY INSPECTION**
- 6.10.1 CLIENT –
- 6.10.1.1 hereby grants to RAM the right to hold and submit the SHIPMENT to security checks by any Governmental Body and/or Airport Cargo officials and/or Security Personnel for SHIPMENTS carried by RAM;
- 6.10.1.2 shall provide RAM and/or any 3P-SP with all accurate and complete documents, payments and information necessary for customs clearance;
- 6.10.1.3 shall be bound by and warrant the accuracy of all documents and information furnished to RAM and/or any TP-SP for customs purposes and for any other purposes in terms of this AGREEMENT;
- 6.10.1.4 hereby authorise RAM and/or any TP-SP to complete any document/s required to comply with the relevant Laws, should RAM or any TP-SP be required to clear a SHIPMENT through customs.
- 6.10.2 RAM shall not be liable to CLIENT for any Loss suffered by CLIENT in the course of such inspection through Shipper’s failure to comply with the provisions of this 6.10 (CUSTOMS & SECURITY INSPECTION).



7 PROTECTION OF PERSONAL INFORMATION

- 7.1 At RAM, we take data privacy seriously and we always make sure to be compliant with the relevant legislations including the Protection of PERSONAL INFORMATION Act (“**POPIA**”).
- 7.2 The provisions of DATA PROCESSING & PRIVACY SCHEDULE which is available on [RAM’S WEBSITE](#) (“[SCHEDULE 1.3 - DP&P SCHEDULE](#)”) set out RAM’s and CLIENT’s rights and obligations as to the protection of RAM’s and CLIENT’S PERSONAL INFORMATION as well as the PERSONAL INFORMATION of CLIENT’S Customers.

8 RISK & LIABILITY FOR SERVICES

8.1 RISK - NO LIABILITY

- 8.1.1 Unless otherwise agreed to by RAM and CLIENT in writing in a separate SLA, RAM shall only be liable, subject to exclusions and limitations contained herein, for any physical loss of or damage to a SHIPMENT resulting from the gross negligence of RAM, occurring, while the SHIPMENT is in the actual possession of RAM, which shall be deemed not to include any period of time the SHIPMENT is in the care, custody or control of any designated private or commercial air carrier or airlines.
- 8.1.2 For the avoidance of doubt, it is specifically recorded and agreed that subject to 8.1.1 –
- 8.1.2.1 CLIENT acknowledges that CLIENT shall dispatch, and RAM shall provide the SERVICES solely at CLIENTS risk;
- 8.1.2.2 neither RAM, nor RAM’s Personnel shall be liable for any Loss, save where such Loss is due to gross negligence of RAM;
- 8.1.2.3 no insurance, full liability option, limited liability option or other indemnity shall be provided by RAM to CLIENT in respect of any of the SERVICES.
- 8.1.3 CLIENT shall, at its option, take out and maintain CLIENT’S own insurance in respect of the collection, transport and delivery of CLIENT’S SHIPMENTS and the SERVICES.
- 8.1.4 CLIENT shall not be entitled to mark any SHIPPING INSTRUCTION with the annotation “Full Liability”, “Limited Liability” “Liability”, “Insurance” or any similar annotation and any such annotation shall not be binding on RAM.
- 8.1.5 Should CLIENT require any Risk / Liability Option or other type of Insurance, same shall only become applicable in terms of a separate quotation which is reduced to writing and incorporated in a separate SLA signed by both PARTIES.

8.2 GENERAL EXCLUSION

- 8.2.1 Notwithstanding anything to the contrary herein contained, neither RAM nor any TP-SP shall be liable under any circumstances whatsoever, for any of the Excluded Losses.
- 8.2.2 If, notwithstanding all of the foregoing, a court should nevertheless find that RAM or any TP-SP is liable to CLIENT in any way, such liability for any one SHIPMENT shall not in any event exceed the lesser of the actual damage sustained or R500 (Five Hundred Rand), as the case may be. To the extent permitted by law, the remedies stated in this AGREEMENT are exclusive and are limited to those expressly provided for in this AGREEMENT.
- 8.2.3 RAM and/or any TP-SP’s liability for any Loss that occurs while a SHIPMENT is in the care, custody or control of any designated commercial air carrier or airline, shall be governed and limited by the terms set forth in any air Waybill or other contract of carriage issued for the transportation of the SHIPMENT, and may be subject to the Warsaw Convention/Hague Protocol/Montreal Convention, which governs and, in most cases, limits the liability of the air carrier in respect of loss, damage or delay to cargo unless a higher value is declared for air carriage in the relevant Section on the Waybill, in advance, by CLIENT and a supplementary charge is paid.
- 8.2.4 CLIENT hereby indemnify RAM, any TP-SP and their Personnel against any Loss or claim of whatever nature which may be made against any of them arising out of any of the foregoing occurrences referred to in this 8, except to the extent that RAM, any TP-SP and /or their Personnel acted with gross negligence.



9 SUB-CONTRACTING COMPONENTS OF THE SERVICES

- 9.1 RAM may sub-contract any element of the SERVICES and any of its rights and obligations as it considers fit to any TP-SP.
- 9.2 Any sub-contracting by RAM shall not relieve RAM of any liability or obligation under this AGREEMENT.
- 9.3 RAM shall remain fully responsible for the performance of the SERVICES notwithstanding any default or failure to perform by any TP-SP.
- 9.4 Subject to this 9 (SUB-CONTRACTING COMPONENTS OF THE SERVICES) (and subject to RAM paying any additional costs relative thereto), CLIENT shall as between itself and such TP-SP and to the extent necessary to enable such TP-SP to provide the SERVICES sub-contracted to it –
- 9.4.1 grant to each TP-SP all rights granted to RAM under the provisions of this AGREEMENT; and
- 9.4.2 comply as regards each TP-SP with all obligations assumed by CLIENT under this AGREEMENT towards RAM.
- 9.5 RAM and/or any TP-SP (as the case may be) -
- 9.5.1 will do all that it reasonably and commercially can to meet the stipulated / requested dates and time for the SERVICES;
- 9.5.2 reserves the right in its sole discretion in certain circumstances, including but not limited to cancelled or delayed route schedules, to delay the SERVICES to a later Service;
- 9.5.3 cannot be responsible for failure to perform or delays in performance of the SERVICES due to matters beyond RAM's control, including RELIEF EVENTS;
- 9.5.4 will not be liable to CLIENT for any Loss arising from any failure or delay in performance of the SERVICES resulting from matters beyond RAM's control;
- 9.5.5 will use reasonable endeavours to continue to perform as soon as performance becomes possible.

