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MASTER SERVICES AGREEMENT

IN RESPECT

OF

**MODERNISED CCTV SYSTEM AND A LICENCE PLATE RECOGNITION SYSTEM
INCLUDING MAINTENANCE**

Between

THE SOUTH AFRICAN REVENUE SERVICE

("SARS")

And

_____(PTY) LTD

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1. PARTIES

1.1. The Parties to the Agreement are:

1.1.1. **The South African Revenue Service**, an organ of state within the public administration but outside the public service established in terms of Section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), with its principal place of business situated at 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria (“**SARS**”); and

1.1.2. _____ (**Pty**) **Ltd**, Registration Number: (●) a private company registered in terms of the Companies Act, 2009 (Act No. 71 of 2008) with its principal place of business situated at (●) (the **Service Provider**”).

1.2. Collectively referred to herein as the “**Parties**” and individually as a “**Party**”)

2. INTERPRETATION AND DEFINITIONS

2.1. The headings in the Agreement are for reference purposes only and will not govern or affect the interpretation of nor modify nor amplify the terms of the Agreement.

2.2. Unless inconsistent with the context, the words and expressions have the following meanings and similar expressions will have corresponding meanings:

2.2.1. “**Acceptance Certificate**” means the document signed by SARS, indicating its acceptance of a Deliverable (or part thereof);

- 2.2.2. **“Acceptance Testing”** means the criteria and process of measurement, examination and/or such other activities as set out in clause 24 below, required to verify that the Deliverable meets the Technical Requirements;
- 2.2.3. **“Account Executive”** means the Service Provider’s designated senior manager, who will be in charge of the general administration of the Services and will interface with SARS’s Authorised Representative in connection therewith, and to whom all communications regarding the Agreement must be addressed, and further, who will assist in the resolution of any disputes;
- 2.2.4. **“Acts of Insolvency”** means when a Party is unable to pay its debts, becomes insolvent, is going through business rescue, is the subject of any order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction), has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets, enters into or proposes any composition or arrangement with its creditors generally or is the subject of any events or circumstances or analogous to the foregoing in the Republic of South Africa, as fully defined in the Insolvency Act, 1936 (Act No. 24 of 1936), as amended;
- 2.2.5. **“Ad Hoc Services”** means additional services required by SARS from time to time, relating to the Technical Security System or Equipment, Software and/or Project(s) procured by SARS during the Term, subject to SARS’s procurement governance processes and procedures;
- 2.2.6. **“Agreement”** means collectively, this MSA, Service Request and/or Work Order;
- 2.2.7. **“Affiliate(s)”** means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity. The term "Affiliate" will also include:

- 2.2.7.1. a subsidiary of such entity, as the term "subsidiary" is defined in Section 3 of the Companies Act 71 of 2008, as amended; and
- 2.2.7.2. any foreign company which, if it were registered under such Act, would fall within the ambit of such term.
- 2.2.8. **"AFSA"** means the Arbitration Foundation of Southern Africa;
- 2.2.9. **"Annexure(s)"** means annexure to the MSA, where applicable, concluded and signed by the Parties;
- 2.2.10. **"Appendix(ces)"** means appendix(ces) to the Service Request and/or Work Order concluded and signed by the Parties, and appendix to Schedule F;
- 2.2.11. **"Applicable Law(s)"** means any statute which includes without being limited thereto, Companies Act, PFMA, PAJA, PAIA, PSIRA and POPIA including any regulation, directive, or subordinate legislation; the common law; any binding court order as between the Parties, judgment; any applicable securities industry code, standard enforceable by law; or any applicable direction, policy or order that is given by the Authority where there is an onus on the Parties to adhere to the aforesaid;
- 2.2.12. **"Authority"** means any agency, tribunal, commission, regulator, self-regulatory body or other similar body having jurisdiction over the Deliverables and/or Services activities or operations of any of the Parties in any territory that is applicable to the Agreement, including without limitation, Information Regulator, SARB, PSIRA and SARS;
- 2.2.13. **"B-BBEE"** means broad-based black economic empowerment as defined in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended from time to time;
- 2.2.14. **"BEE Codes"** means the Codes of Good Practice on Black Economic Empowerment gazetted by the Minister of Trade and Industry under Section 9 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), as amended, applicable to and binding on the Service Provider;

- 2.2.15. **“BEE Status”** means the BEE Status of the Service Provider based on its generic scorecard as measured and certified by a verification agency in accordance with the applicable BEE Codes;
- 2.2.16. **“BEE Verification Certificate”** means a certificate issued by a Verification Agency, verifying the Service Provider's BEE Status level, the details of its scorecard performance, as may be applicable, and any other aspect of its BEE performance under the Codes;
- 2.2.17. **“Best Industry Practices”** means the best industry practice, quality standards and requirements prescribed by PSIRA;
- 2.2.18. **“BRS”** means SARS Business Requirements Specification which forms part of the RFP number 08/2022.
- 2.2.19. **“Business Day”** means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 2.2.20. **“Commercially Reasonable Efforts”** means taking such steps and performing in such a manner as a well-managed firm/consultancy would undertake where such firm / consultancy was acting in a prudent and reasonable manner to achieve the particular result for its own benefit, provided always that such steps are within the reasonable control of the Party;
- 2.2.21. **“Companies Act”** means the Companies Act, 2008 (Act No. 71 of 2008), as amended;
- 2.2.22. **“Confidential Information”** means:
- 2.2.22.1. in relation to SARS, subject to sub-Clause 2.2.22.3 immediately below in this definition any information or data of any nature, whether provided orally or in writing or otherwise obtained and in any format or medium, which constitutes:
- 2.2.22.1.1. SARS Information;
- 2.2.22.1.2. SARS Data;
- 2.2.22.1.3. Taxpayer Information;

- 2.2.22.1.4. information as defined in Section 68 of the Tax Administration Act, 2011 (Act No. 28 of 2011) (hereinafter referred to as “**TAACT**”);
- 2.2.22.1.5. information which by its nature, content, or circumstances of disclosure is or ought reasonably to be identifiable by the Service Provider as confidential (including by reason of such information not being generally known to, or readily ascertainable by, third parties generally) and/or proprietary to SARS, including (i) information regarding SARS Personnel, independent contractors and suppliers of SARS; processes and plans of SARS and governmental entities; projections, manuals, forecasts, and analyses of SARS; Intellectual Property owned by or licensed to SARS; (ii) information relating to the knowledge, know-how, expertise, trade secrets and activities of SARS; (iii) any information which SARS (without creating a presumption that only so designated information is confidential), acting reasonably, may designate in writing, at the time of disclosure to the Service Provider, as being confidential information; and (iv) and any other information of SARS which would be regarded by a reasonable person to be confidential or proprietary in nature;

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

- 2.2.22.2. in relation to the Service Provider, any information or data of any nature, whether provided orally or in writing and in any format or medium, which is clearly designated in writing by Service Provider, at the time of disclosure to SARS, as being Confidential Information, and which written designation is, in each case acknowledged by SARS, by SARS initialling such designation, or which information by its nature could reasonably be expected to be confidential under the circumstances in which it is disclosed;
- 2.2.22.3. Confidential Information does not include information that is lawfully publicly available to, or lawfully in the Receiving Party's possession, at the time of disclosure thereof by the Disclosing Party (whether before or after the Effective Date) to the Receiving Party; or (ii) is independently developed or learned by the Receiving Party without reference to or use of the Confidential Information of the Disclosing Party; or (iii) is in or enters the public domain without breach of the Agreement or any other obligation owed by the Receiving Party to the Disclosing Party; or (iv) the Receiving Party receives from a Third Party without restriction on disclosure and without breach of a non-disclosure obligation; provided always that notwithstanding the foregoing:
- 2.2.22.3.1. the onus will at all times rest on the Receiving Party to establish that such information falls within such exclusions;
- 2.2.22.3.2. the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information that is publicly available or in a Party's possession;
- 2.2.22.3.3. any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are publicly available or in a Party's possession, but only if the combination itself is publicly available or in a Party's possession; and

- 2.2.22.3.4. the determination of whether information is Confidential Information will not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise.
- 2.2.23. **“Control”** means with regard to any entity, the right or power to dictate the management of and otherwise control such entity by any of:
- 2.2.23.1. holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a corporation) of such entity ordinarily having voting rights;
 - 2.2.23.2. controlling the majority of the voting rights in such entity; or
 - 2.2.23.3. having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.
- 2.2.24. **“Data Protection Agreement”** means the data protection agreement to be signed by the Service Provider as the Operator required for the Processing of the Personal Information as part of the provision of the Services attached to this MSA as **Annexure “B,”**
- 2.2.25. **“Data Protection Legislation”** means collectively, POPIA and any other legislation applicable to the protection of Personal Information in the Republic of South Africa;
- 2.2.26. **“Data Subject”** means the person to whom Personal Information relates;
- 2.2.27. **“Deficiency”** means any error, Problem, non-conformity or defect in the: (i) Software; (ii) Technical Security System Equipment (iii) Security Solution; (iv) operating system; (v) hardware; and/or (vi) Documentation, resulting from any deviation from the functional specification, or incorrect or incomplete documentation;

- 2.2.28. **"Deliverable(s)"** means the deliverables specified in a Service Request or Work Order including and if applicable, any Documentation pertaining to the aforesaid, respectively;
- 2.2.29. **"Disclosing Party"** means a Party disclosing the Confidential Information to the Receiving Party;
- 2.2.30. **"Disengagement Assistance"** has the meaning set out in clause 1.1 of the Schedule F (Disengagement Assistance).
- 2.2.31. **"Disengagement Assistance Manager"** has the meaning set out in clause 1.8.1 of the Schedule F (Disengagement Assistance);
- 2.2.32. **"Disengagement Assistance Period"** means the period commencing 6 (six) months prior to expiration of this Agreement, or commencing on any notice of termination and continuing through the effective date of expiration (as it may be extended in terms of the Main Agreement) or, if applicable, through the effective date of termination (as such effective date may be extended in terms of the Agreement) and ending up to 12 (twelve) months after such date as is necessary to successfully complete Disengagement Assistance;
- 2.2.33. **"Disengagement Assistance Plan"** means the disengagement assistance plan(s) to be developed in accordance with Schedule F (Disengagement Assistance);
- 2.2.34. **"Documentation"** means a list of documentation to be delivered by the Service Provider as part of the provision of the Services and/or implementation of a Project as fully set out in the Service Request and/or Work Order;
- 2.2.35. **"ECA"** means the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended;
- 2.2.36. **"Effective Date"** means the MSA Signature Date notwithstanding the Service Request Commencement Date and/or Work Order Commencement Date;

- 2.2.37. **“Fault Reporting Framework”** means the fault reporting framework for reporting and management of faults including Incidents pertaining to the Technical Security System or Equipment and/or Software and/or component thereof attached to the Service level Agreement as **Appendix A**;
- 2.2.38. **“Force Majeure Event”** means any circumstances beyond a Party’s reasonable control and includes, without limitation: (i) acts of God, public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil disorder, sabotage, riot, strikes, lock-outs or other labour disputes, blockade, embargo, sanctions, epidemics, pandemics, act of any Government or other Authority, compliance with law, regulations or demands of any Government or Governmental agency, limitations imposed by exchange control or foreign investment or other similar regulations or any other circumstances of like or different nature beyond the reasonable control of the Party so failing;
- 2.2.39. **“ICT”** means information communication and technology;
- 2.2.40. **“Incident”** means any event that is not part of the standard operation of Services (including a fault with Technical Security System or Equipment or Software or where applicable the provision of the Security Solution or a failure to successfully complete a batch job on time) and that causes, or may cause, an interruption to, or a reduction in, the quality of Services.

2.2.41. **“Intellectual Property”** means all computer programs, software, source code, object code, programmer interfaces, specifications, operating instructions, compilations, lists, databases, systems, operations, processes, methodologies, technologies, algorithms, techniques, methods, designs, circuit layouts and mask-works, plans, reports, data, works protected under the Copyright Act 98 of 1978, works of authorship, video recordings, audio recordings, photographs, models, samples, substances, trade secrets, formulae, know-how, show-how, Confidential Information, concepts and ideas of any nature (including of a technical, scientific, engineering, commercial, strategic, financial, marketing or organisational nature), inventions, discoveries, drawings, notes, manuals, documentation, training materials, job aids, trademarks, service marks, logos, slogans, corporate, business and trade names, domain names, trade dress, brand names and other indicia of origin, regardless of whether Intellectual Property Rights actually inhere in any such items, and any other tangible or intangible items in which Intellectual Property Rights may inhere, as may exist anywhere in the world and any applications for registration of such intellectual property, and includes all Intellectual Property Rights in any of the foregoing;

2.2.42. **“Intellectual Property Rights”** means all rights of whatever nature and however described in respect of Intellectual Property, including:

2.2.42.1. all patents and other patent rights, including divisional and continuation patents, utility models;

2.2.42.2. rights in and to inventions, whether patentable or not;

2.2.42.3. rights in trademarks, service marks, logos, slogans, corporate, business and trade names, trade dress, brand names and other indicia of origin;

2.2.42.4. rights in designs, topography rights, rights in circuit layouts and mask-works;

2.2.42.5. copyright, including all copyright in and to computer programs;

- 2.2.42.6. rights in internet domain names, reservations for internet domain names, uniform resource locators and corresponding internet sites;
- 2.2.42.7. rights in databases and data collections; and
- 2.2.42.8. know-how, show-how, trade secrets and confidential information, in each case whether or not registered and including applications for the registration, extension, renewal and re-issuance, continuations in part or divisions of, any of these and the right to apply for any of the foregoing, all claims for past infringements, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.
- 2.2.43. **“ISO”** means International Standards Organization, specifically in the implementation of quality standards and requirements in line with ISO 9001:2008/15 to increase and continually improve on operational efficiency;
- 2.2.44. **“ITIL”** means the Information Technology Infrastructure Library published by the UK Office of Government Commerce (**“OGC”**), and any natural successor organisations to the OGC, from time to time together with the associated published codes of practice (including DISC PD005 and any updates and amendments thereto) and best practice guides published by the IT Service Management Forum (**“ITMF”**) from time to time, including any natural successor organisations to the ITMF;
- 2.2.45. **“Letter of Award”** means the letter of award issued to the Service Provider by SARS and signed by SARS on the (●) and by the Service Provider on (●);
- 2.2.46. **“Losses”** means all losses, liabilities, costs, expenses, fines, penalties, damages and claims, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties);

- 2.2.47. **“Maintenance Services”** means without being limited thereto, (i) preventative maintenance and corrective maintenance as may be required for the purpose of ensuring continued functionality and operation of the of the Technical Security System or Equipment or Software and where applicable the provision of the Security Solution as set out in the Service Request or Work Order, in accordance with the functional specification and Documentation, including the performance of: (ii) the maintenance activities; (iii) the identification and notification of Problems and/or Deficiencies (iv) installing of workarounds, patches, Bug-fixes, upgrades, enhancements and new releases;
- 2.2.48. **“Master Services Agreement or “MSA”** means this Master Services Agreement and its Annexure/Schedules thereto as may be attached by the Parties from time to time in writing;
- 2.2.49. **“MSA Pricing”** means the Service Provider’s pricing proposal received and accepted in response to the RFP for the provision of the Services;
- 2.2.50. **“MSA Signature Date”** means the date of signature of the Agreement by the Party last signing;
- 2.2.51. **“MSA Term”** means the term of this MSA as fully defined in Clause 9 below;
- 2.2.52. **“OHSA”** means the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) and regulations thereto, amended;
- 2.2.53. **“Operator”** means a person who processes personal information for a responsible party in terms of a contract or mandate, but does not come under the direct authority or control of the Responsible Party and for the purposes of the Agreement, Operator means the Service Provider;
- 2.2.54. **“PAIA”** means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), as amended;

- 2.2.55. **“PAJA”** means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- 2.2.56. **“Performance Failure”** means a failure to attain a prescribed Service Level, which will entitle SARS to levy a financial penalty or which may result in the cancellation of a Service Request Work Order as well as reallocation of a Service Request or Work Order to another service provider or termination of the Agreement;
- 2.2.57. **“Personal Information”** means information relating to an identifiable, living, natural or juristic person as fully defined in Section 1 of POPIA;
- 2.2.58. **“Personal Information Breach”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to, Personal Information transmitted, stored or otherwise Processed;
- 2.2.59. **“PFMA”** means the Public Finance Management Act, No. 1 of 1999;
- 2.2.60. **“POPIA”** means Protection of Personal Information Act, 2013 (Act No. 4 of 2013);
- 2.2.61. **“Project”** means Security Solution required by SARS during the Term, set out in the BRS;
- 2.2.62. **“Project File”** means a project file to be prepared, maintained and managed by the Service Provider during the Project implementation;
- 2.2.63. **“Project Index Layout Guide”** means the technical security to be populated as Part of the project file to be maintained and managed by the Service Provider relating to a Project implemented as envisaged in this Agreement, a copy of the project index layout guide is contained in Annexure C of this MSA as **Annexure C**;
- 2.2.64. **“PSIRA”** means the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);

- 2.2.65. **“Privacy and Data Protection Requirements”** means the 8 (eight) requirements for the lawful Processing of personal information contained in Chapter 3 of POPIA;
- 2.2.66. **“Problem”** means the unknown underlying cause of one or more Incidents.
- 2.2.67. **“Process” and “Processing”** means any operation or activity or any set of operations, whether or not by automatic means, concerning Confidential Information, including its collection, receipt, recording, organisation, collation, storage, updating or modification, merging, linking, blocking, degradation, erasure or destruction retrieval, alteration, consultation, testing or use, dissemination or distribution by any means;
- 2.2.68. **“Province(s)”** means Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape;
- 2.2.69. **“Region(s)”** means a Province or Provinces allocated to the Service Provider which region(s) are as stated in **Annexure D** of this MSA;
- 2.2.70. **“Resources”** means the functional equipment, systems (computer and telephone/mobile systems), tools and/or machines required for the performance of the Services by the Service Provider;
- 2.2.71. **“RFP”** means the Request for Proposal number RFP 08/2022 for the provision of the Services including delivery of any Deliverables issued by SARS which forms an integral part of the Agreement and incorporated herein by reference;
- 2.2.72. **“Repo Rate”** means the interest rate (percent per annum) at which the South African Reserve Bank lends money to private banks;
- 2.2.73. **“Responsible Party”** means the party who determines the purpose of and means for Processing Personal Information and for the purposes of the Agreement, Responsible Party shall mean SARS;

- 2.2.74. **“SABS”** means the South African Bureau of Standards is a South African statutory body established in terms of the Standards Act, 1945 and continues to operate in terms of the latest edition of the Standards Act, 2008 as the national institution for the promotion and maintenance of standardisation and quality in connection with commodities and the rendering of services;
- 2.2.75. **“SANAS”** means the South African National Accreditation System established in terms of Section 3 (1) of the Accreditation for Conformity Assessment Calibration and Good Laboratory Practice Act, 2006 (Act No. 19 of 2006) and recognised by the South African Government as the national accreditation body;
- 2.2.76. **“SARS Act”** means the South African Revenue Service Act, 1997 (Act No. 34 of 1997);
- 2.2.77. **“SARS Data”** means any information and/or data including but not limited to data or any information owned and created by SARS, whether or not Confidential Information in any format, being information of SARS relating to SARS’s business operations, a taxpayer, its employees, contractors and Service Provider which information and/or data includes without being limited thereto, personal information as defined in the Tax Acts, POPIA, or any other Applicable Legislation, including:
- 2.2.77.1. all reports, documentation, software or inventions in material form, irrespective of media on which they occur, entered into, contained in and/or stored, collected, accessed or processed by the Service Provider for the purpose of providing the Services to SARS; and
- 2.2.77.2. all other records, data, files, input materials, reports, forms and other such items that may be received, computed, developed, used or stored by the Service Provider or any of the Service Provider Personnel, Subcontractor, Subcontractors, for or on behalf of SARS or in connection with the Services;

2.2.78. **“SARS Disengagement Assistance Manager”** has the meaning set out in clause 1.8.2 of the Schedule F (Disengagement Assistance);

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

interests of SARS; (k) information the disclosure of which could reasonably be expected to put SARS at a disadvantage in contractual or other negotiations; and (l) information relating to the security of SARS buildings, property, structures or systems;

