

THIS AGREEMENT DOES NOT CONSTITUTE A FINAL AGREEMENT BETWEEN THE PARTIES. SARS RESERVES THE RIGHT TO AMEND SAME, AT ITS OWN DISCRETION, AT ANY POINT PRIOR TO SIGNATURE HEREOF

SERVICES AGREEMENT

IN RESPECT OF

IT NETWORK TROUBLESHOOTING SOLUTION

Between

THE SOUTH AFRICAN REVENUE SERVICE

(“SARS”)

And

[NAME TO BE INSERTED]

(“Service Provider”)

1	PARTIES.....	5
2	INTERPRETATION AND DEFINITIONS	5
3	APPOINTMENT	26
4	NATURE OF RELATIONSHIP AND NON-EXCLUSIVITY	27
5	COMMENCEMENT AND DURATION	28
6	SCOPE OF THE SERVICES.....	29
7	PROVISION OF THE SERVICES.....	33
8	SERVICE PROVIDER PERSONNEL	36
9	RESOURCES TO BE PROVIDED BY SARS	38
10	SERVICE COMPATIBILITY.....	40
11	ACCEPTANCE TESTING AND DELIVERY.....	40
12	DELIVERY AND RISK OF LOSS.....	43
13	HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES ..	44
14	FEES INVOICING AND PAYMENT	44
15	DISPUTED FEES AND INVOICING ERRORS.....	45
16	SARS'S RIGHTS AND OBLIGATIONS.....	45
17	INTELLECTUAL PROPERTY RIGHTS	46
18	CONFIDENTIAL UNDERTAKING	48
19	DATA PROTECTION	51
20	PROCESSING OF PERSONAL INFORMATION.....	52
21	PROTECTION OF PERSONAL INFORMATION	53
22	AUDITS	56
23	INTEGRITY AND SECURITY COMPETENCE	59
24	BREACH	61
25	INDEMNITIES	61
26	LIMITATION OF LIABILITY	62
27	TERMINATION.....	63
28	TERMINATION FOR CONVENIENCE	63

29	TERMINATION FOR CAUSE	64
30	TERMINATION UPON SALE, ACQUISITION, MERGER OR CHANGE OF CONTROL	64
31	EFFECT OF TERMINATION	64
32	TERMINATION/EXPIRATION ASSISTANCE	65
33	FORCE MAJEURE	65
34	RECORDS RETENTION	66
35	CONSENTS AND APPROVALS	66
36	APPLICABLE LAW AND JURISDICTION	66
37	LEGAL AND REGULATORY COMPLIANCE	66
38	WARRANTIES	67
39	PUBLICITY	70
40	CO-OPERATION	70
41	DISPUTES	71
42	ADDRESSES	71
43	BROAD-BASED BLACK ECONOMIC EMPOWERMENT ("BBBEE")	72
44	TAX COMPLIANCE	73
45	ETHICAL BUSINESS PRACTICES	73
46	CONFLICT OF INTEREST	74
47	NEW LAWS AND INABILITY TO PERFORM	74
48	RELATIONSHIP BETWEEN THE PARTIES	75
49	GENERAL	75
50	COVENANT OF GOOD FAITH	76
51	COSTS	76
52	AUTHORISED SIGNATORIES	77
	SCHEDULE 1	79
	LIST OF DOCUMENTS	79
	SCHEDULE 2	80

LIST OF DOCUMENTS	80
ANNEXURE C	82
SCOPE OF THE SERVICES	82
ANNEXURE D	83
SERVICE LEVEL AGREEMENT	83
ANNEXURE E	84
SERVICE PROVIDER PERSONNEL.....	84

1 PARTIES

The Parties to this Agreement are:

- 1.1 **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 ("**SARS**"); and
- 1.2 ● with its principal address situated at ● (the "**Service Provider**")

2 INTERPRETATION AND DEFINITIONS

- 2.1 The headings in this Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of this Agreement.
- 2.2 Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings:
- 2.2.1 "**Acceptance Testing**" means the testing by SARS of a specific Deliverable or set of Deliverables for the purposes of determining whether such Deliverable(s) complies with the Documentation;
- 2.2.2 "**Acts of Insolvency**" means when a Party is unable to pay its debts, becomes insolvent, is going through business rescue, is the subject of any order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction), has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets, enters into or proposes any composition or arrangement with its creditors generally or is the subject of any events or circumstances or analogous to the foregoing in the Republic of South Africa, as fully defined in the Insolvency Act, 1936 (Act No. 24 of 1936), as amended;
- 2.2.3 "**Ad Hoc Services**" means additional services required by SARS from time to time, that are related to the Services;

- 2.2.4 **“Agreement”** means this IT Network Troubleshooting Solution Agreement including its annexures and schedules thereto as amended and/or added from time to time by the Parties in writing and RFP 35/2018;
- 2.2.5 **“Affiliate(s)”** means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity. The term "Affiliate" will also include:
- 2.2.5.1 a subsidiary of such entity, as the term "subsidiary" is defined in section 3 of the Companies Act 71 of 2008, as amended; and
- 2.2.5.2 any foreign company which, if it were registered under such Act, would fall within the ambit of such term.
- 2.2.6 **“AFSA”** means the Arbitration Foundation of Southern Africa;
- 2.2.7 **“Applicable Law(s)”** means any statute which includes without being limited thereto, Companies Act, PFMA, PAJA, PAIA, POPIA, ECA and RICA, including any regulation, directive, or subordinate legislation; the common law; any binding court order as between the Parties, judgment; any applicable securities industry code, standard enforceable by law; or any applicable direction, policy or order that is given by the Authority where there is an onus on the Parties to adhere to the aforesaid;
- 2.2.8 **“Authority”** means any agency, tribunal, commission, regulator, self-regulatory body or other similar body having jurisdiction over the Deliverables and/or Services activities or operations of any of the Parties in any territory that is applicable to this Agreement, including without limitation, IRBA, SARB, ICASA and SARS;
- 2.2.9 **“B-BBEE”** means broad-based black economic empowerment as defined in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended from time to time;
- 2.2.10 **“BEE Codes”** means the Codes of Good Practice on Black Economic Empowerment gazetted by the Minister of Trade and Industry under section 9 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), as amended, applicable to and binding on the Service Provider;
- 2.2.11 **“BEE Status”** means the BEE Status of the Service Provider based on its generic scorecard as measured and certified by a verification agency in accordance with the applicable BEE Codes;

- 2.2.12 **“BEE Verification Certificate”** means a certificate issued by a Verification Agency, verifying the Service Provider's BEE Status level, the details of its scorecard performance, as may be applicable, and any other aspect of its BEE performance under the Codes;
- 2.2.13 **“Best Industry Practices”** means the best industry practice, quality standards and requirements prescribed by ITIL and/or ISO;
- 2.2.14 **“Business Day”** means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 2.2.15 **“Commercially Reasonable Efforts”** means taking such steps and performing in such a manner as a well-managed firm / consultancy would undertake where such firm / consultancy was acting in a prudent and reasonable manner to achieve the particular result for its own benefit, provided always that such steps are within the reasonable control of the Party;
- 2.2.16 **“Companies Act”** means the Companies Act, 2008 (Act No. 71 of 2008), as amended;
- 2.2.17 **“Confidential Information”** means
- 2.2.17.1 means in relation to SARS, subject to sub-clause 2.2.17.3 immediately below in this definition any information or data of any nature, whether provided orally or in writing or otherwise obtained and in any format or medium, which constitutes:
- 2.2.17.1.1 SARS Information;
- 2.2.17.1.2 SARS Data;
- 2.2.17.1.3 Taxpayer Information;
- 2.2.17.1.4 Information as defined in section 68 of the Tax Administration Act, 2011 (Act No. 28 of 2011) (hereinafter referred to as “TAACT”);

2.2.17.1.5 information which by its nature, content, or circumstances of disclosure is or ought reasonably to be identifiable by the Service Provider as confidential (including by reason of such information not being generally known to, or readily ascertainable by, third parties generally) and/or proprietary to SARS, including (i) information regarding SARS Personnel, independent contractors and suppliers of SARS; processes and plans of SARS and governmental entities; projections, manuals, forecasts, and analyses of SARS; Intellectual Property owned by or licensed to SARS; (ii) information relating to the knowledge, know-how, expertise, trade secrets and activities of SARS; (iii) any information which SARS (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to the Service Provider, as being confidential information; and (iv) and any other information of SARS which would be regarded by a reasonable person to be confidential or proprietary in nature;

2.2.17.1.6 in terms of Applicable Laws or by its nature, content, or circumstances of disclosure is or ought reasonably to be identifiable by the Service Provider as confidential (including by reason of such information not being generally known to, or readily ascertainable by, third parties generally) and/or proprietary to SARS, including: (i) data, financial information, information regarding taxpayers; information regarding employees, independent contractors and suppliers of SARS and Governmental Entities; processes and plans of SARS and Governmental Entities; projections, manuals, forecasts, and analysis of SARS and Governmental Entities; Intellectual Property owned by or licensed to SARS or a Governmental Entity; (ii) information relating to the knowledge, know-how, show-how, expertise, trade secrets and activities of SARS; (iii) any information which SARS (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to the Service Provider, as being confidential information; and (iv) and any other information of SARS or Governmental Entities which would be regarded by a reasonable person to be confidential or proprietary in nature; SARS or any person acting on behalf of SARS discloses or provides (or has previously disclosed or provided) to the Service Provider (including Service Provider Personnel, Service Provider affiliates, Subcontractors, Third Party suppliers or agents, as applicable) or which the Service Provider (including the Service Provider's Personnel, Affiliates, Subcontractors, Third Party suppliers or agents, as applicable), otherwise becomes aware of in connection with this Agreement or as a result of the provision or receipt of the Services under this Agreement, and which information will include this Agreement;

2.2.17.2 means in relation to the Service Provider, any information or data of any nature, whether provided orally or in writing and in any format or medium, which is clearly designated in writing by Service Provider, at the time of disclosure to SARS, as being Confidential Information, and which written designation is, in each case acknowledged by SARS, by SARS initialling such designation, or which information by its nature could reasonably be expected to be confidential under the circumstances in which it is disclosed;

2.2.17.3 Confidential Information does not include information that:

2.2.17.3.1 is lawfully publicly available to, or lawfully in the Receiving Party's possession, at the time of disclosure thereof by the Disclosing Party (whether before or after the Effective Date) to the Receiving Party; or (ii) is independently developed or learned by the Receiving Party without reference to or use of the Confidential Information of the Disclosing Party; or (iii) is in or enters the public domain without breach of this Agreement or any other obligation owed by the Receiving Party to the Disclosing Party; or (iv) the Receiving Party receives from a Third Party without restriction on disclosure and without breach of a non-disclosure obligation; provided always that notwithstanding the foregoing:

provided that:

2.2.17.4 the onus will at all times rest on the Receiving Party to establish that such information falls within such exclusions;

2.2.17.5 the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information that is publicly available or in a Party's possession;

2.2.17.6 any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are publicly available or in a Party's possession, but only if the combination itself is publicly available or in a Party's possession; and

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

2.2.18 **"Control"** means with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of:

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

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

2.2.18.3 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.

- 2.2.19 **"Data Protection Legislation"** means the following legislation:
- 2.3.13.1 POPIA;
- 2.3.13.2 the GDPR; or
- 2.2.20 legislation applicable to the protection of Personal Information in the Republic of South Africa;
- 2.2.21 **"Data Subject"** means the person to whom Personal Information relates;
- 2.2.22 **"Deficiency"** means any error, Problem, non-conformity or defect in the: (i) Software; (ii) License; (iii) Operating System; (iv) Hardware; and/or (iv) Documentation, resulting from any deviation from the Functional Specification, or incorrect or incomplete documentation;
- 2.2.23 **"Deliverable(s)"** means the Software, Software Licenses, Hardware and/or Documentation, including any other material, specification, documentation which are provided by the Service Provider to SARS as part of the Services pursuant to this Agreement;
- 2.2.24 **"Destructive Element"** means any "back door", "time bomb", "time lock", "trojan horse", "worm", "drop dead device", "virus" or other computer software routine, code or device intended or designed to: (a) permit access to or the use of any software, firmware, hardware and peripherals, wide area network, or local area network by an unauthorised person; or (b) disable, damage, erase, disrupt or impair in any way the operation of any software, firmware, hardware and peripherals, wide area network, or local area network, including by the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral; or (c) damage, erase or corrupt data, storage media, programmes, equipment or communications or otherwise interfere with operations of any software, firmware, hardware and peripherals, wide area network, or local area network; and/or (d) any other form of destructive coding and/or device, including those which result in aesthetical disruptions or distortions;
- 2.2.25 **"Disclosing Party"** means a Party disclosing the Confidential Information to the Receiving Party;

- 2.2.26 **"Documentation"** means the Functional Specification, training manuals including any other documentation relating to a Deliverable under this Agreement which will be furnished by the Service Provider to SARS as envisaged in this Agreement. A list of the Documentation is attached in the Schedule of Documents attached hereto and marked **SCHEDULE 1**;
- 2.2.27 **"ECA"** means the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended;
- 2.2.28 **"Effective Date"** means the date upon which the Service Provider commences with the provision of the Solution or any part thereof notwithstanding the Signature Date;
- 2.2.29 **"End Users"** means SARS Personnel selected by SARS to attend training as part of the Training Services to be provided by the Service Provider, which personnel will be communicated in writing to the Service Provider;
- 2.2.30 **"Force Majeure Event"** means any circumstances beyond a Party's reasonable control and includes, without limitation: (i) acts of God, public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil disorder, sabotage, riot, strikes, lock-outs or other labour disputes, blockade, embargo, sanctions, epidemics, act of any Government or other Authority, compliance with law, regulations or demands of any Government or Governmental agency, limitations imposed by exchange control or foreign investment or other similar regulations or any other circumstances of like or different nature beyond the reasonable control of the Party so failing;
- 2.2.31 **"Functional Specification"** means the document specifying the technical functionality and operation of the Software, Operating System and/or Hardware, which document is annexed hereto and marked **ANNEXURE A**;
- 2.2.32 **"GDPR"** means the European Union General Data Protection Regulation (2016/679) replacing the EU Directive 95/46/EC, which came into effect on May 2018;
- 2.2.33 **"Government Entity"** means any department, agency, service or other constituent body of the national South African government;

