

# **CONFIDENTIALITY AND SECRECY UNDERTAKING**

## **“Undertaking”**

by

\_\_\_\_\_  
**Registration No.: \_\_\_\_\_**  
**("Bidder")**

**in favour of**

**SOUTH AFRICAN REVENUE SERVICE**  
**("SARS")**

### **1. INTRODUCTION**

- 1.1 SARS is the proprietor and owner of all information (i) published in the SARS RFP17-2012 Non-intrusive Inspection, Scanning and Detection Solutions ("RFP"); and (ii) disclosed as part of the tender process under the RFP.
- 1.2 SARS may disclose confidential information to the Bidder during the tender process under the RFP.
- 1.3 SARS will only disclose the Confidential Information subject to the terms of this Undertaking.

### **2. THE CONFIDENTIAL INFORMATION**

- 2.1 Confidential Information may be disclosed to the Bidder directly or indirectly, advertently or inadvertently. The disclosure or publication of Confidential Information by the Bidder to any third party and/or the use by Bidder of the Confidential Information other than in accordance with this Undertaking may cause irreparable harm or loss to SARS.
- 2.2 Without limitation, the Confidential Information includes the following even if it is not marked as being 'confidential', 'restricted' or 'proprietary' (or any similar designation):

- 2.2.1 any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which (i) by its nature or content is, or ought reasonably to be identifiable as, confidential and/or proprietary to the SARS or a third party associated to SARS, or (ii) which is provided or disclosed in confidence, and which SARS or any person acting on behalf of SARS may disclose to the Bidder, or (iii) which may come to the knowledge of the Bidder by whatsoever means.
- 2.2.2 SARS's data, SARS's 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 analyses of SARS and governmental entities, intellectual property owned by or licensed to SARS or a governmental entity;
- 2.2.3 information relating to the operations, business strategies, assets, knowledge, know-how, expertise, trade secrets and activities of SARS;
- 2.2.4 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 Bidder, as being confidential information;
- 2.2.5 the information disclosed during the course of any negotiations between SARS and the Bidder, including negotiations in respect of the proposed contract contemplated in the RFP;
- 2.2.6 all information disclosed during interactions with SARS, including information relating to requests SARS may direct to the Bidder or steps SARS may take under the RFP process;
- 2.2.7 the information disclosed in any Bidder conferences, responses to Bidder's questions or meetings;
- 2.2.8 the information disclosed in the data room as contemplated in the RFP; and
- 2.2.9 any other information which relates to SARS's business, disclosed to the Bidder and which is not readily available to the general public.

### 3. **CONFIDENTIALITY**

The Bidder undertakes, in perpetuity:

- 3.1 to keep the Confidential Information in the strictest confidence with the endeavours of a reasonable person protecting their own confidential information;

- 3.2 not to distribute, reproduce, store or transmit the Confidential Information, in any form or by any means;
- 3.3 not to utilise, employ, exploit or in any other manner whatsoever use the Confidential Information for any purpose whatsoever;
- 3.4 not to release or disclose the Confidential Information to any person, without SARS's prior written consent;
- 3.5 not to release or disclose the Confidential Information to any of its associates, employees, agents or professional advisers who have not signed SARS's Oath of Secrecy. In addition SARS may require such persons to sign an Undertaking in terms of which they expressly bind themselves not to use or disclose the Confidential Information on terms and conditions substantially similar to those set out in this Undertaking;
- 3.6 at its cost, to take all steps legally available to it to enforce the agreements signed by its associates, employees, agents or professional advisers in terms of clause 3.5;
- 3.7 not to use, divulge or disclose, whether directly or indirectly, the Confidential Information; and
- 3.8 to immediately, on written request by SARS, return to SARS or destroy if so instructed by SARS (including where applicable by electronically deleting the same in such manner that it is completely and utterly irretrievable) all Confidential Information it may have in its possession together with all copies, electronic versions, excerpts or summaries thereof. Where required by SARS to do so, furnish a written statement to the effect that upon such return it has not retained in its possession or under its control, either directly or indirectly, any such Confidential Information or material and has fully complied with the foregoing destruction and deletion obligations.

#### 4. **BREACH**

- 4.1 The Bidder acknowledges that SARS will suffer significant harm if the Bidder breaches any of its obligations in terms of this Undertaking and accordingly indemnifies SARS against any and all losses SARS may suffer as a result of such breach.
- 4.2 Any breaches of this Undertaking by any Bidder associates, employees, agents or professional advisers shall be deemed to be a breach by the Bidder.
- 4.3 The Bidder agrees that this Undertaking will have international application and SARS has the right to enforce the terms of this Undertaking in any relevant or applicable jurisdiction notwithstanding clause 6.6.

- 4.4 The Bidder's attention is drawn to those provisions of SARS RFP 17-2012 1-1 Non-Intrusive Inspection Scanning and Detection Solutions Main Document that provide that SARS will be entitled to encash the Bidder's bid bond in the event of a breach of this Undertaking by the Bidder.

5. **NOTICES AND ADDRESSES FOR SERVICE**

- 5.1 Unless otherwise specified any notice or communication in terms of this Undertaking:

5.1.1 must be in writing to be effective;

5.1.2 must be sent by hand or telefax to the addresses / telefax numbers below, which physical addresses the parties select as their respective *domicilium citandi et executandi*:

In the case of SARS:

**Office of the Commissioner**

Block A, 299 Bronkhorst Street

Nieuw Muckleneuk

Pretoria, 0181

(marked for the urgent attention of the  
Executive: Corporate Legal Services)

Facsimile: Office of the Commissioner  
(012) 422 5250 (marked for the urgent  
attention of the Executive: Corporate  
Legal Services)

In the case of the Bidder:

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Facsimile:

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- 5.2 Either party may change its address / telefax number to any other address / telefax number within South Africa. Such change will only take effect upon receipt or deemed receipt of such notice by the other party.

- 5.3 Any notice or communication shall:

5.3.1 if delivered by hand during business hours to the person apparently in charge of the premises selected by the addressee for the delivery of notices, be deemed to have been received on the date of delivery;

- 5.3.2 if telefaxed to the selected telefax number, be deemed to have been received on the first business day following the date of transmission.
- 5.4 Any written notice or communication that has actually been received by a party shall be regarded as sufficient notice even if it has not been sent in the manner or to the address / telefax number provided for above.

## 6. MISCELLANEOUS LEGAL PROVISIONS

- 6.1 This is the whole Undertaking between the parties containing all of the express provisions agreed on by the parties with regard to the subject matter hereof.
- 6.2 No party may rely on any representation that allegedly induced that party to enter into this Undertaking, unless the representation is recorded herein.
- 6.3 No agreement varying, adding to, deleting from or cancelling this Undertaking and no waiver of any right under this Undertaking shall be effective unless in writing and signed by or on behalf of the parties.
- 6.4 No relaxation by a party of any of its rights in terms of this Undertaking at any time shall prejudice or be a waiver of its rights (unless it is a signed written waiver) and it shall be entitled to exercise its rights thereafter as if such relaxation had not taken place.
- 6.5 No party may cede, delegate, assign or sub-contract any of its rights or obligations in terms of this Undertaking without the prior written consent of the other parties.
- 6.6 This Undertaking shall be governed by and construed according to the law of South Africa.
- 6.7 Headings of clauses are inserted for the purpose of convenience only and must be ignored in the interpretation of this Undertaking.

SIGNED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
For: THE BIDDER

who hereby warrants that (s)he is duly authorised  
to sign this Undertaking on its behalf

Full names \_\_\_\_\_

Designation \_\_\_\_\_