- 2.2.80. **“SARS Personnel”** means SARS’s staff, consultants and/or agent employed by SARS for the purposes of the Agreement;
- 2.2.81. **“SARS PPS&G”** means the SARS’s physical policies, procedures, processes, standards, guidelines, and other similar issuances (including any updates, amendments or revisions) that are applicable to the Service Provider when accessing SARS’s offices and/or Territories, from time to time as may be amended, updated and/or replaced by SARS;
- 2.2.82. **SARS’s Authorised Representative”** means the SARS employee designated / appointed in terms of the Agreement, or his/her appointed delegate, as the person who will interface with the Service Provider on all matters relating to the general administration of the Agreement, who will manage the overall performance of the Service Provider over the contract term and to whom all communications regarding the Agreement must be addressed, whose details are as set out in the Service Level Agreement;
- 2.2.83. **“SARS’s Project Manager”** means the SARS employee designated/ appointed in terms of the Agreement as the person, who will manage the provision of the Services including the performance thereof by the Service Provider at a SARS Site in terms of a specific Service Request or Work Order, whose details will be communicated in writing to the Service Provider by SARS;
- 2.2.84. **“SARS Sites”** means the SARS’s offices and/or premises within the Region(s) where the Services are required to be provided in terms of the Agreement, which sites will be as specified in the Service Requests and/or Work Order;

- 2.2.85. **“Security Solution”** means a security solution designed, engineered, installed, tested, supplied and commissioned by the Service Provider as a Project, in line with the Technical Requirements and BRS, utilising the Technical Security System or Equipment and/or Software;
- 2.2.86. **“Services”** means collectively, design, engineer, install, supply, test and commission of Security Solution as stipulated in the BRS, and Support Services, Maintenance Services and/or Project;
- 2.2.87. **“Services Fees”** means the fees payable by SARS to the Service Provider for the provision of the Services and/or delivery of a Deliverable, which fees are as fully set out in the Service Request and/or Work Order and aligned to the MSA Pricing;
- 2.2.88. **“Service Level”** means the minimum performance standard of performance and/or compliance which must be met by the Service Provider when rendering the Services which are as fully detailed in the Service Level Agreement or each Service Request entered into by the Parties;
- 2.2.89. **“Service Level Agreement”** means the Service Level Agreement attached to the MSA as **Annexure E**;
- 2.2.90. **“Service Level Credit”** means a penalty amount which will be payable by the Service Provider to SARS for its failure to meet a Service Levels;
- 2.2.91. **“Service Level Failure”** means in respect of a Service Level where actual performance fails to meet or exceed such Service Level in the relevant month or Service Request;
- 2.2.92. **“Service Provider Personnel”** means any staff, entity, institution or person engaged or employed by or on behalf of the Service Provider to provide the Services;

- 2.2.93. **“Service Provider’s Project Manager”** means a senior employee of the Service Provider responsible for the day to day management of the delivery of the Services in terms of a Service Request or Work Order, whose details whose details will be communicated in writing to SARS;
- 2.2.94. **“Service Request”** means a specific written service instruction, outlining the Services and/or Deliverables required within a Region(s), by SARS at SARS Site, issued to the Service Provider to render the Services or part thereof and/or to deliver a Deliverable, in terms of this MSA and Service Request Terms, and signed by the SARS Authorised Representative, a template of which is attached hereto as **Annexure F** to this MSA;
- 2.2.95. **“Service Request Commencement Date”** means the commencement date of the specific Services described in the Service Request notwithstanding the Service Request Signature Date;
- 2.2.96. **“Service Request Signature Date”** means notwithstanding the MSA Signature Date, the date of signature of the Service Request by a Party signing last in time;
- 2.2.97. **“Service Request Terms”** means the specific terms and conditions applicable to the provision of the Services and/or delivery of a Deliverable which terms shall where required, be as fully set out in a Service Request;
- 2.2.98. **“Signature Date”** means the date of signature of this MSA by the Party last signing, notwithstanding the Service Request Signature Date or Work Order Signature Date;
- 2.2.99. **“Software”** means an operating system and/or software required by SARS for the operation and/or functionality of the Security Solution and/or Technical Security System or Equipment;
- 2.2.100. **“Staff”** means collectively, SARS Personnel and Service Provider Personnel;

- 2.2.101. **“Subcontractor”** means a third party (including a Service Provider Affiliate), to whom Service Provider subcontracts or otherwise delegates any Service Provider obligations to perform any of the Services and/or Deliverables (including subcontractors of a Subcontractor) provided that such third party has been approved for such purpose by SARS in accordance with the terms and conditions of the Agreement;
- 2.2.102. **"Support Services"** means the (i) provision of support services of the Technical Security System or Equipment, Software and where applicable the provision of the Security Solution as set out in the Service Request including all support activities as fully set out in Clause 10 below as well as those services, functions or responsibilities not specifically mentioned herein but which are reasonably and necessarily required for the proper performance and provision of the Services as these may evolve or be supplemented, enhanced, modified, amended or replaced in accordance with the terms of this MSA logged by SARS and escalated to the Service Provider in accordance with the Service Level Agreement; (ii) resolution of all Incidents logged by SARS in accordance with the Service Levels; and (iii) attendance to any break fix, installation and repair of all hardware or software;
- 2.2.103. **“Tax Act”** means an Act, or a portion thereof, referred to in Section 4 read with Schedule 1 to the SARS Act, as well as the Tax Administration Act No. 28 of 2011; the Mineral and Petroleum Resources Royalty Act No 28 of 2008 and the Mineral and Petroleum Resources Royalty Administration Act No. 29 of 2008 as amended;
- 2.2.104. **"Taxpayer Information"** means any relevant material, including details of a Taxpayer's bank account, Tax reference number; identity number and/or any information, document or thing that is reasonably foreseeable to be relevant to enable the performance of the Services as envisaged in this MSA (and as may be more fully described in the Agreement), provided by a Taxpayer or obtained by SARS in respect of a Taxpayer;

- 2.2.105. **“Technical Requirements”** means SARS’s requirements for hardware, devices and/or software set forth in the BRS which must be considered and implemented by the Service Provider where supply of a Security Solution, Technical Security System or Equipment and/or Software is required which technical requirements shall be as set out in the Service Request or Work Order;
- 2.2.106. **“Technical Security System or Equipment”** means security system and/or equipment deployed within SARS’s environment for the enablement of a secure and safe working environment for SARS;
- 2.2.107. **“Term”** means the term of the Agreement as defined in Clause 9 below;
- 2.2.108. **“Third Party”** means any person other than SARS, Affiliates or Subcontractor;
- 2.2.109. **“Third Party Intellectual Property”** means Intellectual Property owned by a third party and licensed for use by the Service Provider in the provision of the Services subject to SARS’s written consent;
- 2.2.110. **“Third Party Service Provider(s)”** means the network, facilities authorised to the extent involved: (i) in providing the Services and/or (ii) delivery of the Deliverables under the Agreement with the Service Provider; and
- 2.2.111. **“VAT”** means Value-Added Tax levied in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991);
- 2.2.112. **“Work Order”** means a specific written service instruction, outlining the Project and/or deliverables required within a Region(s), by SARS at SARS Site, issued to the Service Provider to implement the Project or part thereof, in terms of this MSA and Work Order Terms, and signed by the SARS Authorised Representative, a template of which is attached hereto as **Annexure G** to this MSA; which terms shall where required, be as fully set out in a Service Request;

- 2.2.113. **“Work Order Commencement Date”** means the commencement date of the specific Work Order described in the Work Order notwithstanding the Work Order Signature Date;
- 2.2.114. **“Work Order Signature Date”** means notwithstanding the MSA Signature Date, the date of signature of the Work Order by a Party signing last in time; and
- 2.2.115. **“Work Order Terms”** means the specific terms and conditions applicable to the implementation of the Project which terms shall where required, be as fully set out in a Service Request.
- 2.3. Any reference in this MSA to:
- 2.3.1. **“Clause”** shall, subject to any contrary indication, be construed as a reference to a Clause in this MSA.
- 2.3.2. **“Person”** refers to any person including juristic entities.
- 2.4. Unless inconsistent with the context or save where the contrary is expressly indicated:
- 2.5. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the definition Clause, effect shall be given to it as if it were a substantive provision of this MSA;
- 2.6. when any number of days is prescribed in this MSA, such a period shall be computed by excluding the first and including the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
- 2.7. no provision of this MSA constitutes a stipulation for the benefit of any Person who is not a Party to this MSA; and
- 2.8. a reference to a Party includes that Party’s successors-in-title and permitted assignees, including any other persons contemplated in Clause 2.12 of this MSA.
- 2.9. Unless inconsistent with the context, an expression which denotes:

- 2.9.1. any one gender includes the other gender; and
- 2.9.2. the singular includes the plural and vice versa.
- 2.10. Unless it is clear from a specific Clause in which a term has been defined that such definition has limited application to the relevant Clause, any term defined within the context of any particular Clause in this MSA shall bear the same meaning as ascribed to it throughout the Agreement, notwithstanding that that term has been defined in a specific Clause.
- 2.11. The termination of this MSA will not affect the provisions of this MSA which operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding that the Clauses themselves do not expressly provide for this.
- 2.12. This Agreement is binding on the executors, administrators, trustees, permitted assignees or liquidators of the Parties as fully and effectually as if they had signed this MSA in the first instance and reference to any Party is deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.
- 2.13. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.14. None of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.
- 2.15. Subject to Clause 2.15.2 below in the event of a conflict:
- 2.15.1. between the terms and condition contained in various Clauses of the MSA and any other document that is part of or executed under this MSA , these terms and conditions of this MSA shall prevail; and/or
- 2.15.2. the MSA, and RFP, the provision of the RFP will prevail.

- 2.16. This Agreement shall govern the relationship between the Parties for Services to be provided by the Service Provider to SARS. Any terms and conditions imposed by the Service Provider (whether in a quotation, offer, proposal, invoice, etc., as the case may be) and purporting to bind SARS, shall not (to the extent that they contradict the provisions of this MSA) override this MSA, unless agreed to by SARS in writing and such agreement is confirmed and signed by SARS.

3. AGREEMENT STRUCTURE

- 3.1. This MSA provides a framework for, and the general terms applicable to the Services that the Service Provider will provide to SARS under the Agreement.
- 3.2. By written agreement, the Parties may, from time to time, include under the MSA, the: (i) Service Request pertaining to particular Services and/or Deliverable(s) to be provided by the Service Provider to SARS under the Agreement; and/or (ii) Project pertaining to a particular Security Solution to be implemented by the Service Provider for SARS under the Agreement.
- 3.3. The provisions of this this MSA shall apply to each and every Service Request and/or Work Order concluded by the Parties under this MSA.
- 3.4. The Service Provider will provide the Services to and/or implement a Project for SARS subject to the terms and conditions of this MSA *generally* and *specifically*, subject to the terms and conditions set forth in the relevant Service Request or Work Order.
- 3.5. It is agreed that notwithstanding any:
- 3.5.1. Service Request or the like which SARS may issue to the Service Provider requesting any Services to be provided under the Service Request, such Service Request shall constitute a contract document in terms of this MSA.; and
- 3.5.2. Work Order or the like which SARS may issue to the Service Provider requesting any Project to be provided under the Work Order, such Work Order shall constitute a contract document in terms of this MSA.

- 3.6. If there is a conflict between the terms in the various contract documents including this MSA, Service Request Terms, Work Order Terms, and/or any Annexures, Schedules and/or Appendices thereto:
- 3.6.1. subject to Clause 3.6.5 below, to the extent the conflicting terms can reasonably be interpreted so that such terms are consistent with each other, such consistent interpretation shall prevail;
- 3.6.2. subject to Clause 3.6.5 below, to the extent the conflicting term pertains specifically to the Services and/or any aspect thereof, the provisions of the Service Request Terms shall prevail;
- 3.6.3. subject to Clause 3.6.5 below, to the extent the conflicting term pertains specifically to the Project and/or any aspect thereof, the provisions of the Work Order shall prevail;
- 3.6.4. to the extent that Clauses 3.6.1 , 3.6.2 and 3.6.3 above do not apply and subject to Clause 3.6.5, below, any conflict between the provisions of the various Sections of the MSA, the Service Request and/or Work Order and will be resolved in accordance with the following order of precedence (in descending order of priority): (a) Service Request and Appendices; (b) Work Order and Appendices, (c) the MSA and its Annexures; and (d) RFP and proposal thereto, in the same order of precedence attaching to the documents to which they are annexed;
- 3.6.5. the Service Request may amend the terms and conditions of this MSA only with respect to the subject matter of such Service Request. Insofar as any Service Request specifically amends the provisions of this MSA, such amendment shall prevail in respect of that Service Request only. For the avoidance of doubt, it is recorded that the terms of one Service Request shall not apply to any other Service Request;

- 3.6.6. the Work Order may amend the terms and conditions of this MSA only with respect to the subject matter of such Work Order. Insofar as any Work Order specifically amends the provisions of this MSA, such amendment shall prevail in respect of that Work Order only. For the avoidance of doubt, it is recorded that the terms of one Work Order shall not apply to any other Work Order; and
- 3.6.7. neither the Service Request and Work Order, shall not be used as a vehicle to extend and/or revive the MSA in the event of the expiry of the MSA and/or termination thereof for any reason whatsoever.

4. SERVICE REQUEST REQUIREMENTS

- 4.1. Each Service Request shall be: (i) in writing and contain the following requirements and (ii) in conformance with the process set forth herein:
- 4.1.1. details of the Service Request;
 - 4.1.2. details of all Services to be performed;
 - 4.1.3. details of all Deliverables required;
 - 4.1.4. details of the amount, schedule and method of payment (subject to the provisions of Clause 26 below);
 - 4.1.5. the duration of the Services;
 - 4.1.6. completion and acceptance criteria;
 - 4.1.7. all and any reporting requirements; and
 - 4.1.8. any applicable Service Levels and Service Level Credits.

5. WORK ORDER REQUEST REQUIREMENTS

- 5.1. Each Work Order shall be: (i) in writing and contain the following requirements and (ii) in conformance with the process set forth herein:
- 5.1.1. details of the Work Order;
 - 5.1.2. details of the Project to be implemented;

- 5.1.3. details of all Project deliverables required;
- 5.1.4. details of the amount, schedule and method of payment (subject to the provisions of Clause 26 below);
- 5.1.5. the duration of the Project;
- 5.1.6. completion and acceptance criteria;
- 5.1.7. all and any reporting requirements; and
- 5.1.8. any applicable Project timelines and penalties.

6. APPOINTMENT

- 6.1. The Service Provider is hereby appointed in accordance with the Letter of Award, to provide the Services to SARS under the RFP.
- 6.2. The Service Provider represents that it has and warrants that throughout the duration of the Agreement, it shall have the skilled, qualified, and experienced Service Provider Personnel as well as Resources necessary to perform the Services.
- 6.3. The Service Provider warrants that it will adhere to all SARS's security policies and standing operating procedures in the performance of the Services.
- 6.4. The Service Provider will be utilised on an ad hoc basis, as and when required by SARS. SARS does not guarantee that the Service Provider will receive Service Requests or Work Order during the Term.
- 6.5. In reliance on these statements and representations and subject to the provisions of the MSA, SARS has selected and placed the Service Provider on a Panel to provide the Services or Project on a non-exclusive basis to SARS, which appointment the Service Provider hereby accepts.

- 6.6. SARS shall not be precluded from obtaining services that may be similar or identical to the Services or Project from any other service provider and nothing contained herein will in any way be construed or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work or contract from SARS for services in the future, whether under the Agreement or otherwise.
- 6.7. In the event that the Service Provider merges with a service provider, who is not a Pre-approved Service Provider to the Panel, the inclusion of such merged entity on the said panel shall be subject to SARS's procurement processes and procedures, written approval and such further conditions as prescribed by SARS in writing. The Service Provider acknowledges the procurement governance processes and procedures binding on SARS and such acknowledges and agrees that any such merger without SARS's prior written consent shall be deemed to be a material breach of the Agreement.
- 6.8. SARS reserves the right, should it be deemed necessary in SARS's sole discretion, to enter into an agreement with the Service Providers or other service providers who are not Pre-approved Service Providers on the Panel during the Term of the Agreement.

7. NATURE OF RELATIONSHIP AND NON-EXCLUSIVITY

- 7.1. The Parties act for all purposes in terms of the Agreement as independent contractors. Without limiting the foregoing:
- 7.1.1. neither Party shall be entitled to contract on behalf of or bind the other Party in any manner whatsoever or to incur any liability or debt on behalf of the other Party; and
- 7.1.2. the Service Provider shall not publish or cause to be published any advertisement or other information relating to SARS or SARS's business without the prior written approval of SARS; and

7.1.3. neither Party's Staff shall be deemed Staff of the other Party for any purpose whatsoever and for these purposes, where the Service Provider has utilised the fixed term contractors, temporary employees and/or consultants either as Service Provider Personnel, the Service Provider undertakes to ensure that its contracts with the aforesaid Service Provider Personnel, specifically states that the assignment to SARS is only for a project and is by no means a reflection of SARS as an intended employer of the Service Provider Personnel or deemed employer in terms of the deeming provision introduced by Section 198 the Labour Act, 1995 (Act No. 66 of 1995 as amended) ("**the Labour Relations Act**"), in the event of termination of the Agreement for any reason whatsoever.

7.2. In the event that the Labour Act, deems the Service Provider Personnel to be employees for the purposes of the aforesaid Section 198, the Service Provider undertakes to indemnify SARS in full against all costs, expenses (including legal expenses on an attorney own client scale), damages, loss (including loss of business or loss of profits), liabilities, demands, claims, actions or proceedings, which the Service Provider may incur arising as a result of the aforesaid Labour Act.

8. SUBCONTRACTORS

8.1. The Service Provider must subcontract Thirty percent (30%) of this Agreement to an Exempt Micro Enterprise ("EME") or Qualifying Small Enterprise ("QSE") which is at least Fifty-one percent (51%) owned by black people.

8.2. The Service Provider will enter into an agreement with the Subcontractor relating to the subcontracting of the Services or Project ("**Subcontractor Agreement**") which agreement will contain materially the same terms and conditions as those contained in the Agreement to the extent that such terms and conditions are relevant to the services to be provided by the Subcontractor. The Subcontractor Agreement shall further restrict the Subcontractor's right to further subcontract its obligations without SARS's prior written consent.

- 8.3. In no event be relieved of its obligations under the Agreement as a result of its use of any subcontractors. The Service Provider will at all times be responsible to SARS for fulfilment of all the Service Provider's obligations under the Agreement and will remain SARS's sole point of contact regarding the Services, including with respect to payment.
- 8.4. The Service Provider will not disclose SARS's Confidential Information to a Subcontractor without SARS's prior written approval and until such Subcontractor or prospective Subcontractor has executed an agreement including provisions at least as rigorous and restrictive as the confidentiality provisions set out in the Agreement and also complied with the integrity and security competence as stated in the Service Request Terms.
- 8.5. The Service Provider will supervise the activities and performance of each subcontractor and will be jointly and severally liable with each such subcontractor for any act or failure to act by such subcontractor.
- 8.6. In the event of SARS's approval of subcontracting, the Service Provider undertakes to ensure that:
- 8.6.1. a subcontractor, complies with the applicable provisions of this Agreement, including in particular, the terms and conditions relating to confidentiality, data security, protection of personal information and intellectual property rights;
- 8.6.2. a Data Protection Agreement is in place between SARS and the subcontracting and the Service Provider remains responsible to ensure that its subcontracting conditions explicitly states this requirement as a 'condition precedent for subcontracting';

- 8.6.3. a written contract with the subcontractor is in place prior to 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 will not terminate, alter, amend or vary in any material respect a subcontract or novate a subcontract that was approved by SARS under this Clause 8 without obtaining prior written consent from SARS;
- 8.6.4. The Service Provider will act as principal and not agent for SARS in all contracts with subcontractors. The Service Provider acknowledges and agrees that it shall, subject always to the limitations and exclusions of liability contained in Clause **Error! Reference source not found.**, be fully responsible for the acts and omissions of all subcontractors as if they were the acts and omissions of the Service Provider.
- 8.7. Notwithstanding the foregoing, the Service Provider acknowledges that it shall be fully responsible for the payment of all fees and charges payable to subcontractors.

9. TERM

9.1. The MSA shall commence Notwithstanding the above, the term of each Service Request shall (unless terminated earlier in accordance with the provisions of the MSA commence with effect from the Effective Date and shall continue as such until the expiry of the last Service Request executed by the Parties date specified in the Service Request (the “**MSA Term**”) or termination thereof in accordance with the provisions of the MSA.

9.2. Notwithstanding the above,

9.2.1. the term of each Service Request shall (unless terminated earlier in accordance with the provisions of the MSA, commence with effect from the Service Request Commencement Date and shall continue as such until the expiry of the date specified in the Service Request (the “**Service Request Term**”) or termination thereof in accordance with Service Request Terms; and

9.2.2. the term of each Work Order shall (unless terminated earlier in accordance with the provisions of the MSA, commence with effect from the Work Order Commencement Date and shall continue as such until the expiry of the date specified in the Work Order (the “**Work Order Term**”) or termination thereof in accordance with Service Request Terms.