- 2.2.34 **“Hardware”** means hardware to be provided by the Service Provider as detailed in RFP 35/2018;
- 2.2.35 **“Hardware Failures”** means individually and/or collectively, the bug fixes, work-arounds and temporary fixes, patches relating to the Operating System;
- 2.2.36 **“Hardware Owner”** means (where applicable) the owner or authorised distributor of the Hardware forming part of the Deliverable leased to or purchased by SARS whose details are listed in **ANNEXURE B**;
- 2.2.37 **“ICASA”** means the Independent Communications Authority of South Africa, established in terms of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), as amended;
- 2.2.38 **“ICT”** means information communication and technology;
- 2.2.39 **“Incident”** means any event that is not part of the standard operation of a service and which causes, or may cause, an interruption to, or a reduction in, the quality of that Software or Service;
- 2.2.40 **“Intellectual Property”** means all computer programs, software, source code, object code, programmer interfaces, specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts and mask-works, plans, reports, data, works protected under the Copyright Act 98 of 1978, works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, Confidential Information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organisational nature), inventions, discoveries, drawings, notes, manuals, documentation, training materials, job aids, trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property Rights actually inhere in any such items, and any other tangible or intangible items in which Intellectual Property Rights may inhere, as may exist anywhere in the world and any applications for registration of such intellectual property, and includes all Intellectual Property Rights in any of the foregoing;

- 2.2.41 **“Intellectual Property Rights”** means all rights of whatever nature and however described in respect of Intellectual Property, including:
- 2.2.41.1 all patents and other patent rights, including divisional and continuation patents, utility models;
 - 2.2.41.2 rights in and to inventions, whether patentable or not;
 - 2.2.41.3 rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin;
 - 2.2.41.4 rights in designs, topography rights, rights in circuit layouts and mask-works;
 - 2.2.41.5 copyright, including all copyright in and to computer programs;
 - 2.2.41.6 rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites;
 - 2.2.41.7 rights in databases and data collections; and
 - 2.2.41.8 know-how, show-how, trade secrets and confidential information, in each case whether or not registered and including applications for the registration, extension, renewal and re-issuance, continuations, continuations in part or divisions of, any of these and the right to apply for any of the foregoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.
- 2.2.42 **“ITIL”** means the Information Technology Infrastructure Library published by the UK Office of Government Commerce (“OGC”), and any natural successor organisations to the OGC, from time to time together with the associated published codes of practice (including DISC PD005 and any updates and amendments thereto) and best practice guides published by the IT Service Management Forum (“ITMF”) from time to time, including any natural successor organisations to the ITSMF;
- 2.2.43 **“IRBA”** means Independent Regulatory Board for Auditors established by the Auditing Profession Act 2005, (Act No. 26 of 2005);
- 2.2.44 **“ISO”** means International Standards Organization, specifically in the implementation of quality standards and requirements in line with ISO 9001:2008 to increase and continually improve on operational efficiency;

- 2.2.45 **“Letter of Award”** means the letter dated ● in terms of which the Service Provider was appointed to provide the Services to SARS under RFP 35/2018;
- 2.2.46 **“Licensor”** means the license owner/holder of the Software licensed to SARS as contemplated in this Agreement, whose details are listed in **ANNEXURE B**;
- 2.2.47 **“Location”** means SARS’s offices at which the Services and/or Deliverables will be provided or delivered which will be communicated in writing by SARS to the Service Provider;
- 2.2.48 **“Losses”** means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties);
- 2.2.49 **“Maintenance Services”** means without being limited thereto, (i) preventative maintenance, scheduled maintenance and emergency maintenance (as fully described in the Service Level Agreement) as may be required for the purpose of ensuring continue functionality and operation of the Solution Software, Operating System and Hardware in accordance with the Functional Specification and Documentation, including the performance of: (ii) the maintenance activities set out in generally in Clause 6.3 below and specially as set out in the scope of the Services attached hereto and marked **ANNEXURE C**; (iii) the identification and notification of Problems and/or Deficiencies (iv) initiating any bug fixes, including without being limited thereto, the provision and installation of the Hardware, Software, and Operation System Breakages, Upgrades, New Releases and enhancements. For the avoidance of doubt, the provisions of this clause 2.2.47 will apply in respect of all copies of the: (i) Software; (ii) the commercial software used by SARS; and (iii) Software used by SARS for disaster recovery purposes;
- 2.2.50 **“Network Troubleshooting Agreement”** means this IT Network Troubleshooting Agreement and its annexures, schedules and as amended from time to time by the Parties in writing;

- 2.2.51 **"New Release"** means a new release of the Software incorporating Upgrades, Software Breakages or enhancements to the Software and which is generally a replacement for the Software. For the sake of clarity, New Releases are usually identified by a change in the version number, for instance a change from version 1 to version 2;
- 2.2.52 **"Operating System"** means the software used to operate the Hardware;
- 2.2.53 **"PAIA"** means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), as amended;
- 2.2.54 **"PAJA"** means the Promotion of Administrative Justice At, 2000 (Act No. 3 of 2000);
- 2.2.55 **"Pass Through Expenses"** means an expense charged by a Third-Party for the Deliverables which relate to the Services, that are purchased by the Service Provider on behalf of SARS with SARS's prior written consent and instruction, and which SARS agrees to pay on a Pass-Through Expense Basis;
- 2.2.56 **"Pass Through Expense Basis"** means the actual and reasonable amount charged or invoiced by the applicable Third-Party service provider for Pass Through Expenses without the addition of, or separate charge for, any margin, mark-up, administrative or other similar fee;
- 2.2.57 **"Performance Criteria/Standards"** means individually and/or collectively, the quantitative and qualitative obligations and commitments and the functional and technical specifications for each Deliverable agreed by the Parties in the Service Level Agreement attached hereto marked **ANNEXURE D**;
- 2.2.58 **"Personal Information"** means information relating to an identifiable, living, natural or juristic person, including but not limited to information relating to the person's —
- 2.2.58.1 race, sex, gender, sexual orientation, pregnancy, marital status, nationality, ethnic or social origin, colour, age, physical or mental health, well-being, disability, religion, conscience, belief, cultural affiliation, language and birth;
- 2.2.58.2 education, medical, or criminal, history;

- 2.2.58.3 identifying number, pin code, client code or number, numeric- alfa- or alpha-numeric design or configuration of any nature, symbol, e-mail address, website address, physical address, cellular phone number, telephone number, VAT registration number or other particular assignment;
- 2.2.58.4 blood type or any other biometric information;
- 2.2.58.5 personal opinions, views or preferences;
- 2.2.58.6 correspondence that is implicitly or explicitly of a personal, private or confidential nature (or further correspondence that would reveal the contents of the original correspondence);
- 2.2.58.7 views or opinions about another person;
- 2.2.58.8 name, if it appears with other Personal Information relating to such person or if the disclosure of the name itself would reveal information about the person;
- 2.2.59 **“Personal Information Breach”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to, Personal Information transmitted, stored or otherwise Processed;
- 2.2.60 **“PFMA”** means the Public Finance Management Act, No. 1 of 1999;
- 2.2.61 **“POPIA”** means Protection of Personal Information Act, 2013 (Act No. 2 of 2013);
- 2.2.62 **“Pre-delivery Testing”** means the Service Provider’s testing of a Deliverable, which testing is to be performed by the Service Provider prior to submitting or delivering such Deliverable to SARS for SARS’s evaluation;
- 2.2.63 **“Pricing Schedule”** means the Service Provider’s schedule of rates annexed which rates fall within the range of rates specified in the aforesaid pricing schedule and attached hereto as **SCHEDULE 2**;
- 2.2.64 **“Privacy and Data Protection Requirements”** means the 8 (eight) requirements for the lawful Processing of personal information contained in Chapter 3 of POPIA;

- 2.2.65 **"Problem"** means the underlying cause of one or more Incidents; or the occurrence of a problem or error in the Software and/or Operating System if applicable, reported by SARS to the Service Provider, including a Deficiency;
- 2.2.66 **"Process" and "Processing"** means any operation or activity or any set of operations, whether or not by automatic means, concerning Confidential Information, including its collection, receipt, recording, organisation, collation, storage, updating or modification, merging, linking, blocking, degradation, erasure or destruction retrieval, alteration, consultation, testing or use, dissemination or distribution by any means;
- 2.2.67 **"Procurement Services"** means Software or Hardware procurement services by Service Provider on behalf of SARS and delivery of such Software or Hardware to SARS;
- 2.2.68 **"RFP"** means the Request For Proposal number 35/2018 for the provision of the Solution issued by SARS which forms an integral part of this Agreement;
- 2.2.69 **"Repo Rate"** means interest rate (percent per annum), which the SARB lends money to the banks
- 2.2.70 **"SANAS"** means the South African National Accreditation System and **recognised** by the South African Government as the national accreditation body;
- 2.2.71 **"SARS Data"** means any information and/or data including but not limited to data or any information owned and created by SARS, whether or not Confidential Information in any format, being information of SARS relating to SARS's business operations, a taxpayer, its employees, contractors and Service Providers which information and/or data includes without being limited thereto, personal information as defined in the Tax Acts, POPIA, GDPR (where SARS's Data includes information of Data Subjects as defined under the European Union jurisdiction), or any other Applicable Legislation, including:

- 2.2.71.1 all reports, documentation, software or inventions in material form, irrespective of media on which they occur, entered into, contained in and/or stored, collected, accessed or processed by the Service Provider for the purpose of providing the Services to SARS; and
- 2.2.71.2 all other records, data, files, input materials, reports, forms and other such items that may be received, computed, developed, used or stored by the Service Provider or any of the Service Provider Personnel, Key Personnel, Subcontractors, for or on behalf of SARS or in connection with the Services;
- 2.2.72 **“SARS’s Designated Representative”** means any SARS official who is authorised to enter into this Agreement with the Service Provider;

2.2.73 **"SARS Information"** means— (a) any information (including Personal Information) about a current or former SARS official, whether deceased or not; (b) information subject to legal professional privilege vested in SARS; (c) information that was supplied in confidence by a third party to SARS, the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source; (d) information related to investigations and prosecutions described in section 39 of PAIA; (e) information related to the operations of SARS, including an opinion, advice, report, recommendation or an account of a consultation, discussion or deliberation that has occurred, if— (i) the information was given, obtained or prepared by or on behalf of SARS for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; and (ii) the disclosure of the information could reasonably be expected to frustrate the deliberative process in SARS or between SARS and other organs of state by— (aa) inhibiting the candid communication of an opinion, advice, report or recommendation or conduct of a consultation, discussion or deliberation; or (bb) frustrating the success of a policy or contemplated policy by the premature disclosure thereof; (f) information about research being or to be carried out by or on behalf of SARS, the disclosure of which would be likely to prejudice the outcome of the research; (g) information the disclosure of which could reasonably be expected to prejudice the economic interests or financial welfare of the Republic of South Africa or the ability of the government to manage the economy of the Republic of South Africa effectively in the best interests of the Republic of South Africa, including a contemplated change or decision not to charge a tax or a duty, levy, penalty, interest and similar moneys imposed under a Tax Act; (h) information supplied in confidence by or on behalf of another state or an international organization to SARS; (i) a computer program, as defined in section 1(1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by SARS; (j) financial, commercial, scientific or technical information, other than trade secrets, of SARS, the disclosure of which would be likely to cause harm to the financial interests of SARS; (k) information the disclosure of which could reasonably be expected to put SARS at a disadvantage in contractual or other negotiations; and (l) information relating to the security of SARS buildings, property, structures or systems;

- 2.2.74 **“SARS Personnel”** means SARS’s staff, consultants and/or agent employed by SARS for the purposes of the Agreement;
- 2.2.75 **“SARS PPS&G”** means the SARS’s policies, procedures, processes, standards, guidelines, and other similar issuances (including any updates, amendments or revisions) that are applicable to the Services or the Service Provider from time to time;
- 2.2.76 **“Services”** means the functions and responsibilities to be provided by the Service Provider to SARS as detailed in the RFP as they may evolve or be supplemented, enhanced, modified, amended or replaced in accordance with the terms of this Agreement, and in particular means: (i) the Procurement Services; (ii) the Maintenance Services; (iii) the Support Services; (iv) Training Services; (v) Ad Hoc Services and any services related to those detailed in (i) to (v) above;
- 2.2.77 **“Service Level”** means a quantitative standard of performance of the Services that Service Provider is required to satisfy in its performance of the Services, as are detailed under **ANNEXURE D**;
- 2.2.78 **“Service Level Agreement”** means the Service Level Agreement attached hereto and marked **ANNEXURE D**;
- 2.2.79 **“Service Level Credit”** means a penalty amount which will be payable by the Service Provider to SARS for its failure to meet a Service Level and/or Performance Criteria/Standards, calculated in accordance with the formula set out the Service Level Agreement;
- 2.2.80 **“Service Level Failure”** means the Service Provider's failure to meet a Service Level;
- 2.2.81 **“Service Provider Personnel”** means the Service Provider’s staff, be they permanent, temporary or contractors, and Subcontractor’s personnel performing the Services on behalf of the Service Provider whose details are as fully set out in **ANNEXURE E**;
- 2.2.82 **“Signature Date”** means the date of signature of this Agreement by the last Party signing;
- 2.2.83 **“Solution”** means the Software, Hardware and the Services to be provided collectively by the Service Provider in terms of this Agreement;