10 RELIEF EVENTS AND EXTENSION OF TIME

- 10.1 Subject to 10.2, RAM shall not be in breach of this AGREEMENT to the extent such a breach is a direct result of a "RELIEF EVENTS" (as defined in the [INTERPRETATION SCHEDULE](#)).
- 10.2 In order to benefit from a RELIEF EVENT as contemplated by 10, RAM acknowledges and agrees that it shall-
- 10.2.1 notify CLIENT within 7 (seven) Business Days of actually becoming aware of, or where it ought to have become aware of, the occurrence of the RELIEF EVENT (and submit a probable impact assessment of the same); and
- 10.2.2 use all reasonable endeavours to mitigate the impact of the RELIEF EVENT and to continue to perform its obligations under and in connection with this AGREEMENT.
- 10.3 RAM may be entitled to an Extension of Time as a result of a RELIEF EVENT subject to –
- 10.3.1 CLIENT, in its reasonable discretion, being satisfied as to the existence of the matters set out in 10.1;
- 10.3.2 THE RELEVANT RELIEF EVENT CAUSING, OR BEING EXTREMELY LIKELY TO CAUSE, A DELAY IN THE DELIVERY OF THE SERVICES; AND
- 10.3.3 the Extension of Time being limited to a "*day of extension for day of delay*" basis.

11 INDEPENDENT CONTRACTOR

- 11.1 In connection with this AGREEMENT, RAM's relationship to CLIENT is one of an independent contractor.
- 11.2 Neither PARTY shall have any authority to bind or commit the other PARTY or its credit.
- 11.3 Nothing in this AGREEMENT shall be deemed or construed to create a joint venture, partnership or agency relationship between the PARTIES for any purpose.



III. SECTION 3 – FINANCIAL

12 SERVICE COSTS & PAYMENT

12.1 SERVICE COSTS

12.1.1 RAM provides different Service Costs and Service Cost Schedules/Rate Cards (“SCS”) for -

12.1.1.1 RAM APPLICATION CLIENTS;

12.1.1.2 RAM GO TO HUB CLIENTS;

12.1.1.3 RAM SLA CLIENTS;

12.1.1.4 RAM ONLINE CLIENTS, being RAM CLIENTS that request the relevant services via RAM’S WEBSITE. In respect of Online Service Requests, the SERVICE COSTS shall be for the SERVICES specified on the SHIPPING INSTRUCTION and the Quotation / Invoice which shall be furnished on RAM’S IT PLATFORM.

12.2 PAYMENT FOR EACH TYPE OF ACCOUNT

12.2.1 CLIENT is required to make payment for SERVICES via the following methods subject to availability and/or your eligibility to use such a method) –

12.2.1.1 credit card/debit card (“CC”);

12.2.1.2 direct bank deposit (“DBD”); or

12.2.1.3 electronic funds transfer (“EFT”).

12.2.2 In consideration for the provision of the SERVICES by RAM, CLIENT shall pay RAM the SERVICE COSTS calculated and payable in accordance with the SCS in accordance with the following table –

CLIENT	SERVICE COST SCHEDULE / RATE CARD	PAYMENT OBLIGATION
APPLICATION	SCS agreed upon between RAM and the Client on signature of the APPLICATION (as amended)	30 (thirty) days from date of transmission of the Financial Information or Statement
GO TO HUB	SCS at the relevant GO TO HUB in respect of PUDO SERVICES (as amended)	EFT / Credit Card at Go TO HUB or PRE-PAID FACILITY
SLA	SCS agreed upon between RAM and the Client on signature of the SLA (as amended)	Generally, 30 (thirty) days from date of transmission of the Financial Information or Statement or such other period as may be agreed between the Parties in writing
ONLINE	SCS which apply on the date that CLIENT pays for the SERVICES on RAM’S IT PLATFORM (as amended)	Immediate at the time of sending the Shipping Instruction via CC / DBD / EFT or PRE-PAID FACILITY

12.2.3 Should CLIENT wish to change the SERVICES or any part thereof, then in addition to paying an Administration Fee, the SERVICE COSTS may increase.

12.2.4 All service Costs shall be paid free of any deduction, charges or set off, directly into RAM’s bank account as may be notified in writing by RAM to Client

12.3 GENERAL

12.3.1 RAM provides secure online payment facilities for transactions on RAM’S IT PLATFORM, with all transactions encrypted using industry-standard encryption technology.

12.3.2 SERVICE COSTS are payable in respect of the SERVICES selected and specified by CLIENT which are subsequently confirmed and printed onto any SHIPPING INSTRUCTION.