9.3. It is recorded that:

9.3.1. the Service Request may subject to Clause **Error! Reference source not found.** below, extend beyond the Service Request Term in respect of such Service Request only, and in such event this MSA will expire on the date of the expiration of such last Service Request executed by the Parties, provided that all Services and/or Deliverables procured in terms of a Service Request shall be so procured during the MSA Term and no new Service Request may be issued may be concluded after the MSA Term; and

9.3.2. the Work Order may subject to Clause 9.4 below, extend beyond the Work Order Term in respect of such Work Order only, and in such event this MSA will expire on the date of the expiration of such last Work Order executed by the Parties, provided that the Project and/or Deliverables procured in terms of a Work Order shall be so procured during the MSA Term and no new Work Order may be concluded after the MSA Term.

9.4. SARS shall have the option, in its sole discretion, to extend the MSA beyond the MSA Term for a further period approved in terms of its procurement policies and procedures ("**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 the right on the part of SARS to renew the MSA for the Renewal Period may be exercised in respect of certain Region(s) or Services only and not others, as the case may be, at SARS' option and without any penalty to SARS. The then-existing terms and conditions of this MSA shall unless agreed otherwise by the Parties in writing, remain in full force and effect during the Renewal Period, *mutatis mutandis*.

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

10. REQUEST FOR SERVICES AND WORK ORDERS

10.1. The Parties agree that the Service Provider has been appointed to the in order to render Services as specified in the Service Request to SARS within the Region(s).

10.2. SARS shall, as a vehicle of procurement and when required from time to time, issue a Service Request or Work Order to the Service Provider in the relevant Region(s) for the provision of the Services as outlined in the Service Request.

10.3. **Service Request:**

- 10.3.1. If SARS wishes to have the Service Provider perform Support Services and/or Maintenance Services and/or Project and/or Deliverables from the Service Provider, it will issue a Service Request to a Service Provider within the relevant Region(s).
- 10.3.2. The Support Services and/or Maintenance Services and/or Project and/or Deliverables supplied by Service Provider shall conform to the Technical Requirements set forth in the applicable Service Request and obligations contained within the Agreement.
- 10.3.3. The Service Provider must perform all obligations required of it in terms of this MSA and Service Request Terms and to the Service Request issued within the Region(s).
- 10.4. The Service Provider shall provide the Services utilising the requisite skills and expertise highlighted in the Service Provider's proposal, subject to this MSA and Service Request Terms and in accordance with the Best Industry Standards and/or professional standards generally acceptable in the security profession. In the event of any doubt regarding what constitutes generally acceptable standards, the Parties shall request a directive from the relevant regulatory Authority.
- 10.5. SARS makes no undertaking that a Service Request will be issued during the Term.
- 10.6. **Work Orders:**
- 10.6.1. SARS shall, when required from time to time, issue a Work Order to the Service Provider in the relevant Region(s) for the Project as outlined in the Work Order.
- 10.6.2. The Service Provider must perform all obligations required of it in terms of the Agreement and the Work Order issued within the Region(s).
- 10.6.3. If SARS wishes the Service Provider to attend to a Project, it will issue a Work Order to the Service Provider within the relevant Region(s).

10.6.4. Project to be performed by the Service Provider shall conform to the Technical Requirements set forth in the applicable Work Order and implemented in accordance with the Work Order Terms and the provisions of this MSA.

10.7. The Service Provider shall implement the Project utilising the requisite skills and expertise highlighted in the Service Provider's proposal, subject to this MSA and Work Order Terms and in accordance with the Best Industry Standards and/or professional standards generally acceptable in the security profession. In the event of any doubt regarding what constitutes generally acceptable standards, the Parties shall request a directive from the relevant regulatory Authority.

10.8. SARS makes no undertaking that a Work Order will be issued during the Term.

11. DISENGAGEMENT ASSISTANCE

11.1. Service Provider may charge for Disengagement Assistance only in accordance with the provisions of Schedule F (Disengagement Assistance).

12. APPROACH TO THE SERVICES AND SERVICE PERFORMANCE

12.1. SARS has appointed the Service Providers to render the Services as stated in the RFP . The Service Provider is required to perform the Support Services or Maintenance Services or Projects on an "*as and when required basis*" within the allocated Region(s).

12.2. SARS may, from time to time and as and when needed, issue a Service Request or Work Order to the Service Provider on the Panel to perform the Support Services or Project outlined in the Service Request or Project outline in the Work Order, each within the allocated Region(s).

12.3. Notwithstanding the above, the Service Provider will:

- 12.3.1. provide the Support Services and Maintenance Services to SARS subject to the terms and conditions of the Agreement *generally*, and in particular, subject to the Service Request Terms set forth in the relevant Service Request; and
- 12.3.2. implement the Project for SARS subject to the terms and conditions of the Agreement *generally*, and in particular, subject to the Work Order Terms set forth in the relevant Work Order.

13. PERFORMANCE OF SERVICES BY SUBCONTRACTORS

- 13.1. Where SARS has approved a Subcontractor for the performance of any aspect of the Support Services or Project, the Service Provider remains responsible for the supervision of the activities and performance of each Subcontractor and will be liable for any act or failure to act by such Subcontractor which causes any harm, loss or damage to SARS and/or Third Party Service Provider including reasonable costs of any investigations (incurred by SARS) into the activities of such Subcontractor by relevant authorities.
- 13.2. Notwithstanding the aforesaid, if SARS determines that the performance or conduct of any Subcontractor is unsatisfactory or if it can be reasonably established or determined that concerns exist regarding the Subcontractor's ability to render future performance due to changes in the ownership, management, and/or financial condition of the Subcontractor, or there has been material misrepresentations regarding the Subcontractor on the strength of which SARS's consent was granted for the appointment of such Subcontractor, SARS may notify the Service Provider of its determination in writing, indicating the reasons therefore, in which event the Service Provider undertakes to promptly take all necessary actions to remedy the performance or conduct of such Subcontractor or replace such Subcontractor with another Subcontractor acceptable to SARS.

14. SCOPE OF THE SERVICE

- 14.1. The Service Provider may, as and when determined by SARS, be required to provide SARS with the following Services:

- 14.1.1. Design, engineer, supply, install, test and commission Security Solution at the relevant SARS Site(s) within the allocated Region(s);
- 14.1.2. Design IP CCTV surveillance system and Licence Plate Recognition (LPR) system for all identified SARS Site(s) or facilities.
- 14.1.3. Supply and deliver CCTV and LPR components to the designated SARS Site(s) or facilities;
- 14.1.4. Install all CCTV and LPR system and its components in line with the SARS approve designs;
- 14.1.5. Manufacture and install Poles for CCTV and LPR, associated power supply adapters;
- 14.1.6. CCTV cabling (where necessary as most cable will be done by SARS IT);
- 14.1.7. Network Switches (Where necessary as most network switches will be supplied and configured by SARS IT);
- 14.1.8. Install solar power for the CCTV and LPR where required inline with the SARS approved design;
- 14.1.9. Integrate components of the CCTV and LPR to ensure connectivity among all components of the system;
- 14.1.10. Test the Installed CCTV and LPR system and its components for performance for 120 hours in line with the SARS approved design
- 14.1.11. Training of SARS users and supply manuals and certification where applicable:
 - 14.1.11.1 System admin;
 - 14.1.11.2 Maintenance team;
 - 14.1.11.3 System operators; and
 - 14.1.11.4 Management.

- 14.1.12. Prepare CCTV and LPR system commissioning plan for approval by SARS including the schedule indicating the dates of commissioning;
- 14.1.13. Commission the integrated system as per the SARS approved commissioning report;
- 14.1.14. Hand over the system and warranty twelve (12) months and its components in line with the Original Equipment Manufacturer (OEM) specifications;
- 14.1.15. Technical security support (including break-fix repairs) to the security systems and/or equipment installed at the relevant SARS Site(s);
- 14.1.16. Repair and support of a Technical Security System or Equipment, Software and/or Security Solution under warranty, as specified in the Service Request for such solution. Such repair and support services will be provided at no additional cost to SARS;
- 14.1.17. Conduct and participate in investigations or analyses regarding, Technical Security Systems and/or Equipment, Software and/or Security Solution;
- 14.1.18. Inspection of the Technical Security Systems and/or Equipment, Software and/or Security Solution at the relevant SARS Site(s) and proposal of solutions where appropriate or deemed to be necessary;
- 14.1.19. Technical Security System or Equipment, Software and/or Security Solution, including vulnerability assessments to determine compliance with current Best Industry Practice and/or international standards and trends, where applicable;
- 14.1.20. Assessment of specific risks at the relevant SARS Site(s) to determine security needs to be covered by electronic Technical Security Systems and/or Equipment, Software and/or Security Solution;
- 14.1.21. Assessment of the integration and compatibility of existing Technical Security System or Equipment, Software and/or Security Solution into new proposed systems;

- 14.1.22. Cost estimations in terms of maintenance on existing and new proposed Technical Security System or Equipment, Software and/or Security Solution on a national level;
- 14.1.23. Integration of Technical Security System or Equipment, Software and/or Security Solution into the SARS national and/or regional control room(s) at SARS Sites;
- 14.1.24. Introduction of a technical system of standardisation of equipment;
- 14.1.25. Bill of quantities in respect of a relevant SARS Site(s) or a Service Request;
- 14.1.26. Specific risks assessment documents for the relevant SARS Site(s) and an indication of specific Technical Requirements;
- 14.1.27. Detailed technical drawings in terms of equipment location, design layout, communication protocols and systems integration; software licences and registration (where applicable), including certificates of compliance; and
- 14.1.28. Ad Hoc Services.

14.2. **Maintenance**

- 14.2.1. Service Provider shall be responsible for performing preventative maintenance which will include but not limited to providing updates with respect to the Technical Security System or Equipment, Software and/or Security Solution, to prevent errors, and otherwise to minimise the need for corrective maintenance. The Service Provider's obligations in this regard include performing configuration services, application tuning, code restructuring, database indexing, database compaction, and other similar activities required to improve the efficiency, performance, and reliability of the Technical Security System or Equipment, Software and/or Security Solution. Providing technical and other information regarding the Technical Security System or Equipment, Software and/or Security Solution. Performing other preventive maintenance functions reasonably required to maintain the Technical Security System or Equipment, Software and/or Security Solution in good working order.
- 14.2.2. Service Provider shall be responsible for performing corrective maintenance which will include but not limited to developing patches, fixes, maintenance releases and other corrections ("Corrections") for all (i) errors, abnormal, termination, performance or operational issues, security holes or other vulnerabilities and (ii) other issues arising from operation, use, performance or functionality of the Technical Security System or Equipment, Software and/or Security Solution (collectively, the 'Problems'). Whenever a Correction is introduced, Service Provider shall be responsible for promptly updating the Documentation.

14.3. **Guarantees**

14.3.1. **The Service Provider-**

- 14.3.1.1. guarantees solutions proposed and implemented by the Service Provider can be maintained and supported for a period of not less than three (3) years.

- 14.3.1.2. guarantees equipment and workmanship for a minimum period of twelve (12) months, or such longer period as may be guaranteed by a supplier or manufacturer of the relevant equipment; and
- 14.3.1.3. undertakes to, upon expiry or termination of the Agreement, cede to SARS any applicable supplier or manufacturer guarantee it may hold in its name as a result of its execution of the Agreement.

14.4. Compliance

14.4.1. The Service Provider must:

- 14.4.1.1. comply with Applicable Law and where applicable, provide proof thereof on the anniversary of the Effective Date or on such other date as may be agreed upon between the Parties, or on request by SARS;
- 14.4.1.2. use South African designed and produced equipment where possible, without compromising total system integrity and security. In particular, the Service Provider must comply with local production and content requirements in regard to any power and telecoms cables, when such cables are utilised in the fulfilment of a Service Request;
- 14.4.1.3. comply with all SARS policies, procedures, processes and standards;
- 14.4.1.4. provide Services that comply with SARS and SABS minimum specifications or standards;
- 14.4.1.5. for all elements of a solution proposed to SARS, provide a letter from the original equipment manufacturer or distribution agent stating that the Service Provider is authorised to sell, implement and support the equipment making up the solution;

- 14.4.1.6. together with a proposal for a solution or upon request, and within a time period prescribed by SARS at its exclusive discretion, provide proof of competency and/or accreditation requested by SARS in terms of installation of applicable security components making up the solution; and
- 14.4.1.7. undertake the Services at a SARS Site. Should the removal of any equipment belonging to SARS be necessary, the Service Provider must request permission to do so from the SARS Project Manager, which permission shall not be unreasonably withheld. The Service Provider further undertakes to bear the risk in and to any equipment whilst so removed from a SARS Site.

14.5. Turnaround times:

- 14.5.1. The Service Provider must strictly adhere to the fault reporting response and resolution turnaround times set forth in the Fault Reporting Framework (**Appendix A to the Service Level Agreement**) hereto. Failure to adhere to the aforesaid response and resolution turnaround times shall constitute a Performance Failure.
- 14.5.2. The Service Provider specifically agrees that where the completion of the Services occurs beyond the prescribed or agreed timelines, SARS will not be responsible for any additional costs associated with the late completion of the Services, except as provided for in Clause 14.5.3 below.
- 14.5.3. The Service Provider shall not be liable to SARS for any delay or failure to execute a Service Request either at all, or in a timely manner, where such delay or failure is solely attributable to SARS.

14.6. Keeping of Records:

- 14.6.1. The Service Provider must, where engaged and applicable:
 - 14.6.1.1. record SARS Site visits in the project journal and append the signature of the Service Provider's Project Manager or his/her appointed delegate;

- 14.6.1.2. physically monitor the technical security measures/systems, test the operation of the security measures/systems and conduct quality assurance;
- 14.6.1.3. record the results of the monitoring and/or testing of the security measures and/or systems in the project journal; and
- 14.6.1.4. provide project reports or information as and when required by the SARS Project Manager and/or SARS Authorised Representative; and
- 14.6.2. Upon close out, provide a Project File to the SARS Project Manager per Service Request, including but not limited to the information outlined in **Annexure C (“Project Index Guide”)**.

14.7. Prohibited Acts:

- 14.7.1. The Service Provider shall ensure that the Service Provider’s Personnel do not-
 - 14.7.1.1. Fight or behave disorderly whilst at a SARS Site;
 - 14.7.1.2. Use or remove SARS’s property without authority;
 - 14.7.1.3. Disregard SARS policies and procedures regarding access to and/or health and safety at a SARS Site; or
 - 14.7.1.4. Provide the Services at a SARS Site whilst under the influence of alcohol or dependence producing drugs.

15. GENERAL PROVISIONS RELATING TO THE SERVICES

15.1. General Terms:

- 15.1.1. The Service Provider shall generally render the Services on the terms and conditions of the Agreement and, specifically, in accordance with the specifications set out in a Service Request.

- 15.1.2. Any Service Request may involve working with Third Party Service Providers. The Service Provider undertakes to work with and co-operate with such Third Party Service Providers.
- 15.1.3. The Service Provider shall:
- 15.1.3.1. Maintain a basic level of competence in technical network configuration and support;
 - 15.1.3.2. Attend operational meetings at times and places as requested by SARS; and
 - 15.1.3.3. Where requested, participate in any operational meeting where the benefit of the Service Provider's expertise may be of use to SARS, including but not limited to problems which may be associated with the Service Provider's solution.
- 15.1.4. Without limiting the generality of the Service Provider's obligations detailed elsewhere in the Agreement, the Service Provider undertakes as part of the Services for the Term:
- 15.1.4.1. to comply with SARS's information and data security standards as communicated in writing from time to time; and

15.1.4.2. at its own cost, provide, maintain and, where required, upgrade such Technical Security System or Equipment, Software and/or Security Solution as may be necessary, and as required by SARS, for the provision of the Services. In particular, the Service Provider shall ensure that all Technical Security System or Equipment, Software and/or Security Solution will be kept at levels supported by the licensor and will be upgraded as required to meet the Technical Security System, or Equipment, Software and/or Security Solution, licensor end-of-life policies and timelines and licensor-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 Technical Security System or Equipment, Software and/or Security Solution. The Service Provider shall ensure that Technical Security System or Equipment, Software and/or Security Solution and the Service provision at all times remains compatible with SARS's architectural technology standards and strategies.

15.1.5. The Service Provider undertakes for the Term, to provide the Services as fully outlined in Clause 10 to SARS in accordance with the provisions of the Agreement.

15.1.6. The Service Provider shall perform the Services contemplated in the Agreement remotely or where required, onsite, at the SARS Sites. In instances where SARS discloses Confidential Information for the provision of the Services, the Service Provider shall not remove any of the so disclosed Confidential Information from the SARS Site without SARS's express prior written permission, which SARS may, in its sole discretion, withhold. For these purposes, the Service Provider Personnel shall sign SARS's oath of secrecy and where applicable, without limiting Clauses 33, 34, and 35 below, as well as Data Protection Agreement, which documents will once signed by the Parties, be incorporated herein by reference.

15.1.7. The Service Provider shall provide all Services utilising security technologies and techniques in accordance with Best Industry Practice and SARS PPS&G including those relating to the prevention and detection of inappropriate use or access of Technical Security System or Equipment, Software and/or Security Solution, and networks. For the avoidance of doubt, the Service Provider will not be under any obligation to find such suitable software, systems or networks if it is not currently using it in the provision of services to its other clients. Should the Service Provider, however, be using certain software or programmes for similar services rendered to other clients, SARS has the expectation that such software will also be used in the provision of the Services under the Agreement, where appropriate.

15.1.8. The Service Provider undertakes for the Term:

15.1.8.1. to use industry leading levels of functionality and performance as prescribed by the Best Industry Practice in the provision of the Services to SARS;

15.1.8.2. to implement such new technologies as it deems appropriate to deliver the Services to SARS in order to maintain competitiveness in the quality and scope of Services available to SARS and to take advantage of market cost efficiencies. The Service Provider will also keep the Technical Security System or Equipment, Software and/or Security Solution under the Agreement current with industry advances and leading technology standards; and

15.1.8.3. to provide SARS with information regarding any newly improved or enhanced commercially available information technologies that the Service Provider becomes aware of and which reasonably could be expected to have a positive impact on the Technical Security System or Equipment, Software and/or Security Solution including, without limitation, in the areas of increased efficiency, increased quality and/or reduced costs.

- 15.1.9. Without limiting the generality of the foregoing, the Service Provider shall implement and/or use network management and maintenance applications and tools and appropriate intrusion detection, identity management, and encryption technologies when providing the Services. The Service Provider shall maintain the security of the Technical Security System or Equipment, Software and/or Security Solution and the systems relating to such Technical Security System or Equipment, Software and/or Security Solution at a level that is generally acceptable in the marketplace and/or as prescribed by Best Industry Practice.
- 15.1.10. The risk of and liability for any erroneous Deliverables or any errors which may occur due to fraud or unlawful activity on the part of the Service Provider's Staff shall lie with the Service Provider.
- 15.1.11. In the event that any installation, connection and/or configuration of the systems is required for the performance of the Services, the Parties shall record and agree on the Technical Requirements required for the installation, connection and configuration of such systems used for the provision of the Services and/or functioning of the Technical Security System or Equipment, Software and/or Security Solution in order to ensure Services performance and delivery.
- 15.1.12. Without limiting the provisions of this Clause 15, the Parties undertake to do all reasonable things, perform all reasonable actions and take all reasonable steps and, where necessary, to procure the doing of same 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 the Agreement where such things, actions, steps and procurement shall not materially and/or adversely affect such Party being expected to so perform.