- 2.2.84 **"Software"** means the network troubleshooting tool supplied by the Services Provider to SARS as defined in the RFP and licensed to SARS by the Licensor in terms of this Agreement, including any additional licenses which SARS may procure either itself or as part of the Services from the Service Provider during the Term. For the avoidance of doubt, any reference to the term "Software" will include any Upgrades and New Releases of the Software. The Software which is licensed to SARS as at the Effective Date is detailed in **ANNEXURE B** hereto. ANNEXURE B may be modified during the Term to incorporate details of licenses granted to SARS subsequent to the Effective Date;
- 2.2.85 **"Software or Operating System Breakages"** means individually and/or collectively, the bug fixes, work-arounds and temporary fixes, patches relating to the Software or Operating System;
- 2.2.86 **"Source Code Material"** means: (i) source code and object code (both magnetic media and printed versions), executable files, and all other programming materials; and (ii) all documentation, sufficient for SARS to be able to maintain, enhance, customise, modify, support and perpetuate the Software;
- 2.2.87 **"SPOC"** means a Single Point of Contact designated by either Party to ensure the implementation of the Agreement in accordance with the terms hereof and to resolve any operational issues pertaining thereto;
- 2.2.88 **"Staff"** means collectively, SARS Personnel and Service Provider Personnel;
- 2.2.89 **"Subcontractor"** means a party to whom Service Provider subcontracts or otherwise delegates any Service Provider obligations to perform any of the Services and/or Deliverables (including subcontractors of a Subcontractor) provided that such Third Party has been approved for such purpose by SARS in accordance with the terms and conditions of this Agreement;

- 2.2.90 **"Support Services"** means the provision of services including all support activities listed in RFP documents and **ANNEXURE C**, by the Service Provider to SARS whereby the Service Provider: (i) attends to all service request logged by SARS and escalated to the Service Provider; (ii) resolves all Incidents and Problems logged by SARS in accordance with the provisions of **ANNEXURE D**; (iii) the installation and repair of all Software and Operating System Breakages and Upgrades and/or Hardware Failures; and (iv) provides consultancy services in respect of or related to the Software or Hardware to ensure the continued functionality of the Software or Hardware in accordance with the Functional Specification and/or Documentation, which services may be provided via telephonic support. For the avoidance of doubt, the provisions of this Clause 2.2.90 will apply in respect of all copies of the Software used by SARS, including those used by SARS for disaster recovery purposes;
- 2.2.91 **"Tax Act"** means an Act, or a portion thereof, referred to in section 4 read with Schedule 1 to the SARS Act, as well as the Tax Administration Act No. 28 of 2011; the Mineral and Petroleum Resources Royalty Act No 28 of 2008 and the Mineral and Petroleum Resources Royalty Administration Act No. 29 of 2008;
- 2.2.92 **"Taxpayer Information"** means any relevant material, including details of a Taxpayer's bank account, Tax reference number; identity number and/or any information, document or thing that is reasonably foreseeable to be relevant to enable the performance of the Services as envisaged in this MSA (and as may be more fully described in the Agreement), provided by a Taxpayer or obtained by SARS in respect of a Taxpayer;
- 2.2.93 **"Third Party"** means any person other than SARS, a Governmental Entity, Affiliates or Subcontractor;
- 2.2.94 **"Third Party Intellectual Property"** means Intellectual Property owned by a third party and licensed for use by the Service Provider in the provision of the Services subject to SARS's written consent;

- 2.2.95 **“Third Party Service Provider(s)”** means a third party who/which is holder of a software licence, owner equipment manufacturer (OEM), holder of a right to or owner of the Hardware used to enable the Software under this Agreement, including such third party’s employees, agents, affiliates, and third-party Service Providers. Third Party Service Providers exclude any Affiliate, (direct or indirect), or Subcontractors or other agents of the Service Provider to the extent involved: (i) in providing the Services and/or (ii) delivery of the Deliverables under this Agreement with the Service Provider;
- 2.2.96 **"Time and Materials Basis"** means the basis on which the Service Provider will charge SARS for Ad Hoc Services and/or services explicitly designated as such and which is based on the time spent and the materials utilised to execute such services. All such time will be billed in accordance with the time and materials rates set forth in the Pricing Schedule hereto;
- 2.2.97 **“Term”** means the term of this Agreement defined in Clause 5 below;
- 2.2.98 **“Training Services”** means the training, advisory and consultancy services provided by the Service Provider to End-Users to enable the End-Users to maintain and support the Software and Hardware; and
- 2.2.99 **"Upgrade"** means any change or improvement to the Software, Operating System or any component thereof that relates to or affects the operating performance of the Software or Hardware or an aspect of such Software but does not change the basic operation or functionality of the Software. For the sake of clarity, Upgrades are usually identified by a change in the version number, for instance a change from version 1.1 to version 1.2; and
- 2.2.100 **“User”** means the SARS machine onto which the Software will be installed and/or integrated;
- 2.2.101 **“Verification Agency”** means a BEE Verification Agency contemplated by the BEE Codes which, at the time of the issue of any certificate or confirmation of any aspect of the Service Provider's BEE Status for purposes of this Agreement, is a verification agency accredited by SANAS, Independent Regulatory Board of Auditors (“IRBA”) or any other entity conferred with such powers by statute;
- 2.3 Any reference in this Agreement to:

- 2.3.1 “**Clause**” shall, subject to any contrary indication, be construed as a reference to a Clause in this Agreement.
- 2.3.2 “**Person**” refers to any person including juristic entities.
- 2.4 Unless inconsistent with the context or save where the contrary is expressly indicated:
 - 2.4.1 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the definition Clause, effect shall be given to it as if it were a substantive provision of this Agreement;
 - 2.4.2 when any number of days is prescribed in this Agreement, such a period shall be computed by excluding the first and including the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
 - 2.4.3 no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement; and
 - 2.4.4 a reference to a Party includes that Party’s successors-in-title and permitted assignees, including any other persons contemplated in Clause 2.8 of this Agreement.
- 2.5 Unless inconsistent with the context, an expression which denotes:
 - 2.5.1 any one gender includes the other gender; and
 - 2.5.2 the singular includes the plural and vice versa.
- 2.6 Unless it is clear from a specific Clause in which a term has been defined that such definition has limited application to the relevant Clause, any term defined within the context of any particular Clause in this Agreement shall bear the same meaning as ascribed to it throughout the Agreement, notwithstanding that that term has been defined in a specific Clause.
- 2.7 The termination of this Agreement will not affect the provisions of this Agreement which operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding that the clauses themselves do not expressly provide for this.

- 2.8 This Agreement is binding on the executors, administrators, trustees, permitted assignees or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
- 2.9 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.10 None of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.
- 2.11 Subject to clause 2.11.3 below in the event of a conflict:
- 2.11.1 between the terms and condition contained in various clauses of the Network Troubleshooting Agreement and any other document that is part of or executed under this Network Troubleshooting Agreement, these terms and conditions of this Network Troubleshooting Agreement shall prevail;
- 2.11.2 the between the terms and condition contained in various clauses of the Network Troubleshooting Agreement and the Service Level Agreement as the terms and conditions contained in the Service Level Agreement shall prevail in so far as it relates to the Services and performance there; and/or
- 2.11.3 the Network Troubleshooting agreement, Service Level Agreement and RFP, the provision of the RFP will prevail.
- 2.12 This Agreement shall govern the relationship between the Parties for Services to be provided by the Service Provider to SARS. Any terms and conditions imposed by the Service Provider (whether in a quotation, offer, proposal, invoice, etc., as the case may be) and purporting to bind SARS, shall not (to the extent that they contradict the provisions of this Agreement) override this Agreement, unless agreed to by SARS in writing and such agreement is confirmed and signed by SARS.
- 3 APPOINTMENT**
- 3.1 The Service Provider is hereby appointed in accordance with the Letter of Award to provide the Services to SARS under the RFP.

3.2 Subject to the provisions of the RFP, the Agreement *generally* and the provisions of clause 6 *specifically*, SARS hereby appoints the Service Provider, on a non-exclusive basis, to provide the Services on the terms and conditions of this Agreement, and the Service Provider hereby accepts such appointment.

3.3 SARS shall not be precluded from obtaining services that may be similar or identical to the Services from any other service provider and nothing contained herein shall in any way be construed or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work or contract for services in the future, whether under this Agreement or otherwise from SARS.

4 **NATURE OF RELATIONSHIP AND NON-EXCLUSIVITY**

4.1 The Parties act for all purposes in terms of the Agreement as independent contractors. Without limiting the foregoing:

4.1.1 neither Party shall be entitled to contract on behalf of or bind the other Party in any manner whatsoever or to incur any liability or debt on behalf of the other Party; and

4.1.2 the Service Provider shall, not publish or cause to be published any advertisement or other information relating to SARS or SARS's business without the prior written approval of SARS; and

- 4.1.3 neither Party's Staff shall be deemed Staff of the other Party for any purpose whatsoever and for these purposes, where the Service Provider has utilised the fixed term contractors, temporary employees and/or consultants either as Service Provider Personnel, the Service Provider undertakes to ensure that its contracts with the aforesaid Service Provider Personnel, specifically states that the assignment to SARS is only for a project and is by no means a reflection of SARS as an intended employer of the Service Provider Personnel or deemed employer in terms of the deeming provision introduced by section 198 the Labour Act, 1995 (Act No. 66 of 1995 as amended) ("the **Labour Act**"), in the event of termination of this Agreement for any reason whatsoever or for convenience or as a result of breach, after the Service Provider Personnel has been assigned to SARS for more than a period of 3 (three) months. In the event that the Labour Act, as amended), deems the Service Provider Personnel to be employees for the purposes of the aforesaid section 198, the Service Provider undertakes to indemnify SARS in full against all costs, expenses (including legal expenses on an attorney own client scale), damages, loss (including loss of business or loss of profits), liabilities, demands, claims, actions or proceedings, which the Service Provider may incur arising as a result of the aforesaid Labour Act.

5 **COMMENCEMENT AND DURATION**

- 5.1 The term of this Agreement will commence on the Effective Date and will expire on the 3rd (third) anniversary of the Effective Date (the "**Term**"), unless:
- 5.1.1 the Agreement is terminated earlier in accordance with its the terms, in which case the Agreement will expire on such earlier termination date; or
- 5.1.2 extended as contemplated in clause 5.2 below in which case, the Agreement will expire at the end of such Renewal Term.

5.2 Upon giving notice to Service Provider no less than 60 (sixty) days prior to the then-existing expiration date of this Agreement, SARS will have the right to extend the Term of this Agreement, for all or some of the Services for a period of 12 (twelve) months each or such shorter period as SARS may deem necessary, on the same terms and conditions then in effect ("**Renewal Term**"). SARS will be entitled to exercise this right twice. It is specifically recorded that the right on the part of SARS to renew the Agreement for a Renewal Term may be exercised in respect of some or all Services at SARS's option, and that any such renewal will be subject to the then-existing terms and conditions of this Agreement which will remain unchanged and in full force and effect during each such Renewal Term, further that such renewal will be subject to SARS procurement policies and procedure.

5.3 For the avoidance of doubt, it is recorded by the Parties that where procurement approval has not been obtained, this Agreement shall automatically terminate at the expiry of the Term.

6 **SCOPE OF THE SERVICES**

6.1 The Service Provider shall for the Term, use its Commercial Reasonable Efforts to provide Services to SARS on the terms and conditions of this Agreement and subject to the Service Level Agreement.

6.2 The Service Provider undertakes to ensure that the following Services are provided in accordance with the Best Industry Practice and attaining the Service Level and Performance Criteria/Standards at all times.

6.3 **Maintenance services:**

6.3.1 The Service Provider shall provide the Maintenance Services required for the Solution with effect from the Effective Date. For the avoidance of doubt, the Parties record and agree that the Maintenance Services will apply on the following:

6.3.1.1 in respect of Software and/or Hardware already installed at SARS's request prior to the Effective Date;

6.3.1.2 in respect of Software and/or Hardware procured by the Service Provider on behalf of SARS after the Effective Date; and

- 6.3.1.3 in respect of Software and/or Hardware procured by a Third-Party Service Provider on behalf of SARS after the Effective Date, from the date that SARS informs the Service Provider of the installation of the Software and/or Hardware; and
- 6.3.1.4 in respect of the commercial software procured by the Service Provider at SARS's request.
- 6.3.2 Upgrades and New Release
 - 6.3.2.1 In providing the Maintenance Services, the Service Provider will-
 - 6.3.2.1.1 promptly notify SARS in writing of any Upgrades or New Release of the Software;
 - 6.3.2.2 provide with each notification, release notes specifying: (i) the nature of such Upgrades or New Release; and (ii) any adverse effects which the Upgrades or New Release may be expected to have, including, without limitation, any expected degradation in performance of the Software. The Service Provider undertakes that such release notes will contain sufficient information to enable SARS to determine whether such Upgrade or New Release will be appropriate to SARS's requirements. Should SARS wish to review the Upgrades or New Release, then SARS will notify the Service Provider in writing accordingly;
 - 6.3.2.3 procure, within 7 (seven) days of receipt of a notification referred to in clause 6.3.2.2, that it delivers to SARS the object code of the Upgrade or New Release in machine readable form together with any amendments to the Documentation (or updated Documentation, as the case may be) which will be necessary to describe and enable proper use of the improved facilities and functions of the Upgrade or New Release;
 - 6.3.2.4 ensure that it is available at all times during any SARS evaluation period to provide assistance to SARS in this respect; and
 - 6.3.2.5 continue to provide any Maintenance Services to SARS in respect of the release in use by SARS in the event that SARS elects not to evaluate and/or install the Upgrades or New Release.
 - 6.3.3 Software Breakages
 - 6.3.3.1 In providing the Maintenance Services, the Service Provider will-

