MASTER SERVICES AGREEMENT

between

**SOUTH AFRICAN REVENUE SERVICE**

and

**SERVICE PROVIDER**

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1. PARTIES
   1. The Parties to this Agreement are:
      1. South African Revenue Service; and
   2. Service Provider The Parties agree as set out below.
2. INTERPRETATION
   1. In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:
      1. **"AFSA"** means the Arbitration Foundation of Southern Africa;
      2. **"Agreement"** means this Master Services Agreement, including all Statements of Work and annexures (if any) hereto;
      3. **“Applicable Law(s)”** means any statute, regulation, notice, policy, directive, ruling or subordinate legislation; the common law; any binding court order, judgment or ruling; any applicable industry code, policy or standard enforceable by law; or any applicable direction, policy or order that is given by any regulator, competent authority or organ of state or industry body;
      4. **"BEE Verification Certificate"** means a verification certificate issued by a verification agency that has been and at the time of issue of the verification certificate still is a duly accredited verification agency as contemplated in terms of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).
      5. **"Condition Precedent"** means suspensive condition set out in clause 4 below;
      6. "**Confidential Information"** means SARS’s confidential information and taxpayer information as defined in the Tax Administration Act, 2011 (Act No. 28 of 2011) and information considered confidential in terms of any tax act administered by the Commissioner of SARS, SARS Material and any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence, and which the Disclosing Party or any person acting on behalf of the Disclosing Party may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means. The Confidential Information of the Disclosing Party shall include information even if it is not marked as being ‘confidential’, restricted or proprietary (or any similar designation);

Confidential Information excludes information or data which-

* + - 1. is lawfully in the public domain at the time of disclosure thereof to the Receiving Party; or
      2. subsequently becomes lawfully part of the public domain by publication or otherwise; or
      3. is or becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information to the Receiving Party; or
      4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed; provided that-
      5. the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions;
      6. the information disclosed shall not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession; and
      7. any combination of features shall not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession, but only if the combination itself is in the public domain or in a Party's possession.

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

* + 1. **"Deficiency"** means any error, problem, non-conformity or defect resulting from any Deliverable deviating from the requirements or specifications as agreed in each Statement of Work;
    2. **Disclosing Party** means the Party, other than the Receiving Party, that discloses any of the Confidential Information to the Receiving Party;
    3. **"Deliverable"** means any materials, information or output that is to be provided by the Service Provider to SARS as part of the Services pursuant to this Agreement, which shall be detailed in a Statement of Work;
    4. "**Designated Representative**" means a person nominated by each of the Parties, whose name appears in clause 46.1, to whom all communications regarding this Agreement must be addressed;
    5. "**Effective Date**" means XXXXXXX, notwithstanding the Signature Date;
    6. "**Force Majeure Event**" means unpredictable adverse weather conditions, national industrial strikes (excluding strikes or labour disputes originated by or involving only the relevant Party's workforce or any part of it or the workforce of its agents or sub-contractors), war, acts of God, acts of terrorism, floods, earthquakes or civil disturbance, which in each case could not reasonably be foreseen and is beyond the reasonable control of the relevant Party or its employees or agents;
    7. "**Insolvency Event**" means when a Party is unable to pay its debts, becomes insolvent, 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, becomes the subject of business rescue proceedings under Chapter 6 of the Companies Act, 2008 (Act No. 71 of 2008) or is the subject of any events or circumstances or analogous to the foregoing in the Republic of South Africa;
    8. "**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, plans, reports, data, works protected under the Copyright Act, 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, trade marks, 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;
    9. "**Key Personnel**" means those Staff of the Service Provider listed in the relevant Statement of Work who are deemed to be integral to the provision of the Services referred to in that Statement of Work;
    10. "**Master Services Agreement**" means the terms and conditions contained in this document, including any annexures hereto;
    11. "**Parties**" means the parties to this Agreement;
    12. **"Performance Bond"** means a performance bond guaranteeing the performance by the Service Provider of the specific obligations in terms of this Agreement as detailed in Annexure **E1**, issued by a South African financial institution (being a registered bank or insurance company) reasonably acceptable to SARS, upon terms and conditions and in the form as set out in Annexure "**E**", to SARS;
    13. "**Personal Information**" means information relating to an identifiable, living, natural or juristic person, including but not limited to information relating to the person's:
        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. education, medical, or criminal, history;
        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;
        4. blood type or any other biometric information;
        5. personal opinions, views or preferences;
        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);
        7. views or opinions about another person;
        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;
    14. “**Process**" and "**Processing**” means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal 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;
    15. "**Proof of Concept**"means the (i) provision by the Service Provider; and (ii) evaluation by SARS of the Proof of Concept Services during a period determined in a Statement of Work in order for SARS to satisfy SARS's requirements and expectations of the Services;
    16. **''Proof of Concept Services''** means the Services to be provided by the Service Provider as part of the Proof of Concept, as more fully detailed in the first Statement of Work issued under this Agreement;
    17. "**Receiving Party**" means the Party, other than the Disclosing Party, that receives disclosure of any of the Confidential Information
    18. "**Return**'' means a form, declaration, document or other manner by which Taxpayers submit information to SARS, which incorporates a self-assessment or is the basis on which an assessment is to be made by SARS;
    19. "**SARS**" means South African Revenue Service;
    20. **“SARS Act”** means the South African Revenue Service Act, 1997 (Act No. 34 of 1997);
    21. **"SARS Data"** means any data (being electronic representations in any form) of SARS, any data relating to Taxpayers, including Personal Information (as same is defined herein and in the Tax Acts and in any other applicable legislation in the jurisdiction where the Services are to be provided) of SARS or Taxpayers, supplied, stored, collected, collated, accessed, retained or processed by Service Provider, irrespective of the media or form and further includes –
        1. all data that is in the possession of SARS, and all data concerning or indexing such data (regardless of whether or not owned by SARS or generated or compiled by SARS); and
        2. all other records, data, files, input materials, reports, forms and other such items (other than Service Provider Data) that may be received, computed, developed, used or stored by Service Provider or any of Service Provider Staff, contractors (including subcontractors) or agents from, for or on behalf of SARS, or in connection with the Services;

For the avoidance of doubt, the Parties agree that Service Provider Data shall not constitute nor fall within the meaning of SARS Data.

* + 1. **"SARS Information"** means — (a) personal 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 the Promotion of Access to Information Act, 2000 (Act No.2 of 2000); (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 for 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 or the ability of the government to manage the economy of the Republic effectively in the best interests of the Republic, including a contemplated change or decision not to change 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 organisation to SARS; (i) a computer program, as defined in section 1(1) of the Copyright Act, 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, but excludes any Service Provider Data;
    2. "**Services**" means the Service Provider's use of its Intellectual Property, skill, tools, mechanisms and the Service Provider Data to provide services to SARS, together with the required report of the outcome thereof as, as detailed in a Statement of Work, and any other items or services provided by the Service Provider to SARS under a Statement of Work as they may evolve during the continued duration of this Agreement to render the agreed services in the Statement of Work and as they may be supplemented, enhanced, modified or replaced in accordance with the terms of this Agreement; and includes any management, planning and other services that are ancillary to and reasonably and necessarily required for the performance of any of the foregoing, and any duties, services, activities, functions and responsibilities reasonably and necessarily required for the proper performance and provision of the Services even if not specifically described in this Agreement;
    3. "**Service Provider**"means XXXXXXXXXXX with registration number XXXXXXXX
    4. "**Service Provider Data**'' means all information and data including but not limited to Confidential Information, Personal Information and Intellectual Property in the Service Provider's, possession and/or to which the Service Provider has access, whether by virtue of its status as a credit bureau, a member of any association or other body, or otherwise, but excluding SARS's Confidential Information, SARS Data and/or SARS Information;
    5. "**Service Provider's Designated Account**" means the bank account nominated by the Service Provider, the details of which are set out below, or such other account as the Service Provider may designate in writing on 5 (five) business days’ notice to SARS: xxxxxxxxxxxxxxxxxxxx (details of the account)
    6. "**Signature Date**" means the date of signature of this Agreement by the Party last signing;
    7. "**Staff**" means any natural person who is either an employee, consultant or subcontractor of either Party;
    8. "**Statement of Work**"means the individual work orders executed by the Parties in terms of this Agreement, substantially in accordance with the Statement of Work template attached hereto as Annexure "**A**", specifying the Services and/or Deliverables to be provided by the Service Provider to SARS;
    9. "**Tax**" means any tax, duty, levy, contribution, royalty, penalty or interest imposed under a Tax Act, including income tax, employees’ tax, provisional tax, capital gains tax, secondary tax on companies, dividend tax, donation tax, value-added tax, estate duty, transfer duty, customs duty, export duty securities transfer tax, skills development levy, diamond export levy, unemployment insurance contribution and royalty payable on the transfer of minerals and petroleum resources;
    10. “**Tax Act**” means an Act, or a portion thereof, referred to in section 4 read with Schedule 1 to the SARS Act;
    11. **"Taxpayer"** means (a) a person chargeable to Tax; (b) a representative taxpayer (being a person who is responsible for paying the tax liability of another person as an agent other than as a withholding agent); (c) a withholding agent (being a person who must, under a Tax Act, withhold an amount of Tax and pay it to SARS); (d) a responsible third party (being a person who becomes otherwise liable for the Tax liability of another person, other than as a representative taxpayer or as a withholding agent, whether in a personal or representative capacity); or (e) a person who is the subject of a request to provide assistance under an arrangement made with the government of any country other than the Republic of South Africa, by an agreement entered into in accordance with a Tax Act; and
    12. **"Taxpayer Information"** means any relevant material, including a Taxpayer's financial, Tax or employment history and/or any information, document or thing that is reasonably foreseeable to be relevant for Tax risk assessment, assessing Tax, collecting Tax, showing non-compliance with an obligation under a Tax Act or showing that a Tax offence was committed, provided by a Taxpayer or obtained by SARS in respect of a Taxpayer.
  1. In this Agreement -
     1. clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
     2. an expression which denotes -
        1. any gender includes the other genders;
        2. a person includes a natural and juristic person;
        3. the singular includes the plural and *vice versa*; and
        4. a Party includes a reference to that Party’s successors in title and assigns allowed at law.
  2. Any reference in this Agreement to:
     1. "**business hours**" shall be construed as being the hours between 08h00 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;
     2. "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" shall be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
     3. "**law**" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law; and
     4. "**person**" means any natural person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.
  3. The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
  4. Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 2 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
  5. Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
  6. Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
  7. A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
  8. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
  9. If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately following business day.
  10. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
  11. The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
  12. No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.
  13. The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
  14. Any reference in this Agreement to "**this Agreement**" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
  15. In this Agreement the words "**clause**" or "**clauses**" and "**annexure**" or "**annexures**" refer to clauses of and annexures to this Agreement.