- 12.3.3 SERVICE COSTS exclude any additional SERVICES not specified on the SHIPPING INSTRUCTION. RAM may charge the relevant SURCHARGE (as defined in Clause 8 of the **INTERPRETATION SCHEDULE**), including -
- 12.3.3.1 each subsequent delivery or attempted delivery following a non-delivery or failed delivery following a RELIEF EVENT; and
- 12.3.3.2 any adjustment for incorrect payment resulting from CLIENT's failure to disclose or incorrect disclosure of Volumetric Weight, Actual Weight and/or Chargeable Weight
- 12.4 **TAXES**
- 12.4.1 CLIENT acknowledges and agrees that it shall be liable to pay VAT on the SERVICE COSTS and other taxes imposed on RAM by the Relevant Authorities together with payment of the SERVICE COSTS payable to RAM.
- 12.4.2 When CLIENT completes the SHIPPING INSTRUCTION on **RAM'S IT PLATFORM**, RAM will advise CLIENT about the SERVICE COSTS, SURCHARGES and Taxes payable to RAM and they will normally be shown separately to the SERVICE COSTS.
- 12.4.3 Taxes, fees and charges may change or be introduced after the SHIPPING INSTRUCTION is issued. CLIENT shall be liable for any such changes or new amounts and must pay them to RAM upon demand.
- 12.5 **PAYMENT ONLINE**
- 12.5.1 **Credit Card / Debit Card**
- 12.5.1.1 RAM may request additional verification information to authorise or validate any payment made by credit or debit card.
- 12.5.1.2 RAM shall be entitled to withhold SERVICES until such verification is completed and authorisation obtained.
- 12.5.1.3 If RAM does not receive authorisation RAM shall be entitled to cancel the provision of SERVICES.
- 12.5.1.4 CLIENT warrants that -
- 12.5.1.4.1 it is duly authorised to use the credit or debit card provided; and
- 12.5.1.4.2 the card has sufficient funds or credit to cover all costs incurred for Services purchased via **RAM'S IT PLATFORM**.
- 12.5.1.5 **Bank Deposit / EFT**
- 12.5.1.5.1 Where CLIENT elects to pay by direct bank deposit or EFT -
- 12.5.1.5.1.1 payment must be received by RAM at least 3 (three) business days prior to the Service request; and
- 12.5.1.5.1.2 RAM will not process the Service Request until payment is cleared. CLIENT may obtain payment records via RAM's Help Page, and RAM will send email confirmation of the order and payment.
- 12.5.1.5.2 Once CLIENT selects a payment method, it will be directed to a secure site for completion of the transaction.
- 12.6 **INTEREST**
- 12.6.1 Should Client fail to pay any amount payable to RAM in terms of this Agreement, then in addition to any rights RAM may have in terms of this MLA, SLA or at Law, the provisions of this 12.5.1.5.1 shall apply.
- 12.6.2 Without prejudice to any of RAM's rights, Client shall pay to RAM interest on all overdue payments calculated at the Prime Rate.
- 12.6.3 The interest shall be reckoned from the day after the due date of the amount concerned until the date of payment, both days inclusive, and shall be -
- 12.6.3.1 calculated on a compounded basis on the amount owing at the end of each month; and



12.6.3.2 payable on demand.

12.7 **NCA COMPLIANCE**

RAM confirms that where any transaction between RAM and Client falls within the ambit of the **National Credit Act**, RAM will comply with the provisions thereof, including but not limited to the charging of interest, delivery of statements, and provision of notices required under the NCA.

13 **PRE-PAID & SECURITY DEPOSIT**

13.1 **PRE-PAYMENT FOR SERVICES**

RAM shall be entitled, at its sole but reasonable discretion, to require CLIENT to pre-pay all or part of the anticipated SERVICE COSTS prior to the rendering of Services in any of the following circumstances -

- 13.1.1 CLIENT is a new customer without an established credit record;
- 13.1.2 CLIENT does not qualify for a 30 (thirty) day credit account and elects to operate on a Pre-Paid Account basis;
- 13.1.3 CLIENT has previously failed to pay any amount on the due date;
- 13.1.4 CLIENT's creditworthiness has, in RAM's reasonable opinion, deteriorated, or RAM reasonably believes the CLIENT may be unable to meet its payment obligations; or
- 13.1.5 CLIENT requests SERVICES of a high value or exceptional nature;
- 13.1.6 CLIENT requests ongoing PUDO SERVICES.

13.2 **SECURITY DEPOSIT**

- 13.2.1 RAM may require CLIENT to pay a refundable security deposit to RAM as a condition for the continued provision of SERVICES.
- 13.2.2 The amount of such deposit shall be determined by RAM, acting reasonably, having regard to the value, frequency, and risk profile of the SERVICES and the CLIENT's credit standing.
- 13.2.3 RAM may apply the deposit, in whole or in part, towards any overdue amounts, costs, or other lawful charges payable by the CLIENT in terms of this Agreement.

13.3 **TOP-UP OF DEPOSIT**

If RAM applies any portion of the security deposit in terms of clause 13.2, CLIENT shall be obliged to replenish the deposit to its original amount within 7 (seven) days of written demand from RAM.

13.4 **REFUND OF DEPOSIT**

- 13.4.1 Upon termination of this Agreement, RAM shall refund any remaining balance of the deposit to CLIENT within 30 (thirty) calendar days, provided all amounts due to RAM have been paid in full.
- 13.4.2 Unless otherwise required by law, no interest shall accrue on the deposit.

13.5 **PRE-PAID FACILITY**

- 13.5.1 RAM may, at its discretion, offer CLIENT a pre-paid account facility for the payment of SERVICE COSTS.
- 13.5.2 Such facility shall be subject to separate terms and conditions, and SERVICE COSTS will be debited against the pre-paid balance.
- 13.5.3 The CLIENT must ensure that its pre-paid balance is sufficient to cover the SERVICES requested. RAM shall be entitled to withhold or suspend SERVICES where the balance is insufficient.

13.6 **APPLICATION OF PAYMENTS**

Unless otherwise agreed in writing, RAM may apply any payment received from the CLIENT, whether a pre-payment or deposit, in such order and manner as RAM considers appropriate, subject to any applicable law.