16. SERVICE LEVELS

- 16.1. The Service Provider shall perform the Services with promptness and diligence, where possible, and courtesy on a best effort basis and ensuring that all Service request logged are attended to during Business Hours and/or Support Hours as stated in the Service Level Agreement (**Annexure “E”**).
- 16.2. 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 Best Industry Practices and professional standards used in well-managed operations performing Services similar to the Services.
- 16.3. The Parties will agree to objectively measurable Service Levels and to specific formulae by which to calculate Service Level Credits related to the Service Provider's failure to meet, or the Service Provider's breach of the Service Levels. The Service Levels and Service Level Credits, including the applicable formulae, shall be included in the Service Level Agreement to which the Services and Service levels relate.
- 16.4. SARS may, to the extent agreed to under the Service Level Agreement recover the applicable Service Level Credit from the Service Provider. In the event that SARS is entitled to a Service Level Credit in accordance with the provisions of the Service Level Agreement, the amount of such Service Level Credit shall be deducted by SARS from any amount due to be paid by SARS to the Service Provider. If there is no further amount due to be paid by SARS to the Service Provider for the Services in question, then the Service Provider shall, at SARS' election, either refund the amount of the Service Level Credit to SARS or provide SARS with a credit note for such amount.
- 16.5. The Service Provider shall be excused from failing to comply with the Service Levels to the extent that non-performance or delayed performance is caused by SARS or its Staff, or a Force Majeure Event.
- 16.6. If the Service Provider fails to meet any Service Level, the Service Provider shall:
- 16.6.1. investigate and report on the root causes of the Service Level Failure;

- 16.6.2. promptly correct the failure and begin meeting the Service Levels;
 - 16.6.3. advise SARS, as and to the extent requested by SARS, of the status of remedial efforts being undertaken with respect to such Service Level Failure; and
 - 16.6.4. take appropriate preventive measures to prevent the recurrence of the Service Level Failure.
- 16.7. SARS shall be entitled to reasonable access to all data in the Service Provider's possession relating to Service Levels and Service Level performance as provided for in this Agreement. When required by SARS in writing, the Service Provider shall provide SARS with written reports on the Service Provider's performance against the Service Levels, together with any supporting information for each report as reasonably requested by SARS.
- 16.8. Should a Service Level Credit become payable to SARS and the Service Provider is also liable to pay damages to SARS under this Agreement in respect of the act or omission that is the subject or cause of failure to meet the Service Level, then the value of the Service Level Credit shall be deducted from any such claim for damages.

17. SERVICE COVERAGE HOURS

- 17.1. The Service Provider shall be available for engagement by SARS on twenty four (24) hours, seven (7) days a week, three hundred and sixty five (365) days a year basis (the “**Service Coverage Hours**”).

18. PERFORMANCE FAILURES

- 18.1. SARS will, at the time of issuing and/or awarding of a Service Request or Work Order, determine and/or prescribe certain Performance Standards (Service Levels) that the Service Provider should comply with in the performance of the requested Services.
- 18.2. Adherence to these Service Levels is crucial to the delivery of the Services at acceptable levels.

- 18.3. Failure to adhere to Service Levels will entitle SARS to levy a Service Level Credit/Penalty for the transgressed Service Level.
- 18.4. Notwithstanding the imposition of a financial penalty in respect of a Performance Failure, SARS reserves the rights and without derogation to any other remedies it may have in law, to-
- 18.4.1. terminate the Agreement for breach by the Service Provider as provided for in Clause 37;
 - 18.4.2. cancel a Service Request or Work Order with immediate effect; or
 - 18.4.3. reallocate with immediate effect the Service Request or Work Order to another service provider. In such an event, the outgoing Service Provider shall be obliged, and for the Service Provider's own reasonable account, to assist in a seamless transition of the Services to the incoming service provider.
- 18.5. Cancellation or reallocation of Services in respect of a Service Request or Work Order in terms of this Clause shall be without any liability to SARS except for payment for the Services already rendered by the Service Provider, less applicable financial penalties.

19. SERVICE PROVIDER'S GENERAL OBLIGATIONS

- 19.1. During the currency of the Agreement, the Service Provider shall-
- 19.1.1. nominate a representative who shall be referred to as the Account Executive;
 - 19.1.2. ensure that the Service Provider's Personnel devote such time, attention and skill in performing the Services as may be reasonably required for the proper discharge of its duties under the Agreement;
 - 19.1.3. assign suitably qualified and skilled personnel to provide the Services;
 - 19.1.4. provide the Services to SARS with due care, skill and diligence in accordance with the highest professional service standards and principles;

- 19.1.5. ensure that the Service Provider's Personnel adhere to written and reasonable requests or instructions by the SARS's Authorised Representative and/or SARS Project Manager;
- 19.1.6. immediately inform the SARS's Authorised Representative of any information detrimental to SARS's security, including information of any disciplinary action taken against the Service Provider's Personnel that could be detrimental to the security of SARS;
- 19.1.7. ensure that it performs security checks (vetting) on the Service Provider's Personnel involved with the performance of the Services and immediately take steps to prevent any of the Service Provider's Personnel found to be a security risk from performing the Services, which are the subject of the Agreement;
- 19.1.8. ensure that it maintains its PSIRA registration for the entire term of the Agreement, and furnish confirmation of same to SARS on demand;
- 19.1.9. comply with all Applicable Law; and
- 19.1.10. where applicable, provide SARS with a report containing a consolidated record of all Performance Failures that occur at a SARS Site during the performance of a Service Request, either monthly or upon conclusion of a Service Request, whichever occurs first. The report will be discussed at the management liaison meetings.

20. MANAGEMENT LIAISON MEETINGS

- 20.1. The Account Executive and SARS's Authorised Representative shall meet on a monthly basis to discuss the performance of the Services.
- 20.2. The Service Provider shall be responsible for the correct recording of the meeting proceedings.
- 20.3. The Service Provider shall deliver the record of the meeting proceedings to SARS within two (2) Business Days after the date of the meeting or such shorter period as SARS may prescribe, in its absolute discretion, for SARS's perusal and verification.

- 20.4. SARS shall have the right to comment on and amend the record. SARS's comments and amendments shall be discussed and/or confirmed at the next meeting.
- 20.5. The Service Provider's Chief Executive Officer and SARS's Authorised Representative shall meet biannually to review the performance of the Services, where applicable.
- 20.6. Nothing contained in this Clause 20 shall prevent SARS from calling an unscheduled meeting with the Service Provider or Account Executive to discuss any matter regarding the performance of Services, at its sole discretion. The provisions of Clauses 20.2, 20.3 and 20.4 shall apply to such meetings as well.

21. SERVICE COMPATIBILITY

- 21.1. The Service Provider shall in providing the Services as envisaged in the Agreement, cooperate with all Third-Party Service Providers of SARS to coordinate its provision of the Services with the services and systems of such Third-Party Service Providers. Subject to reasonable confidentiality requirements, such cooperation will include providing:
- 21.1.1. applicable written information concerning any or all of the Service Provider resources, data and technology strategies used in providing the Services;
- 21.1.2. reasonable assistance and support services to such Third-Party Service Providers; and
- 21.1.3. access to systems and architecture configurations of the Service Provider to the extent reasonably required for the activities of such Third-Party Service Providers. SARS will procure that relevant Third-Party Service Providers to SARS provide the Service Provider with their reasonable cooperation, where reasonably requested by the Service Provider.

- 21.2. In order to prevent disruption to the Services, the Service Provider will immediately notify SARS if an act or omission of a Third-Party Service Provider may cause a problem (including a Problem) or delay in providing the Services and will work with SARS to prevent or circumvent such problem or delay.

22. SERVICE PROVIDER PERSONNEL

- 22.1. The Service Provider shall ensure that the Service Provider Personnel who perform the services are appropriately skilled, experienced and qualified to render the specific services for which they are responsible, and that each of them strictly comply with the Agreement including the Service Level Agreement in the performance of the Service;
- 22.2. The Service Provider shall duly comply with its contractual arrangements with all Service Provider Personnel to ensure uninterrupted provision of Services.
- 22.3. The Service Provider shall be liable for any criminal activity, delicts, misconduct, failure to comply with any law and/or wrongdoing or Data Protection Agreement (in respect of Subcontractor) on the part of a Service Provider Personnel committed (or omitted) by a Service Provider Personnel in the course of the Agreement and the Service Provider hereby (in addition to any other indemnities recorded elsewhere in the Agreement), indemnifies SARS and holds SARS harmless against any costs, liabilities, expenses or damages of whatever nature suffered or incurred by SARS, and caused directly by any Service Provider Personnel.

23. CONFIGURATION AND IMPLEMENTATION OF THE SOFTWARE

- 23.1. Following delivery of Technical Security System or Equipment, Software and/or Security Solution to SARS, the Service Provider shall work together with SARS to configure and implement the Technical Security System or Equipment, Software and/or Security Solution in accordance with SARS's Technical Requirements.

- 23.2. The Service Provider undertake to configure the Technical System and/or Equipment, Software in order to ensure that the Security Solution meets and in doing so, the Service Provider undertakes not to and without limiting the provisions of Clause 31 below, utilise any Third Party Intellectual Property Rights without SARS's written consent.

24. ACCEPTANCE TESTING AND DELIVERY

- 24.1. To ensure the successful implementation of the Technical Security System, Equipment and/or Security Solution within SARS's environment.

- 24.2. The Service Provider shall:

- 24.2.1. conduct Acceptance Testing of the Technical Security System, or Equipment, Software and/or Security Solution in order to ensure that once implemented, the Security Solution will conform to the functional specification required by SARS to meet its Technical Requirements.

- 24.2.2. in conducting Acceptance Testing comply with the process and procedures set out below.

24.3. Pre-delivery Testing:

- 24.3.1. Prior to presenting any Deliverable to SARS for Acceptance Testing, the Service Provider will carry out Pre-delivery Testing in order to ensure that the Deliverable functions in accordance with the relevant functional specifications and complies with the Technical Requirements.

24.4. Acceptance Testing Procedure:

- 24.4.1. Following delivery of Technical Security System or Equipment, Software and/or Security Solution, SARS shall in its discretion, conduct Acceptance Testing thereof (collectively referred to as "**Tested Deliverable(s)**").

- 24.4.2. During Acceptance Testing, the Service Provider shall (if required by SARS), assist SARS, to the extent necessary and reasonable, in conducting the Acceptance Testing and respond to any queries relating to the Services and/or Tested Deliverables, within a reasonable time. Without limiting the foregoing, the Service Provider shall be available to liaise with SARS regarding any queries arising with regard to the Tested Deliverables and its related documentation and shall assist SARS with its evaluation of such Tested Deliverables and its related Documentation.
- 24.4.3. Should SARS not accept the Tested Deliverables and/or its related Documentation, SARS shall provide the Service Provider with written notice of its non-acceptance of such Tested Deliverables and/or its related functional specification. The Service Provider shall correct any deficiencies in such Tested Deliverables and functional specification within timeframe agreed upon by the Parties in writing to ensure that such Tested Deliverable is free from deficiencies and conform to SARS's business and security requirements, where after such Tested Deliverable will be resubmitted to Acceptance Testing in accordance with this Clause.
- 24.4.4. The acceptance of the functionality of the Tested Deliverables shall be governed by a test and acceptance procedure and criteria, which shall demonstrate the correct and satisfactory operation and functioning of the relevant functionality of the Tested Deliverables in accordance with the Documentation.
- 24.4.5. SARS shall have the right to review and accept or reject all Tested Deliverables and any components of such Tested Deliverables to be provided by the Service Provider to SARS under the Agreement, pursuant to the methodology set forth in this Clause.
- 24.4.6. The Service Provider will be available to liaise with SARS regarding any queries arising with regard to a Deliverable and will assist SARS with its evaluation of Tested Deliverables.

24.4.7. Should SARS not accept the Tested Deliverable, SARS will provide the Service Provider with written notice of its non-acceptance, as well as detailed reasons for it not being acceptable. The Service Provider will correct any deficiencies within 5 (five) business days of receiving SARS's notice, where after the Tested Deliverables will be resubmitted to SARS for review and evaluation in accordance with this Clause 24.

24.4.8. If the Service Provider is still unable to correct the Deficiency within this period, then SARS may in its sole discretion elect to –

24.4.8.1. direct the Service Provider to continue its efforts to make the Tested Deliverables acceptable to SARS, in which case the Service Provider shall continue such efforts; or

24.4.8.2. accept the deficient Tested Deliverables, in which event the charges with respect to such Tested Deliverables shall be equitably reduced to reflect the presence of such Deficiency; or

24.4.8.3. without limiting the generality of SARS's right to terminate the Agreement for cause under Clause 40 or to claim damages, 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 Tested Deliverables. Such refund shall be made within 14 (fourteen) days of receiving SARS's notice.

24.5. **Functionality Testing**

24.5.1. Upon delivery of any Tested Deliverables, SARS shall conduct Acceptance Testing thereof and record in writing the outcome of the Acceptance Testing, including any failures or exceptions noted during the Acceptance Testing.

- 24.5.2. During Acceptance Testing, the Service Provider shall assist SARS, to the extent necessary and reasonable, in conducting the Acceptance Testing and respond to any queries relating to the operation and/or functionality of any Tested Deliverables within a reasonable time. The Service Provider shall further assist SARS with the evaluation of such Tested Deliverables.
- 24.5.3. Should SARS not accept the Tested Deliverable and/or its related documentation, SARS shall provide the Service Provider with written notice of its non-acceptance of such Tested Deliverable. The Acceptance Testing will be repeated in respect of such failures or any element which was not approved by SARS in order to correct any deficiencies in such Tested Deliverable, until SARS is satisfied with the outcome of the Acceptance Testing. The Service Provider shall correct any deficiencies in such Tested Deliverable and its related documentation within 24 (twenty-four) hours of receiving SARS's notice to ensure that they are free from deficiencies and conform to SARS's business and security requirements, where after such Tested Deliverable will be resubmitted to Acceptance Testing in accordance with the provisions of Clause 24.1.
- 24.5.4. If the Service Provider is unable to correct such deficiencies within a period of 14 (fourteen) days, SARS shall, without limiting any of its other rights contained in the Agreement, be entitled to a refund of the Service Fees paid for such Tested Deliverable and its related Documentation and shall return the Deliverable and its related Documentation to the Service Provider. Such refund shall be made within 14 (fourteen) days of receiving SARS's notice.
- 24.5.5. The Service Provider will ensure that the Tested Deliverable procured in terms of the Agreement are compatible with the information technology and telecommunications standards and architectures of SARS. This information is available to the Service Provider upon prior written request.

- 24.5.6. Once SARS is satisfied with the outcome of Acceptance Testing, SARS will furnish the Service Provider with a formal acceptance of the functionality of the Tested Deliverable.

24.6. Documentation

- 24.6.1. The Service Provider shall deliver the Documentation in respect of each Tested Deliverable on the date agreed upon by the Parties for review and approval. SARS shall give the Service Provider written notice of its approval or non-approval of the Documentation. If the Service Provider does not approve the Documentation, SARS shall give written reasons for its non-approval of the deliverable.
- 24.6.2. Once SARS is satisfied with the outcome of the approval process, SARS shall furnish the Service Provider with a formal acceptance of the Documentation.

25. HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES

- 25.1. SARS has in terms of OHS Act,
- 25.1.1. established and provided a safe working environment for SARS's Personnel and visitors to its Premises and further maintains the work environment, which is safe, without risks to the health of SARS's Personnel and visitors, in as far as is reasonably practical to eliminate or mitigate any health and safety hazard or potential health and safety hazard; and
- 25.1.2. controls in place required to respond to any health safety risk which controls are regularly updated in line with the applicable provisions of the OHSA and where required, standards and guides as published by the aforesaid prescript and/or National Institute for Communicable Diseases (NICD).

- 25.2. The Service Provider hereby agrees and undertakes:

25.2.1. in terms of Section 37(2) of the OHSA, to ensure that the Service Provider and the Service Provider's Personnel comply in all respects, with the aforesaid OHSA and regulations 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 Term of the Agreement, including with regard to the Service Provider Personnel and ensuring that neither SARS's Personnel nor any Third Party Service Providers staff's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services whilst at the Premises.

25.2.2. to ensure that the Service Provider Staff will at all times and if required by SARS at its Premises, be in possession of the necessary PPE (Personal Protective Equipment) prescribed by the OHSA before entering SARS's offices and Premises and shall when within SARS's offices and/or Premises, adhere to SARS PPS&G applicable to SARS and SARS's Personnel and are available to the Service Provider on request. Should SARS at any time have reason to believe that any member of the Service Provider Personnel is failing to comply with SARS PPS&G, SARS will be entitled to deny such member of Service Provider Personnel to any or all of Premises and require the Service Provider to replace such member of Staff without delay.

25.3. The Service Provider undertakes and warrants to SARS that:

25.3.1. it shall ensure that all Service Provider Personnel are and remain adequately and validly insured in terms of the Compensation for Occupational Injury and Diseases Act, 1993 ("**COIDA**"), and shall deliver proof to that effect to SARS as and when required to do so. In addition, the Service Provider shall, before commencement of the Services (notwithstanding the Effective Date), an Appointment, furnish to SARS a copy of a certificate of good standing issued by the Compensation Commissioner appointed in terms of COIDA;

25.3.2. it shall at all times comply with the provisions of COIDA and the OHSA;

- 25.3.3. it shall, at the request of SARS, furnish to SARS a copy of its own health, safety and environmental plan, policy and procedures pertaining to occupational health and safety, and amend such policy if SARS can reasonably demonstrate that the plan, policy and/or procedures are incomplete or inadequate;
- 25.3.4. it shall ensure that no Service Provider Personnel brings intoxicating drugs or liquor onto the Premises, and that no Service Provider Personnel arrives at the Premises under the influence of intoxicating drugs or liquor;
- 25.3.5. it shall supply all personal protective equipment and clothing, and other safety measures and equipment, as may be necessary in the circumstances (or as may be requested by SARS from time to time) in order to protect Service Provider Personnel while they are at the Premises; and
- 25.3.6. all equipment, tools and materials brought onto the Premises for use by the Service Provider Personnel, are in good working order for the Term, and that they meet the requirements contemplated in the OHSA.
- 25.4. SARS reserves (where applicable), the right to undertake audit(s) at any given time at the Service Provider's and its sub-contractor's premises to assess the Service Provider's compliance with its health and safety plan;
- 25.5. The Service Provider hereby indemnifies and agrees to hold SARS harmless against any loss, damages, liability or expense suffered or incurred by SARS:
- 25.5.1. as a result of any breach in terms of this Clause 25.1.1; and
- 25.5.2. in terms of the OHSA as a result of any Service Provider Personnel failing to comply with SARS PPS&G as contemplated in Clause 13.2 above;

25.5.3. as a result of any charge that may be brought against SARS in terms of Section 37 and related provisions of the OHSA, in the event that any of its personnel commit any offense in terms of the OHSA, while on the Premises.

25.6. The indemnity referred to in Clause 25.5 is in addition to the general indemnity contained elsewhere in this agreement and does not limit the ambit of the general indemnity in any way whatsoever.

26. SERVICE FEES INVOICING AND PAYMENT

26.1. In general, the Service Fees applicable to the Services are set out in each applicable Service Request.

26.2. SARS will pay undisputed Service Fees to Service Provider within 30 (thirty) days following receipt of each invoice provided such invoice is accurate and meets the requirements of this Agreement.

26.3. SARS shall for the Term, pay the Service Provider for the provision of the Services to the total value set out in the Service Request.

26.4. The Service Provider will (subject to the provisions of this Clause 26), not be entitled to: (i) impose or seek payment of any amounts or charges under the Agreement other than the Service Fees; (ii) establish any new types of charges under the Agreement; or (iii) modify any of the Service Fees under the Agreement; unless SARS has agreed thereto in writing.

26.5. Each invoice shall be itemised and will consist of:

26.5.1. a description of the Services renders;

26.5.2. the amount of the financial penalties credited to SARS for Performance Failures calculated with reference to the Service Levels set out in the Service Request; and

26.5.3. Any such details as may be reasonably requested by SARS from time to time.

- 26.6. The Service Provider will verify that each invoice is complete and accurate and that it conforms to the requirements of the Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to SARS.
- 26.7. SARS may withhold any amounts that it disputes in good faith, provided that such dispute shall either be discussed in the meetings as provided for in Clause 28 and/or automatically be referred to dispute resolution in terms of Clause 54.
- 26.8. The Service Provider will 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 (compliant with FAIS and IFRS) applied on a consistent basis.
- 26.9. Notwithstanding the provision of Clause 28 below, SARS may as and when it deems necessary audit the Service Fees that have been paid to the Service Provider during the Term. For these purposes, the Service Provider shall within 10 (ten) days after SARS's request, provide SARS with response to any payment queries raised by SARS including any other documentation or information reasonably required in order to verify the accuracy of the Service Fees invoiced and paid by SARS including compliance by the Service Provider with the requirements of the Agreement. In the event that SARS determines, at any time during the Term and/or expiry thereof that SARS has overpaid the Service Provider, the Service Provider shall refund such overpaid Service Fees to SARS in fully without any set off, including any interest thereon, calculated at Repo Rate.
- 26.10. SARS shall not be obliged to pay any amounts that are invoiced more than one hundred and twenty (120) days after the first (1st) day of the month in which the Service Provider was obliged to deliver such invoice, unless the amount or invoice is disputed in terms of Clause 28 below.

27. TAX, DUTIES AND CURRENCY ISSUES

- 27.1. Unless otherwise specified, all Service Fees and expenses are recorded (inclusive) of Value Added Tax. The Service Provider will be financially responsible for all taxes associated with the Services and will comply with all applicable laws relating to tax and tax invoices.
- 27.2. All Service Fees set out in the Agreement are inclusive of any export and import tax.
- 27.3. The Service Fees are stated in South African Rand and will be quoted, invoiced and paid in South African Rand. Subject only to the discounts contemplated in the RFP, the Service Fees are not subject to adjustment due to any currency fluctuations for the duration of the Agreement.