- 6.3.3.1.1 promptly notify SARS in writing of any Software and Operating Software Breakage(s);
- 6.3.3.1.2 provide with each notification, release notes specifying: (i) the nature of such Software Breakage(s); and (ii) any adverse effects which the Software Breakage(s) may be expected to have, including, without limitation, any expected degradation in performance of the Software.
- 6.3.3.1.3 procure, within 7 (seven) days of receipt of a notification referred to in clause 6.3.3.1.2, that it delivers to SARS the object code of the Software Breakages in machine readable form together with any amendments to the Documentation (or updated Documentation, as the case may be) which will be necessary to describe and enable proper use of the improved facilities and functions of the Software Breakages;

6.4 Procurement Services

- 6.4.1 The Service Provider shall supply SARS with the Software and Hardware including the licenses required for the provision of the Services. Notwithstanding the aforesaid, during the Term, SARS may, in its sole discretion, request the Service Provider to procure additional Software licenses and/or Hardware.
- 6.4.2 Where SARS requests the Service Provider to provide additional Software licence or Hardware, the Service Provider will, prior to procuring the Software and/or Hardware, submit a pricing proposal to SARS. The Service Provider undertakes to achieve the best possible prices for Software and/or Hardware procured by it and will ensure that its pricing proposal will at a minimum always apply the agreed discounts as set forth in the Pricing Schedule.
- 6.4.3 Notwithstanding anything contained in this Agreement, SARS will not:
 - 6.4.3.1 be obliged to procure the Software and/or Hardware from the Service Provider and/or any Third-Party recommended by the Service Provider; and
 - 6.4.3.2 be precluded from procuring the Software and/or Hardware from any service provider or value-added reseller other than the Service Provider.
- 6.4.4 Unless specifically agreed to the contrary, the Service Provider undertakes to:

- 6.4.4.1 ensure that SARS is granted a licence to use, copy, deploy and install the Software procured by the Service Provider on a concurrent, perpetual, world-wide, non-exclusive and non-transferable basis within SARS's own business environment and for its commercial use,
- 6.4.4.2 ensure that the license procured as envisaged in this Clause 6.4 shall allow SARS to transfer the license from one User to another provided that SARS does not exceed the total license allocation. SARS will be entitled to make and maintain back-up copies of the Software and may make such number of copies of part or all of the Software as is necessary for such purposes;
- 6.4.4.3 the licence procured as envisaged in this clause, permits and/or authorizes SARS to make back-up copies of the Software at no extra charge and without further additional licenses for such back-up copies.
- 6.4.5 The Service Provider will deliver the Software, Hardware and related Documentation at the Location specified by SARS in writing and at the date and time for delivery as specified by SARS.
- 6.4.6 Together with the delivery of the Software and/or Hardware, the Service Provider will provide all manuals and Documentation in respect of the Software and/or Hardware in electronic format.
- 6.4.6.1 ensure that it is available at all times during any SARS evaluation period to provide assistance to SARS in this respect.
- 6.5 **Support Services**
- 6.5.1 The Service Provider shall provide the Support Services required for the Software and/or Hardware with effect from the Effective Date. For the avoidance of doubt, the Parties record and agree that the following terms will (without limiting the other provisions of this Agreement and/or Service Level Agreement), apply to the Service Provider's provision of the Support Services:
 - 6.5.1.1 the Service Provider will provide the Support Services in accordance with the procedures detailed in the Service Level Agreement.
 - 6.5.1.2 the Support Services will be provided during Business Hours.
 - 6.5.1.3 the Service Provider will, at its expense, supply all items necessary or required for the Support Services.

6.5.1.4 where the Software and/or Hardware become defective, the Service Provider will repair or replace same.

6.5.2 The Service Provider undertakes that in providing the Support Services it will use its Commercially Reasonable Efforts to ensure that the Software and Hardware functions error-free and to maintain the Software and Hardware's continued compliance with its specifications and the Documentation. The Service Provider will, on an ongoing basis apply Best Industry Practices to provide proactive preventative maintenance and advice in an effort to ensure that the Software and/or Hardware will function error-free and will continue to comply with its Functional Specifications. In addition, the Service Provider will identify the nature and cause of the Problem, advise SARS thereof and provide SARS with future avoidance advice as well as undertaking any necessary preventative measures to minimise recurrence of the Problem.

6.6 **Training Services**

6.6.1 The Service Provider will provide training Services related to the Software and/or Hardware, to SARS and/or the SARS Personnel the scope of which is set out in the Service Provider's proposal to the RFP and as amended by the Parties in writing from time to time, subject to the RFP..

6.7 **AD HOC SERVICES**

6.7.1 The Service Provider will provide ongoing consultancy services in the Service Provider's specialist fields of activity related to the operation and improved/increased use of the Software and/or Hardware, as may be reasonably requested by SARS from time to time in writing.

7 **PROVISION OF THE SERVICES**

7.1 Without limiting the generality of the Service Provider's obligations detailed elsewhere in this Agreement, for the Term, the Service Provider undertakes as part of the Services for the Term:

7.1.1 to comply with SARS's information and data security standards as communicated in writing from time to time;

- 7.1.2 at its own cost provide, maintain and, where required, upgrade such computer systems, data bases and software as may be necessary, and as required by SARS, for the provision of the Services. In particular, the Service Provider shall ensure that all Hardware and Software used to provide the Services will be kept at levels supported by the respective OEM, and Hardware will be upgraded or replaced as required to meet the Service Levels, OEM end-of-life policies and timelines and OEM-recommended requirements. The Service Provider shall schedule all such upgrades and replacements in advance and implement them in such a way as to prevent/minimise any interruption or disruption of, or diminution in, the nature or level of any portion of the Services. The Service Provider shall ensure that its internal systems and infrastructure and the Service provision at all times remains compatible with SARS's architectural technology standards and strategies; and
- 7.1.3 without limiting the generality of Clause 7.1.2 above, at its own cost, maintain its computer based security systems to counteract fraudulent claims in as far as it is in accordance with the Best Industry Practice or security level that is no less secure than the security SARS provided as of the Effective Date or the security the Service Provider then provides for its own systems and data, whichever is greater.
- 7.2 The Service Provider undertakes for the Term, to provide the Services as fully outlined in clauses 6 to SARS in accordance with the provisions of this Agreement.
- 7.3 The Service Provider shall perform the Services contemplated in this Agreement remotely or onsite at the Location. In instances where SARS discloses Personal Information for the provision of the Services, the Service Provider shall not remove any of the so disclosed Confidential Information from the Location without SARS's express prior written permission, which SARS may, in its sole discretion, withhold. For these purposes, SARS and the Service Provider Personnel shall sign SARS's oath of secrecy and where applicable, without limiting Clauses 19.6 and 21 below, as well as 'personal information agreement', which documents will once signed by the Parties, be incorporated herein by reference.

- 7.4 The Service Provider shall provide all Services utilising security technologies and techniques in accordance with best industry practice and SARS's security processes and procedures including those relating to the prevention and detection of inappropriate use or access of software, hardware, systems and networks. For the avoidance of doubt, the Service Provider will not be under any obligation to find such suitable software, hardware, systems or networks if it is not currently using it in the provision of services to its other clients. Should the Service Provider, however, be using certain software or programmes for similar services rendered to other clients, SARS has the expectation that such software will also be used in the provision of the Services under this Agreement, where appropriate.
- 7.5 The Service Provider undertakes for the Term:
- 7.5.1 to use industry leading levels of functionality and performance as prescribed by the Best Industry Practice in the provision of the Services to SARS;
- 7.5.2 to implement such new technologies as it deems appropriate to deliver the Services to SARS in order to maintain competitiveness in the quality and scope of Services available to SARS and to take advantage of market cost efficiencies. The Service Provider will also keep the Services under this Agreement current with industry advances and leading technology standards; and
- 7.5.3 to provide SARS with information regarding any newly improved or enhanced commercially available information technologies that Service Provider becomes aware of and which reasonably could be expected to have a positive impact on the Services including, without limitation, in the areas of increased efficiency, increased quality and/or reduced costs.
- 7.6 Without limiting the generality of the foregoing, the Service Provider shall implement and/or use network management and maintenance applications and tools and appropriate intrusion detection, identity management, and encryption technologies. The Service Provider shall maintain the security of the Services and the systems relating to such Services at a level that is generally acceptable in the market place and/or as prescribed by Best Industry Practice.

- 7.7 The risk of and liability for any erroneous Deliverables or any errors which may occur due to fraud or unlawful activity on the part of the Service Provider's Staff shall lie with the Service Provider.

8 **SERVICE PROVIDER PERSONNEL**

- 8.1 The Service Provider undertake for the Term, to ensure:
- 8.1.1 that the Service Provider Personnel assigned to render the Services are suitable, qualified, experienced, competent and are possessed with the requisite skills and certifications to render the Services including any other Ad Hoc Services assigned to the Service Provider in terms of the provisions of this Agreement;
- 8.1.2 that the Service Provider Personnel who is engaged, or is to be engaged, in providing the Services shall, where required by SARS, comply with SARS's internal security clearance requirements, including submitting to a security clearance, failing which SARS shall be entitled to require the Service Provider to replace such member of Service Provider Personnel with someone who does so comply;
- 8.1.3 the authenticity of all Service Provider Personnel credentials prescribed Clause 23;
- 8.1.4 all Service Provider Personnel who are or who may be exposed to SARS Information, Personal Information and/or SARS Data will comply with all secrecy and confidentiality obligations which SARS officials and employees are obliged to comply with in terms of POPIA, SARS Act, the Tax Acts and all other relevant Applicable Laws, and further that, they will in particular execute, prior to such exposure all document required to ensure compliance the aforesaid secrecy, confidentiality and Personal Information protection and agree adhere to the prescribed Declaration/Oath of Secrecy and/or protection of personal information agreement for the Term.

- 8.2 Neither the Service Provider nor the Service Provider Personnel are or shall be deemed (without limiting Clause 4 above), to be SARS Personnel. The Service Provider and any of its Subcontractor(s), shall be responsible for their own personnel assigned to provide Services under this Agreement, including that the Service Provider shall be required to comply with and/or ensure compliance with all Applicable Laws, including in relation to employment and Tax as they relate to and apply in respect of its personnel and the personnel of the Subcontractors.
- 8.3 The Service Provider shall ensure that the Service Provider Personnel are assigned to perform the Services in terms of the Agreement in an efficient and timely manner.
- 8.4 The Service Provider shall not voluntarily remove a member of Service Provider Personnel from the Services prior to obtaining SARS's approval of a suitable replacement in terms of Clause 23 and such replacement being properly trained and made familiar with the Services by the Service Provider.
- 8.5 SARS shall be entitled, if SARS believes that the performance or conduct of any Service Provider Personnel is unsatisfactory for any reason or is not in compliant with the provisions of the Agreement, by giving no less than 48 (forty eight) hours written notice thereof to the Service Provider, require the Service Provider to address the issue or to remove any such Service Provider Personnel, and the Service Provider shall take such steps as may be necessary to give effect to such notice, including promptly addressing the performance or conduct of the Service Provider Personnel, at SARS's request, immediately replacing such Service Provider Personnel in accordance with Clause 23 with another Service Provider Personnel acceptable to SARS and with sufficient knowledge and expertise to perform the Services in accordance with the Agreement.
- 8.5.1 the Service Provider Personnel renders the Services in strict compliance with the provisions of this Agreement and within the timeframes set out in the Service Level Agreement or agreed upon by the Parties in writing in line with the Service Level and Performance Criteria/Standards;

8.5.2 it remains compliant with all the obligation imposed on employers in terms of the current legislation and in particular, those obligations for which SARS shall be deemed to be jointly and severally liable in the event of the Service Provider contravening same;

8.5.3 ensure that time sheets reflecting the time worked by Service Provider Personnel in rendering the Services are completed in order to validate service delivery.

9 RESOURCES TO BE PROVIDED BY SARS

9.1 Where applicable, SARS shall allow the Service Provider reasonable access to and use of SARS-owned hardware, software, equipment and other resources (collectively referred to as "SARS Resources"), reasonably and necessarily required by the Service Provider to perform the Services for SARS, provided that the Service Provider shall have provided SARS with reasonable advance notice of the Service Provider's requirements. All SARS Resources shall be provided to the Service Provider by SARS in the form which SARS, in its sole discretion, deems necessary and appropriate for the provision of the Services, having specific regard to the nature of the Services or Deliverables. The SARS Resources shall be provided in reasonable working order on an "as is, where is" basis with no warranties whatsoever. No lien over any SARS Resources shall be established in favour of the Service Provider under any circumstances whatsoever and the Service Provider waives all its rights in this regard.

9.2 The Service Provider may use the SARS Resources only to perform Services for SARS and only as follows:

- 9.2.1 the Service Provider shall comply with SARS's standard information security policies, for purposes of which, and without limiting the generality of any other provisions of this Agreement, any information or SARS Data to which the Service Provider has access will be regarded as 'secret', and procedures as made available to the Service Provider from time to time regarding access to and use of the SARS Resources. Without limiting the generality of the foregoing, the Service Provider shall keep the SARS Resources in good order and shall not use such resources for any purpose other than the Services as contemplated under this Agreement. In particular, the Service Provider shall not use the SARS Resources for any unlawful purpose or act.
- 9.2.2 the Service Provider shall be responsible for any damage to the SARS Resources resulting from the abuse, misuse, neglect or negligence of the Service Provider (including Service Provider Personnel) or other failure to comply with its obligations in respect of the SARS Resources. In the event of the SARS Resources being damaged beyond repair, the Service Provider shall replace such SARS Resources with new facilities of equal standard, quality and specification.
- 9.2.3 the Service Provider shall not make any changes to the SARS resources without SARS's prior written approval. SARS reserves the right to give or withhold such approval in its sole discretion. Any such changes shall be done at the Service Provider's expense and shall not be recoverable from SARS. Severable improvements shall belong to the Service Provider, and non-severable improvements shall belong to SARS.
- 9.2.4 when any of the SARS Resources are no longer required for the performance of the Services, the Service Provider shall return such SARS Resources to SARS in the same condition in which they were received (including, if SARS so requires, reversing any changes effected), fair wear and tear excepted.