13.7 LEGISLATIVE COMPLIANCE

- 13.7.1 To the extent that the provisions of this clause fall within the scope of the NCA or any other applicable law, RAM shall ensure compliance with all relevant statutory requirements, including, where applicable:
- 13.7.1.1 the proper handling, recording, and accounting of CLIENT funds; and
 - 13.7.1.2 the provision of any prescribed statements or disclosures.
- 13.7.2 Nothing in this Agreement shall be construed as creating an obligation for RAM to grant credit to the CLIENT where RAM elects to operate on a pre-paid or deposit basis.

IV. SECTION 4 – GENERAL

14 CONFIDENTIALITY & INTELLECTUAL PROPERTY RIGHTS

14.1 CONFIDENTIALITY OF THIS AGREEMENT

- 14.1.1 No PARTY ("**RECEIVING PARTY**") shall, at any time after the conclusion of this AGREEMENT, disclose to any person or use in any manner whatever the other PARTY's CONFIDENTIAL INFORMATION or the existence and contents of this AGREEMENT, provided that the –
- 14.1.1.1 RECEIVING PARTY may disclose the other PARTY's CONFIDENTIAL INFORMATION and the existence and contents of this AGREEMENT –
 - 14.1.1.1.1 to the extent required by law (other than in terms of a contractual obligation of the RECEIVING PARTY);
 - 14.1.1.1.2 to, and permit the use thereof by, its Personnel, representatives and professional advisers to the extent strictly necessary for the purpose of implementing or enforcing this AGREEMENT or obtaining professional advice or conducting its business.
 - 14.1.2 It is specifically agreed that any disclosure or use by any such Personnel, representative or adviser of such confidential or other information for any other purpose shall constitute a breach of this 14 (CONFIDENTIALITY) by the RECEIVING PARTY.
 - 14.1.3 The provisions of this 14 (CONFIDENTIALITY) shall cease to apply to any CONFIDENTIAL INFORMATION of a PARTY which –
 - 14.1.3.1 is or becomes generally available to the public other than as a result of a breach by the RECEIVING PARTY of its obligations in terms of this 14 (CONFIDENTIALITY);
 - 14.1.3.2 is also received by the RECEIVING PARTY from a third party who did not acquire such CONFIDENTIAL INFORMATION subject to any duty of confidentiality in favour of the other PARTY; or
 - 12.1.1.2.3 was known to the RECEIVING PARTY prior to receiving it from the other PARTY.

14.2 SEPARATE CONFIDENTIALITY AGREEMENT

- 14.2.1 In addition to the DATA PROCESSING AND PRIVACY SCHEDULE which is incorporated as [SCHEDULE 1.3 - DP&P SCHEDULE](#), the PARTIES shall by virtue of this AGREEMENT become possessed of and have access to the others CONFIDENTIAL INFORMATION and/or PERSONAL INFORMATION.
- 14.2.2 RAM and CLIENT may sign a separate CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT ("**CNDA**").
- 14.2.3 Notwithstanding anything to the contrary contained in this AGREEMENT, the CNDA shall be deemed to be incorporated herein by reference and shall continue to be of full force and effect between the PARTIES in accordance with the terms of the CNDA.

14.3 INTELLECTUAL PROPERTY RIGHTS

- 14.3.1 Subject to the provisions of this 14.3 (INTELLECTUAL PROPERTY RIGHTS), each PARTY (or its third-party licensors) shall retain ownership of its INTELLECTUAL PROPERTY RIGHTS ("**IP RIGHTS**") supplied to the other PARTY to facilitate the rendering of the SERVICES.



- 14.3.2 RAM may, as permitted by CLIENT have access to and use CLIENT's IP RIGHTS as is necessary, solely for the purpose of performing the SERVICES and such use must be in accordance with this IP RIGHTS clause.
- 14.3.3 It is specifically recorded that all IP of any nature in either PARTY's name shall remain the sole property of that PARTY and the other PARTY shall not acquire any rights in relation to such IP.
- 14.3.4 Neither PARTY shall use the other PARTY's IP without the other PARTY's formal written consent.
- 14.3.5 A PARTY shall -
- 14.3.5.1 immediately bring any improper or wrongful use of the other PARTY's IP RIGHTS which comes to such PARTY's notice, to the attention of the other PARTY;
- 14.3.5.2 in and about the execution of its obligations use every effort to safeguard the rights and interests of the other PARTY and shall assist the other PARTY at its request in taking all steps to defend such PARTY's rights other than by the institution of legal proceedings.
- 14.3.6 The PARTIES mutually agree that they will not take any action to challenge or interfere with, directly or indirectly, the validity of the other PARTY's IP RIGHTS use, ownership, or registration of the IP RIGHTS.
- 14.3.7 Each PARTY agrees not to register, or to have registered any trademarks, trade names or symbols of any of the other PARTY's entities or any name or sign which is confusingly similar to the other PARTY during and after the term of this AGREEMENT.
- 14.3.8 Neither PARTY shall sub-license any of the IP RIGHTS of the other PARTY to any third party without prior written consent.
- 14.3.9 Any proceedings relating to any IP RIGHTS of either PARTY shall be exclusively handled by the owner of such IP RIGHTS. Such owner shall solely determine the course of actions in respect of any opposition, infringement or alleged infringement thereof, unfair competition or any other claim or counterclaim brought or threatened in respect of the use or registration of any of such PARTY's IP RIGHTS.