28. DISPUTED SERVICE FEES AND INVOICING ERRORS

- 28.1. SARS may withhold payment of any Service Fees that SARS disputes in good faith (or, if the disputed Service Fees have already been paid, SARS may withhold an equal amount from a later payment), including disputes in respect of an error in an invoice or an amount paid. If SARS withholds any such amount:
 - 28.1.1. SARS will promptly notify the Service Provider that it is disputing such Service Fees; and
 - 28.1.2. the Parties will promptly address such dispute in accordance with Clause 54 of the Agreement.
- 28.2. If the dispute relates to (or is equal to (in the case of disputed Service Fees that have already been paid by SARS)) only certain of the Service Fees included on an invoice, then SARS will pay the undisputed amounts in accordance with the provisions of RFP.

- 28.3. If an invoice is identified as incorrect by SARS, the Service Provider will either (i) issue a correct invoice if the amount stated on the invoice has not yet been paid; or (ii) make a correction on the next invoice if the amount has been paid by SARS, provided however, that the Service Provider will refund any overpayments with interest calculated at the Repo Rate for the number of days from the date of SARS's payment to the date of the refund. SARS will not be responsible for paying interest on undercharged amounts, if any.
- 28.4. For the avoidance of doubt, the Parties record and agree that the Service Provider shall not be entitled to suspend or interrupt the provision of the Services until the dispute is resolved by the Parties and such resolution is recorded in writing.

29. SERVICE PROVIDER OBLIGATIONS TO REDUCE COSTS

- 29.1. In consultation with SARS, the Service Provider will continuously investigate methods to reduce the Service Fees whilst maintaining Performance Standards.
- 29.2. Without limiting the generality of its obligations under Clause 29.1 above, the Service Provider will:
- 29.2.1. use Commercially Reasonable Efforts to identify methodologies, processes and solutions and technologies that SARS or the Service Provider may employ to reduce consumption, costs and to claim applicable discounts;
 - 29.2.2. Model the effect of the methodologies, processes, solutions and technologies at different levels and mixes of consumption; and
 - 29.2.3. periodically report (but no less frequently than quarterly) on such efforts and make recommendations to SARS regarding the steps SARS, the Service Provider or both may take to reduce the Service Fees.

30. SARS'S RIGHTS AND OBLIGATIONS

- 30.1. SARS undertakes to furnish the Service Provider with any relevant information necessary for the Service Provider to perform the Services in compliance with the terms and conditions of the Agreement.

31. INTELLECTUAL PROPERTY RIGHTS

31.1. SARS Intellectual Property:

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

31.2. Intellectual Property developed during the Term

- 31.2.1. SARS will have all right, title and interest in all Intellectual Property developed or generated for SARS in the course of providing the Services ("Developed Intellectual Property"). For avoidance of doubt this only relates to bespoke work.
- 31.2.2. Service Provider hereby irrevocably assigns, transfers and conveys to SARS without further consideration all of its right, title and interest in such Developed Intellectual Property.
- 31.2.3. Service Provider agrees to execute any documents or take any other actions as may reasonably be necessary, or as SARS may reasonably request in writing, to perfect SARS's ownership of such Developed Intellectual Property, and further, hereby irrevocably grants to SARS its power of attorney *in rem suam* with the right on behalf of Service Provider to sign all such deeds and documents and to take all such actions as may be necessary for SARS to perfect its rights of ownership over such Developed Intellectual Property should Service Provider fail to comply with any such written request.
- 31.2.4. Unless otherwise agreed, where Developed Intellectual Property incorporates Service Provider Intellectual Property, systems, and processes that Service Provider did not develop in the course of providing the Services, Service Provider hereby grants SARS an irrevocable, perpetual, world-wide, fully paid-up, royalty-free, non-exclusive licence for SARS, SARS Personnel and agents to perform any lawful act, including the right to use, copy, maintain, modify, enhance and create derivative works of such Service Provider Intellectual Property insofar as it forms part of the Developed Intellectual Property. Subject to clause 31.2.4, Service Provider retains all right, title and interest in and to Service Provider Intellectual Property that is used in connection with the Services. Service Provider grants to SARS an irrevocable, perpetual, fully paid-up, royalty-free, non-exclusive licence for SARS to receive and realise the benefit of the Service Provider Intellectual Property during the Term and during the Disengagement Assistance Period.

31.3. Third Party Intellectual Property

- 31.3.1. Service Provider will neither, incorporate any Third Party Intellectual Property into any Developed Intellectual Property nor introduce into SARS's environment any Third Party Intellectual Property without first obtaining SARS's prior written consent thereto. Service Provider will, where required, be responsible for obtaining a licence on behalf of SARS, at Service Provider's cost and in SARS's name, to use such Third Party Intellectual Property from the Third Party. Service Provider is required to perform the Services in accordance with the Service Levels notwithstanding any decisions by SARS to withhold its consent to the use of Third Party Intellectual Property and/or failure to assist in procuring the required consents as contemplated in clause 31.4.1 below.

31.4. Required Consents and License Fees

- 31.4.1. Service Provider will, at its cost and expense, obtain all required consents with respect to any Third Party Intellectual Property required by it to provide the Services.
- 31.4.2. Service Provider will be responsible for all financial liability related to licence and maintenance fees under SARS's agreements with Third Parties for the licence and maintenance of any Third Party Intellectual Property to the extent that such liability arises from Service Provider's use, support, maintenance or access to such Third Party Intellectual Property.
- 31.4.3. Service Provider will be financially responsible for any licence and maintenance fees under Service Provider's agreements with Third Parties for the licensing and maintenance of any Third-Party Intellectual Property.

31.5. Residual Knowledge

31.5.1. Nothing contained in this Agreement will restrict either Party from the use in its business activities of any generic ideas, concepts, know-how, or techniques developed or learned by such Party pursuant to this Agreement, provided that in doing so such Party does not:

30.5.1.1 disclose Confidential Information to Third Parties;

30.5.1.2 infringe any Intellectual Property Rights of the other Party and/or Third Parties; or

30.5.1.3 use any such residual knowledge or assist or enable any Third Party to use such residual knowledge to the detriment of SARS or Service Provider.

31.6. **Licence Limitations**

- 31.6.1. Except for the licence rights contained in this clause 31, neither this Agreement nor any disclosure made hereunder grants any licence to either Party or any Third Party in respect of any Intellectual Property Rights of the other Party.

32. CONFIDENTIAL UNDERTAKING

- 32.1. The Parties shall ensure that prior to commencing the performance of the Services all the Service Provider Personnel and Subcontractor involved in the rendering of the Services, sign the SARS Oath of Secrecy and submit the original thereof to SARS for record keeping purposes.
- 32.2. The Service Provider undertakes that for the duration of the Agreement and after the expiration or earlier termination of the Agreement for any reason, it will keep confidential all SARS's Confidential Information. This includes the knowledge acquired by the Service Provider Personnel and Subcontractor as a result of the work performed by the Service Provider in terms of the Agreement and which by its nature, is intended to be kept confidential.
- 32.3. The Parties agree that no trade and/or business secrets, Confidential Information or methods of work supplied by one Party to the other shall be disclosed to any third party, without first obtaining the written consent of the other Party, unless required by law or competent court or Authority.
- 32.4. The Service Provider specifically acknowledges that all information relating to the Services, including and not limited to, literary works produced thereunder are of a sensitive nature and must be kept confidential. The Service Provider undertakes not to disclose such information without first obtaining the written consent of SARS unless required by law or competent court.
- 32.5. If the Service Provider is uncertain about whether information is to be treated as confidential in terms of this Clause, it shall be obliged to treat it as such until advised otherwise, in writing, by SARS.

32.6. The Service Provider will protect the interests of SARS in its Confidential Information by:

- 32.6.1. making available such Confidential Information only to Subcontractor or Service Provider Personnel who are actively involved in the execution of its obligations under the Agreement and then only on a “need to know” basis;
- 32.6.2. putting in place internal security procedures in accordance with current industry standards and/or Applicable Law to prevent unauthorised disclosure and taking all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;
- 32.6.3. using the Confidential Information only for the purposes of and to the extent necessary for the Service Provider to comply with its obligations under the Agreement. In particular, the Service Provider shall not use the Confidential Information for the purpose of updating, supplementing or verifying its own data bases;
- 32.6.4. not using any Confidential Information of SARS, or disclosing directly or indirectly any Confidential Information of SARS to third parties, whether during the Agreement or thereafter, unless required by law;
- 32.6.5. notifying SARS promptly of any unauthorised or unlawful use, disclosure and/or Processing (as defined by POPIA) of the Confidential Information of which the Service Provider becomes aware;
- 32.6.6. deleting or returning (at the request of SARS) the Confidential Information as may be required by SARS, without keeping copies thereof, immediately upon first written demand for deletion or the return thereof by SARS, whether or not the Service Provider has completed the provision of the Services in respect of any such Confidential Information, and in any event promptly after the use thereof in the provision of the Services;

- 32.6.7. providing reasonable evidence of the Service Provider's compliance with its obligations under this Clause 32.6.6 to SARS on reasonable notice and request; and
- 32.6.8. ensuring that all Confidential Information of SARS which has or will come into the possession of the Service Provider and its personnel, will at all times remain the sole and absolute property of SARS.
- 32.7. The unauthorised disclosure by the Service Provider of the Confidential Information to a third party may cause irreparable loss, harm, and damage to SARS, and may lead to criminal sanction. As such, the Service Provider indemnifies and holds SARS harmless against all Losses and any action, or damage, of whatever nature, suffered or sustained by the SARS pursuant to a breach by the Service Provider of provisions of this Clause 32.
- 32.8. No announcements of any nature whatsoever will be made by or on behalf of a Party relating to the Agreement without the prior written consent of the other Party.
- 32.9. The provisions of this Clause 32 shall survive the termination or cancellation of the Agreement for any reason whatsoever.

33. DATA PROTECTION

- 33.1. The Service Provider acknowledges that in the course of the provision of the Services it may become privy to SARS's Confidential Information.
- 33.2. To the extent that the SARS's Confidential Information needs to be stored on the Service Provider's information technology systems, the Service Provider shall take appropriate technical safeguards and organisational measures and/or measures prescribed by POPIA and/or applicable Data Protection Legislation (where applicable), SARS Act and/or Applicable Laws against unauthorised access to, unlawful Processing, accidental loss, destruction or damage of the SARS's Confidential Information and shall provide SARS, with reasonable evidence of the Service Provider's compliance with its obligations under this Clause 33.2 on reasonable notice and request.

- 33.3. The Service Provider shall institute and operate all necessary back-up procedures to its information technology systems to ensure that, in the event of any information system malfunction or other loss of SARS's Confidential Information can be recovered promptly and that the integrity thereof and any database containing such material can be maintained.
- 33.4. The Service Provider shall ensure that all SARS's Confidential Information and information provided to it by SARS in order to render the Services is stored separately and isolated from data and property relating to the Service Provider or any third party (including any other entity with whom the Service Provider may conduct business) in accordance with the POPIA, SARS Act and the Applicable Laws.
- 33.5. The security measures to be taken by the Service Provider in terms of Clause 33.2 must –
- 33.5.1. not be less rigorous than the security safeguards, measures and practices generally maintained by SARS in respect of its data (and as communicated by SARS to the Service Provider), or maintained by the Service Provider with respect to its own confidential information of a similar nature and/or as prescribed by the Applicable Laws, POPIA and/or Data Protection Legislation; and
- 33.5.2. enable SARS and the Service Provider to conform to Applicable Law, including:
- 33.5.2.1. Data Protection Legislation;
- 33.5.2.2. the Electronic Communications and Transactions Act, 2002 (Act No 25 of 2002); and
- 33.5.2.3. the Tax Acts.
- 33.6. The Service Provider hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any breach by the Service Provider of the provisions of this Clause 33.

34. PROCESSING OF PERSONAL INFORMATION

- 34.1. Without limiting any other provision of the Agreement, the Service Provider shall only store, copy or use any Personal Information disclosed to it by SARS pursuant to the Agreement to the extent necessary to perform its obligations under the Agreement and subject to the Privacy and Data Protection Requirements and/or Data Privacy Legislation binding on SARS and/or Service Provider.
- 34.2. If at any time the Service Provider suspects or has reason to believe that Personal Information disclosed to it by SARS pursuant to the Agreement has or may become lost or corrupted in any way for any reason then, the Service Provider shall immediately notify SARS thereof what remedial action it proposes to take, if any, aligned with the relevant conditions of POPIA and/or where applicable the Data Privacy Legislation.
- 34.3. The Service Provider agrees that, in regard to the Personal Information, it shall –
- 34.3.1. only Process the Personal Information subject to the Privacy and Data Protection Requirements and in accordance with written instructions from SARS and supported by written consent from a Data Subject, (which may be specific instructions or instructions of a general nature limited to the specific purpose (as prescribed by Condition 1 of POPIA “**the Lawful Purpose**”)), as set out in the Agreement or as otherwise notified by SARS to the Service Provider from time to time);
- 34.3.2. not otherwise modify, amend or alter the contents of the Personal Information or disclose or permit the disclosure of any of the Personal Information to any third party unless authorised in writing by SARS and where required, the Data Subject and limited to the Lawful Purpose, being carrying out duties in relation to the performance of the Services;

- 34.3.3. not maintain records of the Personal Information for longer than is necessary in order for the Service Provider to comply with its obligations under the Agreement, unless retention thereof for a longer period is required by the Applicable Laws, POPIA and where applicable, Data Privacy Legislation or as requested in writing by SARS;
- 34.3.4. implement appropriate technical safeguards and organisational measures to protect the Personal Information against unauthorised access or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure in accordance with Condition 7 of POPIA and/or relevant provisions of the Data Privacy Legislation and shall further ensure Service Provider Personnel and where applicable Subcontractor in their role as Operators, comply in all respect with the technical safeguard and organisation measures implemented by the Service Provider or SARS to protect the Personal Information against unauthorised access or unlawful Processing, accidental loss, destruction, damage, alteration or disclosure as prescribed by the aforesaid Condition 7 of POPIA. to Personal Information and to the nature of the Personal Information which is to be protected;
- 34.3.5. keep all Personal Information and any analyses, profiles or documents derived therefrom separate from all other data and documentation of the Service Provider;
- 34.3.6. Process the Personal Information in accordance with Privacy and Data Protection Requirements and/or requirements prescribed by Data Privacy Legislation where binding on SARS as the Responsible Party; and

- 34.3.7. co-operate as requested by SARS to enable SARS to comply with or exercise rights of Data Subject under POPIA and/or Data Privacy Legislation if binding of SARS in respect of Personal Information Processed by the Service Provider and/or Service Provider Personnel under the Agreement or comply with any assessment, enquiry, notice or investigation under the SARS Act, POPIA or Applicable Law which shall include the provision of all data requested by SARS within the timescale specified by SARS in each case, subject to compliance by SARS with POPIA.
- 34.4. The Service Provider shall provide co-operation in any investigation relating to security which is carried out by or on behalf of SARS, including providing any information or material in its possession or control, provided that SARS gives its reasonable notice of its intention to carry out such an investigation.
- 34.5. The Service Provider hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any Personal Information Breach by the Service Provider, Subcontractor and/or breach of any of the provisions of this Clause 34.

35. PROTECTION OF PERSONAL INFORMATION

- 35.1. Each Party shall comply with its obligations under POPIA in respect of Personal Information collected and/or Processed in connection with the Agreement and the Services.
- 35.2. Each Party shall only provide, collect and/or Process the Personal Information:
- 35.2.1. in compliance with POPIA and where binding on a Party;
 - 35.2.2. as is necessary for the purposes of the Agreement and the Services;
 - 35.2.3. for maintaining its internal administrative processes, including quality, risk, client or vendor management processes;
 - 35.2.4. for internal business-related purposes; and

35.2.5. in accordance with the lawful Purpose and reasonable instructions of SARS as the Responsible Party.

35.3. Both Parties shall:

35.3.1. in dealing with the Personal Information either as the Responsible Party, Operator comply with the specific security safeguards or measures set out in Condition 7 of POPIA and data protection obligations imposed on them in terms of POPIA or Applicable Laws; and/or

35.3.2. where applicable, comply with the specific obligations imposed on them in terms of POPIA and/or where applicable, Legislation in respect of the specific role they fulfil either as the Operator or Responsible Party in terms of providing the Services as agreed between the Parties;

35.3.3. take, implement and maintain all such technical and organisational security procedures and measures as prescribed by Condition 7 of POPIA and/or relevant articles of Data Privacy Legislation where applicable, necessary or appropriate to preserve the security and confidentiality of the Personal Information in its possession and to protect such Personal Information against unauthorised or unlawful collection, disclosure, access or Processing, accidental loss, destruction or damage.

35.4. No Personal Information of the Data Subject shall be collected, Processed and/or shared with any other third party without obtaining written consent of the Responsible Party supported by the Data Protection Agreement signed with the Responsible Party.

35.5. Neither the Service Provider nor Subcontractor in line with their role as the Operator shall be entitled to Process the Personal Information with any other third party except for the Service Provider Personnel (subject to signing of the Data Protection Agreement by Responsible Party), where necessary in order to protect the legitimate interests of any of the Parties, Data Subject or in connection with the Agreement and the Services.

- 35.6. The Service Provider may notify SARS about important developments, proposals and services which it thinks may be relevant to SARS for Service improvement etc., however, the Service Provider undertakes for the Term, not to use or Process the Personal Information to send business offering to SARS and/or Data Subject including newsletters, invitations to seminars and similar marketing material or other communications from the Service Provider.
- 35.7. Electronic communications between the Service Provider and SARS (limited only where the Service Provider Personnel are using the Service Provider's resources), may be monitored by the Service Provider to ensure compliance with its professional standards and internal compliance policies pertaining to the Agreement and not for any other purpose.
- 35.8. Electronic communications between SARS and the Service Provider and SARS Personnel (limited only where the Service Provider Personnel are using SARS's resources), may be monitored by SARS to ensure compliance with its professional standards and internal compliance policies pertaining to the Agreement and not for any other purpose.
- 35.9. The Service Provider shall not Process the Personal Information to:
- 35.9.1. an outsourced information technology service provider; or
 - 35.9.2. another country, including the use of cloud-based solutions (unless those solution are approved by SARS and compliant with POPIA); or
 - 35.9.3. an Affiliate;
 - 35.9.4. without prior written consent of SARS and the Data Subject or existing Data Protection Agreement.

- 35.10. Where consent has been granted in terms of Clause 35.9 above, the Service Provider undertakes in relation to Clauses 35.7 and 35.8 and for the Term as the Operator, to require that any third party, outsourced service provider, foreign legal entity or other Affiliate involved in the Processing or storage of Personal Information, to ensure that such Personal Information is protected with the same Best Industry Practices and/or protection as is required in terms of Clause 33.3 and the provision of the POPIA Act and/or Data Legislation binding on it (where applicable).
- 35.11. The Service Provider in their role as Operator shall be held accountable for Personal Information further Processed by the Service Provider Personnel for the purposes set out in the Agreement irrespective of whether a Service Provider Personnel Subcontractor performs such role under the instruction of SARS as a Responsible Party.
- 35.12. SARS as the Responsible Party warrants that it has obtained written consent from all applicable Data Subjects for the Processing or transfer of such Data Subjects' Personal Information whenever this is required for purposes of the Agreement and the Services.
- 35.13. The Service Provider represents and warrants in favour of SARS that:
- 35.13.1. it has used reasonable measures to ensure POPIA compliance by the Service Provider Personnel when at its offices or assigned to customers on a project basis which measures includes, POPIA training and awareness; and
- 35.13.2. it has establishment POPIA compliance programme to manage and maintain POPIA compliance.
- 35.14. For these purposes, and notwithstanding that a Subcontractor will be Processing Personal Information in terms of the Agreement and not the Service Provider, the Service Provider hereby indemnifies and holds SARS harmless against all Losses incurred by SARS as a result of any Personal Information Breaches by a Subcontractor and/or breach of any of the provisions of this Clauses 33, 34 and 35.