10 **SERVICE COMPATIBILITY**

- 10.1 The Service Provider shall in providing the Services as envisaged in this Agreement, cooperate with all Third-Party Service Providers of SARS to coordinate its provision of the Services with the services and systems of such Third-Party Service Providers. Subject to reasonable confidentiality requirements, such cooperation will include providing: (a) applicable written information concerning any or all of the Service Provider resources, data and technology strategies used in providing the Services; (b) reasonable assistance and support services to such Third-Party Service Providers ; and (c) access to systems and architecture configurations of the Service Provider to the extent reasonably required for the activities of such Third-Party Service Providers . SARS will procure that relevant Third-Party Service Providers SARS provide the Service Provider with their reasonable cooperation, where reasonably requested by the Service Provider.
- 10.2 In order to prevent disruption to the Services, the Service Provider will immediately notify SARS if an act or omission of a Third-Party Service Provider may cause a problem (including a Problem) or delay in providing the Services and will work with SARS to prevent or circumvent such problem or delay.

11 **ACCEPTANCE TESTING AND DELIVERY**

- 11.1 The acceptance of the functionality of the Deliverable shall be governed by a test and acceptance procedure and criteria, which shall demonstrate the correct and satisfactory operation and functioning of the relevant functionality of the Deliverable in accordance with the Documentation.
- 11.2 SARS shall have the right to review and accept or reject all Deliverables and any components of such Deliverables to be provided by the Service Provider to SARS under this Agreement, pursuant to the methodology set forth in this clause.
- 11.3 The Service Provider will be available to liaise with SARS regarding any queries arising with regard to a Deliverable and will assist SARS with its evaluation of Deliverable.

- 11.4 Should SARS not accept the Deliverable, SARS will provide the Service Provider with written notice of its non-acceptance, as well as detailed reasons for it not being acceptable. The Service Provider will correct any Deficiencies within 5 (five) business days of receiving SARS's notice, where after the Deliverable will be resubmitted to SARS for review and evaluation in accordance with this clause.
- 11.5 If the Service Provider is still unable to correct the Deficiency within this period, then SARS may in its sole discretion elect to -
- 11.5.1 direct the Service Provider to continue its efforts to make the Deliverable acceptable to SARS, in which case the Service Provider shall continue such efforts; or
- 11.5.2 accept the Deficient Deliverable, in which event the charges with respect to such Deliverable shall be equitably reduced to reflect the presence of such Deficiency; or
- 11.5.3 without limiting the generality of SARS's right to terminate this Agreement for cause under clause 29 or to claim damages, terminate the applicable Statement of Work without liability by providing written notice to the Service Provider, in which case the Service Provider shall refund to SARS all amounts paid by SARS to the Service Provider in respect of that Deliverable. Such refund shall be made within 14 (fourteen) days of receiving SARS's notice.
- 11.6 **Pre-delivery Testing**
- 11.7 Prior to presenting any Deliverables (including any enhancements to the Software, Upgrades, New Releases, and Software Breakages) to SARS for Acceptance Testing, the Service Provider will carry out Pre-delivery Testing in order to ensure that the Deliverable functions in accordance with the relevant specifications and the Documentation for same.
- 11.8 **Functionality Testing**
- 11.9 Upon delivery of any Deliverable, SARS shall conduct Acceptance Testing thereof and record in writing the outcome of the Acceptance Testing, including any failures or exceptions noted during the Acceptance Testing.

- 11.10 During Acceptance Testing, the Service Provider shall assist SARS, to the extent necessary and reasonable, in conducting the Acceptance Testing and respond to any queries relating to the operation and/or functionality of any Deliverable within a reasonable time. The Service Provider shall further assist SARS with the evaluation of such Deliverable.
- 11.11 Should SARS not accept the Deliverable and/or its related documentation, SARS shall provide the Service Provider with written notice of its non-acceptance of such Deliverable. The Acceptance Testing will be repeated in respect of such failures or any element which was not approved by SARS in order to correct any Deficiencies in such Deliverable, until SARS is satisfied with the outcome of the Acceptance Testing. The Service Provider shall correct any Deficiencies in such Deliverable and its related documentation within 24 (twenty-four) hours of receiving SARS's notice to ensure that they are free from Deficiencies and conform to SARS's business and security requirements, where after such Deliverable will be resubmitted to Acceptance Testing in accordance with the provisions of this clause 11.
- 11.12 If the Service Provider is unable to correct such Deficiencies within a period of 14 (fourteen) days, SARS shall, without limiting any of its other rights contained in this Agreement, be entitled to a refund of the fees paid for such Deliverable and its related Documentation and shall return the Deliverable and its related Documentation to the Service Provider. Such refund shall be made within 14 (fourteen) days of receiving SARS's notice.
- 11.13 The Service Provider will ensure that the Deliverable and any enhancements, Upgrades, New Releases, Software and Hardware procured in terms of this Agreement are compatible with the information technology and telecommunications standards and architectures of SARS. This information is available to the Service Provider upon prior written request.
- 11.14 Once SARS is satisfied with the outcome of Acceptance Testing, SARS will furnish the Service Provider with a formal acceptance of the functionality of the Deliverable.
- 11.15 **Documentation**

11.16 The Service Provider shall deliver the Documentation in respect of each Deliverable on the date agreed upon by the Parties for review and approval. SARS shall give the Service Provider written notice of its approval or non-approval of the Documentation. If the Service Provider does not approve the Documentation, SARS shall give written reasons for its non-approval of the deliverable.

11.17 Once SARS is satisfied with the outcome of the approval process, SARS shall furnish the Service Provider with a formal acceptance of the Documentation.

12 DELIVERY AND RISK OF LOSS

12.1 In the case of Software licenses procured by SARS under this Agreement and generally in respect of all Upgrades and New Releases, the risk in and to the Software will only pass to SARS upon delivery as evidenced by SARS's signature to the Service Provider's delivery note. For the avoidance of doubt, the Service Provider will bear all liability for any Deficiencies, including any latent or patent defects, identified by SARS.

12.2 Each Party will be responsible for risk of loss of, and damage to, any Hardware or other asset of the other in its possession or under its control. Any Hardware in the possession or control of the Subcontractors or agents (including couriers, freight companies and the like) will be deemed to be under the control of the Service Provider.

12.3 Should any Deliverable be delivered to SARS in a damaged or sub-standard condition, SARS will be entitled to return such Deliverable to the Service Provider, at the Service Provider's cost, in which event the Service Provider will refund to SARS the full amount paid by SARS in respect thereof or replace the Deliverable with the equivalent Deliverable, delivered in an acceptable condition

13 **HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES**

13.1 The Service Provider will ensure that its Staff will at all times, whilst on Location, adhere to the standard health, safety and security procedures and guidelines applicable to SARS's Staff, as such procedures and guidelines may be changed by SARS from time to time and are available to the Service Provider on request. Should SARS at any time have reason to believe that any member of the Service Provider's Staff is failing to comply with such standard health, safety and security procedures and guidelines, SARS will be entitled to deny such member of Service Provider's Staff to any or all of Location and require the Service Provider to replace such member of Staff without delay.

13.2 The Service Provider hereby agrees and undertakes, in terms of section 37(2) of the Occupational Health and Safety Act, 1993, to ensure that the Service Provider and the Service Provider's Staff comply with the aforesaid Act and accept sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with or arising out of such Services, for the duration of this Agreement, including with regard to the Service Provider Personnel and ensuring that neither SARS's Staff nor any Third Party service providers Staff's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services.

14 **FEES INVOICING AND PAYMENT**

14.1 In general, the Fees applicable to the Services are set out in **SCHEDULE 2** and detailed in the Service Provider's proposal to the RFP. The relevant invoicing requirements and payment terms are also stipulated in the aforementioned schedule.

14.2 **Tax, Duties and Currency issues:**

14.2.1 Unless otherwise specified, all Fees and expenses are recorded inclusive of Value Added Tax. The Service Provider will be financially responsible for all taxes associated with the Services and will comply with all applicable laws relating to tax and tax invoices.

14.2.2 All Fees set out in this Agreement are inclusive of any export and import tax.

14.2.3 The Fees are stated in South African Rand and will be quoted, invoiced and paid in South African Rand. Subject only to the discounts contemplated in **SCHEDULE 2**, the Fees are not subject to adjustment due to any currency fluctuations for the duration of the Agreement.

15 **DISPUTED FEES AND INVOICING ERRORS**

15.1 SARS may withhold payment of any 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:

15.1.1 SARS will promptly notify the Service Provider that it is disputing such Fees; and

15.1.2 the Parties will promptly address such dispute in accordance with clause 39 of the Agreement.

15.2 If the dispute relates to (or is equal to (in the case of disputed Fees that have already been paid by SARS)) only certain of the Fees included on an invoice, then SARS will pay the undisputed amounts in accordance with the provisions of **SCHEDULE 2**.

15.3 If an invoice is identified as incorrect by SARS, the Service Provider will either (i) issue a correct invoice if the amount stated on the invoice has not yet been paid; or (ii) make a correction on the next invoice if the amount has been paid by SARS; provided, however, that Service Provider will refund any overpayments with interest calculated at the Repo Rate for the number of days from the date of SARS's payment to the date of the refund. SARS will not be responsible for paying interest on undercharged amounts, if any.

15.4 For the avoidance of doubt, the Parties record and agree that the Service Provider shall not be entitled to suspend or interrupt the provision of the Services until the dispute is resolved by the Parties and such resolution is recorded in writing.

16 **SARS'S RIGHTS AND OBLIGATIONS**

16.1 SARS undertakes to: -

- 16.1.1 Furnish the Service Provider with any relevant information necessary for the Service Provider to perform the Services in compliance with the terms and conditions of this Agreement.

17 **INTELLECTUAL PROPERTY RIGHTS**

17.1 SARS Intellectual Property

- 17.1.1 SARS retains all right, title and interest in and to the SARS Intellectual Property. As of the Effective Date, the Service Provider is granted a non-exclusive licence for the Term, to perform any lawful act including the right to use, copy, maintain, modify, enhance and create derivative works of SARS Intellectual Property (including source code materials, programmer interfaces, available documentation, manuals and other materials to the extent necessary for the use, modification, or enhancement thereof) for the sole purpose of providing the Deliverables and/or Services to SARS. The Service Provider will not be permitted to use SARS Intellectual Property for the benefit of any entities other than SARS without a signed written consent of SARS, which may be withheld at SARS's sole discretion. Except as otherwise requested or approved by SARS, which approval will be at SARS's sole discretion, the Service Provider will cease all use of SARS Intellectual Property as of the termination or expiration date of this Agreement.

17.2 Intellectual Property developed during the Term

- 17.2.1 SARS will have all right, title and interest in all Intellectual Property developed or generated for SARS in the course of supplying the Deliverables and/or Services ("**Developed Intellectual Property**").
- 17.2.2 The Service Provider hereby irrevocably assigns, transfers and conveys to SARS without further consideration all of its right, title and interest in such Developed Intellectual Property.
- 17.2.3 The Service Provider hereby grants SARS (subject to payment of all fees regarding the Developed Intellectual Right), all rights, title and ownership to the Developed Intellectual Property and to perfect such title, the Service Provider undertakes to:

- 17.2.3.1 execute any documents or take any other actions as may be reasonably necessary, or as SARS may request in writing, to cede and assign such Developed Intellectual Property in order to vest all rights, title and ownership thereto, to SARS; and
- 17.2.3.2 not to claim any such rights, title and ownership in such work whether during and/or after the expiry of this Agreement for any reason whatsoever.
- 17.2.4 Unless otherwise agreed, where Developed Intellectual Property incorporates Service Provider Intellectual Property and/or systems, and processes that Service Provider did not develop in the course of supplying Deliverables and/or Services under the Agreement, the Service Provider hereby grants SARS an irrevocable, perpetual, world-wide, fully paid-up, royalty-free, non-exclusive licence for SARS including SARS Personnel to perform any lawful act, including the right to use, copy, maintain, modify, enhance and create derivative works of such Service Provider Intellectual Property insofar as it forms part of the Developed Intellectual Property (**"SARS's License"**).
- 17.3 The Service Provider Intellectual Property:
- 17.3.1 Subject to clause 17.2.3.2, the Service Provider retains all right, title and interest in and to Service Provider Intellectual Property that is used in connection with the Deliverables and/or Services. The Service Provider grants to SARS an irrevocable, perpetual, fully paid-up, royalty-free, non-exclusive licence for SARS to receive and realise the benefit of the Deliverables and/or Services during the Term and during the Disengagement Assistance Period (**"SARS Licence"**).
- 17.4 Third Party Intellectual Property

17.4.1 The Service Provider will neither, for the Term, incorporate any Third-Party Intellectual Property into any Developed Intellectual Property *nor* introduce into SARS's environment any Third-Party Intellectual Property without first obtaining SARS's written consent thereto. The Service Provider will be responsible for obtaining a licence on behalf of SARS, at Service Provider's cost and in SARS's name, to use such Third-Party Intellectual Property from the Third Party. The Service Provider is required to supply the Deliverables and Services in accordance with the Service Levels notwithstanding any decisions by SARS to withhold its consent to the use of Third-Party Intellectual Property and/or failure to assist in procuring the required consents.

17.5 Use of Third-Party Intellectual Property licensed to SARS

17.5.1 Service Provider will not, without SARS's express prior written consent, use any Third-Party Intellectual Property licensed to SARS whether to provide the Deliverables and/or Services to SARS or for any other purpose whatsoever. The Service Provider acknowledges that such unauthorised use of Third-Party Intellectual Property licensed to SARS may constitute a breach of the provisions of the licence agreement/s in terms of which such Third-Party Intellectual Property is licensed to SARS. Should consent be granted to the Service Provider to use Third Party Intellectual Property licensed to SARS, the Service Provider undertakes that it will only use such Intellectual Property strictly in accordance with the provisions of the relevant consent. The Service Provider is required to perform the Services in accordance with the Service Levels, notwithstanding any decisions by SARS to withhold its consent.