15 **FORCE MAJEURE**

- 15.1 Neither PARTY shall be responsible for or liable for any delay or non-performance of its obligations in terms of this AGREEMENT caused or resulting from *FORCE MAJEURE*.
- 15.2 Neither PARTY shall be entitled to rely on *FORCE MAJEURE* unless it has given the other PARTY written notice and proof by means of official certificates and/or attestations, legally authenticated, of the existence of such *FORCE MAJEURE* forthwith but not later than 45 (forty-five) days of its existence first coming to the relevant PARTY's notice.
- 15.3 Once a PARTY is affected by *FORCE MAJEURE*, and it has given the other PARTY notice thereof in terms of this 15 (FORCE MAJEURE) –
- 15.3.1 all performance time limits set out in this AGREEMENT for compliance by the PARTY relying on *FORCE MAJEURE* of its obligations hereunder, shall be extended for such period as such *FORCE MAJEURE* affects such PARTY; and
- 15.3.2 the PARTY relying on *FORCE MAJEURE* shall use reasonable endeavours to obviate and remove such *FORCE MAJEURE* in the shortest practical time and shall not be excused from or refrain from the performance of such of its obligations hereunder as may remain unaffected by the *FORCE MAJEURE*.
- 15.4 If and when the *FORCE MAJEURE* applicable terminates, the PARTY relying on *FORCE MAJEURE* shall as soon as it is practically possible, proceed with the performance of its obligations in terms of this AGREEMENT and the PARTY relying on *FORCE MAJEURE* shall not be liable to the other PARTY for Losses suffered as a result of *FORCE MAJEURE*.
- 15.5 Notwithstanding anything to the contrary contained in this 15 (FORCE MAJEURE) the declaration of a *FORCE MAJEURE*, shall not entitle CLIENT to withhold, delay or deduct any amount owing to RAM or refrain from its payment obligations for SERVICES rendered by RAM.

16 **CESSION OF RIGHTS**

- 16.1 CLIENT shall be entitled to cede its rights under this AGREEMENT to any –



- 16.1.1 company within CLIENT's Group by giving RAM 30 (thirty) days written notice of such intention and without the written approval or consent of RAM;
- 16.1.2 third party with the prior written consent of RAM.
- 16.2 Subject to the provisions of 9 (SUB-CONTRACTING COMPONENTS OF THE SERVICES), RAM shall be entitled to cede their rights under this AGREEMENT to any –
 - 16.2.1 company within the RAM GROUP by giving CLIENT 30 (thirty) days written notice of such intention and without the written approval or consent of CLIENT;
 - 16.2.2 third party with the prior written consent of CLIENT.
- 16.3 Notwithstanding anything to the contrary contained in 16.1 and 16.2, the sale of any shares in RAM in any of the following transactions, shall not require the prior written consent of CLIENT-
 - 16.3.1 to any third party which sale does not result in a Change in Control;
 - 16.3.2 to any other company which is Controlled by RAM's current shareholders or a company within the RAM GROUP for the purposes of a *bona fide* restructuring of the RAM GROUP;
 - 16.3.3 for the purposes of listing the RAM Group on a recognised stock exchange;
 - 16.3.4 for the purposes of implementing a Black Economic Empowerment transaction.

V. SECTION 5 – BREACH & DISPUTE RESOLUTION

17 BREACH/TERMINATION

17.1 MATERIAL BREACH

- 17.1.1 Subject to any provision of this AGREEMENT providing for an alternative remedy, should either PARTY commit a material breach of any of the provisions of this AGREEMENT (“**DEFAULTING PARTY**”), then the other PARTY (“**AGGRIEVED PARTY**”) shall be obliged to give the **DEFAULTING PARTY** written notice to remedy the **MATERIAL BREACH**.
- 17.1.2 Should the **DEFAULTING PARTY** fail to comply with such notice within 14 (fourteen) days of receipt of the notice (or, save for the service levels as contemplated in 17.4, within such longer period as may be reasonably required to remedy such breach), then the **AGGRIEVED PARTY** shall be entitled to cancel this AGREEMENT or to claim specific performance, in either event, without prejudice to the **AGGRIEVED PARTY**'s rights to claim damages.
- 17.1.3 The aforesaid is without prejudice to such other rights as the **AGGRIEVED PARTY** may have at law.

17.2 SUSPENSION OF SERVICES

If Client fails to pay any amount due under this Agreement on or before the due date, RAM shall be entitled, without prejudice to its other rights and remedies to-

- 17.2.1 suspend the provision of any or all SERVICES until such payment is received in full; and/o
- 17.2.2 require CLIENT to make payment in advance or provide security acceptable to RAM for any future SERVICES.

17.3 GENERAL BREACH / INSOLVENCY EVENT

- 17.3.1 Either PARTY shall be deemed to be in default (“**DEFAULTING PARTY**”) if the **DEFAULTING PARTY** has committed an **INSOLVENCY EVENT**.
- 17.3.2 If the **DEFAULTING PARTY** is deemed to be in default in terms of 17.3.1 then the **AGGRIEVED PARTY** may, without prejudice to any other rights it may have in law or in terms of this AGREEMENT, terminate this AGREEMENT.
- 17.3.3 No failure or delay by RAM in exercising any right or remedy shall constitute a waiver thereof, and RAM shall be entitled to exercise such rights at any time.



17.4 **SLA BREACH**

Breach of any SLA shall be governed by the terms and conditions relating to breach in the relevant SLA.

18 **DISPUTE RESOLUTION**

18.1 **CONSULTATION AND APPROVAL FOR AGREEMENT**

18.1.1 For the purposes of dealing with any matters contained in this AGREEMENT-

18.1.1.1 CLIENT hereby appoint their respective AUTHORISED REPRESENTATIVE/s set out in RAM'S APPLICATION as their representative/s and they shall be the only representatives of CLIENT with whom RAM shall in any way communicate in regard to any matters in terms of this AGREEMENT;

18.1.1.2 RAM hereby appoints its Managing Director and National Sales Manager as their respective AUTHORISED REPRESENTATIVE/s and they shall be the only representatives of RAM with whom CLIENT shall in any way communicate in regard to any matters in terms of this AGREEMENT.