36. AUDITS

36.1. **Audit Rights:**

36.1.1. The Service Provider will maintain a complete audit trail of financial and non-financial transactions resulting from the provision of the Services (the “**Transactional Information**”). Where SARS requires to audit the Transactional Information, the Service Provider will provide SARS with access to such Transactional Information including personnel, data, records and documentation relating thereto for the purpose of performing audits and inspections of the Transactional Information to: (i) verify the accuracy of the Service Provider’s Service Fees and invoices; (ii) verify the accuracy of payments by SARS or credits from the Service Provider; (iii) verify the accuracy of price changes to the extent such changes are determined by reference to Service Provider’s costs or changes thereto;

36.1.2. The Service Provider will maintain complete records of Service Provider accreditation including Subcontractor qualifications (the “**Technical Information**”) submitted as proof of Service Provider and/or Subcontractor’s ability to provide the Services. Where SARS requires to audit the Technical Information, the Service Provider will provide SARS with access to such Technical Information including personnel, data, records and documentation relating thereto for the purpose of performing audits and inspections of the Technical Information to: (i) verify the accuracy of the Service Provider and/or Subcontractor’s accreditation, qualification and/or experience; (ii) examine the Service Provider’s performance of the Services, including verifying compliance with the Best Industry Standards; (vi) verify compliance with the terms of the Agreement; (vii) satisfy the requirements of any Applicable Law.

36.2. SARS reserves the right to appoint a third party to perform an audit under this Clause 36.1 and the Service Provider will provide to the auditors, inspectors and regulators such assistance as they may require. Unless SARS has a good faith suspicion of fraud, SARS will provide the Service Provider with reasonable notice for audits.

- 36.3. All costs incurred by SARS in performing audits of the Service Provider will be borne by SARS unless any such audit reveals a material inadequacy or material deficiency in respect of the Services including compliance with the relevant Applicable Laws, in which event the cost of such audit will be borne by Service Provider.
- 36.4. If an audit reveals an overcharge, the Service Provider will promptly refund the overcharge plus interest at Repo Rate, from the date of payment of the overcharge through the date the overcharge is refunded by Service Provider.
- 36.5. **Audit Follow-Up:**
- 36.5.1. Following an audit or examination, SARS or its external auditors will meet with the Service Provider to obtain factual concurrence with issues identified in the audit or examination.
- 36.5.2. Within 10 (ten) Business Days following the provision to the Service Provider of the findings of an audit, whether by way of a meeting or the delivery of the audit report by the auditors, or an audit report by the Service Provider's auditors, the Service Provider will provide SARS with a plan ("**Audit Response Plan**") to address shortcomings or deficiencies raised in such audit findings attributable to the Service Provider. The Audit Response Plan will identify the steps that the Service Provider will take to remedy such shortcomings and deficiencies and include a completion date for such steps detailed in the Audit Response Plan. With SARS approval, the Service Provider will implement such Audit Response Plan at the Service Provider's cost and expense. If required and agreed between the Service Provider and SARS, the Service Provider will report monthly to SARS on the status of the implementation of any Audit Response Plan. Failure to complete the Audit Response Plan on or before the completion date included in such Audit Response Plan will be deemed to be a material breach of the Agreement.

- 36.5.3. The Service Provider will promptly make available to SARS the results of any reviews or audits conducted by the Service Provider, its Affiliates agents or representatives (including internal and external auditors) to the extent such findings reflect conditions and events relating to the Services.
- 36.5.4. Promptly after the issuance of any audit report or findings issued under Clause 36.5.3 the Parties will meet to review such report or findings and to agree on how to respond to the suggested changes.

37. BREACH

- 37.1. A Party (the "**Aggrieved Party**") may terminate the Agreement if the other Party (the "**Defaulting Party**") commits a material breach of the Agreement and fails to remedy such breach within 10 (ten) Business Days (the "Notice Period") of being notified of the breach and, if the Aggrieved Party so elects, the steps required to remedy such breach.
- 37.2. For the purposes of Clause 37.1 a breach will be deemed to be a material breach if :-
- 37.2.1. it is capable of being remedied, but is not so remedied within the Notice Period; or
 - 37.2.2. it is incapable of being remedied within the Notice Period; or
 - 37.2.3. if payment in money will compensate for such breach, but payment is not made within the Notice Period; or
 - 37.2.4. the Service Provider commits numerous, repeated breaches even if cured; or
 - 37.2.5. at any time, SARS experiences non-performance, alternatively mal-performance from the Service Provider relating to the execution of its duties and obligations in terms of the Agreement.

38. INSURANCE

- 38.1. The Service Provider shall on or before the Effective Date and for the duration of this Agreement, have and maintain in force without limitation third party liability insurance cover, professional indemnity insurance cover, sufficient short-term insurance cover to cover all of its obligations and liabilities under this Agreement and against all actions, suits, claims or other expenses arising in connection with damages or loss (including death) suffered by third party as a result of negligence on the part of the Service Provider or its employees engaged to provide the Services.
- 38.2. The Service Provider shall provide SARS with certificates of insurance, evidencing that the covers and policy endorsements required under this Agreement are maintained in force, on the date of signing this Agreement and provide evidence of renewal of the insurance at least three (3) Business Days prior to expiration thereof.
- 38.3. The Service Provider shall provide SARS at least thirty (30) days' notice prior to any material modification, cancellation or non-renewal of the insurance policies.
- 38.4. In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage set out in Clause 38.1, the Service Provider shall be solely responsible to take such action. The Service Provider shall provide SARS with contemporaneous notice and with such other information as SARS may request regarding the event.
- 38.5. Service Provider will be responsible for risk of loss of, and damage to, any hardware, Software or other assets of SARS that it may have in its possession or under its control. Any hardware or Software in the possession or control of Service Provider's Subcontractors or agents (including couriers, freight companies and the like) will be deemed to be under the control of the Service Provider.

39. INDEMNITIES

- 39.1. Without in any way detracting from the rights of SARS in terms of the Agreement, the Service Provider hereby indemnifies and holds SARS harmless from any and all Losses which may be suffered as a result of any breach of the warranties set out in Clause 51 including the provisions of the Agreement by the Service Provider or Service Provider Personnel.
- 39.2. In addition to any other remedy available to SARS, the Service Provider agrees to indemnify in full and on demand and to keep SARS so indemnified from and against all claims, demands, actions, proceedings and all Losses, which are made or brought against or incurred or suffered by SARS resulting from:
- 39.3. any or action arising from the Service Provider's breach of any obligation with respect to Confidential Information and/or Personal Information; and/or.
- 39.4. any claim, action or demand by a Third Party that the use by SARS of the Technical Security System, Equipment and/or Security Solution and its related Documentation supplied by the Service Provider infringes the Intellectual Property rights of that Third Party.

40. TERMINATION

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

40.2. If the Service Provider fails to adhere to any legal requirement or breaches the provisions of Clause 40.1 above and/or any term or condition of any licence, authorisation or consent required for the provision of the Services and which failure or breach SARS, in its sole discretion, considers to be detrimental to SARS, then SARS will be entitled, but not obliged, to immediately terminate the Agreement on written notice to the Service Provider, in which event such termination will be without any liability to SARS and without prejudice to any claims which SARS may have for damages against the Service Provider.

40.3. A Party's remedies in terms of this Clause 40 are without prejudice to any other remedies to which such Party may be entitled in law.

41. TERMINATION FOR CONVENIENCE

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

42. TERMINATION FOR CAUSE

42.1. SARS may (subject to Clause 37.1), by giving notice to the Service Provider, terminate the Agreement in whole or in part, as of a date set out in the notice of termination, in the event that the Service Provider commits a material breach of the Agreement or:

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

42.1.2. commits an Acts of Insolvency.

42.2. Notwithstanding Clause 42.1 above, SARS may terminate the Agreement, in whole or in part, in the event that SARS is unable to obtain funding to procure the Services.

43. TERMINATION UPON SALE, ACQUISITION, MERGER OR CHANGE OF CONTROL

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

44. EFFECT OF TERMINATION

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

45. TERMINATION/EXPIRATION ASSISTANCE

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

45.2. For these purposes, the Service Provider shall within 60 (sixty) days from the Signature Date, deliver to SARS a termination assistance plan for SARS's review and approval.

45.3. The Parties will comply with their respective obligations set forth in Schedule F (Disengagement Assistance).

46. FORCE MAJEURE

- 46.1. Delay or failure to comply with or breach of any of the terms and conditions of the Agreement by either Party if occasioned by or resulting from a Force Majeure Event or any other circumstances of like or different nature beyond the reasonable control of the Party so failing, will not be deemed to be a breach of the Agreement nor will it subject either party to any liability to the other. It is understood that neither Party will be required to settle any labour dispute against its will.
- 46.2. Should either Party be prevented from carrying out any contractual obligation by any circumstance described above, such obligation will be postponed provided the Party suffering such circumstance notifies the other Party to the Agreement within 7 (seven) days of becoming aware thereof. The Parties will thereupon promptly meet to determine whether an equitable solution can be found. If the event continues or is likely to continue for more than 30 (thirty) days, then SARS shall be entitled to terminate the Services by delivering a written notice to that effect to the Service Provider.
- 46.3. Should such Force Majeure Event last continuously for a period of 14 (fourteen) days, and no mutually acceptable arrangement is arrived at by the parties within a period of 7 (seven) days thereafter, either Party will be entitled to terminate the Agreement with immediate effect.

47. RECORDS RETENTION

- 47.1. The Service Provider will maintain and provide SARS with access to the records, documents and other information required to meet SARS's audit rights under the Agreement until the later of: (i) 5 (five) years after expiration or termination of the Agreement; (ii) all pending matters related to the Agreement are closed; or (iii) such other period as required by Applicable Law.

48. CONSENTS AND APPROVALS

- 48.1. Any approval, acceptance, consent or similar action required to be given by either Party in terms of the Agreement will, unless specifically otherwise stated or stated to be at the discretion of a Party, not be unreasonably withheld.
- 48.2. An approval, acceptance, consent or similar action by a Party (including of a plan or deliverable) under the Agreement will not relieve the other Party from responsibility for complying with the requirements of the Agreement, nor will it be construed as a waiver of any rights under the Agreement, except as and to the extent otherwise expressly provided in such written approval or consent. For example, where the Agreement sets forth a standard by which a plan is to be developed, the Service Provider will be responsible for complying with such requirement and will not be deemed to be relieved of it merely because SARS has approved such plan.

49. APPLICABLE LAW AND JURISDICTION

- 49.1. This Agreement will be governed by and construed in accordance with the Law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
- 49.2. The Parties hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the North Gauteng High Court, Pretoria in regard to all matters arising from the Agreement.

50. LEGAL AND REGULATORY COMPLIANCE

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

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

51. WARRANTIES

51.1. Service Provider Personnel:

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

51.2. Intellectual Property warranties:

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

51.3. Service Provider authority and Licensor undertaking:

51.3.1. The Service Provider warrants (for the duration of the Term of the Agreement), that it: (i) is the duly appointed distributor of the Technical Security System, Equipment and/or Security Solution in the Republic of South Africa during the subsistence of the Agreement; (ii) is authorised to procure security products from Licensor on SARS's behalf and in SARS's name; (iii) is authorised to maintain and support the Technical Security System, Equipment and/or Security Solution by licensor; (ii) has all the necessary licences, certificates, authorisations and consents required under the laws of the Republic of South Africa or under any other applicable jurisdiction for the provision of the Technical Security System, Equipment and/or Security Solution and/or Services under the Agreement; (iii) will comply with all legal requirements and with the terms and conditions of all licences, certificates, authorisations and consents required for the provision the Services; and (iv) will ensure that upon the date of delivery of the Deliverables or use of the licence thereof by SARS at the SARS Sites in which SARS takes receipt thereof will not breach any law or regulation of those territories or of the territory from which the products were sourced.

51.3.2. Should the Service Provider, for whatsoever reason and at any time during the Term, no longer be appropriately accredited or authorised to provide the Services, the Service Provider will immediately inform SARS thereof in writing in which event, the Agreement may, at SARS's option, be terminated immediately or on such date as determined by SARS. The Service Provider will be required to repay any pre-paid amounts that SARS may have paid in respect of the Services.

51.3.3. The Service Provider warrants that it has in place a business continuity plan in place which will ensure that in the event the Service Provider ceases to provide the Services to SARS in terms of the Agreement (whether as a result of the Service Provider losing its accreditation or distributorship rights with licensor, as a result of the Service Provider ceasing to trade or going into liquidation or as a result of a material breach by the Service Provider of the Agreement), SARS (i) remains supported by the OEM in accordance with the terms of the Agreement or (ii) is able to enlist a third party service provider (acceptable to SARS) to do so on its behalf, such that there is a minimal or no disruption in the Service provision to SARS. A copy of the Service Provider's business continuity plan is attached hereto as **Annexure "I."**

51.4. Product Specific Warranties:

51.4.1. The Service Provider warrants that the Technical Security System, Equipment and/or Security Solution is designed to operate in conformance with the functional specification as set out in the Documentation and that it will at all times: (i) ensure that the Technical Solution and the Documentation will be free as reasonably possible from deficiencies and will comply in all respects with the technical and functional specification therefore as agreed by the Parties; (ii) remedy any non-conformity of the Technical Security System, Equipment and/or Security Solution to the functional specification (iii) take all reasonable and necessary steps to ensure that the Services and the Technical Security System, Equipment and/or Security Solution will be free of destructive elements and such destructive element will be recorded in writing by the Parties and will not constitute a breach of this warranty.

51.4.2. In the event of a breach of this warranty, the Service Provider will immediately take all reasonable steps to remedy such breach or, if not possible, ameliorate the impact of the destructive element; and (iii) the Technical Security System, Equipment and/or Security Solution and/or all components thereof, once installed and/or implemented, will process any date and time data correctly and all date-related output and results produced by the Technical Security System, Equipment and/or Security Solution will comply with the Gregorian calendar.

51.5. Service Delivery:

51.5.1. The Service Provider represents and warrants that it shall for the duration of the Agreement: (i) use adequate numbers of qualified Service Provider Personnel with suitable training, education, experience and skill to perform the Services; (ii) use and adopt any standards and processes required under the Agreement; (iii) provide the Services with promptness and diligence and in a workmanlike manner and in accordance with the practices and high professional standards used in well-managed operations performing services similar to the Services; and (iv) provide and maintain such documentation as is authored by or on behalf of the Service Provider so that it: (a) accurately reflects the operations and capabilities of the Technical Security System, Equipment and/or Security Solution; (b) is accurate, complete and written in a manner easily understood by SARS; and (c) is promptly updated from time to time to reflect any changes.

51.6. Security Clearance:

- 51.6.1. Without limiting the generality of the foregoing, the Service Provider represents and warrants that it will ensure that the Service Provider Personnel engaged in the provision of the Services are suitable and pose no risk to SARS. Any member of the Service Provider Personnel who is engaged, or is to be engaged, in providing the Services must, if requested by SARS, comply with SARS's internal security clearance requirements, including submitting a security clearance certificate, failing which SARS shall be entitled to require the Service Provider to replace such member of the Service Provider Personnel with someone who does so comply. The Service Provider undertakes to indemnify SARS against any claims that may be brought by any of the Service Provider Personnel who may be affected as a result of SARS exercising its rights under this Clause.
- 51.6.2. As a confirmation that the Service Provider Personnel engaged to provide the Services are suitable and appropriately qualified, trained, experienced, skilled and available to render such services in terms of the Agreement including confirmation of such Service Provider Personnel's citizenship, criminal record status and/or credit worthiness, the Service Provider represents and warrants that it has conducted a background screening exercise on every member of the Service Provider Personnel whom is assigned to SARS for the fulfilment of its obligations in terms of the Agreement and shall if requested by SARS provide the report from a reputable screening agency which shall verify the following:
- 51.6.2.1. Citizenship including residency status;
 - 51.6.2.2. Criminal activity report; and
 - 51.6.2.3. Credit worthiness.
- 51.6.3. The Service Provider shall ensure that the validity of such report shall not be older than 3 (three) months as at the date of request or as at the commencement of such Service Provider Personnel duties to SARS in terms of the Agreement, as the case may be, and shall be updated as required by SARS from time to time.

- 51.6.4. In the event that the report reveals evidence that the Service Provider Personnel assigned to perform the Services are not qualified and/or do not possess the level of skills required for the performance of the Services, the Service Provider shall ensure a replacement of such member of the Service Provider Personnel with one whose background screening meets the requirements of SARS. The Service Provider undertakes to indemnify SARS against any claims that may be brought by any of the Service Provider's Staff who may be affected as a result of SARS exercising its rights under this Clause.
- 51.6.5. The Service Provider shall further ensure that its Staff assigned to provide the Services to SARS as envisaged in the Agreement shall for the duration of the Agreement, be subject to SARS's "*Anti-Corruption and Security Internal Policy: Security Vetting*" as amended from time to time, as well as other security legislation and policies applicable to the entities providing the services to the organs of State.
- 51.6.6. A breach by the Service Provider of any warranty, representation or other provision of this Clause 51 or of any express or implied warranty or representation contained elsewhere in the Agreement, shall be a material breach of the Agreement which shall confer on SARS the right, in its sole discretion, to utilise any remedy created in the Agreement for the enforcement of SARS's rights, including termination in terms of Clause 40 above.

51.7. POPIA Compliance:

- 51.7.1. The Service Provider warrants that it is and will remain for the duration of the Agreement, fully cognisant of and compliant with POPIA including any other Data Protection Legislation applicable to the Services.
- 51.7.2. The Service Provider warrants that it has implemented POPIA compliance programme within its organisation and further that, the Service Personnel in their role as Operators, have been trained on POPIA compliance and are aware of the importance of Protection of Personal Information and commit to ensure compliance thereof when at SARS in their role as Operators.

51.7.3. The Service Provider warrants that all Service Provider Personnel in particular the Subcontractor who will be exposed to the Personal Information has agreed to sign a Data Protection Agreement (**Annexure B**) and a copy thereof will be submitted to SARS.

51.8. Regulatory requirements:

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

51.9. Documentation:

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

51.10. General Warranties:

51.10.1. The Service Provider hereby represents and warrants to SARS that-

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

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

- 51.10.1.3. the execution and performance of the terms and conditions of the Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its business, or its memorandum of incorporation or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;
- 51.10.1.4. it will provide the Services in a cost-effective manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to SARS;
- 51.10.1.5. it will have the requisite insurance to cover for professional liability claims (to the extent that it may be applicable), that may be instituted against it;
- 51.10.1.6. it has the necessary resources, skills and experience to render the Service and/or deliver the Deliverables to SARS; and
- 51.10.1.7. it is expressly agreed between the Parties that each warranty and representation given by the Service Provider in the Agreement is material to the Agreement and induced SARS to conclude the Agreement.

51.10.2. The provisions of this Clause 51 shall survive the termination of the Agreement.

52. PUBLICITY

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

53. CO-OPERATION

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

54. DISPUTES

- 54.1. In the event of there being a dispute, but save where otherwise provided in the Agreement, such dispute will be resolved in accordance with the rules of the AFSA as provided for below.
- 54.2. In the event of any such dispute arising between the Parties relating to or arising out of the Agreement, including a dispute as to the validity, implementation, execution, interpretation, rectification, termination or cancellation of the Agreement, the Parties will forthwith meet to attempt to settle such dispute, and failing such settlement within a period of 14 (fourteen) days of first meeting, the said dispute will on written demand by either Party be submitted to arbitration in Johannesburg in accordance with the rules of AFSA.
- 54.3. Should the Parties fail to agree in writing on an arbitrator within 10 (ten) days after arbitration has been demanded, the arbitrator will be nominated at the request of a disputant by AFSA.
- 54.4. The decision of the arbitrator will be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party. A decision which becomes final and binding in terms of this Clause 54 may be made an order of court at the instance of any Party to the arbitration.
- 54.5. Nothing herein contained will be deemed to prevent or prohibit a disputant from applying to the appropriate Court for urgent relief or for judgment in relation to a liquidated claim.
- 54.6. Any arbitration in terms of this Clause 54 will be conducted in camera and the Parties will treat as confidential and not disclose to any Third Party details of the dispute submitted to arbitration, the conduct of the arbitration proceedings or the outcome of the arbitration, without the written consent of all the disputants.
- 54.7. The provisions of this Clause 54 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

55. ADDRESSES

55.1. Each Party chooses the addresses set out below its name as its addresses to which all notices and other communications must be delivered for the purposes of the Agreement and its domicilium citandi et executandi ("domicilium") at which all documents in legal proceedings in connection with the Agreement must be served.

55.2. SARS's physical address for service of notices and legal processes-

Head: Corporate Legal Services

299 Bronkhorst Street

Block A, Le Hae La SARS

Nieuw Muckleneuk

Pretoria

55.3. The Service Provider's physical address for service of notices and legal processes shall be as follows:

Head: Corporate Legal Services

299 Bronkhorst Street

Block A, Le Hae La SARS

Nieuw Muckleneuk

Pretoria

55.4. Any notice or communication required or permitted to be given to a Party pursuant to the provisions of the Agreement shall be valid and effective only if in writing and sent to a Party's domicilium.