1. introduction
   1. SARS has a statutory mandate which includes the effective and efficient collection of revenue and the widest possible enforcement of and compliance with the legislation it administers. The vision of SARS is to be an innovative revenue collection service provider that enhances economic growth and social development and supports South Africa’s integration into the global economy.
   2. In pursuit of its objective to ensure the widest possible enforcement of Tax laws and to maintain confidence in the integrity of the Tax system, SARS also has a duty to actively target and pursue increasingly sophisticated tax evaders and tax evasion schemes as Tax evasion undermines compliant Taxpayers’ morale and places an unfair burden on them if it is not countered effectively.
   3. It is part of SARS's functions in administering the Tax Acts to verify Taxpayer Information to ensure that:
      1. it is correct and current;
      2. Taxpayers are duly registered for and pay Tax; and
      3. information required to be submitted by a Taxpayer in a Return, including information relating to income derived and deductions claimed by the Taxpayer, is true and correct and correlates with other information relative to the Return, including that Taxpayer's true income, deductible expenditure, assets and liabilities, spending patterns, debt servicing and lifestyle.
   4. The Service Provider, being a registered credit bureau, has disposal over a large body of data relating to consumers (including Taxpayers), their addresses, personal particulars, assets, spending patterns, indebtedness and other information. The Service Provider has the necessary expertise that shall enable it to provide the Services to SARS in order to assist and support SARS in the carrying out of its functions as contemplated in paragraph 3.3 above.
   5. SARS has the authority in terms of section 5 of the SARS Act to appoint the Service Provider to perform specific acts or functions, in this case to provide Analytical Services and Verification Services. Furthermore, under the Tax Acts, the Commissioner for SARS may engage the Service Provider to carry out the powers conferred and duties imposed upon the Commissioner by or under the provisions of the Tax Acts under the control, direction or supervision of the Commissioner.
   6. The Parties have agreed to conduct the Proof of Concept in order for SARS to assess whether the Services shall assist in meeting its requirements and expectations in relation to the exercise of its functions as contemplated in clause 3.3 above. The Service Provider has represented to SARS that it is able, willing and legally authorised to provide the Proof of Concept Services and Services.
   7. In reliance on the representations made by the Service Provider in its bid document/proposal , and as a result of the unique ability of the Service Provider to provide the Services, SARS has appointed the Service Provider to provide SARS with the Services.
   8. The Parties wish to record in writing their agreement in respect of the above and matters ancillary thereto.
2. CONDITION PRECEDENT
   1. Save for clauses 1 to 4 and clauses 35 to 54 all of which shall become effective immediately on the Signature Date, this Agreement is subject to the fulfilment of the Condition Precedent that, within 30 (thirty) days after the Effective Date, the Service Provider has delivered to SARS a Performance Bond to the value of ( Still to be determined)
   2. Unless the Condition Precedent has been fulfilled by not later than the relevant date for fulfilment thereof set out in clause 4.1 (or such later date or dates as may be agreed in writing between the Parties) the provisions of this Agreement, save for clauses 1 to 4, and clauses 35 to 54, which shall remain of full force and effect, shall never become of any force or effect and the *status quo ante* shall be restored as near as may be and neither of the Parties shall have any claim against the other in terms hereof or arising from the failure of the Condition Precedent, save for any claims arising from a breach of clause 37.
3. APPOINTMENT

Subject to the provisions of 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. 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 shall receive any work or contract for services in the future, whether under this Agreement or otherwise.