18.1.2 Should there be a query or a material dispute in relation to any matter in terms of this AGREEMENT between the AUTHORISED REPRESENTATIVES in 18.1.1 and such query or material dispute has not been resolved by 16:00 on the 5th Business Day following the date upon which the query or material dispute has been brought to the other PARTY's attention, then such dispute shall be referred for resolution in accordance with the provisions of 18.2 (CO-OPERATION & GOOD FAITH) and 18.3 (SENIOR EXECUTIVES) of this AGREEMENT as a matter of urgency.

18.2 **CO-OPERATION & GOOD FAITH**

18.2.1 The PARTIES agree that a high degree of good faith and co-operation must exist between them.

18.2.2 Accordingly, the PARTIES agree to do their utmost by means of negotiation between them to ensure that-

18.2.2.1 disputes between them in regard to any matter arising out of this AGREEMENT are settled equitably, amicably and urgently;

18.2.2.2 decisions are taken with the least possible delay.

18.2.3 Each of the PARTIES undertakes to exercise and display the utmost good faith to the other of them in giving effect to the terms of this AGREEMENT and hereby undertake to –

18.2.3.1 do, and to procure the doing by other persons, and to refrain and procure that other persons will refrain from doing, all such acts; and

18.2.3.2 pass, and to procure the passing of all such resolutions of directors or shareholders of any PARTY;

18.2.3.3 assist the other PARTY in obtaining any consent, direction, permission, license or other grant,

to the extent that the same may depend on such PARTY and as may be required to give effect to the import or intent of this AGREEMENT.

18.3 **SENIOR EXECUTIVES**

18.3.1 To this end, the PARTIES endeavour within a period of 5 (five) days of a dispute of a material nature arising ("THE MATERIAL DISPUTE") to appoint their respective senior executives ("SENIOR EXECUTIVES") to meet in order to attempt to resolve the material dispute.

18.3.2 Should the Senior Executives fail to resolve any such Material Dispute, within 5 (five) days of the dispute arising (and the dispute not being subject to 18.4 (EXPERT'S DETERMINATION), then the provisions of 18.5 (GOVERNING LAW & JURISDICTION) shall apply.

18.4 **EXPERT'S DETERMINATION**

18.4.1 Should any provision of this AGREEMENT provide that the resolution of a dispute shall be determined by means of an EXPERT'S DETERMINATION, then either PARTY shall be entitled by written notice to the other, to request the –

18.4.1.1 appointment of the relevant EXPERT; and

18.4.1.2 determination of the dispute by the EXPERT appointed in terms of this 18.4 (EXPERT'S DETERMINATION).



- 18.4.2 For the purposes of this AGREEMENT should the dispute arise as a consequence of any-
- 18.4.2.1 legal matter, then the EXPERT shall be an independent commercial attorney of at least 15 (fifteen) years standing, nominated by the senior partner of an independent firm of attorneys, agreed upon between the PARTIES. Failing agreement within 3 (three) days of the dispute arising, nominated by the Provincial Director (Gauteng) for the time being of the Legal Practise Council, or its successor-in-title;
- 18.4.2.2 financial matter, then the EXPERT shall be an independent auditor of at least 15 (fifteen) years standing, nominated by the senior partner of one of the “big four” firms of auditors, agreed upon between the PARTIES. Failing agreement within 3 (three) days of the dispute arising, nominated by the President for the time being of the Institute of Chartered Accountants, or its successor-in-title.
- 18.4.3 The EXPERT shall allow the PARTIES and/or their legal advisors to make such oral and/or written representations in regard to such dispute prior to making his determination.
- 18.4.4 The EXPERT shall act as an expert and not as an arbitrator and/or mediator and his decision, including any determination with regard to his costs, shall, save for any manifest error in calculation, be final and binding on the PARTIES.
- 18.4.5 Any hearing by the EXPERT shall be held in Gauteng.
- 18.4.6 Immediately after the EXPERT is appointed, the EXPERT may be called upon by the PARTIES to fix a date and place when and where the proceedings shall be held and to settle the procedure and manner in which the proceedings will be held.
- 18.4.7 The PARTIES shall use their best endeavours to procure that the decision of the EXPERT shall be given within 30 (thirty) days or so soon thereafter as possible after the determination has been called for.
- 18.4.8 The EXPERT shall determine which PARTY is liable for his fees and disbursements and failing any such determination, the PARTIES shall share them equally.
- 18.5 **GOVERNING LAW & JURISDICTION**
- 18.5.1 This AGREEMENT shall be governed in all respects by and shall be interpreted in accordance with the laws of South Africa.
- 18.5.2 Subject to 18.1 (CONSULTATION AND APPROVAL FOR AGREEMENT), 18.2 (CO-OPERATION & GOOD FAITH), 18.3 (SENIOR EXECUTIVES) and 18.4 (EXPERT'S DETERMINATION) the PARTIES hereby consent and submit to the non-exclusive jurisdiction of High Court of South Africa (Southern Gauteng High Court) for all purposes of and in connection with this AGREEMENT.
- 18.6 **FORUMS**
- 18.6.1 The PARTIES agree that it may be impractical to meet and/or attend in person at the relevant venues for the purposes of this 18 (DISPUTE RESOLUTION).
- 18.6.2 Accordingly, the PARTIES agree that they may participate in any of the forums of set out in this 18 (DISPUTE RESOLUTION) by CONFERENCE EQUIPMENT.
- 19 **NOTICES & DOMICILIUM**
- 19.1 The PARTIES choose as their *domicilia citandi et executandi* (address for service and execution) (“**DOMICILE**”) for all purposes under this AGREEMENT, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), at the addresses set out in RAM’S APPLICATION.
- 19.2 Any notice or communication required or permitted to be given in terms to any PARTY in terms of this AGREEMENT shall be valid and effective only if in writing provided that any notice given by means of e- communication shall be regarded for this purpose as having been given in writing.
- 19.3 Any PARTY, may by notice to the other PARTY, change the physical address chosen as its Domicile vis-à-vis that PARTY to another physical address in South Africa or its e-mail address. The change shall become effective vis-à-vis that addressee on the 7th (seventh) day from the receipt (or deemed receipt) of the notice by the addressee.