55.5. Any Party may by written notice to the other Party, change its chosen address to another address, provided that-

55.5.1. the change shall become effective on the tenth (10th) Business Day after the receipt or deemed receipt of the notice by the addressee; and

55.5.2. any change in a Party's domicile shall only be to an address in South Africa, which is not a post office box or a poste restante.

55.6. Any notice to a Party contained in a correctly addressed envelope and sent by prepaid registered post to it at a Party's domicile shall be deemed to have been received on the fifth (5th) Business Day after posting.

55.7. Any notice to a Party in a correctly addressed envelope and which is delivered by hand to a Party's chosen address shall be deemed to have been received on the day of delivery unless the contrary is proved.

56. BROAD-BASED BLACK ECONOMIC EMPOWERMENT ("BBBEE")

56.1. The Service Provider acknowledges that Broad-Based Black Economic Empowerment is a business and social imperative in order to achieve a non-racial, non-sexist and equitable society in South-Africa.

56.2. In pursuance of this objective the Service Provider commits and warrants to comply in all respects with the requirements of the BBBEE and BBBEE Codes issued in terms of the BBBEE.

56.3. Upon signature of the Agreement and one (1) calendar month after the expiry of a current certificate for a particular year, the Service Provider shall provide SARS with a certified copy of its BEE Status from an agency accredited by SANAS or IRBA or sworn affidavit where applicable.

56.4. During the currency of the Agreement (including any extension or renewal hereof which may apply), the Service Provider shall use reasonable endeavours to maintain and improve its current BEE Status at least level two (2).

56.5. A failure to provide a certified copy of its BEE Status or a failure to comply with provisions of this Clause will entitle SARS to terminate the Agreement by giving the Service Provider one (1) month's written notice.

57. TAX COMPLIANCE

57.1. The Service Provider warrants that as of the Effective Date it is in full compliance with and shall throughout the Term of the Agreement (including any Extended Period) shall remain in full compliance with Tax Act.

57.2. Notwithstanding Clause 57.1 above, the Service Provider acknowledges and agrees that to be appointed as the preferred service provider, compliance with the Tax Act is required and as such, the Service Provider is encouraged to monitor and maintain its Tax Act compliance status during the Term.

58. ETHICAL BUSINESS PRACTICES

58.1. SARS has a policy of zero tolerance regarding the engagement in corrupt activities or business. The Parties shall promptly report to each other and the relevant authorities any suspicion of corruption on the part of their agents, Staff, suppliers, taxpayers, or any other person or entity related to them, as well as any behaviour by any of the persons that may constitute a contravention of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) ("**PRECCA**") or the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998) ("**POCA**") as amended from time to time..

58.2. Neither Party shall conspire to or offer, promise or make any gift, payment, loan, reward, inducement benefit or other advantage to any of the other Party's Staff, suppliers or any third party in return for a benefit to itself or for the benefit of another person.

58.3. 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, SARS shall, after allowing the Service Provider reasonable opportunity to investigate that possibility, have the right either by itself, or by its agents, or by requesting the police, to investigate all the relevant circumstances, on reasonable notice to the Service Provider as the circumstances allow, to question any relevant Staff of the Service Provider 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, SARS shall be entitled, on written notice to the Service Provider, to immediately terminate this Agreement and either assume the provision of the Services itself or appoint a third party to render the Services. The Service Provider acknowledges that as the Services are a matter of national importance, it is crucial that SARS shall be entitled, without penalty, to ensure continued provision of the Services if for whatever reason this Agreement is terminated pursuant to the breach thereof by the Service Provider or its Staff, as the case may be.

58.4. If SARS at any stage during the subsistence of this agreement suspects the possibility of corrupt activities, improper or fraudulent practices, theft or any other offence in terms of PRECCA or POCA by the Service Provider, SARS shall be entitled to:

58.4.1. On written notice immediately suspend this Agreement and at its sole and absolute discretion appoint a third party to render the Services should SARS deem it necessary; and

58.4.2. either by itself, or by its agents, or by requesting the police, to investigate all the relevant circumstances giving rise to the suspicion and to question any relevant Staff of the Service Provider or a third party; and the Service Provider shall use all reasonable efforts to facilitate any such investigation or enquiry.

58.5. Withhold payment of the Service Provider's invoices until such time as SARS have concluded its investigations, which period shall be reasonable.

58.6. In the event that an act of corruption, fraud, theft or any other offence in terms of PRECCA or POCA is proven, SARS shall be entitled to immediately terminate this Agreement on written notice to the Service Provider and either assume the provision of the Services itself or appoint a third party to render the Services. The Service Provider acknowledges that as the Services are a matter of national importance, it is crucial that SARS shall be entitled, without penalty, to ensure continued provision of the Services if for whatever reason this Agreement is terminated pursuant to the breach thereof by the Service Provider or its Staff, as the case may be.

59. CONFLICT OF INTEREST

59.1. The Service Provider undertakes to immediately notify SARS in the event that a conflict of interest is identified, upon entering of the Agreement by SARS and the Service Provider.

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

60. NEW LAWS AND INABILITY TO PERFORM

60.1. It is recorded that the Parties are aware of various new Bills that are to be presented to Parliament which, if passed into law, may have an effect on the provisions of the Agreement and/or the Services. Therefore, the Parties record and agree that, if any law comes into operation subsequent to the signature of the Agreement which law affects any aspect or matter or issue contained in the 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 impossible to comply with the letter and spirit of the Agreement, the Parties undertake to enter into negotiations in good faith regarding a variation of the Agreement in order to ensure that neither the Agreement nor its implementation constitutes a contravention of such law.

- 60.2. If any law comes into operation subsequent to the commencement of the Services notwithstanding the Effective Date, which law affects any aspect or matter or issue contained in the is Agreement and/or performance of the Services, the Parties undertake to enter into negotiations in good faith regarding a variation of the Services in order to ensure that neither the Services nor implementation constitutes a contravention of such law by either Party.

61. BUSINESS CONTINUITY MANAGEMENT

- 61.1. To mitigate the effects of any disaster incident, the Service Provider shall implement and maintain a proven business continuity plan that is satisfactory to SARS which ensure continuity of the Services in the event of early termination of the Agreement for any reason whatsoever, which business plan shall when acceptance by SARS, be attached to the Agreement as **Annexure “I”** For the avoidance of doubt the cost of implementing and maintaining the business continuity plan shall be for the account of the Service Provider. The Service Provider shall ensure that the business continuity plan is concluded and signed by the Parties within 60 (sixty) days from the Signature Date.
- 61.2. On an annual basis, SARS, or its nominated appointee, shall have the right to review and assess the Service Provider’s business continuity plan in respect of the Services.
- 61.3. The Service Provider shall immediately, or as soon as is reasonably or practically possible, inform SARS in writing of any internal or external incidents that impact on, or may impact on, or prevent it from providing the Services and how it plans to resolve such incidents to ensure a sustained Service provision in line with the Service Level Agreement.

62. RELATIONSHIP BETWEEN THE PARTIES

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

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

63. GENERAL

63.1. Whole Agreement and Amendment

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

63.2. No Assignment Without Consent

- 63.2.1. The Service Provider may not assign, delegate or in any other manner transfer any benefit, rights and/or obligations in terms of this Agreement to a third party, with or without the prior written consent of SARS.

- 63.2.2. The Service Provider may only cede this Agreement in favour of registered Financial Services Providers (FSP) and state institutions established for the express purpose of providing funding to businesses and entities (State Institution). Therefore, cession shall only be permissible in the event that -

63.2.2.1 It is intended to transfer rights to receive payment for services rendered by the Service Provider to SARS;

63.2.2.2 The written request for cession to SARS is by the Service Provider and not any third party; and

63.2.2.3 The written request by the Service Provider must be accompanied by the cession agreement the parties intend to enter into.

63.3. Severability

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

63.4. Advertising and Marketing

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

63.5. Waiver

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

64. COVENANT OF GOOD FAITH

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

65. COSTS

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

66. AUTHORISED SIGNATORIES

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

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

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

66.4. The persons signing the Agreement in a representative capacity warrant their authority to do so.

SIGNED at _____ **on** _____ **2022**

For and on behalf of

SOUTH AFRICAN REVENUE SERVICE

Signature

Name of Signatory

Designation of Signatory

SIGNED at _____ **on** _____ **2022**

For and on behalf of

SOUTH AFRICAN REVENUE SERVICE

Signature

Name of Signatory

Designation of Signatory

SIGNED at _____ **on** _____ **2022**

For and on behalf of

SERVICE PROVIDER

Signature

Name of Signatory

Designation of Signatory

ANNEXURE B

DATA PROTECTION AGREEMENT

(ATTACHED SEPARATELY)

DRAFT

ANNEXURE C

TECHNICAL SECURITY: PROJECT INDEX LAYOUT GUIDE

Contents:

1. Project Journal
2. Copies of Quotations Submitted and/or approved
3. Copies of Purchase Order/s Received
4. Copies of Service Requests / SOW Documents
5. Approved and/or version controlled Installation Drawings and/or Layouts
6. Copies of Approved Project Plans and/or Work Breakdown Schedules and/or Gantt Charts (including milestones)
7. Copies of Project Correspondence such as but not limited to:
 - a. Meeting Agendas
 - b. Meeting Minutes
 - c. Stakeholder Analysis
 - d. Responsibility Matrix
 - e. Communication Plan
 - f. Action Plan
 - g. Risk logs
 - h. Issue logs
 - i. Change requests and/or logs
 - j. Control checklists

- k. Closure reports
- 8. Copies of As-Built Documentation (including cabling routes, cabling schedules, equipment position, etc.)
- 9. Schedules of Equipment Serial Numbers and SARS barcodes
- 10. Copies of Equipment Manuals, Certificates, Licensing, Registration and Software
- 11. Copies of Invoices Submitted
- 12. Copy of Completion Certificate
- 13. Copy of Safety File

ANNEXURE D

REGIONS

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ANNEXURE E

SERVICE LEVEL AGREEMENT IN RESPECT OF THE SOLUTION

(ATTACHED SEPARATELY)

DRAFT

ANNEXURE F

FORM OF A SERVICE REQUEST

1. PARTIES

1.1. The Parties to this Agreement are –

1.1.1. SARS; and

1.1.2. (PTY LTD.

1.2. The Parties agree as set out below.

2. INTERPRETATION AND DEFINITION

2.1. This Service Request is being executed by the Parties pursuant to the Master Services Agreement entered into by the Parties, the terms of which are incorporated herein by reference.

2.2. In this Service Request, unless the context clearly indicates the contrary, any term defined in the Master Services Agreement and any annexure, appendixes or schedules hereto shall when used herein, bear the same meaning as defined in the Master Services Agreement.

2.3. Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto-

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

2.3.2. **“Commencement Date”** means (notwithstanding the Signature Date and the Effective Date) (**DRAFTING NOTE: PLEASE INSERT THE DATE**); and

- 2.3.3. **“Dependencies”** means the dependencies for the provision of the Services, which shall where applicable, be specified in the Service Request;
- 2.3.4. **“Fees”** means the fees chargeable by the Service Provider for the performance of the Services, which fees are as fully set out in the table below;
- 2.3.5. **“SARS Requirements”** means SARS’s requirements for performance of the Services and/or allocation of Resources which requirements shall where required, be stated in this Service Request;
- 2.3.6. **“Services”** means the services as defined in the MSA;
- 2.3.7. **“Signature Date”** means the date of signature of this Service Request by a Party last signing;
- 2.4. Capitalised terms used but not defined herein shall have the meanings given to them under to the aforesaid Master Services Agreement.

3. INTRODUCTION

- 1.1. This Service Request Number. _____ dated as of [_____] (the **‘Service Request Commencement Date’**) is being executed pursuant to the Master Services Agreement (Technical Security Services) Agreement between South African Revenue Service (**“SARS”**) and Diopoint (Pty) Ltd, (Registration No. [_____] (**“the Service Provider”**)) (the **“Agreement”**) dated as of [_____] , the terms of which are incorporated herein by reference (the **“Service Request”**).

2. DESCRIPTION OF THE DELIVERABLE(S)

[Note to the Parties: Please insert a description of the Deliverable(s) under this Agreement. Identify Hardware/Software to be provided by the Service Provider]

- 2.1. **Specifications and quantity:**

Table -1		
Deliverable Type	Specifications	Quantity

2.2. Dependencies:

[Note to the Parties: If there are any dependencies for the performance of the Service or delivery of Deliverables, please insert a description of such a dependency]

3. SPECIFIC TERMS

[Note to the Parties: If there are any specific terms for the performance of the Service or delivery of Deliverables, please insert a description of such a terms]

4. APPLICABLE TIMELINES

[Note to the Parties: delete whichever is not applicable]

- 4.1. The Service Provider shall procure the delivery of the Deliverables within **[Drafting Note: to be inserted]** of Service Request and shall inform SARS of any other service requirements.

Table -1				
Deliverable Type	Service Provider Requirements	Timeline		
			Sign-off by SARS	Delivery

5. FEES

The Service Provider's Fees for Deliverable(s) of this Service Request under the Master Services Agreement shall be the amount specified in the table below:

Table-2			
Deliverable	Quantity	Price Per Unit	Total
Total:			

[Signature blocks appear on the next page.]

SIGNED at _____ on _____ 2022.

For and on behalf of

SARS

Signature

Name of Signatory

Designation of Signatory

SIGNED at _____ on _____ 2022.

For and on behalf of

(DRAFTING NOTE: PLEASE INSERT COMPANY NAME)

Signature

Name of Signatory

Designation of Signatory

ANNEXURE G

FORM OF A WORK ORDER

1. PARTIES

1.1. The Parties to this Agreement are –

1.1.1. SARS; and

1.1.2. **[NOTE TO BIDDER: TO BE INSERTED].**

1.2. The Parties agree as set out below.

WHEREBY THE PARTIES AGREE AS FOLLOWS -

2. INTERPRETATION

2.1. The Work Order is being executed pursuant to the Master Services Agreement between SARS and the Service Provider the terms of which are incorporated herein by reference. In this Work Order (and any Appendixes hereto), unless the context indicates a contrary intention, capitalised words and phrases shall have the meaning ascribed to them in the Master Services Agreement, and the following words and expressions bear the meanings assigned to them below, and cognate expressions bear corresponding meanings -

2.1.1. **“Account Executive”** means the Service Provider’s designated senior manager, who will be in charge of the general administration of the Project and will interface with Service Provider Authorised Representative in connection therewith, and to whom all communications regarding the Project must be addressed, and further, who will assist in the resolution of any disputes;

2.1.2. **“Dependencies”** means the dependencies for the provision of the Services, which shall where applicable, be specified in this Work Order;

- 2.1.3. **"Project Commencement Date"** means the date of signature hereof, it being specifically recorded that the definition of Effective Date in the Master Services Agreement shall not apply to this Work Order;
- 2.1.4. **"Project"** means [DRAFTING NOTE: TO BE INSERTED BY THE PARTIES];
- 2.1.5. **"Project File"** means the SARS journal for recording of Project activities, documents, records or the like;
- 2.1.6. **"Project Price "** means the price payable by SARS for the implementation of the Project which price is fully described in **Appendix A**;
- 2.1.7. **"Project Plan"** means the Project Plan documented and agreed to between the Parties in terms hereto which shall when signed, be attached to this Work Order as Appendix B; and
- 2.1.8. **"Project Performance Penalty"** means a penalty amount which will be payable by the Service Provider to SARS for its failure to meet a timeline set out in the Project Plan as part of the implementation of such Project;
- 2.1.9. **"SARS Requirements"** means the agreed specifications applicable to the Project, the details of which will once agreed to by the Parties be attached hereto as **Appendix B**.

3. **COMMENCEMENT AND DURATION**

- 3.1. The Work Order shall commence upon the Commencement Date and shall continue for the duration of the Project ("**Project Term**"), until the Services are completed or unless terminated by either Party in terms of the Services Agreement.
- 3.2. Provision of the Services: The Service Provider shall provide the Services in accordance with the SARS Requirements.

4. **RETAINED RESPONSIBILITIES AND SYSTEM REQUIREMENTS**

- 4.1. SARS's Retained Responsibilities in terms of this Work Order are set out in **Appendix C**.

- 4.2. SARS shall provide Service Provider with access to the SARS-owned hardware, software, equipment and other resources, reasonably and necessarily required by the Service Provider to implement the Project for SARS. Service Provider's requirements in this regard are contained in **Appendix D**.

5. **DEPENDENCIES**

[Note to the Parties: If there are any dependencies for the performance of the Service or delivery of Deliverables, please insert a description of such a dependency]

6. **SPECIFIC PROJECT TERMS**

[Note to the Parties: If there are any specific terms for the performance of the Service or delivery of Deliverables, please insert a description of such a terms]

7. **PROJECT PERFORMANCE PENALTIES**

- 7.1. The penalty is a price adjustment for the relevant period to reflect the reduced level of Project implement by the Service Provider. The penalty is not an estimate of the loss or damage that may be suffered by SARS as a result of a failure to meet a timeline set out in the Project Plan.
- 7.2. The penalties in respect of the Project Plan timeline not met will be set at 5% (five percent) of the Project Fees payable by SARS to the Service Provider in respect of a Project deliverable not met and increase by 1% (one percent) every day until such Project Milestones are met.
- 7.3. The payment of a penalty fee by the Service Provider is without prejudice to, and will not limit, any right SARS may have to terminate this Work Order or the Agreement and/or seek damages or other remedies at law resulting from such failure to meet a timeline and any resulting termination.

8. **MEASUREMENTS PERIODS**

8.1. The first Measurement Period in respect of a Project delivery and meetings and Project shall be the period commencing on the Project start date and ending on the date of acceptance by SARS of the first milestone Project deliverable, as contemplated in the Project Plan. Subsequent Measurement Periods shall be the periods from the date of Acceptance of the last delivered Project deliverable milestone to the date of Acceptance of the next milestone Project deliverable. The final Measurement Period shall end on the date of Acceptance of the final Project deliverable milestone as contemplated in the Project Plan.

8.2. Except as otherwise set out in the description of the individual Project Timelines, the Service Provider's performance with respect to the Project Timeline will:

8.2.1. commence being measured by the Service Provider on the Project Start Date; and

8.2.2. be measured against the Service Provider's actual implementation of the Project against the Project Plan, not merely a sampling of its performance of such Project.

9. **SERVICE MEASUREMENTS**

9.1. **Implementation Services:**

9.1.1. The first Service measurement shall be in respect of the Implementation Services and Deliverables to be completed and delivered within the timelines set out in the Project Plan, which shall be a period commencing within 21 (twenty-one) days from award date set out in the Letter of Award.

9.1.2. Subsequent Measurement Periods shall be the periods from the date of acceptance of the last delivered milestone Deliverable to the date of acceptance of the next milestone Deliverable. The final Measurement period shall end on the date of acceptance of the final milestone Deliverable as contemplated in the Service plan.

9.2. **Technical Support:**

- 9.2.1. The Service performance will be measured by SARS using the Remedy system. Or the Service Provider will make monthly performance reports available to SARS on request.
- 9.2.2. The Parties will hold three monthly service review meeting to discuss the overall Service performance however SARS can request monthly meetings in the event that the Service performance standards are not met.

10. DESIGNATED REPRESENTATIVES AND KEY PERSONNEL

- 10.1. SARS's Designated Representative: SARS appointed Designated Representative for this Work Order is [DRAFTING NOTE: TO BE INSERTED].
- 10.2. Service Provider's Designated Representative: The Service Provider appointed Designated Representative for this Work Order is [DRAFTING NOTE: TO BE INSERTED].
- 10.3. Key Personnel: The Service Provider's Key Personnel for this Work Order are those Staff members listed in **Appendix F**.

11. COMMUNICATION INTERFACES

- 11.1. All communications between the Service Provider and SARS shall be addressed to their respective Designated Representatives, or their alternates, in writing.

12. PRICE AND PAYMENT

- 12.1. The Project Fees shall be provided and charged for by Service Provider on the fixed price basis as set out in Appendix A.
- 12.2. It is recorded that SARS's budget for the Work Order is an amount not exceeding R (TBD) exclusive of Value Added Tax ("**the Budgeted Cost**"). The Budgeted Cost has been calculated by SARS on the basis of the pricing provided by the Service Provider and contained in Appendix A and is on that basis a genuine estimate by SARS to cover the anticipated cost for the Project implementation contemplated by the parties in terms of this Work Order, including a reasonable margin for contingencies. The Budgeted Cost set forth in this clause 12.1, including any adjustment made thereto will fully remunerate the Service Provider for the Project.