18 **CONFIDENTIAL UNDERTAKING**

18.1 The Parties shall ensure that prior to commencing the performance of the Services all the Service Provider Personnel and Key Personnel involved in the rendering of the Services, sign the SARS Oath of Secrecy and submit the original thereof to SARS for record keeping purposes.

- 18.2 The Service Provider undertakes that for the duration of this Agreement and after the expiration or earlier termination of this Agreement for any reason, it will keep confidential all SARS's Confidential Information. This includes the knowledge acquired by the Service Provider Personnel and Key Personnel-as a result of the work performed by the Service Provider in terms of this Agreement and which by its nature, is intended to be kept confidential.
- 18.3 The Parties agree that no trade and/or business secrets, Confidential Information or methods of work supplied by one Party to the other shall be disclosed to any third party, without first obtaining the written consent of the other Party, unless required by law or competent court or Authority.
- 18.4 The Service Provider specifically acknowledges that all information relating to the Services, including and not limited to, literary works produced thereunder are of a sensitive nature and must be kept confidential. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS unless required by law or competent court.
- 18.5 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.
- 18.6 The Service Provider will protect the interests of SARS in its Confidential Information by:
- 18.6.1 making available such Confidential Information only to Key Personnel or Service Provider Personnel who are actively involved in the execution of its obligations under this Agreement and then only on a "*need to know*" basis;
- 18.6.2 putting in place internal security procedures in accordance with current industry standards and/or Applicable Law 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;

- 18.6.3 using the Confidential Information only for the purposes of and to the extent necessary for the Service Provider to comply with its obligations under this Agreement. In particular, the Service Provider shall not use the Confidential Information for the purpose of updating, supplementing or verifying its own data bases;
- 18.6.4 not using any Confidential Information of SARS, or disclosing directly or indirectly any Confidential Information of SARS to third parties, whether during this Agreement or thereafter, unless required by law; and
- 18.6.5 notifying SARS promptly of any unauthorised or unlawful use, disclosure and/or processing (as defined by POPIA or GDPR) of the Confidential Information of which the Service Provider becomes aware;
- 18.6.6 deleting or returning (at the request of SARS) the Confidential Information as may be required by SARS, without keeping copies thereof, immediately upon first written demand for deletion or the return thereof by SARS, whether or not the Service Provider has completed the provision of the Services in respect of any such Confidential Information, and in any event promptly after the use thereof in the provision of the Services;
- 18.6.7 providing reasonable evidence of the Service Provider's compliance with its obligations under this clause 18.6.6 to SARS on reasonable notice and request; and
- 18.6.8 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.
- 18.7 The unauthorised disclosure by the Service Provider of the Confidential Information to a third party may cause irreparable loss, harm, and damage to SARS, and may lead to criminal sanction. As such, the Service Provider indemnifies and holds SARS harmless against any loss, action, expense, claim, harm or damage, or whatever nature, suffered or sustained by the SARS pursuant to a breach by the Service Provider of provisions of this clause 18.
- 18.8 No announcements of any nature whatsoever will be made by or on behalf of a Party relating to this Agreement without the prior written consent of the other Party.

18.9 The provisions of this Clause 18 shall survive the termination or cancellation of this Agreement for any reason whatsoever.

19 **DATA PROTECTION**

19.1 The Service Provider acknowledges that in the course of the provision of the Services it may become privy to Confidential Information.

19.2 To the extent that the Confidential Information needs to be stored on the Service Provider's information technology systems, the Service Provider shall take appropriate technical and organisational measures and/or measures prescribed by POPIA, SARS Act and/or Applicable Laws against unauthorised access to, unlawful Processing, accidental loss, destruction or damage of the Confidential Information and shall provide SARS, with reasonable evidence of the Service Provider's compliance with its obligations under this Clause 19.2 on reasonable notice and request.

19.3 The Service Provider shall institute and operate all necessary back-up procedures to its information technology systems to ensure that, in the event of any information system malfunction or other loss of Confidential Information can be recovered promptly and that the integrity thereof and any database containing such material can be maintained.

19.4 The Service Provider shall ensure that all Confidential Information and information provided to it by SARS in order to render the Services is stored separately and isolated from data and property relating to the Service Provider or any third party (including any other entity with whom the Service Provider may conduct business) in accordance with the POPIA, SARS Act and the Applicable Laws.

19.5 The security measures to be taken by the Service Provider in terms of clause 19.2 must –

19.5.1 not be less rigorous than the security safeguards and practices generally maintained by SARS in respect of its data (and as communicated by SARS to the Service Provider), or maintained by the Service Provider with respect to its own confidential information of a similar nature and/or as prescribed by the Data Privacy Legislation; and

19.5.2 enable SARS and the Service Provider to conform to Applicable Law, including:

19.5.3 the Electronic Communications and Transactions Act, 2002 (Act No 25 of 2002); and

19.5.4 the Tax Acts.

19.6 The Service Provider hereby indemnifies and holds SARS harmless against any claim, loss, damage or expense (including legal expenses) incurred by SARS as a result of any breach by the Service Provider of the provisions of this Clause 19.

20 **PROCESSING OF PERSONAL INFORMATION**

20.1 Without limiting any other provision of this Agreement, the Service Provider shall only store, copy or use any Personal Information disclosed to it by SARS pursuant to the Agreement to the extent necessary to perform its obligations under this Agreement and subject to the Privacy and Data Protection Requirements and/or Data Privacy Legislation binding on SARS.

20.2 If at any time the Service Provider suspects or has reason to believe that Personal Information disclosed to it by SARS pursuant to this Agreement has or may become lost or corrupted in any way for any reason then, the Service Provider shall immediately notify SARS and where required, the Data Subject (however with SARS's written consent), thereof and inform SARS and/or Data Subject of what remedial action it proposes to take, if any.

20.3 The Service Provider agrees that, in regard to the Personal Information which SARS obtains from Taxpayers, it shall -

20.3.1 only Process the Personal Information in accordance with instructions from SARS and supported by written consent from a Data Subject, (which may be specific instructions or instructions of a general nature limited to the specific purpose, as set out in the Agreement or as otherwise notified by SARS to the Service Provider from time to time);

20.3.2 not otherwise modify, amend or alter the contents of the Personal Information or disclose or permit the disclosure of any of the Personal Information to any third party unless authorised in writing by SARS and where required, the Data Subject and limited to the purpose;

- 20.3.3 not maintain records of the Personal Information for longer than is necessary in order for the Service Provider to comply with its obligations under the Agreement, unless retention thereof for a longer period is required by the Applicable Laws or requested in writing by SARS;
- 20.3.4 implement and ensure that the Service Provider Personnel implement appropriate technical and organisational measures to protect the Personal Information against unauthorised access or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from unauthorised or unlawful Processing or accidental loss, destruction or damage to Personal Information and to the nature of the Personal Information which is to be protected;
- 20.3.5 keep all Personal Information and any analyses, profiles or documents derived therefrom separate from all other data and documentation of the Service Provider;
- 20.3.6 Process the Personal Information in accordance with POPIA and/or Data Legislation binding on SARS; and
- 20.3.7 co-operate as requested by SARS to enable SARS to comply with any exercise of rights by a Data Subject under POPIA and/or Data Legislation if binding of SARS in respect of Personal Information Processed by the Service Provide and/or Service Provider Personnel under the Agreement or comply with any assessment, enquiry, notice or investigation under the SARS Act or Applicable Law which shall include the provision of all data requested by SARS within the timescale specified by SARS in each case, subject to compliance by SARS with POPIA and/or Data Legislation if binding on SARS.
- 20.4 The Service Provider shall provide co-operation in any investigation relating to security which is carried out by or on behalf of SARS, including providing any information or material in its possession or control, provided that SARS gives it reasonable notice of its intention to carry out such an investigation.

21 **PROTECTION OF PERSONAL INFORMATION**

- 21.1 Each Party shall comply with its obligations under POPIA in respect of Personal Information and Personal Information Processed by it in connection with the Agreement and the Services.
- 21.2 Each Party shall only provide, collect, use, store or Process Personal Information:
 - 21.2.1 in compliance with POPIA and where binding on a Party, GDPR or Data Legislation;
 - 21.2.2 as is necessary for the purposes of this Agreement and the Services;
 - 21.2.3 for maintaining its internal administrative processes, including quality, risk, client or vendor management processes;
 - 21.2.4 for internal business-related purposes; and
 - 21.2.5 in accordance with the lawful and reasonable instructions of the Party providing the Personal Information.
- 21.3 Both Parties shall:
 - 21.3.1 comply with the specific security and data protection obligations imposed on them in terms of POPIA and where binding on them, GDPR or Data Protection Legislation; and/or
 - 21.3.2 where applicable, comply with the specific obligations imposed on them in terms of POPIA, GDPR or Data Protection Legislation in respect of the specific role they fulfil in terms of providing the Services as agreed between the Parties;
 - 21.3.3 take, implement and maintain all such technical and organisational security procedures and measures necessary or appropriate to preserve the security and confidentiality of the Personal Information in its possession and to protect such Personal Information against unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage.
- 21.4 The Parties shall for the purposes of the Agreement collect Personal Information directly from either Party, Service Provider Personnel, SARS Personnel, Third Party Service Providers, and in some instances from the Data Subject directly.

- 21.5 Neither Party shall be entitled to share Personal Information with any other Third Party except for Service Provider Personnel or SARS Personnel where necessary in order to protect the legitimate interests of any of the Parties or in connection with this Agreement and the Services.
- 21.6 The Service Provider may notify SARS about important developments, proposals and services which it thinks may be relevant to SARS for Service improvement etc., however, the Service Provider undertakes for the Term, not to use the Personal Information to send business offering to SARS and/or Data Subject including newsletters, invitations to seminars and similar marketing material or other communications from the Service Provider.
- 21.7 Electronic communications between the Service Provider and SARS (limited only where the Service Provider Personnel are using the Service Provider's resources), may be monitored by the Service Provider to ensure compliance with its professional standards and internal compliance policies pertaining to the Agreement and not for any other purpose.
- 21.8 Electronic communications between SARS and the Service Provider and SARS (limited only where the Service Provider Personnel are using SARS's resources), may be monitored by SARS to ensure compliance with its professional standards and internal compliance policies.
- 21.9 The Service Provider shall not transfer or Process the Personal Information to:
- 21.9.1 an outsourced information technology service provider; or
- 21.9.2 another country, including the use of cloud-based solutions; or
- 21.9.3 an Affiliate
- without prior written consent of SARS and the Data Subject.
- 21.10 Where consent has been granted in terms of Clause 21.9 above, the Service Provider undertakes in relation to Clause 21.8 and for the Term, require that any third party, outsourced service provider, foreign legal entity or other Affiliate involved in the collection, use, storage or Processing, to ensure that such Personal Information is protected with the same Best Industry Practices and/or protection as is required in terms of Clause 21.3.

- 21.11 Neither Party shall be held accountable for Personal Information sent to Personnel, Third Parties used by either Party for the purposes set out in the Agreement.
- 21.12 The Service Provider warrants that it has obtained written consent from all applicable Data Subjects for the collection, use, storage, Processing or transfer of such Data Subjects' Personal Information whenever this is required for purposes of this Agreement and the Services.
- 21.13 It is specifically stated, recorded, acknowledged and agreed by the Parties that SARS is not an EU Member and therefore, any GDPR compliance requirements and/or Data Privacy Legislation shall not be enforced on SARS by this Agreement directly or otherwise unless SARS, has and where it is relevant for its own business purposes, taken a decision to adjust its governance, risk and compliance requirements to be aligned with those of the GDPR and/or Data Privacy Legislation. To ensure no risk to SARS, the Service Provider undertakes not to assign any Service Provider Personnel who is an EU Member to provide the Services to SARS unless the skill type required for any aspect of the Services cannot be undertaken by any South African resource in which event, the Service Provider shall inform SARS in writing and the Parties shall agree in writing on how to ensure compliance with the GDPR and/or Data Protection Legislation for that particular resource. However, compliance by SARS shall not in any manner whatsoever remove and/or exonerate the Service Provider from ensuring compliance with GDPR and/or Data Protection Legislation, notwithstanding the aforesaid arrangement; this remains the Service Provider's obligation and SARS shall be indemnified against all costs, expenses (including legal expenses on an attorney own client scale), damages, loss (including loss of business or loss of profits), liabilities, demands, claims, actions or proceedings, which SARS may incur arising from Personal Information Breach should it be found to have contravened GDPR or Data Protection Legislation.

22 **AUDITS**

22.1 **Audit Rights**

- 22.1.1 The Service Provider and its Subcontractors will maintain a complete audit trail of financial and non-financial transactions resulting from the Agreement. The Service Provider will provide to SARS, its internal or external auditors, inspectors and regulators access at all reasonable times to such facility or part of a facility at which either the Service Provider or any of its Subcontractors is providing the Deliverables and/or Services, to Service Provider Personnel, and to equipment, software, personnel, data, records and documentation, including agreements between Service Provider and its Subcontractors, relating to the Deliverables and/or Services for the purpose of performing audits and inspections of either Service Provider or its Subcontractors to: (i) verify the accuracy of Service Provider's Fees and invoices; (ii) verify the accuracy of payments by or credits from Service Provider; (iii) verify the accuracy of price changes to the extent such changes are determined by reference to Service Provider's costs or changes thereto; (v) examine Service Provider's performance of the Services or Deliverables, including verifying compliance with the industry standards; (vi) verify compliance with the terms of the Agreement; (vii) satisfy the requirements of any Applicable Law;.
- 22.1.2 SARS reserves the right to appoint a third party to perform an audit under this clause 22.
- 22.1.3 The Service Provider will provide to the auditors, inspectors and regulators such assistance as they may require. In the case of audits, SARS's audits will not unreasonably interfere with Service Provider's normal course of business and will comply with the Service Provider's reasonable confidentiality requirements.
- 22.1.4 Unless SARS has a good faith suspicion of fraud, SARS will provide Service Provider with reasonable notice for audits
- 22.1.5 All costs incurred by SARS in performing audits of the Service Provider will be borne by SARS unless any such audit reveals a material inadequacy or material deficiency in respect of the scope of the audit exercise conducted, in which event the cost of such audit will be borne by Service Provider.