- 19.4 Any notice to a PARTY –
- 19.4.1 delivered by hand to a responsible person during ordinary business hours at the physical address chosen in the APPLICATION as its Domicile shall be deemed to have been received on the day of delivery; or
- 19.4.2 transmitted by e-communication to its chosen e-mail address stipulated in the APPLICATION shall be deemed to have been received on the date and at the time recorded by the sender (unless there is evidence to the contrary that it was delivered on a different date or at a different time).
- 19.5 The PARTIES agree that operational notices and communications, inclusive of notices arising out of or in connection with this AGREEMENT, its breach or termination any amendments to this AGREEMENT, and in respect of the service of Court processes may be sent and received via e-communication.
- 19.6 In this regard the PARTIES agree that for the purposes of generating, sending, receiving, storing or otherwise processing data messages, the provisions of Section 22, 23, 24, 25 and 26 of Part 2 of Chapter the ECT Act, shall apply.
- 19.7 Any termination and or breach notice sent by e-mail to a PARTY using its chosen e-mail address, will be regarded as having been received by the recipient when the complete data message enters the information system designated and used for that purpose by the recipient, and is capable of being retrieved and processed by the recipient, or upon receipt by the sender, of an automated acknowledgement of receipt by the recipient or any conduct of the recipient reasonably sufficient to indicate to the sender that the email has been received. Any termination notice sent by e-mail to a PARTY will be deemed, unless the contrary is proved, to have been received by the recipient, 24 (twenty-four) hours after the e-mail was sent.
- 19.8 Notwithstanding anything to the contrary herein contained a written notice or communication (including e-mail) actually received by the person named in the APPLICATION on behalf of a PARTY shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen Domicile.

20 GENERAL

20.1 SOLE CONTRACT

- 20.1.1 This AGREEMENT together with its SCHEDULES and ANNEXURES constitutes the sole record of the agreement between the PARTIES.
- 20.1.2 Any SLA PACK and its SCHEDULES & ANNEXURES, once agreed and signed by the PARTIES shall be deemed to be incorporated in the AGREEMENT and all references to the AGREEMENT in this MLA shall be deemed to include the SLA together with its SCHEDULES & ANNEXURES.
- 20.1.3 To the extent permissible by law no PARTY shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 20.1.4 This AGREEMENT supersedes and replaces all prior agreements, commitments, undertakings or representations, whether oral or written, between the PARTIES in respect of the subject matter hereof.

20.2 REMEDIES

Save as otherwise expressly provided in this AGREEMENT -

- 20.2.1 no remedy conferred by this AGREEMENT is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise;
- 20.2.2 each remedy is cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise; and
- 20.2.3 the election of any one or more remedies by a PARTY shall not constitute a waiver by such PARTY of the right to pursue any other remedy.



20.3 **LIMITATION OF LIABILITY**

20.3.1 Notwithstanding anything to the contrary contained in the AGREEMENT, neither PARTY shall be liable to the other PARTY for any indirect or consequential loss or damage, including loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.

20.3.2 The aggregate liability of either Party towards the other under or in connection with this Agreement, whether arising in contract, delict, statute or otherwise, shall not exceed the Agreement Value.

20.4 **AMENDMENTS**

20.4.1 No amendment or consensual cancellation of this AGREEMENT or any provision or term hereof or of any agreement or other document issued or executed pursuant to or in terms of this AGREEMENT and no settlement of any disputes arising under this AGREEMENT and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this AGREEMENT or of any agreement or other document issued pursuant to or in terms of this AGREEMENT shall be binding unless recorded in a written document signed by the PARTIES (or in the case of an extension of time, waiver or relaxation or suspension, signed by the PARTY granting such extension, waiver or relaxation).

20.4.2 Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

20.5 **GOVERNING LANGUAGE**

20.5.1 Any notice given under this AGREEMENT shall be in English.

20.5.2 All other documents provided under this AGREEMENT shall be in English.

20.6 **WAIVER**

No indulgence which any PARTY may grant to another shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.

20.7 **WRITING**

20.7.1 For the purposes of this AGREEMENT -

20.7.1.1 all notices, consents, advice or other communication by either PARTY to the other of them, shall be in WRITING and SIGNED by the relevant PARTY, and unless in WRITING and SIGNED, shall be deemed not to have been given or made;

20.7.1.2 an e mail transmission of a portable document format (“**.PDF**”) of a document signed by a duly authorised PARTY shall be acceptable evidence that such document has been SIGNED by the relevant duly authorised PARTY whose signature appears on the .pdf.

20.8 **TERMINATION**

Termination or expiry of this AGREEMENT for any cause shall not release a PARTY from any liability which at the time of termination or expiry has already accrued to such PARTY or which thereafter may accrue in respect of any act or omission prior to such termination or expiry.

20.9 **CONSENTS**

20.9.1 Wherever any provision in this AGREEMENT requires either PARTY's consent, such consent shall only be valid and binding on the PARTIES if it is obtained beforehand and is in writing, provided that neither PARTY shall be entitled to unreasonably withhold or delay its consent.

20.9.2 Should there be a dispute between the PARTIES as to whether the relevant PARTY has unreasonably withheld or delayed its consent in any case, then the onus shall be on the PARTY requesting the consent to prove that the other PARTY has withheld or delayed its consent unreasonably.

20.9.3 No oral undertaking not to sue (*pactum de non petendo*) shall be of any force or effect.



20.10 **LEGAL COSTS**

If pursuant to any breach by either PARTY of any of the terms of this AGREEMENT, the AGGRIEVED PARTY instructs its attorney to make demand or institute legal proceedings against the DEFAULTING PARTY, then upon receipt of the relevant court order, judgment or determination in terms of 18.5 (GOVERNING LAW & JURISDICTION), the DEFAULTING PARTY shall indemnify the AGGRIEVED PARTY against all LEGAL COSTS.