1. Agreement Structure
   1. This Master Services Agreement provides a framework for, and the general terms applicable to, the Services that the Service Provider shall provide to SARS under this Agreement.
   2. By written agreement, the Parties may, from time to time, include under the Master Services Agreement, Statements of Work pertaining to particular Services provided by the Service Provider to SARS under the Agreement. For the avoidance of doubt, the Service Provider acknowledges and agrees that its appointment is non-exclusive and that SARS is under no obligation at law or pursuant to this Agreement to agree to any Statements of Work under this Master Services Agreement.
   3. The provisions of this Master Services Agreement shall apply to each and every Statement of Work issued under this Master Services Agreement.
   4. The Service Provider shall provide the Services to SARS subject to the terms and conditions of this Master Services Agreement generally and in particular subject to the terms and conditions set forth in the relevant Statement of Work.
   5. It is agreed that notwithstanding any purchase orders, order forms or the like which SARS may provide to the Service Provider requesting any Services to be provided, such purchase orders or forms shall not constitute a contract document in terms of this Agreement and the relevant Service purchase or request shall be required to be recorded in a Statement of Work in terms hereof.
   6. If there is a conflict among the terms in the various contract documents including this Master Services Agreement, and/or any Statement of Work, and/or any annexures:
      1. subject to clause 6.6.3, to the extent the conflicting terms can reasonably be interpreted so that such terms are consistent with each other, such consistent interpretation shall prevail;
      2. to the extent clause 6.6.1 does not apply and subject to clause 6.6.3, any conflict between the provisions of the various sections of the Master Services Agreement, the Statements of Work and annexures shall be resolved in accordance with the following order of precedence (in descending order of priority): (a) the Master Services Agreement and its annexures; (b) the Statements of Work and any annexures thereto documents in the same order of precedence attaching to the documents to which they are annexed; and
      3. a Statement of Work may amend the terms and conditions of this Master Services Agreement only with respect to the subject matter of such Statement of Work. Insofar as any Statement of Work specifically amends the provisions of this Master Services Agreement, such amendment shall prevail in respect of that Statement of Work only. For the avoidance of doubt it is recorded that, the terms of one Statement of Work shall not apply to any other Statement of Work.
2. statements of work
   1. Each Statement of Work shall be in writing, substantially in the form of Annexure "**A**" or any other form which may be agreed to by the parties during the subsistence of this Agreement, and shall contain the following requirements and be in conformance with the process set forth herein:
      1. details of all Services to be performed;
      2. the amount, schedule and method of payment (subject to the provisions of clause 31);
      3. the timeframe for performance;
      4. completion and acceptance criteria; and
      5. all and any reporting requirements.
   2. All work undertaken by the Service Provider outside of an executed Statement of Work is at the Service Provider's risk and SARS shall under no circumstances whatsoever be obliged to compensate the Service Provider in respect thereof unless SARS agrees to same in writing.
   3. For any services required by SARS which are outside the scope of the Services contemplated under this Agreement, for which the Service Provider wishes to tender or bid and which are the subject of SARS’s general tender or procurement procedures, the Service Provider shall be required to comply with the specific requirements in respect of such tender or procurement procedure and general procurement policy requirements, notwithstanding anything to the contrary set out in this Agreement.
3. proof of concept
   1. SARS shall, for such period as it deems necessary, be entitled to evaluate and assess the Proof of Concept Services to determine whether they meet SARS’s requirements and expectations, provided that SARS shall, subject to the provisions of clause 17 below, make payment to the Service Provider of its charges for the Proof of Concept Services as agreed and detailed in the first Statement of Work executed under this Agreement.
   2. The Parties hereby agree that SARS shall be under no obligation whatsoever to continue to use the Services on expiry of the Proof of Concept, nor to enter into any further agreements relating to the Services.
4. SUB-CONTRACTING
   1. The Service Provider may not sub-contract the whole or any part of the Services without the prior written consent of SARS, which consent SARS may, given the nature of the Services, refuse in its sole discretion and without having to give reasons for its refusal.
   2. The Service Provider shall ensure that any SARS-approved subcontractor shall enter into a written contract with the Service Provider prior to the subcontractor performing any of the subcontracted services, the terms of which shall be consistent with the terms of this Agreement. Prior to the conclusion and signature of any such agreement between the Service Provider and the subcontractor relating to the subcontracting of the Services, a comprehensive draft of the agreement is to be submitted to SARS for review and approval. The Service Provider shall be obliged to accommodate all reasonable requests of SARS for amendments to the subcontract. The draft agreement shall in any event only be signed upon approval by SARS and a certified copy of the signed subcontract (which is to be identical to the final draft approved by SARS) shall be submitted to SARS within 7 (seven) business days of signature. The Service Provider shall not terminate, alter, amend or vary in any material respect a subcontract or novate a subcontract that was approved by SARS under this clause 9.2 without obtaining prior written consent from SARS.
   3. SARS shall be entitled in its sole discretion to waive compliance with the provisions of any one or more of, or of any part of clause 9.1 or 9.2, by written notice given by SARS to the Service Provider.
   4. In no event shall the Service Provider be relieved of its obligations under this Agreement as a result of its use of any subcontractors. The Service Provider shall at all times be responsible to SARS for fulfilment of all the Service Provider's obligations under this Agreement and shall remain SARS' sole point of contact regarding the Services.
   5. The Service Provider shall supervise the activities and performance of each subcontractor.
   6. Without limiting the generality of any other provision of this Agreement, and except as specifically catered for in clause 9.2, the Service Provider shall not disclose Confidential Information to a subcontractor or individual contractor unless SARS has approved such disclosure in writing and until such subcontractor, prospective subcontractor, individual contractor, or prospective individual contractor has executed an agreement including provisions at least as rigorous and restrictive as the confidentiality provisions set out in this Agreement.
   7. Notwithstanding any authorised sub-contracting of the whole or any part of the Services in terms of this Agreement, the Service Provider shall remain the prime contractor to SARS and the subcontractor shall not have any direct rights against or obligations to SARS arising out of this Agreement.
   8. The Service Provider shall act as principal and not agent for SARS in all contracts with subcontractors. The Service Provider acknowledges and agrees that it shall be fully responsible for the acts and omissions of all subcontractors as if they were the acts and omissions of the Service Provider.
   9. Notwithstanding the aforegoing, the Service Provider acknowledges that it shall be fully responsible for the payment of all fees and charges payable to subcontractors.
5. NATURE OF RELATIONSHIP
   1. The Parties act for all purposes in terms of the Agreement as independent contractors. Without limiting the foregoing:
      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
      2. neither Party shall publish or cause to be published any advertisement or other information relating to the other or its business without the prior written approval of such Party; and
      3. neither Party’s Staff shall be deemed Staff of the other Party for any purpose whatsoever.
6. COMMENCEMENT AND DURATION
   1. Subject to the provisions of clause 4 as read with clause 6, this Agreement shall be deemed to have commenced on the Effective Date and, unless extended as provided in clause 11.2 or terminated earlier in accordance with the terms of this Agreement, shall endure for a period of 3 (three) years thereafter ("**Initial Period**") or until expiry of all Statements of Work, subject to SARS’s rights of termination detailed in this Agreement.
   2. SARS shall have the option, in its sole discretion, to extend the Agreement beyond the Initial Period for a further period of 2 (two) years ("**Renewal Period**"), by serving written notice to that effect on the Service Provider not less than 90 (ninety) days prior to expiry of the Initial Period. It is specifically recorded that for the duration of this Agreement SARS shall have the right to request the Service Provider to provide it with such services as SARS and the Service Provider may agree to in any Statement of Work under this Agreement. The then-existing terms and conditions of this Agreement shall remain in full force and effect during the Renewal Period and until expiry of all Statements of Work executed during the Renewal Period (subject to SARS’s rights of termination under this Agreement), *mutatis mutandis.*
   3. SARS shall be entitled to terminate this Agreement and any Statements of Work for convenience at any time in the manner as provided in clause 42 below.
7. SERVICES
   1. The Service Provider shall render the Services on the terms and conditions of this Agreement generally and in accordance with the specifications set out in the relevant Statements of Work specifically.
   2. The Service Provider shall perform the Services at SARS premises as designated by SARS from time to time in the relevant Statement of Work, under the supervision of SARS.
   3. To the extent that the Service Provider has agreed to use its own systems to provide the Services under any Statement of Work, the systems used by the Service Provider to provide the Services must, as a minimum, include the following:
      1. a dedicated stand-alone server that is not connected to any other part of the Service Provider's system.
      2. adequate and effective safeguards to ensure that all Confidential Information as defined in clause 2.1.6.1 above is and remains separate and isolated from the Service Provider's other systems, and that only duly authorised Staff of the Service Provider who are involved in the provision of the Services and processing (including Processing) of Taxpayer Information, SARS Data and/or (to the extent relevant) SARS Information, shall have access thereto; and
      3. the ability to process data (either "pushed" or "pulled") from a SARS network server in flat files, XML or MQ formats (but not limited to those formats) for processing in a manner as agreed in the relevant Statement of Work.
   4. To the extent relevant and provided the Service Provider is responsible for providing security technologies and techniques in relation to the Services, the Service Provider shall provide all Services utilising security technologies and techniques in accordance with industry best practices and SARS’s security policies, procedures and requirements, including those relating to the prevention and detection of inappropriate use or access of software, hardware, systems and networks.
   5. The Service Provider shall in the provision of the Services to SARS use industry leading levels of functionality and performance.
   6. The Service Provider shall implement commercially reasonable new technologies 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 shall also keep the Services under this Agreement current with industry advances and leading technology standards.
   7. Where compliance with clauses 12.4 to 12.6 or any of them would have the effect of imposing unreasonable and unintended additional obligations or costs on the Service Provider, the Service Provider may require reasonable compensation for such compliance, and shall be excused from such compliance until the Parties have reached agreement in regard to a suitable variation of the terms of this Agreement or the relevant Statement of Work, as the case may be.
   8. Without limiting the generality of the foregoing, the Service Provider shall, in respect of its information technology systems which may be used to provide the Services, implement and/or use network management and maintenance applications and tools and appropriate intrusion detection, identity management, and encryption technologies. The Service Provider, in so far as it is responsible therefore, shall maintain the security of the Services and its systems relating to such Services at a 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.
   9. The risk of and liability for 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. The Service Provider shall not bear the risk or liability for an erroneous report provided that the Service Provider has exercised reasonable care, skill and diligence to verify such report.
8. THIRD PARTY service provider CO-OPERATION
   1. As part of the Services, where appropriate and when requested by SARS to do so, the Service Provider shall work in co-ordination and co-operation with, all other third party service providers providing services to SARS so that the Services are provided seamlessly to SARS.
   2. The Service Provider shall immediately notify SARS if an act or omission of such a third party service provider may cause a delay, interruption or deficiency in the Services.
9. RESOURCES TO BE PROVIDED BY SARS
   1. Subject to the provisions of this Agreement, SARS shall provide the Service Provider with Taxpayer Information, SARS Information and SARS Data to the extent necessary, relevant and proportionate in relation to the purpose of such disclosure (as determined under this Agreement) for the purpose of enabling the Service Provider to render the Services under a Statement of Work.
   2. SARS shall allow the Service Provider reasonable access to and use of SARS-owned hardware, software, equipment and other resources, reasonably and necessarily required by the Service Provider to perform the Services for SARS, provided that those members of staff of the Service Provider who shall obtain access to SARS facilities have signed the SARS Oath of Secrecy, that the Service Provider shall have provided SARS with reasonable advance notice of the Service Provider's requirements. All SARS’s 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. 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.
   3. The Service Provider may use the SARS resources only to perform Services for SARS and only as follows:
      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 SARS Information or SARS Data to which the Service Provider has access shall 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 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 resources for any unlawful purpose or act.
      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 Staff) 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 or better standard, quality and specification.
      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, unless the Service Provider is able to demonstrate to SARS’s reasonable satisfaction that such changes are necessary in order for the Service Provider to provide the Services in accordance with the Agreement, in which case the Service Provider may propose, for consideration by SARS, the inclusion of charges in respect of such changes in a Statement of Work to which the change relates. Severable improvements shall belong to the Service Provider, and non-severable improvements shall belong to SARS, provided that SARS shall own all improvements which it has paid for.
      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 LEVELS

The Service Provider shall perform the Services with promptness, diligence and courtesy. The Service Provider shall execute the Services in a professional manner and in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services.