12.3. SARS shall pay the Service Provider in accordance with the payment milestones as set out in **Appendix A.**

12.4. SARS shall pay the Service Provider in accordance with the payment milestones as set out in **Appendix A.**

13. COSTS

13.1. Each party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of the Work Order.

13.2. The Parties' duly authorised representatives hereby confirm their acceptance of this Change Service Request.

SIGNED at _____ **on** _____ **2022.**

For and on behalf of

SARS

Signature

Name of Signatory

Designation of Signatory

SIGNED at _____ **on** _____ **2022.**

For and on behalf of

(DRAFTING NOTE: PLEASE INSERT COMPANY NAME)

Signature

Name of Signatory

Designation of Signatory

DRAFT

ANNEXURE H

FORM OF A CHANGE REQUEST

THIS CHANGE ORDER NO. _____ dated as of [_____] (the 'Change Service Request Commencement Date') is being executed with respect to the Deliverable(s)/Service Request #_____ and pursuant to the Master Services Agreement in respect of _____ between South African Revenue Service ("SARS") and _____ (Proprietary) Limited, (Registration No. [_____] ("Service Provider") dated [_____] the terms of which are incorporated herein by reference. Capitalised terms used but not defined herein shall have the meanings given to them under Clause 2 of the aforesaid Agreement.

All terms and conditions of the Service Request and/or Work Order not specifically amended in terms of this Change Service Request will remain in full force and effect. Any conflict between the terms and conditions of this Change Service Request, Service Request and/or the Master Services Agreement or Change Service Request, Work Order and/or the Master Services Agreement shall be addressed in accordance with 2 of the Agreement.

DESCRIPTION OF THE CHANGES TO DELIVERABLES

[Note to the Parties: Please insert a description of the changes to the Service Request provided under this Change Service Request. Upon execution of this Change Service Request, the Service Provider shall implement such changes. For purposes of clarity, Support Services and/or Projects shall be provided only under Service Request or Work Order not under Change Service Request.]

The Parties' duly authorised representatives hereby confirm their acceptance of this Change Service Request.

SIGNED at _____ **on** _____ **2022.**

For and on behalf of

SARS

Signature

Name of Signatory

Designation of Signatory

SIGNED at _____ **on** _____ **2022.**

For and on behalf of

(DRAFTING NOTE: PLEASE INSERT COMPANY NAME)

Signature

Name of Signatory

Designation of Signatory

SCHEDULE F: DISENGAGEMENT ASSISTANCE

1. GENERAL

- 1.1 Service Provider will, during the Disengagement Assistance Period provide to SARS, or at SARS's request to a Successor (where SARS is not the Successor) without interruption or degradation of the Services (i) such termination/expiration assistance as SARS may request to facilitate the Transition of the Services to SARS or a Successor; and (ii) to the extent applicable, hardware and Software, ("Disengagement Assistance").
- 1.2 Disengagement Assistance provided to SARS prior to the effective date of termination or expiration will be chargeable by Service Provider to SARS only to the extent that the appointment of additional resources (above and beyond those resources used in providing the Services) is strictly necessary for Service Provider to provide such assistance and provided Service Provider has notified SARS of such appointment and SARS has pre-approved such appointment (and related charges) in writing, which approval will be exercised at SARS's sole discretion. Service Provider will use Commercially Reasonable Efforts to perform the Disengagement Assistance without deploying additional resources. Disengagement Assistance provided to SARS after the effective date of termination or expiration will be chargeable to SARS on a Time and Materials Basis in accordance with the Personnel Rates. Charges related to materials will be treated on a Pass Through Expense Basis.
- 1.3 Disengagement Assistance will include the provision of all information and assistance requested by SARS and necessary to ensure the seamless Transition of Services and functions being performed by Service Provider or its agents to the Successor. Disengagement Assistance may include capacity planning, consulting services, facilities planning, electronic communications services planning, Software configuration, reviewing all system Software with a new vendor, generating machine readable listings of source code, uploading production databases, providing parallel processing, testing, and providing such other assistance as is described in this Schedule F (Disengagement Assistance).
- 1.4 Service Provider will perform the Disengagement Assistance in a manner such that (to the extent within Service Provider's control):

- 1.4.1 the Terminated Services are transferred to the Successor in an efficient and orderly manner;
- 1.4.2 the impact on SARS's operations (including SARS Personnel) and the internal and Third Party costs incurred by SARS in transferring the Terminated Services are minimised;
- 1.4.3 the Terminated Services continue to be performed by Service Provider until the Termination Date has occurred without disruption or deterioration except as approved by SARS and included in the Disengagement Assistance Plan;
- 1.4.4 any disruption or deterioration of the Terminated Services following the Termination Date (except as approved by SARS and included in the Disengagement Assistance Plan) is minimised;
- 1.4.5 there is a knowledge transfer as part of which SARS and/or the Successor are provided with all information held by Service Provider (or a Subcontractor) that is required to perform services replacing or reasonably equivalent to the Terminated Services following the Termination Date; and
- 1.4.6 SARS is able, at its option, to receive services similar to the Terminated Services, independently of the Service Provider following termination, including by the transfer to SARS or the Successor of the resources specified in clause 3.

1.5 If there is more than one Successor, then Service Provider will perform the Disengagement Assistance in respect of each Successor.

1.6 Approach to disengagement

SARS will be entitled to determine on notice to Service Provider the approach to be taken in respect of the transfer of the Terminated Services, including that:

- 1.6.1 the transfer of the Terminated Services from Service Provider to a Successor may either occur:
 - 1.6.1.1 on the Termination Date; or

- 1.6.1.2 over a period prior and up to the Termination Date in accordance with a timetable, specified by SARS with a corresponding adjustment of the Charges in accordance with clause 13 of Schedule D (Charges, Invoicing and Payment), provided that all Terminated Services will cease being performed by Service Provider no later than the Termination Date or such later date as determined by SARS and advised to Service Provider; and
- 1.6.2 interim changes are made to the Services to enable the transfer of the Terminated Services.

1.7 Disengagement Assistance Plan

- 1.7.1 The Disengagement Assistance Plan will be developed for each transfer of Terminated Services. SARS will elect whether the Disengagement Assistance Plan is to be developed by SARS or in whole or part by Service Provider.
- 1.7.2 If SARS elects to develop the Disengagement Assistance Plan (or any part thereof), SARS will provide the Disengagement Assistance Plan to Service Provider.
- 1.7.3 If SARS elects for Service Provider to develop all or part of the Disengagement Assistance Plan, then:
- 1.7.3.1 a detailed draft that complies with this Agreement will be delivered to SARS for its comments and review by:
- 1.7.3.1.1 in the case of expiry of the Term, 8 (eight) months prior to the end of the Term; or
- 1.7.3.1.2 in all other cases, 10 (ten) Business Days following the date of delivery of a notice of termination or a notice to reduce the scope of the Services.
- 1.7.3.2 Service Provider will incorporate SARS's reasonable comments and changes into the Disengagement Assistance Plan (and any subsequent version of the Disengagement Assistance Plan) and finalise the Disengagement Assistance Plan within 15 (fifteen) days following receipt of the same; and
- 1.7.3.3 the final Disengagement Assistance Plan will be subject to the written approval of SARS.
- 1.7.4 The Disengagement Assistance Plan will clearly and in detail:
- 1.7.4.1 give effect to any approach to the Disengagement Assistance specified by SARS in accordance with clause 1.6;

- 1.7.4.2 describe actions to be taken by Service Provider in performing the Disengagement Assistance (without limitation to any other actions requested by SARS pursuant to this Schedule F during the Disengagement Assistance Period);
- 1.7.4.3 subject to clause 1.7.7, describe in detail any SARS and/or Successor tasks (including an estimate of the specific staffing required);
- 1.7.4.4 describe how any transfer of assets and contracts will be achieved;
- 1.7.4.5 specify the detailed information that will be provided (having regard to the categories in Appendix F-1 (Disengagement Assistance Data));
- 1.7.4.6 set out the timetable for the transfer of each element of the Terminated Services (including key milestones to track the progress of the transfer); and
- 1.7.4.7 specify reasonable acceptance criteria and testing procedures to confirm whether the transfer of the Terminated Services has been successfully completed.
- 1.7.5 Following SARS's approval of and authorisation to proceed with the final Disengagement Assistance Plan, Service Provider will perform the Disengagement Assistance in accordance with the Disengagement Assistance Plan.
- 1.7.6 During the Disengagement Assistance Period, either Party may propose changes to the Disengagement Assistance Plan and Service Provider will proactively recommend changes that are necessary or desirable. Any changes to the Disengagement Assistance Plan will be subject to the other Party's approval.
- 1.7.7 SARS (or Successor) tasks to be performed in respect of Disengagement Assistance will only apply where:
 - 1.7.7.1 the task is reasonable and there is no other practical manner in which Service Provider can perform the Disengagement Assistance without such task being performed by SARS or a Successor; or
 - 1.7.7.2 SARS notifies Service Provider that SARS wishes to perform such task.

1.8 Disengagement Assistance Management

- 1.8.1 Service Provider will appoint a senior project manager as its "Disengagement Assistance Manager" who will be responsible for the overall performance of the Disengagement Assistance and who will be the primary point of contact for SARS in respect of the Disengagement Assistance during the Disengagement Assistance Period. Service Provider will appoint such representative by the relevant date specified in clause 1.7.3.1.
- 1.8.2 SARS will appoint a senior project manager as its "SARS Disengagement Assistance Manager" who will be the primary point of contact for Service Provider during the Disengagement Assistance Period.
- 1.8.3 Both Parties will use Commercially Reasonable Efforts to ensure that any Disengagement Assistance issues or disputes are resolved promptly by the Disengagement Assistance Managers. Any disputes that cannot be resolved will be escalated in accordance with the dispute resolution procedure set forth in clause 24 of the Main Agreement.
- 1.8.4 Service Provider will manage the Disengagement Assistance in accordance with SARS's reasonable directions, including:
- 1.8.4.1 resolving any Incidents or problems arising with respect to the Disengagement Assistance;
 - 1.8.4.2 defining an escalation process, as approved by SARS, to be used if there is a failure in any part of the disengagement;
 - 1.8.4.3 establishing, as directed by SARS, the necessary communications and interfaces between SARS, Service Provider, the Successor and the Subcontractors; and subject to the provisions of clause 1.2 above, providing individuals with the required expertise to perform Disengagement Assistance.
- 1.8.5 Service Provider will monitor progress of all tasks and responsibilities in the Disengagement Assistance Plan (whether the responsibility of Service Provider, SARS or any Third Party) against the Disengagement Assistance Plan and promptly escalate to SARS any failures (or potential failures) to perform any tasks or responsibilities, including failures by SARS or the Successor.
- 1.8.6 Service Provider will provide reports to SARS not less than once a week which:

1.8.6.1 describe the progress of the Disengagement Assistance against the Disengagement Assistance Plan; and

1.8.6.2 identify any risks encountered during the performance of the Disengagement Assistance and propose steps to mitigate such risks.

1.8.7 The Disengagement Assistance Managers appointed pursuant to clauses 1.8.1 and 1.8.2 above will meet on a weekly basis (or as otherwise required by SARS) during the Disengagement Assistance Period to review the status of the Disengagement Assistance Plan.

1.8.8 SARS may appoint a Successor during the Disengagement Assistance Period to manage Service Provider's performance of the Disengagement Assistance and any Terminated Services. Service Provider will follow the direction of such Successor only to the extent that:

1.8.8.1 Service Provider would be obliged to follow SARS's directions under this Agreement; and

1.8.8.2 SARS has authorised the Successor and notified Service Provider of such authorisation.

1.9 Confidentiality and Security Compliance

1.9.1 Prior to a Successor (other than SARS) being provided with any Service Provider Confidential Information as part of Disengagement Assistance, SARS will enter into a confidentiality agreement with the Successor on terms substantially similar to those set out in clause 15 of the Main Agreement or as otherwise agreed by the Parties.

1.9.2 SARS will procure that any Successor entering any Service Provider or Subcontractor facilities in connection with the Terminated Services will comply with Service Provider's reasonable security and site regulations and policies notified to SARS in advance.

2. SPECIFIC DISENGAGEMENT ASSISTANCE REQUIREMENTS

2.1 Bid Assistance

2.1.1 At any time during the Term (whether before or during the Disengagement Assistance Period), Service Provider will, as requested by SARS, reasonably co-operate and promptly provide assistance with any bid or tender process that SARS runs in relation to any of the Terminated Services (or potential Terminated Services) including:

- 2.1.1.1 providing information, reports and data for inclusion in SARS's request for information and request for proposals;
- 2.1.1.2 answering questions raised by potential Successors; and
- 2.1.1.3 allowing potential Successors to perform reasonable due diligence activities in respect of the relevant Services, including providing reasonable access to facilities from where the Services are performed (subject to Service Provider's reasonable security requirements), Service Provider support systems and Service Provider Personnel (including personnel located off SARS Sites); provided that such due diligence will be performed in such a reasonable manner so that it does not materially disrupt Service performance (unless SARS excuses such disruption in advance, in writing).
- 2.1.2 The bid assistance to be performed pursuant to clause 2.1.1 above will be at least to the level:
 - 2.1.2.1 that would be required for reasonably skilled and experienced Third Party service providers to:
 - 2.1.2.1.1 prepare an informed, non-qualified offer for the relevant Terminated Services; and
 - 2.1.2.1.2 not be disadvantaged compared to Service Provider (if Service Provider is invited to participate) in respect of access to information; and
 - 2.1.2.2 in any event, be no less than the co-operation and assistance provided by SARS to Service Provider prior to the Effective Date.

2.2 Return of Materials

Service Provider will return to SARS (or destroy) the SARS Confidential Information in accordance with clause 15.8 of the Main Agreement.

2.3 Information

- 2.3.1 As requested by SARS, Service Provider will promptly (and in any event within 5 (five) Business Days following the request) provide SARS with and permit SARS to share with the Successor if the Successor is not SARS:

2.3.1.1 the information and data listed in Appendix F-1 (Disengagement Assistance Data), subject to any timing restrictions specified in that Appendix; and

2.3.1.2 any other information relating to the Services which would be reasonably required by a reasonably skilled and experienced provider of services to continue to perform the Services without disruption or deterioration following the Termination Date.

2.3.2 Subject to clause 1.8 above, SARS may provide to a Successor (or potential Successor): (a) the information identified in clause 2.3.1 and (b) the Agreement.

2.3.3 Service Provider will provide updates to the information provided pursuant to this Schedule F, during the Disengagement Assistance Period.

2.4 Knowledge Transfer

Service Provider will provide knowledge transfer services to the Successor (and SARS where SARS is not the Successor) as reasonably required by SARS, including:

2.4.1 explaining procedures, standards and operations used to perform the Terminated Services;

2.4.2 answering questions in respect of the information provided pursuant to clause 2.3 above; and

2.4.3 for reasonable periods during the Disengagement Assistance Period prior to the Termination Date, allowing Successor personnel to work alongside Service Provider Personnel to shadow their role and enable knowledge transfer.

2.5 Co-operation

As requested by SARS, Service Provider will co-operate with (and procure that the Subcontractors co-operate with) the Successor during the Disengagement Assistance Period.

2.6 Change Freeze

Service Provider will, unless otherwise approved by SARS, ensure that during the 3 (three) month period prior to the Termination Date no material changes are made to:

- 2.6.1 the Terminated Services (including to any hardware, Software or other facilities used to perform the Terminated Services), other than changes necessary for the continued performance of the Services in accordance with the Performance Standards; and
- 2.6.2 any hardware, Software or contracts that SARS has the right to acquire in accordance with clause 3 below.

2.7 Backlogs

Service Provider will perform its obligations under this Agreement so that there is not an unreasonable backlog of requests for support or resolution of Incidents as at the Termination Date.

2.8 Business Continuity

Service Provider will provide the following assistance to support SARS's requirements for business continuity:

- 2.8.1 where SARS is not the Successor, informing Successors of SARS's then-current policies and procedures with regard to backup and disaster recovery relating to the Terminated Services;
- 2.8.2 arranging for additional overlapping coverage or support through the Run Down Period to minimise disruption in the event of an outage during the Run Down Period; and
- 2.8.3 as requested by SARS, assisting in disaster recovery testing during the Run Down Period in accordance with the processes and procedures detailed in the Process and Procedures Library.

3. TRANSFER OF ASSETS AND GRANT OF RIGHTS

3.1 Option to purchase hardware

- 3.1.1 At SARS's election, Service Provider will sell to SARS some or all of the hardware used primarily to provide the Services to SARS. Service Provider will sell hardware that SARS elects to purchase under this provision at the lesser of fair market value or net book value. For this purpose, fair market value will be determined by a registered valuator designated by SARS.

By the relevant date as contemplated in clause 1.7.3.1 above, Service Provider will provide a list of any hardware that is owned by Service Provider or a Subcontractor and is used primarily to provide the Services to SARS. The list will specify for each item of hardware: the manufacturer, model, configuration, age, location, function in the provision of the Services and net book value.

3.1.2 If SARS elects to purchase hardware pursuant to clause 3.1.1 above, then:

3.1.2.1 as requested by SARS, Service Provider will de-commission the purchased hardware and prepare it for transportation (including packaging) or provide it for collection by SARS or the Successor;

3.1.2.2 risk in the purchased hardware will pass to SARS only upon collection by SARS or upon delivery to SARS; and

3.1.2.3 Service Provider will execute or provide any title, bills of sale, invoices or other documents as may be required to give effect to this clause 3.1 and to perfect the transfer of title to SARS or the Successor.

3.1.3 If SARS elects not to purchase any such hardware, Service Provider will be responsible for the re-use or safe disposal of the same (including, if it contains any SARS data, cleansing the same to the standards specified in this Agreement).

3.1.4 Service Provider will provide SARS, the Successor or both (as specified by SARS) with such assistance as is reasonably required to ensure the migration of SARS's Software, SARS data or SARS-provided resources from any hardware which SARS does not wish to acquire to alternative hardware designated by SARS, or secure deletion (as required by SARS).

3.1.5 At SARS's election, Service Provider will assign to SARS some or all of the Third Party contracts relating to hardware used primarily to provide the Services to SARS. Service Provider will be responsible for obtaining, at its sole cost and expense, any Required Consents necessary for the assignment of the applicable lease.

3.2 Assignment of contracts

- 3.2.1 SARS or a Successor (where SARS is not the Successor) will have the option (exercisable by SARS on a contract by contract basis) to assume contracts for any Services provided by Third Parties to Service Provider and used exclusively by Service Provider to provide Services to SARS. Service Provider will take all steps necessary to formally assign such contracts to SARS. In respect of Third Party service contracts, Service Provider will, where required by SARS, use Commercially Reasonable Efforts to arrange for the provision of the Services by the Third Party to SARS under terms at least as favourable as those in the Third Party Service Contract.
- 3.2.2 Service Provider will provide further information about such contracts in accordance with Appendix F-1 (Disengagement Assistance Data).

APPENDIX F-1: DISENGAGEMENT ASSISTANCE DATA

1. DISENGAGEMENT ASSISTANCE DATA

The Disengagement Assistance Data consists of:

1.1 Third Party contracts

1.1.1 In respect of each Third Party contract entered into by Service Provider (or by a Subcontractor) in relation to the Services, including contracts with Subcontractors, and warranties, maintenance agreements and leases relating to hardware and licences and maintenance agreements relating to Software:

1.1.1.1 the type of contract, such as maintenance or support services;

1.1.1.2 a description of the service being provided;

1.1.1.3 whether the contract exclusively relates to the Services;

1.1.1.4 whether the contract can be assigned or novated;

1.1.1.5 the licences, rights or permissions granted under the contract by the Third Party;

1.1.1.6 amounts payable under the terms of such contract;

1.1.1.7 the remaining term of contract and termination rights;

1.1.1.8 contact details of the Third Party;

1.1.1.9 a history of dealings with the Third Party (including performance histories against service levels that may be in effect with respect to such Third Party);

1.1.1.10 a list of projects or unfilled orders in progress and the status of each; and

1.1.1.11 a copy of each of the contracts with each Third Party.

1.2 Other Information

1.2.1 A copy of all documents in the Process and Procedures Library required to provide the Services to SARS;

1.2.2 A list of any Tools, systems, hardware, assets, Software, processes and procedures that are necessary to perform the Services that will not be transferred to the Successor;

1.2.3 All Software back-ups of systems used to perform the Services;

- 1.2.4 Any security features, passwords and password control policies that the Successor needs to know to continue to perform the Services;
- 1.2.5 Key support contact details for Service Provider Personnel and Third Party service providers (excluding Subcontractors), including a contact listing of current potential alternative sources of resources, including skilled labour and spare hardware and parts; and
- 1.2.6 Work volumes, staffing requirements, actual Service Levels and information on historical performance for each Service component during the preceding 12 (twelve) months.

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ANNEXURE I
SERVICE PROVIDER BUSINESS CONTINUITY PLAN
(ATTACHED SEPARATELY)