- 22.1.6 If an audit reveals an overcharge, Service Provider will promptly refund the overcharge plus interest at the applicable prime rate from the date of payment of the overcharge through the date the overcharge is refunded by Service Provider.
- 22.1.7 All Subcontractors will be obliged to comply with the provisions of this clause 22. If the Service Provider seeks to hire a Subcontractor, and such prospective Subcontractor does not grant SARS the audit rights described in this clause 22, the Service Provider will: (i) notify SARS of the prospective Subcontractor's refusal to grant such rights; (ii) identify the audit rights the prospective Subcontractor is willing to grant; and (iii) obtain SARS's review and approval of such subcontract. SARS reserves the right to withhold its approval of any subcontract at its sole discretion, and the Service Provider will be obliged to continue providing the Services and/or Deliverables in accordance with the industry practice, notwithstanding SARS's decision to withhold such approval.
- 22.2 **Audit Follow-Up**
- 22.2.1 Following an audit or examination, SARS or its external auditors will meet with Service Provider to obtain factual concurrence with issues identified in the audit or examination.

- 22.2.2 Within 10 (ten) Business Days following the provision to Service Provider of the findings of an audit, whether by way of a meeting or the delivery of the audit report by the auditors, or an audit report by Service Provider's auditors, the Service Provider will provide SARS with a plan ("**Audit Response Plan**") to address shortcomings or deficiencies raised in such audit findings attributable to Service Provider. The Audit Response Plan will identify the steps that Service Provider will take to remedy such shortcomings and deficiencies and include a completion date for such steps detailed in the Audit Response Plan. With SARS approval, Service Provider will implement such Audit Response Plan at Service Provider's cost and expense. If required and agreed between the Service Provider and SARS, Service Provider will report monthly to SARS on the status of the implementation of any Audit Response Plan. Failure to complete the Audit Response Plan on or before the completion date included in such Audit Response Plan will be deemed to be a material breach of the Agreement.
- 22.2.3 The Service Provider will promptly make available to SARS the results of any reviews or audits conducted by Service Provider, its Affiliates or their Subcontractors, agents or representatives (including internal and external auditors) to the extent such findings reflect conditions and events relating to the Services.
- 22.2.4 Promptly after the issuance of any audit report or findings issued under clause 22.2.3 the Parties will meet to review such report or findings and to agree on how to respond to the suggested changes.

23 **INTEGRITY AND SECURITY COMPETENCE**

23.1 **Background Verification**

- 23.1.1 As a confirmation of a Service Provider Personnel's citizenship, criminal record status, credit-worthiness, academic qualifications and membership of professional associations, the Service Provider shall conduct a background vetting on every Service Provider's Personnel whom it intends to delegate/assign to SARS for the fulfilment of its obligations in terms of this Agreement.

- 23.1.2 The Service Provider shall provide SARS with a screening report for each member of its Personnel referred to in clause 8 above prior to Effective Date , or where it is impossible to provide the report prior to Effective Date, the Service Provider shall refrain from delegating a Service Provider Personnel for this purpose without it first providing such a report to SARS.
- 23.1.3 The screening reports referred to in clause 23.1.2 above, shall be issued by a reputable screening agency acceptable to SARS agreed to between the Parties prior to Effective Date.
- 23.1.4 The validity of such screening reports referred to in clause 23.1.2 shall not be older than 12 (twelve) months as at Effective Date and shall be updated as reasonably required by SARS from time to time.
- 23.1.5 The Service Provider shall provide SARS with suitable, fit and proper Service Provider Personnel as a replacement of the individual member whose updated report reveals evidence that he/she no longer meets SARS's integrity and security competence requirements.
- 23.1.6 The report referred to in clause 23.1.2 above must include the verification of the following, amongst others:
- 23.1.6.1 Citizenship, including residency status;
 - 23.1.6.2 Criminal activity report;
 - 23.1.6.3 Credit record;
 - 23.1.6.4 Academic qualifications including matric certificate or equivalent record;
 - 23.1.6.5 Professional association memberships; and
 - 23.1.6.6 SARS reserves the right to verify any such report(s) provided by the Service Provider.
- 23.2 **Security Competence**
- 23.2.1 The Service Provider Personnel delegated/assigned to provide the Services to SARS in terms of this Agreement who have access, or who are reasonably expected to have access, to SARS's Confidential Information or SARS's restricted areas shall at all times during the subsistence of this Agreement, be subject to SARS policies and procedures regarding integrity, competence, security.

24 **BREACH**

24.1 A Party (the "**Aggrieved Party**") may terminate this Agreement with the other Party (the "**Defaulting Party**") commits a material breach of this Agreement and fails to remedy such breach within 10 (ten) Business Days (the "Notice Period") of being notified of the breach and, if the Aggrieved Party so elects, the steps required to remedy such breach.

24.2 For the purposes of Clause 24.1 a breach will be deemed to be a material breach if -

24.2.1 it is capable of being remedied, but is not so remedied within the Notice Period; or

24.2.2 it is incapable of being remedied within the Notice Period; or

24.2.3 if payment in money will compensate for such breach, but payment is not made within the Notice Period; or

24.2.4 the Service Provider commits numerous, repeated breaches even if cured; or

24.2.5 at any time, SARS experiences non-performance, alternatively mal-performance from the Service Provider relating to the execution of its duties and obligations in terms of this Agreement.

25 **INDEMNITIES**

25.1 **General indemnity:**

25.1.1 Without in any way detracting from the rights of SARS in terms of this Agreement, the Service Provider hereby indemnifies and holds SARS harmless from any and all Losses which may be suffered as a result of any breach of the warranties set out in clause 38 including the provisions of this Agreement by the Service Provider or its Staff.

25.2 **Intellectual Property indemnity:**

- 25.2.1 In addition to any other remedy available to SARS, the Service Provider agrees to indemnify in full and on demand and to keep SARS so indemnified from and against all claims, demands, actions, proceedings and all Losses, costs and expenses (including legal and other professional advisers' fees), which are made or brought against or incurred or suffered by SARS resulting from any claim by a Third Party that the use by SARS of the Software and its related Documentation supplied by the Service Provider infringes the Intellectual Property rights of that Third Party.

26 **LIMITATION OF LIABILITY**

- 26.1 The Parties agree that, in the event of a breach of any of the provisions of the Agreement, the defaulting Party will be liable to the other Party for all Losses which constitute direct and/or general damages.
- 26.2 Subject to clauses 26.3 and 26.7, the Parties agree that, in the event of a breach of any of the provisions of the Agreement, the defaulting Party will not be liable to the other Party for any Losses which constitute indirect, special and/or consequential damages.
- 26.3 Notwithstanding anything to the contrary set forth in clause 26.2 above or the Agreement in general, the Parties agree that they will be liable to the other for -
- 26.4 Losses which constitute indirect, special and/or consequential damages where such damages are caused by a breach of any Intellectual Property and/or Confidential Information undertaking contained in the Agreement; and
- 26.5 all Losses which arise out of their dishonesty or gross negligence regardless of whether such Losses arise out of contract or delict; and/or
- 26.6 any Third-Party claims arising from or related to the death or bodily injury of any agent, employee, customer, business invitee, or other person caused by the delictual conduct of such Party.

26.7 Notwithstanding anything to the contrary set forth in this clause 26.7 or the Agreement in general, the Service Provider agrees that it will be liable to SARS for all Losses (whether these are special, indirect or consequential, direct and/or general damages and which will not be subject to any limitation of liability) where the Losses incurred by SARS are occasioned by the breach by the Provider of the provisions of clauses 17; 18; 19; 20 and 21 above.

27 **TERMINATION**

27.1 If a Party commits a material breach of this Agreement and fails to remedy such breach within 7 (seven) Business Days of written notice requiring the breach to be remedied, then the Party giving the notice will be entitled, at its option, either to claim specific performance of the defaulting Party's obligations whether or not such obligations have fallen due for performance (with or without claiming damages) or to cancel this Agreement (with or without claiming damages) in which case the cancellation will take effect on the date of the notice.

27.2 If the Service Provider fails to adhere to any legal requirement or breaches the provisions of clause 27.1 above and/or any term or condition of any licence, authorisation or consent required for the provision of the Services and which failure or breach SARS, in its sole discretion, considers to be detrimental to SARS; then SARS will be entitled, but not obliged, to immediately terminate this Agreement on written notice to the Service Provider, in which event such termination will be without any liability to SARS and without prejudice to any claims which SARS may have for damages against the Service Provider.

27.3 A Party's remedies in terms of this clause 27 are without prejudice to any other remedies to which such Party may be entitled in law.

28 **TERMINATION FOR CONVENIENCE**

28.1 SARS may terminate this Agreement for convenience and without cause at any time by giving the Service Provider at least 90 (ninety) days prior written notice designating the termination date. SARS will have no liability to the Service Provider with respect to any such termination, other than pro rata refunding to the Service Provider such actual annual maintenance fees that the Service Provider may have paid to the Licensor on SARS's behalf and cannot using reasonable commercial efforts recover from the Licensor. The Service Provider must provide SARS with proof, acceptable to SARS, of such payment.

29 **TERMINATION FOR CAUSE**

29.1 SARS may (subject to Clause 24.1), by giving notice to the Service Provider, terminate this Agreement in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider commits a material breach of this Agreement or:

29.1.1 is placed under voluntary or compulsory liquidation (whether provisional or final) or business rescue proceedings are commenced against the Service Provider; and/or

29.1.2 commits an Acts of Insolvency.

SARS may terminate this Agreement, in whole or in part, in the event that SARS is unable to obtain funding to procure the Services.

30 **TERMINATION UPON SALE, ACQUISITION, MERGER OR CHANGE OF CONTROL**

30.1 In the event of a sale, acquisition, merger, or other change of Control of Service Provider where such Control is acquired, 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 Service Provider in a single or series of related transactions, then SARS may terminate this Agreement by giving Service Provider at least 90 (ninety) days prior notice and designating a date upon which such termination will be effective. SARS will have no liability towards Service Provider with respect to such termination save for the settlement of any outstanding fees for the Services rendered as at the date of termination.

31 **EFFECT OF TERMINATION**

31.1 The termination of this Agreement will not relieve the Parties hereto of any liabilities, obligations, expenses or charges accruing up to date of such termination and all rights accruing to either Party to the said date of termination will likewise remain in full force and effect.

32 **TERMINATION/EXPIRATION ASSISTANCE**

32.1 Upon termination of this Agreement, the Service Provider will, at no additional cost to SARS, provide all reasonable information and assistance to SARS to enable SARS or a Third Party designated by SARS to take over the Service Provider's obligations under this Agreement.

33 **FORCE MAJEURE**

33.1 Delay or failure to comply with or breach of any of the terms and conditions of this Agreement by either Party if occasioned by or resulting from an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil disorder, sabotage, riot, strikes, lock-outs or other labour disputes, blockade, embargo, sanctions, epidemics, act of any Government or other Authority, compliance with law, regulations or demands of any Government or Governmental agency, limitations imposed by exchange control or foreign investment or other similar regulations or any other circumstances of like or different nature beyond the reasonable control of the Party so failing, will not be deemed to be a breach of this Agreement nor will it subject either party to any liability to the other. It is understood that neither Party will be required to settle any labour dispute against its will.

33.2 Should either Party be prevented from carrying out any contractual obligation by any circumstance described above, such obligation will be postponed provided the Party suffering such circumstance notifies the other Party to this Agreement within 7 (seven) days of becoming aware thereof. The Parties will thereupon promptly meet to determine whether an equitable solution can be found.

33.3 Should such force majeure circumstance last continuously for a period of 14 (fourteen) days, and no mutually acceptable arrangement is arrived at by the parties at within a period of 7 (seven) days thereafter, either Party will be entitled to terminate the Agreement with immediate effect.

34

34.1

35

35.1

35.2

36

36.1

36.2

37

37.1 The Service Provider warrants that it and its Subcontractors are and will remain for the duration of this Agreement, fully cognisant of and compliant with any relevant Applicable Laws (as may be amended from time to time) and/or rulings or codes of practice of any competent Authority or industry body that has jurisdiction over the provision of or is relevant to the Deliverables and/or Services under this Agreement.

37.2 The Service Provider will, within 14 days (or any other period agreed by the Parties in writing) Effective Date, furnish SARS with copies of all regulated licences and/or accreditation (as specified in the RFP), and which are required by Service Provider for the provision of the Services to SARS. The details of all licence terms and conditions and other obligations imposed on Service Provider which are not contained in Service Provider's licences must be furnished in writing by Service Provider to SARS.

38 **WARRANTIES**

38.1 **Service Provider Personnel**

38.1.1 The Service Provider warrants that it will for the duration of this Agreement: (i) use adequate numbers of qualified staff with suitable training, accreditation, education, experience and skill to perform the Services; (ii) use and adopt any standards and processes required under this Agreement; and (iii) provide the Services with promptness and diligence and in a workmanlike manner and in accordance with the practices and high professional standards used in well-managed operations performing services similar to the Services.