1. OBLIGATIONS OF THE SERVICE PROVIDER
   1. Without limiting the generality of the Service Provider's obligations detailed elsewhere in this Agreement, for the duration of this Agreement, the Service Provider shall as part of the Services:
      1. to the extent that the Service Provider is required to use its own computer systems, data bases and software to provide the Services, 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, to the extent relevant, all Service Provider owned, leased or licensed hardware and software used to provide the Services shall be kept at levels supported by the respective manufacturers, and Service Provider equipment shall be upgraded or replaced as required to meet the Service levels, manufacturer end-of-life policies and timelines and manufacturer-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, to the extent relevant, its internal systems and infrastructure used to provide the Services and the Service provision at all times remains compatible with SARS’s architectural technology standards and strategies; and
      2. without limiting the generality of clause 16.1.1, at its own cost, maintain and, as required, upgrade its computer based security systems (to the extent that it uses such computer based security systems to provide any aspect of the Services), in accordance with SARS’s information and data security standards set out in Annexure "**C**".
2. acceptance and review
   1. SARS shall have the right to review and accept or reject (with valid reason) all Deliverables detailed in a Statement of Work 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.
   2. The Service Provider shall be reasonably available to liaise with SARS regarding any queries arising with regard to a Deliverable and to assist SARS with its evaluation of a Deliverable.
   3. Should SARS not accept the Deliverable, SARS shall provide the Service Provider with written notice of its non-acceptance. The Service Provider shall correct any Deficiencies within 7 (seven) days, or such other period as may be agreed by the Parties in a Statement of Work, of receiving SARS’s notice, whereafter the Deliverable shall be resubmitted to SARS for review and evaluation in accordance with this clause.
   4. If the Service Provider is still unable to correct the Deficiency within this period, then SARS may in its sole discretion elect to:
      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
      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
      3. without limiting the generality of SARS’s right to terminate this Agreement and/or any Statement of Work for cause under clause 40.3 or to claim damages in terms of this Agreement, 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, and shall, where SARS is entitled to claim damages in respect of such termination, be credited to the amount of any such damages.
3. BROAD-BASED black economic empowerment ("BBBEE")
   1. Subject to clauses 18.2 to 18.4, Service Provider undertakes that as of the Effective Date it is in compliance with, and throughout the Term it shall remain in compliance with, all Applicable Laws governing BBBEE, including in particular compliance with criteria and codes published from time to time by Department of Trade and Industry with which suppliers to government departments of the Republic of South Africa, as they may change from time to time, are required to comply, and the corresponding procurement policies of SARS in this regard.
   2. Prior to the Effective Date, Service Provider provided SARS certain information regarding its BBBEE status. Service Provider hereby represents and warrants that as of the Effective Date, such information is accurate and complete. For the purposes of this clause 18, "BBBEE" shall be given the same meaning as that in section 1 of the Broad-Based Black Economic Empowerment Act, (Act No. 53 of 2003). Service Provider’s BBBEE compliance levels as of each anniversary of the Effective Date during the Term are set forth in Annexure "**D**" (BBBEE Criteria). For purposes of this Agreement, compliance with Annexure "**D**" (BBBEE Criteria) shall constitute compliance with clause 18.1.
   3. Within 60 (sixty) days prior to each such anniversary date of this Agreement, Service Provider shall provide SARS such information as is reasonably required for SARS to determine whether Service Provider is in compliance with the requirements of Annexure "**D**" (BBBEE Criteria). On each such date Service Provider shall represent and warrant that the most recently provided information is accurate and complete.
   4. If at any time during the Term, SARS has reason to believe that due to a change in Applicable Laws the requirements in Annexure "**D**" (BBBEE Criteria) must be adjusted, SARS shall propose such adjustments for Service Provider’s review and approval. Service Provider shall not unreasonably delay or withhold its approval. Any decision to delay or withhold approval shall be deemed to be unreasonable unless based exclusively on a good faith view that SARS’s interpretation of the Applicable Laws is incorrect. Service Provider shall have 9 (nine) months from the date of a change to Annexure "**D**" (BBBEE Criteria) to comply with such change, provided Service Provider uses commercially reasonable efforts to comply sooner if possible.
   5. Without limiting the generality of SARS’s rights and remedies in the event of a breach of this clause 18 other than a breach described in clause 18.5 or this clause 18.6, if at any time during the term, Service Provider has reason to believe that it is likely to fail, or fails, to meet the requirements of clause 18.1 due to circumstances beyond its reasonable control other than a change in Applicable Laws under clause 18.5, it shall (a) immediately inform SARS of the fact, and (b) have a period of 6 (six) months from the earlier of the date of the notice under sub-clause (a) or the date it becomes aware that such a failure is likely, to again comply with compliance established in accordance with the principles of clause 18.5. Notwithstanding the foregoing, Service Provider shall use commercially reasonable efforts to remedy such failure as soon as possible.
   6. SARS may, at SARS’s cost and in SARS sole discretion, audit all information provided by Service Provider in terms of this clause 18 using internal and/or external auditors. Copies of any written report by such auditors shall be made available to Service Provider.
   7. A breach by Service Provider of this clause 18 (including the obligation to meet the requirements of Annexure "**D**" (BBBEE Criteria)) shall be a material breach of this Agreement.
4. Tax and Security Compliance
   1. Solely for the purposes of this clause 19, the Service Provider hereby waives, in favour of SARS (and in a form acceptable to SARS), the preservation of secrecy (as contemplated in the relevant Tax Acts) in regard to its taxation affairs.
   2. The Service provider shall require its directors, its senior managers, and its Staff that are directly involved in the delivery of the Services in terms of this Agreement, to confirm in writing to the Service Provider (who shall in turn advise SARS accordingly) that such person is fully compliant with South African Tax Acts (to the extent that such person is a Taxpayer) or, if not so compliant, that such person is taking active steps to become so compliant within 180 (one hundred and eighty) days after the Effective Date and shall confirm in writing once such compliance is achieved. No person who has not provided such written confirmation may be directly or indirectly involved in providing the Services under this Agreement.
   3. The Service Provider undertakes that it shall inform SARS should it become aware that any of its Staff that are directly involved in the delivery of the Services in terms of this Agreement are not fully tax compliant.
   4. The Service Provider shall provide any such information as is required by SARS in relation to the Oaths of Secrecy signed by Staff that are directly involved in the delivery of the Services in terms of this Agreement and shall promptly report any known or reasonably suspected breach of their obligations under the Oath by its Staff to SARS.
   5. The Service Provider further warrants that the Service Provider shall deliver to SARS on the Effective Date and each anniversary thereof during the term of this Agreement, a valid tax clearance certificate issued for the then-current year in respect of the Service Provider and each of its subcontractors. A copy of the Service Provider’s tax clearance certificate valid as of the Effective Date is attached hereto as Annexure **"F"**. If the Service Provider fails to provide such certificates in respect of (i) itself and not due to any failure by SARS in the production of the certificate, SARS may terminate the Agreement on 30 (thirty) days' notice; and (ii) any subcontractor, and not due to any failure by SARS in the production of the certificate, SARS may direct the Service Provider to (a) procure that the subcontractor immediately ceases providing Services pursuant to the subcontract; and (b) that the Service Provider terminates the subcontract. SARS shall have no liability to Service Provider with respect to a termination under this clause 19.
5. INSURANCE

For the duration of this Agreement, the Service Provider shall maintain a public liability insurance policy, as agreed between the Parties in writing, in respect of all risks normally associated with the business of the Service Provider including fraud and theft by either third parties or Staff. The Service Provider shall on the Effective Date provide SARS with a copy of the aforesaid insurance policy.

1. INSPECTIONS AND AUDITS
   1. The Service Provider consents to SARS or its auditor or duly qualified expert agent (who may however not be a competitor of the Service Provider) at SARS's cost conducting inspections and audits, upon reasonable notice, of its data bases, operational structures and systems when required, for the purpose of monitoring strict compliance with this Agreement, and undertakes to assist SARS in a transparent and open manner and to provide SARS with such information as is reasonably required by SARS during the period of this Agreement and in respect of any period relating to the Service Provider’s possible assistance in any transition process following the termination of this Agreement.
   2. The Service Provider shall in respect of clause 21.1 allow SARS and its Staff access to the Service Provider's records and shall provide SARS with such reports as is reasonably required to ensure the proper administration of the Services and to avoid fraudulent activity in so far as it relates to the rendering of the Services by the Service Provider in terms of this Agreement.
   3. SARS consents to the Auditor General conducting inspections and audits only of SARS databases and systems which house Service Provider Data and which are used by the Service Provider to provide the Services when specifically required, in writing and on reasonable notice by the National Credit Regulator; or as otherwise contemplated under the National Credit Act, 2005 (Act No. 34 of 2005) (**''NCA''**), or other applicable regulatory authority, solely for the purpose of ensuring that Service Provider Data is being used strictly in compliance with the NCA and the terms of this Agreement.
2. SERVICE PROVIDER STAFF
   1. As part of itsprovision of the Services, the Service Provider shall at all times ensure that all Service Provider Staff are suitable and appropriately qualified, trained, experienced (**''Credentials''**) and available to render the Services in terms of this Agreement. Any Staff member who is engaged, or is to be engaged, in providing the Services shall, unless SARS has otherwise agreed in writing, be required to comply with SARS's internal security clearance requirements, failing which SARS shall be entitled to require the Service Provider to replace such member of Staff with someone who does so comply.
   2. The Service Provider shall be responsible for ensuring the authenticity of all Credentials of the Service Provider Staff involved in the performance of the Services.
   3. The Service Provider hereby agrees and undertakes:
      1. to procure that all Service Provider Staff who are exposed to SARS Information and/or Taxpayer Information and/or SARS Data shall comply with all secrecy and confidentiality obligations with which SARS officials and employees are obliged to comply in terms of the SARS Act, the Tax Acts and all other relevant legislation, and that they shall in particular all execute and adhere to the prescribed Declaration/Oath of Secrecy attached hereto marked Annexure "**G**";
      2. in terms of Section 37(2) of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) ("**OHS Act**"), to ensure that Service Provider and the Service Provider Staff comply with the OHS 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.
   4. Neither the Service Provider nor the Service Provider's Staff, subcontractors or other agents are or shall be deemed to be Staff of SARS. The Service Provider and any of its subcontractor(s), shall be responsible for their own Staff 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 Staff and in respect of the Staff of the subcontractors.
   5. The Service Provider shall ensure that Key Personnel are assigned to perform the Services in terms of the Agreement in an efficient and timely manner.
   6. The Service Provider shall not appoint, assign, designate or subsequently re-assign any Staff member to occupy the position or perform the duties of a Key Personnel member in terms of the Agreement without SARS’s prior written consent.
   7. If SARS believes that the performance or conduct of any Key Personnel member is unsatisfactory for any reason or is not in compliance with the provisions of the Agreement, SARS shall provide written notice of its dissatisfaction or such non-compliance to the Service Provider and require the Service Provider to address the issue, 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 Key Personnel member within the timelines designated by SARS. Should the Service Provider fail to resolve SARS concerns within the timelines designated by SARS, the Service Provider shall, within a reasonable time provided this shall be as soon as is reasonably possible, replace such Key Personnel member with another Service Provider Staff member acceptable to SARS and with sufficient knowledge and expertise to perform the Services in accordance with the Agreement.
3. SARS’s obligations with regard to STAFF
   1. SARS hereby agrees and undertakes:
      1. to procure that all SARS Staff who are exposed to Service Provider Data shall comply with all confidentiality obligations under the Agreement; and
      2. to comply with the OHS Act, including in relation to Service Provider Staff performing the Services at SARS premises.
4. NON-SOLICITATION

Neither Party shall, without the prior written consent of the other Party, either during, or within 12 (twelve) months after termination or expiration of this Agreement, solicit for employment, whether directly or indirectly, any person who, at any time during the duration of this Agreement, was a member of the other Party's Staff who was directly involved with any activity relating to the Services. It will not be a violation of this provision for a Party to advertise its openings in the generally available media and to hire a member of the other Party's Staff that may contact it as a consequence of such advertising.

1. GOVERNANCE, meetings and reports
   1. Unless otherwise agreed in writing, the Parties shall conduct the following meetings:
      1. *ad-hoc* meetings as reasonably required to ensure that the Services are performed effectively;
      2. a monthly meeting between -

(i) operational Staff representing each of SARS and the Service Provider to discuss daily performance and planned or anticipated activities, and otherwise address, review, and discuss matters specific to SARS; and