20.11 **AUDITORS' CERTIFICATE**

20.11.1 A certificate signed by RAM's financial director as to the existence of any amount of indebtedness of CLIENT to RAM at any time, as to the fact that such amount is due and payable, the amount of interest accrued thereon and as to any other fact, matter or thing relating to the indebtedness of CLIENT to RAM, shall be *prima facie* proof of the contents and correctness thereof and of CLIENT's indebtedness for the purposes of provisional sentence or summary judgment or any other proceeding against CLIENT in any competent court and shall be valid as a liquid document for such purposes.

20.11.2 It shall not be necessary to prove the appointment of the person signing such certificate and such certificate shall be binding on CLIENT and shall be deemed to be sufficient particularly for the purpose of any pleading or trial in any action or other proceeding instituted by RAM against CLIENT.

20.12 **SUCCESSORS-IN-TITLE**

Without prejudice to any other provision of this AGREEMENT, any successor-in-title, including any executor, heir, liquidator, judicial manager, curator or trustee, of either PARTY shall be bound by this AGREEMENT and any SLA.

20.13 **EXECUTION IN COUNTERPARTS**

This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement as at the date of signature of the PARTY that signs its counterpart last in time.

20.14 **SEVERABILITY**

20.14.1 All provisions in this AGREEMENT are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other.

20.14.2 Any provision of this AGREEMENT, which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this AGREEMENT shall remain of full force and effect.

20.14.3 The PARTIES declare that it is their intention that this AGREEMENT would be executed without such unenforceable provision if they were aware of such unenforceability at the Signature Date.

20.15 **NON-EXCLUSIVITY**

Nothing in this AGREEMENT and any SLA shall preclude RAM from furnishing similar SERVICES to any competitor of CLIENT.

20.16 **NON-SOLICITATION OF EMPLOYEES**

During the term of this AGREEMENT and any SLA and for 24 (twenty-four) months after the term of this AGREEMENT and any SLA, neither PARTY shall solicit the employment of, or employ any of the other PARTY's personnel without the relevant PARTY's prior written consent.

20.17 **ADVICE**

Each PARTY hereby agrees and acknowledges that -

20.17.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this AGREEMENT and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

20.17.2 each provision of this AGREEMENT is fair and reasonable in all the circumstances and is part of the overall intention of the PARTIES in connection with this AGREEMENT.



21 WARRANTIES

21.5 GENERAL

Each PARTY hereby warrants to and in favour of the other that –

- 21.5.1 it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this AGREEMENT;
- 21.5.2 this AGREEMENT constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;
- 21.5.3 they will generally act in good faith in their dealings with one another;
- 21.5.4 the execution of this AGREEMENT and the performance of its obligations hereunder does not and shall not –
 - 21.5.4.1 contravene any law or regulation to which that PARTY is subject;
 - 21.5.4.2 contravene any provision of that PARTY's constitutional documents;
- 21.5.5 to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of this AGREEMENT;
- 21.5.6 it is not relying upon any statement or representation by or on behalf of any other PARTY, except those expressly set forth in this AGREEMENT.

21.6 RAM'S WARRANTIES

RAM warrants to CLIENT that –

- 21.6.1 it has the requisite power, authority and resources to enter into this AGREEMENT and to perform its obligations hereunder;
- 21.6.2 the signatory to this AGREEMENT on behalf of RAM does so in his capacity as duly authorised representative of RAM.

21.7 CLIENT'S WARRANTIES

CLIENT warrants to RAM that –

- 21.7.1 CLIENT has provided RAM with the information known to it that materially affect RAM's ability to perform its obligations under this AGREEMENT;
- 21.7.2 CLIENT has the requisite power, authority and resources to enter into this AGREEMENT and to perform its obligations hereunder and to grant the rights granted hereunder;
- 21.7.3 the signatory to this AGREEMENT on behalf of CLIENT does so in his capacity as duly authorised representative of CLIENT.

21.8 NO OTHER WARRANTIES

- 21.8.1 The warranties set forth in this 21 (WARRANTIES), are the only warranties provided by either PARTY concerning this AGREEMENT, the SERVICES and any related work hereunder.
- 21.8.2 These warranties are made expressly in lieu of all other warranties, express or implied, including, any implied warranties of fitness for a particular purpose, merchantability, non-infringement, title or otherwise.
- 21.8.3 The warranties are separate and severable. Each of the warranties shall be construed and enforceable as a separate and several warranty and the waiver, performance or abandonment of any one warranty shall not limit or otherwise adversely affect any other warranty.

22 COSTS

Each PARTY shall bear and pay all of their own professional and advisory costs of and incidental to the entire transaction contemplated in this AGREEMENT including the costs of and incidental to the drafting, preparation, negotiation and implementation of this AGREEMENT.



VI. SECTION 6 – SIGNATURE

23 SIGNATURE

- 23.1 Prior to entering any AGREEMENT, CLIENT will be required to electronically complete, sign and submit RAM's APPLICATION.
- 23.2 In terms of Section 13 of the ECT Act, Electronic Signature includes data attached to, incorporated in, or logically associated with other data and which is intended by the user to serve as a signature.
- 23.3 Upon completion and Electronic Signature of the APPLICATION, by clicking the "**SUBMIT FORM**" button in the top right-hand corner CLIENT has applied to RAM to provide COURIER & LOGISTICS SERVICES on the terms and conditions contained in the AGREEMENT (MLA together with its Schedules and Annexures).
- 23.4 The AGREEMENT shall however only come into force and effect upon written acceptance by RAM being communicated to CLIENT.