38.2 **Intellectual Property warranties**

38.2.1 The Service Provider warrants that it will at all times perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any Intellectual Property or other proprietary rights of any Third Party

38.3 **Service Provider authority and Licensor undertaking**

- 38.3.1 The Service Provider warrants (for the duration for the Term of this Agreement), that it: (i) is the duly appointed distributor of the Software and Hardware in the Republic of South Africa; (ii) is authorised to procure licenses from Licensor on SARS's behalf; (iii) is authorised to support and maintain the Software by Licensor and Hardware by OEM; (ii) has all the necessary licences, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the provision of the Software, Hardware and/or Services under this Agreement; (iii) will comply with all legal requirements and with the terms and conditions of all licences, certificates, authorisations and consents required for the provision of the Software, Hardware and/or Services; and (iv) will ensure that upon the date of delivery of the Software and Hardware or use thereof by SARS at the Location in which SARS takes receipt thereof will not breach any law or regulation of those territories or of the territory from which the Software or Hardware was sourced.
- 38.3.2 Should the Service Provider, for whatsoever reason and at any time during the Term of this Agreement, no longer be appropriately accredited or authorised to provide the Services, the Service Provider will immediately inform SARS thereof in writing in which event, this Agreement may, at SARS's option, be terminated immediately or on such date as determined by SARS. The Service Provider will be required to repay any pre-paid amounts that SARS may have paid in respect of the Services.
- 38.3.3 The Service Provider warrants that it has obtained a written undertaking from Licensor and OEM in favour of SARS confirming that Licensor and/or OEM will, in the event that the Service Provider ceases to provide the Services to SARS in terms of this Agreement (whether as a result of the Service Provider losing its accreditation or distributorship rights with Licensor, as a result of the Service Provider ceasing to trade or going into liquidation or as a result of a material breach by the Service Provider of this Agreement), take over and continue to provide the Services to SARS in accordance with the terms of this Agreement or enlist a third party service provider (acceptable to SARS) to do so on its behalf, such that there is a minimal or no disruption in the Services provision to SARS.

38.4 **Product Specific Warranties**

38.4.1 The Service Provider warrants that it will at all times: (i) ensure that any Software, Hardware and the Documentation will be free from Deficiencies and will comply in all respects with the Functional Specification ; (ii) take all reasonable and necessary steps to ensure that the Services and all Deliverables will be free of Destructive Elements provided that where a Destructive Element is a reasonable and necessary component of a deliverable, such Destructive Element will be recorded in writing by the Parties and will not constitute a breach of this warranty. In the event of a breach of this warranty, the Service Provider will immediately take all reasonable steps to remedy such breach or, if not possible, ameliorate the impact of the Destructive Element; (iii) ensure that in respect of Software and Hardware which operate or are dependent on a Microsoft platform or operating system, that such Software will, at all times, be and remain compatible and operate in conjunction with the then current Microsoft Release; and (iv) the Software, Hardware and/or all components thereof, once installed and/or implemented, will process any date and time data correctly and all date-related output and results produced by the Software will comply with the Gregorian calendar.

38.5 **Regulatory requirements**

38.5.1 The Service Provider warrants that it is and will remain for the duration of this Agreement, fully cognisant of and compliant with any relevant legislative or regulatory requirements and/or rulings or codes of practice of any competent authority or industry body that has jurisdiction over the provision of or is relevant to the Services and/or Software. The Service Provider will be responsible for any fines and penalties arising from any non-compliance with any law, legislative enactment or regulatory requirement, code or ruling of any competent authority or industry body relating to the delivery or use of the Services.

38.6 **Documentation**

38.6.1 The Service Provider warrants that it will provide and maintain Documentation so that it: (i) accurately reflects the operations and capabilities of any and all Software and training courses; (ii) is accurate, complete and written in a manner easily understood by the Customer; and (iii) is promptly updated from time to time to reflect any change.

38.7 General Warranties

- 38.7.1 The Service Provider hereby represents and warrants to SARS that-
- 38.7.1.1 this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
- 38.7.1.2 it is acting as a principal and not as an agent of an undisclosed principal;
- 38.7.1.3 the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum of incorporation or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;
- 38.7.1.4 it will provide the Services in a cost-effective manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS;
- 38.7.1.5 it will have the requisite insurance to cover for professional liability claims (to the extent that it may be applicable), that may be instituted against it;
- 38.7.1.6 it has the necessary resources, skills and experience to render the Service and/or deliver the Deliverables to SARS; and
- 38.7.1.7 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.
- 38.8 The provisions of this Clause shall survive the termination of this Agreement.

39 PUBLICITY

- 39.1 No announcements relating to this transaction and of any nature whatsoever will be made by or on behalf of a Party relating to this transaction without the prior consent of the other Party.

40 CO-OPERATION

- 40.1 The Parties undertake at all times to co-operate with each other in good faith in order to carry out this Agreement.

41 **DISPUTES**

41.1 In the event of there being a dispute, but save where otherwise provided in this Agreement, such dispute will be resolved in accordance with the rules of the AFSA as provided for below.

41.2 In the event of any such dispute arising between the Parties relating to or arising out of this Agreement, including a dispute as to the validity, implementation, execution, interpretation, rectification, termination or cancellation of this Agreement, the Parties will forthwith meet to attempt to settle such dispute, and failing such settlement within a period of 14 (fourteen) days of first meeting, the said dispute will on written demand by either Party be submitted to arbitration in Johannesburg in accordance with the rules of AFSA.

41.3 Should the Parties fail to agree in writing on an arbitrator within 10 (ten) days after arbitration has been demanded, the arbitrator will be nominated at the request of a disputant by AFSA.

41.4 The decision of the arbitrator will be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party. A decision which becomes final and binding in terms of this clause 41.4 may be made an order of court at the instance of any Party to the arbitration.

41.5 Nothing herein contained will be deemed to prevent or prohibit a disputant from applying to the appropriate Court for urgent relief or for judgment in relation to a liquidated claim.

41.6 Any arbitration in terms of this clause 41 will be conducted in camera and the Parties will treat as confidential and not disclose to any Third Party details of the dispute submitted to arbitration, the conduct of the arbitration proceedings or the outcome of the arbitration, without the written consent of all the disputants.

41.7 The provisions of this clause 41 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

42 **ADDRESSES**

- 42.1 Each Party chooses the addresses set out below its name as its addresses to which all notices and other communications must be delivered for the purposes of this Agreement and its *domicilium citandi et executandi* ("domicilium") at which all documents in legal proceedings in connection with this Agreement must be served.
- 42.2 SARS's physical address for service of notices and legal processes-
Chief Officer: Legal Counsel
299 Bronkhorst Street
Block A, Le Hae La SARS
Nieuw Muckleneuk
PRETORIA
- 42.3 The Service Provider's physical address for service of notices and legal processes shall be as follows: **[DRAFTING NOTE: TO BE INSERTED]**
- 42.4 Any notice or communication required or permitted to be given to a Party pursuant to the provisions of this Agreement shall be valid and effective only if in writing and sent to a Party's domicilium.
- 42.5 Any Party may by written notice to the other Party, change its chosen address to another address, provided that-
- 42.5.1 the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and
- 42.5.2 any change in a Party's domicilium shall only be to an address in South Africa, which is not a post office box or a poste restante.
- 42.6 Any notice to a Party contained in a correctly addressed envelope and sent by prepaid registered post to it at a Party's domicilium shall be deemed to have been received on the fifth (5th) Business Day after posting.
- 42.7 Any notice to a Party in a correctly addressed envelope and which is delivered by hand to a Party's chosen address shall be deemed to have been received on the day of delivery, unless the contrary is proved.
- 43 **BROAD-BASED BLACK ECONOMIC EMPOWERMENT ("BBBEE")**

- 43.1 The Service Provider acknowledges that Broad-Based Black Economic Empowerment is a business and social imperative in order to achieve a non-racial, non-sexist and equitable society in South-Africa.
- 43.2 In pursuance of this objective the Service Provider commits and warrants to comply in all respects with the requirements of the BBBEE and BBBEE Codes issued in terms of the BBBEE.
- 43.3 Upon signature of this Agreement and one (1) calendar month after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its BEE Status from an agency accredited by SANAS or IRBA.
- 43.4 During the currency of this Agreement (including any extension or renewal hereof which may apply), the Service Provider shall use reasonable endeavours to maintain and improve its current BEE Status.
- 43.5 A failure to provide a certified copy of its BEE Status or a failure to comply with provisions of this Clause will entitle SARS to terminate the Agreement by giving the Service Provider one (1) month's written notice.

44 TAX COMPLIANCE

- 44.1 The Service Provider warrants that as of the Effective Date it is in full compliance with, and throughout the term of this Agreement (including any Extended Period) shall remain in full compliance with Tax Act.
- 44.2 Notwithstanding Clause 44.1 above, the Service Provider acknowledges and agrees that to be appointed as the Preferred Service Provider, compliance with the Tax Act is required and as such, the Service Provider is encouraged to monitor and maintain its Tax Act compliance status during the Term.

45 ETHICAL BUSINESS PRACTICES

- 45.1 SARS has a policy of zero tolerance regarding corrupt activities. The Service Provider will promptly report to SARS or the relevant authorities any suspicion of corruption on the part of their personnel in relation to the Services provided under this Agreement, as well as any behaviour in relation to the Services provided under this Agreement by any of those persons that is likely to constitute a contravention of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).

45.2 Neither Party will offer, promise or make any gift, payment, loan, reward, inducement benefit or other advantage to any of the other Party's personnel.

45.3 If the results of any audit of the Services conducted by or on behalf of SARS indicates the possibility of unethical conduct which includes amongst others, corrupt activities, improper or fraudulent practices or theft in relation to the Services provided under this Agreement, SARS will, after allowing the Service Provider reasonable opportunity to investigate that possibility, have the right either by itself, or by its agents, or by requesting the police, to investigate all the relevant circumstances, to question any relevant personnel of the Service Provider or a third party and the Service Provider will use all reasonable efforts to facilitate any such investigation or enquiry. In the event that an act of corruption, fraud or theft is proven, SARS will be entitled, on written notice to the Service Provider, to immediately terminate this Agreement.

45.4 SARS reserves the right to withdraw an award or to cancel this Agreement should it be established, at any time, that the Service Provider, its personnel, its Subcontractor or the personnel of its Subcontractor has been blacklisted by National Treasury or by another government institution.

46 **CONFLICT OF INTEREST**

46.1 The Service Provider undertakes to immediately notify SARS in the event that a conflict of interest is identified, pursuant to a Specific Services Agreement being entered into between the Service Provider and SARS.

46.2 The Service Provider further warrants that it will not disclose any Confidential Information it obtained in rendering the Services to SARS to any client or third party unless required by law.

47 **NEW LAWS AND INABILITY TO PERFORM**

47.1 It is recorded that the Parties are aware of various new Bills (including the POPIA) that are to be presented to Parliament which, if passed into law, may have an effect on the provisions of this Agreement and the Services. Therefore, the Parties record and agree that, if any law comes into operation subsequent to the signature of this Agreement which law affects any aspect or matter or issue contained in this Agreement, the Parties undertake to comply with such laws as if they had been in force on the MSA Effective Date; provided that if such compliance renders it impossible to comply with the letter and spirit of this Agreement, the Parties undertake to enter into negotiations in good faith regarding a variation of this Agreement in order to ensure that neither this Agreement nor its implementation constitutes a contravention of such law.

48 **RELATIONSHIP BETWEEN THE PARTIES**

48.1 The Service Provider is an independent contractor and under no circumstances will it be a partner, joint venture partner, agent, or employee of SARS in the performance of its duties and responsibilities pursuant to the Agreement.

48.2 All personnel used by the Service Provider will be the Service Provider's employees, contractors, Subcontractors or agents, and the entire management, direction, and control of all such persons will be and remain the responsibility of the Service Provider.

49 **GENERAL**

49.1 **Whole Agreement and Amendment**

49.1.1 This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an "Addendum" to the applicable Service Agreement and assigned a sequential letter to be included in the title.

49.2 **No Assignment Without Consent**

49.2.1 The Service Provider shall not be entitled to assign, cede, sub-contract, delegate or in any other manner transfer any benefit, rights and/or obligations in terms of this Agreement, without the prior written consent of SARS which consent shall if approved by SARS in its sole discretion, be in compliance with the provisions of the PFMA and SARS's procurement policies and procedures.

49.3 **Severability**

49.3.1 Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions which shall continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.

49.4 **Advertising and Marketing**

49.4.1 The Service Provider shall not make or issue any formal or informal announcement (with the exception of Authority announcements), advertisement or statement to the press in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person without the prior written consent of SARS.

49.5 **Waiver**

49.5.1 No change, waiver or discharge of the terms and conditions of this Agreement shall be valid unless in writing and signed on behalf of the Party against which such change, waiver or discharge is sought to be enforced, and any such change, waiver or discharge will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

50 **COVENANT OF GOOD FAITH**

50.1 Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

51 **COSTS**

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

52 **AUTHORISED SIGNATORIES**

52.1 The Parties agree that this Agreement and any contract document concluded in terms hereof shall not be valid unless signed by all authorised signatories of SARS.

52.2 This Agreement is signed by the Parties on the dates and at the places indicated below.

52.3 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

52.4 The persons signing this Agreement in a representative capacity warrant their authority to do so.

SIGNED at _____ on _____ 2018

For and on behalf of

SOUTH AFRICAN REVENUE SERVICE

Signature

Name of Signatory

Designation of Signatory

SIGNED at _____ on _____ 2018

For and on behalf of

SOUTH AFRICAN REVENUE SERVICE

Signature

Name of Signatory

Designation of Signatory

SIGNED at _____ on _____

For and on behalf of

SERVICE PROVIDER

Signature

Name of Signatory

Designation of Signatory

SCHEDULE 1
LIST OF DOCUMENTS

SCHEDULE 2
LIST OF DOCUMENTS

ANNEXURE A
LIST OF SOFTWARE AND HARDWARE SUPPLIERS

ANNEXURE C
SCOPE OF THE SERVICES

ANNEXURE D
SERVICE LEVEL AGREEMENT

ANNEXURE E
SERVICE PROVIDER PERSONNEL