1. the Parties' Designated Representatives to discuss any proposed changes that might adversely affect performance and to review the Service Provider's performance of the Services during the prior month, including its performance of the Services. At such meeting, the Service Provider shall identify the actions it shall take to rectify any failures to perform the Services in accordance with the service specifications, which actions shall be subject to SARS’s review and approval; and
   * 1. a quarterly senior management meeting by the Parties to review relevant relationship, contractual and performance issues.
   1. The Service Provider shall provide SARS with all reports reasonably required by SARS as detailed in a Statement of Work. The Statement of Work shall also detail the format, content and frequency of such reports reasonably required by SARS. Notwithstanding anything to the contrary provided herein, such reports shall, subject to and in accordance with the provisions of clause 32 below, be proprietary to SARS and all Intellectual Property rights contained in any such reports created by the Service Provider under this Agreement shall vest with SARS.
2. compliance with laws and regulations
   1. The Service Provider warrants that it shall render the Services in accordance with all laws, regulations and industry codes of conduct applicable thereto, including but not limited to the following:
      1. the procedures contained in Standard Operating Procedures attached hereto as Annexure "**H**" and as amended or replaced by SARS from time to time; and
      2. all Applicable Laws relating to the Services, Tax and data privacy.
   2. SARS, in turn, warrants that it shall ensure that the performance of its obligations under the Agreement shall comply with all Applicable Laws.
   3. The Service Provider shall at its own cost (unless otherwise agreed) ensure, and take all legal advice necessary to ensure, that in providing the Services the Service Provider shall not infringe any third party rights and that the provision of the Services shall be lawful and in compliance with all applicable laws, regulations and/or industry codes of practice. This shall be in addition to any legal procedures and checks that SARS may carry out.
3. ETHICAL BUSINESS PRACTICES
   1. SARS has a policy of zero tolerance regarding corrupt activities. The Parties shall promptly report to each other and the relevant authorities any suspicion of corruption on the part of their Staff, suppliers, taxpayers, or any other person or entity, as well as any behaviour 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) in relation to the provision of the Services and this Agreement.
   2. Neither Party shall offer, promise or make any gift, payment, loan, reward, inducement benefit or other advantage to any of the other Party's Staff or suppliers.
   3. If the results of any audit of the Services conducted by or on behalf of SARS indicates the possibility of corrupt activities, improper or fraudulent practices or theft, either Party shall, after allowing the other the 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 Staff of the other Party or a third party and the Service Provider shall use all reasonable efforts to facilitate any such investigation or enquiry. In the event that an act of corruption, fraud or theft is proven, the non–transgressing Party shall be entitled, on written notice to the transgressing Party, to immediately terminate this Agreement, and subject to the provisions of clause 41 below, SARS shall be entitled, on written notice to the Service Provider, to immediately terminate this Agreement.
4. CONFLICT OF INTEREST
   1. The Service Provider warrants to and in favour of SARS that as at the Signature Date, none of its directors or employees is related to or has any business relationship with any employee or other functionary of SARS.
   2. Should any of the Service Provider's directors or Staff, who commence their directorship or employment with the Service Provider after the Signature Date, be related to or have any business relationship with any Staff member or other functionary of SARS, the Service Provider shall immediately disclose such conflict of interest upon the Service Provider becoming aware thereof to SARS and the individual director or Staff member concerned shall:
      1. be prohibited from rendering, or be in any way involved in rendering, the Services to SARS on behalf of the Service Provider; and
      2. in the case of a director, that director shall not be entitled to vote on any board resolution of the Service Provider relating to decisions to be taken in terms of this Agreement.
5. DATA PROTECTION
   1. The Service Provider and SARS acknowledge that in the course of the provision of the Services either Party may become privy to Confidential Information.
   2. To the extent that the Confidential Information needs to be stored on either Party's information technology systems, that Party shall take appropriate technical and organisational measures against unauthorised or unlawful Processing, accidental loss, destruction or damage of the Confidential Information and shall provide the other Party with reasonable evidence of its compliance with its obligations under this clause 29.2 on reasonable notice and request.
   3. 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 clause 29.2.
   4. Each Party shall, to the extent that Confidential Information is stored on its information technology systems, 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.
   5. The Parties shall ensure that all Confidential Information and information provided under this Agreement in order for the Service Provider to render the Services is stored separately and isolated from other data and property relating to Parties or any third party.
   6. The security measures to be taken by the Parties in terms of clause 29.2 must:
      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
      2. enable SARS and the Service Provider to conform to Applicable Law, including:
         1. the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);
         2. the NCA; and
         3. the Tax Acts.
   7. On termination or expiry of the Agreement, or where specifically requested by SARS, the Service Provider shall be responsible for ensuring that (i) to the extent that it has used or uses its information technology systems to provide any aspect of the Services, such systems are, at Service Provider's cost, cleaned to ensure that all SARS Data, Taxpayer Information and SARS Information is, at the direction of SARS either (a) irretrievably removed from such systems and destroyed, including in accordance with any specific retention, destruction and purging requirements as may be prescribed by SARS; or (b) irretrievably removed from such systems and returned to SARS; and (ii) to the extent that the Service Provider has used or uses SARS’s information technology systems to provide the Services, such systems are, at SARS's cost, cleaned to ensure that all Service Provider Data is irretrievably removed from such systems and destroyed, including in accordance with any specific retention, destruction and purging requirements as may be prescribed by SARS. The Service Provider shall be required to provide SARS with written confirmation that the destruction has been fully complied with within 5 (five) days of (a) the termination/expiry of the Agreement; or (b) SARS request.
6. processing of personal information
   1. Without limiting any other provision of this Agreement, to the extent that either Party is exposed to Personal Information under the Agreement, that Party shall only store, copy or use any Personal Information disclosed to it by the other Party pursuant to this Agreement to the extent necessary to perform its obligations under this Agreement.
   2. If at any time the Party to which Personal Information has been disclosed suspects or has reason to believe that Personal Information disclosed to it by the other Party pursuant to this Agreement has or may become lost or corrupted in any way for any reason then the receiving Party shall immediately notify the disclosing Party thereof and inform the disclosing Party of what remedial action it proposes to take, if any.
   3. The Service Provider agrees that, in regard to the Personal Information which SARS obtains from Taxpayers and discloses to the Service Provider for the purpose of providing the Services, it shall:
      1. only Process the Personal Information in accordance with instructions from SARS (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by SARS to the Service Provider from time to time);
      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;
      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 this Agreement, unless retention thereof for a longer period is required by law or requested in writing by SARS. Where SARS specifically requests the retention of Personal Information for a longer period than is necessary in order for the Service Provider to comply with its obligations under this Agreement, such retention periods shall be agreed and included in a Statement of Work;
      4. implement and ensure that its agents, subcontractors and Staff members implement appropriate technical and organisational measures to protect the Personal Information against unauthorised 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;
      5. keep all Personal Information and any analyses, profiles or documents derived therefrom separate from all other data and documentation of the Service Provider that is not related to the provision of the Services;
      6. Process the Personal Information in accordance with any Applicable Law; and
      7. cooperate as reasonably requested by SARS to enable SARS to comply with any exercise of rights by a Taxpayer under Applicable Law in respect of Personal Information processed by the Service Provider under this Agreement or comply with any assessment, enquiry, notice or investigation under the Applicable Law which shall include the provision of all data requested by SARS within the timescale specified by SARS in each case, which shall be in accordance with Applicable Laws.
   4. The Parties shall each provide co‑operation in any investigation relating to security which is carried out (i) by or on behalf of SARS as contemplated in clause 21.1; and (ii) by the Auditor Generalon behalf of the Service Provider as contemplated in clause 21.3 above, including providing any information or material in its possession or control, subject to reasonable confidentiality requirements, and implementing new security measures, to the extent requested by SARS or determined to be necessary by an external auditor.
7. pricing and payment
   1. The Service Provider's charges for the rendering of the Services shall be detailed in each Statement of Work, provided that such charges shall be calculated on the basis of the Service Provider's rates detailed in the Pricing and Payment schedule attached hereto as Annexure "**B**".
   2. The payment terms applicable to the Service Provider's charges shall be detailed in each Statement of Work, provided that, unless otherwise agreed in a Statement of Work:
      1. the Service Provider shall invoice SARS in arrears;
      2. each invoice provided by the Service Provider shall contain or have attached such information, and be in such form and on such media as SARS may reasonably request;
      3. Each invoice shall consist of or have attached:
         1. a statement of the total amount due which shall be itemised per Service; and
         2. to the extent relevant, copies of daily time cards signed by an authorised SARS representative for any work performed by the Service Provider Staff on a time and materials basis;
      4. the Service Provider shall maintain complete and accurate records of, and supporting documentation for, the amounts invoiced to and payments made by SARS hereunder in accordance with generally accepted South African accounting practice applied on a consistent basis; and
      5. SARS shall pay undisputed charges to the Service Provider following receipt of each invoice that is accurate and meets the requirements of this Agreement. The due date for such payment shall be 30 (thirty) days from SARS’s receipt of the invoice.
   3. The Service Provider is not entitled to any other fee, commission or other remuneration over and above the consideration as contemplated in clause 31.1 above.
   4. All payments to be made by SARS in terms of this Agreement shall be made by electronic transfer of immediately available and freely transferable funds to the Service Provider's Designated Account, in the currency of the Republic of South Africa.
   5. SARS shall be entitled to set-off against amounts otherwise payable to the Service Provider, any and all amounts owed by the Service Provider to SARS, other than any amount owing under the Tax Acts.
   6. Any changes to charges and/or pricing previously agreed in any Statement of Work shall be subject to negotiation and agreement between the Parties in accordance with the change control provisions contained in this Agreement.
8. INTELLECTUAL PROPERTY
   1. The Service Provider acknowledges that it shall acquire no right, title or interest in or to any information technology infrastructure, systems, components, computer hardware, software, designs, processes, data, material or Intellectual Property made available to it by SARS in terms of this Agreement.
   2. The Service Provider hereby assigns to SARS all right, title and interest to any and all Intellectual Property created in, arising out of or in relation to the output resulting from the Services after the Effective Date. For purposes of this clause 32.2, "output" means all reports and other data in any format provided to SARS by the Service Provider pursuant to the Services, but excluding specifically any rights in and to data that was not provided to the Service Provider by SARS, any know-how, techniques, algorithms, models, methodologies and the like owned by or licensed to the Service Provider (unless developed for and paid for by SARS as contemplated in clause 32.4 below), and any other rights that constituted Intellectual Property of the Service Provider prior to the Effective Date. No consideration shall be payable by SARS to the Service Provider in respect of this assignment. Such Intellectual Property shall belong to and be the absolute property of SARS.
   3. The Service Provider and SARS agree that the ownership in and to all Intellectual Property which was developed for SARS or which was being used by the Service Provider to provide services to SARS prior to the Effective Date and which was created and/or developed at SARS’s request is and shall continue to remain the property of SARS. Should the Service Provider be required to use the Intellectual Property referred to in this clause 32.3 as part of the provision of the Services hereunder, SARS hereby provides the Service Provider with a non-exclusive license for the duration of this Agreement to enable it to continue the use of such Intellectual Property strictly in its provision of the Services.
   4. Without limiting the provisions of clause 32.2, should SARS require the Service Provider to develop or customise any computer software in order to render the Services ("**Developed Software**"), all Intellectual Property rights in such Developed Software shall vest in SARS, and no additional consideration shall be payable by SARS to the Service Provider in respect of such Developed Software. The Service Provider hereby waives any moral rights which it may have in any Developed Software.
   5. The Service Provider shall retain all its Intellectual Property rights which existed as at the Signature Date. The Service Provider hereby grants to SARS a worldwide, royalty-free, perpetual and fully paid up licence to use the Service Provider's Intellectual Property for the sole purpose of utilising the Services. Similarly, in the event that the Service Provider, with the consent of SARS in terms of clause 9.1, subcontracts the whole or any part of the Services, it shall, in respect of the Intellectual Property of its subcontractors (subject to the provisions of clause 9 above), procure from such subcontractors on behalf of SARS a worldwide, royalty-free, perpetual and fully paid up licence for SARS to use the Service Provider's Intellectual Property for the sole purpose of utilising the Services. For the purposes of this clause 32.5, the Intellectual Property of the Service Provider includes its methodologies, processes and techniques used to render the Services and produce the requested deliverables, including any Developed Software. For the avoidance of doubt, if such Intellectual Property is incorporated into or embedded in any Developed Software, the aforegoing licence includes a licence for SARS to use the Service Provider's Intellectual Property in the Developed Software.
   6. The Service Provider warrants to and in favour of SARS that in providing the Services, it shall not infringe the Intellectual Property rights of any third party. The Service Provider hereby indemnifies SARS for any and all losses, damages, expenses, penalties and costs which SARS may sustain as a result of a breach of such warranty by the Service Provider.
   7. In the event that any person brings a claim against SARS alleging that the reproduction, use or exploitation of any material used or produced by the Service Provider in rendering the Services infringes the rights of any person, the Service Provider shall provide SARS with all assistance as may be reasonably required to defend or settle such claim and SARS shall reimburse the Service Provider for any expenses reasonably incurred by the Service Provider in providing such assistance, provided that such expenses have been approved by SARS in advance. The aforegoing provisions shall not apply in respect of claims arising as a result of a breach of the warranty given by the Service Provider in clause 32.6.
   8. In the event that the Service Provider, with the consent of SARS in terms of clause 9.1, subcontracts the whole or any part of the Services, the Service Provider shall procure that such sub-contractor assigns in writing to and in favour of SARS all Intellectual Property Rights created in, arising out of or in relation to the provision of the sub-contracted services as contemplated in clause 32.2 above, and further that the sub-contractor waives any moral rights which it may have in the sub-contracted services.
9. INDEMNITIES AND LIMITATION OF LIABILITY
   1. Subject to the limitation contained in clause 33.4 below, the Service Provider hereby indemnifies and holds SARS harmless against all claims, liability, damage, loss, penalty, expense and cost (including legal costs on an attorney and own client scale) of any nature whatsoever which SARS may sustain as a result of or attributable to:
      1. a failure of any of the warranties or any representations or undertakings contained in this Agreement to be true and correct;
      2. the negligence of the Service Provider; or
      3. any breach of or non-compliance by the Service Provider with any of its obligations contained in this Agreement.
   2. Save to the extent that any such loss suffered by SARS may be covered by the Performance Bonds and/or public liability insurance to be procured by the Service Provider under this Agreement, neither Party shall be liable to the other Party for indirect or consequential loss or damage, loss of profits, business, revenue, goodwill or anticipated savings suffered by the other Party during the term of this Agreement.
   3. Notwithstanding anything to the contrary set forth in clause 33.2 above or this Agreement in general, the Parties agree that the Service Provider shall be liable to SARS for all losses which constitute direct, indirect, general, special and/or consequential damages where such damages are caused by the Service Provider's breach of the provisions of clauses 29, 30 and 37 of this Agreement.
   4. Subject always to clause 33.3 above, in respect of which the Service Provider's liability shall be unlimited, the Service Provider’s liability in respect of any other claims (whether in contract, delict, for breach of statutory duty or under any indemnity or otherwise) brought under or in connection with this Agreement shall be limited, in respect of any claim or series of claims by SARS resulting directly from the same incident, to an amount equal to the greater of:
      * 1. 7.5 (seven and a half) times the fees (excluding VAT) paid by SARS to the Service Provider under this Agreement in the preceding 12 (twelve) months, or if the claim or series of claims arises in the first year of this Agreement, 7.5 (seven and a half) times the value of the aggregate amount of fees (excluding VAT) then contracted to be spent by SARS with the Service Provider for the Services and Service Provider Deliverables in that first year; and
        2. the amount of the Performance Bond;

provided that in no circumstances shall the liability of the Service Provider under this clause 33.4 exceed the amount of R100.000.000,00 (one hundred million Rand).

1. service provider's warranties
   1. In addition to and without limiting the generality of any other warranties provided by the Service Provider elsewhere in this Agreement, the Service Provider warrants to and in favour of SARS that:
      1. it shall provide the Services to the best of its ability, with a level of skill and care appropriate to a Service Provider experienced and qualified to perform the Services and in all respects to the reasonable satisfaction of SARS and to be performed reasonably in accordance with the appropriate and relevant best industry practice;
      2. it has full authority to enter into and perform this Agreement and is not bound by any previous agreement which adversely affects this Agreement;
      3. it has the skills, resources and ability to provide the Services in an effective and efficient manner, as required by the provisions of this Agreement, Applicable Laws (including the Tax Acts and subsidiary legislation), and in conformity with reasonably appropriate global best practices for the rendering of the Services;
      4. it shall maintain an information technology system to control and administer the provision of the Services in terms of this Agreement;
      5. the Staff of the Service Provider responsible for providing the Services shall be suitably screened and selected, given the extremely confidential nature of the SARS Confidential Information to which they shall be exposed, and in particular all Staff of the Service Provider who are involved in the rendering of the Services shall be screened in order to ensure that they are independent and have no personal or commercial interest (other than as being employed by the Service Provider) in the Services, as required by SARS’s impartiality guidelines;
      6. all information submitted by the Service Provider to SARS in its services proposal is true and correct and a proper reflection of its capacity and resources; and
      7. the Service Provider shall remain compliant with all Applicable Laws applicable to the provision of the Services to SARS.
2. SARS’S WARRANTies
   1. SARS warrants that:
      1. it shall use any Service Provider Data provided to it by the Service Provider as part of the Services solely in furtherance of its functions contemplated in clause 3.3; and
      2. it shall remain complaint with all Applicable Laws in respect of its obligations and use of the Services it acquires from the Service Provider for the duration of this Agreement; and
      3. it shall and is authorised to provide the SARS Data, SARS Information and Taxpayer Information specified in a Statement of Work and required by the Service Provider to perform the Services in the format and within the timeframes agreed in a Statement of Work.
3. general WARRANTIES
   1. Each of the Parties hereby warrants to and in favour of the other that:
      1. it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;
      2. this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;
      3. the execution of this Agreement and the performance of its obligations hereunder does not and shall not:
         1. contravene any law or regulation or other rule to which that Party is subject;
         2. contravene any provision of that Party's constitutional documents; or
         3. conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it; and
      4. to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of this Agreement;
      5. it is entering into this Agreement as principal (and not as agent or in any other capacity);
      6. the natural person who signs and executes this Agreement on its behalf is validly and duly authorised to do so;
      7. no other party is acting as a fiduciary for it; and
      8. it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in this Agreement.
   2. Each of the representations and warranties given by the Parties in terms of clause 36.1 shall:
      1. be a separate warranty and shall in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;
      2. continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and
      3. *prima facie* be deemed to be material and to be a material representation inducing the other Party to enter into this Agreement.
4. CONFIDENTIALITY AND PUBLICITY
   1. The Parties each acknowledge that in the course of the Service Provider's provision of the Services, they may become privy to each other's Confidential Information. Each Party undertakes to keep confidential and not to disclose to any third party, save as may be permitted in terms of this Agreement, the Confidential Information, the nature, content or existence of this Agreement and any and all information given to it by the other Party pursuant to this Agreement. In particular, each of the Parties agrees that it shall:
      1. treat this Agreement and the Confidential Information as strictly confidential;
      2. not disclose the Confidential Information to any person other than those Staff members on a "need to know" basis strictly in order for the Service Provider to render the Services and for the Parties to comply with their obligations under this Agreement;
      3. ensure that all Staff members who are provided with the Confidential Information on a "need to know" basis as contemplated in clause 37.1.2 above are bound by appropriate and legally binding confidentiality and non-use obligations, including, in relation to the Service Provider the Declaration/Oath of Secrecy attached hereto as Annexure "**G**", in relation to the Confidential Information;
      4. use the Confidential Information only for the purposes of and to the extent necessary for (i) in respect of the Service Provider, 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 or credit information; and (ii) in respect of SARS to benefit from the Services and exercise the functions as contemplated in clause 3.3 above;
      5. notify the other Party promptly of any unauthorised or unlawful use, disclosure and/or Processing of the Confidential Information of which it becomes aware;
      6. at the request of the other Party, delete or return to the other Party its Confidential Information, without keeping copies thereof, immediately upon first written demand for deletion or the return thereof by the other Party, 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; and
      7. provide reasonable evidence of its compliance with its obligations under this clause 37.1 to the other on reasonable notice and request.
   2. The unauthorised disclosure by the Party that receives Confidential Information under this Agreement of the Confidential Information to a third party may cause irreparable loss, harm, and damage to the disclosing Party, and may lead to criminal sanction. 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 the provisions of this clause 37.
   3. No announcements of any nature whatsoever shall be made by or on behalf of a Party relating to this Agreement without the prior written consent of the other Party.
5. SUPPORT

The Parties reasonably undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.

1. FORCE MAJEURE
   1. Neither Party shall be liable to the other for non-performance (either in whole or in part) or delay in performance of their respective obligations if caused by a Force Majeure Event. While a Force Majeure Event subsists, the Party so affected shall be relieved of liability to the other for failure to perform its obligations hereunder and such obligations shall be suspended until such time as performance can be resumed (provided that the relevant affected Party could not have prevented the failure or delay by taking reasonable precautions or measures).
   2. Either party shall be entitled to terminate this Agreement on not less than 30 (thirty) days written notice to the other Party if a Force Majeure Event persists for more than 14 (fourteen) consecutive days.
   3. Neither Party shall be liable for the payment of any termination fees or have any other liability to the other Party if this Agreement is terminated in terms of clause 39.2.
2. CONTINUITY OF SERVICES
   1. In addition to any other rights and remedies that it may have in terms of the Agreement or otherwise, including the right to terminate this Agreement, SARS may immediately upon SARS identification or the Service Provider's notification of the occurrence of any event which shall probably affect the continuity of the Services, in its sole discretion elect to (i) call for an urgent senior level meeting with the Service Provider; and/or (ii) within its reasonable discretion to launch an audit investigation at its costs into the Service Provider’s operations in accordance with the audit provisions detailed in clause 21.
   2. The Service Provider shall, upon the request of SARS, fully co-operate with and assist SARS in the performance of the audit and investigation referred to in clause 40.1.
   3. Should SARS in the circumstances contemplated in clause 40.1 elect, after the said meeting and/or investigation, to terminate the Agreement, the Service Provider shall furnish reasonable co-operation to facilitate an orderly and speedy termination and disengagement, in order to enable the completion of the Services by SARS and/or the appointment by SARS of a new service provider and the speedy continuation of the provision of services by such new service provider in substitution for the Services being provided under the then current Statement/s of Work, provided that the Service Provider shall under no circumstances be required to disclose any of its trade secrets or other intellectual property or Service Provider Confidential Information to any third party which operates as a competitor of the Service Provider. Where the Service Provider has disclosed any such trade secrets or other intellectual property or Service Provider Confidential Information to SARS and/or any third party that is not a competitor, same may only be used for the purpose of completing the Services being provided under the then current Statement/s of Work, and for no other purpose whatsoever.
3. breach AND TERMINATION
   1. Either Party ("**Aggrieved Party**") may terminate this Agreement with immediate effect if:
      1. the other ("**Defaulting Party**") commits a material breach of this Agreement and fails to remedy that breach within 10 (ten) business days of being notified of the breach ("**Notice Period**") and, if the Aggrieved Party so elects, the steps required to remedy it;
      2. the Defaulting Party suffers an Insolvency Event;
      3. by reason of a Force Majeure Event, the Defaulting Party is unable to perform or delays in performing its obligations hereunder for a period of 15 (fifteen) business days from the date of such Force Majeure Event in circumstances where the Defaulting Party could have prevented the failure or delay by taking reasonable precautions or measures); or
      4. any material representation or material warranty contained in this Agreement on the part of the Defaulting Party is found to be untrue in any material particular or if the Defaulting Party does anything in breach of such representation or warranty.
   2. For the purposes of clause 41.1.1, a breach shall be deemed to be a material breach if:
      1. it is capable of being remedied, but is not so remedied within the Notice Period; or
      2. it is incapable of being remedied or is not remedied within the Notice Period, and payment in money shall compensate for such breach but such payment is not made within the Notice Period.
   3. The Parties agree that any costs awarded shall be recoverable on an attorney-and-own-client scale unless the Court specifically determines that such scale shall not apply, in which event the costs shall be recoverable in accordance with the High Court tariff, determined on an attorney-and-client scale.
   4. The Aggrieved Party's remedies in terms of this clause 41 are without prejudice to any other remedies to which the Aggrieved Party may be entitled in law.
4. TERMINATION FOR CONVENIENCE
   1. SARS may terminate this Agreement in whole or in part for convenience and without cause at any time by giving the Service Provider at least 30 (thirty) days prior written notice designating the termination date. SARS shall have no liability to the Service Provider with respect to any such termination, provided that:
      1. SARS shall remain liable for payment to the Service Provider of any undisputed amounts which are due to the Service Provider for Services which have been rendered under the applicable terminated Statement of Work(s) prior to such termination, subject to the provisions of clause 31 above and the provisions of the relevant Statement of Work;
      2. SARS shall not, save with the written agreement of the Service Provider, be entitled to terminate any Statement of Work in part only; and
      3. in the event that the Service Provider is able to demonstrate, to SARS’s reasonable satisfaction that a partial termination as contemplated in this clause 42, shall directly and materially increase the Service Provider's costs of providing the Services under one or more Statements of Work, the Service Provider shall be entitled to propose for SARS’s consideration, a review of the charges. The Service Provider shall provide detailed information in support of its proposal and the Parties shall negotiate any amendment to the charges in good faith.
5. consequences of termination
   1. Upon the termination of this Agreement for any reason, the Service Provider shall:
      1. cease to perform the Services;
      2. comply with the obligations detailed in clause 29.7 above;
      3. subject to the provisions of clause 29.7 above, immediately return to SARS any and all materials and/or SARS Confidential Information provided by SARS to the Service Provider in connection with the Services and shall certify in writing that it has done so;
      4. furnish reasonable co-operation to facilitate an orderly and speedy termination and disengagement, in order to enable the completion of the Services by SARS and/or the appointment by SARS of a new service provider and the speedy continuation of the provision of services by such new service provider in substitution for the Services being provided under the then current Statement/s of Work ("**Termination Assistance**"), provided that the Service Provider shall under no circumstances be required to disclose any of its trade secrets or other intellectual property or Service Provider Confidential Information to any third party which operates as a competitor of the Service Provider. Where the Service Provider has disclosed any such trade secrets or other intellectual property or Service Provider Confidential Information to SARS and/or any third party that is not a competitor, same may only be used for the purpose of completing the Services being provided under the then current Statement/s of Work, and for no other purpose whatsoever.
   2. If this Agreement is terminated by SARS pursuant to clause 4, 19, 40 or clause 41 the Service Provider shall provide the Termination Assistance at no additional cost to SARS. If this Agreement is terminated by SARS in terms of clause 11.3, clause 39.2 or clause 42, SARS shall reimburse the Service Provider for all reasonable costs and expenses incurred in rendering the Termination Assistance.
   3. Termination of this Agreement shall not affect any accrued rights of the Parties.
   4. To the extent relevant, SARS shall upon termination of this Agreement promptly return to the Service Provider any and all of the Service Provider's Confidential Information provided by the Service Provider to SARS in connection with the Services. SARS shall however not be obliged to return to the Service Provider the Deliverables or any part thereof.
6. Performance Bond
   1. Subject to and in accordance with the provisions of clause 4.1, the Service Provider shall by no later than the date stipulated in clause 4.1 and thereafter on each anniversary of the Effective Date, post a Performance Bond, which shall secure the Service Provider’s obligations in terms of clauses 29, 30, 32 and 37 of this Agreement in an amount equal to) (Still to be determined). The value of the Performance Bond may be amended from time to time by agreement between the Parties and/or in terms of any signed Statement of Work.
   2. The provisions of clause 44.1 have been inserted for the benefit of SARS, which shall be entitled to waive fulfilment of the said provisions, in whole or in part, on written notice to the Service Provider.
   3. The Service Provider shall not be absolved of any of its obligations and liabilities under this Agreement by virtue of it having obtained the Performance Bond.
   4. SARS shall be entitled to encash the Performance Bond up to the amount due if:
      1. Service Provider materially breaches any provision of clauses 29, 30, 32 and/or 37 of this Agreement, and such breach is reasonably considered by SARS to be irremediable; or
      2. Service Provider materially breaches any provision of clauses 29, 30, 32 and/or 37 of this Agreement, such breach is reasonably capable of being remedied and Service Provider fails to remedy such breach when called upon by SARS to do so.
   5. If SARS encashes the Performance Bond in terms of clause 44.4, SARS shall be entitled to recover from the proceeds of the Performance Bond all of (i) SARS’s losses occasioned by the Service Provider's breach of any provision of clauses 29, 30, 32 and/or 37; (ii) all amounts for which the Service Provider is liable in terms of any indemnities given by it to SARS in regard to its obligations under clauses 29, 30, 32 and/or 37; (iii) all legal costs which SARS is entitled to recover from Service Provider in asserting SARS’s rights under any provision of clauses 29, 30, 32 and/or 37 of this Agreement and the Performance Bond; and (iv) any other amounts which may be owing by the Service Provider to SARS, of whatever nature and however arising, pursuant to its breach of any provision of clauses 29, 30, 32 and/or 37; provided always that the provisions of this clause 44.5 shall never be construed as in any way limiting SARS’s right of recovery to the value of the Performance Bond.
   6. In the event of SARS:
      1. cancelling the Agreement pursuant to any matter referred to in clause 44.5, after SARS has recovered all amounts which may be owing to SARS by Service Provider in terms of clause 44.5, SARS shall pay the balance of the Performance Bond, if any, to Service Provider;
      2. not cancelling the Agreement pursuant to any matter referred to in clause 44.4, Service Provider shall, at the election of SARS:
         1. pay to SARS an amount equal to that which SARS is entitled to recover from Service Provider in connection with such matters and in accordance with the provisions of clause 44.5, so that SARS holds in trust (either itself or in escrow with its attorneys) an amount equal to that which was represented by the Performance Bond prior to SARS recovering the amounts owing to it in accordance with clause 44.5;
         2. deliver to SARS a new Performance Bond for the same value as that of the original Performance Bond (and for which purpose clause 44.1 shall again apply, *mutatis mutandis*) against delivery of which SARS shall pay to the Service Provider the balance, if any, of the amounts remaining from the previous Performance Bond following SARS's recovery of the amounts owing to it in terms of clause 44.5.
   7. Upon SARS receiving any amount from the Service Provider in terms of clause 44.6.2.1 or a replacement Performance Bond in terms of clause 44.6.2.2, the provisions of this clause 44 shall apply anew in respect thereof, mutatis mutandis in the event of the amount being held in cash in terms of clause 44.6.2.1.
7. DISPUTE RESOLUTION
   1. **Informal dispute resolution**
      1. Upon the written request of a Party, any dispute which arises between the Parties under this Agreement shall be referred to a joint committee of the Parties' Designated Representatives. The joint committee shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue that the Parties believe to be appropriate in connection with its resolution.
      2. The Designated Representatives shall discuss the problem and attempt to resolve the dispute without the necessity of any formal proceeding, within 14 (fourteen) days of the dispute having been referred. During the course of discussion, all reasonable requests made by one Party to another for non-privileged information, reasonably related to this Agreement, shall be honoured in order that each of the Parties may be fully advised of the other's position. The specific format for the discussions shall be left to the discretion of the Designated Representatives.
   2. **Formal Dispute Resolution**
      1. If the Parties are unable to resolve any dispute in the manner contemplated by clause 45.1, such dispute shall on written demand by either Party to the dispute be submitted to arbitration at AFSA in Johannesburg and in accordance with the AFSA rules, by an arbitrator or arbitrators agreed on by the Parties or should the Parties fail to agree an arbitrator within 10 (ten) business days after arbitration has been demanded, the arbitrator shall be nominated at the request of any Party to the dispute by AFSA. The arbitration shall be held in the English language.
      2. Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the parties to the dispute or failing agreement within 10 (ten) business days of the demand for arbitration, then any party to the dispute shall be entitled to forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 (ten) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties to the dispute
      3. The arbitration shall be held as quickly as possible after it is demanded with a view to its being completed within 60 (sixty) business days after it has been so demanded. Any party to the arbitration may appeal the decision of the arbitrator or arbitrators in terms of the AFSA rules for commercial arbitration.
      4. Each Party shall bear its own costs of the arbitration, unless the arbitrator directs otherwise.
      5. Any arbitration in terms of this clause 45 (including any appeal proceedings) shall be conducted *in camera* and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
      6. The Parties agree that the written demand by a party to the dispute in terms of clause 45.2.1 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969).
   3. **Urgent relief**

Nothing contained in this clause 45 shall be deemed to prevent or prohibit a party to the dispute or arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.

* 1. **Binding after termination**

This clause 45 shall continue to be binding on the Parties notwithstanding any termination or cancellation of this Agreement.

1. NOTICES AND DOMICILIa
   1. The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following telefax numbers:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| **Name** | **Physical Address** | **Telefax** |
| SARS | LaHae La SARS | 012 452 9668 |
|  | 299 Bronkhorst Street |  |
|  | Brooklyn  Pretoria |  |
|  |  |  |
| Marked for the attention of: The Chief Officer: Legal and Policy | | |
|  |  |  |
| **Name** | **Physical Address** | **Telefax** |
| Service Provider |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| Marked for the attention of: | | |
|  | | |

provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address or telefax number by written notice to the other Party to that effect. Such change of address shall be effective 5 (five) business days after receipt of the notice of the change.

* 1. All notices to be given in terms of this Agreement shall be given in writing and shall:
     1. be delivered by hand or sent by telefax;
     2. if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day shall be presumed to have been received on the following business day; and
     3. if sent by telefax during business hours, be presumed to have been received on the date of successful transmission of the telefax. Any telefax sent after business hours or on a day which is not a business day shall be presumed to have been received on the following business day.
  2. Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, shall be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 46.

1. benefit of the agreement

This Agreement shall also be for the benefit of and be binding upon the successors in title and permitted assigns of the Parties or either of them.

1. applicable law and jurisdiction
   1. This Agreement shall in all respects be governed by and construed under the laws of the Republic of South Africa.
   2. Subject to clause 45, the Parties hereby consent and submit to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg in any dispute arising from or in connection with this Agreement.
2. new laws and inability to perform
   1. It is recorded that the Parties are aware of various new Bills (including the Tax Administration Bill and the Protection of Personal Information Bill) that are to be presented to Parliament which, if passed into law, shall have an effect on the provisions of this Agreement and the Services. 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 Effective Date; provided that if such compliance renders it commercially unviable 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.
   2. If either Party is prevented from performing any of its obligations in terms of this Agreement as a result of any new law, it shall not be liable to perform those of its obligations under this Agreement which are affected by the new law until such time as a variation to this Agreement has been reached in terms of clause 49.1. The Parties shall however, to the extent possible, continue to perform those obligations under this Agreement that are not affected by the new law.
   3. In the event that the Service Provider establishes to SARS’s reasonable satisfaction that a change in Applicable Laws after the Effective Date directly and materially increases the cost to the Service Provider of providing the Services, the Service Provider shall be entitled to propose prospective amendments to its charges under the appropriate Statement(s) of Work, but not in excess of the amount required for the Service Provider to recover the additional costs solely and directly attributable to the change in Applicable Laws under this clause 49. The Parties shall negotiate in good faith any requested increases.
3. independent advice
   1. Each of the Parties to this Agreement hereby acknowledges and agrees that –
      1. it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or has dispensed with the necessity of doing so; and
      2. all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with the Party’s intentions.
4. change control
   1. The Service Provider shall control and manage changes to the Services in accordance with this clause 51, unless otherwise agreed in any Statement of Work. The Service Provider shall not take any action or make any decision which may adversely affect the performance or efficiency of, or charges for (including third party expenses) the Services, without first: (a) analysing the possible action or change and providing SARS with a change control report; (b) providing SARS with a reasonable period of time to review the change control report; and (c) obtaining SARS's consent to the proposed change. With respect to any change which may have an adverse effect on SARS or the Services, SARS may withhold its approval in its sole discretion.
   2. The Service Provider shall schedule changes so as to minimise disruption of the Services and of SARS's normal business operations.
   3. Until any changes have been agreed by the Parties in writing, the Parties shall continue to perform their respective obligations in terms of the Agreement and applicable Statement of Work.
5. GENERAL
   1. **Penalties**

Wherever this Agreement provides for a penalty in favour of SARS, SARS shall be entitled to at any time recover damages in lieu of any such penalty.

* 1. **Whole Agreement**

This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.

* 1. **Order of Precedence**

Subject to the provisions of clause 6.6.3, any conflict between the provisions of the various clauses of the Master Services Agreement, the Annexures, and a Statement of Work, shall be resolved in accordance with the following order of precedence (in descending order of priority):

* + 1. the Master Services Agreement;
    2. the Annexures; and
    3. the Statement of Work (subject to the provisions of clause 6.6.3 above and only in respect of those provisions included in the Statement of Work which are not specifically stated to amend the provisions of the Master Services Agreement for purposes of that Statement of Work).
  1. **Variations to be in Writing**

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement shall be of any force or effect unless in writing and signed by the Parties.

* 1. **No Indulgences**

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement shall not constitute or be deemed to be a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

* 1. **No Waiver or Suspension of Rights**

No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement shall be effective only in the specific instance and for the purpose given.

* 1. **Provisions Severable**

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

* 1. **Continuing Effectiveness of Certain Provisions**

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they shall operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

* 1. **No Cession or Assignment**

Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either Party without the prior written consent of the other Party, save as otherwise provided herein.

* 1. **Exclusion of Electronic Signature**

The reference in clauses 52.4, 52.6 and 52.9 to writing signed by a Party shall, notwithstanding anything to the contrary in this Agreement, be read and construed as excluding any form of electronic signature.

1. COSTS

Except as otherwise specifically provided herein, each Party shall bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

1. SIGNATURE
   1. This Agreement is signed by the Parties on the dates and at the places indicated below.
   2. 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.
   3. The persons signing this Agreement in a representative capacity warrant their authority to do so.

SIGNED at on 20\_\_

For and on behalf of

**SOUTH AFRICAN REVENUE SERVICE**

|  |
| --- |
| Signature |
| Name of Signatory |
| Designation of Signatory |

SIGNED at on 20\_\_

For and on behalf of

**SOUTH AFRICAN REVENUE SERVICE**

|  |
| --- |
| Signature |
| Name of Signatory |
| Designation of Signatory |

SIGNED at on 20\_\_

For and on behalf of

**SERVICE PROVIDER**

|  |
| --- |
| Signature |
| Name of Signatory |
| Designation of Signatory |

**ANNEXURE "A"**

**STATEMENT OF WORK TEMPLATE**

**ANNEXURE "B"**

**PRICING AND PAYMENT**

**ANNEXURE "C"**

**SYSTEM – SECURITY STANDARDS**

**ANNEXURE "D"**

**BBBEE CRITERIA**

**ANNEXURE "E"**

**FORM OF PERFORMANCE BOND**

**PERFORMANCE BOND:**

FROM: Full particulars of the issuing financial services institution.

TO: South African Revenue Service

299 Bronkhorst Street

Nieuw Muckleneuk

Brooklyn

0181

***Performance Bond in favour of the South African Revenue Service***

*--------------- (Full particulars of Service Provider (the “Service Provider”)) has confirmed to us that it has entered into an agreement with the South African Revenue Service for the provision of certain analytical and verification services.*

*At the request of the Service Provider, we----- (Full Particular of the financial services institution) (the “Grantor” )hereby unconditionally and irrevocably undertake(s) to pay you, the South African Revenue Service, the maximum of* ***[the amount will be determined for each particular RFQ/P enquiry made to the panel]*** *(the “Guaranteed Amount”) upon receipt by Grantor of your first written demand. The written demand must state that:*

***Insert the conditions under which SARS shall be entitled to called in the security***

*The Guaranteed Amount shall be paid on your first written demand without reference to the accuracy of the amount requested and without regard to any claim or dispute of any nature that any party may allege.*

*This guarantee shall not be negotiable or transferable and is restricted to payment of money in South African Rand.*

*The original shall be surrendered by the South African Revenue Service at any branch of Grantor when demanding payment hereunder.*

*This guarantee shall expire, whether returned to Grantor for cancellation or not at 15H30 on the ------- (****date of validity****) at which time the Grantor’s liability hereunder shall cease and no claims shall be considered thereafter.*

*Any changes to terms and/or conditions of this guarantee must first be agreed to in writing by the Service Provider and the Grantor shall be binding.*

*Signed at ----on this the----day of-------------------------2016*

For: Grantor

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Full Names and Surname

Capacity:

**ANNEXURE "F"**

**TAX CLEARANCE CERTIFICATE**

**ANNEXURE "G"**

**DECLARATION/OATH OF SECRECY**

**ANNEXURE "H"**

**STANDARD OPERATING PROCEDURE**